4 one law

The Need for Intervention

We have seen how increased awareness of our dependence on the shared and vulnerable atmosphere of our planet and the movement toward a more integrated world economy have both put pressure on traditional ideas of state sovereignty. There is another area in which the traditional idea of state sovereignty has been more directly confronted—and overridden. Support for an effective universal prohibition on genocide and crimes against humanity shows more clearly than any other issue how our conception of the sovereign rights of states has changed over the past 50 years. This chapter examines why that has happened, how it has been defended, and why it is justified.

Genocide is not a new phenomenon. Anyone who has read the Bible knows that. The *Book of Numbers* tells of a time when Israelite men were succumbing to the charms of the women of a neighboring tribe, the Midianites. Worse still, it seems that these

women succeeded in persuading their Israelite lovers to follow the Midianite religion:

> And the LORD spake unto Moses, saying, Avenge the children of Israel of the Midianites. And Moses spake unto the people, saying, Arm some of yourselves unto the war, and let them go against the Midianites, and avenge the LORD of Midian. Of every tribe a thousand, throughout all the tribes of Israel, shall ye send to the war. So there were delivered out of the thousands of Israel, a thousand of every tribe, twelve thousand armed for war. . . . And they warred against the Midianites, as the LORD commanded Moses; and they slew all the males. . . . And the children of Israel took all the women of Midian captives, and their little ones, and took the spoil of all their cattle, and all their flocks, and all their goods. And they burnt all their cities wherein they dwelt, and all their goodly castles, with fire. And they took all the spoil, and all the prey, both of men and of beasts. And they brought the captives, and the prey, and the spoil, unto Moses, and Eleazar the priest, and unto the congregation of the children of Israel, unto the camp at the plains of Moab, which are by Jordan near Jericho. And Moses, and Eleazar the priest, and all the princes of the congregation, went forth to meet them without the camp. And Moses was wroth with the officers of the host, with the captains over thousands, and captains over hundreds, which came from the battle. And Moses said unto them, Have ye saved all the women alive? Behold, these caused the children of Israel . . . to commit trespass against the LORD . . . and there was a plague among the congregation of the LORD. Now therefore kill every male among the little ones, and kill every woman that hath known man by

Num 31:1-18

lying with him. But all the women children, that have not known a man by lying with him, keep alive for yourselves.[1]

For much of the past century it has been widely believed that people commit crimes of violence because they are poor, ignorant, oppressed, abused, or exploited; or if none of these adjectives apply to them at the time they commit these crimes, then one or more of them must have applied to them at a formative period of their individual psyche, such as their childhood. This was supposed to be true not only of people who commit individual crimes but also of those who take part in crimes on a larger scale. It follows from this view that trying to prevent crimes by more effective policing is treating the symptoms and not the causes. To get at the roots of the problem we must end injustice and exploitation, improve and reform education so that it teaches the importance of respecting our fellow human beings, irrespective of race, religion, or politics, prevent the corruption of the democratic process by the arms manufacturers and others who profit from war or genocide, and ensure that no child is brought up in poverty or by abusive parents.

We would, I hope, all like to end injustice and exploitation, and see that no child lives in poverty or is abused. Nor would I disagree with those who would like to see our schools do whatever they can to encourage an attitude of respect for others. Perhaps doing these things would reduce violence, but we ought to do them even if it does nothing to reduce violence. But would doing them be enough to put an end to violence, and make other measures unnecessary? I do not think so, and the passage from the *Book of Numbers* that I have quoted suggests three reasons why it will not.

First, that text—especially if read alongside other biblical passages describing other slaughters, no less ruthless[2]—shows that

the horrific mass killings of the twentieth century were not a new phenomenon, except insofar as modern technology and communications enabled the killers to murder far more people in a relatively brief period of time than had ever happened before. As Lawrence Keeley has shown in *War Before Civilization,* war has been a regular part of the existence of the overwhelming majority of human cultures, and male prisoners were usually not taken, although women and children sometimes were. Massacres of entire groups seem not to have been unusual. The mass graves of Europe—burial pits containing people of all ages who have met violent deaths—go back at least 7,000 years, to the Neolithic grave at Talheim, in Germany. At Crow Creek, in South Dakota, more than a century before Columbus sailed for America, 500 men, women, and children were scalped and mutilated before being thrown into a ditch. It is a sobering thought that in many tribal societies, despite the absence of machine guns and high explosives, the percentage of the population killed annually in warfare far exceeds that of any modern society, including Germany and Russia in the twentieth century.[3]

Second, the text clearly suggests that the Israelite motivation for wiping out the Midianites had nothing to do with their own poverty, nor with any injustice they had suffered at the hands of the people they attacked. In fact the Midianites appear to have committed no crime at all except consenting to sexual relations —to which, presumably, the Israelite men also consented—and having a religion that was, at least to some Israelites, more attractive than that followed by Moses.

Third, if the Lord had not spoken of vengeance, but had given Moses a modern genetics textbook and commanded him to do whatever would maximize the number of Israelite descendants, then Moses might have acted exactly as he is portrayed as doing in *Numbers.* Since women can have only a limited number of chil-

dren, and the Israelite men were capable of providing them with all the sperm they need for that purpose, Midianite males were potential competitors and of no genetic use to the Israelites. So Moses ruthlessly eliminated them, men and boys alike. Killing all the Midianite women who are not virgins ensured that there were no pregnant women who might carry male Midianite children, and it was an effective way of ensuring that there would be no one of full Midianite descent in the next generation. Allowing the captains to keep the young Midianite females for themselves increased the number of their own descendants.

