

A Critique of *The Responsibility to Protect*

by

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We accept this thesis as conforming
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Abstract

Armed military intervention for humanitarian purposes is most often framed as a disruption, or transgression, of state sovereignty. This transgression against the 'offending' state is legitimated by 'international' concerns for protecting citizens from ethnic cleansing or genocide. Prevailing theories of intervention provide only cursory analyses of the causes of violence, focusing instead on how to respond to intra-state conflict with 'legitimate' and 'legal' force. Rather than question the need to respond to 'acts that shock the conscience of mankind', this thesis examines the lack of reflexivity in the prevailing discourses of International Relations. Reliance on current institutions may be supporting the violence intervening powers are trying to halt. By analyzing the semantic shift from the 'right to intervene' to the 'responsibility to protect' exemplified in the report of the Commission on Intervention and State Sovereignty titled *The Responsibility to Protect*, I comment further on the limits of political imagination in understanding the politics of intervention.

Examiners:

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Chapter 1 : Introduction

The Significance of the Report

Two elements of a long-standing debate in political theory, law, and policy are concern for individual well being, on the one hand, and the right of non-intervention into the affairs of sovereign states on the other. From the writings of St. Thomas Aquinas on waging 'Just War', to the Bush administration's formal commitment to a doctrine of pre-emptive strike, claims about the use of military force in general, of intervention into the affairs of sovereign states in particular, have long generated controversy over fundamental principles of political life. Such controversies have become increasingly urgent since the end of the Cold War. Should concern for the individual person outweigh the primacy of state sovereignty? Is the sovereign state still an important actor or have other institutions rendered it irrelevant? Has globalization moved us into a post-Westphalian world? How do we bring the 'rule of law' to 'failed states'? These are the questions that shape contemporary discussions of the use of force in international relations.

Numerous texts have been devoted entirely to answering these questions. Studies have been undertaken in order to qualify and quantify whether intervention is rational or acceptable. One example of such, *The Responsibility to Protect*, a report created by the International Commission on Intervention and State Sovereignty (ICISS), will serve as the basis from which this thesis will analyze prevailing theories

of intervention. The Commission was created in 2000 after Kofi Annan's urging during his Millennium Report:

In his Millennium Report to the General Assembly, Secretary-General Annan challenged the international community to address the political, operational, legal and ethical dilemmas posed by the issue of humanitarian intervention. The ICISS was established by Canadian Prime Minister Jean Chrétien at the UN Millennium Summit on September 7, 2000, in response to this challenge. The Commission, an independent body sponsored by the Canadian government, was asked to produce a comprehensive report that would assist the international community in reconciling respect for the sovereignty of states with the need to act in the face of humanitarian crises (International Commission on Intervention and State Sovereignty).

The central question posed by the Commission concerned whether, and under what conditions, it is appropriate for states to use coercive force to protect people at risk in other states. Their objective was to create a consistent process for intervention for humanitarian purposes. *The Responsibility to Protect* is striking in its endurance in international politics. In 2004, the United Nations High Panel on Threats, Challenges and Change endorsed the "emerging norm of the responsibility to protect" (High Level Panel on Threats 2004). Kofi Annan and Paul Martin have recently asked the nations of the world to come together and support the principles found in *The Responsibility to Protect* and its reincarnation in the above United Nations High Panel's report, *A More Secure World: Our Shared Responsibility*. Unlike many doctrines of intervention¹, this text is written with considerable conceptual rigour, laying out a clear set of assumptions and a sustained (if at times self-contradictory) argument. As such, it serves as an exemplary document for study and critique. This is especially so in relation to the text's explicit liberal commitments on human rights

¹For example, The National Security Strategy of the United States of America, September 2002, esp. section V. (Access on the web at <http://www.whitehouse.gov/nsc/nss.html>), offers a striking contrast to this report.

and the role of the state. While unusually successful on its own terms, it also reproduces contradictions that are rooted in these liberal commitments. These consequences, and the violence that *The Responsibility to Protect* comes to legitimize as a consequence, are what I want to examine in this thesis.

The Responsibility to Protect (hereafter: the Report) provides a ground from which to theoretically assess the contemporary debate around intervention, and especially to examine the effects of some specific conceptual moves that are made within the liberal tradition of international political theory. The central contradiction that is reflected within the Report is the tension created between the 'sovereign state' and the 'international system of sovereign states'. Specifically, this is the tension between the autonomous sovereign state, as defined by Article 2 of the United Nations Charter, and Chapter VII of the Charter, or the maintenance of international peace and security at the expense of state sovereignty. Each of these conceptions expresses its own irreconcilable ideas regarding the constitution and structure of a proper world order. This tension, legally and theoretically, cannot be mitigated without destroying the basic principles of international order, only shifted back and forth between the relative claims of the state and the system of states. In effect, the Report can be understood as a part of a broader attempt to restructure contemporary political life toward a specifically liberal account of the individual person at the international level by recasting the roles played by both the state and the international community. The radical implications of the restructuring are obscured by a central semantic change from a 'right to non-intervention' to 'the responsibility to protect' highlighted in the title of the Report.

Rather than revisit the extensive literature on the legal and moral justifications for intervention, I will draw on literature that explores the onto-political roots of such justification. On this basis, I argue that the next step in the intervention debate must be to question the prevailing political traditions of International Relations and especially “the way we have come to know the world and represent that knowledge as reality...in order that its deep silences, omissions, and points of closure be eased open and space provided for alternative ways of thinking and acting in relation to global issues” (George 1994, 10). In other words, this thesis looks at the way in which the violence associated with the need for intervention is constructed by the state and international system and argues that those who are concerned with protecting the individual person from political violence must ask questions about these foundations of political order. The answers gained from these questions must be analyzed in a way that does not reproduce the limits of the international, as it is currently imagined in International Relations discourse. Consequently, I am working with a broad field of enquiry concerned with such questions as: how is intervention made possible by the historical conditions it is trying to explain? Are the exclusionary practices of the modern state responsible for violence? How is modernity implicated in intervention? How is the ‘West/North’ complicit in the violence it is intervening in? What are the long-term repercussions of prioritizing the current discourse of International Relations and can this way of thinking adequately address the problems that face the world today?

If the Report were to succeed in creating a process for ‘legitimate’ intervention that became widely accepted, the underlying problems that create the

need for intervention will remain largely unaltered. Moreover, whether the ‘international community’ celebrates or disagrees with the Report, it still expresses a specific liberal conception of international law and order; a conception that fails to take any responsibility for its own complicity in the violence and disorder that the Report seeks to address. In the end, the Commission’s approach to the intervention debate sabotages their desire that the Report will “generate innovative thinking on ways of achieving and sustaining effective and appropriate action” (International Commission on Intervention and State Sovereignty 2001). The Commission reproduces the same fundamental contradictions that have partly created the need for intervention in the first place. Additionally, the Report hides its hegemonic claims within internationalist ideals. Heavily moral discussions on the rights of the ‘victims’ hide a reliance on the Security Council and military power that are ultimately at odds with any claim to an egalitarian ‘international community’. In this sense, the thesis offers a consequentialist argument. It is not concerned with proving the Commission to be right or wrong. Its concern is to identify how the Report works and the political consequences of the Report’s evasion of its responsibility for the legitimacy of violence.

At the same time, this thesis does not pretend to “magically illuminate the previously dark recesses of global politics” (Campbell 1998, 5). I am not trying to assert personal notions of “the truth” or disagree with the Commission’s plea for action in the face of monstrous violence. I understand that many of the questions pursued in this thesis will remain unanswered, or may, in fact, even lead to the reproduction of the same limits, but this does not mean that such questions should not

be asked. However, it is also necessary to heed Jim George's "appeal for serious critical reflection upon the fundamental philosophical premises of Western modernity" (George 1994, 9). Claims about international intervention are necessarily claims about the limits of modern politics in general, and liberal commitments in particular. In my view, the Report ultimately refuses to come to terms with these limits. As a result, it can be read less as a conceptual breakthrough, and more as yet another attempt to legitimize an old-fashioned liberal imperialism.

This thesis is not meant to be accusatory or pejorative to the Commission members or their commitment to humanitarian concerns. I will critique the ideals and conceptualizations of world order that underlie the Report itself. In the end, I agree with the sentiment of the Report, if not the mechanics, which the Commissioners state simply in the last lines: "We cannot be content with reports and declarations. We must be prepared to act. We won't be able to live with ourselves if we do not" (International Commission on Intervention and State Sovereignty 2001, 75).

Organization

Chapter 2 of this thesis is a straightforward introduction to the elements of the Report for those unfamiliar with its contents. Each section of the Report will be reviewed and its mandate, main points, and goals highlighted. Although the Commission claims its findings to be a substantive shift in the intervention debate, Chapter 3 demonstrates that the Report is easily placed within the prevailing

discourses of law and world order. Consequently, the third chapter especially examines the role of law in the Report.

Chapter 4 introduces an analysis of the Report's terminological interventions into the intervention debate. This chapter is based on three interventions: an analysis of the Report's two language interventions in the debate; and my critique which entails: an "intervention in established modes of thought and action...and involve[s] an effort to disturb those practices that are settled, untie what appears to be sewn up, and render as produced that which claims to be naturally emergent" (Campbell 1998). Chapter 4 examines the Commission's definition of 'intervention'; and will provide different thoughts on both the concept and act of invention, as well as the implications of such a conception. This analysis will focus on the concepts of sovereignty and violence, and how they relate to the state, intervention, and humanitarianism; I will examine the relationship between the 'old' definition of sovereignty and the 'new' one that is articulated by the Report. The redefinition of sovereignty sketched in the Report is not as contested as the Commissioners would have the reader believe. Far from radical, the text reifies the prevailing concept of state sovereignty, while neglecting other levels of responsibility. The Report refuses to implicate the state and sovereignty in the very problem (genocidal violence) it is trying to address, even though, by the Commissioners' own admission, the state is more often than not the villain in question. Most importantly, this chapter will: emphasize the socially constructed nature of these institutions and concepts; examine the Report's essentialist assumptions about the state, sovereignty, and the individual

person; and develop a claim about the theoretical incoherence of the Commission's definition of sovereignty.

Chapter 5 engages with David Campbell and his two books, *Writing Security* and *National Deconstruction*, in order to continue the analysis initiated in the previous chapter. This is done in order to extend my earlier discussion of the Commission's conception of alterity, violence, the state, and sovereignty. I also draw upon Campbell's analysis here in order to develop the possibility of 'counternarratives' that may explain these instances of violence in a different manner. I will conclude with some final thoughts on the repercussions of the Report and its unwitting complicity in the violence it is trying to prevent.

Chapter 2 : The Responsibility to Protect

The Mandate

Lloyd Axworthy, then Foreign Minister of Canada, launched the International Commission on Intervention and State Sovereignty in 2000 “to build a new international consensus on how to respond in the face of massive violations of human rights and humanitarian law” (International Commission on Intervention and State Sovereignty 2001, 81). The Commission was created in response to a challenge issued by Kofi Annan, the Secretary-General of the United Nations, in 2000. In Mr. Axworthy’s words:

Canada's human security agenda is all about putting people first. We are establishing this Commission to respond to the Secretary-General's challenge to ensure that the indifference and inaction of the international community, in the face of such situations as occurred in Rwanda and Srebernica, are no longer an option (International Commission on Intervention and State Sovereignty).

Both the Report and the background research reflect Canada’s foreign policy commitment to “soft power” and the human security agenda shared with Kofi Annan.

According to Jean Chrétien, then Prime Minister of Canada:

Canada’s embrace of the UN reflects our common values and shared experiences. An incredibly diverse nation, we are deeply committed to freedom, tolerance, justice, and equality. We know the sense of community that comes from sharing prosperity and opportunity... the United Nations will remain the world’s indispensable institution in the 21st century. And Canada is committed to being an indispensable partner (International Commission on Intervention and State Sovereignty).

The Canadian government and a group of major foundations¹ sponsored the Commission during their year-long mandate. In order to find a way to balance state sovereignty issues with violations of human rights and intervention in an effort to stop these violations, scholars and specialists researched for 12 months. The Commission itself was a balance of backgrounds and professions. The Canadian government appointed Gareth Evans and Mohamed Sahnoun to head the Commission. Evans is president of the International Crisis Group and former Australian Foreign Minister and Sahnoun is a special advisor to the United Nations. Ramesh Thakur, a fellow commissioner, comments on the co-chairs:

Co-Chair Mohamed Sahnoun carries the inherited wisdom of an entire continent very lightly on his shoulders and has long and great experience as a national and UN diplomat. In addition, he has a wonderful and seemingly inexhaustible repertoire of African animal stories, with a moral for every occasion. Fellow Co-Chair Gareth Evans is as passionate about justice and human security as Sahnoun, and is driven by a restless energy that is astonishingly creative when harnessed to a pet cause (Thakur 2002, 236).

Ten other Commissioners³ were appointed, “spanning between them an enormously diverse range of regional backgrounds, views and perspectives, and experiences, and eminently able to address the complex array of legal, moral, political and operational issues the Commission had to confront” (International Commission on Intervention and State Sovereignty 2001, 81). Ramesh Thakur believes that there was “excellent

¹ The Carnegie Corporation of New York; the William and Flora Hewlett Foundation; the John D. and Catherine T. MacArthur Foundation; the Rockefeller Foundation; and the Simons Foundation. Financial contributions were also received from the governments of the United Kingdom and Switzerland (International Commission on Intervention and State Sovereignty).

