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Sovereignty and Threats to Peace

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It is not surprising that there is a link between sovereignty and threats to peace. Contemporary events have made us acutely conscious of the limits of sovereignty as a principle of international order, which sometimes appears to be the major obstacle to collective security and to the rational management of world affairs. Moreover, as an ideal of self-rule and independence, this principle has fueled demands for new "sovereignties" and a proliferation of violence within and across established borders. There is a strong temptation to proclaim or predict the demise of sovereignty in the "new international order."

This chapter seeks to throw some light on this many-sided problem by examining sovereignty as it has developed and functioned in the relations of states, especially in regard to the maintenance of peace and order. Against this background, we shall also consider various contemporary threats to peace. Our discussion will not be value free, but we leave prescription to the other contributors to this volume.

Sovereignty, Nations, and Peoples

The idea of sovereignty is by no means as nebulous as sometimes suggested. As used in political and legal theory, it has had two distinct, if somewhat antithetical, meanings. With respect to the political structure within a state, it refers to the supreme political authority in that territorial community. It does not apply where there is no such ultimate authority. However, on the international level, with respect to the relations between states, sovereignty has the obverse meaning: it refers to the absence of an external superior authority. These two notions of sovereignty are not inconsistent. In fact, recognition of a supreme ultimate authority within a state tends to support the rejection of a superior external authority.

In the international context, sovereignty is generally accepted as the primary postulate of the modern state system. It has both a normative and a

descriptive application. In principle, each sovereign state has ultimate political and legal authority over persons, activities, and things within its territorial domain. Each is free to determine its form of government, and to pursue its own goals and interests, without dictation by any other state or superior political authority. The precepts of nonintervention and territorial integrity are the corollaries of sovereignty, expressed in the United Nations Charter and in general international law. Strictly construed, sovereignty implies that states are subject only to constraints necessary to ensure the reciprocal rights of other states and to such rules as they freely accept as obligatory. The vast body of international law and regimes are considered nationally to be manifestations of the sovereign wills of the individual states.

To be sure, these normative expressions of sovereignty are not wholly factual. Obviously, states are not free from external influences in their conduct of affairs. Large or small, they are constrained by the power of others and by their dependency on transnational factors. Economics and ecology do not respect territorial integrity. Communication and movement of people reduce the significance of territorial inviolability. Affinities grounded in ethnic, religious, and historical connections impinge on the state's autonomy. In law and in fact, a state's authority is subject to the numerous obligations of the international legal system, expressed through treaties, customary law, and juridical postulates accepted explicitly or implicitly by the community of states.

These limitations of sovereignty are well recognized. They have sometimes led political commentators to minimize state sovereignty as an operative principle. Indeed, some writers, with polemical fervor, have declared sovereignty to be fictional or outmoded. Many international lawyers have theorized for centuries that sovereignty is a conception or a "competence" determined by law and limited by it. Yet despite all of the qualifications of sovereignty as an operative concept, the reality of state power and authority cannot be ignored. The concept of world government is far from accepted; "great power" hegemony has neither been legitimized nor made effective. The world in its diversity remains incorrigibly pluralist. A system of self-governing states, mutually respectful of their independence, is widely considered by many the best foundation for stability and order. The dissatisfied are more inclined to seek their own sovereignties than to merge their identities in a global or regional authority. Many see national sovereignty as the effective way to achieve greater freedom and determine their own political destiny. Whether we like it or not, more people are ready to shed blood for their particular sovereignty than for the ideal of international community.

Sovereignty, though an abstract conception, is obviously part of political history, responsive to social forces and particular interests. In its European origins, it arose on the international level as a political response to the dissolution of ecclesiastical authority in the early fifteenth century. It

was more than an abstract idea at that time. It expressed a specific jurisdictional development: territorial authorities replaced the church, assuming exclusive political and legal authority over defined areas and their inhabitants.[1] The critical international element was the reciprocal recognition of such exclusive jurisdiction. The citizens of one realm were not to be subject to the laws of another ruler. A legal maxim of Thomas Aquinas was cited in support: "Chacun est maitre chez soi; personne n'est maitre hors de chez soi."[2] (Each man is master in his own home; no man is master away from home.) In its origins and early development, sovereignty was not dependent on national identity or popular will. The question of legitimacy—that is, the international recognition of the rightful rulers and of succession of sovereigns—was judged by dynastic rules derived from feudal law. The monarch and the sovereign were the same. Not until the French Revolution was sovereignty attributed to the nation and linked to the will of the people.

Before considering how this profound transformation affected world order, it is worth noting that in the early period of state sovereignty—even before Westphalia—concern was expressed about the international anarchy of independent sovereigns and the need for collective security. In fact, the core concept of collective security that an attack on one is an attack on all can be found as early as 1454 in the pact for the Most Holy League of Venice and later in the 1518 Treaty of London and in the better-known Treaty of Munster of 1648 (part of the Peace of Westphalia).[3]

The joinder of the sovereign state and nationalism occurred dramatically in the French Revolution, a development profoundly subversive of the established order. It meant that the legal and historical state had to yield to the nation and, more subversively, the nation was identified with the people.[4] French revolutionary interventionism in other countries followed, but was soon transformed by Napoleon into imperialist domination, which in turn was overthrown by an alliance of powers that partly succeeded in curbing nationalist "excesses." But neither the Congress of Vienna nor the subsequent Concert of Europe (the "great powers") was able to prevent the linkage of national self-determination with state sovereignty. The ideology of national unity, expressed by Bismarck in Germany and eloquently by Mazzini in Italy, emphasized both the moral and the prudential value of the nation-state. It was morally right that every people should have its own state governing itself free of external authority. This would remove a principal cause of war and allow every nation to determine its own goals and develop in its own way. The principle of self-determination was thus tied to sovereignty. This was carried forward by Woodrow Wilson and more successfully by the anticolonialism that transformed the map of the world after 1945.

The logic of giving each people its own nation-state seemed compelling in the postwar period. Self-determination was declared a fundamental principle of international law in UN resolutions and lauded as a safe-

guard of the weak against the strong. Memories of imperialism and abusive intervention strengthened the emphasis on sovereignty. Democracy and nationalism were seen as mutually supporting.

It did not take long for this optimistic outlook to encounter the explosive force of nationalism, multiplied by emerging popular "wills." UN history is illustrative. The UN began with 51 member states. When its headquarters was planned in 1950, future growth was premised on a potential membership of 72, because that was the estimate of the number of nation-states given in international law treatises. Some four decades later, the UN members number 178, with more on the way. This population explosion of states was not foreseen by the proponents of national self-determination nor, for that matter, by academics.

On the whole, the state system has accommodated the UN's increased membership, though not without growing pains. However, the international community has not agreed on a governing principle to determine the "self" entitled to sovereignty. It has merely declared, solemnly and repeatedly in legal instruments, that every people is entitled to self-determination, without defining "people." At the same time, the UN and other international bodies have also affirmed the principles of territorial integrity and political unity of sovereign states.[5] These affirmations do not seem to have impeded the demand for new states and secession from existing states. The result has been a proliferation of internal conflicts and an unparalleled fragmentation of states that had long been perceived as stable entities. International order has been conspicuously shaken by these events. Not only have the internal wars fueled by secessionist demands spilled over into interstate conflict, but also the proliferation of new states has produced many disputes concerning territorial claims and minority rights. (I shall come back to this point in discussing threats to peace.)

