CHAPTER 2

Human Rights and State Responsibilities

Abstract This chapter lays out an argument that citizens' human rights are the responsibility of the corresponding State, meaning that citizens of a territorial State claim particular rights that State is obliged to deliver. In return, in an aspect which is often neglected in analyses of human security, citizens also owe allegiance to the State. Citizens' rights have been expanded to encompass not only physical protection within a territory but also a host of economic and welfare provisions. Despite the increasingly international discourse on human security rights, their legal home remains with the national State vis-à-vis its citizens. The chapter argues that the rules of the State-based order are shifting, with no clear loci of responsibility and accountability for human security.

Keywords State • Citizen • Rights • Responsibility

The Introduction sketched the origins and elements of human security. This chapter lays out one argument to make the case that citizens' human rights are the responsibility of the corresponding State, meaning that citizens of a territorial State claim particular rights that State is obliged to deliver. As outlined in the Introduction, these rights have been expanded to encompass not only physical protection within a territory but also a

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host of economic and welfare provisions (Hösle 2003; Slaughter 2004; CESCR 1966; ICPCR 1966). However, especially with regard to the latter, not all of these rights are equally or legally encoded into national law. Thus despite the increasingly international discourse on human security rights, their legal home remains with the national State vis-à-vis its citizens. In return, in an aspect which is often neglected in analyses of human security, citizens also owe allegiance to the State.[1] This includes submitting to civic codes such as police ordinances and taxation, as well as to the military draft when instituted[2]: without such a reciprocal relationship between States and citizens, it might not be possible to guarantee territorial or other human security protections. Of course, the necessary existence of such a relationship does not preclude its potential for abuse by either party (see also Howell 2014). This reciprocal relationship is based on a State-citizenship centric order, and that not only at the national level, but also internationally. In other words, citizenship here is dependent upon its conferral by a territorial State, which derives its contours from its citizenry.

This chapter thus assumes that the current national/international governmentality order continues to be based upon this State-citizens relationship, with a twist. That is, while the national/international legal order rests upon the pillars of State-citizen reciprocity with regard to rights and obligations, this exchange does not reflect the more complicated reality. That is, the rules of the State-based order are shifting, with no clear loci of responsibility and accountability for human security.

The hypothesis presented here argues that a bifurcated evolution wherein rights have ascended up the international agenda but not necessarily at the national level, and State or sovereign obligation has been diffused between State and NSAs without clarifying where the locus of the final guarantee of protection lies, describes the current status. This has led to a diffusion of the guarantor status of the national State, with elements of power in governance—agency, scope, mechanisms, and normative context—diverging. This leads to two questions: first, if State A acts as a guarantor to the human security of citizens of A, the same holds for State B and citizens of B; but what happens to citizens of State A residing in State B, or vice versa? Second, what are the consequences of human security provision to citizens of A or B by NSAs, notably when NSAs go bankrupt or depart? Both of these questions point again to the need to clarify the relationship between citizens and States in order to conceive of suitable answers.

2.1 Human Security in Conversation with Sovereignty

As outlined in the Introduction, the idea of human security as the remit of the State is inextricable from the notion of State sovereignty. Sovereignty as a concept has been debated since its inception, and each idea of it has made various assumptions as to what it entails and what it excludes. The majority of scholars (Krasner 1999) of Westphalia-influenced definitions of sovereignty include requisites such as the State enjoying a monopoly of power capable of defending its territorial borders against external aggression; even these have rarely been absolute in practice (Krasner 1999, 8–9, 42). In describing this 'compound' myth, Anne-Marie Slaughter defines Westphalian sovereignty as "the right to be left alone, to exclude, to be free from any external meddling or interference" (Slaughter 2004, 284). Yet the same sovereignty that offers the option to opt out is also the ticket to inclusion in the inter-*national* community of (equal) States. The Westphalian definition also invokes "the right to be recognized as an autonomous agent in the international system, capable of interaction with other States and entering into international agreements" (Slaughter 2004, 284), the responsibility for whose implementation resides squarely with those signatory States.

