

# Sovereignty as Responsibility

---

by Amitai Etzioni

**Amitai Etzioni** (etzioni@gwu.edu) is university professor and professor of international relations at George Washington University. His books include *The New Golden Rule* (Basic Books, 1996), *The Limits of Privacy* (Basic Books, 1999), *How Patriotic is the Patriot Act?* (Routledge, 2004), and *From Empire to Community* (Palgrave Macmillan, 2004).

*This article examines the development of a new normative principle of international order, sovereignty as responsibility; its communitarian implications; and the ways in which the newly conceived responsibility of the "international community" to protect the people of states failing to live up to their responsibilities as defined by international norms can come to terms with the notion of democratic self-government.*

The 1990s saw numerous humanitarian crises around the world. The international community intervened in some of these, such as Kosovo, but did not in others, Rwanda being the prominent example. These crises brought new attention to the issue of sovereignty. Among those who looked at the issue anew were Francis Deng and associates at the Brookings Institution, who published a book in 1996 challenging what had been the key principle of international relations since the signing of the Treaty of Westphalia in 1648: that sovereign states are not to interfere in one another's internal affairs. Their book, *Sovereignty as Responsibility: Conflict Management in Africa*, argues that when nations do not conduct their internal affairs in ways that meet internationally recognized standards, other nations not only have the right, but also have a duty, to intervene. Deng et al. propose that those governments that do not fulfill their responsibilities to their people forfeit their sovereignty. In effect, the authors redefine sovereignty as the responsibility to protect the people in a given territory.

This duty-to-protect formulation of sovereignty was further elaborated by a report of the International Commission on Intervention and State Sovereignty ("ICISS" or "Evans-Sahnoun Commission"), *The Responsibility to Protect*, issued in August 2001 in response to the UN Secretary General's Millennium Report.

In 2004, the UN Secretary General's High-Level Panel on Threats, Challenges, and Change (the "High-Level Panel") issued its report, *A More Secure World: Our Shared Responsibility*, which affirmed Deng et al.'s

proposals, and Lee Feinstein and Anne-Marie Slaughter came forward with an article that added to this precept a second duty, the duty to prevent.<sup>1</sup> They proposed that nations' obligations include the commitment to refrain from acquiring or developing WMD, and that it is the duty of the international community to ensure that nations acting irresponsibly in this regard lose the privileges of sovereignty and become subject to intervention.

Although not perfectly complementary in every way,<sup>2</sup> these two duties point to a new formulation of sovereignty as responsibility that in effect renders sovereignty conditional. This formulation opens the door to treating nations not as free agents, but as members of an international community who are expected to adhere to that community's evolving norms regarding what is considered legitimate.

The new formulation also opens a gaping hole in the foundation of democratic theory. Democracy (in modern terms, at least) assumes that the people are sovereign and therefore have a right to govern themselves. The "people"—the members of a particular community and citizens of a given nation—elect a government that has a jurisdiction co-extensive with their own. The new sovereignty precept would move policymaking, in several critical matters, from the given government to an international forum, such as the UN Security Council. The given nation's people would thus have at best limited representation: an international forum could rule that their government was acting irresponsibly without having to give the affected citizens the opportunity to affect the forum's judgments and positions. Sovereignty as responsibility therefore creates a democratic deficit that cannot be ignored in the quest for a new international order.

### **The 1990s and the Duty to Protect**

In 1996, Deng and his associates were concentrating specifically on humanitarian crises that have arisen out of the civil wars and genocides over the course of the 1990s in Rwanda, Sudan, Somalia, the Democratic Republic of the Congo, and other African nations. They argued that these conflicts, along with the refusal of some African governments to allow humanitarian relief to those affected, provided ample grounds for the legitimacy of international intervention: "A government that allows its citizens to suffer in a vacuum of responsibility for moral leadership cannot claim sovereignty in an effort to keep the outside world from stepping in to offer protection

<sup>1</sup> Lee Feinstein and Anne-Marie Slaughter, "The Duty to Protect," *Foreign Affairs*, Jan./Feb. 2004.