Although the multiplication of new states and resurgent nationalism have thrown a bright light on the shortcomings of sovereignty, it is at least as important to recognize that nationalism has provided the strongest support of state sovereignty. Those inclined to dismiss sovereignty as outmoded tend to minimize the continuing strong hold of nationalist sentiment in sustaining the state system. Good reasons can be given as to why an emphasis on sovereign rights is dysfunctional in an interdependent world, but analysis and prescription are seriously deficient if they fail to recognize the power of political nationalism in sustaining state sovereignty. To deride this as a new "tribalism" has little effect.

The assertion that peoples have the right to self-determination is indicative of a general claim that sovereignty, as the term is now used, rests on the consent of the people. The idea of popular sovereignty is not new in regard to the internal government of a state.[6] The American and French revolutions most notably articulated the notion of the "sovereignty of the people"—it held sway in the rhetoric of both countries even though the majority of the people were actually excluded from the electoral process.

However, in international relations and law, consent of the people was never considered an essential element of sovereignty. It is only recently that the case is being made on the international level for conditioning sovereignty on the popular will. The principal legal argument for that position stems from the propositions of the Universal Declaration of Human Rights that "the will of the people shall be the basis of the authority of government" and that "this will shall be expressed in periodic and genuine elections."[7]

It is true that virtually all governments have professed approval of the Universal Declaration and many have adhered to binding treaties supportive of its democratic principles. This is certainly significant. Nevertheless, states with governments that clearly do not rest on the consent of the governed (as expressed through free elections) are treated as sovereign in their relations with other states. Dictatorial regimes do not forfeit state sovereignty. Even when a government is denied recognition on the grounds that it is a puppet of a foreign power, the state is not stripped of its sovereignty.[8] True, a nondemocratic regime may open itself to condemnation and even sanctions, but this is quite different from declaring that states with nondemocratic governments are no longer entitled to be treated as sovereign entities under international law.

I do not argue that popular sovereignty is entirely immaterial in international relations. Popular sovereignty has a sufficient degree of acceptance today to provide normative guidance in particular situations. For example, whether a state has consented to external intervention should be determined by reference to the people's will where that is ascertainable rather than by a nondemocratic government. (I will discuss this later in the section on civil wars.)

The Relativity of Sovereignty

The main problem posed by the principle of sovereignty (from the inception of the principle to the present time) has been to reconcile the independence of states with the practical requirements of coexistence and the generally accepted values of the international community. Some answers have been propounded in theoretical writing of a philosophical and juridical character as well as in governmental declarations. It is not appropriate for me to go into this complex body of ideas here; but it is pertinent to observe that the two main schools of juridical thought, while differing in important respects, have tended to agree that sovereignty in law, as in fact, cannot be absolute.

The older school, dating back to the sixteenth century (and including such eminences as Suárez and Grotius), took as its basis the "moral unity"

of peoples and, more pragmatically, the necessities of a pluralist society.[9] The idea of a "society of states," which emerged most clearly in the eighteenth century, fortified the older conception of the primacy of "mankind" expressed through the law of nations.[10] Though this basic idea had many variations, its central core was—and still is—widely accepted by legal theorists and reflected in many international governmental declarations. Sovereignty, in this view, necessarily presupposes a body of rules and practice—that is, an international order—that defines its scope and limits. It cannot be left to the unlimited discretion of a state, as was asserted, for example, by the claim of *raison d'état*.[11]

The opposing school of thought denies that sovereignty is conceded to states by the international order or the law of nations.[12] Insofar as a legal order or international society exists, it is the creation of states and is dependent on its voluntary acceptance by them.[13] This doctrinal approach has had various expressions, but the common emphasis on the primacy of state sovereignty was broadly supported by jurists and political philosophers in Europe and the United States beginning in the eighteenth century. A historian of sovereignty has observed that by the nineteenth century sovereignty "became the central principle in the external policy and the international conduct of all the leading states of Europe."[14] It was taken for granted that with the exception of the high seas, every part of the world had to have a sovereign. The absence of a state (in the European conception) meant that territory was *terra nullius* open to acquisition by sovereign states. Indigenous political structures sometimes assumed statehood, but large areas were placed under the sovereignty of colonial powers. The idea of sovereignty, first supportive of imperial aims, was then turned against the European empires; it fueled demands for independence by subordinate peoples everywhere in the world.

The dominance of the principle of sovereignty in international relations did not mean the absence of legal restraints. On the contrary, the increase of sovereignties in the past 100 years has been paralleled by a great expansion of international law and institutions that imposed limits on state conduct. These limits were not generally viewed by statesmen or lawyers as inconsistent with sovereignty but rather as the collective expression of sovereign wills. In the prevalent positivist conception, states freely subjected themselves to obligations by treaty or custom. It was therefore unnecessary to denounce sovereignty in order to achieve greater limits on state autonomy; it was sufficient to recognize that the international community developed restraints through processes adopted by the member states.[15] The relativity of sovereignty was thus acknowledged in the practical working of the international system.

Renouncing the absolutist conception of sovereignty is helpful but not a complete solution. The basic problem still remains as to where the lines should be drawn and what process should be used for such line-drawing.

These issues arise sharply in respect to matters that are strongly believed to be elements of self-rule. Four such subjects are paramount. One is the relation between the state and the individual (i.e., human rights). A second, obviously, is the choice of rulers and governmental system. A third concerns the control and management of the natural resources within the country, and a fourth relates to the national security and defense.

These four subjects are surely central to the commonly held conception of independence and self-rule. It is also true that they may be of international concern and, under certain conditions, may affect peace and security. Put conceptually, the principle of sovereignty may compete with international obligation. We may hold that sovereignty is only relative, but that does not solve the particular problem of deciding how relative and where to draw the line. A quick survey of the four subjects mentioned is instructive.

I begin with the area of human rights that, most conspicuously, involves obligatory international norms regarding matters long regarded as within the exclusive competence of the state. Some international lawyers consider that the principle of sovereignty is no longer relevant in regard to the human rights that have been internationalized. But this broad conclusion involves some exaggeration. Recognizing obligatory human rights does not entirely eliminate respect for sovereignty. Two situations are cases in point. The first relates to the application of human rights in domestic law and practice. In many cases, the states concerned have maintained that local factors must be taken into account in applying rights and that each state should be entitled to a "margin of appreciation" in determining the implementation of the right. This principle has been recognized in the jurisprudence of the European Court of Human Rights and generally acknowledged as reasonable.[16] While some perceive this only as a sensible prudential rule, it is also an implied acknowledgment that the principle of self-rule should not be ignored in the application of international obligations.

A more controversial aspect of sovereignty and human rights concerns coercive action against a state that has seriously violated human rights. The argument has been made that in some cases sovereignty must yield to a right of "humanitarian intervention" by governments or international bodies that would allow the use of armed force.[17] On the whole, governments and legal authorities have not considered such intervention as a permissible exception to the prohibition of force in Article 2(4) of the Charter.[18] The memory of past abuses and the fear of intervention by powerful states remain strong deterrents to legitimizing armed intervention by governments in principle. This concern is less evident in respect to action by the UN or a regional organization, especially where a threat to international peace may be found.[19] Nonetheless, concern for sovereignty is still an important consideration for governments faced with demands to use armed force in another country without the consent or acquiescence of its government.

