

# And the world just walks on by...

## **Max G. Dalton investigates our Responsibility to Protect**

***If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond... to gross and systematic violations of human rights that offend every precept of our common humanity?***

***Kofi Annan, 1999***

In order to maintain peace and security in the anarchic international community, an international rule of law is essential, whereby any actor within the international order can be held accountable for their actions. Intrinsic to this notion is the altruistic advocacy of 'humanitarian intervention', which is ostensibly utilised to protect the basic human rights of citizens in nation-states where the state itself is unable or unwilling to protect those rights.

The *Responsibility To Protect* ('R2P') report addresses the emerging norm of humanitarian necessity in the 'new world order' and sets out practical guidelines for

for the implementation of a program of humanitarian intervention by the United Nations.<sup>1</sup> However R2P is far from being seriously implemented, as the tensions between the notion of an international rule of law and politics have seen the realist policies of states stymie any substantial attempts to enforce it.

This essay argues that the internationally upheld norm of the equality of political sovereignty directly prohibits any form of un-requested humanitarian intervention, and thus renders it illegitimate under current international law. The practicality of R2P relies on the strict adherence to a legally codified set of rules overseen by the UN, so as to curtail the exploitation or misuse of humanitarian intervention by other international organisations. Despite for the obvious protection of individuals in need, traditional conceptions of sovereignty must yield to a new norm of legally valid multilateral humanitarian intervention, as this is the essential ingredient to attaining an effective international rule of law.

A legitimate program of humanitarian intervention would require a





paradigmatic shift in the sovereignty norm. Hedley Bull contests that international society is comprised of five "institutions" which legitimise the existence of the order that defines international society.<sup>2</sup> He argues that these institutions - war, the balance of power, the great powers, diplomacy, and international law - are not static, but rather evolve to accommodate changing circumstances.<sup>3</sup> Makinda links Bull's thesis to the modern conception of sovereignty, and contests that the survival of sovereignty is dependent on these institutions, and if these institutions evolve then so will sovereignty.<sup>4</sup>

Realist critics argue that such a shift in sovereignty would undermine the institutions that govern international relations, and inevitably undermine international peace and security. The predominance of this view has meant that, although adopted at the '2005 World Summit' by the UN General Assembly, politics has stymied the implementation of the measures recommended in R2P.<sup>5</sup> However, the forces of post-Cold War globalisation continue to fundamentally challenge the institution of the state, requiring increased interdependence between nations. Rodrik indicates the incompatibility of this 'new world order' with the political sovereignty of states.<sup>6</sup>

Thus, applying Bull's thesis, if a new norm of humanitarian necessity was to

be acknowledged by the international community, sovereignty could consequently adapt to complement the contemporary environment.

Discussion of R2P gives rise to the notion of 'sovereignty as responsibility', coined by Francis Deng (1996) and embodied in R2P (ICISS 2004). This doctrine recognises that in maintaining sovereignty over a region, the sovereign of that region has an inherent *responsibility* to protect the individual human rights of its citizens (Deng 1996: 32). When a state is unwilling or unable to carry out this duty, the international community has an automatic responsibility to act its place (ICISS 2004: 4). Specifically, R2P advocates a global, UN-implemented strategy to "prevent" humanitarian disaster, "react" to humanitarian crisis with the use of force as a last resort, and to assist affected regions with "recovery, reconstruction and reconciliation" (ICISS 2004: 3-7). However, as was noted earlier, the practicality and legitimacy of such a policy requires a paradigmatic shift in the sovereignty norm.

Referring again to Bull's thesis, it is arguable that this shift in sovereignty is possible through an evolution in international law. Such a change to international law must come from the UN Security Council (UNSC), and this stems from the reality that the organisation is inherently inequitable. Chapter VII of the Charter establishes the UNSC as the sole

legally violate another nation's sovereignty (Köchler 2001: 13). This license, combined with the power of given to the five permanent members, has meant that the operation of the UN Charter, and thus international law itself, has been underpinned by the individual interests of the permanent members. This creates the paradox that the permanent members are largely in control and therefore exempt from the application of the rule of law they are entrusted to uphold (Robertson 2008: 490). Köchler (2003: 1) consequently argues that a paradigmatic shift is required by way of democratic reform of the UN and the abrogation of the veto right. This argument is consistent with the proposals of the R2P report (Wheeler 2005: 49). Without such reform, the UN and international law will remain paralysed in relation to humanitarian intervention.

The practical implementation of R2P will only be effective and sustainable if employed multilaterally under international law. The emerging norm of un-lawful intervention, born out of frustration over the paralysis of the UN, is inconsistent with international security (Glennon 1999: 6). NATO's military intervention in Yugoslavia reflects this concern, as the use of force was *prima facie* in breach of 2(4) of the Charter. Robertson (2008: 473) is not alone in arguing that, as well as the breach of the Charter, the conflict was outside of international law in other areas, such as the "indiscriminate bombing from 15 000 feet which caused the death of the very people the Western alliance was ostensibly meaning to protect". However the paradox of this argument is that without NATO intervention, 1.7 million Kosovo-Albanians would have become victims of genocide (*ibid.*)

There is strong political opposition to decentralising state sovereignty in favour of the UN multilateralism R2P proposes, as some argue it will provide powerful states with a vehicle to justify the use of force in advancing their interests (Vincent 1974: 345; Köchler 2001: 28). Köchler (2001: 28) embodies this argument:

The revival of the just war concept... may open the gates to ideological fanaticism of an emotional intensity... it will undermine international legitimacy and destroy any hopes of peaceful coexistence.

This opposition to R2P is heightened by the significant obstacle that in order for this level of recognition of international law to take place, states would have to undertake the normative process in international law of introducing R2P into their domestic law. These arguments are the manifestation of the realist suspicion of humanitarian intervention and ultimately an enforceable international rule of law. They are consequently the dominant obstacles to the practical implementation of R2P.

In opposition to realist claims, Wheeler (2005: 15) notes that a strong argument can be made that adopting R2P would both reduce the risk of states employing "bogus humanitarian claims" to justify the use of force, and increase the likelihood of the UNSC acting to prevent, and end future atrocities. Proponents of R2P argue that if implemented by the UN, states wanting to intervene would be beholden to the strict guidelines outlined in the report, forcing them to prove their actions were in conformity with R2P and international law (*ibid.*). Therefore it is arguable that UN-sponsored multilateral





1. International Commission on Intervention and State Sovereignty, *The Responsibility To Protect* (2001)

2. Ibid.

3. Bull, H. *The Anarchical Society* (1977)

4. Makinda, S.M, 'The Global Covenant as an Evolving Institution' (2002) *The International Journal of Human Rights* 113, 115

5. Ibid

6. Rodrik, D, 'Feasible globalisations', in Weinstein, M. (ed.), *Globalisation: What's New?* (2005) 177, 194

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