

The Costs of Respecting Sovereignty

by Jakub Grygiel

Jakub Grygiel is the George H.W. Bush Associate Professor at The Paul H. Nitze School of Advanced International Studies (The Johns Hopkins University). He was awarded the 2005 Rear Admiral Ernest M. Eller Prize in Naval History.

***Abstract:** Respect for sovereignty can be an effective tool to manage relations between states, drawing boundaries of acceptable behavior. But there are also clear costs of respecting sovereignty. A foreign policy based on a principled defense of sovereignty can be, in fact, morally wrong, politically illegitimate, and strategically dangerous. This does not mean that sovereignty should be broken wantonly, but only that prudential judgment must be exercised to weigh the costs and benefits of respecting the sovereignty of a state. In the end, our security and our values, not the principle of sovereignty, should be the metric by which we should judge the necessity and legitimacy of U.S. actions.*

The war in Iraq has drawn criticism on many levels and from many sides. One criticism is that this war has violated the sovereignty of a state, Iraq, in an illegitimate way, thereby weakening not only U.S. authority but also the principle of sovereignty, seen as a cornerstone of international stability. As a preventive war, and consequently as a war of choice rather than necessity, U.S. intervention in Iraq failed to meet the strict standards of a war waged in self-defense. The threat from Iraq, the argument goes, was doubtful and not imminent, and did not justify the clear violation of sovereignty perpetuated by the U.S. and its coalition. Furthermore, the absence of wide international support for the Iraq invasion (combined with the vocal opposition of some key powers) has augmented the perception of the illegitimacy of the 2003 U.S. attack.

Such criticism, voiced by some current administration officials, is leading to a renewed appreciation for the principle of state sovereignty. Restoring respect for state sovereignty is seen again as the cornerstone of international stability, as well as U.S. foreign policy. In a July 2009 speech in Moscow, President Barack Obama argued this case, saying that

State sovereignty must be a cornerstone of international order. Just as all states should have the right to choose their leaders, states must have the right to borders that are

secure, and to their own foreign policies. That is true for Russia, just as it is true for the United States. Any system that cedes those rights will lead to anarchy.¹

State sovereignty is certainly worth defending in practice and as a principle. Violations of state sovereignty should not be taken lightly because the integrity of states imparts a modicum of order to an already violent international system. Sovereignty may not always be just or legitimate, and ultimately it is still subject to that timeless law of power, so clearly enunciated by the Athenians in their fifth century dialogue with the beleaguered Melians: the weak, after all, will continue to have their sovereignty at the mercy of the powerful. But a world without state sovereignty—or a world without states—is likely to be considerably more violent than one with them. It may not be perfect, but there is no clear alternative to it.

Furthermore, the principle of sovereignty—defined in the simplest way as the right of states to be the supreme authorities in their domestic and external affairs, and, therefore, to have the right to their territorial integrity—is still a reference point to many, especially to weaker polities (e.g., Ukraine or Georgia) who are neighbors of expansionary states. President Obama's speech could also be read under this light, as a call to respect the wishes and freedom of small states, especially in the post-Soviet space.

Sovereignty, finally, is also a way of judging the actions of stronger states, whose superior power often makes the principle of sovereignty expendable. By placing the right to sovereignty above the whims of powerful states, the international system has a built-in constraint on power and a metric to evaluate state behavior. Any violation of sovereignty weakens these fragile rules, making international relations less manageable. The costs of not respecting sovereignty are, therefore, clear.

Having said this, it is also important to look at the costs of an overly respectful or deferential attitude toward state sovereignty. A foreign policy based on a strict respect of other states' sovereignty—and of violating theirs only in a clear response to a violation of ours—comes with several unambiguous costs and even dangers. Specifically, three broad categories of costs affect a state's security, legitimacy, and efficacy. These costs are mutually reinforcing and result in the weakening of a state's ability to pursue a foreign policy that maximizes its security.

The following examination of such costs should not be construed as an invitation for wanton breaches of state sovereignty. It is simply a presentation of what a foreign policy based on an absolute respect for sovereignty would entail. The underlying premise is that the use of power, an inherent feature of any foreign policy, is morally ambiguous and always entails trade offs. In this specific case, the trade off is between validating the principle of sovereignty and undermining one's own security, legitimacy, and efficiency. Both actions,

¹ Online at <http://www.america.gov/st/texttrans-english/2009/July/20090707062839abretnuh3.549922e-02.html>.

those weakening and those strengthening state sovereignty, can increase threats to a state. For instance, if sovereignty stops being perceived as a value to be respected, there is a higher likelihood that international relations will become unmoored and more violent. But reverence for the principle of sovereignty may also lead to an overly timid foreign policy, paralyzed by fears of destabilizing what is often called the Westphalian system. In the end, there are costs and benefits to any action, and the sign of good leadership is to evaluate them and undertake the course of action that will minimize the dangers to a state. Prudential judgment must be exercised in respecting, as well as violating, sovereignty.