An even more obvious issue of sovereignty is raised by action to

impose a regime or a constitutional arrangement on a state. This issue goes to the heart of political independence. It has come up in troubling ways whenever the UN has used armed force against a government, namely, in Korea and Iraq and in the internal conflict in the former Belgian Congo.[20] A basic question is whether the Security Council may determine the structure of government (e.g., unity or federalism) and even select the actual rulers (e.g., replace a ruler guilty of aggression) in order to secure international peace. While the Security Council is a political organ, it is bound by Article 24 to observe the principles of the Charter, even in regard to enforcement measures under Chapter VII. It may be plausibly argued that imposing a government would violate the basic Charter principle of "sovereign equality" found in Article 2(1).

But some would argue that the Council's responsibility to maintain international peace and security is a political matter left entirely to the discretion of the Council, particularly in regard to Chapter VII actions. Up to now, the Security Council has not expressly addressed this basic Charter issue. It has refrained from making a determination that a particular regime or individual must be ousted because of aggression or extreme human rights violations. It has gone only so far as to declare that a particular government or head of government is the legitimate authority for purposes of representation in the UN.[21]

A third sensitive area of sovereign rights relates to the use and exploitation of a country's resources. In this respect, "sovereignty over natural resources" is an acclaimed principle, affirmed by UN bodies and by most governments. While somewhat contentious in details, it is generally agreed that international law requires states to accord certain basic rights to foreign investors under customary law as well as applicable treaties.[22] Environmental concerns are also affecting absolutist ideas of sovereignty over resources. It is fairly clear by now that as a matter of broad principle, states should take into consideration the environmental harm to other states and to common areas caused by the exploitation of resources in their territory.[23] Claims of sovereignty are still important, especially in regard to development needs, but they are no longer regarded as ruling out constraints considered necessary to prevent or mitigate damage beyond the state's borders.

The fourth subject of self-rule concerns the highly sensitive areas of national security and arms. While states are subject to the Charter prohibitions on the use of force, they may resort to force in individual or collective self-defense. Their right to arms and related defense measures is regarded as an essential element of sovereignty. Nonetheless, legal restraints have been adopted in a number of international treaties, many multinational treaties, and some regional and bilateral treaties.[24] These have all been negotiated agreements, presumably freely accepted by the parties. Hence no derogation of sovereignty in a strict sense has been involved. However,

constraints on sovereignty are implied by moves to limit armaments, particularly weapons of mass destruction (nuclear, chemical, and biological) without requiring specific treaty adherence or consent. A development of this character could be given effect by a concerted policy of denying materials for such arms to a noncomplying state and by other sanctions. This would, of course, effectively cut down on the sovereign right of a state to defense. Up to now, such action has been taken only in respect to Iraq under Chapter VII, and even there, with the coerced "agreement" of its government. A more general application has been discussed in official as well as unofficial circles. Objections will surely be raised on grounds of sovereignty, but these are not likely to be decisive if the restrictions are considered essential to international peace.

These comments on the relativity of sovereignty confirm that the Hobbesian and Hegelian notions of absolute sovereignty are remote from present conceptions and practice. But they do not show that sovereignty has lost its political and legal significance. Like other abstract concepts of law and politics, the law of sovereignty cannot be reasonably applied without regard to competing principles and the particular context of circumstances. Obviously, changing conditions and values affect its application, but it would be a mistake to conclude that they have removed its strong hold on the international system.

Divided and Joint Sovereignty

The general rule in international law is that the government of a state speaks for that state, whatever the national political structure provides. This is true of federal and confederal states that for internal reasons may have divided sovereignty. However, there are examples on the international level that depart from the general monolithic conception of sovereignty. Over time a variety of arrangements have been made by agreements of states, or unilaterally, under which sovereign authority of an area is divided or exercised jointly.[25] Such arrangements have usually been made to resolve disputes over territorial sovereignty, but in a number of cases they have been means to accommodate demands of powerful states or to limit sovereign claims in the general interest. An example common in the imperialist period of the nineteenth and earlier twentieth centuries is the dependent, "semi-sovereign" state—protectorates, states under suzerainty, neutral "buffer" zone areas. The Anglo-Egyptian condominium is another example. These examples of dominance of the more powerful states have largely vanished. All states are formally equal today.

Shared resources—such as rivers, lakes, maritime areas—while formally subject to sovereign rights, have often been dealt with by agreement as areas of joint administration involving mutual rights and responsibilities.[26] The Antarctic treaty regime is a more complex arrange-

ment. It allows the various competing claims of sovereignty to be maintained in law, but it provides for uniform restraints on activities in the region (e.g., military activities or mineral exploitation) and for mutual inspection rights.[27] Sovereignty is, so to speak, put on ice.

Various forms of joint sovereignty have been proposed for disputed areas. A notable case for such proposals has been that of Jerusalem, but no proposal has been acceptable and the idea is strongly resisted by Israel. Dividing sovereign rights has also been suggested as a means of resolving the Falkland Islands territorial dispute, but it has not been adopted.[28]

The idea of separating some sovereign rights from others has been embodied in several important provisions of the Law of the Sea Convention. "Sovereign rights" for exploiting and managing the natural resources of the respective 200-mile exclusive economic zones are granted to coastal states, but this stops short of full sovereignty, thus denying the sovereign right to control navigation in that area.[29]

It has been suggested from time to time that claims for some degree of autonomy for national minorities within a state be granted by international agreements, in effect dividing sovereign rights over the area in question.[30] Reference is sometimes made to the agreement between Italy and Austria regarding Alto Adige (South Tirol), which gave a considerable degree of autonomy to the German-speaking minority.[31] The Camp David Treaty between Egypt and Israel promised autonomy for Palestinian Arabs on the West Bank; but, as of mid-1992, it has remained unfulfilled. The difficulty in this, as in other cases of minority rights, is not the monolithic nature of sovereignty but the difficulty of reconciling the incompatible demands of the parties.

Civil Wars as Threats to Peace

Civil wars have been far more numerous since 1945 than wars between states. They have raised issues of both sovereignty and collective security. The conflicts fall into two broad classes based on the ends sought. One category involves large-scale armed struggles for state power by opposing organized forces. The other includes the armed movements that seek secession or autonomy for a part of the state in question. In the first category the classic cases are the French Revolution of 1789 and the Spanish Civil War of the 1930s. In recent decades such internal armed conflicts have occurred in every part of the world except North America and Western Europe. Examples include the conflicts in Afghanistan, Angola, El Salvador, Lebanon, Mozambique, Nicaragua, Somalia, The Sudan, and Yemen. The second category, the wars of secession, include almost as many: in Bangladesh (East Pakistan), Biafra (Nigeria), Myanmar (formerly Burma), Ethiopia (Eritrea), East Timor, Sri Lanka (involving the Tamil), and Yugoslavia, as well as Kurdish rebellions. The classic case in the past is, of course, the American Civil War.

