
NEW WORLD ORDER AND STATE SOVEREIGNTY: IMPLICATIONS FOR UN-SPONSORED INTERVENTION

— JAMES H. ANDERSON —

The last few years have witnessed growing acceptance of, and demand for, intervention by the United Nations and other organizations to correct transnational and domestic crises. To meet the needs of its larger responsibilities, the United Nations will have to undergo serious reforms. In light of recent political developments and projected trends, James Anderson presents recommendations for UN Charter reform and guidelines for formulating intervention criteria.

The end of the cold war has not hastened the end of history. Instead, it has unleashed the renewal of history, as evidenced by the rekindling of several long-frozen conflicts, Yugoslavia being the most prominent example. Yet, the present is more than simply a replay of the past, for emerging trends are intersecting in novel and complex ways. Consequently, national leaders attempting to craft a new world order face daunting challenges.

Present efforts to forge a stable and just international order rest on four related premises:

1) *The international system has a limited capacity for self-correction.* Global stability is not a natural byproduct of the system. History reveals that periods of protracted peace do not occur by chance; instead, they require adroit and farsighted leadership.

2) *The system has a dangerous capacity for self-destruction.* This premise derives from the first. The prevalence of war and, more generally, the tendency toward disorder, have been stubborn features of international politics. The absence of global war since 1945 has not prevented smaller conflicts from claiming millions of lives and causing untold suffering; nor has it prevented states from sponsoring egregious human rights abuses.

3) *National leaders have a window of opportunity to craft a more stable and just international system.* It is a truism that the international system is *always* in a state of change, but not all periods of change are created equal. At present, several factors have created an auspicious climate for bold reforms. These include the cold war's abrupt end; the widespread, if uneven, trend toward political liberalization; and the election of UN Secretary-General Boutros Ghali who appears committed to serious reform in the United Nations and the international order.

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4) *Reform efforts should improve existing multilateral organizations rather than craft new ones.* Almost a half-century old, the United Nations remains the only global forum for states to cooperate on a vast array of international issues. It also remains a popular arena; in 1991 UN membership reached 166 members, an all-time high. In short, the United Nations is the logical starting point for new world order reform efforts.

In varying degrees, these four assumptions have influenced the international community's changing conception of state sovereignty. They have also helped link the debates on new world order reforms and state sovereignty—as the most fundamental questions in this regard are inseparable from, or derivative of, sovereignty issues.¹ Collective security arrangements, for example, presuppose the existence of sovereign states. Thus, it follows that if our traditional notion of sovereignty changes, then so will the concept of collective security.

This inquiry will devote special attention to the recent evolution of political and moral thought that caused state sovereignty to win and then lose its sacred status—a key transformation that reflects *and* presages enormous changes for the international system. These reflections, in turn, will generate policy recommendations regarding UN-sanctioned intervention.

Sovereignty and Nonintervention

Until recently, international opinion has dismissed most prescriptions for UN-sponsored intervention as immoral. As one theorist commented in the late 1960s: "Nonintervention is an obvious corollary of national sovereignty, for if national sovereignty is good, interference with a state's integrity must be bad."² Indeed, the intervention debate seemed moot as late as 1990, when a respected theorist asserted:

If offenses against humanity even to the point of genocide in a few cases have not been sufficient justification to override sovereign rights until now we probably should not expect it to be any different in the future.³

Recently, the intervention debate has attracted renewed attention. Long-term trends, coupled with last year's UN-sanctioned intervention to provide protection for Kurdish refugees in Northern Iraq, have altered the political-moral

1. Some social scientists depreciate the importance of state sovereignty. Robert H. Jackson notes that structuralists consider "international relations in terms of underlying material conditions which transcend international boundaries," while behaviorists view state institutions "as secondary effects of cultural and social norms." He concludes that neither group "can say whether or not sovereignty is important because it is insignificant by definition and excluded from analysis by and large." See Robert H. Jackson, *Quasi-states: Sovereignty, International Relations, and the Third World* (Cambridge: Cambridge University Press, 1990), 2.