Before dwelling on the costs of respecting sovereignty, it is important to clarify what this concept means. In the simplest formulation, sovereignty is the idea of authority that each state is entitled to exercise over its territory. States are supposed to be independent from other polities and supreme within their own territory, regardless of their size, population, or power. Sovereignty is, therefore, conceptually distinct from power, which is measured in relative terms. That is, states have more or less power but are either sovereign (independent from foreign influences and supreme within its territory) or are not. Sovereignty is an either-or, absolute concept. A particular state may be more or less capable of enforcing and defending this authority, but respect for sovereignty is, at least in principle, not conditional on the perfect implementation of the external independence and internal supremacy of a state. A weak state deserves respect as much as a superpower.

Territorial sovereignty is an intrinsic part of this concept because in modern history the idea of such authority became tied to a clearly delimited piece of real estate. Borders are literally lines in the sand that circumscribe sovereign political entities and crossing them is perhaps the clearest sign of a violation of sovereignty. Often the term “sovereignty” refers simply to the territorial integrity of states, but it is much larger than that because the geographic contours are only one of the many features of states. In practice, what sovereignty entails is the right to be free from foreign interference in the internal workings of one’s own state. State borders define the geographic area that is “off limits” to other states.²

The principle of sovereignty does allow for the possibility, even necessity, of violating the integrity of another state. However, the standards for when sovereignty can be violated are very strict and traditionally are confined only to actions taken in self-defense. This means that a state is justified to break the sovereignty of another when it has been attacked or is clearly about to be attacked. The right to immediate self-defense, that is, trumps the need to respect sovereignty. The farther one moves from clear, immediate self-defense, the more controversial the violation of state sovereignty becomes. A violation of

²For a good summary of the concept and its changing meaning and practice, see Robert Jackson, *Sovereignty* (Cambridge, UK: Polity Press, 2008).

sovereignty is an action that needs careful consideration, ought to be a rarity in international relations, and should be an action of last resort. Reality, however different from the ideal, ought to aspire to it, and the principle of sovereignty should serve as a constant guide.

Yet, as I argue, the principle of sovereignty and respect for it are not cost free. In what follows, I describe three such costs that stem from too much reverence for sovereignty. First, states may need to violate the sovereignty of others to improve their security position, and not only in immediate (or even anticipatory) self-defense. Second, legitimacy, both domestic and international, is not grounded in the respect for the sovereignty principle but in both the ability and willingness of the state to provide security to its own population and to defend a higher law. Third, foreign policy is largely a series of constant attempts to alter the will, capabilities, and actions of the other states, and by its very nature engages in a spectrum of sovereignty violations.

Security

To put it succinctly, the absolute defense of the principle of sovereignty and the defense of one's state are mutually exclusive. One cannot argue for respecting the sovereignty principle at all times without simultaneously undermining one's own safety. In other words, it is often necessary to violate this principle to protect one's own sovereignty. There is no contradiction in such a posture because the stakes of international relations are state survival, not the survival of the principle of sovereignty. States choose to defend their own sovereignty (a shorthand for their security and independence) even by infringing upon other states' sovereignty; they do not revere an abstract rule that can be only self-enforced.

Stating this tension between the value of the principle of sovereignty and the value of one's own sovereignty is, by itself, not terribly controversial. After all, as mentioned above, the right to self-defense is perhaps the clearest and most legitimate reason to violate the sovereignty of the attacking state, and it has been enshrined in Article 51 of the UN Charter. Yet, there are several constraints imposed on even this right. Article 51, for instance, states that self-defense is legitimate "until the Security Council has taken measures necessary to maintain international peace and security." Moreover, a state can act in self-defense, and thereby if necessary violate the sovereignty of the aggressor state, only if an actual armed attack has occurred. Once sovereignty has been violated, that is, the target state has the right to respond in kind. This means, for instance, that state support of armed groups of terrorists does not constitute an "armed attack" and therefore cannot justify a violation of that state's sovereignty. Furthermore, according to some legal experts, a preemptive attack is clearly unlawful because states do not have the right to attack

“another state because of speculative concerns about that state’s possible future actions.”³