The civil wars in both categories have been bound up with issues of sovereignty. International law generally concludes that internal conflicts are not limited by international law, although they are, of course, unlawful by national law. International law becomes relevant by prohibiting, in principle, intervention by a foreign power in an internal conflict. Thus, the armed intervention of German and Italian forces in support of the Franco rebellion in Spain was regarded as unlawful,[32] as was the comparatively minor assistance given by Britain to the Confederacy in the American Civil War (for which the British eventually were held legally liable for damages).[33] The legal bar on intervention in civil wars was reaffirmed by the International Court of Justice (ICJ) in the 1986 case of Nicaragua versus the United States.[34]

The idea of imposing a legal wall around internal conflicts—a kind of *cordon sanitaire*—has been difficult to maintain in many cases. An important reason is that the internal conflict tends to spill outside the territorial state when one or both of the warring sides has obtained external aid of a military or quasi-military character. When intervention has occurred on one side, a third state may counterintervene on the claim of collective self-defense to support the political independence of the state under prior external attack. Thus, in principle, counterintervention would support the sovereignty of the state in question.

Foreign military interventions in civil wars had been so common during the Cold War that the proclaimed rule of nonintervention seems to have been stood on its head. This is not new. Talleyrand quipped that "non-intervention is a word with the same meaning as intervention." Actually, no state would deny today that the people have the right to decide for themselves what kind of government they want and that a foreign state that supports one side with force in an internal conflict deprives the people in some degree of their right to decide on their government. It is therefore a use of force against their political independence in violation of Article 2(4) of the Charter.

The issue becomes murky where both sides have sought and received military support. There may be a presumption—and many so hold—that the recognized government has a right to receive foreign aid against an insurgency. On the other hand, the presumption that the government is entitled to foreign military aid may be questioned when that government faces a large-scale insurgency, with substantial support in the country. In those circumstances, outside support to the government would also violate the right of the people to decide by themselves. This conclusion would apply whether the insurgency were aimed at secession or at the overthrow of the government.

Of course, if one side gets substantial outside aid, the case can be made

that aid to the other should be permitted to counteract foreign domination. This was essentially the argument of the United States in support of its military action on behalf of El Salvador against intervention by the Nicaraguan Sandinista regime.[35] It would, of course, be much better as a general rule to adhere to the nonintervention rule in any civil war. To achieve this, it would probably be necessary to have international mechanisms such as peacekeeping forces to monitor compliance and to bar the sending of arms, backed by sanctions against violators. Such UN measures are dealt with elsewhere in this book. Our specific point here is to emphasize that the principle of sovereignty supports a strong noninterventionist position in internal conflicts. Where intervention by a foreign state does occur, it opens the way to counterintervention and the consequential internationalizing of the civil war; this was borne out during the Cold War. It seems less likely today, but it cannot be excluded where ethnonationalism or economic interests impel a third state to take sides.

Even where the opposing forces do not invite or receive external support, a civil war may spill over into neighboring countries through the mass movements of displaced persons. This occurred in the course of the 1971 civil war in Pakistan, with Bengali (East Pakistani) war refugees entering India and giving India a reason to deploy its troops against Pakistan.[36] A more recent example can be found in April 1991 at the end of the war against Iraq when Kurdish inhabitants in Iraq were attacked by Iraqi troops. Many became refugees in the neighboring countries of Turkey and Iran. The UN Security Council declared that the repression against the Kurds constituted a threat to international peace and security and the Council demanded access for humanitarian aid.[37] The resolution was relied on by the United States, Britain, the Netherlands, and France as authorizing them to send troops to protect the Kurdish refugees.[38] The potential for armed conflict in a case of this kind is evident whether or not the UN has declared the situation to be a threat to peace. The exodus of refugees from the recent civil war in Liberia was also given as a reason for armed intervention by troops of the Economic Community of West African States.[39] The effect appears to have been a widening of the war.

A civil war of secession may be converted into an interstate war when the secessionist movement succeeds in obtaining significant recognition as a new state. Even before such recognition, the civil conflict may be generally viewed as international because of the national character of the opposing forces. This seems to have been the perception of the breakup of Yugoslavia.[40] Like treason, which if successful is no longer treason, a civil war is no longer "civil" when the seceding area receives formal recognition as a state. The more important point is that the breakup of a state through civil war may leave a legacy of antagonism and irredentism that endangers peace in the future. India-Pakistan is an example.

Finally I note that civil wars are often characterized by mass brutality and hardships of the civilian population. This engenders pressure for other states to intervene on humanitarian grounds, especially where they have ties of ethnicity, religion, or ideology. The antiapartheid conflict in South Africa, similar essentially to a civil war, was formally designated a threat to peace by the Security Council so as to enable the Council to take mandatory sanctions under Chapter VII.[41] This was justified on the grounds that the egregious racial regime of South Africa aroused such hostility among African states as to lead them to support armed action against South Africa.

Predictions about civil wars are as hazardous as they are about other wars. In 1988, *The Economist* wrote that wars of "national identity . . . are inevitably on the decrease, because most such breakaways have already taken place."[42] In fact, many more breakaways have occurred since 1988, and there is no good reason to believe that others (say, in Africa and Asia) are not on the way. The end of the Cold War has probably greatly reduced the probabilities of military intervention by major powers, but it may well make it more likely that new wars of secession will take place in countries, such as those in Africa, that have boundaries that were drawn by Europeans a century ago.[43] The reasonable way to avoid these breakups would be to improve the chances of peaceful settlement and genuine choices by the people concerned. This may be facilitated by modifying "monolithic" sovereignty and "unbundling" sovereign rights so as to make borders less important and movements of people and goods easier for all.[44]

Territorial and Resource Disputes as Threats to Peace

It is quite striking that nearly all wars between states in the recent decades have involved a territorial dispute. This does not mean that territorial disputes are themselves a significant threat to the peace. In fact, numerous conflicts of disputed sovereignty to territory (including boundary disputes) exist at the present time. Many are long-standing; many evoke strong nationalist sentiment and feelings of past injustice; some have important economic implications. Yet, most cannot be said to be threats to the peace.

With this important qualification, territorial conflicts must be included in the category of threats to the peace. I note two reasons. One is that territory may have significant value to a state, even if it is not the most important factor in its political or economic power. This is markedly evident where the territory has valuable resources, such as the oil deposits in the conflict between Iraq and Kuwait. It is also important in many parts of the world where water is scarce and sovereignty cuts across the sources of water.

The second reason we give as to why territorial conflicts are considered as threats to peace is that territory includes people, who may be more important than the land. The violent conflicts between Azerbaijan and Armenia and among Serbia, Croatia, and Bosnia over ethnic enclaves

showed concern for the fate of the people more than for the land as such.

Other factors are also relevant to the outbreak of territorial disputes into violent conflict. In many cases, the popular emotions attached to territory play a critical role in domestic political affairs. Groups in power or seeking power find it very useful to take strong and uncompromising stands on territorial claims to win popular support. The Argentine use of force in the Falklands has been explained by the need of the military regime to strengthen its weakening internal rule.[45] And even on the other side, the resistance of the Thatcher government to proposals for peaceful settlement was attributed to its interest in winning the next election, and this was borne out by the popularity of the war despite its relatively large economic cost.[46] The emotional aspect of a territorial conflict appears repeatedly. Boundary disputes over maritime areas, such as those between Britain and Iceland and between France and Canada, have evoked local passions that made negotiated settlement difficult and even led to the use of naval force. That these states had long histories of friendly relations and cooperation was not enough to prevent popular anger over challenge to their sovereign rights.