<sup>2</sup> See Gareth Evans, "Uneasy Bedfellows: 'The Responsibility to Protect' and Feinstein-Slaughter's Duty to Prevent," Speech at The American Society of International Law Conference, Washington, D.C., Apr. 2004, at [www.crisisgroup.org](http://www.crisisgroup.org).

and assistance.”<sup>3</sup> They provided rationales for nations to pressure such governments—with diplomacy, economic and political sanctions, or armed intervention—to allow the UN and humanitarian relief agencies access to affected populations.

Deng et al. realized that the sovereignty-as-responsibility principle was not observed as a universal doctrine, but held that “it is becoming increasingly recognized as the centerpiece of sovereignty.”<sup>4</sup> Yet, the Westphalian ideal of the sovereign nation-state continues to carry considerable moral force. When the United States led a coalition of nations to force Saddam Hussein to retreat after Saddam’s troops invaded Kuwait in 1990, it was considered fully legitimate: the UN approved it, numerous scholars of international law regarded it as just, U.S. allies picked up most of the cost, and Arab nations joined the coalition and provided bases for the military action. Conversely, when the United States invaded Iraq in 2003 although Iraq had not invaded, nor did it plan to invade, another nation, protests were made worldwide, and little support was forthcoming from major U.S. allies and Arab nations.

Deng et al. sought to provide moral and legal legitimacy for intervention in the affairs of independent states by recasting sovereignty as “not merely the right to be undisturbed from without, but the responsibility to perform the tasks expected of an effective government.” If a state fails to fulfill its obligations to its citizens, “the right to inviolability should be regarded as lost, first voluntarily as the state itself asks for help from its peers, and then involuntarily as it has help imposed on it in response to its own inactivity or incapacity and to the unassuaged needs of its own people.” It follows therefore that “the sovereign state’s responsibility and accountability to both domestic and external constituencies must be affirmed as interconnected principles of national and international order.”<sup>5</sup> The international community expects states to bring their domestic law and conduct in line with established international standards; if they do not, other nations have a responsibility to interfere in the offending state’s internal affairs. Thus Deng et al.’s justification for humanitarian intervention turns what was once a taboo of international relations into a moral imperative.

In his Millennium Report to the General Assembly, UN Secretary-General Kofi Annan posed the question, “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica?”<sup>6</sup> To respond to this challenge, the Government of Canada established the ICISS, chaired by former Australian foreign minister Gareth Evans and Kofi Annan’s special advisor Mohamed Sahnoun. The Commission’s report puts sovereignty as responsibility at the center of its proposals:

<sup>3</sup> Deng et al., *Sovereignty as Responsibility*, p. 33.

<sup>4</sup> *Ibid.*, xviii.

<sup>5</sup> *Ibid.*, xvii–iii.

<sup>6</sup> Quoted in ICISS, *Responsibility to Protect*, p. 2.

The Charter of the UN is itself an example of an international obligation voluntarily accepted by member states. On the one hand, in granting membership of the UN, the international community welcomes the signatory state as a responsible member of the community of nations. On the other hand, the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature. There is no transfer or dilution of state sovereignty. But there is a necessary recharacterization involved: from *sovereignty as control* to *sovereignty as responsibility* in both internal functions and external duties.<sup>7</sup>

This recharacterization was subsequently strongly endorsed by the UN High-Level Panel, and Secretary Annan has since urged that the international community “embrace the ‘responsibility to protect,’ as a basis for collective action against genocide, ethnic cleansing and crimes against humanity.”<sup>8</sup> The High-Level Panel’s recommendations, following on the Evans-Sahnoun Commission’s, held that where a state is unable or unwilling “to meet its responsibilities to protect its own people and avoid harming its neighbors . . . the principles of collective security mean that some portion of those responsibilities should be taken up by the international community.”<sup>9</sup>

While the UN Security Council has authorized interventions in states such as Somalia and Haiti in the past, such authorizations have been rare and were made on an ad hoc basis: it had not developed a general case for degrading national sovereignty. Proponents of the new concept of sovereignty as responsibility seek to legitimate a fundamental shift in the international community’s role in the internal affairs of states. The new duty to protect hardly favors wanton interventions, but it does lower the legitimacy of independence and increase that of intervention. “Sovereignty” becomes an internationally shared responsibility, and national sovereignty a privilege dependent on the fulfillment of responsibilities.

