The International Community and Limitations of Sovereignty

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Public international law is entirely a product of consensualism. The State, which is both the legislator and subject of the world juridical order, only agrees to comply with exterior norms to the extent that it approves of their content. Any treaty, in its contractual nature; any custom, in its consensual nature; any decision of an international organization, in its ability to be enforced, expresses the agreement of the concerned States, whether on a case by case or global basis. National sovereignty is in this way safeguarded. Nothing can be imposed on those who govern without their consent. Indeed, until the middle of the twentieth century, States had succeeded in juridically protecting their free will; or more precisely, their free willfulness. International law required no behavioral norms, and no obligation of tolerance, in regard to a State's own nationals.

The shock of World War II, the trauma inflicted by Nazi atrocities, and the progress of democratic ideals were instrumental in the adoption of the first set of international judicial principles aimed at limiting the prerogatives of national sovereignty. The international community won the right to intervene in the internal affairs of a State when the aim was disinterested. The defense of human rights inspired increasing efforts by diplomats and non-governmental organizations to bring an end to all forms of intolerable behavior. To this day, however, most of these efforts remain verbal. An embattled State must account for its actions, must allow inspections, must on occasion suffer condemnation and punishment. Yet this last is usually of a rather gentle nature. Punishment is either political, as in the case of the United Nations, or judicial, notably by the Council of Europe or the Organization of

American States. These sentences are rarely accompanied by an instrument for their forced implementation. Moreover, the few cases of economic embargo have proven to be both ineffective and controversial. Nevertheless, intolerance has come up against a dogged foe: the international community now possesses a universal conscience. It opposes oppression and tyranny everywhere. However, because lacking a permanent public force to guarantee that its decisions be carried out, the international community has not managed to stamp out all manifestations of injustice. Still, its constant pressure is gradually breaking down the fortress of national sovereignty.

A second set of principles has been produced as a result of the activities of humanitarian organizations. Their actions "without borders" bring them face to face with human suffering. These organizations, physically present on the territory of a State – with or without its knowledge, sometimes with its tacit approval but rarely with its formal authorization – break established rules and work without juridical constraints. Their intervention, which is sometimes illegal, is nevertheless legitimate. The justice of their cause reveals and underscores the gap between law and morality. The indignation felt by many is caused by the fact that the former always lags behind the latter. Work has been done to reduce this troubling gap, although much remains to be done. The right to intervene in order to lend material support to those in danger is in its infancy. It has been called the "right of humanitarian intervention."[1] Such intervention irritates and it bothers – especially the dictators. However, lacking a permanent military force, the international community finds it difficult to decide on what course of action to take when it determines – in the face of intolerance and the intolerable – that it must do something to overcome the obstacles preventing help from reaching the victims of an intolerable situation.

The Development of Non-Material Limitations on Sovereignty

For a long time international law regarded the nationals of a sovereign State to be that State's goods. In a sense, its property. The

state had exclusive jurisdiction and free reign over its nationals. A telling example of this principle is contained in the story of Bernheim. In 1933 this German Jew went to the League of Nations, seeking condemnation of Nazi crimes committed against his people. However, convinced by the arguments of the German representative, this Genevan body turned down his request. Here's what this representative said: "Ladies and gentlemen, a man's home is his castle. We are a sovereign State: nothing that this individual has said concerns you. We will do what we want with our Socialists, our pacifists, our Jews; we will not accept the control of either humanity or the League of Nations."[2] The man who expressed this opinion went by the name of Joseph Goebbels ... and his logic was in harmony with the international law of the period. It was Bernheim who was in conflict with reigning principals and beliefs. His suit was dismissed. There was no limitation in law to absolute sovereignty. Nor to intolerance. The path was clear for Hitler.

The cowardice of the League of Nations and its member states was concealed behind the façade provided by the principle of non-interference, resolutely upheld by fundamentalist jurists. René Cassin, who was not of their number, made mention of this sinister episode in a speech he gave to the General Assembly of the United Nations in Paris in December 1948, the subject of which was to vote the Universal Declaration of Human Rights: "Thus the first great crime went unpunished; this crime against German human rights became a crime against the human rights of peoples of all nations, and soon after that the supreme crime, universal war, was committed." In a famous article written for *Nouveaux Cahiers*, and published in April 1940, Cassin explained that the Covenant of the League of Nations "did not dare to challenge directly the principal of national sovereignty: two direct consequences of this decision are the rights to war and neutrality ."[3] By defending the principal of sovereignty, the Leviathan states lend mutual support to one another in the battle against what Hitler, in *Mein Kamf*, called "the subversive power" of individual criticism. Sovereignty thus serves as a mutual guarantee for the torturers.