Yet, even without a clear attack, it may be necessary to break the sovereignty of another state. At this point, opinions on the legality of violating a state’s sovereignty begin to diverge. On the one hand, some argue that Article 51 of the UN Charter is the accepted legal position for the legitimate use of force against another state, which is only when an armed attack has occurred or when the victim state is “morally certain that the armed attack is under way” or is in the final stages of being mounted.⁴ Preemptive strikes against a state that is in the process of launching an attack are legitimate forms of self-defense wars. On the other hand, a more expansive interpretation of self-defense allows the use of force and the violation of state sovereignty in anticipation, broadly defined, of an attack. Such anticipatory self-defense, according to this view, is part of customary international law, which has never clearly prohibited such actions. As one legal scholar writes, “it would be difficult to conclude that there is an established rule of customary international law prohibiting the preemptive use of force when undertaken in anticipatory self-defense. If anything, there seems to have been greater support for the doctrine” in the case of Israel’s “Operation Opera” against Iraq’s Osirak nuclear reactor in 1981.⁵

The lack of legal clarity concerning when self-defense is acceptable may matter in some international discussions, but has never prevented states from acting when they—and only they—deem it necessary. Most states recognize that in order to protect their security they may need to act in (often very early) anticipation of an attack and without any international approval. States are, after all, the ultimate arbiters of their own security, and it is up to them to decide when and how to act in self-defense. Indeed, there is no consensus even on what “aggression” means; it is up to individual states to determine what constitutes a threat to their national security.⁶ It is not surprising then that support for preventive war—that is, for clear violations of state sovereignty done well in advance and perhaps even with a very generic expectation or fear of an attack—is gaining strength. The 2002 National Security Strategy formulated by George W. Bush clearly stated that the United States will break state sovereignty when it considers it necessary to protect its

³ Mary Ellen O’Connell, “The Myth of Preemptive Self-Defense,” American Society of International Law, Task Force on Terrorism Paper, August 2002, 21. Online at <http://www.asil.org/taskforce/oconnell.pdf>.

⁴ Yoram Dinstein, *War, Aggression, and Self-Defence* (New York, NY: Cambridge University Press, 2005), p. 187.

⁵ Anthony Clark Arend, “International Law and the Preemptive Use of Military Force,” *Washington Quarterly*, Spring 2003, p. 96.

⁶ Michael J. Glennon, “The Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter,” *Harvard Journal of Law and Public Policy*, Vol. 25, No. 2, p. 556.

citizens and its security.⁷ Despite vocal opposition by many in the United States and abroad, the idea that security concerns permitted states to intervene in the affairs of other states through a variety of means, including war, and without even a clear expectation or intelligence of a potential attack, gained support. As two analysts write, a “sizeable number [of states] seem to agree that the risk of calamitous surprise attacks, especially with chemical, biological or nuclear weapons, might well justify preventive strikes against terrorists or preventive wars against their state sponsors.”⁸ Indeed, the novelty and radicalism of supporting preventive war has been greatly exaggerated, and the United States has a long history of acknowledging the need to conduct an interventionist foreign policy which includes preventive attacks.⁹

Respecting sovereignty at all costs, and in all cases, also undermines national security because it deprives a state of a key tool of foreign policy, namely the ability to threaten other states. Sovereignty, and the value states attach to it, is useful exactly because it can be violated. The threat of breaking another state’s sovereignty is a powerful tool in the hands of states, and can serve to coerce the enemy to alter its behavior. The credibility of that threat is affected not only by the ability of the state to carry it out, but also by its willingness to violate another state’s sovereignty. The less willing a state is to break the sovereignty of another state, the less credible the threat—and paradoxically, the more vulnerable a state becomes. A state’s credibility diminishes and with it, leverage. If a state cannot coerce another state to change its behavior, force becomes the only option. In brief, a principled defense of sovereignty may undermine a state’s ability to defend its security and ultimately may lead to greater violence and more acts of intervention.

A sign of the importance of this idea of sovereignty as a source of strategic leverage is the difficulty the United States faces from non-state actors. When encountering actors who do not value sovereignty, officials are often at a loss on how to deal with them because the state lacks a key arrow in the foreign policy quiver, namely the ability to violate sovereignty, to weaken it, to break it, and in extreme cases, to deprive the enemy of it. This is the case with the U.S. conflict with al Qaeda and its cells that function outside, or under the cover, of the system of state sovereignty. The best approximation that the United States can achieve is to threaten states who are in some way responsible for abetting or sheltering these groups. By doing so, the United States is again

⁷ The White House, *The National Security Strategy of the United States of America*, Washington, DC, September 2002. Available online at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/>.