### The Importance of Being Moral

The wider context of the issue at hand—what it means to be sovereign—concerns the question of what is legal and legitimate in international affairs, and how important such considerations are in the first place. Strong realists (neorealists included) belittle the use of normative power in international relations, focusing instead on economic power (such as trade privileges and sanctions) and military force. Strong idealists, on the other hand, accord a high place to the power of normative moral principles,<sup>10</sup> which many of them

<sup>7</sup> Ibid., p. 13.

<sup>8</sup> Kofi Annan, “In Larger Freedom,” Executive Summary, Mar. 2005, at [www.un.org](http://www.un.org).

<sup>9</sup> High-Level Panel, *A More Secure World*.

<sup>10</sup> Leslie H. Gubb and Justine A. Rosenthal, “The Rise of Ethics in Foreign Policy,” *Foreign Affairs*, May/June 2003, pp. 2–7.



would treat as one significant factor among a handful of others that are especially important in determining legitimacy.

Public opinion, which has become increasingly crucial to win over, is greatly influenced by perceived morality. Since at least World War II, the percentage of the public that is educated and involved in public affairs has grown in free societies and become more ideological. As education and communication have spread, more and more people worldwide have become involved in politics. Over recent decades, citizens have been entering politics in many parts of the world where they had once been largely excluded. And they pay attention to global, not merely local, affairs. Worldwide mass communications (from CNN to Al-Jazeera), the Internet, social activists, network organizers, and other outlets link people from around the world to one another and often move them in similar directions. In this sense, one can speak of a global public opinion, which tends to favor, among other things, environmental protection, the UN, and reallocation of wealth.<sup>11</sup>

Because an educated public is harder for political leaders to sway, politicians have to work harder to convince their constituencies of the merits of particular foreign policy decisions. If the public accepts that intervening in other nations' affairs is legitimate under certain conditions, interventions will be less costly in terms of political capital and thus more frequent. A national leader who has UN or other international support for a proposed intervention is better able to win support for it both within his or her own country and in the nation where the intervention is to take place.

Support for humanitarian intervention has become manifest in the Convention on the Prevention and Punishment of the Crime of Genocide and the UN Security Council's interpretation of Chapter VII of the UN Charter, which authorizes armed intervention on the grounds of maintaining international peace and security.<sup>12</sup> Moreover, national courts have increasingly taken into account the growing body of international law.<sup>13</sup> All this suggests that the recharacterization of sovereignty, arguably the most important term in the realm of international normative principles, is no inconsequential matter.

<sup>11</sup> Shalom H. Schwarz and Anat Bardi, "Moral Dialogues Across Cultures: An Empirical Perspective," in Edward W. Lehmann, ed., *Autonomy and Order: A Communitarian Anthology* (Lanham, Md.: Rowman & Littlefield, 2000); The Pew Research Center for the People and the Press, *2002 Global Attitudes Survey*, Dec. 4, 2002, at <http://people-press.org>; Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, Ind.: University of Notre Dame Press, 1994); Frances V. Harbour, "Basic Moral Values: A Shared Core," *Ethics and International Affairs* 9 (1995).

<sup>12</sup> See, e.g., Security Council Resolutions 751 (1992, establishing intervention in Somalia) and 1529 (2004, authorizing intervention in Haiti).

<sup>13</sup> See Sandra Day O'Connor, "Broadening our Horizons: Why American Judges and Lawyers Must Learn about Foreign Law," *International Judicial Observer*, June 1997. For an example in case law, see Anthony Kennedy's majority opinion in *Lawrence v. Texas*, 02-102 (2003). He cites an opinion by the European Court of Human Rights (ECHR) to show that laws against same-sex sodomy are not in line with values shared by a wider civilization.

## The 2000s and the Duty to Prevent

In their 2004 *Foreign Affairs* article, Feinstein and Slaughter focused on preventing the threat of WMD, concluding that states have not only the responsibility to protect their people, but also a duty to prevent nations whose rulers “lack internal checks on their power” from developing or acquiring WMD and to remove WMD in case those nations already command them:

Like the responsibility to protect, the duty to prevent begins from the premise that the rules now governing the use of force, devised in 1945 and embedded in the UN Charter, are inadequate. Both new principles respond to a growing recognition, born of logic and experience, that in the twenty-first century, maintaining global peace and security requires states to be proactive rather than reactive. And both recognize that UN members have responsibilities as well as rights.