2. Andrew Scott, "Nonintervention and Conditional Intervention," *Journal of International Affairs* Vol. 22, No. 2 (1968): 208.

3. Jackson, *Quasi-states*, 192.

calculus concerning intervention. UN Resolution 688, passed on April 5, 1991, authorized member states to assist Kurdish refugees by dispatching humanitarian personnel *inside* Iraq's borders.

Still, the United Nations has not codified conditions justifying intervention to prevent systemic state-sponsored human rights violations, or to prevent nuclear proliferation to hostile states or terrorist organizations. While the Gulf war and its aftermath provide some lessons, they probably will not provide authoritative precedents for future UN interventions. Global outrage over Baghdad's brutal invasion of Kuwait helped spotlight an enormous amount of postwar attention on the plight of Kurdish refugees within Iraq. But in planning to prevent future tragedies, the international community must remember that egregious human rights abuses are not always preceded by flagrant cases of transnational aggression.

Before addressing intervention criteria for future contingencies, it is important to review how certain global political and moral developments have shaped international opinion on state sovereignty. To this end, state sovereignty and state power merit attention.

State Sovereignty and State Power

State sovereignty is a complex term, often confused with state power. Traditionally defined, state sovereignty refers to the government's exclusive rights: to manage its internal affairs without external interference; and to conduct foreign affairs with other sovereign entities.⁴ State power refers to a state's capacity to get others to act in ways they had not intended to act, or not act where they had intended to act. Many sovereign states possess little state power; indeed, much of the Third World falls into this category. Conversely, some entities which lack statehood, such as the Palestine Liberation Organization, have accrued significant political power.

In differentiating state power and state sovereignty, two dynamics warrant special emphasis:

1) *Decreases in state sovereignty do not necessarily entail proportional decreases in state power.* States lose varying degrees of sovereignty when they enter cooperative economic arrangements—customs unions, free trade agreements, etc. Yet, these losses are tolerated because states expect to reap other benefits. As the December 1991 Maastricht conference reaffirmed, members of the European Community expect to gain by forming a common currency and a European Central Bank ("EuroFed").

2) *Increases in state sovereignty do not necessarily entail commensurate increases in state power.* History reveals that states will relinquish the benefits of free trade to strengthen their sovereignty. North Korea, still one of the world's most totalitarian regimes, has long pursued a policy of economic self-sufficiency

4. In the United States, for example, a modified version of the Logan Act (1799) forbids private citizens from unauthorized negotiations with foreign governments.

(*juche*). Similarly, for decades South Africa preferred to labor under UN economic sanctions rather than modify its racial policies.

In short, there is no one-to-one correspondence between state sovereignty and political-economic state power. This observation is significant, for it helps explain why the negative connotations associated with diminutions of state sovereignty are waning. More states are realizing that losing a measure of traditional sovereignty has compensatory benefits, as evidenced by the spread of cooperative economic arrangements. To uncover the origins of this shift, it is vital to revisit important historical developments.

The Impact of History on Sovereignty

International esteem for state sovereignty reached its zenith soon after the colonial era ended. Moral imperatives played a vital role in shaping this process, as evidenced by intellectual shifts that occurred in this century. After colonialism's demise—a process accelerated by two world wars—states emerged as the dominant actors in the international system. Colonial empires lost their moral authority to rule, though some, such as the Portuguese, cleaved to the old order as long as possible.

The decolonization process led to political and legal tensions between respect for state sovereignty and respect for human rights. Tensions sprang from two diametrically opposed ethical systems, moral relativism and moral absolutism. Moral relativism dictates that each state be judged on its own terms, according to its own values, norms, and customs. In this paradigm, universal norms do not apply.⁵ In contrast, the absolutist model posits universal standards that, by definition, apply equally across state borders.