This reveals the schism between what Robert Keohane (1995) called formal and 'operational' sovereignty, and what I referred to as the divergent 'final guarantee' and 'functional' sovereignty with regard to the governance accountability problem (GAP) (Šehović 2014). It acknowledges that Westphalian sovereignty is not absolute, and rather that "it is now a platitude that the ability of governments to attain their objectives through individual action has been undermined by international political and economic interdependence" (Keohane, quoted in Slaughter 2004, 283). The EU exemplifies political and economic interdependence, a model partially replicated to differing degrees by the African Union (AU), ASEAN (Association of Southeast Asian Nations), and MERCOSUR (the common market of select South American States) in a quest to confront threats and maximize opportunities. Both in theory and in practice then, this means that, on the one hand, States increasingly cannot—and often do not want to—fully guard against external interference. On the other hand, States (should also) acknowledge that the sources of such interference include not only other States but also activities of NSAs, from crime syndicates and cyber surveillance and mercenaries to human rights'

campaigners, as well as cross-border challenges such as (infectious) disease spread and migration. These interdependencies and their potential both for cooperation and for conflict directly influence a State's ability not only to control its own territory (see Krasner, interdependence sovereignty, pages 12–14) but also to the "security, economic stability and a measure of prosperity, clean air and water, and even minimum health standards" (Slaughter 2004, 283) that are the hallmarks of Hösle's expanded definition of sovereignty (Hösle 2003) and the integral components of human security.

Human security's main argument places the emphasis of security on the human as opposed to the State. The central assumption underscoring human security is that "when a human faces a threat, so does international security" (Burgess and Gräns 2012, 101; Kerr 2007, 92; UNDP 1994). Yet the two are necessarily in dialogue with each other: first of all, States in the inter-*national* remain the arbiters of human security (Hösle 2003; UN Declaration 1948; UNDP 1994), regardless of whether the point of departure is human- or State-centric; and second, as members of the inter-*national* community of (equal) States, these are themselves increasingly subjected to trial by their peers. "States can no longer assume that if they refrain from interfering in the affairs of other states they will remain free from interference themselves" (Slaughter 2004, 284). Furthermore,

> *Governments increasingly understand that they often cannot afford to look the other way; that fundamental threats to their own security, whether from refugees, terrorists, the potential destabilization of an entire region, or a miasma of disease and crime, may well have their origins in conditions once thought to be within a state's exclusive domestic jurisdiction.* (Slaughter 2004, 284)

As the post–Cold War era has shown, both intra- and inter-State conflict have coincided with the spread of disease. This has been evident in the former Yugoslavia, in Rwanda and Somalia, in Iraq and Syria (*Intrastate Conflict by the Numbers* 2013; Human Security Centre). These conflicts have seen the increase in cross-border spread of disease such as EVD, H5N1, HIV, measles (notably in continental Europe, and the US), MERS-CoV, and SARS, to name a few examples. This incidence salience of the insight that: "States can only govern effectively by actively cooperating with other states and by collectively reserving the power to intervene in other states' affairs" (Slaughter 2004, 285). It has been backed up by

the normative evolutions first from rights to responsibility, to the R2P, to, arguably at this moment, the responsibility to respond.

This captures the essence of a continual conversation between human security and sovereignty. Therein, "internally, a government has a responsibility to respect the dignity and basic rights of its citizens," and "externally, it has a responsibility to respect the sovereignty of other states" (Slaughter 2004, 287), except when a State heeds the (r)evolution rewriting sovereignty as control to sovereignty as responsibility. Daniel Philpott describes this shift as part of an ongoing process. He attributes this revolution in sovereignty to "prior revolutions in ideas about justice and political authority" (Philpott 2001, 4). The post–Cold War reordering of the world proffers a multitude of examples of this progress: from emergent multipolarity (Flockhart 2016) to the rise of nongovernmental organizations (NGOs) and NSAs, from the human rights debates to gain access to HIV treatment to those to usher in the R2P (ICISS 2001), reconceptualizations of internal and external State responsibility have been pitted against each other. Though the State remains legally dominant, theoretical and philosophical evidence underscored by empirics points to two key unresolved tensions: the locus of the responsibility for human security and the scope of human security, particularly in reaching non-citizens.

On the theoretical side, Foucault presciently identified emergent 'governmentality' (Faubion and Rabinow 1994), anticipating the collaborative governance that would emerge as States and NSAs sparred and cooperated in response to ever more global challenges to human security.