The victory of the allies was expected to bring about a decisive change in the concept of sovereignty as well as the creation of an

organization capable of defending human rights. The occasion of the drafting of the United Nations' charter added to that hope. However, it proved to be another lost opportunity. The San Francisco text makes only brief mention of the idea of basic rights. It says that these rights should be "promoted," "developed," "encouraged" and "fostered": a rather feeble resolve in the face of the Holocaust. There was nothing obligatory here, nothing compulsory, nothing authorizing an outside authority to investigate incipient, existent, or flourishing barbarism. Nor was there a mechanism by which mass cruelty, brutality, or sheer horror could be immediately stopped. From Yalta to San Francisco, it was but the sovereigns themselves who gathered. Could they have been expected to organize anything other than a mechanism for guaranteeing their mutual security? As Professor Jean Combacau wrote, "I am in my own house, they belong to me."[4]

Following the second world war, the international community adopted the principle of defending human being *as* human beings. It did so by addressing them not as members of a group or citizens of a State but as individuals. It was believed that one way of averting the resurgence of Nazi-like atrocities was to have the world's most representative body proclaim certain basic, universally valid norms: this organization was the General Assembly of the United Nations. Gradually, under the leadership of intellectuals and the pressure of public opinion, individual States agreed to acknowledge the right of the international community to monitor the living conditions of the world's citizens; next came a ban on certain kinds of behavior incompatible with a few basic democratic principles. Still later the member states agreed to prohibit the subjugation of entire peoples to colonial rule and to promote the liberation of States still subject to it. Henceforth, sovereignty was to be exercised within the framework of international law, the role of which was to limit the arbitrary exercise of power. The idea of democratic intervention – which is a consequence of the universality of human rights – both authorized the international community to demand that governments they justify their treatment of their citizens and allowed for the collection of information in this regard.

One needs only to observe the proceedings at the United Nations to realize that the claim of sovereignty no longer permits govern-

ments to do whatever they want without having to answer – at least politically or diplomatically – for their actions. Each autumn, entire sessions of the Third Commission of the General Assembly are taken up with discussions of basic freedoms. The Commission on Human Rights devotes long hours to this subject too. And so does the Subcommision on Minorities. While public opinion may not be much informed on the nature of the discussions that go on here, international institutions react to the demands of governments and non-governmental agencies. Although this kind of intervention is political, ethical, and verbal rather than material in nature, it nevertheless provides a solid base of support for opposition and dissident figures. Its focus is more on the ethical than judicial plane.

Universality and Ethical Limitations on Sovereignty

In trying to overcome the obstacle of sovereignty, the international community began by making moral and political pronouncements aimed at disconnecting, at least in part, the individual from the State of which he or she was a national. The goal, however, was not to strip the individual of his or her nationality. Nationality was ascribed as a human right and the powers of those who govern were accepted as an indispensable element in social organization. The aim was rather to establish the individual as an object of law, existing in part outside the control of the State; in a sense, to internationalize the individual in order to legitimate the right of other States to act in the individual's best interest. "They are mine," says the state: "They are also ours," says the United Nations, as part of humanity's common patrimony.

This *universality* of human values demands that each individual feel compelled to protect those values, even when the threat to them occurs beyond one's own national borders. This is the foundation of René Cassin's Universal Declaration of Human Rights, which he co-authored with Eleanor Roosevelt. Here, for the first time, the principle of non-interference was called into question in the name of another, still more fundamental axiom: the individual's belonging to the human race or the transnational identity of the human person. According to Cassin, the characteristic "universal," which the Declaration substituted for "international" on 10 December 1948, was necessary in order "to protect people

everywhere, of all faiths and viewpoints, without regard to the nature of the State or the other human groups amongst whom they live."[5] He also insisted that there should be no distinction between citizens of one's own country and foreigners: "We are not afraid to assert that there exists territorial universality. France, when it worked on the Universal Declaration, never thought for a moment that these basic rights could be denied to any human beings, no matter where they lived, and especially not to people living in countries without self-government."[6] Addressing these people directly, he said: "Before your countries are allowed admission to the United Nations, you too should enjoy fundamental liberties and rights. Our work was not for ourselves alone: we have fought for all humanity."

At the same, in the convention adopted the day before the Universal Declaration itself, genocide was declared a "crime against human rights, whether committed in time of peace or war. It is a crime against humanity. The individual nations are committed to its prevention and elimination."[7] Anxious to underscore even more strongly the ecumenicalism of his text, René Cassin addressed the world's leaders at the Sorbonne, in February 1949, in the following terms: "It is up to us," he said, "to see to it that the Universal Declaration of Human Rights becomes the Universal Declaration of the citizens of the world."[8] The international community thus laid the groundwork for an ethical limitation on sovereignty: a common conception of the individual and of his or her basic rights. The successes of decolonization, the victories of democracy, and the fall of the Berlin Wall seemed to make progress inevitable. However, our facile hopes in this regard were soon dashed.