Here we have an example of genocide in which the genetic advantage to the perpetrators is as clear as anything can be. What does this mean for us? We are all the descendants of men who succeeded in leaving their genes in subsequent generations, while many other men did not. Killing rival males with whom one does not share any genes and mating with their wives or daughters is one way in which men can, when the circumstances allow, enhance their prospects of leaving their genes in subsequent generations. Don't be misled by the thought that the killing of some humans by others cannot be good for the species. Species come in and out of existence too slowly to be the dominant unit of evolution. It is better to think of evolution as a competition between genes, individuals, and perhaps small, genetically related groups, than between species. That, presumably, has something to do with the central part that war and massacre have played in human history and pre-history. Indeed, the capacity to commit massacres probably goes back even further than our distinct identity as human beings. Chimpanzees, who together with bonobos are our closest non-human relatives, go on raiding parties across the borders of their territory in which they deliberately—if you doubt that word, read a description of how they go about it—seek out and kill vulnerable chimpanzees, usually males, from another group. In one instance the chimpanzees that Jane Goodall was observing at Gombe completely wiped out a neighboring group over a three-year period, killing at least four adult and adolescent males and one adult female, driving away all the other adults, and "keeping alive for themselves," if I may here use the biblical expression, the two young daughters of the adult female they had killed. Similar behavior has been observed in other chimpanzee groups widely dispersed across Africa.[4]

Are we, then, all potential perpetrators of genocide? That goes too far. There are many ways in which one can do better than others in leaving one's genes in later generations. One of them is being particularly good at forming mutually beneficial cooperative relationships.[5] Amazingly, humans can do this even when they are divided into warring nations, marched into trenches facing each other, given a rifle, and told to kill the enemy in the other trenches.[6] The circumstances in which this is likely to be advantageous are more common than the circumstances in which genocide is likely to be advantageous. Thus we could say that we are all potential cooperators. But that a significant number of human males have the potential to be perpetrators of genocide is, in view of the evidence from ethology, anthropology, and history, highly plausible. It is also plausible to believe that although this potential may be more likely to be acted upon in the presence of poverty, injustice, exploitation, or a lack of education, it may also be acted upon without these factors.

If we bring our gaze forward from biblical times to the century that has just ended, we find terrible confirmation of that bleak statement. In 1915 to 1917 Turks massacred perhaps 1.5 million Armenians. In the 1930s Stalin ordered the deaths of somewhere between 7 and 10 million people. The figure of 6 million is usually assigned to the Nazi genocide against Jews. Then came the killings in Cambodia, in Rwanda, and as the century neared its end,

in Bosnia, Kosovo, and East Timor. Some of these killings were perpetrated by people who were poor and uneducated, but others were not. Germany in the 1920s was among the most highly educated nations in the world. Yugoslavia had, since 1918, been striving to educate its citizens to think of themselves as Yugoslavs, not as Croats, Serbs, or members of other nationalities or ethnic groups. Timothy Garton Ash asks, in his *History of the Present,* What have we learned from the events in that region during the last decade of the twentieth century? He answers: "We have learned that human nature has not changed. That Europe at the end of the twentieth century is quite as capable of barbarism as it was in the Holocaust of mid-century."[7] He might have also said: and for millennia before that, and not only in Europe.

So although overcoming poverty, eliminating injustice, and improving education may make genocide less likely, we cannot rely on these policies alone to prevent it. What else can be done? Developing mechanisms to promote peace and reduce the risk of war between nations is important, for the mentality of war breaks down inhibitions and makes men more prone to kill noncombatants as well as the enemy's armed forces. But in the end, we need to be able to do something that will make potential perpetrators of genocide fear the consequences of their actions. Just as, at the domestic level, the last line of defense against individual crimes of murder, rape, and assault is law enforcement, so too the last line of defense against genocide and similar crimes must be law enforcement, at a global level, and where other methods of achieving that fail, the method of last resort will be military intervention.

The Development of International Criminal Law

The charter of the International Military Tribunal set up by the Allies to try the leading Nazi war criminals at Nuremberg gave it

jurisdiction over three kinds of crimes: crimes against peace, war crimes, and crimes against humanity. In promulgating this charter, the Allies declared it a "crime against peace" to initiate a war of aggression; a "war crime" to murder, ill-treat, or deport either civilians or prisoners of war; and a "crime against humanity" to murder, exterminate, enslave, or deport any civilian population, or to persecute them on political, racial, or religious grounds. These acts, the charter of the tribunal stated, are crimes "whether or not in violation of the domestic law of the country where perpetrated."[8]

Though the Allies were able to draw on earlier precedents and conventions to justify their claim that crimes against humanity were already recognized in international law, the Nuremberg Tribunal gave new impetus to the idea that certain acts are so horrendous that they are crimes, no matter what the prevailing law at the time in the country in which they are perpetrated. Subsequently the United Nations General Assembly asked the International Law Commission to formulate principles of international law relating to crimes such as those dealt with by the Nuremberg Tribunal and the Commission recommended that there should be international criminal responsibility for crimes against humanity committed at the instigation or with the toleration of state authorities. The 1984 Convention against Torture, signed by 110 states, accepted this principle. That Convention was central to the House of Lords decision on whether the United Kingdom government could extradite Senator Auguste Pinochet to Spain, to be tried there for crimes he was alleged to have committed in Chile. Chile had ratified the Convention against Torture, and this was sufficient for the law lords to find that Pinochet could be extradited to Spain.[9] But that case also raised the question of what is called "universal jurisdiction," that is, the right of any country to try a person who has committed crimes against hu-

manity, irrespective of whether the country in which the crime was committed is a signatory to a convention that provides for international criminal responsibility in respect of that crime.