The 1990s, amid the (Western) euphoria of the 'end of history' (Fukuyama 1989), witnessed an initial acknowledgment that States alone could not meet the rising number of international and increasingly global challenges—from the multiplication of intra-State conflict and the proliferation of weapons to water management. Rosenau introduced the idea of 'governance without government' (Rosenau and Czempiel 1992), maintaining that governance 'regimes' composed both of States and NSAs would form to tackle specific issues in the international realm. NSAs have long been engaged in shoring up or tearing down State sovereignty, with (Hösle 2003) or without the consent of the State. While on the one hand a tension exists between theory and practice of State sovereign obligation with regard to human security, it also means that though threats to human security abound on the part of both State and NSAs, precedents likewise exist for mitigating these to the benefit of human security. To a large extent, Rosenau has been proven correct: if NSAs are included, then a

plethora of organizations exist dedicated to treating HIV/AIDS, providing water and sanitation, and even administering public transportation in municipalities around the world. However, these are not regimes in the sense that they have a central organizational structure, that their interventions are legally binding, or that any mechanisms are in place to ensure the continuation of their work if and when they opt out.

This is not a central theme of Risse's work, which focuses on 'areas of limited statehood' (Risse 2007). Here NSAs might perform functions theoretically if not in practice associated with State responsibility for human security. Yet they are not bound to such actions, for instance, of service delivery and health care. Critically, instead of shoring up States' lack of capacity, NSAs have contributed to the fragmentation of their power—including their ability to guarantee traditional and human security:

> *NGOs' [nongovernmental organizations'] role and influence have exploded in the last half-decade. Their financial resources and—often more important—their expertise, approximate and sometimes exceed those of smaller governments and of international organizations. "We have less money and fewer resources than Amnesty International, and we are the arm of the U.N. for human rights," noted Ibrahima Fall, head of the U.N. Centre for Human Rights, in 1993. "This is clearly ridiculous." Today NGOs deliver more official development assistance than the entire U.N. system (excluding the World Bank and the International Monetary Fund). In many countries they are delivering the services—in urban and rural community development, education, and health care—that faltering governments can no longer manage.* (Matthews 1997)

Nonetheless, Risse assumes that NSAs will continue their activities. That these NSAs might be accountable not to the human beings they serve, but otherwise, or that they might be dependent upon funding sources whose priorities are prone to shift, remains under-analyzed. It leaves unanswered the questions of what happens to the State-citizen relationship when they do not.

Krasner attempts to corral some of these disparate responses to the sovereign redrafting by delineating four elements of sovereignty: Westphalian, juridical, domestic, and interdependence (Krasner 1999; Czempiel and Rosenau 1992). None directly deal with the engagement between sovereignty and human security explicitly, yet they are critical in highlighting their exchange. Whether the four 'sovereignties' can be meaningfully divorced from one another and applied in an empirical sense

Box 2.1 Practical Limits to Krasner's Cartography of Sovereignty

- What is the value of Westphalian sovereignty where a State cannot control its territory?
- What role does juridical sovereignty play when a State is only partially recognized by its peers? (see Kosovo)
- What does domestic sovereignty mean if (a) a portion of the citizenry is excluded from, for instance, health care? (b) non-citizens have no recourse to rights (to education, health, justice)?
- What is interdependence sovereignty if borders are porous or surveillance systems are technologically or politically incompatible?

to State or human security remains unproven: while theory must conform to practice, so, too, must practice inform theory (see Box 2.1).

While Keohane's divide between formal and functional sovereignty alludes to some of the problems with distilling sovereignties listed above, they are not thereby resolved (Keohane 1995). Similarly, Slaughter's network theory, taking NSAs into account, revives some of the same solutions put forward by Foucault and Rosenau. Likewise my 2014 GAP thesis, while identifying the lack of accountability between State and NSAs with regard to the guarantee of human security to citizens, it did not deal with the same responsibility to non-citizens. This points to a new stage in Philpott's (r)evolutions in ideas: while each of the conversations between sovereignty and human security introduced above acknowledges the limits of Westphalian absolutism, each fails to account for their (re)imagining beyond borders.