Has the principle of the *universality* of human rights been definitively accepted in the international arena? If the arguments heard in the General Assembly of the United Nations in 1994 over the death penalty are any indication, then the signs are not good. The question, which was raised at the request of the Italian parliament, was a source of embarrassment for more than one United Nations' delegation. The abolitionists [9] found themselves opposed by many countries – notably the Islamic nations – asserting that the United Nations had no legitimate right to take up the matter: the death penalty was a matter of divine law and could be neither

debated nor challenged. Obviously, the proponents of this position advanced notions of sovereignty and cultural specificity in order to reject the Italian proposal. Singapore, which has become the spearhead for the rejection of universalistic notions, declared itself "unalterably opposed to countries which try to impose their views on other member states of the United Nations. In some of the world's countries capital punishment is a necessary ingredient for the maintenance of public order. This question can not be decided on the basis of consensus."[10] Mr. Chew Tai Soo added: "the particular situation of each country must be taken into account and the right of each country to promulgate its own laws respected. In Singapore, for instance, it is thanks to the death penalty that the general interests of society itself are protected." As for Malaysia, it rejected the abolitionist position on the death penalty because "it attempts to impose values that not all consider universal, without considering the efforts made by those States that have the courage to protect their societies."[11] Thus national sovereignty has many happy days ahead of it.

Samuel Huntington, a professor at Harvard University, has pointed to the clash of civilizations within the international arena.[12] He emphasizes that concepts such as individualism, liberalism, constitutionalism, human rights, equality, liberty, the rule of law, democracy, and separation of church and state carry very little weight in Islamic, Confucian, Hindu, Buddhist, and Orthodox cultures. "The attempts to transmit these kinds of ideas provoke a counter-reaction against what is perceived as 'the imperialism of human rights' which they resist by a reaffirmation of indigenous values."[13] He believes that the notion of "universal civilization" is a Western idea, completely foreign to the particularism of the majority of Asian societies.

The reason that these claims have been called the "Singapore" solution is, as is well known, related to the practices of Singapore's leaders, especially its former Prime Minister, Lee Kwan Yew, and to the arguments advanced by two high-ranking officials in the Ministry of Foreign Affairs, Kishor Mahbubani and B. Kausikan.[14] In order to re-legitimate the idea of unlimited sovereignty, they counter the United Nations' universalistic claims with three arguments. Their first is that, for Asia and generally for the

countries of the South, democracy follows economic development. This latter thus has priority, requiring a transitional period characterized by a strong government. Their emphasis on economic development makes efficiency in this area – not the promotion of democratic values – the standard by which a government is judged. Finally, by trying impose the Western concept of democracy on the countries of southern Asia, the West alienates them and behaves like "human rights' imperialists."

Does this mean that these countries acknowledge no norms? Do they deny universal validity to all of the basic principles affirmed in the Universal Declaration of Human Rights of 1948, or in subsequent international agreements on human rights (such as the accords of 1966)? The answer to these questions must be nuanced. The aim of the Singapore School is less to reject these principles altogether than to reduce the number of those considered sacrosanct. The Singaporians assert that the core of authentically universal human rights is considerably smaller than the Westerners claim. Although they accept the international consensus in regard to the prohibition of genocide, torture, and political assassinations, they do not go much beyond that. Kausikan writes: "The Universal Declaration of Human Rights is not the ten commandments that Moses brought down from the mountain: it was created by mortal men. International norms must be developed bearing in mind that they are conceived differently throughout the world." The Malaysian Prime Minster, Datuk Mahathir, an ideological, political, and geographical neighbor of Kausikan, declared in 1994: "We value our independence very much. We do not want to be dictated to as to how we should interpret various values in this country, including, of course, human rights and democracy."[15]

Normative Limitations and the Right to Monitor

"In any case, humanity's right to monitor relations between the State and individual must be affirmed." These were René Cassin's words as published in the *Journal de Genève* on 10 December, 1947. And premonitory they were, spoken exactly a year to the day before the adoption of the Universal Declaration of Human Rights.