⁸ Peter Dombrowski and Rodger A. Payne, “The Emerging Consensus for Preventive War,” *Survival*, Summer 2006, p. 115. See also Colin S. Gray, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration,” Strategic Studies Institute, U.S. Army War College, Carlisle Barracks, July 2007.

⁹ John Lewis Gaddis, *Surprise, Security, and the American Experience* (Cambridge, MA: Harvard University Press, 2004).

using sovereignty as leverage, as something that those states presumably value and that the United States can, and if necessary will, break. While such a strategy has certainly a positive impact because it limits state support for al Qaeda, it does not fully resolve the challenge of dealing with groups that do not have sovereignty and for whom sovereignty is merely a potential cover. In brief, it is preferable to have enemies who consider sovereignty of great value, because they will likely respond to threats to that sovereignty.

In sum, the first cost of respecting the principle of sovereignty at all times is a loss of our security. If sovereignty is an inviolable principle, and should always be respected, states lose the ability to protect themselves.

Legitimacy

The second cost of an overly deferential attitude toward sovereignty is a loss of legitimacy, both internationally and domestically. Legitimacy, understood as adherence or at least the perception of adherence to law, is murky from an international perspective because it is unclear what law—UN Charter, customary law, or natural law—should be followed. Domestically, on a very basic level, it is very clear that legitimacy is attained by providing security to one's own citizens. In both cases, absolute respect for state sovereignty will not bring legitimacy.

International legitimacy. Unsurprisingly, often the staunchest defenders of sovereignty are tyrannical and authoritarian regimes that use this principle as a fig leaf for their own internal depredations. Granting such regimes the right to remain undisturbed in the name of state sovereignty is an abdication of the duty to follow a higher law, one that elevates human life above the political independence of states. And that higher law is an aspiration for many people, who by birth or by the vagaries of political history happen to be at the mercy of oppressive governments, megalomaniacal tyrants, or violent ideologies. By refusing to accept the validity of such a law and by giving preference to a blind respect for state sovereignty, states lose legitimacy in the eyes of those for whom sovereignty is a barrier to freedom.

For instance, the initially very muted support of the Obama administration for the popular protests following Iranian elections in the summer of 2009 was carefully worded to avoid any impression that the United States was violating Iran's sovereignty. President Obama tried to walk a fine line between "condemning the violence" on the streets of Teheran while making clear that the United States "respects the sovereignty of the Islamic Republic of Iran and is not interfering with Iran's affairs."¹⁰ Such a policy may be prudent at that particular moment in time. But it is important to recognize that there is an unsolvable tension between the desire to help oppressed people and the respect of that

¹⁰ President Obama's press briefing, June 23, 2009, online at <http://www.nytimes.com/2009/06/23/us/politics/23text-obama.html>.

state's sovereignty. A position that values the sovereignty of a state more than the freedom of its people is likely to garner little international legitimacy. It may be applauded by other governments but the popularity gathered from the rulers also brings disappointment and disdain from the ruled.

The idea that international legitimacy is based on respecting sovereignty must, therefore, be qualified. Sovereignty does imply that the state has the supreme and ultimate authority over its territory and its actions, but this authority cannot be untrammelled. In foreign policy, the respect for the sovereignty of a state is contingent on its behavior. If a state attacks another one, its sovereignty is no longer worthy of respect. Analogously, respect of the sovereignty of a state should be contingent on the internal behavior of that state. If the state mistreats its own citizens, it divests itself of the right to be left alone in internal politics. In other words, sovereignty ought to be respected when it is legitimate—and such legitimacy is a function of that state's behavior toward its neighbors, as well as its own citizens. Thus, violating the sovereignty of another state, deemed to be illegitimate due to gross domestic abuses, is not an illegitimate action.

There is a growing acceptance of the idea that state sovereignty is conditional on good domestic behavior. In 2001, a group of lawyers and academics argued that “UN member states have a responsibility to protect the lives, liberty, and basic human rights of their citizens, and that if they fail or are unable to carry it out, the international community has a responsibility to step in.”¹¹ This movement, called “responsibility to protect” (R2P), has been limited so far to stating a principle, which has been opposed by some UN members fearful of other states meddling in their internal politics.¹² While skepticism about the role of the “international community” or, more specifically, the UN as the arbiter of what is right and wrong is justified because UN decisions can lead to profoundly non-democratic outcomes,¹³ the R2P movement points to an important cost of elevating state sovereignty to an inviolable principle—that of sacrificing the liberty and rights of many people. The legitimacy of intervening in another state to redress grave human rights violations does not stem from the international community or the UN's approval, but from the purpose of that intervention. Therefore, the action of a solitary great power defending the liberty or human rights of a group of people, even if that action violates

¹¹ Lee Feinstein and Anne-Marie Slaughter, “A Duty to Prevent,” *Foreign Affairs*, January/February 2004. p.. 137. See also <http://www.responsibilitytoprotect.org/>.

