TOWARD UNIVERSAL SOVEREIGNTY IN THE TWENTY-FIRST CENTURY

by
David Krieger

Booklet 34
WAGING PEACE SERIES

NUCLEAR AGE
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WAGING PEACE SERIES

As far as is known, the term "Waging Peace" originated with Warren Wells, late husband of Ethel Wells of Santa Barbara, in a letter to President Eisenhower. It was a long-standing practice of Mr. Wells to keep in close touch with key national figures and give them his views on peace issues as well as other vital matters. This series is dedicated both as a memorial to him and in gratitude to Mrs. Wells for her continued efforts in this cause.

In this series the Foundation publishes and distributes short booklets stressing ideas for attaining peace. Concepts expressed will include views of many authorities, and will not necessarily be those of the Foundation. Suggestions for topics and your ideas about this issue are welcome. Booklets in this series and two anthologies of **Waging Peace** booklets are available from the Nuclear Age Peace Foundation.

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The Nuclear Age Peace Foundation, founded in 1982, is a non-profit, non-partisan international educational organization that educates the public through its programs and publications, and provides leadership toward a nuclear weapons free world under international law. The Foundation is recognized by the United Nations as a Peace Messenger Organization and an accredited Non-Governmental Organization.

We are dedicated to playing an important role in making the twenty-first century a time of peace and justice, a time in which the rights of all individuals to peace, security and a healthy environment will be realized.

We welcome your membership, talent and contributions in creating a peaceful future. For further information, please write:

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David Krieger

From the Chinese Mandate of Heaven through the English Magna Carta, the American Declaration of Independence, and the United Nations Charter and Universal Declaration of Human Rights, there has been a long and often painful struggle toward upholding human rights. In this struggle, the absolute and often capricious power of monarchy has given way to more democratic forms of governance in the nation-state.

In the twentieth century, global problems have emerged which require global solutions. Modern technology and the dictates of human dignity have created global imperatives which are eroding national sovereignty. Universal sovereignty has begun to transcend the boundaries of national sovereignty. Our challenge in the twenty-first century is to strengthen universal sovereignty so that the international community on behalf of all humanity may enforce state responsibility and individual accountability for protecting human rights and the common heritage of the planet.

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TOWARD UNIVERSAL SOVEREIGNTY IN THE TWENTY-FIRST CENTURY

by David Krieger

" A major intellectual requirement of our time is to rethink the question of sovereignty...."

— Boutros Boutros-Ghali, 1992

"First and foremost today is the matter of human rights. The rights of the individual — life, liberty and well-being — must be protected above everything else.

"Many of today's tragedies are born from the absolute ascendancy given to national sovereignty.

"People have a right to their identity, culture and language. But to carry this principle beyond the bounds of reason mires us in problems that no one can solve.

"First comes the individual. Then comes 'the people.'"

— Mikhail Gorbachev, 1993

As we approach the twenty-first century, national sovereignty has become limited by necessity and law; and of the two, necessity casts a far broader shadow than law. In this final decade of the twentieth century, which is the United Nations Decade of International Law, it is critical to expand the outer limits of international law and its enforcement to meet the boundaries of necessity — the necessity to assure the survival of the human species, to uphold human dignity, to protect human rights, including the rights of future generations, and to prevent war as a means of resolving human conflicts. The boundaries of necessity have become universal, creating the vision and possibility of universal sovereignty in the twenty-first century.

One of the primary prerogatives of national sovereignty has been the control of territorial borders. But today borders have become permeable to people, pollution, ideas and missiles. Even the most powerful nation-state is not powerful enough to protect its borders from penetration.

People tend to migrate toward greater opportunity, heedless of borders. Throughout the industrialized world, the increasing number of uncontrolled border crossings has become a source of serious concern and debate.

Chernobyl dramatically underlined the permeability of borders to pollution. The radioactive release from the accident at Chernobyl drifted in the atmosphere throughout Europe and most of the Northern hemisphere. No nation could stop the radioactive clouds from releasing their poisons as they drifted in the atmosphere. Nations have also had limited success in protecting against the spread of industrial pollutants by air and waterways.

Modern forms of communication from cassette tapes to televisions to telephones and FAX machines make borders highly permeable to the spread of ideas. Today there is nearly instantaneous knowledge of events occurring throughout the world. As CNN and other news reports go out over the airwaves, they are picked up in every corner of the globe.