At the time of the Pinochet hearing, Amnesty International made a strong case that international law recognizes universal jurisdiction for crimes of humanity.[10] The prosecution of Adolf Eichmann in Israel is often cited as a precedent for this view.[11] Eichmann was, under Himmler and Heydrich, in charge of the implementation of the murder of European Jews under Nazi rule. He was kidnapped in Argentina and flown to Israel, where he was tried and subsequently executed. Though the method by which he was brought to Israel was of doubtful legality, there has been general acceptance that Israel had the right to assert jurisdiction over offenses committed in Germany. Moreover, the Supreme Court of Israel claimed this jurisdiction, not on the ground that Israel was the legal representative of Eichmann's victims, but on the ground of universal jurisdiction over crimes against humanity. Eichmann's crimes against non-Jewish Gypsies, Poles, and others were thus also germane to the proceedings in Israel.[12]

In the Pinochet case, Lord Phillips of Worth Matravers discussed the question of universal jurisdiction and concluded:

> I believe that it is still an open question whether international law recognises universal jurisdiction in respect of international crimes—that is the right, under international law, of the courts of any state to prosecute for such crimes wherever they occur. In relation to war crimes, such a jurisdiction has been asserted by the State of Israel, notably in the prosecution of Adolf Eichmann, but this assertion of jurisdiction does not reflect any general state practice in relation to international crimes. Rather, states have tended to agree, or to attempt to agree, on the creation of international tribunals to try international crimes. They have however, on occasion, agreed by conventions, that their national courts should enjoy jurisdiction to prosecute for a particular category of international crime wherever occurring.[13]

Belgium has legislation recognizing the principle of universal jurisdiction, and that legislation was invoked in the trial of four citizens of Rwanda on charges relating to their involvement in the 1994 genocide in that country. In June 2001, a Belgian jury found them guilty. In the same year, the President of Senegal agreed to a request from United Nations Secretary-General Kofi Annan to hold Hissène Habré, the former dictator of Chad, who is accused of presiding over a regime that carried out systematic torture and murdered 40,000 suspected political opponents. After complaints were filed in Belgian courts against Habré by relatives of his victims, Belgian judicial officials visited Chad in February 2002 to investigate whether the case against him is strong enough to support an application for his extradition to Belgium.[14]

In January 2001, at the initiative of the International Commission of Jurists, an international group of 30 scholars and jurists meeting at Princeton University attempted to reach consensus on a desirable direction for universal jurisdiction. They came very close: the "Princeton Principles on Universal Jurisdiction" were agreed to with only a single dissent among those assembled. The principles endorse the idea of criminal jurisdiction exercised by any state "based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction." The

crimes specified include piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide, and torture. Subsequent principles require adherence to international norms of due process, reject the idea of immunity for those in official positions such as head of state, and deny the efficacy of a grant of amnesty by a state to the accused.[15] If the Princeton Principles gain broad support internationally they would establish a truly global jurisdiction for the crimes they cover.

Yet it would be a mistake to disregard the reasons why the lone dissenter at the Princeton meeting, Lord Browne-Wilkinson, did not join the consensus. Like Lord Phillips of Worth Matravers, Lord Browne-Wilkinson is a distinguished judge of Britain's highest court, the House of Lords. He was the senior judge in the Pinochet case. In his dissenting statement, Lord Browne-Wilkinson warns that universal jurisdiction could lead to states hostile to other states seizing their officials and staging show trials for alleged international crimes. As examples he suggests—and this was written before September 11, 2001—that states hostile to the Western powers might put Western officials on trial, or Western zealots might seek to prosecute Islamic extremists for terrorist activities. The state of which the accused is a citizen might then resort to force in order to protect its subjects. The result "would be more likely to damage than to advance chances of international peace."[16]

In the same month (July 2001) in which the Princeton Principles were published, the fears that Lord Browne-Wilkinson had expressed came a step closer to reality. Ironically, in view of the role that the Eichmann case has played in establishing the principle of universal jurisprudence, this time it was Israel's Foreign Ministry that feared that Israeli officials might be put in the dock. The Foreign Ministry cautioned officials to take care in traveling abroad because some countries might be prepared to charge them

with violating Palestinians' human rights. The warning followed a legal case brought in Belgium by survivors of the 1982 massacre of Palestinians at the Sabra and Shatila refugee camps against Israel's Prime Minister Ariel Sharon. Though Israel's Lebanese Christian allies carried out the massacre, an official Israeli investigation attributed "indirect responsibility" to Sharon, then defense minister, for failing to stop the killing. In Denmark there was also talk of arresting the Israeli ambassador, Carmi Gillon, a former chief of the Israeli security service, who had supported the use of "moderate physical pressure" during police investigations of suspected terrorists.[17] The ground for such cases was undercut, however, by a February 2002 ruling of the International Court of Justice that a Belgian arrest warrant for the acting Foreign Minister of the Democratic Republic of the Congo on charges of human rights violations was itself a violation of international law, because a foreign minister has immunity from such prosecutions. The court did not rule on the issue of universal jurisdiction itself, although remarks made by different judges suggested that the court would have been divided on the issue, had it directly addressed it.[18] (In accordance with standard diplomatic practice, the Princeton Principles provide immunity for diplomats and officials traveling on government business.)

To reduce the risk of a proliferation of charges brought by individual nations invoking universal jurisdiction, both Lord Browne-Wilkinson and his colleague Lord Phillips prefer the use of international courts, unless the country whose national has been charged has signed a treaty accepting universal jurisdiction for the relevant offenses, as in the case of Chile, which had signed the Convention against Torture. Even those who support universal jurisdiction agree that an international court is a valuable additional option. If it worked well enough, it might make universal jurisdiction unnecessary. Like the Nuremberg Tribunal, more

recent international tribunals have arisen in the wake of tragic events: the wars that followed the break-up of the former Yugoslavia, the massacre of Tutsis in Rwanda, the Serbian attacks on the Albanian inhabitants of Kosovo, and the killings in East Timor by militia supported by the Indonesian armed forces. By strengthening the resolve of all decent people not to allow such tragedies to continue, these tribunals are pushing us toward a global system of criminal justice for such crimes. In contrast to the Nuremberg Tribunal, the trial of Slobodan Milosevic, the former president of Yugoslavia, sent by the government he once led to trial by the international tribunal in The Hague, is not justice exacted by the occupying forces against the leaders of a nation that has been forced into unconditional surrender. It is a sign of the recognition, at least within Europe, that national sovereignty is no defense against a charge of crimes against humanity.

