Sovereignty in the Age of Interventionism: Diminished or Restructured?

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Abstract

The principle of sovereignty was a major pillar of the world organization particularly in the age of the United Nations. There has been an enormous interest in the past few decades in sovereignty fuelled by global events starting from the collapse of the Soviet Union. and then the subsequent emergence of new states. an increased global interdependence and other political developments. However. the rigid nature of the classic sovereignty represented a stubborn obstacle to the humanitarian advancement in the world's order. In this context. the doctrine of 'sovereignty as responsibility' was meant to fill in this gap. It was created to give an answer for using sovereignty to prevent .intervention even where human rights are massively violated

This paper attempts to study claims by IR theorists that sovereignty has become irrelevant to our current world. It is the contention of this paper that the theory of sovereignty is a product of particular social and economic conditions. However. far from becoming irrelevant or redundant. sovereignty today is still an essential part of the legal and political international order. Yet. sovereignty has evolved in a reflection of other deep transformations in the international structure. In this evolving context the paper challenges the potential capabilities of the "Responsibility to Protect" principle in terms of .finding the proper answer to the world's main atrocities

The paper is divided into: an Introduction. three main parts and a conclusion. The fir st part "Orthodoxies related to Sovereignty and Intervention" attempts to place the concept of sovereignty within the historical context of modern state development. The second one; Legal Variables and Responses: International Relation Perspective will discuss the meaning of sovereignty within some of

the prominent IR writings mainly from a legal perspective. The third part; "Sovereignty in the contemporary post-Cold War era: developments of the legal perspective" discusses the notion of sovereignty in the context of the increasing practice of post-Cold War Humanitarian intervention. The article as above mentioned sheds light on the report of the International Commission on Intervention and State Sovereignty 'Responsibility to protect' as an example of efforts to redefine 'sovereignty' in the post-Cold war era. Therefore, the third part discusses the relevance of sovereignty in the contemporary world. The conclusion will give the author's account on of sovereignty within the current challenging environment.

السيادة في عصر التدخل: تقلص نهائي أم اعادة تشكيل؟

د. محمد حسام حافظ

يمثل مبدأ السيادة ركيزة أساسية في النظام العالمي الحالي الذي نشأ تدريجيا بعد معاهدة وستفاليا (عام ١٦٤٨) وقد تبلورت أهمية المبدأ بعد نشوء الأمم المتحدة التي حرمت اللجوء إلى القوة في العلاقات الدولية وفرضت احترام سيادة الدول في مواجهة أي تدخل خارج الأمم المتحدة ومظلتها السياسية والقانونية. وقد زاد الاهتمام الكبير في العقود القليلة الماضية بمفهوم السيادة ومصدرها وكل ما يتعلق بها ومن كافة الجوانب كافة لأسباب مختلفة. وكان من أسباب هذا الاهتمام الكبير ما جرى من أحداث متلاحقة خلال العقود الماضية بدأت بانهيار الاتحاد السوفيتي، وما تبع ذلك من ظهور لدول جديدة، وكذلك الترابط التركمي والتبادلي العالمي بين الدول والمنظمات وغيرها من تطورات سياسية. ولكن الطبيعة الجامدة للسيادة حسب مفهومها التقليدي قد تحولت إلى عقبة كأداء في وجه تقدم مفهوم الإنسانية بوصفة مبدأ من المبادىء السياسية والقانونية – وليس الأخلاقية – فحسب في العالم الحديث. في هذا السياق كان من المفترض أن تقدم نظرية "السيادة كمسؤولية" أو "مسؤولية الحماية" الحل لملء هذه الفجوة. وقد تم تبني النظرية أصلا لتعطي الحل الناجح لمسألة التذرع بالسيادة لمنع التدخل حتى في حالات الانتهاكات الواسعة لحقوق الإنسان.