¹² See Neil MacFarquhar, “When to Step In to Stop War Crimes Fissures,” *New York Times*, July 23, 2009, online. Interestingly, the George W. Bush administration was supportive of this principle. See also Kristen Silverberg, “Does the UN Still Value the ‘responsibility to protect?’”, July 23, 2009, online at http://shadow.foreignpolicy.com/posts/2009/07/23/does_the_un_still_value_the_responsibility_to_protect.

¹³ See, for instance, Amitai Etzioni, “Sovereignty as Responsibility,” *Orbis*, Winter 2006, pp. 71-85.

unilaterally state sovereignty, is more legitimate than the collective inaction (and corresponding respect, even if only by default, of sovereignty).

There is certainly a trade-off between international stability and interventions in other states. But not every action meant to preserve international stability through respect for sovereignty is legitimate. So, too, not every action that breaks the sovereignty of another state is illegitimate. As Theodore Roosevelt wrote, “[t]here are big and powerful nations which habitually commit, either upon other nations or upon sections of their own people, wrongs so outrageous as to justify even the most peaceful persons in going to war.” The costs of international stability, therefore, can often be enormous tragedies. “The worst infamies of modern times—such affairs as the massacres of the Armenians by the Turks, for instance—have been perpetrated in a time of nominally profound international peace, when there has been a concert of big Powers to prevent the breaking of this peace, although only by breaking it could the outrages be stopped.”¹⁴

To put it in another way, absence of international support for a violation of state sovereignty does not lead *ipso facto* to lack of legitimacy. Conversely, widespread international support, say in the UN General Assembly, for an action is not *ipso facto* a sign of legitimacy. Some political leaders and scholars likely will disagree with such an understanding of international legitimacy. For instance, Dominique de Villepin, then French Foreign Minister, argued in 2003 that the UN is the necessary international institution “[b]ecause the United Nations is the place where international rules and legitimacy are founded. Because it speaks in the name of peoples,”¹⁵ Villepin’s paean to the UN is based on the idea that international legitimacy is grounded in clearly stated rules (presumably, in this case, resolutions of the Security Council or of the General Assembly) that have been formulated through a process of negotiations. According to one scholar, legitimacy is “that quality of a rule which derives from a perception on the part of those to whom it is addressed that it has come into being in accordance with right process.”¹⁶ This view, however, is not accepted by all, including those who in the days preceding the Iraq war in 2003 supported it. Western European states, for whom Villepin was speaking, went to war in Kosovo without UN approval and did not argue that their military action there was illegitimate. It may have been illegal from an international perspective, but it was certainly not illegitimate.

International legality does not always coincide neatly with international legitimacy and with respect for a higher law. Legitimacy and legal

¹⁴ Theodore Roosevelt, *An Autobiography* (New York, NY: The Macmillan Company, 1916), pp. 548-549.

¹⁵ Address by Minister Dominique de Villepin, French Minister of Foreign Affairs to the UN Security Council, March 19, 2003, online at http://www.un.int/france/documents_anglais/030319_cs_villepin_irak.htm.

¹⁶ Thomas M. Franck, “Legitimacy in the International System,” *The American Journal of International Law*, October 1988, p. 706.

documents are two different things, and respecting the process through which international decisions should be made is not sufficient to elevate them to legitimacy. Legitimacy must reflect a higher law, a law not “in the sense of enactment or legislation, but in the Ciceronian sense of ‘right reason in agreement with nature: of universal application, unchanging and everlasting’—what our own Richard Hooker called ‘the law which human nature knoweth itself in reason universally bound thereto.’”¹⁷ A legitimate action is, therefore, one that reflects this higher law, giving precedence, for instance, to human rights over state sovereignty. The French philosopher, Jacques Maritain put it succinctly: “An unjust law, even if it expresses the will of the people, is not law.”¹⁸ By extension, international support and popularity are not by themselves signs of the legitimacy and justice of an action.