On the philosophical side, scholars have wrangled with this conceptually in various terms. The human rights agenda, which both precedes and parallels that of human security, is itself an outgrowth of a historical trajectory of political theology. Referring to "to the connections between religion (in the broadest sense, including philosophy as well) and legally structured power," political theology is of "special importance in the Western world and influenced the development of juristic concepts, especially those concerned with public law" (Hösle 2003, 467; Schmitt 2007). Public law, inextricable from the relationship between States and subjects, then States and citizens, is vested with antecedents of values—with morals and their changing interactions with politics (Hösle 2003, 21; Carlson and Owens 2003).

Christianity in the West, particularly after the treaties of Westphalia largely ended internecine wars on the European Continent, contributed immensely to the conversation and construction of sovereignty, as related to human rights and human security. Hösle argues that Christianity estranged citizens from their State and universalized their rights' claims.

> *Through the idea of all human beings as God's children, a broader as well as existentially deeper diffusion of the universalistic and individualistic ideas of Hellenism—and thereby eliminated a possible identification with any state that does not include all human beings and is not constituted in accord with the principles of Christianity.* (Hösle 2003, 22)

Christianity can arguably be made responsible for two things (Hösle 2003, 24): first, a politics free of religious and ritual considerations, taken further through the Enlightenment; and second, an intensive moralization of the religious, demanding "an influence on politics that went far beyond what was conceivable for ancients" (Hösle 2003, 24). The latter finds its echo in the articulation and demand for individual human rights delivered by the State. Thus although the notion of a Christian theocracy likewise receded with the secularization of Westphalia, the *ideas* of universal human rights and of a universal claim to human security have wound their way through various (r)evolutions in sovereignty right up to this present reimagining.

Returning to the core of the conversation between sovereignty and human security, theory and philosophy back up the urgent need to practically respond to the three main tenets of State and human security: (1) ensuring the territorial and physical security of citizens; (2) protecting lives and livelihoods through basic economic stability, health, and welfare; and (3) bearing accountability internally and to the international community (Hösle 2003; Risse 2007). Assuming that States remain the final arbiter of such securities, articulating, delegating, and assuming respective State and human rights and responsibilities are key to reimagining and implementing human security beyond borders.

2.2 Rights and Responsibility

States, sovereignty, human security—all are predicated upon a relationship of rights and responsibilities between citizens and States. The tension in this reciprocal relationship is not new. It can be divided into three

broad shifts dating from Westphalia through to the last major global reordering in the 1990s, which ended the second wave of democratization (Strand et al. 2012) and inaugurated the third wave of liberal, democratic capitalism based on State sovereignty.

The first shift, demarcated but by no means consolidated with the treaties of Westphalia in 1648, ordered responsibility, for territorial and physical protection in the name of State sovereignty, at the level of the State. The second shift, from circa the 1960s, occurred at the height of the second wave of democratization, and in the name of 'self-determination' (UNPO 2006). This meant on the one hand that especially newly minted States could cling in particular to the Westphalian notions of 'nonintervention,' a stance reemphasized by both blocs at the height of the Cold War. On the other hand, however, the existence of the post–World War II UN and its emerging norms and values spread the notion that State responsibility includes human rights discourse if not its translation into practice. This pre-exposure arguably paved the way for the 1990s shift, which, in the words of the independent Commission on Human Security, refers to the 'vital freedom,' explicitly tied State responsibility to "protecting people from severe and pervasive threats, both national and societal, and empowering individuals and community to develop the capabilities for making informed choices and acting on their own behalf" (Ogata and Cels 2003, 274). What remained formally the same throughout these transitions, and became all the more pronounced as State subjects/constituents became citizens, is the onus placed on the State to assume responsibility for the security of those citizens.