³ Gisèle Côté-Harper (Canada), Lee Hamilton (US), Michael Ignatieff (Canada), Vladimir Lukin (Russia), Klaus Naumann (Germany), Cyril Ramaphosa (South Africa), Fidel V. Ramos (Philippines), Comelio Sommaruga (Switzerland), Eduardo Stein Barillas (Guatemala) and Ramesh Thakur (India).

personal chemistry” between the Commissioners and this allowed them to “come up with a unanimous report that is more than a collection of clichés and platitudes” (Thakur 2002, 326). The mandate that bound these diverse Commissioners together was as follows:

The mandate would be to promote a comprehensive debate on the issues, and to foster global political consensus on how to move from polemics, often paralysis, towards action within the international system, particularly through the United Nations (International Commission on Intervention and State Sovereignty 2001, 81).

The final report was released in December 2001 to lukewarm reception, largely as a consequence of the attacks of September 11th and the response to these attacks by the Bush administration. The Commission was unwilling to change or adapt any of their findings to reflect actions taken, or doctrine adopted, by the Bush administration. The final report is based, not only on research, but also on a series of consultations and roundtable discussions in Beijing, Cairo, Geneva, London, Maputo, New Delhi, New York, Ottawa, Paris, St. Petersburg, Santiago, and Washington. “The report reflects a genuine effort to incorporate many of the views that were expressed ... The views presented during the outreach exercise were sometimes used as tie-breakers during deadlocked discussions in the commission” (Thakur 2002, 326).

A supplementary volume titled “*Research, Bibliography, Background*” accompanies the Report. Thomas G. Weiss from City University of New York and Stanlake Samkange, a lawyer from Zimbabwe and former UN staff member, led the research for the supplementary volume.

While the primary responsibility for the second volume lay with Weiss and Don Hubert, they were helped by several specially commissioned essays, plus submissions and contributions from over 50 specialists. The research volume is supported by an extensive and annotated bibliography that contains more than 2,200 entries, and the entire report and volume are available on CD-ROM, with keywords and an index to facilitate research (Thakur 2002, 327)

The remainder of the chapter will detail the findings of the Report.

Intervention

The Report created a 'new' approach to sovereignty, not just a process for consistent intervention. The Commissioners found that the "right to intervene" should be shifted to the "responsibility to protect". To quote 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...It is acknowledged 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... Sovereignty as a responsibility has become the minimum content of good international citizenship (International Commission on Intervention and State Sovereignty 2001, 8).

This approach redefines the state as being responsible to the individual inside its borders. Accordingly, state actors and authorities are obliged to protect their citizens and are "held accountable for their acts of commission and omission" (International Commission on Intervention and State Sovereignty 2001, 13)⁵ and, perhaps most importantly, other states are to take on a responsibility (along with a legal and moral right) to intervene and stop violations of human rights. The first duty of the international system lies not in preserving state sovereignty but in "delivering

⁵ Subsequent citations will be page numbers as all references come from the Report.

practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them” (11). Or, as stated in the core principles of the Report, “The principle of non-intervention yields to the international responsibility to protect” (xi). The Commission believes that by “changing the terms of the debate” they can “shift the focus of the discussion” to those who need it most. The Commissioners admit that they cannot “resolve all the difficult issues now and forever” but they hope that shift will “generate innovative thinking on ways of achieving and sustaining effective and appropriate action” (18).

The type of intervention that the Report is concerned with is “action taken against a state or its leaders, without its or their consent” (8). The Report discusses other coercive measures such as sanctions and criminal procedures but the most “controversial” of interventions is military; so the Commissioners grant a large portion of the Report to this subject. More specifically, they believe that intervention is justified in order to halt or avert:

- large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or
- large scale “ethnic cleansing” actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape (32).

The rest of the chapter details the specific responses and responsibilities of the international community to the above acts.

Prevent, React, and Rebuild

There are three elements to the 'responsibility to protect'. The first is the Responsibility to Prevent. The Commissioners feel that there should be ongoing and focused attempts at preventing conflict and that the gap between rhetoric and tangible commitment needs to be closed (19). Encouraging prevention efforts are a key objective of the Commission's efforts. Although the international community can play a part, the Commissioners reiterate the primacy of the sovereign state, its communities and institutions, as the state should be responsible, "first and foremost" (19), for the prevention of conflict and man-made disasters. Effective conflict prevention must meet three conditions. First, there must be "knowledge of the fragility of the situation and the risks associated with it--so called 'early warning'" (20). Preventive action requires accurate prediction; and often there are not enough resources allocated to early warning and analysis. Support should be given to regional actors, the UN, and non-governmental organizations specializing in monitoring and reporting human rights violations that could lead to genocide or ethnic cleansing. To prevent conflict "based on an expanded concept of peace and security" (22) UN Charter Article 55⁶ should be invoked. They name these measures "root conflict prevention efforts" (22) and these measures could include: addressing political needs, economic deprivation, lack of legal protection and institutions, and military reform.

⁶ Article 55: With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (United Nations).

Second, there must be an “understanding of the policy measures available that are capable of making a difference: the so-called ‘preventive toolbox’” (20). These are the “direct prevention efforts” (23) and they have the same goals as the root cause efforts. However, these use different instruments in the hope that “directly coercive measures” (22) will not be levied against the offending state. This includes: political and diplomatic measures such as political sanctions, diplomatic isolation, involvement of the UN or mediators; “naming and shaming” (23); economic direct prevention in the form of positive or negative inducements such as promises of increased or new investments; and threats of sanctions or withdrawal of aid and assistance. Legal direct prevention comes in the form of universal jurisdiction over war crimes and crimes against humanity. The main enforcement tool would be the International Criminal Court. The options for direct military prevention are limited: one is stand-off reconnaissance and another is a consensual preventive deployment force.

Lastly, there must be a “willingness to apply these measures—the issue of ‘political will’” (20). A diverse array of actors working together with a clear operational strategy, creating policies and programs at the local, regional, and international levels is the best way to apply these measures. The Commissioners believe that the international community must “change its basic mindset from a ‘culture of reaction’ to that of a ‘culture of prevention’” in order to “take practical responsibility to prevent the needless loss of human life” (27).

The second element is the Responsibility to React. This chapter defines the “exceptional circumstances” (31) that require the need for coercive military action

across the border of a sovereign state. The Commissioners reiterate their dedication to the norm of non-intervention as a stabilizing element in a system of sovereign states, while asking under what circumstances military intervention is defensible. To quote the relevant portions of the text:

The non-interference rule not only protects states and governments: it also protects peoples and cultures, enabling societies to maintain the religious, ethnic, and civilizational differences that they cherish (31).

The norm of non-intervention is the equivalent in international affairs of the Hippocratic principle-first do no harm. Intervention in the domestic affairs of states is often harmful (31).

The rule against intervention in internal affairs encourages states to solve their own internal problems and prevent these from spilling over into a threat to international peace and security (31).

Yet there are exceptional circumstances in which the very interest that all states have in maintaining a stable international order requires them to react when all order within a state has broken down or when civil conflict and repression are so violent that civilians are threatened with massacre, genocide or ethnic cleansing on a large scale (31).

The Commissioners write that, although states support non-intervention based on the principles stated above, there was “general acceptance that there must be limited exceptions to the non-intervention rule for certain kinds of emergencies” (31). The task then became defining, as precisely as possible, what these circumstances are and what rules should guide the responses. The decision-making criteria are summarized under six headings. The first, given its own chapter, is the element of right authority; I will cover this in detail in the next section. The second is the *just cause* principle: Intervention can only be undertaken to halt or avert large-scale loss of life, genocide, or ethnic cleansing. The second criterion must prove that the just cause threshold was passed with *evidence* from trusted sources such as the High Commission for Human

Rights and for Refugees. The last four precautionary criteria are as follows: *right intention* (intervention can only be used to halt human suffering), *last resort* (every diplomatic and non-military avenue has to be exhausted), *proportional means* (the scale of the military action must be the minimum required to halt the atrocities), and *reasonable prospects* (intervention can only be justified if there is a chance of success). The Commission believes that military intervention will be strictly limited and used only for human protection purposes if all of these conditions are met at the outset.

The third responsibility as defined by the Commissioners is the obligation to rebuild after conflict. To quote from the core principles of the Report:

To provide, particularly after military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert (xi).

This includes peace building through a strong and detailed post-intervention strategy, providing basic security and protection to the population as well as a functioning judicial system that can handle increased justice and reconciliation demands. Encouraging economic growth and development is the last peace building duty after intervention. The Commissioners stress that any loss of sovereignty is only *de facto* in the follow up period, not *de jure*. All efforts will be made to return local ownership of the government to the population as soon as possible in order to minimize dependency on the intervening authorities. Guidelines for these are “found in a constructive adaptation of Chapter XII of the UN Charter⁷” (43).

⁷ This also includes Chapter XII on the Trusteeship System; especially Article 76a and 76b:

a. to further international peace and security;
b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement (United Nations).

Authority and the Operational Dimension

In Chapter 6, the Commissioners ground the authority for any intervention in the UN and, specifically, in the Security Council. The legal justification behind this belief resides in Chapter VII of the UN Charter, specifically articles 39, 41, and 42.

[Chapter VII] describes the action the Security Council may take when it “determine[s] the existence of any threat to the peace, breach of the peace, or act of aggression’ (Article 39). Such action may fall short of the use of force, and consist of such measures as embargoes, sanctions and the severance of diplomatic relations (Article 41). However, should the Council consider that such measures are likely to be inadequate, “it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security”-in other words, it may resort to or permit the use of military force (Article 42) (47).

According to the commission, Chapter VII, along with the specific authorization of self-defense action in Article 51 the provisions of Chapter VIII (all enforcement actions by regional agencies must be approved by the Security Council) “constitute a formidable source of authority to deal with security threats of all types” (48).

The Commission recommends that, through reform, the Council be made more accountable to the needs of the international community. To this, they discuss increased legal capacity and a restraint on veto use by the Permanent Five members of the Security Council. The Commission recommends the following to the Security Council:

- (1) That the members of the Security Council should consider and seek to reach agreement on a set of guidelines, embracing the “Principles for Military Intervention” summarized in the Synopsis, to govern their responses to claims for military intervention for human protection purposes.
- (2) That the Permanent Five members of the Security Council should consider and seek to reach agreement not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support (74-75).

If the Security Council were to fail to take action, other response options include the General Assembly supporting intervention under the “Uniting for Peace” procedures and regional actors acting through Chapter VIII of the UN Charter. The Commissioners remind the Security Council that failure to “discharge its responsibility in conscience-shocking situations crying out for action” (55) will damage the credibility and stature of the UN.

“The Operational Dimension” of the Report explains the differences between “traditional warfighting” (57) and peacekeeping operations and the Commissioners’ conception of intervention for human protection purposes. They recommended the development of a doctrine that is based on the following principles:

- A. Clear objectives; clear and unambiguous mandate at all times; and resources to match.
- B. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.
- C. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state.
- D. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.
- E. Acceptance that force protection cannot become the principal objective.
- F. Maximum possible coordination with humanitarian organizations (xiii).

The Path Ahead

The Commissioners feel they found “broad support” (69) for the idea of the responsibility to protect and the concerns expressed most often in the course of the consultations centered on reconciling the political and operational consequences of

shared responsibility with that of non-intervention. These fell into three groups: process, priorities, and delivery.

The Commissioners consider the most important issue to be mobilizing domestic and international political commitment. The Report pays more attention to the domestic level because “The key to mobilizing international support is to mobilize domestic support, or at least neutralize domestic opposition” (70). The arguments need support using four kinds of appeal. *Moral* appeal uses the electorate’s sense of decency and compassion in order to mobilize support for intervention. The *financial* argument emphasizes early and preventive action because it is less costly than military action or post-conflict reconstruction in the long term. *National interest* appeals are recommended, the most important being:

every country's national interest in being, and being seen to be, a good international citizen. There is much direct reciprocal benefit to be gained in an interdependent, globalized world where nobody can solve all their own problems: my country’s assistance for you today in solving your neighbourhood refugee and terrorism problem, might reasonably lead you to be more willing to help solve my environmental or drugs problem tomorrow. The interest in being seen to be a good international citizen is simply the reputational benefit that a country can win for itself, over time, by being regularly willing to pitch into international tasks for motives that appear to be relatively selfless (72).

Partisan appeals are more complicated but the Commissioners stress that if community support is lacking then key sections of the government can be mobilized to provide support for the proposed action. “Governments often have to do things without knowing what is the majority view, and even when they know that the majority sentiment will be against the proposed action” (72).

The starting point in the international arena is the Secretary-General of the UN; and beyond that there are regional organizations, international NGOs, and the

media that can be used to marshal international will. The Commissioners stress, “it is just as important in the international arena as it is in the domestic to be able to produce arguments appealing to morality, resource concerns, institutional interests and political interests” (72).

The last two pages of the Report emphasize the need to advance the principles set forward in its pages. The Commission wants “to strengthen the prospects for obtaining action, on a collective and principled basis, with a minimum of double standards, in response to conscience-shocking situations of great humanitarian need crying out for that action” (74). They urge member states to work with the Secretary-General to give substantive and procedural content to the ideas advanced in the Report and they challenge all to “embrace the idea of the responsibility to protect as a basic element in the code of global citizenship, for states and peoples, in the 21st century”(75).

Chapter 3 : Imperial Interventions

Introduction

It is important to begin the analysis of the Report with a discussion of the legal claims underpinning the Commission's justification of 'intervention for human protection purposes' because the legal argument for intervention exposes the central contradiction within the Report. The first section of this chapter investigates the legal basis for intervention as defined by the Report. The Commission reproduces the tension between 'state sovereignty' and 'international sovereignty' with their interpretation of the UN Charter, specifically Chapter I, Article 2 and Chapter VII, Article 39 of the UN Charter. The Commissioners admit this contradiction in their supplemental volume:

The UN Charter provides the highest source of legal and constitutional authority in relation to claims relating to the use of force. Yet, the authority of the Charter remains obscure in specific instances. It contains inconsistent norms and principles (for example, to promote human rights and respect domestic jurisdiction). It also has dormant provisions, especially in Chapter VII, that give a differing impression if the Charter is read literally or interpreted in light of subsequent events (International Commission on Intervention and State Sovereignty 2001, 157).