This does not mean that international legitimacy does not exist. It does, but not necessarily in a staunch support of state sovereignty. As Robert Kagan writes, “legitimacy is a genuinely elusive and malleable concept. Discovering where legitimacy lies at any given moment in history is an art, not a science reducible to the reading of international legal documents.”¹⁹

Domestic legitimacy. The second cost of respecting state sovereignty at all times is domestic. The legitimacy of a government is based not on its protection of Westphalian norms, but, among others, on its ability and willingness to defend national security, and this may involve the need to break state sovereignty (as in the case of a preventive war). A state that cannot or does not want to protect its own citizens from foreign threats loses its domestic legitimacy. In the case of the United States, as Jeremy Rabkin writes, the “President has a sworn duty not to ‘law’ in the abstract, much less to universal principles or ‘archetypes,’ but to ‘preserve, protect and defend the Constitution of the United States,’ that is, the particular constitutional structure of the particular nation so constituted.”²⁰

The only sovereignty that matters to a state is its own. The *raison d’être* of a state is its own sovereignty, that is, its independence from foreign, and supranational, powers. That is why the modern trend toward the establishment

¹⁷ Cyril E. Hudson, “The Church and International Affairs,” *International Affairs*, January 1947, p. 2.

¹⁸ Jacques Maritain, “The Concept of Sovereignty,” *American Political Science Review*, June 1950, p. 354. The French philosopher argued even further that sovereignty, understood as supreme power that is unaccountable, is inherently problematic because it violates the right of men to self-government. Moreover, such a concept also assumes that a politically sovereign entity is its own lawgiver and lacks accountability to a higher law. As he concludes his article, the “two concepts of Sovereignty and Absolutism have been forged together on the same anvil. They must be scrapped together.” Maritain, p. 357.

¹⁹ Robert Kagan, “America’s Crisis of Legitimacy,” *Foreign Affairs*, March-April 2004, p. 77.

²⁰ Jeremy Rabkin, “American Self-Defense Shouldn’t Be Too Distracted by International Law,” *Harvard Journal of Law & Public Policy*, Vol. 30, No. 1, 49.

of supranational institutions that claim authority over sovereign states is problematic. It undermines the legitimacy of states and moves the locus of decision-making to a higher, less accountable level. Such a trend is undoubtedly supported by some states, often those that have become skeptical of the value of their own sovereignty (especially Western European states that are at the forefront of the European political project). However, it is also equally opposed by others, such as the United States and many of the newly independent states of the former Soviet sphere. The United States, after all, came into existence expressly to achieve and maintain independence from foreign intervention, and this “constitutional culture” makes it difficult to accept a limitation of that freedom and autonomy.²¹

Furthermore, to defend and sustain its own sovereignty, a state has to be both willing and capable of violating the sovereignty of others. The moment a state elevates the *principle* of sovereignty above *its own particular* sovereignty, it undermines the very rationale for its existence by depriving itself of key foreign policy tools. In some ways, there is an inherent paradox in the idea of state sovereignty. A state has external autonomy, that is, it is its own law and the international community has no right to infringe upon it, unless the state acquiesces voluntarily. But a state has the right and duty to protect itself, and in this process it may have to break the sovereignty of others. Its legitimacy derives, therefore, not from the international community, but from its own people to whom the state is bound and to whom it must provide security.

Finally, the legitimacy of states often arises from ideas and principles that transcend the peculiar historical situation of that polity. For instance, the United States was founded on “self-evident truths,” among which are the unalienable rights of life, liberty, and the pursuit of happiness. These truths are not limited to the thirteen colonies, or to the fifty states, but are universal. U.S. legitimacy is based on upholding these truths first and foremost, not an abstract principle of state sovereignty. Of course, this does not mean that the United States must intervene everywhere and all the time to protect these truths; politics requires prudential judgment. The *fiat iustitia, pereat mundus* (let there be justice, though the world perish) exhortation cannot be applied to the foreign policy of a state. But from this limitation of politics does not follow the idea that the legitimacy of a state in general and of the United States in particular, stems from an international status quo (of which state sovereignty is an important facet). There can certainly be a debate about the limits of U.S. power, the prudence of a particular intervention, or the applicability of universal principles, but a foreign policy based on an absolute defense of the state sovereignty principle will incur costs, in this case the loss of some domestic legitimacy.

²¹ See Jeremy Rabkin, *Law without Nations?* (Princeton, NJ: Princeton University Press, 2005), pp. 233-270.