While a constituent refers to a voter within a particular area, a citizen is a (political) member of a State. This has two implications: first, a constituent must not be a citizen. Indeed, a constituent might receive physical security within a territory in return for heeding the obligation to serve that same territorial State's security in the event of war. This leads to the second point: a citizen might have more privileges, such as the right to vote. Yet the obligation to serve the State—by taxation and/or by (required) military service—remains. So, too, does the threat of the revocation of citizenship if an individual serves in the armed forces or swears allegiance to another State. As is quoted on the inside of every US passport:

> *13. Loss of U.S. Citizenship: Under certain circumstances, you may lose your U.S. citizenship by performing, voluntarily and with the intention to relinquish U.S. citizenship, any of the following acts: (1) being naturalized in a*

> *foreign state; (2) taking an oath or making a declaration to a foreign state; (3) serving in the armed forces of a foreign state; (4) accepting employment with a foreign government; or (5) formally renouncing U.S. citizenship before a U.S. consular officer overseas.* (Authors' passport)

(Generous) Provisions do exist that allow dual citizenship. Some States, the US among them, allow citizens to renounce their citizenship. Others, such as Iran, do not. While citizenship obligation has long been linked to a measure of State responsibility for protection, such as consular services overseas, it has not been synonymous with citizenship rights. By its very exclusivity, citizenship does not and cannot confer universal, inalienable rights. The concept and enactment of human security attempt to rebalance those obligations into an equation wherein State sovereign responsibilities meet individual human rights (Bergman 2010; Kerr 2007; Nef 1999; UNDP 1994).

The revolution of human security and rights-based development lies in their universalism. States become the bastions not only of ultimate responsibility for the extent of the provision of rights for what is possible within their capacities but also, arguably, for the highest standard internationally. President Franklin D. Roosevelt's now-famous "Four Freedoms Speech" of 1941 preceded the call for human security in the 1994 UNDP and again in the 2003 publication of the report "Human Security Now" by the Commission on Human Security (Roosevelt 1945; Ogata and Cels 2003). From the very beginning of the post–World War II period, Article 1 of the UN Charter and Article 25 of the UN Universal Declaration of Human Rights (UDHR) encoded the principles of human security, including an emphasis on the right to health, which is central to the case studies presented in Chaps. 5 and 6:

> *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care … and the right to security in the event of … sickness, [and] disability … Motherhood and childhood are entitled to special care and assistance.* (UDHR 1948)

The centrality of health among global policy priorities is reiterated in the constitution of the World Health Organization (WHO) in 1948; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the 1994 UNDP; and the adoption of the IHR in 1969 and most recently

updated in 2005. The ICESCR—as well as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, and the World Trade Organization's Doha Declaration on "Trade-Related Aspects of Intellectual Property Rights," which allows for the production of generic versions of essential medicines under certain conditions before patent protection runs out—appears to provide an *implicit* obligation on the part of States to improve health and to establish and secure health as a human (security) right. However—and crucially—none of them prescribes an *explicit* obligation.

Similarly, the IHR emphasize the universal and expanding right of each individual citizen (of the world) to the highest standard of health. In fact, the IHR, having gone into effect in 2007, require their 196 signatory State parties to "develop public health capacities to detect and respond to public health emergencies of international concern (PHEIC), with States required to cooperate in building these capacities" (WHO 2008). "However, the regulations do not provide incentives, sanction states for failing to cooperate, or allocate responsibility" (Gostin and Friedman 2014, 1323). No specific or enforceable obligation to ensure that individuals attain physical and mental health and no guidelines for how the State's obligations are to be discharged exist (Davies 2010). This situation obviously creates problems for the implementation of the right to health within the remit of a State's responsibility to provide (human) security. Nonetheless, these agreements have transformed normative ideas into principles of action (ICESCR 1966, Article 12). Yet real implementation lags, lost in the opaque realm between theoretical and practical responsibility. The consequences are particularly obvious with regard to States' responses to threats to human security of, but not only of, health.

In the narrow sense, human security is limited to physical protection and the creation of conditions conducive to human welfare, but stops short of full protection and provision. Whether or not defending those values parallels interests that reach to the Hindu Kush (Löfflmann and Vaughan-Williams 2017; Maull 2006), the assertion of which resulted in the then German defense minister Struck (2002–2005) tendering his resignation, remains a point of contentious debate, not just in Germany. Kaldor et al. (2007) attempt to work this into an especially value-based foreign policy strategy for the EU that nonetheless takes State interests into account. This morphs into the broader conceptualization of human security, wherein an equal level of priority is given to any type of threat (Thakur 2004, 37). Critics argue that such prioritization of all is equal to

prioritization of none. Liotta and Owens present one attempt to differentiate between threats, risks, and vulnerabilities as part of this debate (Liotta and Owens 2006). They arguably all converge and infringe upon human security which demands a response. A gap emerges between theory of protecting human security and its practice.