The next section of this chapter examines the unstable foundations of the Report through the Commission's explicit exclusion of international human rights law. This section briefly examines the contested and ambiguous nature of the law's relationship to the individual person at the international level and the difficulties of imputing responsibility to a state in the current legal paradigm.

The last section argues that the Report claims to speak for the ‘international community’¹ but supports a statist discourse typified by the Security Council. Specifically, the Report calls for action from the ‘international community of states’ and then defines the Security Council as the ‘right authority’ for enforcement of international peace and security. This last section argues that this violence enforces an imperial peace, not an internationalist one.

Law in the Report

The strongest legal justification for intervention seems to reside under the purview of soft law² and the UN Charter, especially Chapter VII. Chapter VII can be invoked and the Security Council can intervene to protect international peace and

¹ The Commission’s use of the international conjures up a space full of comparable entities, homogenous comparable “a solid community moving steadily down (or up) history” (Anderson 1991, 26) Following Anderson’s idea of the nation, the Report uses the “international” as another way to imagine community in order to bring meaning to “to the overwhelming burden of human suffering-disease, mutilation, grief, age, and death” (10). Anderson writes, “The great weakness of all evolutionary/progressive styles of thought, not excluding Marxism, is that such questions are answered with impatient silence” (Anderson 1991, 10). If the state, the nation, liberalism, and capitalism (to name but a few) are unable to accept responsibility and create meaning, then adhering to universal human rights and fostering responsible international citizens can transform “fatality into continuity, contingency into meaning” (Anderson 1991, 11). The international offers a sense of connection but it is nevertheless an “imagined community”.

² The Commissioners spend little time analysing the strengths and shortcomings of this soft law besides pointing out that it exists. Soft law is defined as “Guidelines of behaviour, such as those provided by treaties not yet in force, resolutions of the United Nations, or international conferences, that are not binding in themselves but are more than mere statements of political aspiration (they fall into a legal/political limbo between these two states). Soft law contrasts with *hard law*, i.e. those legal obligations, found either in treaties or customary international law, that are binding in and of themselves” (Martin 2002). Thomas G. Weiss, co-author of the supplementary volume writes, “there is a substantial and growing body of quasi-legislation or soft law under the general rubric of the responsibility to protect” and that “The discussion of rescuing individuals from the throes of war does not exist in isolation but is part of a broader process of embedding protection in international norms and practice. This process includes the accumulation of Security Council resolutions mandating the use of force for humanitarian purposes. The agenda underpinning these resolutions has been reaffirmed in general principle in two resolutions (1265 and 1296) on the protection of civilians in war, which posit that massive human rights violations or interference with humanitarian access can constitute threats to international peace and security (Weiss 2004, 989).

security³. “The grave humanitarian consequences of the failure of state capacity has led the Security Council to override state sovereignty by determining that internal disorder may pose a threat to international peace and security” (International Commission on Intervention and State Sovereignty 2001, 10). The Commission asserts that “The Security Council has the legal capacity both to authorize intervention and to delegate needed authority to regional bodies” (International Commission on Intervention and State Sovereignty 2001, 118).

However, there are also restraints placed on the Security Council, which the Commission refers to as being “unresolved theoretical questions”. These are Articles 2.4 and 2.7 in the Charter⁴.

An important unresolved theoretical question is whether the Security Council can in fact exceed its own authority by violating the constitutional restraints embedded in the Charter, particularly the inhibition in Article 2.7. This issue has only been tangentially considered by the International Court of Justice (ICJ) in the Lockerbie case, with the 1998 decision on preliminary objections affirming that the Security Council is bound by the Charter. But the issue seems destined to remain a theoretical one, since there is no provision for judicial review of Security Council decisions, and therefore no way that a dispute over Charter interpretation can be resolved. It appears that the Council will continue to have considerable latitude to define the scope of what constitutes a threat to international peace and security (International

³ Chapter VII: Article 39: The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41: The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations (United Nations).

⁴ Chapter I:

Article 2.4: All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

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

Commission on Intervention and State Sovereignty 2001, 50)[emphasis added].

And, again the Report contradicts itself:

Based on our reading of state practice, Security Council precedent, established norms, emerging guiding principles, and evolving customary international law, *the Commission believes that the Charter's strong bias against military intervention is not to be regarded as absolute when decisive action is required on human protection grounds.* The degree of legitimacy accorded to intervention will usually turn on the answers to such questions as the purpose, the means, the exhaustion of other avenues of redress against grievances, the proportionality of the riposte to the initiating provocation, and the agency of authorization. These are all questions that will recur: *for present purposes the point is simply that there is a large and accumulating body of law and practice which supports the notion that, whatever form the exercise of that responsibility may properly take, members of the broad community of states do have a responsibility to protect both their own citizens and those of other states as well* (International Commission on Intervention and State Sovereignty 2001, 16)[emphasis added].

It is arguable that what the Security Council has really been doing in these cases is giving credence to what we described in Chapter 2 as the emerging guiding principle of the “responsibility to protect,” a principle grounded in a miscellany of legal foundations (human rights treaty provisions, the Genocide Convention, Geneva Conventions, International Criminal Court statute and the like), growing state practice – and the Security Council’s own practice. *If such a reliance continues in the future, it may eventually be that a new rule of customary international law to this effect comes to be recognized, but as we have already acknowledged it would be quite premature to make any claim about the existence now of such a rule* [emphasis added] (International Commission on Intervention and State Sovereignty 2001, 50).

By the Commissioners’ own admission, there is little legal base at present for humanitarian intervention. The above passages reflect this ambiguity in the law and the Commission’s waffling demonstrates the incoherence of their legal argument⁵.

⁵ David Chandler advances a different argument about the legal reasoning: “The Report relies upon an entirely subjective decision and the legal reasoning in the Report disconnects military intervention from earlier constraints and decision-making institutions and customs. “The Commission does not start from the UN Charter rules on whether intervention is permissible but theorizes the legitimacy of intervention from the

The supplemental volume spends more time on the *legitimacy* of intervention, rather than its legality.

If there are significant gray areas relating to the authorization of humanitarian [sic] intervention, then questions of legitimacy become as important as questions of law. Legitimacy is an important dimension even when legality is clear (International Commission on Intervention and State Sovereignty 2001, 156).

The legal status of humanitarian intervention under customary international law and independently of the UN Charter remains contested. A juridical stalemate exists. Legality and legitimacy are linked but not synonymous. In the blurred area where international custom is evolving or unclear, the notion of legitimacy takes on greater significance. This is presently the case for actions taken both within and outside the framework of the UN Charter (International Commission on Intervention and State Sovereignty 2001, 170).

The Commission writes, “In the face of legal ambiguity, lists of possible thresholds and criteria assume increasing importance” (International Commission on Intervention and State Sovereignty 2001, 172). This returns the argument to the realm of soft law; an area of political/legal limbo between binding treaty and customary law and “mere statements of political aspiration” (Martin 2002).

Contested Foundations

One of the most frustrating elements of the Report is its silence on relevant international law; and, more importantly, the Report’s simple statements conceal the complex legal and political debates over state responsibility and the status of the individual person in international law. Part of the difficulty in enforcing international

starting point of the ‘protection’ of the potential victim. This enables the Commission to come up with a set of moral criteria for military intervention which are held to exist independently of international law or any particular political decision or consensus in the Security Council “(2004, 69).

rights law is that individuals are not 'subjects' of international law: only states are legal subjects. The immediate move back to the state by the Commission may be a compromise to 'political reality'.

The Report also exists within larger arguments and theories that surround intervention, international law, and global human rights law. While it is outside the scope of this paper to do a detailed history of public and private international law and the international human rights movement, a few points must be covered in each area in order to ground this discussion and demonstrate that, far from being innovative, the Report fits quite easily within the political and legal reasoning of its time. Although it claims to have created a new and simpler doctrine that all members of the 'international community' can agree on, the underlying unresolved issues in international human rights law and state sovereignty are excluded. The foundation of the Commission's argument is built on the contested ground of the merger of humanitarian law (the law of war) and international human rights law (post WWII) and reproduces the tensions and paradoxes within it. The Report is part of a specific vision of the international legal system. According to Rudi Teital, the statist model of law with human rights based on borders and nationality is

now giving way to an alternative view of the meaning of global order...The merger between humanitarian law and human rights law gives rise to a complicated and somewhat contradictory legal regime that challenges the very basis of longstanding notions of international rule of law. Whereas international rule of law was defined in terms relating to state sovereignty and self-determination, there is now a shift to a juridical definition of the state and an alternative framed in the universalizing language of human rights (Teital 2002, 362).

This move also includes the need not just for national enforcement of the rule of law, but also for international institutions to enforce an international rule of law. The

Commission excludes these legal debates in their shift to ‘sovereignty as responsibility’ but the Report is part of this ‘contradictory legal regime’ challenging the traditional notion of the rule of law based on states. It is a blending of natural and positive law,⁶ which is part of a larger, continuing attempt to rectify these two conceptions of law and strengthen the role of international human rights law.

The next section offers two paradigmatic examples in the international law tradition. I briefly cover the main points of each and some of the problems associated with each in order to demonstrate the contested and historical nature of the debate over individual and state sovereignty in the international realm.

Just War

The Responsibility to Protect is, in some respects, a re-articulation of just war theory, and, thus is connected to the history of reconciling sovereign authority with human protection in the natural law tradition. As I will show in the next section, the positive law concept of *erga omnes* [Latin: towards all] plays a major role, although the specific justifications remain unspecified within the Report. The Report, as the co-chairs tell us, “could not have been produced in an intellectual vacuum”; (International Commission on Intervention and State Sovereignty 2001, v) so it is odd that these two legal traditions remain unnamed in the Report.

Just War theory (JWT) is one of the strongest traditions to emerge from natural law. “In Western culture, the Just War tradition is *the tradition* for addressing moral questions about when and how to use force” (Fixdal 1998, 285). Modern

⁶ Theories of universal human rights have much the same mixing of the elements of natural and positive law in order to justify an expanded theory of rights (for a detailed account and critique see (Dunne and Wheeler 1999).

“intervention” debates are a continuation of a secularized Just War debate (see Chesterman 2001). Saint Augustine, one of the first theorists of Just War, laid down three rules for a just war: The first, the declaration of war must be made by a legitimate authority. Second, there must be a just cause to declare the war. Thirdly, the belligerent must have just intention. In the Report, the legitimate authority is the Security Council, the just cause is to protect the individual from gross or systematic violations of human rights, and the just intention is that the international community is not concerned with victory, only the restoration of an ordered society⁷.

This intellectual and legal debt to JWT is never explicitly mentioned in the Report⁸. In a footnote in an article by Ramesh Thakur, he writes, “These are clearly derived from Just War doctrine. But because the doctrine is rooted in the Christian tradition, acknowledging its religious roots would not necessarily have been the wisest political decision” (Thakur 2002, 17). This also excludes the long history of debate surrounding intervention, or interference into the affairs of states. David Kennedy points out in *The Dark Sides of Virtue*, “the vocabulary of ‘just war’ has made something of a comeback among academic commentators...reflecting the more

⁷ However, the Report diverges somewhat from JWT in its support of regime change. The Security Council has intervened for reasons of regime change and the Report finds this to be consistent with their doctrine. For example: “If humanitarian and human rights tragedies can be squeezed under the rubric of international peace and security, the restoration of democracy within a country demands even more leeway. In this light, Operation Restore Democracy in Haiti can be seen as a high watermark of Council activism in the 1990s. The unprecedented authorization called for the use of force to remove one regime and install another” (ICISS 2001, 119) and “The Security Council in this case authorized action under Chapter VII against an “illegitimate” regime, without even taking refuge in assertions of “extraordinary,” “exceptional,” or “unique” circumstances. Indeed, some commentators have gone so far as to argue that coups against elected governments are now, per se, violations of international law and that regional organizations may be licensed to use force to reverse such coups in member states” (ICISS 2001b, 162).

⁸ Just War is discussed explicitly in the supplemental volume of the research. “In the face of legal ambiguity, lists of possible thresholds and criteria assume increasing importance. The establishment of a set of criteria has been offered as one way to mitigate the potential for abuse. While not legally binding, they could nevertheless provide a benchmark against which the legitimacy of an intervention could be measured. As mentioned above, such lists of principles commonly reflect the essence of just war doctrine” (International Commission on Intervention and State Sovereignty 2001, 172).

porous boundary between ethics and law” (260). But he also explains the exclusion of Just War theory in another manner:

This new law of force does not judge wars ad hoc—usually ex post—as just or unjust...The function of this vocabulary is another one—to provide a vocabulary in which disputes over the legitimacy of sovereign action can be conducted (Kennedy 2004, 262).

The next section contends that challenging and creating new norms for sovereign action is also reflected in positive (state-based) law.