These premises generate important consequences for assessing state behavior. The relativist paradigm posits a *moral equivalence* among states since universal judgments are impermissible.⁶ Moreover, this logic proscribes unilateral or collective intervention to protect human rights. As Robert Jackson has noted:

Sovereign statehood leaves people at liberty to decide their own fate according to their own values and beliefs. Alternate arrangements including international human rights provide an opening for outsiders to interfere and impose their values: cultural imperialism.⁷

Historically, international opinion has shifted between moral relativism and moral absolutism with respect to critiquing internal state practices. Broadly speaking, the Enlightenment-induced rise of secularism cast moral absolutism into disrepute.⁸ World War II and its aftermath brought different changes; the

5. The proposition that universal norms do not apply is itself an absolutist proposition. This is one of several contradictions inherent in moral relativism.

6. Strictly speaking, this does not mean the relativist must "feel good" about the internal policies of other states. But the logic of moral relativism does proscribe comparative moral judgments.

7. Jackson, *Quasi-states*, 200.

Allies painted the contest in stark, absolutist terms. The Atlantic Charter, imbued with Wilsonian precepts, articulated the conflict's moral justification and, equally important, provided the moral framework for shaping the postwar world.

Revelations about Nazi Germany's genocidal ambitions dealt another blow to moral relativism. As noted earlier, moral relativism implies moral equivalence among states. International opinion found this implication repugnant given Nazi domestic practices before and during World War II. By default, then, these developments enabled moral absolutism to recoup some of its lost stature. Prosecutors at Nuremberg invoked universal standards by arguing that the Nazis committed "crimes against humanity." Yet, moral absolutism did not dominate international opinion on all issues. The absolutist perspective relative to the East-West struggle *coexisted* with a relativist perspective concerning the domestic practices of emerging states.

As *détente* took root in the early 1970s and superpower relations improved, serious state sovereignty questions resurfaced and the United Nations made human rights a major priority. Human rights advocates argued that states should be accountable to international standards.

The cold war reflected both these trends. On one hand, Western statesmen cast the cold war in Manichaeian terms, and the East-West struggle became a titanic contest between good and evil. On the other hand, cold war dynamics prevented human rights concerns from receiving much attention. To enhance their bargaining power, developing states often exaggerated their strategic importance in the superpower contest. For their part, the superpowers often ignored internal abuses perpetrated by client states.⁹

The cold war's moral contours became particularly murky during Vietnam. Many Western European states condemned Washington for immoral meddling in another state's civil strife. Most of the Third World expressed similar outrage. Vietnam also triggered an array of related criticisms. Revisionists interpreted the cold war's origins, ascribing more blame to the West.¹⁰ In short, the intellec-

8. Universal moral norms are *not* necessarily rooted in religious values. For more detailed treatment of universal moral principles, see Hadley Arkes, *First Principles* (Princeton, N.J.: Princeton University Press, 1986), 11-30.

9. The notion that Third World democratic regimes favored US security interests more than anti-communist authoritarian regimes did not gain credence until the second half of the 1980s. This policy reversal crystallized when the Reagan administration revealed its preference for Aquino over Marcos in the Philippines.

10. In the United States, the revisionists became known as the New Left. The most important work remains William A. Williams, *The Tragedy of American Diplomacy*, rev. ed. (New York, N.Y.: Dell,

tual consensus vis-a-vis the supremacy and universality of Western values suffered a significant blow.

Yet, just after relativism's influence appeared to crest in the late 1960s, moral absolutism regained some credibility as a framework to judge internal state policies. This crucial shift occurred via the international human rights movement. The UN General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948, although cold war dynamics prevented it from gaining substantive attention until superpower detente took root in the early 1970s.

As superpower relations improved, serious state sovereignty questions resurfaced and the United Nations made human rights a major priority. Human rights advocates argued that states should be accountable to international standards.¹¹ Conferences flourished and important treaties followed. In Europe, for example, the 1975 Helsinki Accords signaled a crucial watershed: it provided the West with a political-legal wedge to judge Soviet internal affairs.