Many would argue that the most important function of national sovereignty is defense. And yet there is no nation that can secure its borders against missile attacks. In the Nuclear Age retaliation is possible, but not defense.

National sovereignty is not sufficient for providing security in the Nuclear Age. Nations have reached the limits of their capabilities for providing security against the powerful technologies of the Nuclear Age. Science has unleashed enormous powers with nuclear, chemical, biological, electronic, metallurgical and propulsion technologies. These technologies, whether applied for peaceful or warlike purposes, have endangered the Earth and humankind. National sovereignty is impotent before the power of our inventions.

International law has been described as a relinquishment of sovereignty. In fact, what a sovereign cannot control, a sovereign cannot relinquish. No nation alone can control the damage to the ozone layer, the change in the Earth's climate, the pollution of the oceans and atmosphere, the threat of nuclear holocaust, or the proliferation of nuclear and other weapons of mass destruction. Only nations acting in concert, in accord with agreed limits under international law, can solve these and many other serious problems.

Sovereignty as we have come to understand it — that is, the supreme power or authority of the nation-state — must be subordinated to a higher sovereignty, what the Secretary-General of the United Nations has called "universal sovereignty." It is only at the global level that global problems can be solved. Our common heritage — the Earth, the air, the water — can only be preserved and protected by all nations acting under international law.

International law presents us with a paradox. Such law is necessary to

provide security against the technological threats of the Nuclear Age. Yet, international law is generally perceived to be too weak to provide adequate protection, and thus national leaders cling tenaciously to what they claim to be the sovereign prerogative to act in accord with their perceived national interests. Unless the scope and powers to enforce international law are dramatically increased, the destruction of our common heritage, which we are already experiencing, will expand and intensify.

The Evolution of Sovereignty

Sovereignty was once the exclusive province of kings and other monarchs. The sovereign, basing authority on divine right, was subject to no one. Monarchs claimed their authority came directly from on high, their power deriving from divinity above rather than from the people below. As revolutions throughout history have taught us, though, the people on occasion have risen up to challenge the legitimacy of a ruler's authority. The Chinese believed their rulers had a "Mandate of Heaven," which was lost by bad rule. If a Chinese ruler was overthrown, he had *ipso facto* lost the Mandate of Heaven. When the American colonies revolted against the British crown, Jefferson argued in the Declaration of Independence that it was not only the right of the people, but their duty to rebel against a despot.

The Magna Carta in 1215 A.D. was a major turning point in defining the responsibilities of sovereignty. In signing the Magna Carta, King John of England agreed to abide by certain rules in relation to his nobles. These rules did not do much to benefit the common man. However, they did place the king under the rule of law in certain respects, beginning the long transition toward government "of the people, by the people, and for the people."

During the past two centuries, monarchs have increasingly been relegated to ceremonial roles as the power of the state has shifted to more democratic forms. The power which once resided in the sovereign has been parceled out to individuals who occupy roles within the nation-state, with primary authority going to the chief executive officer, that is, the president or prime minister.

Twentieth century national sovereignty has been dispersed among governmental roles rather than residing with a single individual. The individuals who hold state office and exercise the power of the state have also increasingly been made subservient to the rule of law, thereby dramatically reducing the extent to which they can act in an arbitrary or capricious manner, as could monarchs before them. Unfortunately, dictators who attempt to regress to the exercise of absolute power have been all too common.

In most twentieth century governments, the authority of the state now derives from the people, and rules of governance are codified in a constitution which provides the basic law of the land and the structure of government. The power to act alone is far more circumscribed for modern-day presidents and prime ministers than it was for kings of old.

The exercise of state power is limited not only by the form of government (constitution vs. absolute monarchy), but also by laws which prohibit certain governmental acts. The Bill of Rights to the U.S. Constitution provides significant limitations on the power of government in relation to the people. The first amendment begins, "Congress shall pass no law respecting...," and goes on to prohibit government controls on freedom of religion, freedom of speech, freedom of assembly, and the right to petition for redress of grievances. The powers which are not specifically transferred to the government remain as rights of the people under the ninth amendment.

Sovereign powers are limited both within a nation and beyond national boundaries. Within a nation, the powers of the sovereign are limited by its own laws. Beyond national territory, the powers of the state are limited by the power of other nations (realpolitik) and by international law (custom and treaty). As the world has become increasingly interconnected by means of transportation, communication and the power of weapons technologies, the role of international law has become more critical in maintaining ordered and civilized international behavior.