It is also worth noting that armed conflict over territory has been functional in many cases—that is, it has resulted in fixing boundaries and settling old disputes in a definitive way. It is true that in some cases, irredentist claims remain alive. This seems to be the case for Pakistan vis-à-vis India and Argentina vis-à-vis the United Kingdom. It certainly applies to the territorial claims against Israel. But from the standpoint of the victorious governments, the armed conflict is not perceived as dysfunctional.

The use of international judicial and arbitral means to resolve territorial conflicts has perceptibly increased in recent years. The ICJ has become a principal arbiter of both maritime and land territorial disputes; in other cases ad hoc tribunals have been successfully utilized. This augurs well for the future. Nonetheless, it is likely that in areas of the globe where boundaries are perceived as the "artificial," arbitrary creations of foreigners, they will be disputed with a good chance that violence will erupt. This appears to be most probable in some areas of Africa. The effort of the Organization of African Unity to maintain the status quo for existing boundaries (fixed mainly by the European colonial powers) was successful for a couple of decades, but recent events indicate that it is unlikely to prevail and that violent means may be used in some cases to redraw the boundaries. That the Cold War has ended and both US and Russian involvement has greatly lessened is considered by some experts as likely to increase the use of force to redraw boundaries and create new sovereignties.[47]

Disputes over water resources, already mentioned, could merit a separate chapter. The underlying problem is that fresh water is increasingly a scarce resource and that many populations are in some jeopardy as a consequence of economic development and population growth. The Middle East and North Africa are areas where the problem has been most acute with strong political repercussions.[48] Egypt, with its extraordinary increases in population and economic growth, has little control over the Nile's upstream governments, which also face exploding needs for water. Not long ago an Egyptian minister declared, "The national security of Egypt is . . . a question of water."[49] Efforts to develop viable plans for sharing water have been made with regard to the Nile, the Euphrates, and the Jordan. However, the tensions in the region and the high stakes involved in water needs must qualify easy optimism that actual conflict will be avoided.

Armaments as Threats to Peace

Whether armaments are a cause of war has long been a subject of international debate. Nearly all states maintain armed forces for security against attack or intimidation. They have the sovereign right to do so without limit except as agreed by them or when the UN Security Council imposes mandatory limits. The actual use of arms against another state is prohibited by the UN Charter unless used for self-defense (individual or collective) under Article 51 or in accordance with a Security Council decision under Chapter VII. A significant number of multilateral and bilateral treaties have imposed limits on the size, number, and deployment of weapons and armed forces.[50] The Nonproliferation Treaty is the most notable example of arms limitation, but it has left nuclear weapons to the five nuclear powers; and it has not been ratified by several states with, or on their way to, nuclear weapons capability.

That states maintain armed forces against possible attack can be viewed quite rightly as supportive of international order. But there also is an element of irony in that a threat to peace arises only where there is likely resistance to threats of force. Clausewitz has a pertinent comment: "War takes place mainly for the defender; the conqueror would like to enter our country unopposed."[51] In other words, without defense, threats of force do not become threats to peace. Only a few pacifists and an exceptional government would follow this logic and eliminate national defense entirely. However, in a more limited way, and in a particular context, peace may be so compelling a value as to preclude armed resistance to threats of force, even though sovereign rights are lost.

Beyond these comments, I do not propose to discuss the somewhat theoretical question of whether armaments are per se a threat to peace. It is more realistic at the present time to consider the situations in which some regimes would have recourse to weapons of a particularly destructive character, especially on civilian populations. Biological, chemical, and nuclear arms fall into this category. Evidence of Iraq's activity in regard to these weapons and indications that Libya has similar ambitions have highlighted

the issue of so-called poor men's weapons. It may be that these weapons will prove to be of little effect against organized military forces in developed countries, but they certainly could menace civilian populations and weak regimes. They are not only potential weapons of the poor but also weapons that can be used especially against the poor. In the hands of fanatical or unstable regimes, they would be weapons of terror. The UN Security Council took specific enforcement measures in Iraq in the aftermath of the Gulf War.[52] It is a safe guess that weapons of terror will make their appearance in various places. Threatened states are likely to take protective action. The menace to peace in that case may well be of large dimensions.

Treaties to outlaw such weapons have not been universally accepted, and there is continued fear of clandestine weapons whether or not covered by such treaties. Action may then be called for by the Security Council, employing its mandatory powers irrespective of consent, to outlaw such weapons and take enforcement measures. The Council took a step in this direction when it declared at the first-ever Summit in January 1992 that "the proliferation of all weapons of mass destruction constitutes a threat to international peace and security."[53] Presumably, claims of sovereignty and "sovereign equality" by the states in question would then have to give way to the Council's authority, provided, of course, that the requisite voting requirements of the Council have been met. In the absence of effective action by the Security Council, individual states may have recourse to measures, falling short of outright use of armed force, in order to compel a recalcitrant government to give up the proscribed weapons. At this point, we can do little more than speculate about the possible scenarios, though we can be quite sure that the problem of proliferation will have to be faced.

Illegal Activities that Endanger Peace: Terrorism, Subversion, Genocide, Repression

A review of contemporary threats to peace would be incomplete without considering certain illegal activities that may provoke a government to react by using force outside its own borders. Terrorism, subversion, genocide, and flagrant repression are examples of such internationally illegal activities.

Terrorism is itself a form of warfare directed against a state. It involves the threat or use of violence to create extreme fear or anxiety in a targeted group or government so as to coerce it to meet political aims of the terrorists. Terrorist acts have an international character when carried out across national lines or directed against nationals or instrumentalities of a foreign state. Terrorism is defined by the act, whatever the motive and however idealistic in aim. Killing children, bombing airplanes, and abducting journalists are terrorist acts, even though those responsible see them as means to national liberation or some other ideal. Some terrorists act as agents of

governments; many are not but receive support from governments in various forms, including territorial bases. A targeted or victim state may feel impelled to take retaliatory action by attacking the supporting state. Such retaliatory action has been rare up to now. The bombing of Tripoli by the United States in 1986 is one conspicuous example. The United States declared the bombing to be a "preemptive action," after an earlier terrorist attack on a Berlin nightclub patronized by US military personnel.[54]

It is open to conjecture whether state-supported terrorism will increase and whether the affected states will respond with force, as the United States did in Libya. The end of the Cold War may reduce support for international terrorism but will surely not bring an end to terrorist activity. The bombings by the Irish Republican Army in the heart of London in 1992 are indicative of the persistence of terrorist activity. The action of the Security Council against Libya this year suggests that collective measures may be used in lieu of individual retaliation.[55] A major concern is that new weapons—a suitcase nuclear bomb or biological toxin—will increase the power of terrorism and therefore precipitate warlike international retaliation.

Subversive activity against a regime by a hostile government has often been cited as a casus belli. Such activity has typically included provision of arms and logistic support to insurgents, often supported by propaganda attacks on the targeted government. Subversive activity has been motivated by support for oppressed minorities, by ideological opposition, and by historical hostility. It is illegal under international law.[56] The victim state may take countermeasures, but under the ruling of the ICJ in the Nicaraguan case, it may not have recourse to armed self-defense as long as the illegal acts do not amount to armed attack.[57] Whether this ruling will have an effect on the resort to force by the victim state is unclear. In any case, subversive activity is likely to continue in various parts of the world as an element of violent opposition to existing governments, whether caused by minority movements or struggles for power.