Growing concerns over WMD in recent years have produced UN Security Council Resolution 1540 (2004), which calls on all member states to cooperate in preventing non-state actors from acquiring WMD; multilateral negotiations with North Korea and Iran concerning their nuclear programs; and a G-8 Action Plan on Nonproliferation, which seeks to tightly control access to nuclear materials for civilian use. Additionally, more than sixty nations have joined the Proliferation Security Initiative to prevent trafficking in WMD.<sup>14</sup> The duty to prevent goes beyond these specific measures to create a general normative justification for intervention in rogue states that possess and spread WMD.

A concept of sovereignty as responsibility that includes both the duty to protect and the duty to prevent has broad appeal across the political spectrum. Progressives can support the assertion that nations have a duty to intervene in failing or authoritarian states on humanitarian grounds, while neoconservatives hold that intervention in such states is necessary to preserve national and international security. By noting that “the unique dangers of proliferation . . . have grown in parallel with the humanitarian catastrophes of the 1990s,” Feinstein and Slaughter expertly link the poor humanitarian conditions in failing states with the dangers such governments pose to international security.

Strong advocates of either the duty to protect or the duty to prevent would often exclude the other duty. On the humanitarian side, for instance, Evans criticizes the duty to prevent, fearing that while humanitarian causes bring the world together, going after WMD in rogue states will divide it.<sup>15</sup> On the prevention side, advocates see no vital national interest served by extensive humanitarian interventions with no clear exit strategy and the possibility of large-scale involvement in costly and difficult nation-building projects.

<sup>14</sup>The G-8 Action Plan on Nonproliferation, July 9, 2004, is available at [www.whitehouse.gov](http://www.whitehouse.gov); the PSI is available at the U.S. State Department website, [www.state.gov](http://www.state.gov).

<sup>15</sup>Evans, “Uneasy Bedfellows.”

However, both camps recognize the need for stronger transnational authorities and hence for redefining the traditional conception of sovereignty.

### Responsibility as an International Communitarian Principle

The new focus on responsibility in international relations is of much greater significance than the introduction of the specific duties to protect and prevent.<sup>16</sup> The term “responsibility” does not appear in the UN Charter, and attempts by the InterAction Council of former heads of state and prime ministers to augment the Universal Declaration of Human Rights with a Universal Declaration of Responsibilities have been rebuffed for nearly two decades. In this sense, the UN Charter and especially the Declaration of Human Rights reflect Western Enlightenment ideals that stress autonomy, liberty, and protection from oppressive governments. There are difficulties in applying these ideals universally. None of the three Abrahamic religions—Christianity,<sup>17</sup> Islam and Judaism—or the major Asian belief systems have the concept of inalienable human rights (although valiant attempts have been made to interpret various texts to find some support for individual rights).<sup>18</sup> These religions and belief systems focus not on how people are entitled to be treated, but on what each person is expected to do for the community and the common good—on their social responsibilities.

Communitarianism applies to international relations the same emphasis on the responsibilities that members of a community have to one another and to the common good. However, some forms of communitarianism tip the scales more heavily toward the common good. These include authoritarian communitarians such as Lee Kuan Yew, former prime minister of Singapore, and Mahathir Mohammad, former prime minister of Malaysia.<sup>19</sup> In contrast, since

<sup>16</sup>For more on the origins and implications of the concept of responsibility, see Herbert Fingarette, *On Responsibility* (New York: Basic Books, 1967); J. R. Lucas, *Responsibility* (New York: Oxford University Press, 1993); John Martin Fischer, *Moral Responsibility* (Ithaca, N.Y.: Cornell University Press, 1986); Susan Sauve, *Aristotle on Moral Responsibility* (Cambridge, Mass.: Blackwell, 1993); Mark Blitz, *Duty Bound: Responsibility and American Public Life* (Lanham, Md.: Rowman and Littlefield, 2005).

<sup>17</sup>A possible exception is Catholicism. Paragraph 2273 of the *Second Edition English Translation of the Catechism of the Catholic Church* (1997) states, “The inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights . . . belong to human nature and are inherent in the person by virtue of the creative act from which the person took his origin.”