وتحاول هذه الورقة استعراض بعض ما تقدم به مختصي العلاقات الدولية وتحليله من أن السيادة قد أصبحت من مخلفات الماضي وأن لا مكان لها في زماننا الحالي. ويرى الكاتب أنه ربما من الصحة بمكان القول بأن نظرية السيادة كانت نتاج أوضاع اجتماعية واقتصادية بعينها. ولكنها مع ذلك أبعد ما تكون من أن تصبح من المبادىء المنسية أو غير ذات القيمة الجوهرية في عالمنا المعاصر. من ناحية أخرى يرى المقال أن مبدأ "مسؤولية الحماية" قد فشل من حيث المبدأ في إيجاد رد الفعل المناسب حيال الفظائع التي ترتكب دون رادع حول العالم.

وتنقسم الورقة إلى مقدمة وثلاثة أجزاء وخاتمة، وفيما يحاول الجزء الأول وضع مفهوم السيادة ضمن السياق التاريخي لتطور الدولة الحديثة يناقش الجزء الثاني معنى السيادة في بعض ما قدمه بعض كبار كتاب العلاقات الدولية وبخاصة المفهوم القانوني للسيادة من وجهة نظر العلاقات الدولية. ويناقش الجزء الثالث مفهوم السيادة في سياق تزايد النزعة الدولية لممارسات التدخل الإنساني بما في ذلك مبدأ مسؤولية الحماية في السياق الإنساني وأثره في النهج الشامل للفهم التقليدي للسيادة. وينتهي المقال بخاتمة تبين رأي الكاتب في مبدأي السيادة ومسؤولية الحماية في هذا الوقت المشحون بفشل العالم في مواجهة الانتهاكات الجسيمة لحقوق الإنسان.

Sovereignty in the Age of Interventionism: Diminished or Restructured?

Over the last two decades there has been a renewed academic interest in sovereignty as one of the underlying assumptions of the international structure. This interest was mainly fuelled by global events the most notable of which was the collapse of the Soviet Union and the subsequent emergence of new states as well as perceived increased global interdependence. More importantly, the discussion was instigated by the increased post-cold war tendency of military intervention under the banner of protection of human rights. Although the subsequent events witnessed less appetite for classic direct intervention the events in the so called Arab Springs countries, particularly Libya and Syria proved advancement of new types of intervention. Sovereignty is one of the topics where International Law encounters International Relations in every aspect. However, it is quite obvious that studying sovereignty under IR gives its legal paradigm a much deeper meaning.

"We find ourselves at a historical moment in which fundamental conceptions of 'the scope of government' and 'the nature of society' are being called into question. Both scholars and politicians commonly speak of a 'crisis of sovereignty'". 1

In the aftermath of September 11 attacks and the subsequent "war on terrorism", arguments promoting the instability of sovereignty in the contemporary world gained high currency in the IR and International Law literature.

This paper attempts to take up claims by IR theorists that sovereignty has become irrelevant to our world today. It is the contention of this paper that the theory of sovereignty is a product of particular social and economic

conditions. However، far from becoming redundant، sovereignty in today's world has been transformed to reflect transformation in the international structure.

The paper is divided into: an Introduction، three main parts and a conclusion. The first part "Orthodoxies related to Sovereignty and Intervention" attempts to place the concept of sovereignty within the historical context of modern state development. The second one; Legal Variables and Responses: International Relation Perspective will discuss the meaning of sovereignty within some of the prominent IR writings mainly from a legal perspective. The third part; "Sovereignty in the contemporary post-Cold War era: developments of the legal perspective" discusses the notion of sovereignty in the context of the increasing practice of post-Cold War Humanitarian intervention. It also discusses the important notion of the responsibility to protect and its impact of the overall approach to the classical understanding of sovereignty. The conclusion gives the author's account on of sovereignty within the current challenging environment.

1- Orthodoxies related to Sovereignty and Intervention;

The theory of sovereignty is a product of particular social and economic conditions. Therefore، to gain an insight into the concept of sovereignty، attention should be given to the history of Europe where the modern sovereign state has evolved.

Peace of Westphalia: Roots and challenges

In the medieval period both rulers and ruled were subject to a universal legal

order which reflected and derived its authority from the law of God. 2 The term sovereignty has evolved over a period of time. Most scholars agree that Jean Bodin's (1529-1596) writings about sovereignty were among the first clear thoughts about the existence and function of a "supreme authority". He was among the first political thinkers who helped turn law and politics into a scientific discipline.