Genocide is sometimes referred to as a potential threat to the peace, recalling Nazi genocide as a factor in the causes of World War II. Since then, accusations of genocide have been made in respect to internal conflicts or repressive state action against minorities. Condemnation by organs of public opinion and on occasion by governments has not been effective in the most extreme cases. There have been calls for action by the UN—or, in lieu thereof, for unilateral intervention by concerned states—on humanitarian grounds. Some of the worst examples of mass killing (such as in Burundi, Cambodia, and Ethiopia) have not brought armed humanitarian intervention by international bodies or concerned states.[58] The French government's removal of Bokassa (the "Emperor" of the Central African Republic) is one of the rare clear cases of forcible military unilateral intervention on humanitarian grounds. The protection of the Kurdish refugees at

the end of the war against Iraq pursuant to Security Council Resolution 688 is an example of collective action, as is the use of UN forces in Bosnia to safeguard relief supplies for a threatened people.[59]

No doubt genocide could be a threat to peace in that it might precipitate protective armed action by concerned states, resulting in war. That this has rarely occurred has sometimes been attributed to respect for the sovereignty of the culpable government, but the more realistic reason is that the material costs, especially in human lives, of an intervention are not perceived as justified by the national interests of other states. Concern that such humanitarian intervention would plunge the intervening state into a quagmire of internal conflict has usually been a deterring factor.

Like genocide, mass repression involving flagrant violations of human rights may bring international condemnation and calls for forcible intervention by concerned states and international bodies. Obviously, widespread human rights abuses can be important causes of internal conflict. Such conflicts may threaten peace on the international level when they result in interventionary action by a foreign state and counterintervention by another, as we noted earlier in our discussion of civil wars.

Are repressive governments likely to be more warlike than those that respect human rights? This has often been answered in the affirmative, generally on the grounds that a people enjoying freedom and democracy would not willingly choose war. Dictators, it is sometimes said, tend to choose or risk war to win popular support or to divert attention from their repressive acts. In Marxist ideology, the ruling classes sought war for markets and other economic gains, whereas the people, the proletariat, were presumed inherently peaceful. Kant more persuasively argued that self-governing peoples acting reasonably would avoid wars that impose hardships on them and that freedom of speech and the institutional limits on power are effective restraints on waging war, contrary to popular will.[60] Empirical studies pursuing Kantian views indicate that liberal democracies rarely engage in wars with one another but that they have behaved aggressively toward nonliberal regimes.[61] Kant, by the way, did not favor armed action by "republics" against despotic regimes.

I may surely conclude that despotic regimes and egregious violations of human rights give rise to international tensions and that, in some circumstances, they gravely threaten peace. Such threats to peace arise not simply because human rights are violated but because the violations are perceived to harm specific interests of other states, as, for example, injuries to their nationals, to common ethnic and religious groups, or, in extreme cases, to security and vital economic interests. Even if democratic states do not generally threaten peace at least among themselves, both past and recent experience show that popular passions have resulted in mass violence across, as well as within, borders. In contrast to Kant, Thucydides observed on the basis of Athenian experience that popular rule engendered expansionist

moves in order to expand commerce, maintain employment, and enhance glory—and that this leads to war.[62] History is not without examples of popular wars. Still, skepticism that people are always peace-loving should not lead to ignoring the historical evidence that despotic regimes have a greater tendency to instigate or invite international violence. There is good reason to conclude that, as UN Secretary-General Boutros Boutros-Ghali recently stated, "there is an obvious connection between democratic practices—such as the rule of law and transparency in decision-making—and the achievement of the peace and security."[63]

Micronationalism and Splintered States

Earlier in this chapter, I noted the emergence of the revolutionary idea that every people is entitled to its own nation-state, thus joining sovereignty and nationalism under the concept of self-determination. To its supporters, the principle was both morally just and politically wise. It upheld the ideal of equality of peoples; it met the claims of self-conscious territorial communities to control their own destinies. Moreover, granting self-determination to all would remove a major cause of international conflict. So argued Mazzini, Woodrow Wilson, and the leaders of independence movements after World War II. The largely peaceful dissolution of the colonial empires fitted into this conception of orderly self-determination, as did, at least initially, the breakup of the Soviet Union.

However, the optimistic projection of self-determination as a force for peace has obviously been called into question by the frequent clashes between rival ethnic communities as well as by the use of armed force against liberation movements. This is not new. Military historian Michael Howard recently wrote: "National self-consciousness far more than any aspirations towards social justice or economic equality has fueled international conflict in the nineteenth and twentieth centuries."[64]

Now, toward the end of the twentieth century and after the Cold War, "national self-consciousness" has exploded into a virtual epidemic of demands for self-rule by territorial communities based on ethnic, religious, and historical identities. Many, perhaps most, of the demands have come from peoples not hitherto perceived as "nations." They have included small indigenous folk communities, obscure pockets of transplanted peoples, large populations sharing a religion or language distinct from the state in which they found themselves, and many other varieties. It is no exaggeration to say that nearly every nation-state in the world includes some groups claiming the status of a separate "nation" or self-governing people.

There is irony in that this contemporary outburst of nationalism, or, more aptly, "micronationalism," has occurred in the same period as state boundaries have diminished in significance for the lives of most people. Economics, ecology, communications, technology, and education have cre-

ated a more interdependent and integrated world. The contradictory tendencies of micronationalism and integration are striking and appear paradoxical. However, they may well be causally related. When the national state appears to be diminished by globalization and new structures of authority, it can appear to its citizens as a loss of their control. We see this even in Western Europe, where integration has gone furthest. It is not surprising that people everywhere are made uneasy by a perception of remote anonymous authority controlling their lives, whether through supranational organizations, multinational corporations, or the influx of foreigners. One attempt to allay such anxiety would involve an assertion for demands for more autonomy of respective states or subnational groups. Micronationalism then flourishes, sustained often by legacies of historical injustices and violence.

In some cases, it has been possible to resolve the group conflicts within existing states or across state lines by negotiation or political processes. However, in a substantial number of cases, violence erupted especially when secession or far-reaching autonomy was demanded. Armed conflicts also arise between the communities within a state, competing for power or benefits. The UN Secretary-General summed up this situation in June 1992:

> National boundaries are blurred by advanced communications and global commerce, and by the decisions of States to yield some sovereign prerogatives to larger, common political associations. At the same time, however, fierce new assertions of nationalism and sovereignty spring up, and the cohesion of States is threatened by brutal ethnic, religious, social, cultural or linguistic strife. Social peace is challenged on the one hand by new assertions of discrimination and exclusion and, on the other, by acts of terrorism seeking to undermine evolution and change through democratic means.[65]

The same report noted that the UN had not closed its doors to new states, but it added: "Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become more difficult to achieve."[66] The conclusion often drawn is that the answer to such fragmentation and its attendant violence lies in the observance of human rights and in effective protection for minorities, preferably enforced by international mechanisms. This would meet the legitimate demands of minorities and, it is hoped, enhance the stability of existing states. It may be too optimistic, however, to conclude that a regime of minority rights would provide a solution in all cases. Autonomy for some, or special privileges, may not be acceptable to the majority or be consistent with democratic principles. Deeply rooted mistrust and animosities may not yield to genuinely negotiated solutions. The result would be continued internal tensions, with an added international dimension that would spread conflict beyond the state's borders. In such cases, the prudential solution would be separation, with

protection for remaining minorities in each state. These considerations suggest the futility of seeking a single formula for all situations. Economic conditions, cultural factors, and security concerns vary from case to case. They need to be taken into account in seeking viable solutions.