Positive Rights

As in natural law, intervention can be ‘just’ in the positive law tradition. The complications begin in the translation of a moral wrong into a legal one and, most importantly, a wrong that can be codified and enforced through state action. It is here we can see the focus shifted from human beings with natural, or God-given rights, to universalizing a set of rights that can be enforced equally and governed by treaty or convention between equals. The Geneva Conventions⁹ and the United Nations Charter are positive legal documents that attempt to do this; they both take the State as a starting point for law creation and the adjudication of law. The Report does as well; although the Commission admits that the State is often the biggest threat to the individual, the State is, in their opinion, the best way to safeguard human rights. It is a perfectible institution that can be corrected if the international community

⁹ The Geneva Convention is an important source of law for the Report and, again, there is scant reference to it in the text of the Report. This could be due to the legal debate surrounding the concept of state responsibility within the Convention. “The Genocide Convention is principally concerned with prosecution of individuals who perpetrate genocide...The Convention imposes a number of restrictions upon States, for which they can obviously be held accountable. However, it does not explicitly declare that states themselves can be guilty of genocide” (Schabas 2002, 418). The problem is jurisdictional and revolves around a debate about civil and criminal liability. The concept of criminal liability was rejected by the drafters and “the concept of civil responsibility of a State for genocide committed on its own territory against a group led to the absurd result that it could be both an applicant and a respondent in its own case” (Schabas 2002, 437-438).

intervenes in the specific manner that the Commission outlines in the Report. Just as JWT theory is never mentioned in the Report, specific references to relevant international law are also conspicuous in their absence. There are judicial decisions, treaties, and customs that uphold the right to protect the individual from undue harm. States can be held to have a legal interest in their protection; there are obligations, *erga omnes*. The phrase, *erga omnes*, first appeared in an argument presented to the International Court of Justice in the Barcelona Traction, Light, & Power Co. case in 1970 (Rubin 2003, 202). The two paragraphs that contain the phrase and the explanation are in their entirety as follows:

33. When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them. These obligations, however, are neither absolute nor unqualified. In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all the States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.

34. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23*); others are conferred by international instruments of a universal or quasi-universal character (International Court of Justice quoted in (Ragazzi 1997, 1-2)).

Erga omnes asserts that, although some States might not be directly affected by a breach of law, a third party State can complain or bring the case before a court. This

argument can be used in cases of commercial interest or in international human rights law:

...humanitarian law underlines the *erga omnes* character of its obligations. Each State has a *locus standi* to protect against violations of the Conventions and to demand their cessation, even if not directly concerned. It is the defense of the superior common interests of humanity (Meurant 1987, 246).

Also, *erga omnes* shows some of the larger limitations in legalizing a set of moral standards at the international level. Though the phrase and the ideas appeared in the ICJ decision, “the application of the phrase was denied and it appears that in no instance has its application been affirmed by the court” (Rubin 2003, 202).

Each of these examples demonstrates the difficulties that are faced in the current legal paradigm when trying to protect the individual person in international law. Positive law is limited, in that it is unwilling to apply decisions made by the ICJ, and reflects that part of the difficulty in enforcing international rights law is that States are the only legal subjects under the law; individuals are not “subjects” of international law and therefore have no rights. Most claims in international law must be advanced by a state. Just War theory emphasizes legitimacy over legality, and this poses problems with the enforcement of international law. Decisions may be legitimate, but nonetheless, illegal. The illegality of the Report’s reasoning is shown in the multiple contradictions within the Report. The Commission asserts the *legality* of intervention through the Security Council when, in actuality, the Commissioners demonstrate through their contradictions in the Report that the power of the Security Council is in its supposed *legitimacy* through the UN. Appropriately, the next section

problematizes the assumption that the Security Council is the “right authority” for advancing human rights through military intervention.

The Right Authority?

The Report relies on the Security Council and the UN Charter for legitimacy, even, for reasons previously discussed, if the legal argument is unconvincing and contradictory. The Council is accountable to no one and is not in the least bit transparent in its decision-making. I will allow the Commissioners to speak for themselves from a quote used earlier in the chapter

An important unresolved theoretical question is whether the Security Council can in fact exceed its own authority by violating the constitutional restraints embedded in the Charter, particularly the inhibition in Article 2.7. *This issue has only been tangentially considered by the International Court of Justice (ICJ) in the Lockerbie case, with the 1998 decision on preliminary objections affirming that the Security Council is bound by the Charter. But the issue seems destined to remain a theoretical one, since there is no provision for judicial review of Security Council decisions, and therefore no way that a dispute over Charter interpretation can be resolved. It appears that the Council will continue to have considerable latitude to define the scope of what constitutes a threat to international peace and security* (International Commission on Intervention and State Sovereignty 2001, 50)[emphasis added].

This unaccountability embodies an astounding *irresponsibility* embedded in the Report. The Security Council is undemocratic and unaccountable. It is perhaps too obvious to state that the Permanent Five are made of imperial powers in one form or another. The Commissioners state in the Report:

A common theme in a great many of the Commission’s consultations was the *democratic legitimacy of the fifteen-member Security Council, which can hardly claim to be representative of the realities of the modern era so long as it excludes from permanent membership countries of major size and influence,*

in particular from Africa, Asia and Latin America. The Security Council was also variously claimed to be neither answerable to the peoples of the world, nor accountable to the plenary General Assembly nor subject to juridical supervision and scrutiny. There is no doubt that reform of the Security Council, in particular to broaden and make more genuinely representative its composition, would help in building its credibility and authority – though not necessarily making the decision making process any easier. But this is not a debate into which this Commission need enter for the purposes of this report (International Commission on Intervention and State Sovereignty 2001, 51)[emphasis added].

After dismissing accountability as a non-issue, the Commission writes that “an issue which we cannot avoid addressing” (International Commission on Intervention and State Sovereignty 2001, 51) is the veto power held by the Permanent Five. This is perhaps the most telling indication of the way power flows in the international system.

[T]he Commission supports the proposal put to us in an exploratory way by a senior representative of one of the Permanent Five countries, that there be agreed by the Permanent Five a “code of conduct” for the use of the veto with respect to actions that are needed to stop or avert a significant humanitarian crisis. The idea essentially is that a permanent member, in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct the passage of what would otherwise be a majority resolution. The expression “constructive abstention” has been used in this context in the past. It is unrealistic to imagine any amendment of the Charter happening any time soon so far as the veto power and its distribution are concerned. But the adoption by the permanent members of a more formal, mutually agreed practice to govern these situations in the future would be a very healthy development (International Commission on Intervention and State Sovereignty 2001, 51).

Adam Roberts writes in *Intervention: One Step Forward in the Search for the Impossible* writes that “[t]his raises huge problems, and Security Council members have shown no enthusiasm for tying themselves to the commissions’ proposed wording or anything like it” (Roberts 2003, 145). This reflects a naïve belief in the

impartiality of the Security Council. The Commissioners do not account for “rogue states” holding veto power. A set doctrine of intervention for human protection purposes would introduce the possibility of intervention into the affairs of the Permanent 5 on the Council, i.e. Russia’s actions in Chechnya or the United States’ behavior in Guantanamo Bay after 11 September. Richard Falk expresses this idea in strong terms in *Human Rights Horizons*. He writes that the West feels the “emphasis is on human rights as an instrument of foreign policy, not as a corrective to domestic shortcomings,” and “[t]his self-righteous diplomacy is producing a new crusader mentality that underpins the advocacy of humanitarian intervention, the geographical axis of which runs always North to South, with no contemplation that perhaps there are circumstances that might validate South-to-North forms of intervention” (Falk 2000, 91).

Good intentions notwithstanding, it becomes clear in the above passages from the Report that political authorities are contravening (or at the very least bending) their own laws by deploying violence outside of these laws. The Security Council is charged with deploying this violence, even though the Commission admits that it is unaccountable and not subject to judicial supervision. Do the Commissioners endorse the Security Council as a new form of exceptionalism? I conclude this section with a question: Is it truly wise to give the power of life and death to a body that pays no price for action or inaction? Or, as stated by David Chandler:

If states can only be guaranteed to act morally through their ‘accountability’ to international society and the threat of intervention, there can be no guarantee that major powers, immune to ‘accountability’ through such coercion will not abuse their powers...The assumption that major powers, tasked with intervening as ‘good international citizens’, will act with higher moral legitimacy than powers which lack military and economic resources, relies on

morality directly correlating with power, that is, 'right equaling might' (2004, 76).

A Concluding Note

This chapter reviewed the legal reasoning within the Report and briefly examined some key feature of international law that pertain to the Report in order to demonstrate that the new and simpler doctrine of the "responsibility to protect" is not as uncomplicated as it appears. It fits quite neatly within the political and legal reasoning and suffers from the same underlying unresolved issues in international human rights law and state sovereignty. The foundation of the Commission's argument is built on the contested ground of the merger of humanitarian law (the law of war) and international human rights law and reproduces the tensions and paradoxes within it, excluding this debate from the text of the Report did nothing to rectify this situation.

Again, the Report can be understood as a part of a broader attempt to structure contemporary political life toward a specifically liberal account of the individual person at the international level by recasting the roles played by both the state and the international community. This is part of a longer story that began with minimal assertions of some kind of sovereign authority within a state, and one that now demands more ambitious 'international' controls on the sovereign state. The important questions within this story are: who decides and who speaks on behalf of the international? The Commission chooses the Security Council. What are the

repercussions if the Security Council is chosen as the sovereign authority at the international level?

Chapter 4 : Sovereign Interventions

Introduction

This chapter will analyze the Report using four themes: humanitarianism, sovereignty, violence, and intervention. How are these themes conceptualized within the Report? How are they implicated in each other and in the Report? These four themes are important because the Report uses them to build their argument about intervention and state sovereignty. Examining these themes helps to analyze the onto-political roots of intervention rather than specific justifications for the act of intervention itself. The first section will problematize the Commissioners' intervention into global politics based on their rewording of "humanitarian intervention" to "intervention for human protection purposes" and the Commission's conception of sovereignty as a responsibility. I introduce the Report as *intervention* itself into the debates about intervention based on the rewordings used in the Report. The rewording does not escape the contested nature of either humanitarianism or sovereignty, and each of these concepts' relationship to violence. The Report avoids the underlying paradoxes and ambiguities¹ with its terminological intervention and, like most other studies of intervention, does not fully explore the socially constructed

¹ As discussed in the previous chapter, it is beyond the scope of this paper to present a detailed history of the legal and philosophical implications of the human rights movement, but it is striking to note the Commission's use of the ambiguous nature of human rights within the Report. It seems that this is not due to a lack of rigorousness on the part of the Commission's research as this tactic is repeated throughout the Report. Ignoring the essentially contested natures of sovereignty, human rights, and the autonomous human subject allows the Commission to ignore the complications and consequences of prioritising their vision of the international system. This chapter looks at how the exclusions and ambiguities detailed in the previous chapter work in the text of the Report.

nature of sovereignty, the state, and “the ordinary person”. I posit that the Report’s “modern” conception of sovereignty is too simple to support their ‘shift’ to sovereignty as a responsibility. Sovereignty is under analyzed; the missing elements in the Commissions’ definition influence the debate in ways that have an effect on the policy prescriptions that could be made using the Report. Finally, this chapter explores a different way to conceptualize the intervention/sovereignty conundrum and draws attention to the essentialist nature of the Report.

The Report as an Intervention

In addition to being a document *about* intervention, the Report also *operates as* an intervention. The Commissioners commit two terminological interventions within the text. With these two changes, “the Commissioners could be said to be exercising their own extraordinary right to intervene in the field of international law and human rights” (Downes 2004, 468). The two language changes obscure inconsistencies and contradictions inherent in sovereignty and humanitarian action. Based on the information at my disposal, it is difficult to ascertain the reason behind the Commission’s intervention; but it seems that the Commissioners ground their normative claims in a presumption about the ‘subject’ of humanitarian intervention. The individual person as this ‘subject’ is not an uncomplicated concept, and an argument that bases itself on this certain conception of an individual is built on a contested foundation. “To begin from states and individuals with rights, as well-defined ontological beings with legitimacy in and of themselves, is to open Pandora’s

box that is filled with inconsistencies and paradoxes that cannot be overcome” (Warner 2003, 118). This will be explored in more depth in the remainder of this section.

The first terminological intervention is the exclusion of the word humanitarian.

We have made a deliberate decision not to adopt this terminology, preferring to refer either to ‘intervention,’ or as appropriate ‘military intervention,’ for human protection purposes... The Commission has also been responsive to the suggestion in some political quarters that use in this context of an inherently approving word like ‘humanitarian’ tends to prejudge the very question in issue – that is, whether the intervention is in fact defensible.” (ICISS 2001, 9).

The Commission sidesteps the slippery and contested nature of humanitarianism with their rephrasing, but the change in wording does not resolve other controversies around humanitarianism, such as its relationship to violence and politics. David Chandler notes in a review of the Report, the entire document and background research are based on an ‘humanitarian’ framework and “[t]he Commission relies on ‘inherently approving’ moral reasoning to challenge Realist conceptions of the international sphere as one of competition and conflicting interests of power” (2004, 62). Although they eschew “humanitarian intervention”, the Commissioners are clearly humanitarians. Morality and ethics are still the guiding force behind “intervention for human protection purposes”. A section in the supplementary volume is reserved expressly for a discussion of morality and ethics and their relation to the Commissioners’ argument about intervention.

In the Report, violence and humanitarianism are presented as two factors in a causal relationship; humanitarianism is heralded as the cure for the problem of

violence (Nyers 72). In truth, the relationship is not that simple. The Commission avoids the underlying questions concerning humanitarianism (partly due to the Commission's terminological intervention) and its relationship to violence, as well as the Report's own disturbing association with force. "The Commission attempts to maintain the moral highground of humanitarian intervention, but without restrictions on the use of force...force in these cases is morally progressive, as it is in the interests of the 'victims of world politics' rather than the self-interest of the intervening powers" (Chandler 2004, 63). Paul Downes, in his insightful literary analysis of the Report, identifies the main "question raised (and avoided) by the ICISS report [is], namely, the relationship between intervention that gets to be called "humanitarian" and intervention that is ultimately military-backed by all the violence that political power is capable of exerting" (2004, 473).