So far, these international tribunals have been one-time arrangements, specially set up to try particular crimes. (The long-standing International Court of Justice deals only with disputes between states, not with accusations against individuals.) To make the prosecution of crimes against humanity a permanent feature of international law, representatives of 160 states met in Rome in 1998 and agreed, by an overwhelming majority, to set up an International Criminal Court, to be associated with the United Nations and situated in The Hague. The court has a prosecutor who can bring charges of genocide, crimes against humanity, and war crimes against individuals as long as they are a national of a state that has ratified the treaty, or the crime was committed on the territory of such a state, or the Security Council refers a specific case to the court. The court came into existence in 2002, with more than 60 states accepting its jurisdiction and others acceding subsequently. Thus the world has, for the first time, a permanent international body enforcing international criminal law.

The United States has played a less than distinguished role in this process, seeking amendments to the statute that would exempt U.S. soldiers and government officials from prosecution. (Why the United States should expect its nationals to be treated differently from the nationals of all other nations has never been made clear.) President Clinton signed the treaty but did not attempt to have it ratified. President Bush has said that he is opposed to the court.[19] Conservative members of Congress are so hostile to the treaty that they held up the payment of money that the United States owed to the United Nations in an effort to obtain an exemption for U.S. officials or military personnel.[20] It is still too early to say whether American support for international prosecution of terrorists will, in time, lead to a change in the U.S. attitude to the International Criminal Court. If one country accuses another of harboring a terrorist, and the accused country is doubtful about whether the accused would receive a fair trial in the country making the charge, an international court is the obvious forum for resolving the dispute. (The treaty setting up the court does not give it authority to prosecute terrorists, because discussion of that issue became bogged down in disputes about how best to define "terrorism." There is, however, provision for further discussion of how best to frame a clause on prosecuting terrorism once the court has come into existence.) Although the United States refuses to contemplate its own citizens being tried by an open international court, operating in accordance with international rules of due process and eschewing the death penalty, it has, in the wake of the September 11, 2001 attacks, set up military tribunals for the trial of suspected terrorists who are not U.S. citizens, using evidence that need not be produced in open court. The tribunals will have the power to apply the death sentence.[21] Here again, as with the case of intellectual property rights over lifesaving medicines discussed in the previous chapter, the United

States uses one standard for its own citizens, and another for citizens of other countries.

Criteria for Humanitarian Intervention

Punishing the criminals after an atrocity has occurred is something that most people would support because of their belief that this is what justice requires. From a utilitarian perspective, punishing those guilty of past crimes will, one hopes, put others who might do something similar on notice that they will have no refuge from justice, and so deter them from committing new crimes. Since the fear of punishment will not always be sufficient to prevent the crimes taking place, however, the question of intervention will still arise. If punishment can be justified, so can intervention to stop a crime that is about to occur, or already in progress. Is there, perhaps, not only a right to intervene when atrocities are being committed, but, as a distinguished international commission suggested in the title of a report it presented in 2001, a "responsibility to protect" even if the only way to do so is to invade another country?[22] But if so, under what circumstances should countries act on that responsibility?

For philosophers to take up this question is not a new idea. Kant wrote a "philosophical sketch" entitled *Perpetual Peace* in which he argued that no state should, by force, interfere with the constitution or government of another state. He also thought that states preparing for war should seek the opinions of philosophers on the possibility of peace.[23] John Stuart Mill said that few questions are more in need of attention from philosophers than: when may a state that is not itself under attack go to war? He thought that philosophers should seek to establish "some rule or criterion whereby the justifiableness of intervening in the affairs of other countries, and (what is sometimes fully as questionable) the justifiableness of refraining from intervention, may be brought to a definite and rational test."[24]

What rule or criterion would satisfy Mill's "definite and rational test" of when intervention is justified, and even obligatory, and when it is not? One phrase often heard in this context is that used by Lassa Oppenheim in the following passage from his influential treatise on international law:

> There is general agreement that, by virtue of its personal and territorial supremacy, a State can treat its own nationals according to discretion. But there is a substantial body of opinion and practice in support of the view that there are limits to that discretion; when a state renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental rights *and to shock the conscience of mankind,* intervention in the interests of humanity is legally permissible.[25]

Michael Walzer has taken up this criterion. In *Just and Unjust Wars,* he wrote:

> Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts "that shock the moral conscience of mankind." The old-fashioned language seems to me exactly right. . . . The reference is to the moral convictions of ordinary men and women, acquired in the course of their everyday activities. And given that one can make a persuasive argument in terms of those convictions, I don't think that there is any moral reason to adopt that posture of passivity that might be called waiting for the UN (waiting for the universal state, waiting for the messiah . . .).[26]

Those words date from 1977. Though the intervening years have not seen the arrival of the messiah, the United Nations has shown that it can act, even if its actions are open to serious criticism, and have not always been as prompt and effective as one would fervently wish.[27] Walzer has continued to support the "shock the conscience" criterion, and has pointed out that in an age in which "the camera crews arrive faster than rigor mortis," the acts that do shock the conscience of humankind are more shocking than they used to be, because we are so intimately linked to them.[28] Nevertheless, Walzer insists on retaining a strong presumption against intervention. He specifically rejects the idea that the violation of human rights is in itself a sufficient justification for intervention, or that it is legitimate to intervene for the sake of democracy.[29] Sometimes he argues for the strong presumption against intervention in terms of the importance of protecting the sovereignty of states in which people can live a communal life, and struggle for freedom in their own way, within their own communal structures.[30] At other times his argument is more pragmatic: ever since Roman times, he reminds us, imperial powers have sought to expand their empires by intervening in civil wars. Intervention can too easily become an excuse for annexation, in one form or another. Walzer does mention some examples of intervention that he thinks were justified: by India in what was then East Pakistan, now Bangladesh, in 1971; by Tanzania in 1979 against the regime of Idi Amin in Uganda; and by the Vietnamese in Cambodia in the same year. On the whole, though, he thinks people "should be allowed to work out their difficulties without imperial assistance, among themselves."[31]

The problem with Walzer's appeal to the "conscience of mankind" criterion is that this conscience has, at various times and places, been shocked by such things as interracial sex, atheism, and mixed bathing. Ironically, the Nazis themselves elevated "the healthy sensibility of the people" to the status of a legal norm, using it to suppress homosexuality.[32] We know that when international lawyers talk of acts that shock the conscience of humankind, they don't mean things like *that,* but how can we specify precisely what they do mean?