Nuclear Age Sovereignty

The Nuclear Age is an era of tremendously powerful technologies. Our communications and transportation systems span and connect the globe, and our weapons are capable of destroying those connections along with most forms of advanced life on the planet. The power of our knowledge about the world and the power of our technologies require new limits on state power for the common (global) good. In the Nuclear Age, the unbridled assertion of state power could result in catastrophic levels of destruction far beyond those possible in any previous era.

In the post-World War II period, the nations of the world organized themselves into the United Nations with the primary goals of preventing aggression and furthering human rights. In each of these areas, treaties and customary international law limit the power of sovereign nations. More effective international legal structures and methods of enforcement are needed, however, to assure that international aggression is prevented and that human rights are upheld in the twenty-first century.

The number of nations has more than tripled since the United Nations was established some fifty years ago. Colonialism has been largely replaced by the emergence of new independent nations. Today there are some 190 nation-states in the world, with many of the newer ones emerging from the break-ups of the former Soviet Union and the former Yugoslavia. As former colonies have achieved independence, they have sought to assert the prerogatives of state power. At the same time, improved technological capabilities have created increasing interdependence. This realization has resulted in the development of new concepts of shared responsibility.

Common Heritage

In January 1967, the Outer Space Treaty was signed. This Treaty described outer space as "the province of all mankind" and stated that the exploration and use of outer space was to be carried out "for the benefit and in the interest of all countries." The Treaty also prohibited appropriation of outer space, including the moon and other celestial bodies, "by claims of sovereignty...." The moon and other celestial bodies were to be used "exclusively for peaceful purposes." According to the Treaty, astronauts were to be regarded as "envoys of mankind." [1]

At the United Nations General Assembly in Fall 1967, Arvid Pardo, then Ambassador of Malta to the United Nations, introduced the concept of the oceans as the "common heritage of mankind." Pardo reasoned that since the oceans belong to all humankind, their protection and preservation are a common responsibility of humankind, and their riches should benefit humankind. Consequently, it was inappropriate to allow nations to exert exclusive sovereign rights in the oceans. Pardo would later argue, "It appears that only the concept of the ocean space as a common heritage of mankind can provide a satisfactory framework for an equitable international order and, at the same time, insure the preservation of the marine environment and the management of living and nonliving resources in the interests of all." [2]

The concept of common heritage of mankind (today better conceptualized as humankind), has five basic attributes: non-appropriation, common benefit, shared management, future generations and peaceful purposes. In Pardo's view the oceans and deep seabeds may not be appropriated and placed under sovereign control. The common heritage focus is on resources which are to be preserved and used for the common benefit of humankind, including future generations. The only way to assure common benefit is to institutionalize shared management. The common heritage attempts to provide for the common good; in doing so, the territorial prerogatives of sovereignty are replaced by the shared management of the international community.

Ambassador Pardo conceptualized the oceans beyond the territorial waters of nations as being a common property of all humans, not subject to claims of national sovereignty or appropriation. Since the oceans could not be appropriated by nations, it followed that it was necessary to devise a management system for the oceans that would preserve and protect the common heritage, and control and distribute its resources.

Pardo reasoned that under the earlier concept of freedom of the seas, technology made possible the unbridled exploitation of ocean resources by those nations that possessed the technological capabilities and financial resources. Without controls, the technologically advanced nations would compete with each other to exploit ocean resources, and the oceans would become a new arena of territorial conflicts. Pardo argued that rather than the oceans belonging to no one and therefore being exploitable at will (freedom of the seas), the oceans belonged to everyone and their bounty must be carefully preserved and shared with present and future generations.

The common-heritage concept was embraced in the 1982 Law of the Sea Treaty, although in a substantially restricted form from its original conception. Not all nations, however, consider the common-heritage concept to be the best approach to management of the global commons. A number of nations with sufficient technological capability to exploit deep seabed resources have refrained from signing the new Law of the Sea Treaty, in the hope that they may thereby gain advantages over other nations in the exploitation of resources. These technologically advanced nations must be convinced that their larger interests will be better served by shared management than by policies that result in anarchy in the oceans.

Thus far, the common-heritage concept has been applied with limited success to Antarctica, outer space, and the oceans beyond national jurisdiction — areas that are not otherwise controlled by principles of sovereignty.