It begs the questions: for whom? How far? By whom?

The (inter)national system based on sovereign States continues to operate under the assumption that "governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures" (WHO 1948). Critically, "while only States are parties to the Covenant, and thus ultimately accountable for compliance with it, all members of society—individuals, including health professionals, families, local communities, intergovernmental and non-governmental organisations as well as the private business sector—have responsibilities regarding the realisation of the right to health" (WHO, IHR 2005). As Lake notes with regard to judicial processes in the Congo, "The *de facto* assumption of power by these diverse sets of actors has created opportunities through which non-State actors can enter and influence juridical processes by engaging in tasks normally reserved for representatives of the sovereign government. These activities would not be possible in contexts where the State had greater reach" (Lake 2014, 519). This exacerbates the problem of responsibility because merely counting the number of convictions of a prioritized crime or the number of people inquiring about health treatments and antiretroviral medications for HIV, for example, "tells us little about the dynamics of power" that determine the necessary response to the problem (including the problem definition) at hand (Lake 2014, 523). Lake notes that "on a broader scale, it could also be argued that the involvement of international actors in micro-level governance activities in DR [Democratic Republic of] Congo has served not to build capacity but in fact to further relieve the Congolese state of its responsibilities to provide basic goods and services to its citizens." Indeed, because a litany of "international and domestic organizations ready to engage in this work, there may be little incentive for the central government to re-invest its own time and resources into developing a functional state apparatus" (see also Keohane 1995; Lake 2014, 524).

Such developments actively undermine State's sovereignty and capacity to exercise responsibility, leading to absurdities such as Indonesia's claim to 'viral sovereignty'—the idea that viruses belong to the State in which they originate. It was invoked to prevent and delay sharing data and sam-

ples of H1N1 influenza also due to the anticipated costs of being branded a State of contagion amid exclusion from research and treatment benefits. Indonesia's was an ill-fated attempt by the State to seize control over information pertaining to the outbreak, its domestic response, and its interdependence sovereignty—notably its ability to regulate any potential medical interventions and possible patents created externally and sold (back) to Indonesia.

These examples all iterate the theory and practical reality in the still State-centric international system that

> *There are roles that only the state—at least among today's polities—can perform. States are the only nonvoluntary political unit, the one that can impose order and is invested with the power to tax.… Moreover, it may be that only the nation-state can meet crucial social needs that markets do not value. Providing a modicum of job security, avoiding higher unemployment, preserving a livable environment and a stable climate, and protecting consumer health and safety are but a few of the tasks that could be left dangling in a world of expanding markets and retreating states.* (Matthews 1997)

Assuming then the necessary vitality of a responsible sovereign State to the guarantee of access to rights, any reworking of State and human security must take States into account even while rising to the challenge of responding to and guaranteeing human security *beyond* States.

2.3 Conclusion

Placing the responsibility for human security beyond States requires flexible relocation of that responsibility itself. Although State sovereignty continues to be the building block of local, national, and international relations and global governance, its real power to enact responsibilities and assume accountability for the provision of the rights of its citizens has arguably waned—not uniformly but almost regardless of whether the State in question is considered consolidated, fragile, or failing/failed. Consequently, the ostensibly sovereign State is *ultimately* responsible for the traditional, territorial security and physical security of the populace within its borders. In addition, it is accountable for both of these securitizations both internally and externally (i.e., within the international community of States). However, the same State is increasingly confronted with NSAs that both demand its action and assume some of its functional

responsibility—but not State(-citizen) accountability. As such, the State-centric international governance system faces the challenge of responding to both internal and external rights' demands and responsibility duties. The next chapter will further explore these conceptual challenges and analyze possible levels of such a reordering of human security responsibilities beyond borders.

Notes

1. See also the Cambridge Dictionary entry for "citizenship: the status, rights and duties of a citizen, *especially* of a particular country."
2. Noting that in most Western countries the permanent draft has been suspended—though not eliminated.

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