Originally, state sovereignty had been limited by the concept of natural law. The word sovereignty, in its usual acceptation, was

defined as 'supreme authority.' Jean Bodin speaks of "*summa potestas*."[16] This expands the powers of the State on two levels. First, internally, it expresses the state's authority over its territory and its absolute dominion over its nationals. For Bodin, sovereignty is the highest degree of power. Externally, it implies the absence of any kind of subordination to, or dependence on, foreign states. In law, all states are equal and sovereign, which makes possible the most perfect manifestation of the independence of each state: in the absence of all outside interference, a state is free to constitute itself as it wishes. As the Vienna School of jurists has shown, inherent in this very idea of the state is a conception of sovereignty that tends to provide the state with the capacity to exercise unlimited authority in all areas of human activity.

Is this supreme and unconditional power unlimited? The founder of the theory of sovereignty himself admits that the sovereign authority is limited by the natural law that governs the community of nations. His immediate successors approached the possibility of limiting this power in two distinct ways: either by subordination to a norm outside the State, the authority of which is recognized as superior; or by a voluntarily accepted self-limitation. Contemporary thinking on the subject, which authorizes exterior intervention in defense of the individual, is to some extent rooted in one or the other of these two restrictions. Jean Bodin emphasizes that supreme power is subordinate to divine law, human rights and fundamentals laws. As for the theologians, such as Vitoria: while asserting that sovereign power "is subordinate to no power of the same order and substance,"[17] they at the same time formulate a doctrine compatible with the coexistence of other States and with their own conception of a universal community of States subordinate to law. For his part, Grotius believed that the nature of supreme power was such that its "acts are independent of any other higher power and can therefore be overruled by no human authority."[18] But he later specifies that sovereignty is no less so sovereign when it conforms to "natural and divine law, and even to the idea of the rights of people, to which all the Princes are indebted."[19]

Following this era, with the appearance of the modern State, a host of new theories were proposed to justify the subordination of sovereignty to international law. The German Jellinek saw it as an

example of "self-limitation by the State," a voluntary reduction of the extent of its power in relation to other States or to its own citizens. A kind of partial hari-kari or self-amputation of the characteristics of the state or of its sovereign powers.

For the Austrian Kelsen, state sovereignty is limited to the cluster of powers granted it by its own domestic and the international legal orders. These powers are part of a pyramidal system of rules in which each norm derives its legitimacy from its subordination to the next higher one: at the summit of this structure is the fundamental norm. Kelsen's disciples at the normativist school of Vienna, in particular Verdross, made it clear that, because international norms are hierarchically superior to internal ones, only the subordination of the latter to the former guarantees the legitimacy of a state's power. In short, internal sovereignty is subordinate to international law. Moreover, the internal sovereign cannot act arbitrarily since it is obliged to respect this higher norm. Finally, the Frenchman Georges Scelle, who considered human rights to be in the first instance individual rights, asserts that sovereignty does not exist in society since power is always limited by the resistance of the social body. Only law can force its will on all members of society, "only Law is sovereign."[20]

Sovereignty was next limited by the concept of human rights. The international community adopted a series of juridical texts in which various inventories of basic rights of the human person were catalogued. The most important of these texts, in an international sense, were the following: the accord of 9 December, 1948 on the prevention and elimination of the crime of genocide; the Universal Declaration of Human Rights of 10 December 1948; the international accords on human rights of 16 December 1966; the agreements outlawing torture of 1984; and the accords on children's rights of 1989. Among the regional agreements the most important are: the European Assembly of 4 November 1950; the Interamerican pact of 27 November 1969; the Helsinki accord of 1975; the African Charter of Human and Peoples' Rights of 1981; and the Universal Islamic Declaration of Human Rights of 1981.

Common to all these texts is a concept of the human individual, and his or her rights and security, outside of any subordinate relation to a State; the aim of all these various texts is to protect

human beings as such. This is the same principle on which human rights' organizations, such as Amnesty International and Human Rights Watch, have developed their strategies of non-material intervention in support of all prisoners of conscience who have neither used nor advocated the use of violence; in support of fair and speedy trials for political prisoners; in support of the abolition of the death penalty, torture and all other forms of inhuman treatment; and in support of the abolition of all extra-judicial executions and forced disappearances.

Using these juridical texts, the Assembly General of the United Nations, as well as its Commission on Human Rights and the Subcommission on Minorities, have launched investigations into various Communist and Fascist dictatorships. Their discussions, and the pressures subsequently applied to these regimes, have played an important role in promoting the return toward – and in some cases, complete embrace of – democracy and tolerance.