The common heritage is a visionary concept that will perhaps increasingly affect sovereignty in the twenty-first century. We should explore the extension of this concept by posing the question: Where else can the common-heritage concept be applied? I would suggest that the concept is applicable in any area that cuts across national borders and involves ecological concerns.

An obvious example would be that certain shared resources threatened by pollution or excessive exploitation deserve protection under the common-heritage concept. For example, air and water deserve and require such protection. Local and even national controls are not sufficient. Neither air nor water stands still, nor are they subject to being contained within any given

territorial space. Since there is a constant circulation of air and water, they deserve some form of shared management. All humans need air and water to live. If their quality is diminished, then the quality of life is diminished. To the extent that this diminishment affects other locations and future generations, it should not be permissible. The protection of air and water requires global standards that will benefit not only present inhabitants of Earth, but future inhabitants as well.

The application of the common-heritage concept, to protect the Earth's commons and resources (including endangered species) from unfettered exploitation by national governments, would impose necessary and reasonable limitations on the exercise of state sovereignty for the common (global) good.

Conflicts in the United Nations Charter

Article 2(1) of the United Nations Charter states, "The Organization is based upon the principle of sovereign equality of all its Members." How is this to be interpreted? The plain meaning of the words suggests that each U.N. member is equal in sovereignty. Thus, sovereign rights are to be treated equally and sovereign responsibilities are to be expected equally.

Article 2(1) does not square with the veto power granted to the five permanent members of the Security Council in Article 27(3). This internal conflict in the Charter must eventually be resolved in favor of democracy rather than special grants of power.

Article 2(7) of the Charter provides, "Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." This principle raises the question of what matters are "essentially within the domestic jurisdiction" of states. Chapter VII is entitled, "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." The Security Council is empowered in this Chapter to authorize a range of actions including "action by air, sea or land forces as may be necessary to maintain or restore international peace and security."

The purposes of the United Nations, however, are not only to maintain international peace and security as provided in Article 1(1), but also:

- to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other

appropriate measures to strengthen universal peace; (Article 1(2))

• to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; (Article 1(3)) and

• to be a center for harmonizing the actions of nations in the attainment of the common ends. (Article 1(4))

Important issues of sovereignty today concern whether or not it is "essentially within the domestic jurisdiction" of a state when there are abuses "of equal rights and self-determination of peoples" or when "human rights and fundamental freedoms" are not upheld within a nation. When does a government lose its legitimate right to act by exceeding the limits of its domestic jurisdiction? What is the relationship between legitimate governance and the abuse of human rights?

In 1992 a group of experts met at a conference sponsored by the Stanley Foundation to discuss "Changing Concepts of Sovereignty: Can the United Nations Keep Pace?" The Conference Report stated, "The sovereign power of nation-states is on the wane."[3] The Conference participants found that "Sovereign national power is being challenged on several fronts. First, treaties have created new regional entities that encroach on traditional sovereign prerogatives (e.g., the European Community) or have limited options (e.g., the Nonproliferation Treaty). Second, the international community has taken actions aimed at addressing egregious conditions within a national border (e.g., U.N. Security Council action to aid the Kurds in Iraq). Third, technological, commercial, and social developments with transnational implications — such as the emergence of transnational corporations (TNCs) or the continuing emergence of the human rights movement — create less deliberate, less easily controlled but perhaps more pervasive challenges. Finally, ethnic, racial, religious, and linguistic schisms are ripping apart former sovereign nation-states."[4]

The Conference participants recognized that the issue of sovereignty is a complex issue for the United Nations. While state sovereignty lies at the core of the U.N. Charter, at the same time sovereignty is being transformed by the organization:

"The United Nations is caught up in the swirl of change. It has been at or near the center of many developments that are transforming the concept of national sovereignty. As a deliberative body, the General Assembly and its associated organs have been forums for negotiating agreements that sometimes cut into sovereign national power. As an enforcement body, the Security Council has asserted itself into several ostensibly internal affairs and,

in so doing, has begun to set new limits to sovereignty.