Some scholars see that the Peace of Westphalia of 1648 marks a turning historical point. This view is particularly prominent among international relation theorists as well as international lawyers. This group of scholars sees that Westphalia marked the transition from the medieval to the modern world as far as International order is concerned. Westphalia is seen to have codified a new international order، one based on independent sovereign states. Before Westphalia states existed in their primitive forms so the order that govern their relations. However، Westphalia brought new set of principles and ideas that shaped a new era in the International Relations discipline.

For instance، Kalevi Holsti، in a survey of peace and conflict since the seventeenth century writes: "the peace of Westphalia organized Europe on the principle of particularism. It represented a new diplomatic arrangement -an order created by states for states- and replaced most of the legal vestiges of hierarchy، at the pinnacle of which were the Pope and the Holy Roman Empire." Similarly، Ruggie argues that the period around Westphalia represents a break with the past as well as a change in the deep generative structure in of the international system. 3 Ruggie argues that population pressure، widening markets، the expansion of systems of justice، and the elimination by rulers of domestic challengers led to a change in the deep structure of the system، namely، a change from the medieval world structure to the modern structure of

sovereignty. [4]

The Westphalian arrangements has not given birth to the concept of national sovereignty. rather it set forth the foundation of international law and international order on a broad European scale. Through colonial era this system became global.

However. some scholars have come to question the significance of Westphalia as the defining moment that marks the birth of sovereign states. For instance. Krasner contends that the actual content of sovereignty. the scope of the authority that states can exercise has always been contested before and after Westphalia. The basic organizing principle of sovereignty-exclusive control over a given territory-has been challenged all the time by the creation of new institutional forms that better meet specific material needs. [5] He also contends that Westphalia was not a total departure from the earlier structures of international relations. It codified existing practices more than it created new ones. That is. in other words. a direct codification of International customary law in its earliest forms. It echoed the temporary benefits of the triumphant parties. these are France and Sweden and this is far from attempting to create firm concepts on how the international system should be ordered. According to Krasner. only in retrospect did Westphalia become an icon that could be used to justify further consolidations of the sovereign state against rival forms of political organizations.[6] Krasner argues that the idea of sovereignty was not the driving force behind the elimination of feudal institutions. This transformation was led by material conditions including changes in the nature of military technology and the growth of trade. These have systematically favored states that could take advantage of siege guns and elaborate defenses. and organize to protect long-distance commerce. [7] Thus.

new political practices created a need for legitimating rationales. [8]

However، many commentators suggest that one cannot see the whole idea of questioning Westphalia as the birth place of sovereignty but in the context of serving certain approaches to current international relation foundations; especially those questioning the very existence sovereignty per se. Krasner's account can be contrasted with another scholarly view that sees that norms of sovereignty changes in response to changes in ideas of legitimate authority. In contrast، with realist accounts that give primacy to shifts in material power، this 'ideas theory' emphasizes that norms of sovereignty follow changes in the actual structures of international society. Philosophers later legitimize these norms by theoretically justifying the structural change. [9]

Nonetheless، it can be said that sovereignty as a political institution has a life of its own seemingly independent of the human agents who invent or operate it. Sovereign statehood is now so entrenched in the public life and imprinted in the minds of people that it seems like a natural phenomenon beyond the control of statesmen or anybody else. However، modern sovereign states are not natural entities. As Krasner، convincingly argues; they are historical 'artifacts'. The oldest modern sovereign states have been in existence in their present shape only for the past three or four centuries. [10]

2- Legal Variables and Responses: International Relation Perspective:

While the legal approach to sovereignty sees it as indivisible in the sense that a country is either sovereign or not، some scholars have broken down sovereignty

into a number of components. Most notable of these is the definition of sovereignty developed by Krasner. He recognizes different definitions of sovereignty، only one of them is to do with aspects of legality. These are: "international legal sovereignty، domestic sovereignty، interdependence sovereignty، and Westphalian sovereignty".[11]

International legal sovereignty denotes exercises related to mutual recognition، usually between entities that have formal juridical independence.