The Impact of Macroeconomic Trends on Sovereignty

Since moral developments only partially explain the evolution of state sovereignty, other macrotrends require attention. Consider, for example, the stark contrast between centrifugal and centripetal forces presently at work on the Eurasian continent. In the West, the European Community has taken significant steps toward political and economic union. In the East, the Soviet Union has disintegrated, leaving behind a loosely configured commonwealth.¹²

Eventually, the East will probably follow the model set by the West. Indeed, Eastern European states have already sought membership in the World Bank, the IMF and other multilateral institutions. Inspired by Western Europe's integration, states in other regions of the world are also pursuing economic coordination efforts. The negotiations among the United States, Mexico, and Canada to create a common North American market provide one example.¹³ Another coordination effort involves the twelve member Asia-Pacific Economic Cooperation (APEC), a group formed in November 1989 to foster regional interdependence among market economies.

Fiscal autonomy has long constituted an important component of state sovereignty, yet major economic shifts are weakening this link. In Europe, states are losing their ability to set independent income tax rates. With increasing frequency, corporations are relocating production sites to avoid high-tax states.

1972).

11. For example, Jimmy Carter became the first US President to make human rights a major part of US foreign policy. See Jimmy Carter, *Keeping Faith* (New York, N.Y.: Bantam Books, 1982), 141-151.

12. To be sure, there are minor countervailing forces in both regions. In the West, extremists in Northern Ireland, Spain, and Corsica continue to strive for independence. In the East, Romanian and Moldavian officials have spoken of sovereign union on the basis of historical ties.

13. For the genesis of this agreement, see M. Delal Baer, "North American Free Trade," *Foreign Affairs* Vol. 70, No. 4 (Fall 1991): 132-149.

More importantly, if the European Community succeeds in creating a European Central Bank and a common currency, it will cross a decisive threshold. Monetary union will constitute the most significant transformation in the West since European states relinquished control over religion.

From a broad perspective, the trend toward increased economic cooperation appears well-entrenched. But it is not irreversible.¹⁴ Since international behavior is often imitative, much will depend on the European example. If expected economic welfare gains are realized, regional groupings will proliferate, creating ever-widening circles of cooperation. But if expected gains do not materialize, other states will rethink the desirability of economic coordination.

The Impact of Nuclear Proliferation

Technology is also influencing the traditional notion of state sovereignty, although this impact has been difficult to gauge. Early in the atomic era John H. Herz forecasted that intercontinental ballistic missiles would fundamentally alter the international system because states could no longer rely on territorial shells for protection.¹⁵ This prediction did not, however, account for the dynamics of bipolarity. To reduce their vulnerability, most Western states allied themselves (formally or informally) under Washington's nuclear umbrella. In the East, Moscow provided its satellite states with nuclear guarantees.¹⁶

Recently, ominous trends have emerged in the post-cold war era. Many Third World states have stockpiled huge quantities of modern weapons. On this point, Charles Krauthammer commented:

[T]he rise of small aggressive states armed with weapons of mass destruction and possessing the means to deliver them (what might be called Weapon States), makes the coming decades a time of heightened, not diminished, threat of war.¹⁷

Syria and Iran have long pursued such capabilities. Iraq also appears stubbornly committed to this path, even after its defeat in the Gulf war.

The international community has traditionally frowned on nuclear proliferation. Security concerns led to the 1968 Non-Proliferation Treaty (NPT), an agreement that denied nuclear states the right to acquire nuclear weapons. NPT compliance has been inconsistent. Some signatories, such as Iraq and North Korea, have spurned international efforts to prevent the spread of nuclear

14. Some pessimistic scenarios suggest that protectionist sentiments may increase to the point where they undermine the entire framework for economic cooperation.

15. See John H. Herz, "The Rise and Demise of the Territorial State," *World Politics* Vol. 9, No. 4 (July 1957): 473-493.

16. Recent events have rekindled the debate over the importance of territorial protection. In the aftermath of the Gulf war, many countries are rethinking missile defense.

17. Charles Krauthammer, "The Unipolar Moment," *Foreign Affairs* Vol. 70, No.1 (America And The World, 1990/91): 23.

weapons.¹⁸ In contrast, other states have concluded bilateral agreements that extend beyond their obligations under the NPT.

Many experts believe a terrorist group or pariah state will eventually acquire nuclear weapons and the means to deliver them. Recent intelligence reports indicate that various states and groups are soliciting expertise from Soviet nuclear scientists.¹⁹ The international community can ill-afford to underestimate the threat posed by nuclear mercenaries.