By granting the world legal system the right to monitor and intervene, the international community has made it possible to carry out protective and inspectional interventions without – as was the case in the past – treating them as infractions of international law. Based on human rights' treaties, sovereignty is henceforth limited by the rights of other subjects of law: foreign States to begin with, followed by international organizations and individuals. Michel Virally has observed: "the wall of State separating domestic from international law, and internal affairs from international relations, has been breached. International law now reaches to the very heart of the sanctuary of sovereignty; to the relations between the State and its nationals, and, more generally, to the apparatus of the State and the general population."[21]

Effective protection of basic human rights requires specific mechanisms. As of now, other states may use the traditional means of diplomatic pressure, such as political and economic sanctions (the refusal or suspension of a nation's right to participate in an international organization, and embargoes and boycotts) to ensure the respect of individual rights. In 1970, the International Court of Justice found that the prohibition of genocide, as well as the laws concerning human rights, are *erga omnes* [22] obligations, and that the protection of these rights "are the concern of all States."[23] Several

other texts, anticipating the possibility of requests between states, created judicial mechanisms to make legal intervention possible in the affairs of states. That same year, the Economic and Social Council of the United Nations, in a now famous resolution (number 1503), granted to the United Nations the right to investigate individual complaints. The agreements of 1966, and the first voluntary protocol annexed to them, which concerned civil and political rights, required the ratifying states periodically to submit reports on the protection of human rights in their respective countries and to answer questions relative to complaints made by individuals or non-governmental organizations. The United Nations' convention against torture, adopted in 1984, created a similar committee, empowered to carry out on-site investigations.

Regional mechanisms also exist, permitting individuals who have been victims of human rights' violations to turn for assistance to supranational authorities, notably The European Court and the Interamerican Court of Human Rights. The European Convention on the Prevention of Torture, adopted in 1987, created a committee to which it granted a general and almost unlimited right to carry out on-site investigations into human rights' violations among its member states (article 2).

Having seen of some of its domestic prerogatives limited by international law in the name of the universality of the human person, national sovereignty has also been subject to external intervention in the name of the ties that henceforth link democracy and law to life, human rights, and peace-keeping. Sovereignty is now subject to material limitations that can include the use of force.

The Emergence of Material Limitations on Sovereignty

Often, and even frequently in our own day, the international community, using the principle of non-interference in the internal affairs of a foreign state as its justification, failed to come to the aid of endangered individuals. Instead it was satisfied with simple verbal condemnation of a country's massive human rights' violations.

It is true that international and domestic law fundamentally differ on this matter. For example, the French penal code has for a long time contained articles punishing individuals who do not come to the aid of a person unable to protect him or herself. *A contrario*, this obligation of solidarity is deduced by the responsibility of each individual to come to the aid of anyone nearby. It is sanctioned by article 223-226 of the French penal code, which states: "Whoever could have prevented, by his immediate action, and without danger to him or herself or a third party, the commission of a crime or an attack against the physical integrity of a person, but voluntarily decides not to do so, is subject to a penalty of five years in prison and a fine of 5,000 francs. Equally punishable by the same penalties is the action of an individual who voluntarily refuses to come to the assistance of a person in danger, and who could have, without danger to him or herself or a third party, have personally, or by calling for help, come to the endangered person's assistance." The courts clearly defined the constituent elements of this obligation of assistance. There was nothing similar to it in international law. It thus made sense to fill this gap.

Humanitarian organizations had shown the way with their "borderless" approach. It was now necessary to legalize their practice. It also made sense to assure effective support and protection for individual victims of intolerance: this required allowing the use of force, although only when necessary and under strictly defined circumstances.

Limiting Sovereignty by Permitting Free Access to Victims

The adoption, at France's urging, of resolution 43/131 by the General Assembly of the United Nations marked a new stage in the challenge to absolutism. The measure can be summarized in the following terms: in cases of catastrophe the necessity of rapid response mandates *free access to victims*, particularly by international humanitarian organizations.

Free access requires neither abdication nor alteration of the principle of sovereignty, only a simple modification of the way it operates. This is why the right to free access is radically different from all forms of imperialism, even the most innocuous. Not only the purpose of the intervention, but its geographical range and time frame, must be strictly limited and clearly defined. In most

cases, the primary aim is to be able to create – in emergency situations – a kind of umbilical cord, like the highway that linked West Berlin to West Germany before the demise of the wall.