"But the United Nations also struggles with this issue since national sovereignty is a core concept in the U.N. Charter. In fact, the United Nations is pledged to defend national sovereignty. Thus, even as the world body takes actions that cut into sovereign power, it continues to issue documents that reaffirm the organization's commitment to the concept. Membership is exclusively governmental, giving only token recognition to emerging nonstate actors."[5]

A U.N. Secretary General Breaks New Ground

United Nations Secretary General Boutros Boutros-Ghali has written, "While respect for the fundamental sovereignty and integrity of the state remains central, it is undeniable that the centuries-old doctrine of absolute and exclusive sovereignty no longer stands, and was in fact never so absolute as it was conceived to be in theory. A major intellectual requirement of our time is to rethink the question of sovereignty — not to weaken its essence, which is crucial to international security and cooperation, but to recognize that it may take more than one form and perform more than one function. This perception could help solve problems both within and among states.

"And underlying the rights of the individual and the rights of peoples is a dimension of universal sovereignty that resides in all humanity and provides all peoples with legitimate involvement in issues affecting the world as a whole. It is a sense that increasingly finds expression in the gradual expansion of international law."[6]

When the Secretary General of the United Nations talks of "rethinking the concept of sovereignty," he is not only recognizing the obvious. He is taking a risk for the benefit of humanity. He is speaking beyond his constituency of U.N. member states to the people of the world. He is raising the issue of a globally shared sovereignty, a "universal sovereignty that resides in all humanity." This is a revolutionary concept.

In the aftermath of the Cold War, an energetic and visionary U.N. Secretary General has challenged us to rethink the question of sovereignty. We share not only common oceans, two-thirds of the Earth's surface, and common rights to outer space, but also common rights to involvement in issues "affecting the world as a whole."

What are these issues? Certainly the destruction of the Earth, whether by the use of weapons of mass destruction, by environmental degradation, or by any other means, must rank at the top of the list. Thus, all humanity has a stake in the control of nuclear and other weapons of mass destruction. The

use and threat of use of these weapons are not issues which can be left to the discretion of any sovereign state. These issues require the exercise of universal sovereignty through the United Nations.

In the same way, global climate change, destruction of the ozone layer, threats to biodiversity, and transport and storage of nuclear and other hazardous wastes are issues that transcend national sovereignty, and require the application of universal sovereignty.

Human rights is another area which falls within this larger category of universal sovereignty. When a sovereign nation tolerates, condones or perpetrates abuses of human rights, it has exceeded its sovereign authority and must be brought to task by the United Nations in behalf of the people of the world. If the abuses of Stalin in the former Soviet Union, of Hitler during World War II, of Pol Pot in Cambodia, of Saddam Hussein in Iraq, have taught us anything, it is — in John Donne's words — that "no man is an island." The diminishment of anyone's human rights, diminishes the dignity and rights of all.

The articulation of human rights has been a major thrust of the United Nations. The upholding of these rights — including, most important, Article 3 of the Universal Declaration of Human Rights, which calls for the right to "life, liberty and the security of person" — is a *responsibility* of national sovereignty. When nations fail in meeting this responsibility, the application of universal sovereignty through the United Nations is necessary to preserve common standards of human dignity and decency.

New Roles for the U.N.

Since the end of the Cold War the United Nations has been empowered by its member states to do more to fulfill its noble goals. It has sent many more peace-keeping missions into many troubled parts of the world, and also has created an interim government in Cambodia.

The U.N. stood up to an act of aggression by Iraq, and forced Iraqi troops from Kuwait. Under U.S. leadership, the U.N. may have acted precipitously and may have applied excessive force against civilians, but it did draw the line against an unacceptable act of aggression. In doing so, the U.N. enforced limitations on Iraqi sovereignty. And in the aftermath of opposing Iraqi aggression, the U.N. has enforced the dismantlement of the Iraqi nuclear weapons program, a further limitation on Iraqi sovereignty.

The U.N. has also acted in Somalia to provide relief against malnutrition and starvation for the people in that country. To fulfill its responsibility in Somalia, the U.N. plans to maintain enough force in that country to establish a structure of government capable of preventing chaos and protecting human

rights. In Somalia the U.N. is attempting to provide protection and food for the Somali people — functions ordinarily exercised by the sovereign.

The U.N. is still not sufficiently empowered to act in behalf of humanity, however, to adequately enforce universal sovereignty. Without the active leadership of the United States, the U.N. probably would not have stood up to Saddam Hussein's aggression, and may not have chosen to mount a major relief action in Somalia. The U.N. has issued many resolutions and sent in peace-keeping forces, but has not been effective in halting the serious human rights abuses in the former Yugoslavia.