In terms of confronting the proliferation menace, the international community faces three choices. It can: 1) rely on individual states to execute preemptive attacks, as Israel did against Iraq's Osirak facility in 1981; 2) act in an ad hoc manner, selectively invoking the UN Charter; or 3) act in accordance to previously codified guidelines.

The third option is most consistent with new world order precepts and is also becoming an increasingly likely option. It is not hard to imagine scenarios wherein global opinion favors the United Nations using force or sanctions to prevent certain states or terrorist organizations from acquiring nuclear weapons. That proliferation concerns have weakened the traditional inviolability of state sovereignty is clear. It should be equally clear that this evolution has immediate policy implications. Simply put, the United Nations should formulate intervention criteria to handle proliferation contingencies. Guidelines to this end will be addressed shortly.

The Impact of Political Liberalization

Increased political awareness of international issues reflects and portends changes in global politics. Almost a quarter-century ago, theorist James Rosenau remarked that:

The principles of sovereignty and self-determination relieve publics of worrying about how and by whom others are governed and, in any event, foreign authority structures are too far removed from the daily concerns of citizens to warrant their sustained advocacy of convention-breaking behavior.²⁰

Much has changed since Rosenau articulated these views. A revolution in

18. North Korea signed the NPT in 1985, but has yet to allow on-site inspections. The current North-South rapprochement may make the Pyongyang amenable to such inspections, although US and South Korean officials remain skeptical.

19. See, for example, Richard Saltus, "Soviet Atom Experts Add To West's Worries," *Boston Sunday Globe*, 12 January 1991, 1.

20. James N. Rosenau, "Intervention as a Scientific Concept," *Journal of Conflict Resolution* Vol. 13, No. 2 (1969): 166. In much the same vein, though more recently, another analyst noted: "It is a truism that a local child struck by a car excites more public reaction than a thousand civilians killed by a rampaging warlord in some distant land," see Richard Wood Smith, "Military Intervention: Considerations For Modern Practitioners," (Ph.D. diss., Johns Hopkins University, 1986), 86.

global communications has altered the dynamics of advocacy. "Foreign authority structures" are no longer remote; they are at most a satellite dish away. Investigative news programs have made quantum leaps in coverage capabilities. The Cable News Network (CNN) demonstrated its technological prowess during the recent Gulf war. Moreover, it was no coincidence that first sites targeted by fledgling Eastern European opposition movements in 1989 included local television stations. The so-called Velvet Revolutions would have assumed a more violent character without global media coverage.

The global trend toward political liberalization and increased international awareness have worked to the advantage of human rights advocates. In the past, it was difficult to pressure states guilty of systemic human rights abuses. Most had a superpower patron whose veto power prevented the Security Council from taking meaningful action.²¹ As a result, miscreant states had little to fear except general condemnation via General Assembly resolutions.

Whether political-economic liberalization continues or stabilizes, the United Nations will have little difficulty collecting data on human rights abuses. Global telecommunication links and the dogged perseverance of human rights monitoring groups such as Amnesty International will ensure this much. But while highlighting state-sponsored abuses is a necessary first step, concerted action to prevent recurring human rights violations requires additional measures.

So long as the United Nations lacks carefully crafted guidelines, future interventions under its auspices will rely on ad hoc justifications. Further, if the past is any indication of the future, stronger states will have a disproportional influence in determining the nature and scope of these interventions—an outcome at odds with hopes for a more equitable world order. Thus, amending the UN Charter is a *sine qua non* for a more just and stable new world order.

Recommendations for Charter Reform

The UN Charter is full of references to human rights. The Preamble speaks of the need to "reaffirm faith in fundamental human rights;" Chapter I specifies that UN purposes include "promoting and encouraging respect for human rights and for fundamental freedoms for all" (Article 1, paragraph 3); and Chapter IX states that the United Nations will promote "universal respect for, and observance of, human rights and fundamental freedoms" (Article 55, paragraph c). Other Charter sections, of course, emphasize the inviolability of state sovereignty. Article 2, paragraph 7 asserts that "[N]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially the domestic jurisdiction of any state."²²

21. For example, the United States often justified its support of unsavory regimes on anti-communist grounds. For the most influential defense of this position, see Jeane Kirkpatrick, *Dictatorships and Double Standards* (New York, N.Y.: American Enterprise Institute, 1982).