Domestic sovereignty means "the formal organization of political authority within the state and the ability of public authorities to exercise effective control within their borders".

Interdependence sovereignty refers to the ability of public authorities to regulate the flow of material and non- material objects such as information، ideas، goods، people، or capital across the borders of their state. [12]

Westphalian sovereignty refers to "a political organization based on the exclusion of external actors from authority structures within a given territory".

A state can have one but not the other. Moreover، in some cases the exercise of one kind of sovereignty - for instance، international legal sovereignty – can challenge another type of sovereignty، such as Westphalian sovereignty. An example of this would be members of the EU; since the rulers of those states entered into an agreement that accepts regulations of external authority: the EU bodies.

According to Krasner، international legal sovereignty and Westphalian sovereignty involve issues of "authority and legitimacy but not control". While the rule of international legal sovereignty revolves around recognition.

That refers to recognition of entities that enjoys formal juridical independence over certain territory. Whereas the rule of Westphalian sovereignty "is the exclusion of external actors whether de facto or de jure". from any acting within the territory of the state." Domestic sovereignty involves both authority and control. This includes the requirements of legitimate authority within an institution and the extent to which that authority can be efficiently employed. Interdependence sovereignty is solely related to the control. but not authority. with the power of the state to regulate movements across its borders. [13]

Embedded in these four usages of the term 'sovereignty' is a vital distinction between authority and control. Authority involves a mutually recognized right for an actor to engage in specific kinds of activities. However. control does not require the mutual recognition of authority and can be achieved by the use of force. [14] Nonetheless. in practice the boundary between authority and control can be unclear. A loss of control over time could lead to a loss of authority. Meanwhile. the effective exercise of control could generate new systems of authority.

Thus. Westphalian sovereignty and international legal sovereignty refers to issues of authority. In other words; they provide an answer of the following questions: does the state have the right to exclude external actors? Or in other words: is the state the only entity that has the exclusive powers to issue the relevant regulations and to prevent outsiders from doing the same? And is a state recognized as the only entity to have the authority needed to engage in international agreements? Interdependence sovereignty exclusively refers to control. and therefore giving the answer to the following question: can a state control movements across its own borders and other activities of that kind? Domestic sovereignty includes both authority and control of all fields

correlated to the daily life of a given state. Therefore the question it tries to answer is: What authority structures are recognized within a state? What means of control and what regulations are functioning within the state? and how effective is their level of control? [15]

3- Sovereignty in the contemporary post-Cold War era: developments of the legal perspective

Many scholars who have come to question the relevance of sovereignty to international law and international politics argue that sovereignty is being eroded by new aspects of the contemporary international system such as globalization. Others believe that sovereignty is sustained -even in states with limited resources- by another aspect of the regime; that is the mutual recognition and shared expectations generated by international society. While some scholars claim that the ability of the state to exercise effective control is eroding, others are pointing to the increase of the scope of state authority over time. In the post-cold war world, focus has shifted increasingly to new norms such as universal human rights that some see as representing a fundamental break with the past. [16]

In the other side, many scholars are still arguing that the place of sovereignty in international relations stemmed from the main pillar of the current international legal system; that is the UN Charter. For these theorists the notion of sovereignty has lend its foundations from principles of equality and non-intervention enshrined in the UN Carter, and the principle of refraining the use of force in the international relations is the heart of this notion. [17]

This shift in norms is reflected in a major post-Cold War influential document: "The Responsibility to Protect (2001)" was produced by the international Commission on Intervention and State Sovereignty (ICISS). The publication represents to some extent the acceptance of the international community of the departure from the Post Second World War sovereignty.