This practical political approach seems to bypass the normative and legal effect of the right to self-determination. But ignoring that right may not be quite practical or wise in view of its recognition in law and its powerful appeal in actuality. Moreover, a regulative principle is important if the international community is to avoid the extreme fragmentation threatened by the potential demands of numerous ethnic, religious, and linguistic communities for international status.

At present, the international law of self-determination contains two major principles. One recognizes the human right of each people to self-determination—that is, to choose independence or autonomy.[67] It is similar to other human rights: an entitlement imposed on the territorial state. The second principle, asserted with equal force in UN declarations, affirms the territorial integrity of national states.[68] This principle may appear incompatible with the first, but they can be reconciled by considering the second as an affirmation of the basic prohibition against intervention and particularly against coercive intervention in support of separatist movements in other states. On this interpretation, the right of a people to self-determination is a human right, but foreign states may not forcibly intervene to support secession against the territorial sovereign.

However, these principles of self-determination do not provide a regulative norm to determine which peoples are entitled to self-determination. The extraordinary influx of new member states in the UN indicates that no general normative criterion has been applied and that the actual test is simply the new regime's effective control over territory. This offers little normative guidance and leaves the UN door open for any self-defined "nation" to claim sovereign rights based on the universal right of self-determination. At the same time, the spread of micronationalism has highlighted the danger of sovereignty "on demand." Very few states have ethnic homogeneity, and it has been estimated that at least 2,000 self-conscious ethnic communities exist. To recognize a right of secession by all such communities would be totally disruptive of peace and security.

The question then remains whether states can develop a consensus on standards for determining which people or communities are entitled to independence, allowing secession for peoples demanding such status. The following criteria find support in UN declarations and practice and in the views of scholars:[69]

1. The claimant community should have an identity distinct from the rest of the country and inhabit a region that largely supports separation.

2. The community has been subjected to a pattern of systematic political or economic discrimination.
3. The central regime has rejected reasonable proposals for autonomy and minority rights of the claimant community.

Other criteria have been proposed that are more controversial. One is that the secession would not be likely to result in armed conflict between the old and new states or generally threaten international peace more. The implications of a rule of this kind may be far-reaching. A second criterion that may find support is that the seceding areas should not have a disproportionate share of the country's wealth; but this, too, will be contentious.

The solution to the phenomenon we have called micronationalism is not likely to come quickly or to be neatly packaged as new law. It is, however, a problem that affects a great number of countries and it has a salient impact on the maintenance of peace and security. In one way or another, it will be high on the international agenda.

The Deeper Roots of Conflict

A discussion of threats to peace would not be complete without some reference to the underlying causes of violence and insecurity. This is a vast subject, extensively treated in scholarly literature. Official declarations and rhetoric in international bodies have abundantly declaimed that peace and security cannot be ensured in the absence of the following conditions: economic and social progress, observance of basic human rights, respect for international law, and, broadly, the attainment of the major purposes enshrined in the UN Charter. These generalities have been commonplace for some decades, but there is reason to believe that they have acquired a fresh urgency at present.

The marked increase in violence within national units and across borders is a key factor in the current concern with the sources of unrest. In many countries, there is a sense of crisis in governance and social cohesion. The gap between generations appears greater than ever, unsettling expectations of progress. These sociopsychological factors are seen by many as linked to economic distress and "the growing disparity of rich and poor."[70] The unchecked population growth in many countries, the spread of drugs, and the perception (and reality) of ecological damage are relatively recent phenomena that exacerbate social tension. Migration, whether by displaced persons, victims of persecution, or so-called economic refugees, appears to evoke increased hostility and often outright violence.

It is fair to say that these phenomena are indications of deeply rooted instabilities likely to produce conflict and disorder. Advances in technology may help in some respects (e.g., increasing material goods and human skills), but they also may have a destabilizing effect (e.g., increasing dangerous weaponry and the opportunity for terrorism and other lawless activity).

The range and enormity of these underlying causes of insecurity indicate how difficult it will be for the main structures of authority—states, substate groups, and international institutions—to provide adequate stability. The end of the Cold War has reduced some dangers, but subsequent events have highlighted new tensions and menaces to peace. We cannot expect that these problems will be solved by merely recognizing them and preaching cooperation. But it is at least a large step forward to see the necessity of international action and a greater collective responsibility. The sphere of state sovereignty might then be diminished, but we can expect that a more secure world will strengthen the social cohesion of communities and add the freedom of individuals.

Notes

1. See M. Wight, *Systems of States* (London: Leicester University Press, 1977), 132–136.
2. *Ibid.*, 135; quotation of Aquinas is from *Summa Theologia*.
3. G. Mattingly, *Renaissance Diplomacy* (Baltimore: Penguin Books, 1955), 75–76, 144–145.
4. C. De Visscher, *Theory and Reality in Public International Law*, 2d ed., Corbett translation (Princeton: Princeton University Press, 1968), 31–32.
5. UN General Assembly Resolution 46/182 (1991).
6. See F. H. Hinsley, *Sovereignty*, 2d ed. (Cambridge, Mass.: Cambridge University Press, 1986), 153–155.
7. Article 21(3) of the Universal Declaration of Human Rights, UN General Assembly Resolution 217 (III 1948).
8. For example, countries occupied or annexed in World War II were not extinguished as states though they were governed by the conquering power. See J. Crawford, "Criteria for Statehood in International Law," *British Yearbook of International Law* 48 (1976–1977), 173–176.
9. See A. Nussbaum, *A Concise History of the Law of Nations* (New York: Macmillan, 1947), 66–68, 104–105.
10. See T. Nardin, *Law, Morality and the Relations of States* (Princeton: Princeton University Press, 1983), 45–46, 60–61.
11. See H. Lauterpacht, *The Function of Law in the International Community* (Oxford: Oxford University Press, 1933), 422–423; and M. Virally, *Panorama du droit international contemporain recueil des cours* (Hague Academy of International Law), Tome 183 (Dordrecht, The Netherlands: Nijhoff, 1983), 77–79.
12. See De Visscher, *Theory and Reality in Law*, 104–105, quoting Judge Anzillotti, "To States, nothing is more repugnant than the idea of exercising a power conceded to them by the international order."
13. International judicial tribunals have tended to treat sovereignty as the basic regulative principle, holding that states are free to take any action not prohibited by positive international law. This is often referred to as the "Lotus Case principle" based on a judgment of the Permanent Court of International Justice in 1927 (PCIJ Ser. A. No. 10). The present International Court of Justice has also tended to the same doctrinal principle in several decisions. See, for example, "North Sea

Continental Shelf Cases," *ICJ Reports* (1969), 23. For criticism of this view, see Lauterpacht, *Function of Law*, 94–96.

14. Hinsley, *Sovereignty*, 204.

15. See O. Schachter, *International Law in Theory and Practice* (Boston: Martinus Nijhoff, 1991), 35–38, on the "inductive science of law."

16. R. Higgins, "Derogations Under Human Rights Treaties," *British Yearbook of International Law* 48 (1976–1977), 281, 296–297.