United Nations Secretary-General Kofi Annan has suggested that intervention is justified "when death and suffering are being inflicted on large numbers of people, and when the state nominally in charge is unable or unwilling to stop it." He defends this view by saying that the aim of the United Nations Charter is "to protect individual human beings, not to protect those who abuse them."[33] Annan's criterion has the advantage of being more specific than "shocking the conscience of mankind." In order to make it more precise still, however, the reference to "suffering" should be replaced by an enumeration of more specific harms. This is done in various international legal documents, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which is followed in the 1998 Rome Statute of the International Criminal Court. Article 2 of the Convention defines the crime of genocide as follows:

> genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.[34]

Although all of these acts should count as crimes, and those who carry them out should be prosecuted and charged whenever possible, it is possible to draw distinctions between them. Since military intervention risks widespread casualties, the imposition of measures intended to prevent births within a group, or the forcible transfer of children from one group to another, is arguably insufficient in itself to justify military intervention. Of course, such measures will generally be accompanied by physical violence and can cause serious mental harm to members of the group, thus bringing the situation under one of the other clauses of the definition of genocide, and opening the way for the possible justification of intervention. In addition, whether the acts are carried out against a specific national, racial, ethnic, or religious group serves only to identify these crimes as genocide. Random acts of violence against an equivalent number of innocent people would be crimes against humanity, and they could also provide a trigger for justifiable intervention.

The definition of a "crime against humanity" is less well settled than the definition of genocide, but the Rome Statute of the International Criminal Court uses the following definition:

> "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
> (a) Murder;
> (b) Extermination;
> (c) Enslavement;
> (d) Deportation or forcible transfer of population;

> (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
> (f) Torture;
> (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
> (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
> (i) Enforced disappearance of persons;
> (j) The crime of apartheid;
> (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[35]

Again, if we are seeking a trigger for military intervention, we need to focus on widespread, flagrant examples of these crimes.

We can now draw on the definitions of genocide and crimes against humanity, as well as Walzer's and Annan's criteria, to say:

> Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts that kill or inflict serious bodily or mental harm on large numbers of people, or deliberately inflict on them conditions of life calculated to bring about their physical destruction, and when the state nominally in charge is unable or unwilling to stop it.

Admittedly, this definition gives rise to more questions than it answers. How many people is a "large number"? How serious does the bodily or mental harm have to be? Who will decide when conditions of life that bring about the physical destruction of large numbers of people have been deliberately inflicted upon them? If humanitarian intervention is justified when this criterion is met, is there also an obligation on other nations to intervene? Could knowingly causing, or being unwilling to stop, environmental pollution that will kill large numbers of people be regarded as meeting the definition? Is it only things done to human beings that count? Might we one day see wiping out of tens of thousands of chimpanzees, or the destruction of a unique ecosystem, bringing with it the extinction of many species, as grounds for intervention?

These questions are difficult, perhaps too difficult to serve as the basis of political action for the foreseeable future. It is better to begin modestly, as the International Commission on Intervention and State Sovereignty set up by the Canadian government in 2000 did in its report *The Responsibility to Protect.* The commission, co-chaired by Gareth Evans, a former Foreign Minister of Australia, and Mohamed Sahnoun, an experienced Algerian diplomat, and consisting of twelve distinguished experts from as many different countries, was concerned that its recommendations should be politically feasible. To that end, the commission cut down the criteria for justifiable military action to just two:

> A. *large-scale loss of life,* actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or,
> B. *large-scale "ethnic cleansing,"* actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

When these criteria are met, the commission said, there is not merely a right to intervene, but an international responsibility to protect those who are, or are in imminent danger of becoming, victims of these acts.[36] Although the conditions are in some respects narrower than those covered by the International Criminal Court's definition of a crime against humanity, and might therefore be thought to err on the side of making the threshold for intervention difficult to meet, in one important respect the commission's first criterion goes well beyond the definition of a crime against humanity: the "large-scale loss of life" that triggers intervention need not be the result of deliberate human action. Intervention can be justified, the commission said, to prevent people from starving to death, if the state is unable to assist them or neglects to do so.

These criteria seem, at least, a good starting point for the international community to use when it is considering a situation in which intervention is being considered. Let us therefore switch our attention to a different question: Who should decide when the criteria (whether it is precisely these, or some other set) have been satisfied? In practice, the answer to that question will be as important as the criteria. There is only one global body that could conceivably develop an authoritative procedure for specifying when intervention is justifiable.

The Authority of the United Nations

In a speech to the United Nations General Assembly in September 1999, Secretary-General Kofi Annan referred to the genocide in Rwanda as indicative of the consequences of inaction, and to the intervention in Kosovo as an example of action taken by "a regional organization [NATO] without a United Nations mandate." He then went on to pose a dilemma:

> To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask—not in the context of Kosovo but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defense of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?
>
> To those for whom the Kosovo action heralded a new era when States and groups of States can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances?[37]

Annan made his own position clear, saying that state sovereignty is being redefined by the forces of globalization and international cooperation: "The State is now widely understood to be the servant of its people, and not vice versa." As we have seen, he reads the United Nations Charter as authorizing intervention to protect individual human beings, rather than those who abuse them. In saying this, Annan may have in mind Article 55(c) of the Charter, which refers to the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all," and Article 56, which reads: "All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." The problem with interpreting these articles as justifying humanitarian intervention to protect individual human beings whose rights are being violated within a sovereign state, however, is that the same Charter states, in Article 2(7):

> Nothing contained 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.

Chapter VII does not refer to human rights but only to "threats to the peace, breaches of the peace, and acts of aggression." If we take this at face value, it would seem that the United Nations cannot set up procedures to authorize humanitarian intervention, because in doing so, it would be violating its own Charter.