The Commissioners stay within the moral framework of humanitarianism while simultaneously protecting "humanitarianism" from contamination by politics (see Downes, 2004; Nyers, 2000). Humanitarian action—be it food aid, medical aid or peacekeeping—bases itself on the ideas of impartiality and neutrality and struggles with its relationship to politics and governments². David Rieff, in his book *A Bed for the Night: Humanitarianism in Crisis*, writes that humanitarian action is based on "the pretense that somehow it is possible to stay outside politics" and that "what is meant by outside, really is above, as if a real revolution of moral concern could not be

² The UN's history of intervention (referred to as peacekeeping in its first manifestation in the Suez Canal crisis) also stressed impartiality, consent and neutrality. "These rules of peacekeeping also distinguished the UN as an international actor. In contrast to states, which are biased, use force, and do not necessarily operate with the consent of the parties, the UN used persuasion, was impartial and neutral, and operated with consent. These rules, in effect, not only told the UN who it was and how it differed from states but also connected peacekeeping to the UN's moral authority and thus the wellspring of its influence" (Barnett 2004, 126). The expanding role of the UN after the Cold War complicated these earlier rules of impartiality. As Rwanda demonstrated, it is not enough to classify intra-state violence as a civil war and not respond to crimes within the border of that state. The Report also reflects the UN's struggle to maintain its relevance and uniqueness post-1989.

political” (Rieff 2002, 75). Fiona Terry, a director in MSF, exposes this space outside politics as a specious one. In her opinion, humanitarian agencies are often used as an arm of states and one that helps assuage the conscience in such a way that disguises their political origin:

The causes of most crises are political; some consequences may be humanitarian. But labelling [sic] them “complex emergencies” and “humanitarian crises” disconnects the consequences from the causes and permits the international response to be assigned--and confined--to the humanitarian domain” (Terry 2002, 13).

Most importantly, in focusing on human rights the Report is able to:

have the best of both worlds. The moral ‘human’ emphasis helps to abstract the concept from disputed political terrain, while the political ‘rights’ side of the concept helps to skate over the divisions within moral philosophy (Chandler 2002, 103).

The Report uses the approximate and rather contingent nature of human rights to make decisions that affect some of the most critical political relationships of the modern world. The Report sees these relationships as being governed by norms disconnected from the political, when these relationships need to be “reconceived as an inherently political concept”(Nyers 2000, 74). This leads the Commissioner to support a system that is exclusionary:

A humanitarianism which insists that it be separated from politics, but which nonetheless focuses on the bare or sacred life of individuals to justify itself, can have the effect of working in perfect symmetry with sovereign state power. This is because sovereignty, based on the relation of the ban (or exception), is violent in the sense that it is a practice that works to keep things apart, create boundaries, and maintain separateness (Nyers 2000, 78).

The Report manifests the tension between the universal and the particular; and the “gap between universal norms and their operationalisation through states” (Warner

2003, 118). The 'individual' that is constructed by the Commission is universalized and must therefore fall prey to the dangers and paradoxes created by the Categorical Imperative³.

But, just as an 'individual' is complicated ontologically, there is "no easy division between sovereign citizens and humanity" (Nyers 2000, 75). It is not enough to appeal to a sense of humanity that is above the traditional notion of a sovereign citizen because 'humanity' is no less complicated than the 'citizen'. In fact, it may even be more so because sovereignty creates the conditions needed to universalize an idea of an individual. Sovereignty and humanity are "implicated in an immanent relationship" (Nyers 2000, 75).

Sovereign Preferences

This relationship between humanitarianism and sovereignty brings us to the second language adjustment reflected in the title of the Report:

It is acknowledged 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. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship (International Commission on Intervention and State Sovereignty 2001, 8).

The Commission claims to have discovered a new understanding of sovereignty in their research; this shift is justified by explaining "that the language of past debates

³ "And should we not add that this world has never really lost a certain savour of blood and torture (not even in old Kant, the categorical imperative reeks of cruelty (Nietzsche 2003, 41). David Campbell, in *National Deconstruction*, writes: "The notion of a universal subject, because it is enabled by suppression of all forms of particularism is, in general, antidemocratic (Campbell 1998, 201).

arguing for or against a 'right to intervene' by one state on the territory of another state is outdated and unhelpful. We prefer to talk not of a 'right to intervene' but of a 'responsibility to protect'" (International Commission on Intervention and State Sovereignty 2001, 11).

"We prefer", write the Commissioners...everything depends on preference (who prefers to call their interventions responsible? who prefers to ignore rights? whose preference will be preferred?), and yet this crucial international report has nothing to say about its own founding preference. A sovereign decision is made at the border; quarantines are established and, with a sigh of relief, words that don't seem to have a fixed place in the world of what the report calls "substantive issues" are left behind (Downes 2004, 468).

Unfortunately, it is the issues that exist within the quarantine zones that may lead to "substantive" theorizing about the intervention conundrum. In order to "generate innovative thinking on ways of achieving and sustaining effective and appropriate action" (International Commission on Intervention and State Sovereignty 2001), the Commission needs to ask the questions about their founding preferences. The Report's 'sovereign decision' about the nature and meaning of sovereignty within the Report is the topic of the next sections.

Sovereignty as Discourse

My interest in the Report began with a suspicion that this substantive shift in the meaning of sovereignty in the Report is not coherent based on the justifications given in the text. I became suspicious of a document that believes it has made an important and broadly supported redefinition of sovereignty, and then proceeds to offer a simplistic and traditional definition of juridical sovereignty with no hint of the

complicated, contested, and ambiguous nature of sovereignty⁴. There is a rich tradition of critical accounts of sovereignty in the discipline of International Relations.

In the context of the Report, Daniel Warner writes of the Commissioners' prodigal return to the sovereign system of states: "The Commission posited its questions about political order and the states' role and "blinked because it looked into the abyss" (Warner 2003, 112). Often, this critique is discounted by mainstream International Relations as reflexive, dangerous, and irrelevant, and the authors of the Report respond no differently. One of the Commissioners, Ramesh Thakur, when confronted with this critique of the Report's reliance on sovereignty, appears baffled and at a loss

Well actually, if you find yourself at an abyss, it may prove injurious to your health to blink, while it is quite a good idea to step back (Thakur 2003, 164).

And, later in the rebuttal:

Warner's most serious charge, to the extent that I can follow him, is that the Commission was guilty of a failure of imagination and nerve in not moving beyond the beyond the Westphalian world of sovereign states. Our mandate was to rescue the international community from the ideological trenches of 'state sovereignty' and 'humanitarian intervention'...I cannot think of a more damaging conclusion than that sovereignty should be abandoned entirely (Thakur 2003, 164-165).

The argument defended by most critical theorists is that sovereignty should not necessarily be 'abandoned', but that its transcendental role as the ground for all

⁴ The argument forwarded by China at the roundtable in Beijing can be summarized as such: It can be argued that redefining sovereignty as accountable to both the inside (citizens) and to the outside (international community) even has implications for the Commission's legal definition of sovereignty "because a power which is 'accountable' to another, external, body clearly lacks sovereign authority" (Chandler 2004, 65). Ironically, this definition could have the opposite effect than the one desired by the Commissioners; it could further weaken the current world order and expose the individual to more dangers. This is the position taken by most of those opposed to the Report, but different than the argument this thesis defends. I am concerned with the contradictions between the two competing sovereign authorities (the state v. the international), not the supposed repercussions on sovereign authority. And, perhaps more importantly for the well being of the individual person, the sovereign state's responsibility for violence.

political action should be questioned. To assure the critique does not further reify sovereignty; questions about the subject, itself, must be especially attentive. (see (Bartelson 2001)). For Warner, the Report fails in not seeing the role of the *State*⁵ in genocidal violence, and the irresponsible imputation of responsibility to a body (the international community) that cannot protect the individual with any more success than the 'failed state.' The Commission even admits this in the background essays, in which they discuss the foundational principles of human rights: "[G]enuine and specific counterpart duties do not really exist at the global level for most positive rights. And nothing better illustrates this institutional lacuna than the protection of the rights of individuals caught in the throes of deadly conflicts" (ICISS 2001b, 148).

Do the Commissioners realize what is at stake in the universalizing narrative they begin in the Report or does panic set in and cause the retreat into 'political realism' and endorsement of the State as the 'easy' way out? Thakur vehemently polices the traditional orthodoxy of International Relations; he writes that the ICISS provided a:

roadmap to bring the international community back to a properly marked highway of international politics. Our Report restates the highway code, identifies the safety markers for detours from the highway, and clarifies that the job of highway patrols belongs properly to the United Nations (Thakur 2003, 164).

While it is impossible to cover all aspects of critical theories of sovereignty, some points must be made to question the theoretical foundation of the Commission's

⁵ Warner also questions whether there is always a sovereign involved. He asserts that the intervention is more often a short-term replacement for the government. "Intervention/assistance is in fact substitution because the local government has either abdicated or abandoned its obligations" and the Commission "assumes that the society will go back to a form of sovereignty that had existed before the trauma" (Warner 2003, 113).

“shift” to sovereignty as responsibility. I will offer some reasons as to *why* sovereignty is a largely unanalyzed concept within the Report. As the dialogue above between Thakur and Warner demonstrates, the next sections argue that the organization of the Commissioners’ line of reasoning makes it impossible to question sovereignty in any meaningful way, and reflects sovereignty’s hold on the political imagination.

Sovereignty as Practice

The Report places very little “substantive” analysis on this subject beyond explaining that:

[S]overeignty is more than just a functional principle of international relations. For many states and peoples, it is also a recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny. In recognition of this, the principle that all states are equally sovereign under international law was established as a cornerstone of the UN Charter (Article 2.1) (International Commission on Intervention and State Sovereignty 2001, 7).

The Commission writes that while many factors have affected sovereignty (emerging states, evolving international law, new conceptions of security, and an increase of actors in the international realm), sovereignty “does still matter” and that “[i]t is strongly arguable that effective and legitimate states remain the best way to ensure that the benefits of the internationalization of trade, investment, technology and communication will be equitably shared” (International Commission on Intervention and State Sovereignty 2001, 7).

The Report and the supplementary volume of background research include pages of discussion about sovereignty, but the overall definition of it appears to be merely the juridical definition of sovereignty—a sovereign state must have a population, a demarcated territory, and political authority⁶. To quote the relevant passages in the Report:

Sovereignty has come to signify, in the Westphalian concept, the legal identity of a state in international law (12).

A sovereign state is empowered in international law to exercise exclusive and total jurisdiction within its territorial boundaries (12).

A condition of any one state's sovereignty is a corresponding obligation to respect every other state's sovereignty (12).

In a dangerous world marked by overwhelming inequalities of power and resources, sovereignty is for many states their best – and sometimes seemingly their only – line of defence (7).

The definition and discussion of sovereignty within the Report is simple, given the Commissioners' supposed substantive shift to "sovereignty as responsibility", but not surprising if we further explore this definition.

The outward manifestation of a unitary sovereign and the plurality of sovereignty on the inside of the state make it difficult to imagine a coherent "metaphysical unity of the state" (Bartelson 1995, 29). Bartelson writes:

⁶ The Commission believes a fourth element has supplemented the traditional three: respect for human rights (ICISS 2001b, 136). Again, the Commission does not offer a substantive discussion of human rights. The background research stresses that action based on an idea of common morality based on humanity "cannot wait for a magical moment of global philosophical consensus (International Commission on Intervention and State Sovereignty 2001, 129). Any criticism, according to the Commission, is relegated to "postmodernists" (129) arguing about moral intelligibility across cultures and time. The "subject" of this universal morality is not problematized even though this is more often the basis for critique from "postmodernists". To quote the supplemental volume: "International responses to humanitarian crises in the 1990s indicate that we do have choices, that they reflect a hierarchy of values, and that even without a universally accepted code of morality we can engage in a dialogue on the morality of intervention. Fundamentally, an ethical judgement is one that can plausibly take 'a universal point of view' and presumes that 'the notion of morals implies some sentiment common to all mankind, which recommends the same object to general approbation.' Even without agreement on the foundations of morality or on the universality of its content, those who make ethical judgements should be able to adopt this minimalist universal point of view" (129-130).

the standard solution to this problem, endlessly repeated or simply taken for granted in the discourse on international politics, sovereignty is taken to be a political or legal fact *within* an already given and demarcated territory... Thus sovereignty and space are conceptualized in logical interdependence on one another right from the start (1995, 29-30).

Territoriality is the most important element in this conception of sovereignty. If territory is lost, sovereignty is lost. The Commissioners' focus on the juridical definition of sovereignty shows that they are not always engaging with *sovereignty*, but with a series of norms that make the *State*. "The modern state system is not based on the timeless principle of sovereignty, but on the production of a normative conception that links authority, territory, and population (society, nation), and recognition in a unique way and in a particular place (the state)" (Biersteker 1996, 3). This also shows that sovereignty, within the Report, lacks a precise definition.

Mystic Foundations

This juridical conceptualization based on territory sidesteps the complicated problem of infusing the will to self-rule into a pluralistic, diverse society by reducing sovereignty to control of a specific territory. This ignores the ungrounded nature of modern sovereignty⁷. What brings these groups together, and more directly, what rips them apart? In the Report's supplementary volume, the Commission explains that part of the justification for being able to shift from "sovereignty as control" to "sovereignty as a responsibility" is the idea of popular sovereignty. Kofi Annan is

⁷ The modern sovereign state's authority is cut loose from transcendental meaning with the shift to popular sovereignty. Its authority is diffuse and ungrounded in an imagined 'people'. This demonstrates that "at the core of modernity and the Enlightenment there is an indeterminacy with regard to foundations for action and being" (Campbell 1998, 197).

quoted as saying “it is the people’s sovereignty rather than the sovereign’s sovereignty” (International Commission on Intervention and State Sovereignty 2001, 11). This should not be seen as a “challenge to traditional notions of state sovereignty”, rather that they should coexist in a “comfortable embrace” (International Commission on Intervention and State Sovereignty 2001, 13). Unfortunately, merely stating that there should be a “comfortable embrace” between these two ideas of sovereignty does not remedy the paradoxes within sovereignty or the confusion created by this statement. Social contract theory may, in part, explain why the Commission is unwilling to think beyond the state. What makes this statement more frustrating is that there is no attempt to explain why the “people’s sovereign” is perpetrating these shocking crimes on its populace. Is there a sovereign even involved? This statement implies that the “sovereign’s sovereign” is guilty and the “people’s sovereign” is innocent of crimes against humanity. Democracies and/or signatories of the Geneva Convention have committed some of the world’s most heinous crime:

...the leaders of Rwanda who plotted the greatest genocide since Hitler’s extermination of the Jews and Gypsies were in many cases the same men who had been in power when their country signed the Convention on Genocide...But when the moment arrived to become a beast, those Rwandan members in good standing of “the international community” became very good beasts indeed (Rieff 2002, 9).