'The Responsibility to Protect' and 'sovereignty as responsibility':

Amongst the first indications of the doctrine could be traced in the UN Secretary-General Javier Perez de Cuellar 1991 call for an "agreement not on 'the right of intervention but the collective obligation of States to bring relief and redress in human rights emergencies'. Then the idea of 'sovereignty as responsibility' was put forward by the Sudanese scholar and Special Representative of the UN Secretary-General for Internally Displaced Persons. Francis M. Deng. principally in a publication by the Brookings Institute. Sovereignty as responsibility: Conflict Management in Africa (1996). Deng envisioned the sovereign state as the primary guarantee of human rights and human security. the authority and responsibilities of which were embedded within overlapping support structures composed of regional and continental organizations. These were then further interlinked with wider international structures. [18]

Despite the fact that it was not the first document to suggest the concept of 'sovereignty as responsibility'. the Report of the International Commission on Intervention and State Sovereignty (ICISS). The Responsibility to Protect (2001). is the piece of official literature that is mostly associated with this new doctrine.[19]

The document has gained quick acceptance as a promising solution to the

bitter conflicts of rights that arose during 1990s. This clash placed the rights of sovereign states against those claiming a 'right of intervention' to defend the human rights of individuals within states.

The Report states. that sovereignty entails a dual responsibility: "externally- to respect the sovereignty of other states. and internally. to respect the dignity and basic rights of all people within the state".[20]

This document came after the exhaustion of the first wave of humanitarian intervention and peacekeeping that inaugurated the post-cold war era. Africa in particular was the site of two major 'defeats' for the new interventionism. following the withdrawal of UN forces from Somalia in 1993. and the failure to bring the atrocities in Rwanda to a retreat. Whereas in 1993 over 70.000 UN peacekeepers were deployed globally. the number dropped precipitously to 20.000 in 1996. [21]

The NATO 1999 bombing of Yugoslavia in response to atrocities in Bosnia was seen as a success for the doctrine of humanitarian intervention. For the first time since the UN was founded. a group of states had explicitly justified war in the name of protecting a minority within another state. But even this apparently successful humanitarian intervention was controversial because NATO had acted without the authorization of the UN Security Council under Chapter VII of the UN Charter. required by international law for all use of forces beyond self-defense.

Whatever moral legitimacy the NATO powers could claim. the war was significantly undermined by its illegality. which the then UN Secretary-General and the Independent International Commission on Kosovo both openly acknowledged.

The world's most powerful military alliance had launched a devastating campaign against a third world state outside the framework of the UN Charter، which created unease among developing countries، that already felt constrained in a post-cold war environment in which Western power was no longer balanced by Soviet power. The Permanent Representative of India to the UN، Nirupam Sen، captured this pervasive sense of powerlessness when he said "In recent years…the developmental activities of the UN have diminished while the regulatory and punitive aspects have acquired prominence. The developing countries are the target of many of these actions which has led to a sense of alienation among the majority of UN Member States (…) The Security Council's legislative decisions and those on the use of force… appear as an arbitrary and alien power؛ this is an alienation not of the individual or class but of countries". [22]

The basic sentiment was affirmed shortly after the NATO war، when the foreign ministers of the non-aligned countries reaffirmed their long-standing opposition to humanitarian intervention at their April 2000 meeting، proclaiming: 'We reject this so-cold "right" of humanitarian intervention، which has no legal basis in the UN Charter or in the general principles of international law'.

Beyond a presumed reaffirmation of state sovereignty، the ICISS Report also provided criticisms of humanitarian intervention. It noted that speaking about 'rights of intervention' elevates the stature of intervening states in inverse proportion to the true beneficiaries of intervention، namely the victims of human rights abuses. The Report also observed that the focus on humanitarian intervention collapses the idea of 'human protection' into a single moment، ignoring preventive efforts before a military intervention، and

the crucial tasks of post-conflict reconstruction. [23]

The Report also warned of the dangers of creating political dependence in post-conflict zones. eloquently arguing that 'international authorities must take care not to confiscate or monopolize political responsibility on the ground'. and that 'local political competence' must be preserved and cultivated. [24]

