



PERSPECTIVES

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[Towards Responsible Sovereignty](#)

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EXECUTIVE SUMMARY: The rise of a globalized Islamist insurgency and armed non-state actors – some of whom, like Hizballah, command more fire power than most national governments – represents a real challenge to the international system. Specifically, the use of proxies who fight from within the territory of weak or failed states is pernicious in that it defies the conventional categorization of armed conflict, blurs state responsibility for armed attacks, and undermines deterrence. This reflects a deeper crisis – a crisis of sovereignty.

State sovereignty has been the organizing principle of the international system for more than 350 years, since the 1648 Peace of Westphalia. Our existing notion of sovereignty – what we might call "conventional sovereignty" – emerged in the very different context of 17th-century Europe and was designed to address very different needs: namely to prevent warring princes from interfering in one another's internal affairs, especially religious affairs.

The fundamental rule of conventional sovereignty is that each state has the right to determine its own domestic authority structure; that outsiders must not interfere in those domestic affairs (the principle of nonintervention); and that in the international system, states are like individuals in society – they are equal and have rights and responsibilities.

Conventional sovereignty, which has since become the global standard, assumes a world of autonomous, internationally recognized and, most importantly, effectively governed states. Under this model, state-to-state

relations are what count, and states are accountable for threats emanating from their territory.

This world, however, no longer exists. Thus, conventional sovereignty no longer works.

Today, there are between 30 and 45 failed states, and this number is growing. In the past, these entities would have been swallowed up by their neighbors or by powerful empires. But in today's world, the Darwinian mechanism has ceased to operate. States today are a little like diamonds – once formed they last forever. Unfortunately, unlike diamonds, not all states shine.

One of the most striking aspects of the contemporary world is the extent to which domestic sovereignty has ceased to function in states that still enjoy international legal sovereignty, with all its benefits. The benefits are considerable and include:

- The right to territorial integrity and self-defense (individual or collective);
- Juridical equality (right to legislate and enforce rules within its territory);
- International legal personality, including power to purchase and transfer state assets;
- Power to enter into contractual agreements with other states, UN membership and membership in other international organizations;
- Sovereign immunity for the head of state and diplomats;
- Financial and technical assistance from the IMF, World Bank and bilateral donors;
- The ability to litigate before international courts;
- Participation in creating international law and shaping the international system.

Thus, states like Lebanon, Pakistan, Somalia, Sudan and Yemen – entities that have ceased to function internally and have become breeding grounds for international threats – continue to enjoy such far reaching privileges and protections. Similarly, states like Iran, Syria and Pakistan retain their international legal sovereignty, instead of having it curtailed. Much more can and should be done to condition the benefits of sovereignty on responsible domestic and international behavior.

While both the US and EU have acknowledged the threat from failing states, they have so far failed to articulate a clear alternative doctrine. Moreover, the tools currently available to well-governed powerful states for dealing with badly-governed or collapsed states – namely (1) targeted killing of terrorists,

(2) development (or governance) assistance, and (3) transitional administrations – are inadequate.

Targeted strikes on terrorists, whether conducted by drones or special ops raids, are legal and legitimate means of fighting terror, and their use is indeed growing. The Obama administration has made such strikes a central feature of its security strategy, with 171 drone strikes undertaken in 2009 and 2010 – in Afghanistan, Pakistan, Somalia and Yemen – compared with only 43 under the Bush administration from 2004 to 2008. But strikes against specific individuals do not address the underlying threat, and targeted killing is legally limited to military targets, excluding political leaders, who are ultimately the source of the problem.

Development assistance – the pouring of trillions of dollars into so-called "developing countries" in an effort to ensure stability, alleviate poverty and jumpstart economic growth – is only helpful in emerging democracies with already decent leadership. Such external development aid rarely makes a positive and decisive difference to the fortune of weak and failed states.

Furthermore, the record of transitional administrations (peace-building or post-conflict reconstruction missions) has been mixed at best. These administrations generally work in the easiest cases: in small countries, where levels of violence are low and key constituencies within the country have already reached mutually acceptable agreements. Elsewhere, however, taking over sovereignty from a failed state for a transitional period has proven hugely costly – in blood as well as treasure – with little guarantee of success. Moreover, transitional administrations are seen as temporary measures meant to simply restore conventional sovereignty.

Ensuring that democracies are able to defend themselves effectively in the twenty-first century will require military, political and legal innovations. It will also necessitate the establishment of a foundational principle that reflects new global challenges, brings coherence to expectations about state conduct in the international arena, and wins the support of key states around the world.

One idea that has been raised by some practitioners and scholars is to extend state-like rights and responsibilities to troublesome non-state actors. According to this rationale, if groups like Hizballah, Hamas and al-Qaeda are "engaged" and "brought into" a new legal regime, they will be more likely to play by the rules of international humanitarian law.