<sup>18</sup>Amartya Sen, for example, has argued that Asian scholars and monarchs have championed values analogous to human rights for centuries. See also Daniel Bell, *East Meets West: Human Rights and Democracy in East Asia* (Princeton, N.J.: Princeton University Press, 2000); Joseph Runzo, Nancy Martin, Arvind Sharma, eds., *Human Rights and Responsibilities in the World Religions* (Oxford: One World, 2003).

<sup>19</sup>Daniel Bell and Joanne Bauer, eds., *East Asian Challenge for Human Rights* (New York: Cambridge University Press, 1999).

1990, a group in the West that defines itself as neocommunitarian has proposed that a good society is one that balances individual rights with social responsibilities and, more generally, autonomy with the common good.<sup>20</sup> Neocommunitarians maintain that the right to be left alone, to have one's home be one's castle, does not hold for those who violate generally held moral standards. They encourage the recognition that individuals also have responsibilities to their community; the community in turn is entrusted with ensuring that both rights and responsibilities are honored. The sovereignty-as-responsibility position in effect applies this neocommunitarian position to the international realm. It challenges the Westphalian notion of independent, sovereign nation-states, balancing nations' rights with their responsibilities to the "international community," which must intervene when a nation ceases to fulfill its duties to its people.

The neocommunitarian conception of international relations sharply contrasts with the libertarian conception of nations as autonomous actors. The neocommunitarian views nations as members of a community who share ties, moral commitments, at least a limited set of moral norms, a concern for the common good, and responsibility for and to the community. A more libertarian, legalistic approach can be seen in the Evans-Sahnoun Commission report, one of the premises of which is that when members of the UN "voluntarily" sign its Charter, they "accept the responsibilities of membership flowing from that signature."<sup>21</sup> The Commission thus views nations as free agents whose obligations are limited to those they freely and knowingly assume, after they have examined a contract and agreed to live by its terms. Not addressed are those nations that are not members of the UN, who presumably would be exempt from any obligations.

Most important, this libertarian approach fails to recognize the importance of shared moral norms. A communitarian may point to slavery as an example of a social phenomenon that was eradicated not primarily because nations freely signed a treaty to ban it, but because it was increasingly recognized as morally abhorrent. The Universal Declaration itself is of course based on such shared norms. Current NGO pressures on the world's nations to protect the environment and children's rights, for instance, or to curb the hunting of whales and cease trading in ivory, all reflect the development of such norms. Strong moral norms against genocide are in fact the reason that the West considers preventing it one of the few justifications for military intervention under the new concept of sovereignty. There was widespread moral condemnation when the UN did not act to stop the 1994 Rwandan genocide that left upwards of 800,000 dead or the 1995 massacre at Srebrenica in which Serbian troops in Eastern Bosnia killed some 7,000 Bosnian men, and it was a transnational moral dialogue that

<sup>20</sup> See *The Responsive Communitarian Platform*, 1991, at [www.communitariannetwork.org](http://www.communitariannetwork.org).

<sup>21</sup> ICISS, *The Responsibility to Protect*, p. 13.



legitimated NATO's intervening in Serbia to stop the ethnic cleansing in Kosovo. The communitarian philosophy views the development of moral norms as leading legal and institutional developments, rather than the other way around.

## The Scope of Responsibility

Applying the concept of responsibility to specific international situations raises numerous subsidiary issues. One that is crucial is where to set the threshold for intervention. If the threshold is set too low, the concept could be interpreted too widely and military action by outside powers could be taken even when a state's "irresponsible" acts are quite limited. Conversely, if the threshold is set too high, so many requirements will be placed on intervening parties that they will be reluctant to act, not sure that the situation meets the test. And of course, if there is inconsistency in application, the concept will lose its legitimacy.

### *A Threshold Too Low*

Setting a low threshold for intervention under the duty to protect from genocide or to prevent nuclear proliferation runs the risk of leading to a further lowering of the threshold. Numerous grounds could then be used to legitimate intervention, such as election fraud, or violations of the freedom of the press. This could easily lead to rising numbers of armed international conflicts, as any nation seeking to intervene in another for its own benefit—for instance, to gain control of oil or access to ports—could find some justifiable reason.