How can these different sections of the Charter be reconciled? The Charter places two sets of obligations on its members, to respect human rights and not to interfere in the internal matters of another state. As Brad Roth puts it: "the Organization and its Members are pledged to observe and promote, but bound not to impose, wholesome internal practices."[38] The "Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations," adopted by the General Assembly in 1970 on the twenty-fifth anniversary of the United Nations, gives some support to this view. This Declaration elaborates on Article 2(7) of the Charter as follows:

> armed intervention and all other forms of interference or attempted threats against the personality of the State or

> against its political, economic and cultural elements, are in violation of international law . . . Every state has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another state.[39]

So does humanitarian intervention violate the United Nations Charter's acceptance of the principle of non-intervention in the domestic affairs of another sovereign state? We could reconcile the Charter with humanitarian intervention if we could defend at least one of the following claims:

1. That the violation of human rights, even in one country, is itself a threat to international peace.
2. That the existence of tyranny itself constitutes a threat to international peace.
3. That the rights of domestic jurisdiction retained by the states in Article 2(7) do not extend to committing crimes against humanity, nor to allowing them to be committed within one's domestic jurisdiction.

I shall discuss these claims in order.

1. The violation of human rights is itself a threat to international peace.

The first of these arguments is one that Annan himself has put forward. In referring to the United Nations Charter in his September 1999 speech, he said:

> The sovereign States who drafted the Charter over half a century ago were dedicated to peace, but experienced in war.
>
> They knew the terror of conflict, but knew equally that there are times when the use of force may be legitimate in the pursuit of peace. That is why the Charter's own words declare that "armed force shall not be used, save in the common interest." But what is that common interest? Who shall define it? Who will defend it? Under whose authority? And with what means of intervention? These are the monumental questions facing us as we enter the new century.

Taking these remarks in their context, Annan can be read as suggesting that the common interest should be defined so as to include an interest in preventing a tyrant from violating the rights of the citizens of the country over which he rules, even if the tyrant poses no threat to other nations. Though this may seem far-fetched, several decisions of the Security Council carry the same implication. In regard to Iraq, the Security Council resolved in 1991 that the repression of the civilian population, including that in Kurdish-populated areas, had consequences that were a threat to international peace and security. Since the Council mentioned the flow of refugees to other countries, it is arguable that this repression did have some consequences outside the borders of Iraq.[40] In authorizing intervention in Somalia, however, the Council simply determined that "the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security."[41] No further explanation was offered, and since the conflict was purely a civil one, it is not easy to guess how international peace would have been threatened if the Somalians had simply been left to starve, terrible as that would have been. Similarly, in Haiti the overthrow of the democratically elected president Jean-Bertrand Aristide was seen as a threat to "international peace and security in the region" and thus as justifying the use of Chapter VII powers.[42]

Given the human tragedies in Iraq, Somalia, and Haiti that the Security Council was trying to overcome, it is understandable that it should have been willing to stretch the language of its Charter to breaking point. It might seem that an ethic that looks to the consequences of our actions as determining what is right or wrong would lead us to support whatever stratagems offer the best prospect of preventing such tragedies. Taking a long-term view, however, a consequentialist should support the rule of international law because of its potential to reduce the likelihood of war. A consequentialist ethic may point to desirable changes in international law, but it will give it general support. Hence we should reject such blatant fictions as the idea that the overthrow of the president of Haiti is a threat to international peace. Once that is accepted, anything goes, and effectively the Security Council has an unconstrained mandate to interfere wherever it sees fit. There is no basis in international law for attributing such powers to the Security Council.

2. *Democracies are the best guardians of peace.*

A second strategy would be to invoke the argument that no war has ever occurred between two democratic states.[43] That thesis is controversial, and much depends on the definitions of "war" and of "democracy." If there has not yet been a counter-example, there no doubt will be one eventually. But the existence of one or two counter-examples does not refute a more cautiously stated version of the thesis, namely that democratic states are less likely to go to war with each other than are states that are not democracies. If this is the case, then it could be argued that Article 2 (7) no longer stands in the way of intervention for the sake of establishing or restoring democracy, since such interventions do reduce the general "threat to the peace" posed by non-democratic regimes. But should so vague and indefinite a threat to peace be sufficient reason for military intervention? Again, it seems that to do so is to use a pretext to cover intervention that is really motivated by another purpose altogether.

3. *The rights of domestic jurisdiction retained by the states in Article 2(7) do not extend to committing genocide or other crimes against humanity, nor to allowing them to be committed.*

The third strategy draws on the body of international law that, as suggested by the Eichmann case, holds that there is universal jurisdiction over those who commit genocide or other crimes against humanity. It asserts that the United Nations Charter cannot have intended, in granting domestic jurisdiction to the states, to set aside this important doctrine of customary international law.

One problem with interpreting the acceptance of domestic sovereignty in the United Nations Charter as limited by international law recognizing the crime of genocide and crimes against humanity is that the International Law Commission did not recommend that there should be international criminal responsibility for crimes against humanity until 1954, long after the Charter had been written and accepted by the original member states of the United Nations. Thus the Charter could well have been formulated and signed in the absence of any such belief. Nor do all nations, even today, accept limits to sovereignty. In July 2001, Russia and China signed a "Treaty on Good Neighborly Friendship and Cooperation" that appeared to interpret domestic sovereignty as providing immunity against intervention. Article XI of the treaty reads:

> The agreeing sides uphold the strict observance of generally recognized principles and norms of international law against any actions aimed at exerting pressure or interfering, under any pretext, with the internal affairs of the sovereign states and will make active efforts in order to

strengthen world peace, stability, development and cooperation.[44]

Despite these doubts, taking the view that domestic jurisdiction, as accepted in the United Nations Charter, does not extend to committing or allowing to be committed acts of genocide or crimes against humanity is the most plausible and promising of the three strategies so far considered. The International Commission on Intervention and State Sovereignty reached a similar conclusion, arguing that state sovereignty implies that the state has a responsibility for the protection of its people. When a state is unwilling or unable to fulfill that responsibility, the commission held, the responsibility falls upon the international community, and more specifically, on the Security Council, which under Article 24 of the United Nations Charter, has "primary responsibility for the maintenance of international peace and security." [45]

Unlike the first strategy, asserting that the violation of human rights is itself a threat to international peace, this third approach does not rely on a fiction, and unlike the second strategy, it does not rest on an unproven theory about the link between democracy and peace. Moreover it has built-in limits to the grounds on which intervention make take place. It may therefore be what we need. Nevertheless, before settling on the claim about the limits of domestic jurisdiction as the best justification for humanitarian intervention, I shall briefly mention a fourth, less obvious but more far-reaching strategy for reconciling humanitarian intervention with the principle of non-intervention in the domestic affairs of another sovereign state.