22. This emphasis has been reaffirmed via various UN declarations. In 1965, for example, the UN General Assembly adopted a "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty."

Initially, the inclusion of language extolling universal human rights and state sovereignty eased ratification. Sections emphasizing the inviolability of state sovereignty appeased states who feared that the strong powers would bully smaller powers. Universal language promoting human rights appealed to those that wanted to bestow the United Nations with a moral conscience.

Unfortunately, the contradictory implications concerning inviolable state sovereignty and universal human rights have precluded coherent formulation of intervention criteria. To break this impasse, Charter revision is necessary via the amendment process.²³

Reform efforts can and should begin immediately. At this year's January 30 summit meeting, Security Council members asked Secretary-General Boutros Ghali to report by July 1 on measures to enhance the United Nations's preventive diplomacy, peacekeeping and peacemaking roles.²⁴ These measures should include a process for formulating UN intervention criteria. To this end, the Secretary General should recommend forming an Ad Hoc Committee to review, within a fixed timeframe, submissions for Charter revision. This recommendation has ample precedent. In 1974, for example, the Secretary General designated an Ad Hoc Committee to consider possible Charter revisions.

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A sizable corpus of intervention literature exists for the Ad Hoc Committee to review. Theorists have long floated various checklists of conditions for intervention. Since many of these efforts are outdated, they should be reexamined in light of recent history, current political and moral developments, and projected trends. Further, they should be reviewed according to the following guidelines:

1) *Criteria must not be too rigid or too elastic for credible application.* Overly rigid requirements tend to justify inaction. For example, lists that categorically exclude situation-specific variables should be avoided. At the other extreme, criteria that are too elastic should also be avoided since they are vulnerable to

23. The Charter has been amended several times. A 1963 amendment to Article 23 increased the Security Council's membership from eleven to fifteen. Articles 27, 61, and 109 have also been amended. For general information on the amendment process and associated difficulties, see David Steele, *The Reform of the United Nations* (London: Croom Helm, 1987), 25-41.

24. Paul Lewis, "World Chiefs to Try to Enhance U.N.," *The New York Times*, 31 January 1992, A9.

indiscriminate application.

2) *Criteria should preserve the United Nations' freedom of action.* This requirement flows from the first guideline. The Security Council should have a credible menu of graduated policy options with forcible intervention as a last resort. The Charter already provides limited guidance on this point; Article 41 specifies some of the Security Council's enforcement options. These options should be elaborated and prioritized.

3) *Criteria must be stated in plain language to minimize interpretation difficulties.* International agreements and treaties often bridge contentious points by using ambiguous language. In the case of Charter revision, however, this practice should be avoided. Legal craftsmen must recognize that political legitimacy is often contingent on clarity.

Realistic Chance for Reform?

The quest to formulate intervention criteria will be arduous. Consensus building efforts will require long-term commitment and enormous energy. Yet certain UN problems, such as collecting outstanding financial dues, require immediate attention. Short-term exigencies will make it difficult to focus attention on long-term reform.

Other problems can be expected. As a matter of principle, fairness dictates that intervention criteria should apply equally to all states. As a practical matter, though, the possibilities for even-handed intervention are limited. Obviously, UN-sponsored intervention is less likely against powerful states that have Security Council seats. Moreover, if the global trend toward political liberalization reverses, the United Nations may find it lacks resources to play a large role in protecting human rights. Finally, UN-sanctioned intervention possibilities will narrow as technological advances make it easier for states and terrorists to acquire and hide weapons of mass destruction.

These potential problems should not be underestimated. But neither should they be allowed to torpedo reform efforts before they begin. Even if agreement on intervention criteria remains elusive in the short term, sustained attention on this crucial topic will advance the discussion, and perhaps provide grounds for future consensus.