Effectiveness

The third set of costs incurred while pursuing a foreign policy based on absolute respect for state sovereignty is ineffectiveness. All foreign policy, especially that of a great power, represents some sort of violation of the target states' sovereignty. The objective of foreign policy is, after all, to alter the behavior of other states, molding it into a course that is more advantageous to us. Foreign policy involves a whole spectrum of actions, from negotiations to threats, sanctions, and use of force, and all of them limit, constrain, and alter a state's freedom of action. As Stephen Krasner points out, sovereignty can be violated in four ways: conventions (when states agree to certain norms or behaviors), contracts (when states agree to a specific behavior in exchange for some benefit from the other side), coercion (when states are forced to do something against their will), imposition (the most extreme, yet more common than coercion, way of violating sovereignty which occurs when the state has no power to resist). The first two are voluntary and occur when, for a variety of reasons, a state realizes it is better off abandoning freedom of action in a specific area. The latter two examples constitute a coercive violation of the target state's sovereignty, resulting from an asymmetry of power between the two political actors. In either case, it is clear that defense of the sovereignty principle is not the overarching foreign policy objective and, in fact, may be a hindrance to a state's ability to conduct an effective and desirable foreign policy. As Krasner writes, "If rulers want to stay in power and to promote the security, material, and ideational interests of their constituents, following the conventional practices of Westphalian and international legal sovereignty might or might not be an optimal policy."²²

Voluntary limitations on sovereignty are less problematic because they presumably enhance international stability and welfare. For instance, conventions regulating relations between the government and various minorities within a state are beneficial to maintaining order, as well as human rights. Similarly, abandoning a national currency in favor of a regional one (e.g., the Euro) has increased the market as well as the financial stability of the participating states. Even in such "voluntary" cases, the abdication of an aspect of one's own sovereignty can create political challenges, especially domestically. Such abdications of sovereignty, while beneficial on some level (e.g., increasing protection of minority groups, or expanding the size of the market), may also lead domestically to a weaker state and ultimately a less effective implementation of law. In fact, in most cases, the agreed convention or the supranational institution have limited enforcement capabilities and, therefore, depend on the willingness of the individual state to abide by them.

²² Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), p. 24.

The other, more forceful, limitations of sovereignty are, however, more germane for the argument here. These violations of sovereignty, through coercion or imposition, are part and parcel of foreign policy, especially of great powers, including the United States. They represent interferences in other states, ranging from altering the foreign policy of the target state to changing its domestic political regime. Such interventions can certainly be unjust, illegitimate, and destabilizing. Russia's small war in Georgia in August 2008 is a perfect example of a military intervention that had no justification (Georgia posed no security threat to Russia, and alleged violations of human rights of Russian minorities were at best overblown) and risked a larger conflagration in the region. Yet, to oppose such individual interventions does not necessarily lead to support for state sovereignty at all times and at all costs. To preclude any interference in another state is to limit the effectiveness of a state's foreign policy. For the United States, this would weaken our ability to defend ourselves and our allies, to advance our ideals, and to use our power advantage to our benefit.

Terrorism especially exacerbates the trade off between sovereignty and security. Terrorist groups such as al Qaeda often use state sovereignty as an umbrella under which to hide, regroup, and reorganize. If the United States or any other state, wants to degrade the lethality of these groups, it has to be willing and able to interfere within the jurisdiction of other states, undermining sovereignty in the process. In the case of state-sponsored groups it is relatively easier to violate the sovereignty of the sponsoring state, which, after all, is using the terrorist organization to project power and attack another state. A violation of its sovereignty is clearly within the parameters of self-defense. For instance, Israel certainly would be justified to attack Iran and Syria, if Hezbollah, aided and encouraged by these two states, engages in another war (whether such an attack is feasible and desirable from a military and political perspective is a different issue).

But even when a terrorist group is simply hiding within a state, using it as a cover or as a source of recruits and finances, sovereignty should not be an impediment to intervention. To avoid dealing with such groups, or to pass the responsibility of dealing with them to the host state, simply because of the claim that sovereignty ought to be respected, is an abdication of political duties. Moreover, to criticize an intervention within a state that has terrorist cells and therefore to argue, for instance, that the United States should refrain from breaking that state's sovereignty erects undue constraints on foreign policy. In a world of non-state threats, absolute respect for sovereignty undermines state security. When threats arise from within states, violating their sovereignty is a necessity. Obviously there is a spectrum of violations, ranging from military invasion to precision strikes or to cover operations, but all of these constitute a clear violation of sovereignty. Some may be more militarily feasible and politically palatable than others, but none would be possible if sovereignty trumped effective foreign policy.