It was this goal that suggested to France the idea of applying a generally accepted category of marine law to the kinds of problems faced by groups seeking free access to victims of catastrophes. Thus, according to international law, the State has complete sovereignty not only over its air space but its territorial waters, to the bottom of the sea. This ancient rule of the sea was codified by the United Nations' convention on maritime law, which was adopted in 1982. Article 17 of this convention asserts that ships of all States, that is to say foreign ships, have the *right to make inoffensive passage* over the waters of another nation. This passage must be rapid and continuous. However, the right to stop and drop anchor is guaranteed "in the event of forces beyond the ship's control or in the case of distress, or when aid is being brought to persons, ships, or aircraft in danger or distress."[24]

The General assembly adopted the French initiative on 14 December 1990. This is resolution number 45/100. As described in the United Nations' Secretary General's report of October 1990, it calls for the establishment of humanitarian corridors, through which assistance could be brought.[25] The part that describes these humanitarian corridors largely echoes the French proposals regarding the establishment of the right of free passage through buffer zones. These kinds of zones have been put in place in the ex-Yugoslavia, Sudan, northern Iraq and Rwanda ... However, armed factions – composed of regular or irregular troops – have in some cases shut them down. It is in these cases that the question of whether or not the international community should resort to – or authorize – the use of force to re-open these corridors or directly bring assistance to the victims has been posed.

Limiting Sovereignty by the Use of International Force

This limitation is obviously the one that the authorities concerned have the most difficulty in accepting. Indeed, except in cases of legitimate self-defense, it has for a long time been in dispute. The Security Council's legal foundation for authorizing this kind of intervention merits some attention.

Since the fall of the Berlin Wall the majority of conflicts with which the Security Council has had to deal concern internal conflicts and civil wars. However, the United Nations' Charter explicitly prohibits the organization from intervening in internal affairs that "essentially relate to the national authority of a State" (article 2 \7). It was therefore necessary to find a way around this constitutional obstacle. And a way was found. Since 1991 the Security Council has on three occasions directly carried out – or authorized – intervention in the internal affairs of a state.

The first step in this process was the decision that certain particularly grave humanitarian situations justified the use of peacekeeping forces (the blue helmets) to insure the delivery of aid. The Security Council made this decision using a certain amount of juridical improvisation. Indeed the member states justified themselves less by attributing to the Security Council formal authority in this matter than by referring to the unanimity of its members (permanent or non-permanent) in regard to the interpretation of the law. As is known, the novelty of their approach consisted in asserting that violations of human rights constitute a threat to peace. By so doing, the Security Council could justify armed intervention on the basis of Chapter VII of the United Nations' Charter. Thus, on 5 April 1991, in regard to the vote on resolution 688 dealing with the Kurdish question, Turkey made it clear that it had called for a meeting of the Security Council "because of the grave threats to regional peace and security represented by the tragic events in Iraq."[26] It should be noted that Turkey, although directly affected by the influx of refugees onto its territory, did not call for the Council's action simply because its territorial borders had been crossed by the Kurds; instead Turkey argued that the Council was justified in acting by Iraq's *internal repression*, which *in itself* constituted a threat to peace.[27] This was exactly the Council's argument. In 1993, in the face of massive human suffering in Bosnia, the Council used similar logic to authorize, by resolution 770, the use of *all necessary means* to insure the delivery of humanitarian aid to Bosnia, which implicitly presupposed the use of military might if circumstances required it. Venezuela observed at the time: "This is the first time that the Security Council has made a decision of this kind in order to insure the delivery of humanitar-

ian aid to a country." With resolution 776, it extended this protection to convoys of freed detainees.

The next step was the Council's decision to authorize the use of force in the case of civil wars: here the aim was to organize *operations for the imposition of peace*. After the failure of the UNOSOM I operation in Somalia, a second resolution (number 814), called UNOSOM II, was adopted on 26 March 1993, authorizing the use of force on the basis of Chapter VII of the Charter of the United Nations. The resolution called for the disarming of the Somalian militias. Force was used on several occasions; in particular in response to the attack of 5 June 1993, in which twenty-five soldiers were killed. Air and land operations were carried out. Arms' depots were destroyed between June 12 and 14. Thanks to a second wave of operations, carried out between June 17 and 25, many of the militias' installations and caches of heavy arms were destroyed. On 4 February 1994, the Security Council expanded the mandate of the UNOSOM II forces, calling on them to "protect the essential infrastructure, the principal ports and airports, as well as guarantee that crucial transportation links remain open for the safe delivery of humanitarian aid and reconstruction assistance." The resulting improvement in the security situation permitted humanitarian organizations to work once more under favorable conditions. The most important result of this activity was the elimination of famine.[28] Of course it is true that the withdrawal of the UNOSOM II forces allowed the warlords to reassert themselves: everyone agrees that the operation was a political failure. However, it was a humanitarian success. The members of the Security Council recognized this almost unanimously on 4 November 1994. Its balance sheet was quite different than the one drawn up by the media and opinion makers. Here are a few, randomly chosen, statements made by various delegations: "Although the intervention of non-governmental agencies, humanitarian organizations, and the UNOSOM forces was belated, it succeeded, in spite of extremely difficult conditions, in containing and ultimately reducing, in large measure, this humanitarian disaster" (Kenya). "The humanitarian objective was fundamentally accomplished. Somalia is no longer threatened with famine. Death by starvation no longer threatens an entire people" (New Zealand).