This fourth strategy builds on the discussion in the previous chapter questioning the standard view of what it takes for a government to be legitimate. As we saw there, although governments are generally accepted as legitimate if they have effective control

over the territory they claim to rule, there is an alternative democratic view of legitimacy, according to which a regime that seizes power by force is not legitimate unless it gains from the people it rules a freely expressed indication of popular support. As we have seen, this democratic view can be defended both in terms of an argument from the right to self-government, and in consequentialist terms. If the democratic view were accepted, then the proposals made in the previous chapter in the context of trading restrictions might have a more far-reaching application. For if a government that came to power by force of arms and remained in power through the repression of all opposition was in virtue of that fact not to be considered a legitimate government, then it could not take its place at the United Nations. Hence if it were engaging in widespread violence against its own population, the provisions of the United Nations Charter restraining member nations against intervening in the internal affairs of other members would not apply. Though this doctrine could lead to an increase in war, this risk must be weighed against the prospect of supporting democracy and reducing the number of governments that are little more than gangs of brigands pillaging a country over which their guns hold sway. Of course, the usual consequentialist argument against going to war will still apply. War causes immense suffering and loss of life, and should always be a last resort, entered into when there is no other way of preventing still greater suffering and loss of life, and the prospects of success are good.

Will the Spread of Democracy Provide Protection Against Genocide?

In the first section of this chapter, I argued that there might be a genetic basis for the willingness of some human beings to mas-

sacre those who are not part of their group. Now I have suggested that where a regime rules by force, rather than in a democratic way, there is no legitimate sovereign to stand in the way of an intervention that can reasonably be expected to have good consequences—and presumably will, if possible, set up a democratic form of government. But, it may be objected, how can we have any faith in democracy as a means of preventing, rather than promoting, genocide? If the genes of violence are in many of us, why are they less likely to be in democratically elected rulers than in dictators?[46]

The worst genocides of this century have been carried out by governments that were very far from being democracies: Ottoman Turkey at the time of the Armenian genocide, Nazi Germany, the Soviet Union under Stalin, Cambodia under the Khmer Rouge. But Rwanda was moving toward a multi-party democracy at the time of the massacres, and since 85 percent of the population was Hutu, it is possible that more democracy would not have stopped the massacres of the Tutsis. An even more difficult counter-example for the view I am defending, however, is the government of Slobodan Milosevic, which bears substantial responsibility for the massacres in Bosnia and Kosovo. Milosevic was twice elected President of Serbia by large majorities, and later of Yugoslavia as well. Although neither Serbia nor Yugoslavia during this period was an entirely free and open society, to raise the bar for acceptance of a state as democratic so high as to exclude them would have the result that very many other putatively democratic states would also be excluded.[47]

Democracy, in the sense of the rule of the majority, does not provide a guarantee that human rights will be respected. But a democratic process requires that the policies of the government must be publicly defended and justified. They cannot simply be implemented from above. Although some of us may have the capacity to commit terrible crimes, many of us also have a moral sense, that is, a capacity to reflect on the rights and wrongs of what we are doing, or what our rulers are doing. That capacity emerges in the public arena. A small group may plot genocide, and inspire or terrify their followers to carry it out, but if genocide has to be defended on primetime television, it will become rare indeed. Even when the Nazis had been in power for eight years, ruling without opposition and making use of all the means of propaganda that Goebbels could devise, they did not dare to be open about what they were doing to the Jews. Himmler told a group of SS leaders that their work in exterminating the Jews was "an unwritten, never-to-be written, glorious page of our history."[48] If it had been possible to ensure that every page of Nazi history were written as it happened, and offered for discussion to the German people, it is hard to believe that the Holocaust would have taken place. When the prosecutors at the Nuremberg Tribunal screened a film of Nazi concentration camps made by Allied military photographers, some of the defendants appeared visibly shocked. Even they may not have grasped exactly what the results of their policies looked like, close-up. Open procedures and public scrutiny may not be a perfect bulwark against genocide, but they do help.

Does Intervention Do More Good Than Harm?

The democratic concept of legitimate government implies that the concept of national sovereignty carries no weight if the government rests on force alone. It would seem that intervention in countries with such governments would then be readily justified. But if intervention is so easy to justify, will it not be used so often that it will be abused?

This objection rests on a failure to distinguish between legal and ethical justification. Even if intervention against a tyrannical

regime that commits crimes against humanity violates neither international law nor the United Nations Charter, it might still be wrong to intervene. As Michael Doyle puts it, "it makes no moral sense to rescue a village and start World War Three, or destroy a village in order to save it."[49] We need to have rules and procedures making intervention difficult to justify, for as I have already noted, some nations are capable of deceiving themselves into believing that their desire to expand their influence in the world is really an altruistic concern to defend democracy and human rights. But even when those rules and procedures have been satisfied, the key question must always be: Will intervention do more good that harm?

Tzvetan Todorov has suggested that tyranny is not the greatest evil: anarchy is. Pointing to the downfall of the former communist regimes of Eastern Europe, he says that in some cases the collapse of the nation-state has led to a situation in which power is wielded by armed criminals. Intervention, even from humanitarian motives, can lead to the same outcome, because it too destroys the nation-state.[50] To the extent that this claim is factually correct, intervention should not take place.