To explore a possible answer, it is important to look at the mystical foundations of social contract theory, or the ‘people’s sovereignty’, and its place in the Report:

The will of the people is primarily the expression of universal reason, which is categorical. The new God is born. That is why the words that are to be found most often in the social contract are the words *absolute, sacred, inviolable*. The body politic is thus defined, whose laws are sacred commandments, is

only a by-product of the mystic body of temporal Christianity (Camus 1956, 116).

Similar language is found in the Report and supplemental volume. The Commissioners write:

The principle of sovereign equality of states is *enshrined* [italics added] in Article 2.1 of the UN Charter (International Commission on Intervention and State Sovereignty 2001, 12).

A condition of any one state's sovereignty is a corresponding obligation to respect every other state's sovereignty: the norm of non-intervention is *enshrined* in Article 2.7 of the UN Charter (International Commission on Intervention and State Sovereignty 2001, 12).

The core elements of state sovereignty were codified in the 1933 Montevideo Convention on the Rights and Duties of States. They include three main requirements: a permanent population, a defined territory, and a functioning government. An important component of sovereignty has always been an adequate display of the authority of states to act over their territory to the exclusion of other states. The post-1945 system of international order *enshrined* in the UN Charter inherited this basic model (International Commission on Intervention and State Sovereignty 2001, 6).

The principal argument against the legality of intervention without a Security Council mandate is that it is said to violate the prohibition on the use of force *enshrined* in Article 2 (4) (International Commission on Intervention and State Sovereignty 2001, 163).

This is one of the very reasons the Commission equates sovereignty with territory. The mystic, ungrounded nature of sovereignty led the Commission to "step back" from the abyss and stay on the well-marked "highway" of international politics. The Commission is unwilling to commit to a larger discussion of the sovereign state and its current status as the basis for the political. If the "King must die in the name of the social contract" (Camus 1956, 114) who will kill the social contract and what comes next? "It is evident that, with *The Social Contract*, we are assisting at the birth of a

new *mystique*-the will of the people being substituted for God Himself” (Camus 1956, 115).

Performing the State

This mystique surrounding sovereignty makes it difficult to admit the social construction of the state and place it in history. The Commission barely touches on the problem of the ‘state’ as a historically specific solution to an earlier set of problems. They admit that the post-1945 world inherited a model of states based upon the Treaty of Westphalia in 1648 and the Montevideo Convention in 1933 (International Commission on Intervention and State Sovereignty 2001, 6) but the Commissioners do not explore the state and sovereignty as performatively constituted entities with no prior ontological status. The Commissioners and the Report are part of the larger project of realizing the Westphalian ideal in International Relations. Even though the Commissioners feel they critique “failed states,” and their inability to protect the individual, by giving the state status as existing prior to their rendering of it, they are part of the move that reinforces this particular way to organize politically (see (Bartelson 2001)). The Report is an example of the “hard work” entailed in protecting the Westphalian system.

Attempting to realize this ideal entails a great deal of hard work on the part of statespersons, diplomats, and intellectuals: to establish and police practices consistent with the ideal...to delegitimize and quash challenges or threats; and to paper over persistent anomalies to make them appear consistent with the ideal or temporary divergences from the diachronic trajectory toward a pristine Westphalian ideal. The ideal of state sovereignty is a product of the actions of powerful agents and the resistances to those actions by those located at the margins of power. (Biersteker 1996, 3).

The sovereign state, itself, also limits the discussion because, no matter when the sovereign state is introduced into the argument its ending point will, necessarily, always be the sovereign state. “Once sovereignty is in place, an ethico-political challenge in the name of an alternative becomes illegitimate. This difficulty arises because sovereignty as a master signifier conceals its status as *will have been*, constituting the social order as *always already*” (Edkins and Pin-Fat 1991, 7). The Report demonstrates the difficulty of moving beyond sovereignty in contemporary political thinking, and, specifically, in the field of International Relations. “Sovereignty serves to satisfy our desire. It gives us a place, as subjects, within the symbolic order that it secures. Without it, the ground will shift beneath our feet” (Edkins and Pin-Fat 1991, 10). Sovereignty offers us symbolic security and, because of this, the Report returns to the state as the “most effective and legitimate way to ensure that benefits will be equitably shared, human rights protected, peace secured, and as the best source of stability for the international system” (International Commission on Intervention and State Sovereignty 2001, 17).

To add to this, intervention and sovereignty are two sides of the same coin. “To speak about intervention is to imply the existence of sovereign states...for intervention to be a meaningful concept, sovereignty must exist because intervention implies violation of sovereignty” (Weber 1995, 27). In order to trespass or ‘intervene’, there must be borders to cross, and as a result, intervention serves to reify the dominant articulations of sovereignty. Studies of intervention, such as the Report, can only scratch the surface of possible outcomes, due to its reliance on the sovereign state. These narrow conceptions of the political lead to impoverished prescriptions

and hypostatization of essentially unanalyzed concepts. “Even acts that would aspire to be critical, to violate convention, or to inaugurate new meanings owe their practical significance—their intelligibility, their meaning, and their power—to a presupposition of an already established convention or structure” (Ashley 1989, 273). This phenomenon is especially clear in the Report. Far from being a critique of sovereignty, intervention is an integral component of sovereignty and may be partly responsible for the very violence it is trying to stop.

Genocidal Sovereigns

The Report makes no attempt to show what sovereignty’s relationship is to violence, intervention, or the individual beyond the idea of “responsibility”. In his review of the Report, Daniel Warner writes, “the Commission begins from the fact of ‘gross and systematic violations of human rights that affect every precept of our common humanity’ without mentioning who is responsible for these violations or who is responsible for the victims” (2003, 111). He then adds, in a footnote, “it may be argued that the very state system is in different ways responsible for violations in the sense that human rights violations are inherent in the prioritising of *raison d’etat*” (2003, 111). Is this violence abnormal, or is it implicit in the state building process? The Commissioners write: “Following decolonialization, what had been a restrictive and eurocentric [sic] (that is, Western) order became global. There were no longer ‘insiders’ and ‘outsiders’ because virtually⁸ every person on Earth lived within a

⁸ The word “virtually” is an interesting choice. How is it that these “virtual” people do not fit in a sovereign state? Where are they? Are these new “outsiders”? This shows the lack of clarity and preciseness in the Commission’s understanding of sovereignty and its relationship to violence and alterity. “The social space

sovereign state,” (International Commission on Intervention and State Sovereignty 2001, 6) without recognizing that the entire system is based on ‘insiders’ and ‘outsiders’⁹. The imposition of “spatially separated sovereigns and subjects” (Walker 1999, x) will necessarily create inclusions and exclusions with limited ways to respond to the challenges that this imposition creates. Violence is inherent in a process that chooses who is inside and who is left outside. The world must be separated into ‘us and them’; herein lies the power in the Hobbesian argument: at least the State slaughters in a controlled manner and not the in the way of man against man in that mythical place called the ‘state of nature’. This is the paradox of sovereignty, the true security dilemma: The State may be your salvation, or death, but it may be better than what waits for you without it.¹⁰ The choice is yours.

The Commission clearly chooses the state even though they admit that it is the State that is most often the perpetrator of these shocking crimes and that “the overwhelming majority of today’s armed conflicts are internal, not inter-state” (International Commission on Intervention and State Sovereignty 2001, 13). The Commission clearly identifies states as a security risk:

In an interdependent world, in which security depends on a framework of stable sovereign entities, the existence of fragile states, failing states, states who through weakness or ill-will harbour those dangerous to others, or states that can only maintain internal order by means of gross human rights violations, can constitute a risk to people everywhere (International Commission on Intervention and State Sovereignty 2001, 5).

of inside/outside is both made possible by and helps constitute a moral space of superior/inferior, which can be animated in terms of any number of higher/lower” (Campbell 1998, 73).

⁹ What supports my intervention into the Report is the idea that the state creates modes of representation that are antithetical to non-violence and acceptance of differences. The exclusionary practice of living “within” means that others must live “without”. This is explored in more depth in later sections of this thesis.

¹⁰ This conception of the paradox within sovereignty is from discussions with R.B.J. Walker.

As this section has tried to demonstrate, a 'stable' state within the Commission's paradigm 'harbors' violence at an ontological level. Aside from the Machiavellian prioritizing of *raison d'etat*, or the exclusions inherent in the Categorical Imperative, the very notion of borders that shelter some 'inside' and keep others 'outside' sustain violence in the international system. The Commissioners appear to be arguing that the "restrictive and eurocentric [sic]" system is fundamentally different now that it is global. Is this truly the case or are the paradoxes discussed above writ large?

Excluding the Nation

Benedict Anderson writes in *Imagined Communities*, "nation-ness is the most universally legitimate value in the political life of our time" (Anderson 1991, 3). In fact, "nation" is only mentioned twice in the Report and I quote, in full:

The UN also became the principal international forum for collaborative action in the shared pursuit of the three goals of state building, nation building and economic development (International Commission on Intervention and State Sovereignty 2001, 13).

In other cases, conflict has been directed towards the capture of resources and towards plunder. The weakness of state structures and institutions in many countries has heightened the challenges and risks of nation building, and sometimes tempted armed groups to try to seize and themselves exploit valuable assets such as diamonds, timber and other natural resources, not to mention the raw materials of drug production (International Commission on Intervention and State Sovereignty 2001, 4).

The nation deserves more attention within the Report than it gets, as the nation holds manifestations of us/them and violence based on the creation of a homogenous nation within the borders of a state. "And in the unselfconscious use of 'our' (which

becomes 'their')...we can detect the seeds of a territorialization of faiths which foreshadows the language of many nationalists ('our' nation is 'the best'-in a competitive, *comparative* field)" (Anderson 1991, 17). As discussed earlier in the chapter, violence is inherent in any process that defines an 'inside' or an 'outside', and the nation is infused with all the passion that religion, ethnicity, language, or common heritage can muster. The ravages of nationalism are well known.

There is a paradox in the violence of emerging nations after decolonialization. These nation-states are held accountable for the violence in a process that is the only way to enter into the larger community of nation states. All that these post colonial states have access to are "models of nation, nation-ness, and nationalism distilled from the turbulent, chaotic experiences of more than a century of American and European history" and "These models, in turn, give shape to a thousand inchoate dreams" (Anderson 1991,140). These dreams are fostered by the UN, and, in many cases, their status as a nation-state is the one protection post-colonial countries have against their old imperial masters. For the purpose of the current discussion, I use these "models of nation" as an example of the paradox of violence in the international system. The West gives the former colonies a model and then punishes them for following it to the letter. Much of the violence that the Report is a response to would not have been possible if not for liberal neo-colonial practices of former colonizers and the involvement of the industrialized West. "The 'last wave' of nationalisms, most of these in the colonial territories of Asia and Africa, was in its origins a response to the new style global imperialism made possible by the achievements of industrial capitalism" (Anderson 1991, 139). The Commissioners admit that "the

West” is implicated in processes that fuel violence, but in the space of one sentence, are able to blame the civil conflicts for their “destabilizing effects”:

Moreover, the rich world is deeply implicated in the process. Civil conflicts are fuelled by arms and monetary transfers that originate in the developed world, and their destabilizing effects are felt in the developed world in everything from globally interconnected terrorism to refugee flows, the export of drugs, the spread of infectious disease and organized crime (International Commission on Intervention and State Sovereignty 2001, 21).

This also brings up the spectre of the imperial power in liberal international paradigm. All thoughts of blame aside, the most compelling argument for the imperial tendencies within intervention (post-1989) is, thus, intuitive. Who are the powers that are intervening? Which individuals are the most in danger? The answer appears to split along the lines of the old Empires and follows the path of Capital. I suspect that this is not an accident:

We are living on a daily basis with the renewal of this frightening narrative as Western commentators representing various political interests call on the United States, for example, to follow the lead of Britain in Sierra Leone and that of France in Cote d’Ivoire by intervening in Liberia. Any positive effects of such interventions remain haunted, I would suggest by a pervasive Western inability to contemplate the relationship of contamination that persists between vulnerability and power...This refusal, moreover, risks producing a geographical allegory of “protection” and need that finally reinforces, rather than counters, political and economic inequalities (Downes 2004, 481).

Again, the tension is manifest between self-determination, state sovereignty, and the international system. As Richard Falk points out in *Human Rights Horizons*, many developing countries see “Western moves to implement human rights recall the abuses of the colonial era, and even the Crusades—that is, moralizing intrusions on non-Western civilizations for the sake of naked exploitation” (Falk 2000, 85). Of course, this is a complicated and subtle argument that differs in every context and

cannot be covered fully in this thesis. I bring it up to highlight the West's unproblematic view of their own participation in the models and influences at work in the violence that intervention is trying to answer.