"All information coming out of Somalia is agreed on one point: the humanitarian situation is quite satisfactory" (Djibouti). "The United Nations did not fail in its task in Somalia" (Nigeria). "The humanitarian success of UNOSOM cannot be discounted" (Pakistan). "The worst aspects of Somalia's humanitarian crisis have been overcome" (Argentina).[29] This coincidence of views contrasts sharply with popular opinion on the subject.[30]

Finally, the United Nations' has authorized certain member states to use force when the scope of a civil war goes beyond the military means at the U.N.'s disposal. In such cases, the UN, so to speak, subcontracts the armed intervention to those governments willing to carry it out. The 1991 operation *Provide Comfort* in Kurdistan, which the U.N. simply tolerated, nevertheless put an end to the exodus of the civilian population and made it possible to protect then. The operation *Restore Hope*, carried out in Somalia in 1992 and 1993, drew forces from nineteen different nations before being taken over by the U.N., under UNOSOM II. Operation *Turquoise* in Rwanda in 1994 put an end to a genocidal war. Operation *Support Democracy* in Haiti in 1994 succeeded in overturning a military dictatorship and restoring the legitimately elected government to power.

To date, the Security Council's authorization of armed intervention has only occurred on the territories of states in the midst of civil war. In each case, the international community granted itself the right to limit a State's sovereignty in the name of the defense of fundamental values: the right to deliver humanitarian aid, the defense of human rights, and the re-establishment of democracy. This constitutes undeniable progress. However, at the same time, the Security Council has remained passive or timid in the face of other human rights' disasters: for example, in Chechnya and Burundi ... Sovereignty is still limited selectively; and the great powers, armed with their veto, are not prepared to apply these limitations to their client states. Additionally, the previous operations have been extremely expensive. Not all the bills have been paid. The financial crisis at the United Nation is cause for concern. History will judge its extent.

Notes

1. See M. Bettati, *Le Droit d'ingérence, mutation de l'ordre international*, Paris, 1996.
2. R. Cassin, "Comment protéger les droits de l'homme," delivered on 13 February 1970 and quoted in: M. Agi, *De l'Idée d'universalité comme fondatrice du concept des droits de l'homme d'après la vie et l'oeuvre de René Cassin*, Antibes, 1980, p. 354.
3. Repr. in: *La Pensée et l'action*, Paris, 1972, pp. 63-71.
4. J. Combacau, "Souveraineté et non-ingérence," in: M. Bettati, B. Kouchner et al., *Le Devoir d'ingérence*, Paris, 1987, pp. 230-1.
5. In: *Cahiers de l'Alliance Israélite Universelle*, 120 (1958), p. 97.
6. See Assemblée générale, Documents officiels, troisième session, 9 décembre 1948, première partie.
7. See Article 1 of the Convention for the prevention of genocide, adopted by the General Assembly of the U.N. in Paris on 9 December 1948.
8. R. Cassin (note 2 above), p. 217.
9. The signatories of the letter demanding that the question be put on the agenda of the Third Commission of the General Assembly were: Andorra, Austria, Bolivia, Cape Verdian Islands, Cambodia, Costa Rica, Croatia, Cyprus, Dominican Republic, Equador, Gambia, Greece, Guinea-Bissau, Haiti, Honduras, Italy, Malta, Marshall Islands, Mexico, Micronesia, Monaco, Namibia, Nicaragua, Norway, Panama, Paraguay, Portugal, Romania, Saint-Marin, Salomon Islands, Sweden, Uruguay, Vanuatu, and Venezuela.
10. United Nations, Press Release AG/SHC/149, 16 November 1994, p. 13.
11. Ibid., p. 14.
12. S. P. Huntington, "The Clash of Civilizations?" in: *Foreign Affairs*, Fall 1993, pp. 22-49. Other European authors have written in the same vein, see R.-J. Dupuy, "Les Ambiguitiés de l'universalisme," in: *Mélanges Virally*, Paris, 1991, pp. 273-79; L.C. green, "Universality and Modern International Law," in: I. Taberner and M. J. Pelaez (eds.), *Ciencia Politica comparada y derecho y economia en las relaciones internacionales estudios en homenaje a Ferran Valls*, Vol. XXII, Barcelona, 1993, pp. 6763-91.
13. S. P. Huntington (note 12 above), pp. 40-1. On the overall problem of the universality of human rights see C. M. Cerna, "Universality of Human Rights in Different Socio-Cultural Contexts," in: *Human Rights Quarterly*, Vol. 16, No. 4 (November 1994), pp. 740-53; C. Makhlouf Obermeyer, "A Cross-Cultural Perspective on Reproductive Rights," in: Ibid., Vol. 17, No. 3 (May 1995), pp. 366-82; J. M. Peek, "Buddhism, Human Rights and the Japanese State," in: Ibid., Vol. 17, No. 4 (November 1995), pp. 527-41; H. Bielefeldt, "Muslim Voices in the Human Rights Debate," in: Ibid., pp. 587-617.
14. K. Mahbubani, "The Dangers of Decadence. What the Rest Can Teach the West," in: *Foreign Affairs*, September/October 1993, p. 10; B. Kausikan, "Asia's Different Standard," in: *Foreign Policy*, 92 (1993), pp. 24-31.
15. Quoted in: *Far Eastern Economic Review*, 7 April 1994.
16. J. Bodin, *Les Six Livres de la République* (1583). See also the essay by G. Mairet in: F. Chatelet, O. Duhamel and E. Pisier (eds.), *Dictionnaire des oeuvres politiques*, Paris, 1986.
17. Quoted by A. Truyol Serra, "Souveraineté," in: *Vocabulaire fondamental du droit* (Archives de philosophie du droit), Vol. 35, Paris, 1990, p. 317.