In analyzing the theoretical basis of the Responsibility to Protect as a legal doctrine. a distinction should be struck between two pillars. Each of them has different degree of legal acceptance. The first one is the simple straightforward principle that no state in our world denies or contests it. It stipulates that "states have a responsibility to protect their own populations from mass atrocities specifically from genocide. war crimes. ethnic cleansing and crimes against humanity". Surely this is a duty that is deeply rooted in the existing International Law foundations. It is well founded in most of International Human Rights instruments and it was also "endorsed" in the General Assembly's 2005 World Summit Agreement. [25]

The second pillar is the 'bystander states' or the 'international community' have not only a right to assist the states to protect their citizens but a collective responsibility to do so. Moreover. this responsibility is extended to protect populations where the host states have failed to offer viable protection. This notion was perceived by many as a positive duty rather that an optional right. therefore it instigated enormous implications on the traditional interstate relations. In contrast to the first pillar this notion has much less obvious support from international law point of view. Nonetheless. while this is when taking the basic international documents on 'responsibility to protect' into consideration. however. the work of both International Court of

Justice (ICJ) and the International Law Commission (ILC) have contributed greatly in nearly completing the efforts that push towards shifting the level of discretionary right of states to protect into legal obligations of bystander states. [26]

Although confined to Genocide، the ICJ articulate a set of criteria on the obligation of states in preventing Genocide and in punishing its perpetrators in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro). [27]

The Court decided that there is a legal duty on all state to exert all efforts possible within its legal and concert capacity to prevent the genocide taking place. The court found that the notion of "due diligence"، which calls for an assessment in concreto، is of critical importance for determining the duties of a particular state. Also the court decided that states cannot make an excuse for not exerting all possible means within its legal and actual reach by arguing that its presumable preventative measures would not have changed the course of committing the crime of Genocide anyway. The Court found this notion reasonable 'since the possibility remains that the combined efforts of several States، each complying with its obligation to prevent، might have achieved the result – averting the commission of genocide – which the efforts of only one State were insufficient to produce'. [28]

An indication of this notion is found also in the International Law Commission work. Taking the potential combined work of multi states in preventing the crime of Genocide - and other crimes – into consideration when deciding on the diligent performance of a particular state could be traced in Article 41(1)

of the ILC's of Articles on State Responsibility. That paragraph provides that 'States shall cooperate to bring to an end through lawful means any serious breach' of the peremptory norms of international law. [29]

In practice. the doctrine of Responsibility to Protect was almost never used as a sole basis for humanitarian intervention. Two permanent members of the Security Council blocked all attempts of the Council to authorize use of force and any sort of military intervention in a sovereign state unless consent from that state is granted.

However. its terminology and wording was used in wide range of UN resolutions since 2006 till now. [30] It was used in Security Council resolutions related to situations in at least ten countries around the world. For example. under the article of the Peace and Security in Africa (Libya) Security Council issued resolution S/RES/1970 (2011) where it states: "Recalling the Libyan authorities' responsibility to protect its population.". In another resolution on Libya S/RES/2040 (2012) the council: "Expresses grave concern at continuing reports of reprisals. arbitrary detentions without access to due process. wrongful imprisonment. mistreatment. torture and extrajudicial executions in Libya and calls upon the Libyan authorities to take all steps necessary to prevent violations of human rights. underscores the Libyan authorities' primary responsibility for the protection of Libya's population. as well as foreign nationals. including African migrants. and calls for the immediate release of all foreign nationals illegally detained in Libya;".

Nevertheless. this line of policy was interrupted in March when both states allowed the adoption of Resolution 1973 concerning the Libyan case. The

wording of the resolution made a clear simulation of the Responsibility to Protect spirit. Resolution 1973 was blatant in authorising the use of 'all necessary measures' to protect civilians from the threat of mass atrocities in Libya committed by Moammar Gaddafi's regime. [31]

Subsequent attempts of reusing this doctrine as a basis for resolutions to force the Syrian regime at least to reduce the scale of mass killing of its own people was all blocked again by the same permanent members; namely China and Russia.