The next step in empowering the U.N. to meet the challenges of universal sovereignty in the twenty-first century is the recognition and acceptance by the international community that the technological capabilities of the Nuclear Age have placed severe limitations on national sovereignty. To create a safer and more secure world in the twenty-first century will require the increased application of universal sovereignty through the United Nations. This, in turn, will require reconsidering and redesigning the role of the United Nations to fill the vacuum which national sovereignty formerly occupied.

No nation alone can be responsible for upholding universal standards of human dignity in all nations. The responsibility of national sovereignty is to uphold those standards within its own jurisdiction, and to refrain from threatening those standards beyond its borders. The United Nations, our only universal organization, must be authorized to enforce universal sovereignty for the common good when any nation commits aggression, threatens or violates the human rights of its citizens or of the citizens of other nations, or commits acts destructive of the Earth's commons, including transboundary pollution of the air and water.

Sovereignty and Human Rights

The first great statement of the American credo is found in the Declaration of Independence. Its distinguished author, Thomas Jefferson, writing out of "a decent respect to the opinions of mankind," put forward five important propositions justifying the American revolution. First, he argued that there are certain truths which are "self-evident." One of these is that "all men are created equal." Another is that we are all endowed by our Creator with "certain unalienable rights," among which are "Life, Liberty and the pursuit of Happiness."

Second, Jefferson argued that governments derive "their just powers from the consent of the governed."

Third, he argued that when a government becomes destructive of the rights of the governed, it is the "Right of the People to alter or abolish it, and to institute new Government."

Fourth, he argued prudence in changing a long-established government.

Fifth, Jefferson argued, when it comes to "absolute Despotism," it is not only the right of the people but their duty "to throw off such Government."

Jefferson defined a relationship between people and government. The people have rights, and the government has a duty to uphold those rights. Failure of the government to fulfill its duty, creates a right in the people to overthrow the government. The Declaration of Independence is nothing less than a call to revolution when a government is destructive of the people's right to life, liberty and the pursuit of happiness. The measure of America's success as a nation is how well it has done in upholding these rights for *all* of its citizens.

More then two centuries after the Declaration of Independence was issued, it continues to inspire new generations and new nations. In 1776, Jefferson referred to "unalienable rights." Today we call them human rights, and they are the measure of how well any government succeeds in fulfilling its duty to its people.

We must recognize, however, that Jefferson's prescription of revolution when those "unalienable rights" are not being upheld is a difficult path to freedom, drenched in the blood of the innocent and guilty alike. As we approach the twenty-first century, it is time to find a more effective and humane way to require governments to meet their human-rights obligations.

The responsibility for assuring that governments fulfill their duty to uphold human rights should rest with the international community, acting through the United Nations. The international community must take responsibility not only for collective measures against threats to peace and acts of aggression, but for preventing abuse of human rights by national governments. National sovereignty must end where abuse of human rights begins.

The Charter of the United Nations recognizes the need to "reaffirm faith in fundamental human rights, [and] in the dignity and worth of the human person...." The Charter also calls for the establishment of "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained...." The Universal Declaration of Human Rights, adopted by the U.N. General Assembly on December 10, 1948, states in its Preamble that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...." The Universal Declaration states in Article 1 that "all human beings are born free and equal

in dignity and rights," and provides in Article 3 that "everyone has the right to life, liberty and security of person." Article 3 of the Universal Declaration, with its strong echo of the U.S. Declaration of Independence, provides for the most basic and important of all human rights.

In the post-World War II period the international community has devoted considerable effort to articulating human rights. It has been less successful in upholding and enforcing the rights that have been articulated. This stems, in part, from the failure to adequately fix responsibility for upholding human rights, and from the lack of individual accountability for violations of human rights.

Human rights by their nature must protect the individual, and they are successfully achieved to the extent that they protect all individuals. The responsibility for upholding human rights resides with governments and ultimately with the international community. When governments fail in their responsibility to uphold human rights or, even worse, perpetrate violations of human rights, it is up to the international community to act to require governments to meet their responsibility.

Until the recent past, the concept of sovereignty has stood as a barrier to international enforcement of human rights. National sovereignty has implied that the internal activities of a nation are not subject to external interference. The application of the principle of non-interference in the domestic affairs of states, embedded in article 2(7) of the U.N. Charter, has kept the international community from effectively enforcing human rights. This has weakened the ability of the United Nations to achieve one of its stated purposes of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion...." Thus, on the bedrock of human rights, a fundamental tension exists between national sovereignty and the responsibility of the international community to assure the dignity and worth of each human person.