The major contributors to the sovereignty-as-responsibility conception vary in how they address this problem of the slippery slope. Deng et al. go about defining nations in which outside powers could intervene by defining the opposite: nations in which intervention would be impermissible. These exempt nations are those with governments that "under normal circumstances, strive to ensure for their people an effective governance that guarantees a just system of law and order, democratic freedoms, respect for fundamental rights, and general welfare."<sup>22</sup> With the bar set so low and vague, there are few nations that would not be vulnerable to intervention.

The Evan-Sahnoun Commission proposes substantially more limited criteria for military intervention. It would require:

- a) 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

<sup>22</sup> Deng et al., *Sovereignty as Responsibility*, p. 223.

- b) large-scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."

Moreover, any intervention must be based on exclusively humanitarian intentions, be taken as a last resort, use only the minimum force necessary to complete the mission, and have reasonable prospects of success. The High-Level Panel recommends the same criteria for military intervention. Both the Commission and the Panel propose to guard against interventions led by individual states or ad hoc coalitions with less than humanitarian intentions by reforming the UN Security Council, but that might be a tall order and a far from perfect solution.

For Feinstein and Slaughter, the problem is whether development or possession of any type of WMD by states "without internal checks" legitimates intervention, or whether only specific kinds of WMD qualify.<sup>23</sup> Biological and chemical weapons are much more difficult to detect and control than nuclear ones. Hence an international regime dedicated to preventing all WMD would have to be much more interventionist than one dedicated, at least for now, to preventing only the proliferation of nuclear arms. Given that chemical and most biological agents are much less dangerous than nuclear ones,<sup>24</sup> a strong case can be made that the threshold for intervention should, at least for now, be set at the nuclear prevention level. This approach has been successful in dealing with Libya, South Africa, Taiwan, and Brazil.

Although the international community must meet its responsibilities to protect and to prevent, the political will and military and economic assets available for interventions are far from unlimited, which argues for a high threshold. As the record in Somalia, Haiti, the Congo, Iraq, and elsewhere clearly shows, such interventions are extremely demanding and hence best limited to situations in which genocide and ethnic cleansing are taking place or where truly threatening nuclear proliferation is at stake. Allowing relatively few justifications for intervention will go a long way toward ensuring legitimacy and political support for a sovereignty-as-responsibility norm.

### *A Threshold Too High*

Deng et al. and the Evans-Sahnoun Commission argue that once an international force intervenes in the internal affairs of a nation, that force must commit to postwar nation-building. "Intervention is called for not only to provide for humanitarian relief, but also to facilitate the search for an enduring solution to the causes of the conflict."<sup>25</sup> The Commission calls this the

<sup>23</sup> Feinstein and Slaughter, "Duty to Protect."

<sup>24</sup> Charles D. Ferguson and William C. Potter, *The Four Faces of Nuclear Terrorism* (New York: Routledge, 2005).

<sup>25</sup> Deng et al., *Sovereignty as Responsibility*, p. 32.

“responsibility to rebuild.”<sup>26</sup> Others have written about the “Pottery Barn rule”—if you break it, you own it. But often it is not the intervening nations who “broke” a failing state. Rich nations may well be morally obliged to help poor ones, but it does not follow that a nation whose government has failed to live up to its obligations deserves more help than another.

Expanding the mission of humanitarian intervention from stopping atrocities to rebuilding nations unwittingly puts barriers in the way of the international community’s fulfilling its responsibilities to protect and prevent. As nation-building efforts often become onerous and costly, if not total failures, critics have argued that nations should not go down this road in the first place. For instance, during the 2000 presidential campaign, then-Governor George Bush argued, “[Somalia] started off as a humanitarian mission and it changed into a nation-building mission, and that’s where the mission went wrong. The mission was changed. And as a result, our nation paid a price. I don’t think our troops ought to be used for what’s called nation-building. I think our troops ought to be used to fight and win war.” Similarly, Henry Kissinger warned in a 2001 opinion piece on the invasion of Afghanistan, “Using U.S. military forces for nation-building or pacifying the entire country would involve us in a quagmire.”<sup>27</sup>

### *Inconsistent Application*

One criticism often leveled against humanitarian intervention is that the international community does not apply it consistently. For instance, Edward Luttwak asks, “What does it mean for the morality of a supposedly moral rule when it is applied arbitrarily, against some but not others?”<sup>28</sup> Critics point especially to the vastly different responses to the atrocities in Kosovo and Rwanda. But foreign policy is never driven by just one consideration or based on just one principle. Humanitarian interventions (like democratization) must be squared with other concerns, especially vital national interests. U.S. Supreme Court Justice Robert Jackson famously observed in 1949 that the constitution is not a suicide pact, and one must similarly conclude that preventing genocide (and surely lesser atrocities) does not require a nation to give up its defenses. Ethicists refer to altruistic acts in which a person gives up his or her life as “heroic acts,” but generally hold that people are not morally required to act in this way. The same holds for nations.