Attempts to use the platform of the General Assembly in order to merge the precedent of Uniting for Peace Resolution and the doctrine of Responsibility to Protect were not highly successful. Examples of the Resolutions taken by the General Assembly to overcome the deadlock in the Security Council was the General Assembly Resolution A/RES/71/130 of 9 December 2016" demanding an immediate end to all hostilities in Syria and the General Assembly Resolution A/RES/71/248 adopted of 21 December 2016 establishing an independent international mechanism to ensure accountability for war crimes and crimes against humanity committed in Syria since March 2011. [32]

Sovereignty as Responsibility and Humanitarian Intervention

Some critical scholars have championed the sovereign rights of states by arguing that humanitarian intervention and 'sovereignty as responsibility' undermines both the spirit and the letter of the UN Charter. Article 2 of the Charter defends the 'principle of the sovereign equality of all its members'. discourages 'the threat or use of force' against 'the territorial integrity or political independence of any state'. and solidly affirms that 'nothing contained in the present Charter shall authorize the UN to intervene in matters

which are essentially within the domestic jurisdiction of any state'. Simon Chesterman، for example، has argued that the increasingly flexible invocation of Chapter VII powers to meet ever-expanding 'threats to international peace and security' has substantially reduced the barriers to the use of force، thereby eroding the normative framework of the UN's collective security system. [33]

Whereas waging war was once considered the prerogative of any sovereign، the Charter's limitation of the use of force did not eliminate the right to wage war as much as restrict it to the permanent members of the Security Council، the victors of the Second World War. Bardo Fassbender has argued that the restriction of the use of force does not impinge sovereignty، but in fact constitutes it. It is restricted use of force، argues Fassbender that allows so many sovereign states to survive as formal equals، despite substantive inequalities of power. What the sovereign equality of the UN Charter really means then، according to Fassbender، is equality before the law; that is، equality of law-taking rather than law-making. [34]

Ayoob has suggested that the clashes over humanitarian intervention could be ironed out by establishing a 'Humanitarian Council': A new more broadly based… with adequate representation from all regions with rotating membership reflecting the diverse composition of the United Nations… Decisions to intervene… must require at least a three –quarters majority of the membership of the proposed Council. [35]

Sympathetically analyzing Ayoob's work، Welsh argues that the problems raised by human rights include questions such as who 'is it that decides when a state has not fulfilled its responsibilities and determines that only force can bring about its compliance… Who should play the role of judge and enforcer

in international society?' 36 The real problem is that, if your standard is a moral one, this question answers itself. In the context of gross and massive human rights violations, the question of who is authorized to act rapidly becomes secondary to the moral imperative to act. In practice, this means that the powerful have the final word on whether intervention will occur or not because, by definition, they are the best placed to act.

As Zaki laïdi says in relation to the conflict in former Yugoslavia, '(Western) societies claim that the urgency of problems forbids them from reflecting on a project, while in fact it is their total absence of perspective that makes them slaves of emergencies.' 37

Human protection' requires the anticipation of human suffering if it is to be morally justifiable. If it did not include this anticipatory element, then moral action would be illegitimate by default, as it could only ever occur post hoc, after the crimes had already been committed. 38 But this element of anticipation introduces a further element of subjectivism and uncertainty to the entire apparatus of intervention- how are we to judge at which point humanitarian crisis should precipitate military intervention?

Sovereignty as Responsibility: Repression of Sovereign Supremacy?

What then does sovereignty as responsibility really mean?

The ICISS Report marks two conceptions of sovereignty. Recall the words of the Report: 'state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare (and) the national political authorities are responsible to the citizens internally and to the international community through the UN'. 39 Does this mean that under

sovereignty as autonomy. state authorities are not responsible for protecting their citizens' welfare? Not according to the Report.