17. F. Teson, *Humanitarian Intervention* (Dobbs Ferry, N.Y.: Transnational Publishers, 1987), 130–137.

18. Schachter, *International Law*, 124–126; L. Henkin, "The Use of Force: Law and US Policy," in *Right v. Might*, 2d ed. (New York: Council on Foreign Relations, 1991), 37–42.

19. T. Farer, "An Inquiry into the Legitimacy of Humanitarian Intervention," in L. Damrosch and D. Scheffer, eds., *Law and Force in the New International Order* (Boulder: Westview Press, 1991); and D. Scheffer, "Towards a Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review* 12 (1992), 253–293.

20. Schachter, *International Law*, 397–400, 407–408.

21. Such decisions have been required when rival claimants to governmental authority present themselves as entitled to represent a member state. The General Assembly has generally acted in such cases through its credentials procedure. It also adopted a general resolution stating that such cases "should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case," UN General Assembly Resolution 396 (V), 1950.

22. Schachter, *International Law*, 300–325.

23. *Ibid.*, 362–388. See also O. Schachter, "The Emergence of International Environmental Law," *Journal of International Affairs* 44(a) (1991), 457–493.

24. See UN publication *The United Nations and Disarmament, 1945–1985*.

25. See F. Kratochwil, P. Rohrlich, and H. Mahajan, *Peace and Disputed Sovereignty* (Lanham: University Press of America, 1985), 3–23; and R. Lapidoth, "Sovereignty in Transition," *Journal of International Affairs* 45(2) (1992), 325–345.

26. See O. Schachter, *Sharing the World's Resources* (New York: Columbia University Press, 1977), 64–83.

27. G. Triggs, ed., *The Antarctic Treaty Regime* (Cambridge, Mass.: Cambridge University Press, 1987)

28. See Kratochwil et al., *Peace and Disputed Sovereignty*, 51–58.

29. Article 56 of the UN Convention on the Law of the Sea, 1982. See W. Riphagen, "Some Reflections on Functional Sovereignty," *Netherlands Yearbook of International Law* 6 (1975), 121–165. Although the Convention of 1982 is not yet in force, its provisions on the exclusive economic zones and on navigation are accepted as customary law binding on all states.

30. See H. Hannum, *Autonomy, Sovereignty and Self-Determination* (Philadelphia: University of Pennsylvania Press, 1990).

31. See Kratochwil et al., *Peace and Disputed Sovereignty*, 130–131.

32. See N. Padelford, *International Law and Diplomacy in the Spanish Civil Strife* (Princeton: Princeton University Press, 1939).

33. Alabama Claims Arbitration 1892. See J. G. Wetter, *The International Arbitral Process* 1 (Dobbs Ferry, N.Y.: Oceana Publishers, 1979), 27–57.

34. Case Concerning Military and Paramilitary Activities in and Against Nicaragua, Merits, *ICJ Reports* (1986), 14.

35. *Ibid.*

36. See T. Franck and N. Rodley, "After Bangladesh," *American Journal of International Law* 67 (1973), 275.

37. UN Security Council Resolution 688 (April 5, 1991). The resolution "insists" that Iraq allow immediate access by all humanitarian organizations to all those in need of assistance in all parts of Iraq.

38. See O. Schachter, "United Nations Law in the Gulf Conflict," *American Journal of International Law* 85 (1991), 452, 468–469.

39. See D. Scheffer, "Towards a Modern Doctrine," 274, n. 80.

40. See Weller, "The International Response to the Dissolution of Yugoslavia," *American Journal of International Law* 86 (1992), 569.

41. UN Security Council Resolution 282 (1970).

42. *The Economist* (March 12, 1988), 13.

43. C. G. Widstrand, ed., *African Boundary Problems* (Uppsala, Sweden: Institute of African Studies, 1969).

44. See Kratochwil et al., *Peace and Disputed Sovereignty*, 130.

45. F. Teson, book review, *American Journal of International Law* 81 (1987), 558–559. See also D. Kinney, *National Interest, National Honor: The Diplomacy of the Falklands Crisis* (New York: Praeger, 1989), 61–71.

46. See H. Young, *The Iron Lady: Margaret Thatcher* (New York: Noonday Press, 1989), 279–288, and M. Charlton, *The Little Platoon: Diplomacy and the Falkland Dispute* (New York, Oxford: B. Blackwell, 1989), 76–98.

47. See B. Davidson, *The Black Man's Burden: Africa and the Curse of the Nation State* (New York: Times Books, 1992).

48. See J. Starr, "Water Wars," *Foreign Policy* 82 (1991), 17–36.

49. *Ibid.*, 21. The Egyptian minister quoted is Boutros Boutros-Ghali, then Minister of State.

50. See n. 24.

51. Quoted in M. Howard, *The Lessons of History* (New Haven: Yale University Press, 1991), 166.

52. UN Security Council Resolution 687 (1991). The safeguards system of the International Atomic Energy Agency and the Nuclear Nonproliferation Treaty are the major international instruments for limiting the spread of nuclear weapons. An optimistic recent study is D. Fischer, *Stopping the Spread of Nuclear Weapons* (New York: Routledge Publishers, 1992).

53. Note by the President of the Security Council, UN document S/23500 (January 31, 1992).

54. See C. Greenwood, "International Law and the United States Air Operation Against Libya," *West Virginia Law Review* 89 (1986–1987), 911 et seq.; and A. Sofaer, "Terrorism and the Law," *Foreign Affairs* 69 (1986), 921.

55. UN Security Council Resolution 748 (1992) imposed mandatory trade and communication sanctions against Libya until Libya surrendered named individuals accused of bombing a civilian aircraft to concerned governments for prosecution and also committed itself to cease all forms of assistance to terrorist groups.

56. The UN General Assembly Declaration on Principles of International Law adopted unanimously in 1970 condemns intervention as illegal and, specifically, refers to subversive activities in that connection. General Assembly Resolution 2625 (XXV) (1970). See also n. 34, 107–108, 123–125.

57. *Ibid.*, 126–127.

58. See M. Bazyler, "Reexamining the Doctrine of Humanitarian Intervention," *Stanford Law Journal* 23 (Stanford: Stanford University Press, 1987).

59. Security Council Resolution 752 (1992).

60. See F. R. Teson, "The Kantian Theory of International Law," *Columbia Law Review* 92, no. 1 (1992), 74–81.

61. M. W. Doyle, "Liberalism and World Politics," *American Political Science Review* 80 (1986), 1151.

62. *Thucydides, Book VI* (The War in Sicily), par. 24 in M. I. Finley, *Greek Historians* (New York: Viking Portable, 1960), 311–312.

63. UN Secretary-General report, "An Agenda for Peace," UN document A/47/277, S/24111, par. 59 (June 17, 1992).

64. Howard, *Lessons of History*, 170.

65. "An Agenda for Peace," par. 11.

66. *Ibid.*, par. 17.

67. The UN Declaration on Principles of International Law General Assembly Resolution 2625 (XXV) (1970) expressly declares, "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

68. The UN Declaration (see n. 67) also includes the following paragraph, "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country."

69. For a helpful discussion of normative criteria for entitlement to secession, see A. Heraclides, "Secession, Self-Determination and Nonintervention," *Journal of International Affairs* 45, no. 2 (Winter 1992), 399–420. For more extensive analysis, see A. Buchanan, *Secession* (Boulder: Westview Press, 1991); and L. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press, 1978).

70. See "An Agenda for Peace," par. 13.