<sup>26</sup> ICISS, *Responsibility to Protect*, p. 39.

<sup>27</sup> Henry Kissinger, “Where Do We Go From Here?” *Washington Post*, Nov. 6, 2001. In a 1999 op-ed about the intervention in Kosovo he wrote, “I am profoundly uneasy about the proliferation of open-ended American commitments involving the deployment of U.S. forces. . . . They lack both a definition of strategic purpose by which success can be measured and an exit strategy.” Henry Kissinger, “US Intervention in Kosovo is a Mistake,” *Boston Globe*, Mar. 1, 1999.

<sup>28</sup> Edward N. Luttwak, “No Score War,” *Times Literary Supplement*, July 14, 2000.

Military interventions should for now be limited to preventing genocide and ethnic cleansing as well as the acquisition of nuclear arms by states that actively threaten others. Other remedies—for instance, economic sanctions or incentives—can be applied much more liberally, both to avoid humanitarian catastrophes and to foster deproliferation.

### A New Global Architecture

Much remains to be explored regarding the implications for democratic governance of the shift toward sovereignty as responsibility.<sup>29</sup> The new characterization presumes that when a state acts irresponsibly, some international body will rule that the state has defaulted on its responsibilities and thus call for corrective international intervention by an international or regional body. The UN is often cited as the appropriate forum to do so, but regional organizations such as NATO have also intervened on humanitarian grounds. The intervention in Kosovo, undertaken following decisions by NATO, has been referred to as legitimate but illegal,<sup>30</sup> because while many have deemed it morally appropriate, it was not approved by the UN. According to many observers, the interventions in East Timor and Congo were both legitimate and legal, as was the 1991 rollback of Saddam from Kuwait. On the other hand, the 2003 invasion of Iraq, many hold, did not meet either criteria.

In any case, the judgment of irresponsibility in these cases was made by a forum composed mainly, if not completely, of representatives from nations other than the one at issue and/or by bodies that on the face of it are undemocratic. This undemocratic facet of the forums casts doubt about the legitimacy of their rulings. During much of the Cold War, the Security Council was deadlocked and unable to act when atrocities took place in Cambodia, the Kurdish parts of Iraq, and elsewhere. There were many other reasons for inaction, but the UN structure was one of them. It is hard to regard a body as legitimate when its ruling can be vetoed by any of the five permanent Security Council members: China and Russia (which have non-democratic governments), France, the United Kingdom, and the United States.

Both the Evans-Sahnoun Commission and the High-Level Panel suggest various reforms to make the Security Council more representative and thus enhance the legitimacy of its rulings. These reforms have not been forthcoming, but even if they were, they would hardly make the Security

<sup>29</sup> Graham Day and Christopher Freeman have written on the implications of the responsibility to protect in their "Operationalizing the Responsibility to Protect—the Policekeeping Approach," *Global Governance* 11 (2005).

<sup>30</sup> From the report of the Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (New York: Oxford University Press, 2000).



Council a representative body.<sup>31</sup> Some have suggested that a separate body composed of democratic nations, such as the U.S.-based Council for a Community of Democracies, should make such decisions or act as a caucus in the UN. This approach raises a whole host of other questions. For example, who will decide which nations qualify to become members? Would Russia, for instance, be included?

The fact remains that reducing the independence of nations in effect allows some sovereignty to be held by whatever forum undertakes an active part in governing “irresponsible” nations. The UN’s turning Bosnia into a trusteeship, trying to restore a multi-ethnic society in Kosovo, and seeking regime change in Haiti and Liberia are telling examples. The more sovereignty that is passed to this international forum, the more important it is that it be held accountable and be democratic.