The U.S. Declaration of Independence articulated a course of action for citizens when governments became destructive of their fundamental rights: revolution. But this is a bloody and costly means of dealing with tyranny. It is also a difficult way that often does not succeed. Despots with control of the means of state power can brutalize and terrorize a population, a frequent occurrence throughout history and even in our own time.

As we approach the twenty-first century, we must devise a more effective means for the international community to deal with national leaders destructive of human rights. The empowerment of the international community in this regard is the next step in the evolution of global governance and respect for human dignity. Just as the powers of the king

of England were restricted by the Magna Carta in 1215 A.D., the powers of national sovereigns today must be restricted to acts which do not violate human rights. A Magna Carta for the Nuclear Age must uphold universal sovereignty and must limit national sovereignty by the boundaries of human rights.

Sovereignty has generally been equated with the exercise of power and the rights of the sovereign. If we are to take seriously the dictates of upholding human rights, however, then national sovereignty must be reconceptualized in terms of responsibilities in addition to rights. The primary responsibility of the sovereign is to govern in such a manner that individual human rights within the territory of governance are upheld, and that the actions of the sovereign do not threaten or abuse the human rights of others beyond national boundaries.

In the Nuclear Age it is clear that a state may not exercise unlimited and undisciplined power without threatening human rights both within and beyond national borders. If the sovereign does not accept the responsibility to control the use of power so as to uphold human rights, it is incumbent upon the international community acting through the United Nations, to enforce the responsibility of the sovereign.

Rights, Responsibilities and Accountability

The question which confronts us today is how do we move from rights to responsibilities to accountability. Rights are empty promises if they are not linked to corresponding responsibilities for protecting the rights. Responsibilities, in turn, are inadequate if they are not tied to accountability. Individual human rights depend upon government responsibilities which, in turn, require individual accountability.

Human rights are embedded in international law. To uphold these rights, the law must be enforced. If the law is not enforced, the rights are without meaning.

World War II witnessed mass violations of fundamental human rights, the most grotesque example being the extermination of European Jews and others in Nazi concentration camps. When that war ended, there was a determination among the victorious powers, as expressed in the United Nations Charter, "to save succeeding generations from the scourge of war..., to reaffirm faith in fundamental human rights..., to.... respect... the obligations... of international law..., and to promote social progress and better standards of life in larger freedom...." These are all noble goals, eloquently stated. The United Nations has never been short of high aspirations. Where the Organization has come up short is in policing its member states to uphold the

standards to which they have committed! For the first 45 years of its existence, the United Nations was, in effect, a victim of the Cold War. Each side protected its allies and pawns, no matter how far their deeds strayed from the purposes of the Organization.

With the Cold War ended, there is new hope for fulfilling the noble ideals expressed in the United Nations Charter. The Organization has begun to demonstrate a willingness to intervene in the internal affairs of member states for humanitarian purposes. It has become a more active force for upholding human rights in the post-Cold War period, and has done so by placing government *responsibility* for protecting human rights ahead of national sovereignty. A further step forward will be taken when the global community, acting through the United Nations, institutes procedures for enforcing individual accountability for major crimes under international law.

Nuremberg in the 1990s

The principle of individual accountability was recognized in the Charter of the International Military Tribunal at Nuremberg following World War II. Following the trials at Nuremberg and elsewhere in Germany and Japan, the United Nations reaffirmed "the principles of international law recognized by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal" [7]

The International Law Commission of the United Nations subsequently developed the Nuremberg Principles, an important statement of individual accountability.[8] These Principles inform us that no one, including heads of state and high government officials, stands above international law, and that anyone who violates international law is liable to punishment. One is not relieved of responsibility for violations of international law by a lack of penalty under national law, or by "acts of state" or by orders of superiors.

An irony of the Nuclear Age is that the London Agreement between the U.S., U.K., France and the Soviet Union, which established the Charter of the International Military Tribunal, was signed on August 8, 1945, between the dropping of the atomic bombs on Hiroshima and Nagasaki. The time is overdue to bring Nuremberg into the 1990s, and apply its principles of accountability to all individuals without regard to their nationality or position.