Exceptionalism

Perhaps a more fruitful way to conceptualize intervention is to explore the extent to which it is the manifestation of the paradox of sovereignty at the global level and thus can be a starting point to discuss violence, sovereignty, and global politics. "Sovereign power comprises a central contradiction. Its first necessity is to uphold the law. Its second necessity is to be outside the law so that it is able to impart law, since anything already bound by law cannot initiate law" (Dillon 2004, 48). The Report calls on a coalition of responsible sovereigns to intervene, to aid "populations at risk," but the act of intervention means that the legal order itself has failed. The intervener must be outside the law in order to enforce the law. Like other discussions of intervention:

The very project assumes the possibility of an "ideal" humanitarian intervention. That there has been no ideal intervention is rarely taken into account. The impetus to develop some sort of normative regime is understandable but misplaced: the circumstances in which the law may be violated are not themselves susceptible to legal regulation...Each instance of humanitarian intervention-genuine or not-is an admission that the legal order itself has failed (Chesterman 2001, 230).

In the end, the Report reinforces the status quo more than it questions the traditional conception of order in global politics. The sentence in the Report's justification for military intervention brings its engagement with 'Realism', in the terms of International Relations, into clear relief. What exactly is "*large scale loss of life, actual or apprehended*"? Phantom numbers dance behind this phrase, conjuring

images of 'rational choice'. The Commissioners admit that they "make no attempt to quantify 'large scale': opinions may differ in some marginal cases, but most will not in practice generate major disagreement" but what they do stress is that "military action can be legitimate as an anticipatory measure in response to clear evidence of large scale killing" (International Commission on Intervention and State Sovereignty 2001, 33). How many have to die to qualify for genocide? What is large scale? Hundreds, thousands, or millions? Will these numbers differ from place to place or situation to situation? And perhaps the most important question: Who decides? As with all discussion of intervention, "The essence of this position-that certain acts are against the law, but that the decision of whether to condemn them is *outside* the law" and that "then the legal regulation of the 'exception' becomes more important" (Chesterman 2001, 227).

The Report may be said to be scripting a new form of exceptionalism; it does not escape Carl Schmitt and his assertion: "Sovereign is he who decides on the exception". The Report's legitimation of violence consists in supporting exceptionalism shifted to the international level; namely, action through the Security Council. The Council is the authority that is outside the law and decides on the exception.

Not only does this conceptual shift to 'sovereignty as responsibility' finally engage with realist doctrine, it also leaves the individual with little protection in the international system. The concepts of the Report reinforce and support a system that may well be the cause of the problem. By not admitting that the State is culturally specific, historically distinctive, and potentially damaging, the Commissioners may

be unwittingly supporting the very institution that creates the need for intervention. Daniel Warner, a dedicated critic the Report, maintains that the Report has, in part, responded to contemporary global politics and the movement beyond the state, but that they only “prick the imagination” (2003, 114) about what could happen from here. This prioritizing of individuals may lead to completely different subjects than states and statist institutions.

A Concluding Note

The Report, like other discussions of sovereignty, “is premised on grossly simplified assumptions about what sovereignty must be” (Walker 2004, 240). Following Walker, the Report’s elision of the concept of sovereignty shows that the “most common understanding of state sovereignty presumes that terms like sovereignty, state, power, legitimacy and supreme authority can be treated more or less as synonyms” (Walker 1993). This makes the Report and the background essay difficult to unpack, as the terms lack clarity and precise definition. Sovereignty can refer to a different concept every time it is mentioned; the lack of preciseness in defining sovereignty leads to passages like this one:

Sovereignty as the supreme power of a state *has always been limited*, originally by divine law, respect for religious practices, and natural law; and subsequently, limitations have resulted from the consent-based system of the law of nations. “The doctrine of national sovereignty in its absolute and unqualified form, which gave rulers protection against attack from without while engaged within in the most brutal assault on their own citizens,” writes Ramesh Thakur, “*has gone with the wind*” (International Commission on Intervention and State Sovereignty 2001, 12)[emphasis added].

It is difficult to assess whether the Commissioners are contrasting 'sovereignty' with 'national sovereignty'. If this is the case, they do not clarify the difference between the two terms. If it "has always been limited," how "has it gone with the wind"? This imprecision is repeated elsewhere in the Report. The world has seen a "transition from a culture of impunity" (International Commission on Intervention and State Sovereignty 2001, 14) to "modern understanding of the meaning of sovereignty" (8). This modern conception of sovereignty "does not include any claim of the unlimited power of a state to do what it wants to its own people", (8) but part of their justification for keeping the institution of sovereignty is that sovereignty has always had limitations and has not assaulted its citizens with impunity. The Commissioners rebound, like a ball in Newton's cradle, between declaring a long tradition of sovereign impunity and emphasizing that sovereignty has always been controlled by concerns about the individual person. This argument allows the Commission to claim that their "modern" idea of sovereignty as responsibility "has become the minimum content of good international citizenship", (International Commission on Intervention and State Sovereignty 2001, 8) as the meaning of sovereignty can be modified to answer all arguments against it. Tautology aside, neither of these definitions of sovereignty engages with "the sovereignty dilemma":

Either we respect the sovereignty principle and seek permission from the very state agents whose purificatory national agenda may have motivated global humanitarian concerns in the first place, or we press our agenda (somehow having made a judgment about its superiority) without the permission of state agents, and, consequently erode and delegitimize sovereignty for all states. Such dichotomous treatments merely sidestep the sovereignty dilemma rather than work through it (Inayatullah 1996, 51).

By not exploring the idea of sovereignty as a problem, or series of problems, (Walker 2003, 274) the Commission has passed a crucial opportunity to explore institutions or ideas that may be more workable, or practical. Invoking sovereignty, whether it is celebrated or maligned, always leads back to sovereignty. Or, as the Commissioners put it: "All that said, sovereignty does still matter" (International Commission on Intervention and State Sovereignty 2001, 7). The consequences of this journey remain the same: the world is just as dangerous for the individual person as it was before.

Chapter 5 : “Ethos of Criticism”

Introduction

This chapter invokes the spirit of what David Campbell calls the “ethos of criticism” in *National Deconstruction* and applies it to *The Responsibility to Protect*. This ethos of political criticism is “concerned with assumptions, limits, their historical production, social and political effects, and the possibility of going beyond them in thought and action”(Campbell 1998,5). As in the preceding chapters, this chapter continues to focus on “ the political consequences and effects of particular representations and how they came to be” (Campbell 1998, 5) and agrees that this ethos is “indispensable if we are to meet the ethical imperative of confronting events akin to the Holocaust” (Campbell 1998, 8).

I also draw upon another book entitled *Writing Security* (Campbell 1998)¹ in order to expand my analysis of the Report based on the themes of alterity and conceptions of identity and difference in International Relations. These concepts are inextricably linked to the state, sovereignty, and violence, and Campbell’s work further illuminates the Report and the discourse of International Relations. Specifically, these questions will be considered: Does the Report reproduce a discourse of otherness and do the Commissioners see “them” (the victims) as a part of

¹ Subsequent references will indicate *National Deconstruction* and *Writing Security* as ND and WS, respectively, with the page numbers in parentheses.

“us” (the interveners)? What is the role of the nation-state in violence? How do the Report and International Relations deal with contingency?

Ethnicity, Intervention, Undecidability

The Report states that intervention is justified in order to halt “large scale ethnic cleansing” (International Commission on Intervention and State Sovereignty 2001, 32). The Commission uses ‘ethnicity’ in such a way that obscures the political foundation of the violence and therefore limits the possibilities for responses to conflict.

If conflicts represented as “ethnic” are understood as no more than settled history or human nature rearing its ugly head, then there is nothing that can be done in the present to resolve the tension except repress or ignore such struggles...The only alternative consistent with this understanding would be for nature to be miraculously overcome as the result of an idealistic transformation at the hands of reason (ND, 84).

The relationship between violence and ‘ethnicity’ also needs to be rethought in order to create ‘counternarratives’ that help us “effect a better interpretation” (ND, 87).

Conceiving of violence as a form of political inscription and transcription, rather than the product of a “psychogenetic” cause, as a performance rather than a purely instrumental practice, highlights its constitutive role in identity politics and means the claims about a recent intensification of “ethnic/nationalist” conflict can take on a very different character. Far from being a natural outgrowth of historic animosities and earlier conflicts, we can think of these issues of ethnicity and nationalism as *questions of history violently deployed in the present for contemporary political goals* (ND 87).

Ironically, it is the insecure, unessential bases that we find the hope for change—were there, “in fact secure foundations, privileged epistemological grounds, and unquestioned ontological bases,” (ND, 183) we could not “resist its presentation

as a natural outgrowth of ancient animosities” (ND, 183). Campbell uses the Derridean term “undecidability” to explain these conditions of possibility surrounding a decision. “If the realm of thought was preordained such that there were no options, no competing alternatives, no difficult decisions to make, there would be no need for a decision” (ND, 184).

The Report only reinforces the instrumental conception of violence and violent deployment of history by ignoring the political aspects of the violence the ‘international community’ is responding to through intervention. Admitting the unfounded, ahistorical, and political nature of the conflicts is one of the ways “we can exercise our responsibility toward the other, and do other than wait for the carnage to subside” (ND, 183).

Violent Performative Acts

Campbell contends that we live in a time where “the activity of politics is no longer (assuming it ever was) concomitant with the enclosure of politics (the state)” (WS, 17). In this light, the Report can be understood as part of a project of to reinscribe the state as the proper container for politics in order to come to terms with changing global conditions since the end of the Cold War. The Report discusses these new actors and new issues.

The current debate about intervention for human protection purposes takes place in a context not just of new actors, but also of new sets of issues. The most marked security phenomenon since the end of the Cold War has been the proliferation of armed conflict within states. In most cases these conflicts have centred on demands for greater political rights and other political objectives, demands that were in many cases forcibly suppressed during the Cold

War...In many states, the result of the end of the Cold War has been a new emphasis on democratization, human rights and good governance. But in too many others, the result has been internal war or civil conflict – more often than not with ugly political and humanitarian repercussions (International Commission on Intervention and State Sovereignty 2001, 4).

These changing conditions go “to the very heart” (WS, 17), and question how we have come to know ‘(inter)national relations’ and the world. Campbell calls these changes part of “a globalization of contingency” (WS, 17). The dangers that the Report identifies are “more than just a result of interdependence, the proliferation of threats, or the overflowing of domestic issues onto the world stage...[t]his is an irruption of contingencies that renders all established containers problematic ” (WS, 18). He asserts that these conventional responses can no longer adequately address the issues the world faces.

[T]he conventional (and foundational) categories of ordering are exhausted. Their work can only continue by abjuration rather than affirmation; they can maintain an existence and identity by specifying exceptions and exclusions, but they are no longer able to mobilize support in terms of a prior and positive ideal (WS, 18).

Campbell writes, in a cutting and concise manner, that these conventional responses are now more of a danger than the contingencies. The Commission would do well to heed this warning about their base for action through the Report.

[T]he desire to order has itself become a danger in our time. Political discourse that speaks only of the interest and institutional bases of action; the need for attunement, normalization, or mastery as the technologies of order; or power as an object or ethics as a command, or of sovereignty and territory as the container of politics; has lost its capacity—if it ever had it—to provide security (18-19).

Campbell explains that ethical action based on “a notion of prior and autonomous sovereign subjectivity”—such as the individual or the state—cannot fully engage with the problem of responsibility. This is because

The normal foundations for ethical considerations in international relations—sovereign states in an anarchic realm—are often the very objects of violence in such contexts and can no longer be theoretically considered a sufficient as a basis for resolution, even if their illusory permanence remains efficacious within political discourse (ND, 12-13).

In other words, the Commission’s devotion to the nation-state as the ‘container of politics’ may be the cause of more bloodshed, because of the violent, performative qualities of the modern nation-state². As discussed in the previous chapter, the nation-state demands a bordered territory and an ethnic identity to define itself. This inscribing of boundaries “require[s] the expulsion from the resultant ‘domestic’ space of all that comes to be regarded as alien, foreign, and dangerous. The nationalist imaginary demands a violent relationship with the other” (ND, 13).

‘Danger’ and fear also play a major role in this discourse of alterity. “The state, and the identity of ‘man’ located in the state, can therefore be regarded as the effects of discourses of danger that more often than not employ strategies of otherness” (WS, 51). “The state requires discourses of ‘danger’ to provide a new theology of truth about who and what ‘we’ are by highlighting who or what ‘we’ are not, and what we have to fear (WS, 48). This is reflected in the Commission’s use of ‘anarchy’ as a motivating force behind intervention:

² According to Campbell, ‘modern’ is understood not as a “temporal era, but rather a series of dispositions and orientations...bound up in a discourse of ‘men’ as much as in a discourse of the ‘state’”; (WS, 43) “nation” is understood as an “imagined political community”; and “state” as “tenuously constituted in time...through a stylized repetition of acts,” and having no ontological status apart from the various acts which constitute its reality” (WS, 10).

Criteria for intervention on humanitarian grounds begin with the question of the scale or gravity of a crisis. There is considerable agreement about two circumstances under which intervention might be justified: when the government of a state is the perpetrator of mass atrocities; and when a government is fundamentally unable to maintain law and order (*or halt the descent into anarchy*) [emphasis added] (International Commission on Intervention and State Sovereignty 2001, 140).

At base, the Report is essentialist; sovereignty, security, the state, anarchy, and the individual are “primary and stable identities” and the Report is written in “response to an objective danger” (WS, 11).

In a dangerous world marked by overwhelming inequalities of power and resources, sovereignty is for many states their best – and sometimes seemingly their only – line of defence (International Commission on Intervention and State Sovereignty 2001, 7)[emphasis added].

The most *marked security phenomenon* since the end of the Cold War has been the proliferation of *armed conflict within states* (International Commission on Intervention and State Sovereignty 2001, 4)[emphasis added].