18. H. Grotius, *Le Droit de la guerre et de la paix*, Amsterdam 1729, Vol. I, p. 150.
19. Ibid., p. 178.
20. G. Scelle, *Précis de droit des gens*, Paris, 1932, p. 12.
21. M. Virally, "Panorama du droit international contemporain. Cours général de droit international public, in: *Recueil des Cours de l'Académie de droit international de la Haye*, Vol. V, The Hague, 1983, p. 124; A. Cassese, "La Valeur actuelle des droits de l'homme," in: *Mélanges René-Jean Dupuy. Humanité et droit international*, Paris 1991, pp. 65-75; G. Cohen-Jonathan, "Responsibilité pour atteinte aux droits de l'homme," in: Société française pour le droit international (colloque du Mans), *La Responsabilité dans le système international*, Paris, pp. 101-35; idem, "La Protection internationale des droits de l'homme dans le cadre des organisations régionales," in: *La Documentation française. Documents d'études. Droit International Public*, No. 3.05 (July 1989); idem, "La Protection internationale des droits de l'homme dans le cadre des organisations universelles," in: Ibid., No. 3.06 (April 1990); idem, *La Convention européenne des droits de l'homme*, Paris-Aix-Marseille, 1989; P.-M. Dupuy, "L'Individu et le droit internationale," in: *Archives de philosophie de droit. Droit international*, 32 (1987), pp. 119-33; B. Mangan, "Protecting Human Rights in National Emergencies. Shortcomings in the European System and Proposal for Reform," in: *Human Rights Quarterly*, Vol. 10, No. 3 (1988), pp. 372-94; Th. Meron, *Human Rights in International Strife. Their International Protection*, Cambridge, 1987; B.G. Ramcharan, "Strategies for the International Protection of Human Rights in the 1990s," in: *Human Rights Quarterly*, Vol. 13, No. 2 (May 1991), pp. 155-69; M. Reisman, "Sovereignty and Human Rights in Contemporary International Law," in: *American Journal of International Law*, Vol. 84, No. 3 (July 1990), pp. 866-76.
22. Latin expression meaning "with regard to all." In international law it refers to the absolute opposability of a rule, even with regard to third states.
23. Cours international de justice, *Recueil des Arrêts*, 1970, p. 32.
24. Article 18.
25. Official Documents of the U.N. General Assembly, 45th Session, A/45/587, 27 October 1990, Paragraph 26.
26. Minutes of the U.N. Security Council, 2982nd Session (1991), pp. 3-5.
27. Curiously, no-one was alarmed about the threat to peace posed by the Turkish army when - four years later - it moved across the border to crack down on the PKK in Kurdistan.
28. See the Report by the Secretary General, 17 August 1993 (S/26317), Paragraph 45.
29. Minutes of the U.N. Security Council, 3447th Session (4 November 1994), pp. 2-14.
30. See R. Brauman, *Le Crime humanitaire: Somalie*, Paris, 1993; M. Klen, "L'Enfer somalien," in: *Défense nationale*, February 1993, pp. 135-43; S. Smith, *Somalie. La Guerre perdue de l'humanitaire*, Paris, 1993; J. Stevenson, "Hope Restored in Somalia?" in: *Foreign Policy*, No. 91 (Fall 1993), pp. 138-72.