The trials at Nuremberg have been described by some as "victor's justice," and in certain respects this is a valid criticism. The victors of World War II did bring to trial the vanquished in the tribunals following World War II. But they did so in preference to the option of summary executions and, in fact, three of the 22 accused were acquitted. Of course, the victors failed to apply the same standards of accountability to themselves. It is now time to remedy this shortcoming, and make the Nuremberg Principles applicable to one and

all, equally and alike. Accountability must apply to *all* individuals if the global environment is to be protected and if human rights are to be upheld for *all* individuals.

At the time of the Nuremberg trials, the U.S. Chief Prosecutor, Supreme Court Justice Robert Jackson, warned that the real value of the trials would lie in how well the principles set forth in the trials would be applied to ourselves and others in the years to follow. In his opening statement to the Tribunal, Jackson argued that, "the record on which we judge these defendants today is the record on which history will judge us tomorrow."[9] Jackson understood that the purpose of these trials was not only to punish those particular violators of international law, but to deter potential future violators.

An International Criminal Court

Human rights rooted in human dignity form the basis of a decent society. Global standards which have evolved since World War II provide for rights for all people to life, liberty and the security of person. Corresponding to these rights are responsibilities of governments and individuals to protect and uphold these rights. What is still missing at the international level, however, is a mechanism for enforcing individual accountability for those who violate these rights.

The International Court of Justice (ICJ), which sits in the Hague, is authorized by its Statute and the U.N. Charter to try cases between nations and to provide advisory opinions to the United Nations General Assembly, other organs of the United Nations and specialized agencies. The ICJ is *not* authorized to try international criminal matters against individuals.

Due to the limited jurisdiction of the ICJ, the only place where individual violators of international law can be tried today is in national courts or in *ad hoc* international tribunals created specially for the purpose. Neither of these solutions is sufficient. National courts are not appropriate for the application of international criminal law because they are subject to claims of bias. The creation of an *ad hoc* international criminal tribunal whenever the need is perceived is a cumbersome manner of enforcing the law and would be subject to international politics.

The best method of assuring that individuals are held accountable for crimes under international law is to establish a permanent International Criminal Court. The United Nations International Law Commission's Working Group on the Question of an International Criminal Jurisdiction recommended in its 1992 Report that an International Criminal Court be established.[10] With authority from the General Assembly, the International Law Commission has prepared a Draft Statute for an International Criminal Tribunal.[11]

An International Criminal Court with jurisdiction over serious international crimes would put all individuals, regardless of rank or position, on notice that the international community is committed to protecting the global commons, to upholding human rights and to enforcing international criminal law. An International Criminal Court would restrict the excesses of state sovereignty with the threat and application of individual accountability. With the establishment of an International Criminal Court, tyrants and despots will no longer be able to escape individual accountability for crimes against peace, war crimes, crimes against humanity and other serious crimes under international law. The international community will fulfill its obligations under the U.N. Charter to uphold human rights by accepting the responsibility to impose individual accountability when crimes are committed.

The enforcement of individual accountability by an International Criminal Court will redefine the boundaries of sovereignty. The dignity of the individual person will find protection in the international community's exercise of universal sovereignty on behalf of those persons whose rights are threatened or abused.

An International Criminal Court will bring Nuremberg into the Nuclear Age. It will reinforce the Nuremberg Principles as common standards to which all individuals will be held accountable. It will also provide an international mechanism for upholding standards of human dignity set forth in the U.N. Charter and the Universal Declaration of Human Rights. An International Criminal Court, charged with enforcing individual accountability for international crimes, will be a major factor in defining the limits of national sovereignty in the twenty-first century.

Conclusion

From the Chinese Mandate of Heaven through the English Magna Carta, the American Declaration of Independence, and the United Nations Charter and Universal Declaration of Human Rights, there has been a long and often painful struggle toward upholding human rights. In this struggle, the absolute and often capricious power of monarchy has given way to more democratic forms of governance in the nation-state.

In the twentieth century, global problems have emerged which require global solutions. Modern technology and the dictates of human dignity have created global imperatives which are eroding national sovereignty. Universal sovereignty has begun to transcend the boundaries of national sovereignty. Our challenge in the twenty-first century is to strengthen universal sovereignty so that the international community on behalf of all humanity may enforce state responsibility and individual accountability for protecting human rights and the common heritage of the planet. ■

NOTES

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3. "Changing Concepts of Sovereignty: Can the United Nations Keep Pace?" ***A Report the Twenty-seventh United Nations of the Next Decade Conference***, Muscatine, Iowa: The Stanley Foundation, 1992, p.15.

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