This is a deeply flawed proposition. It not only ignores the fundamentally subversive goals of Islamist *jihadi* organizations and naïvely assumes they can be tamed, but takes us in an entirely wrong direction. Strengthening the peace and security of the world requires strengthening well-governed states, not empowering or legitimizing rogue non-state actors.

Another idea that has been raised is to make consolidated liberal democracy a *sine qua non* condition for membership in good standing in the international community, and to effectively override sovereignty where the state doesn't meet this requirement.

Democracy is a universal human aspiration. No famine or genocide has ever taken place in a liberal democracy. Democracies are also more stable regimes and make reliable allies. The best protection for international society, therefore, is "a world of well-governed democratic states."

In fact, there is now substantial state practice to support the idea that effective, democratic government should be adopted as the only legitimate form of government. Countless UN reports and Security Council resolutions cite treaty-based rights to political participation and urge free and fair elections. International election monitoring (IEM), which was virtually unknown when the Berlin Wall fell two decades ago, is now universal and ubiquitous. Membership in the European Union, Council of Europe and OSCE is open only to liberal democracies, and since 1997, members of the Organization of American States (OAS) are legally required to suspend a member-state whose government takes power through undemocratic means.

At the global level, too, there is now a caucus of democracies at the UN – albeit a nascent and underdeveloped one. Leading legal scholars have postulated the emergence in international law of a legal right to democratic governance and have called for a "Treaty of Democratic Peace" to be signed. They have also called for a "Community of Democracies" to eventually replace the UN.

And yet, as long as international giants like China and Russia do not make the transition to liberal democracy, making this the foundational principle for a secure international order is regrettably unrealistic.

While the free world cannot, at this point in human history, insist on democracy being the foundational principle of international politics and law, it can, alternatively, insist on the somewhat diminished standard of "responsible sovereignty."

Responsible sovereignty – a term originally articulated by African scholar Francis Deng and later invoked by Bruce Jones, Carlos Pascual and Steve Stedman – entails security obligations and duties both to one's own citizens and to other sovereign states. Responsible sovereignty means that national governments are legally obliged to ensure basic standards of security, freedom and welfare for their citizens as well as actively prevent the export of security threats from within their territory. It also implies effective accountability for these obligations.

The notion of responsible sovereignty, therefore, differs from conventional sovereignty in three key respects: First, conventional sovereignty emphasizes non-interference and international juridical equality among states regardless of their regime type, whereas responsible sovereignty emphasizes positive duties and basic standards of state behavior.

Second, responsible sovereignty is not entirely agnostic about regime type. It does not insist that the domestic government be a consolidated liberal democracy, but it does not tolerate state failure either. It demands at least basic state effectiveness and legitimacy as conditions for recognizing a state as sovereign and for the state's enjoyment of the privileges of sovereignty.

Finally, responsible sovereignty emphasizes states' accountability for actions that have consequences beyond their borders. In a world of diffuse threats and interdependent security, states cannot permit their territory to be used to launch cross-border attacks, let alone aid and abet the export of such attacks.

But how would the principle of responsible sovereignty be operationalized? And who will decide? These are important questions that I cannot do adequate justice to here.

In practice, responsible sovereignty would have different implications in different contexts: For weak states that are willing to reform, it would invoke positive measures such as greater governance aid to improve state capacity, enhanced donor coordination and close monitoring of compliance. Toward aggressive, threat-exporting states – like Iran, Pakistan and Syria – it would mean increased pressure, sanctions and the withdrawal of various international benefits. Toward failed or collapsed states, it would demand containment, greater intervention, greater targeting of aggressive non-state actors, and, where practical, the creation of new political conditions, including "shared sovereignty."

For states in the making, adhering to responsible sovereignty will be particularly important. It is one thing to have to deal with the consequences of

state failure in an already existing state; it is quite another to permit the establishment of a new state where there is no guarantee of effective, stable and peaceful statehood. Thus, at a time when the international community is struggling with the dire effects of state failure in the Middle East and Africa, it would be unconscionable – perhaps illegal – to aid and abet the establishment of a new failed state in the West Bank and Gaza.

Like the rules of conventional sovereignty, the new rules of responsible sovereignty will develop over time, through treaties and state practice. And, like conventional sovereignty, it is likely that the principle of responsible sovereignty would be violated from time to time. But, the basic rules of the game would change for the better.

Historically, it has taken a major catastrophe – typically prolonged and destructive war – to bring about substantial changes in international principles and law. Hopefully, a decade after 9/11, democracies can once again generate and implement a vision that will tackle looming threats seriously, before their worst consequences are allowed to materialize.

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