The defense of state sovereignty. by its strongest supporters. does not include any claim of the unlimited power of a state to do what it wants to its own people. The Commission stated that it heard no such claim at any stage during the worldwide consultations. [40]

In a famous article. Annan. the UN Secretary General at the time. articulated 'two concepts of sovereignty'. For Annan sovereignty remained the ordering principle of international affairs. but he affirmed that it was "'the peoples' sovereignty rather than the sovereign's sovereignty'". [41]

Pure tyranny is not sovereignty because. by definition. tyranny cannot draw upon the willed consent of its members. When consent dries up entirely. the result is not an impregnable. monolithic state sovereignty. as Kofi Anaan and the ICISS seem to imagine. Rather. what you get is the USSR: a rotting state that eventually folds in on itself. The element of rationality in sovereignty has been stressed. quite consistently and coherently. by all social contract theorists. Rousseau. for instance. argues that the sovereign cannot act against the public interest 'because it is impossible for a body to wish to hurt all of its members'. [42] This also means that if the state acts irrationally. if it tyrannizes its own people. then it no longer expresses the general will. This does not mean. however. that the international community can legitimately sever the relationship between the state and the people. It must be up to the people to restore their own supremacy by recapturing the state. A tyrannical state does not completely nullify popular sovereignty. The moment that popular sovereignty truly becomes null and void is when the people do not assert their

sovereignty by disciplining their state. This is what Michael Walzer means when he writes that 'A state is self-determining even if its citizens struggle and fail to establish free institutions، but it has been deprived of self-determining if such institutions are established by an intrusive neighbor'. [43]

In the name of human rights، the doctrine of 'sovereignty as responsibility' pulls the state into orbit around the international community، away from its own populace. The 'responsibility to protect' permits the state to regard its relationship with its own people as less central to its political legitimacy. Under the terms of 'sovereignty as responsibility'، state can downplay domestic demands in the interests of living up to its international duties. In other words، the 'responsibility to protect' easily translates into states becoming less .responsible to their citizens

Power is exercised in the name of the victims of human rights abuses، but that power itself is so immeasurably distant and arbitrary that it cannot be held to accountable. It is here that the politics of 'sovereignty as responsibility' finally come out in the open. It takes the incomplete and incoherent exercise of power by shifting coalitions of states، and recasts it as a new international principle of ethical action. In all، it presents us with a constrained form of international police in which the unaccountable exercise of power is coupled .with the suppression of political conflict in the name of ethical responsibility

Conclusion

It could be fairly concluded that sovereignty was never a fixed term in political sense neither was it of a definite legal boundaries. There were always attempts to overcome its internal flaws. The very rigid nature of the classic

notion of sovereignty represented a stubborn obstacle to the humanitarian advancement of the world's order. That is to adapt the current international norms to the global evolving humanitarianism. The doctrine of 'sovereignty as responsibility' was introduced in this context to fill in this gap and therefore to give an answer for using sovereignty as a shield against intervention even where human rights are savagely violated.

However, the doctrine failed to do so as it exemplifies the state of a world where we endure all the worst aspects of sovereignty and yet are denied most of its benefits. On the one hand, the doctrine reaffirms a world of (nominally) sovereign states, with all the political parochialism and uneven development that accompanies it. Yet, on the other hand, the authority of these states is denied, as they are ultimately behest to a shimmering, remote international community.

In place of proper ethics of responsibility, the 'responsibility to protect' offers odious ethical compromises. The ICISS notes that real politick would dictate that the permanent five members of the Security Council and other major powers are safe from intervention. But what all this means is that the strong have no responsibilities, except to police the weak. Both supporters and opponents of humanitarian intervention are quick to point to the hypocrisy of intervention happening in weak states, when there is not even a slender chance of intervention in places such as Tibet, despite the gravity of human rights abuses there. On this 'question of double standards', the ICISS Report offers a lackluster compromise: ' the reality that interventions may not be able to mount in every case… is no reason for them not to be mounted in any case'. [44]

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[12] Ibid. p.3-4.

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[14] Ibid.

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[17] Article 4.2 reads: "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."

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[29] http://legal.un.org/ilc/texts/instruments/english/commentaries/9__6__2001.pdf

[30] These countries are: Central African Republic, Cote d'Ivoire, DRC/Great Lakes Region, Libya, Mali, Sudan, South Sudan, Somalia, Syria, Yemen.

[31] https://www.un.org/en/sc/documents/resolutions/2011.shtml

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