The Commission follows Hobbes’s by using intervention as a way to keep the world from sliding back into the ‘state of nature’. “Hobbes’s strategies of otherness are aimed at the treasonous subjects who wish to subvert the state” (WS, 60) and “securing an ordered self and an ordered world—particularly when the field upon which this process operates is an extensive as the state—involves defining elements that stand in the way of order as forms of ‘otherness’” (WS, 50). The Commission justifies violence by classifying irresponsible sovereigns as these ‘treasonous subjects’, the dangerous ‘other,’ or lawbreakers. These lawbreakers have ceded their rights and given up their status as members of the community through their actions.

This allows the international community to intervene without moral qualms because the state has placed itself 'outside' the 'civilized' order:

If by its actions and, indeed, crimes, a state destroys the lives and rights of its citizens, it forfeits temporarily its moral claim to be treated as legitimate. Its sovereignty, as well as its right to nonintervention, is suspended (International Commission on Intervention and State Sovereignty 2001, 136).

Specifically, Article 1 (2) stipulates that "[a]ll Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter (International Commission on Intervention and State Sovereignty 2001, 7).

Proponents of this view argue that sovereignty is not absolute but contingent. When a government massively abuses the fundamental rights of its citizens, its sovereignty is temporarily suspended (International Commission on Intervention and State Sovereignty 2001, 11).

The Report supports, at many different levels, the discourse of us/them. The challenge lies, not in crafting consistent responses to manifestations of this violent relationship, but in imagining different forms of political community that do not have an immanent relationship with violence. Campbell asks in *Writing Security*, "Do we have an alternative to the continued reproduction of sovereign communities in an economy of violence? (WS, 203), and "what modes of being and forms of life could we or should we adopt?" Coming to the opposite conclusion of the Commission and its continued faith in the state, Campbell asserts, "A deterritorialization of responsibility is required" (ND, 166). Alternative grounds in the discourse of International Relations must be found in order to deal with the 'irruption of contingency' that troubles the world today.

Conclusion

Campbell believes traditional scholarship in International Relations is overcome with “Cartesian anxiety” and it “will probably continue to forget the silences, omissions, and limitations...and maintain that epistemic realism rests on more than faith” (WS, 194). He reiterates in the epilogue of *Writing Security* that critical scholars need to resist “opting for the either/or renderings of the theoretical and political choices we face...This necessarily involves the refusal to bracket off either ontological or epistemological issues, for new political enactments both depend on and themselves perform the problematization of subjectivity” (WS 223).

The analysis in the last two chapters has attempted to channel this ethos to show that the Commission has missed an opportunity to question founding preference that can lead to violence. The immanent concepts of ‘civilized’ and ‘barbaric’³ in International Relations cannot be dismissed by disdain (WS, 195) or, as the Commission has done, by a limited rendering and rewording of sovereignty. Campbell concludes, in his discussion of US foreign policy, that there must be an attempt to “develop an orientation to the inherently plural world that is not predicated on the desire to contain, master, and normalize threatening contingencies” (WS, 198) and this advice is easily applied to *The Responsibility to Protect*.

Discourses of alterity and our relation to the ‘other’ need to be radically rethought and the “counternarratives” (ND, 87) offered need to disturb key points and

³ This image of the barbarian genocidaires supports the violence that the Report calls “intervention for human protection purposes”. In fact, the Report makes a dangerous move; one that dehumanizes those that are the perpetrators of the violence just as these genocidaires dehumanized their victims. At this point in my argument, I want to make very clear that I am not academically excusing ethnic cleansing or genocide. I merely want to point the cyclical and dangerous nature of this discourse (see (Salter 2002)).

unsettle essentialist accounts of International Relations. Fundamentally, the Commission needs to let go of “the future tense”:

Many, if not most arguments concerning ethics and international relations exhibit a predilection for the future tense and thus imply that moral action is some way off. In the oft-heard demand for an ethical theory of international relations there is the suggestion that once we, the external analysts, find the codes, norms, or rules to guide moral action, *then* we will be able to impart them for the benefit of the relevant participants (ND, 12).

In conclusion, I would remind the Commissioners of the ethos of their intervention into International Relations and how it may be best served: “We cannot be content with reports and declarations. We must be prepared to act. We won’t be able to live with ourselves if we do not” (International Commission on Intervention and State Sovereignty 2001, 75).

Chapter 6 : Conclusion

*Nothing ever begins.
There is no first moment; no single word or place from which
this or any other story springs. The threads can always be traced
back to some earlier tale, and to the
tales that preceded that; though as the narrator's voice recedes
the connections will seem to grow more tenuous, for each age will want
the tale told as if it were of its own making.
-Clive Barker, Weaveworld*

Introduction

The Responsibility to Protect provided a ground from which this thesis assessed the contemporary debate around intervention, and especially to examine the effects of some specific conceptual moves that are made within the liberal tradition of international political theory. This thesis argued that the next step in the intervention debate must be to question the prevailing political traditions of International Relations. One of these prevailing political traditions, and the one analyzed in this thesis, is the sovereign state. Specific to the Report, the Commission fails to substantively question the State as demonstrated by the prodigal return to the sovereign state through their paradigm of the 'responsibility to protect.' This is ultimately irresponsible because of the exclusionary practices of the modern nation state. Moreover, whether the 'international community' celebrates or disagrees with the Report, it expresses a specific liberal conception of international law and order; a conception that fails to take any responsibility for its own complicity in the violence

and disorder that the Report seeks to address. In the end, the Commission's approach to the intervention debate sabotages their desire that the Report will "generate innovative thinking on ways of achieving and sustaining effective and appropriate action" (International Commission on Intervention and State Sovereignty 2001). The Commission reproduces the same fundamental contradictions that have partly created the need for intervention in the first place

And so, Chapter 3 placed the Report within current conceptions of international law and demonstrated that it reflects the complex legal and political debates over state responsibility and the status of the individual person in international law and International Relations. There is "broad support" for the Report because it is emblematic of international human rights law and International Relations. Just War Theory and responsibilities *erga omnes* trace their way through the Report even if they are not explicitly mentioned. It was important to begin the analysis of the Report with a discussion of the legal claims underpinning the Commission's justification of 'intervention for human protection purposes' because the legal argument for intervention exposes the central contradiction within the Report. The question that the Report avoids answering is what the repercussions of supporting the Security Council as the sovereign authority at the international level. Does this open the door for hegemony, or perhaps something more dangerous in its relation to the individual person than the current world order?

Chapter 4 argued that the framework of the Commission's reasoning makes the Report an intervention into international law and politics, as well as a doctrine of intervention. Although the Commission excludes the word 'humanitarian' from

intervention, they still rely on inherently moral concepts to justify the violence that the Report legitimates. I traced four themes: humanitarianism, sovereignty, violence, and intervention through the Report and its supplementary volume in order to explore the onto-political roots of intervention. This exposed the unanalyzed foundations of the Report and challenged the Report's theory of sovereignty. The Report, in its support of the State, may unintentionally be part of the problem. By not admitting that the State is culturally specific, historically distinctive, and potentially damaging, the Commissioners may be unwittingly supporting the very institution that creates the need for intervention.

Chapter 5 continued the thematic analysis began in the previous chapter with David Campbell's two texts, *Writing Security* and *National Deconstruction*. I invoked an "ethos of criticism" and joined Campbell in embracing "the logic of interpretation that acknowledges the improbability of cataloguing, calculating, and specifying the "real causes" and concerns itself instead with considering the manifest political consequences of adopting one mode of representation over another (Campbell 1998, 4). Additionally, this chapter explored alterity, 'ethnicity', and the problematic 'nation-state' and its relationship to these two concepts. The Report does not fully take into account the political aspects of the violence the 'international community' is responding to through intervention. Admitting the unfounded, ahistorical, and political nature of the conflicts is one of the ways "we can exercise our responsibility toward the other, and do other than wait for the carnage to subside" (ND, 183). Campbell's analysis helped to clarify that the Report can be also be understood as part of a project of to reinscribe the state as the proper container for

politics in order to come to terms with changing global conditions since the end of the Cold War. These changing conditions have become more pressing and urgent, but Campbell stresses that our current institutions are not able to deal with the irruptions of contingencies that are taking place post-1989.

Consequences

This thesis defended the position that the Commission's redefinition of sovereignty is not "genuinely innovative" (Thakur 2002, 327). Rather, this redefinition bases itself on traditional concepts and actors in International Relations: The Report still views the state and the individual as autonomous, rational actors in a world system that is defined by anarchy. In fact, this redefinition is necessary in order to have the world 'make sense' again based on these same notions when challenge with irruptions of contingency at the global level. The Report is insufficient in that it does not fully account for the role of the sovereign state in the violence it is trying to prevent. The Commission relies upon the Security Council, an undemocratic and unaccountable UN body, to enforce their internationalist ideals. This 'sovereign violence' is contrary to the 'international community' as the Commission envisions it in the Report.

Another consequence of the Report is that it imputes responsibility to the international level and the international is even less equipped to handle responsibility. The International Criminal Court is still an unfinished dream and the UN is unable to protect the individual at this time. This shift to "sovereignty as responsibility", then,

would leave the individual less protected because the international community is unable to protect human rights over an extended period at this time (Warner 2003, 114-15). The state may not be able to protect individuals but the “international community” is even less able to do so. David Rieff, in a cutting critique of humanitarianism, asks “What thinking person can take seriously the idea of an international community?” (Rieff 2002, 28).

There are international institutions like the United Nations, the World Trade Organization, and the World Bank. But the reality is that the international community is a myth and a way to conceal the bad news about the present in septic sheets of piety about the future...The reality is that the moment one taps on the idea of the international community it falls apart like a child's broken toy (2002, 9).

In the return to state, the Commission discounts the fact that their prioritizing of individuals may lead to completely different subjects than states and statist institutions. This move weakens the ability of non-state actors to play a role in a ‘responsible’ global order. The exclusion of the word ‘humanitarianism’ also seems to rule out the actions of non-state players.

And, most importantly, all other discussion aside, the bodies keep piling up. It would take a hard-hearted person not to desire to alleviate even some of the suffering that occurs everyday in the world. Again, I would like to stress that this thesis is not an attempt to prove the Commission wrong or question their dedication. The issues that the Report outlines are of paramount importance. While I do not disagree with need for action to rectify the wrongs done to the individual person, I question the way in which the Commissioners come to their conclusions and the analysis and theories that seem to be the foundation for these conclusions. It is also

important to remember that critique is not a sanction for violations of human rights. I do not excuse the horrific nature of the pressing issues that face the world today. I only wish to stress that the world is not a place that can be transformed into an easily read 'roadmap'. 'Comprehensive' policy studies may have, in part, lost their effectiveness (if indeed they ever had any) to explain the world. We are inscribed within the world; it is impossible to take an outsider's position.

In the Report, violence and humanitarianism are presented as two factors in a causal relationship; humanitarianism is heralded as the cure for the problem of violence (Nyers 72). To deepen this analysis, violence should be treated as more than something that 'just happens,' any more than every war that has taken place or that wages now is a humanitarian crisis. "Obviously, not all wars are just wars. But all wars have causes. They are not humanitarian emergencies, and to describe them in this way is to distort both their reality and their significance (Rieff 2002, 74-75). It is important, not just to respond to violence, but to connect to the structure that it occurs within. It should not just be the need to 'do something' that drives actions but an interest in looking at all factors that may create the tragedies that require 'intervention' and whether the ends truly justify the means. Again, David Rieff asks and answers a crucial question about the Responsibility to Protect.

Does one not risk becoming a part of the problem rather than a part of the solution? I can only reply that one does the poor and the oppressed no favor by misrepresenting reality, or by confidently offering up prescriptions for ills which the sad truth is that there may be no cure. To the contrary, one consoles oneself without succouring them, and, if one is not careful, one does indeed begin to traffic in false hope (Rieff 2002, 16).

Counternarratives

As the layers in the Report were turned back, this thesis uncovered paradox within paradox. The paradoxes of sovereignty, of subjectivity, of humanitarian action all appear as we descend through this study of intervention. Intervention is a frustrating field to study—it defies prescription because it is a symptom of a sickness in the global polity. Therefore it is not enough to formulate new policies or change existing policies about the act of intervention itself. The same problems reassert themselves if the causes are not dealt with appropriately. This also leads to problems when one tries to formulate options for the future. Is there a more productive way to think about sovereignty and subjectivity? More productive questions might include: Can we move from academic deadlock to a working doctrine in ‘the field’, especially if we admit that the distance separating us from ‘the field’ is shrinking? What can we learn from the instances where sovereignty does not work? Could we use intervention to study sites of power and flows of sovereignty? What if we treat these episodes of genocidal violence as normal instead investing time and energy into proving they are abnormal? Rather than trying to prop up and band-aid a ‘failing state’ can we practice expanding our political imagination, or at least admit the possibility that the modern state and its exclusionary policies may be, at least partly, responsible for instances of violence?

Lives are at stake, innocent and guilty alike, so it behooves us to do so. The shocking nature of this violence makes it easy to fall back into old habits. One of these habits is thinking of the state as the best way to organize collective action. If the current sovereign is the villain in this equation is it wise to intervene, reinstate a

'new' sovereign without any critical reflection and hope that this sovereign will not prey upon its own? Daniel Warner points out the Commission "assumes that the society will go back to a form of sovereignty that had existed before the trauma" and that "intervention/assistance is in fact substitution because the local government has either abdicated or abandoned its obligations"(Warner 2003, 113).

The thrust of this thesis has been that we need a major rethinking of the forms of the political. The Report offers a limited ability to protect the individual person because of its reliance on the exclusionary practices of the modern state and limited humanism based on a Western conception of the individual. We need to foster a "deeper appreciation of our preexisting responsibility to the other" and encourage "the development of new strategies of intervention that encourage nonmilitary and nonstate actors" (Campbell 1998, 240). The Report represents a refocus in the intervention debate, but one that needs to sharpen its analysis in order to better protect the individual person from political violence.

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