The new characterization of sovereignty points to a need to take seriously the notion of an “international community,” a term bandied about too readily. The unspoken implication of the recharacterization of sovereignty is that instead of viewing nations as free agents, they will increasingly be treated as members of one community. Thus, they will be expected to abide by an increasingly thick set of community-wide norms that will eventually become institutionalized and backed up by global, supranational authorities; the International Criminal Court provides a flawed but valuable precedent for a global court, and the Universal Declaration of Human Rights provides some of the attributes of a prototypical global bill of rights. Anything akin to a global parliament, however, is still missing.

The layered concept of sovereignty, in which the holding of sovereignty is split between nations and supranational bodies that determine when interventions are called for, is far from unprecedented. It exists in the European Union, on some issues. It also returns to a feature of pre-Westphalian Europe, where authority over a people was divided between the local rulers and the Church. The idea that sovereignty can be layered may surprise those who view it as supreme or absolute; however, these terms need not imply an all-encompassing authority. A given ruler or government can be supreme in some matters, and another governing body in others.

Layered sovereignty, which encompasses responsible sovereignty, should not be equated with “limited sovereignty,” which refers to conditions in which a superpower limits the sovereignty of a weaker nation, such as the current U.S. involvement in Iraq and the former Soviet rule in Eastern Europe. In contrast, sovereignty as responsibility means that individual states are entitled to full sovereignty so long as they abide by the norms established by the international community.

Fears of a world government would be misplaced. The rulings of any body speaking for the international community would be limited to a very

<sup>31</sup> ICISS, *The Responsibility to Protect*, p. 51.

narrow set of issues, such as whether a genocide is taking place or whether a nation is engaged in nuclear proliferation. However, it is also likely that there will be pressure on such authorities to expand the scope of their missions to include other matters directly concerning the protection of human life (for example, declaring a nation irresponsible when it does not act to prevent the spread of a pandemic), as well as concerning basic human needs such as protecting the environment and ending poverty. (Other conditions that would be considered sufficient cause for action very much remain to be sorted out.) The wider the scope of the missions that these bodies undertake, the greater the demand will be that they be democratically governed; an analogous development is reflected in the current criticisms of the European Commission. The Commission has made numerous decisions without building sufficient public support or taking into account the preferences of the majority of EU citizens. The weak European Parliament has been unable to rein it in. There is a growing sense in Europe that the political classes in general, which are much more "European" than the voters, have been acting in disregard of the people.

Some have proposed expanding the membership of the Security Council, modifying the ways the General Assembly votes, or implementing other such institutional and procedural changes as ways to make the decision whether to intervene more democratic, but much more is required. Some form of global community, with a sense of a shared fate and a set of shared values, is needed. Charles Taylor, the communitarian philosopher, has written, "A modern democratic state demands a 'people' with a strong collective identity. Democracy obliges us to show much more solidarity and much more commitment to one another in our joint political project than was demanded by the hierarchical and authoritarian societies of yesteryear."<sup>32</sup> Democracy imposes sacrifices on those who do not command a majority. Minorities are in part willing to accept political losses not only because they hope to regain the majority, but also because they have a sense of shared community, history, and fate with the majority.

The UN's ability to function one day as a democratic body can come about only as a global sense of community develops. Helping us to advance in this direction are today's high levels of transnational communication, commerce, and travel; the thousands of NGOs that have sprung up since 1990; and the growing awareness of global interdependence. The new conception of sovereignty as responsibility is a telling sign of the new, shared moral understandings. In the long run, all this points to the normative thesis that ultimately, the only sovereign that can provide the final authorization for acts of coercion

<sup>32</sup> Charles Taylor, "Democratic Exclusion (and Its Remedies?)," in Alan C. Cairns et al., eds., *Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives* (Ithaca, N.Y.: McGill-Queen's University Press, 1999), p. 271. See also Sunil Khilnani, "Democracy and Modern Political Community: Limits and Possibilities," *Economy and Society* 20, no. 2 (1991). For additional discussion, see James G. Marsh and Johan P. Olsen, *Democratic Governance* (New York: Free Press, 1995).

is the people of the world, the so-called international community, not those of one nation or the other or even a grouping of such nations.

The author is indebted to Derek Mitchell and Kristen Bell for extensive editorial suggestions and research assistance.