Furthermore, it may be imperative to engage in a policy aimed at changing the domestic regime of another state. As mentioned earlier, respect for sovereignty can be an effective tool to manage relations between states, drawing boundaries of acceptable behavior. But it works most effectively when states share something in common, for instance belief in dynastic legitimacy (as during the 1815 Congress of Vienna) or deference for democratic authority. In such cases, states respect each other's sovereignty because they perceive each other as legitimate. When states look at each other with mistrust and animosity because of fundamental differences in domestic regimes (e.g., Soviet Union vs. the U.S., or democracies vs. autocracies), respect for sovereignty becomes more fragile. Intervention in the domestic affairs of states considered illegitimate and in the wrong is motivated not only by humanitarian reasons but also by serious security concerns. The threat of an autocratic regime, for instance, may be not only in its relative power (which may or may not be greater than ours), but also in its very nature, which, as Kant observed, makes the decision to go to war easy. The ruler is the "owner of the state, and does not lose a whit by the war, while he goes on enjoying the delights of his table or sport, or of his pleasure palaces and gala days. He can therefore decide on war for the most trifling reasons, as if it were a king of pleasure party."²³ To fore swear interventions in the domestic affairs of a state, ranging from support of dissident groups to invasion, seriously undermines the ability to conduct foreign policy in pursuit of limiting threats and establishing a more benign strategic environment.

Thus, if the goal is to alleviate security challenges by changing the nature of states, sovereignty becomes a constraint. A foreign policy based on absolute respect for sovereignty, including that of autocracies, is an ineffective tool to deal with the threat arising from such regimes. By respecting the sovereignty of autocracies, states need to rely exclusively on differentials of power, and ultimately on purely defensive measures. In other words, an autocratic threat needs to constitute an immediate danger, or even a direct attack, before a state may answer. Being proactive requires interfering in the internal affairs of that regime, in the attempt to destabilize it and perhaps even change it. Democracy promotion can be seen, from this perspective, as a form of national security strategy because the creation of domestic regimes based on popular sovereignty and respect for human rights, separation of power, and transparency of its political processes, diminishes the number, and therefore, the overall threat of despotic regimes. Policies that promote democracy abroad are, however, violations of sovereignty—violations that, to be sure, can be on a wide spectrum ranging from financial backing of radio broadcasting (e.g., Radio Free Europe/Radio Liberty during the Cold War) and of groups within the autocratic state to more forceful, even military interventions. They are all

²³ Kant, *Perpetual Peace, A Philosophical Essay* (1795; Old Chelsea Station, New York: Cosimo, Inc., 2005), p. 9.

violations nonetheless. Even taking a stand on the legitimacy of the leadership of a country is a form of denying sovereignty because it passes judgment on a political entity that is independent and is a law on its own. In brief, to defer to sovereignty means abandoning democracy promotion or withholding moral judgment.

The final, but perhaps the most important, cost in foreign policy efficiency is loss of the advantage in power. This is particularly true for great powers, including the United States, because of their military superiority. The principle of state sovereignty is, in fact, the great equalizer: accordingly, states are all equal and power asymmetries ought not to matter. In a world where sovereignty would be perfectly respected, states would defer to each other as equal, independent entities regardless of their relative power. It is not by chance that the weakest states are often the most vocal defenders of the principle of sovereignty. The ideal of a world organized according to the principle of sovereignty—and a principle perfectly respected—is undoubtedly appealing because it would make war a rarity (albeit, as developed in a previous point, it would also make people subject to the whims of their despots without the hope of external help). Yet, because we do not live in such a world, those who function according to the sovereignty principle are disadvantaged. Assume, for example, that the United States decides to abide by the rules of sovereignty and to refrain from interfering in the internal affairs of any other state. By doing so, the United States puts itself on the same level as the weakest state in the world. It becomes, by choice, an equal to, say, Burma or Venezuela, which, by the fact of their relative power, have very limited means to interfere in our internal affairs. Reverence for sovereignty can, thus, lead to a blunting of our advantage in power.

Conclusion

By presenting the costs of absolutely respecting sovereignty, I am not arguing in favor of completely abandoning the idea of state sovereignty. On the contrary, violating state sovereignty should not be taken lightly because states, regardless of their size, are a source of stability and accountability in international relations. But the benefits of respecting state sovereignty should also not be overstated. Basing one's own foreign policy on reverence for sovereignty is not always morally desirable, politically legitimate, and strategically sound. The principle of sovereignty and the defense of a particular state's sovereignty are in many instances mutually exclusive; to protect a state's security and sovereignty it must often violate that of other states. Sovereignty, as well as security and legitimacy, cannot be sacrificed in defense of the abstract principle of sovereignty.

Prudential judgment must dictate both when to violate or when to respect state sovereignty. In either case, the principle of sovereignty should not be the guiding idea of U.S. foreign policy, the metric according to which

analysts and diplomats judge the necessity and legitimacy of U.S. actions. What matters is not an abstract rule of the international system—a rule that is also historically contingent and from the perspective of *la longue durée* relatively young—but the survival and security of the United States with its values. These trump the principle of sovereignty.