There is an important ethical point at issue here, one that often leads to misguided objections to arguments about when it is right to intervene in the domestic affairs of another state. The objection runs: if it was justifiable to intervene against Serbia in Kosovo, then it must also be justifiable to intervene against Russia in Chechnya, or against China in Tibet. What this objection overlooks is that it is one thing for there to be a legal basis, and even a just cause, for intervening, and a totally different thing for intervention to be justified, all things considered. This distinction shows that the reason why NATO would have been wrong to intervene against Russia in Chechnya or against China in Tibet is not that (at least on one version of what the larger state is doing to

the smaller one) there was no legal basis or just cause to intervene, but that the predictable human costs of the resulting war made it wrong to intervene. This should not be thought of as a case of "double standards." There is only one standard, that it is right to do what will have the best consequences, and that standard tells us not to intervene when the costs of doing so are likely to be greater than the benefits achieved.

Avoiding Cultural Imperialism

It is sometimes said that to intervene in other countries to protect human rights is a form of cultural imperialism. By what right, those who take this view ask, do we in the West impose on other peoples our view of the kind of society that they should have? Are we not repeating the errors of the Western missionaries who sailed out to Africa, or the South Sea Islands, and told the "primitive" people they found there to cover their nakedness, to practice monogamy, and to have sex only when prone, with the man on top? Have we not learned from this experience that morality is relative to one's own society, and our morals are no better than theirs?

This objection is confused. Moral relativists imagine that they are defending the rights of peoples of non-Western cultures to preserve their own values, but when moral relativism is taken seriously, it undermines all ethical arguments against cultural imperialism. For if morality is always relative to one's own society, then you, coming from your society, have your moral standards and I, coming from my society, have mine. It follows that when I criticize your moral standards, I am simply expressing the morality of my society, but it also follows that when you condemn me for criticizing the moral standards of your society, you are simply expressing the morality of your society. There is, on this view, no way of moving outside the morality of one's own society and ex-

pressing a transcultural or objective moral judgment about anything, including respect for the cultures of different peoples. Hence if we happen to live in a culture that honors those who subdue other societies and suppress their cultures—and the very same people who defend moral relativism are often heard to assert that this *is* the Western tradition—then that is our morality, and the relativist can offer no cogent reason why we should not simply get on with it.

We should reject moral relativism. A much better case against cultural imperialism can be made from the standpoint of a view of ethics that allows for the possibility of moral argument beyond the boundaries of one's own culture. Then we can argue that distinctive cultures embody ways of living that have been developed over countless generations, that when they are destroyed the accumulated wisdom that they represent is lost, and that we are all enriched by being able to observe and appreciate a diversity of cultures. We can recognize that Western culture has no monopoly on wisdom, has often learned from other cultures, and still has much to learn. We can urge sensitivity to the values of other people, and understanding for what gives them self-respect and a sense of identity. On that basis we can criticize the nineteenth-century missionaries for their insensitivity to cultural differences, and for their obsession with sexual behavior, an area in which human relationships take a wide variety of forms without any one pattern being clearly superior to others. We can also argue that we should be doing much more to preserve diverse cultures, especially indigenous cultures that are in danger of disappearing. But once we accept that there is scope for rational argument in ethics, independent of any particular culture, we can also ask whether the values we are upholding are sound, defensible, and justifiable. Although reasonable people can disagree about many areas of ethics, and culture plays a role in these differences, sometimes

what people claim to be a distinctive cultural practice really serves the interests of only a small minority of the population, rather than the people as a whole. Or perhaps it harms the interests of some without being beneficial to any, and has survived because it is associated with a religious doctrine or practice that is resistant to change. Acts of the kind carried out by Nazi Germany against Jews, Gypsies, and homosexuals, by the Khmer Rouge against Cambodians they considered to be their class enemies, by Hutus against Tutsis in Rwanda, and by cultures that practice female genital mutilation or forbid the education of women are not elements of a distinctive culture that is worth preserving, and it is not imperialist to say that they lack the element of consideration for others that is required of any justifiable ethic.[51]

Some aspects of ethics can fairly be claimed to be universal, or very nearly so. Reciprocity, at least, seems to be common to ethical systems everywhere.[52] The notion of reciprocity may have served as the basis for the "Golden Rule"—treat others as you would like them to treat you—which elevates the idea of reciprocity into a distinct principle not necessarily related to how someone actually has treated you in the past. The Golden Rule can be found, in differing formulations, in a wide variety of cultures and religious teachings, including, in roughly chronological order, those of Zoroaster, Confucius, Mahavira (the founder of Jainism), the Buddha, the Hindu epic *Mahabharata,* the *Book of Leviticus,* Hillel, Jesus, Mohammed, Kant, and many others.[53] Over the past decade there has even been an attempt to draw up a "Declaration of a Global Ethic," a statement of principles that are universally accepted across all cultures. This project began with a meeting known as the "Parliament of the World's Religions"—more strictly, the Second Parliament of the World's Religions, for this one was held in Chicago in 1993, just a century after the first such parliament met. Different versions of the declaration are

currently in circulation. One version, drafted by the theologian Hans Küng and approved at the Second Parliament of the World's Religions, begins with a fundamental demand that "every human being must be treated humanely." In making this demand more precise, it refers to the Golden Rule as "the irrevocable, unconditional norm for all areas of life." Leonard Swidler, who heads the Center for Global Ethics at Temple University in Philadelphia, has published a revised version that makes the Golden Rule itself the fundamental rule of ethics.[54]

The terrorist attacks of September 2001 appeared to constitute a breach in the idea of common cross-cultural ethical standards, for they suggested that it was consistent with Islamic teachings, and perhaps even a duty, to kill "infidel" civilians of nations that were seen as a threat to Islam. The overwhelming majority of Islamic clerics and scholars, however, repudiate this view. Though the attacks, and the support they evoked among some radical Moslems, suggest that agreement even on the prohibition of intentionally killing civilians is not entirely universal, it is very nearly so. So the search for an ethic that is global in the sense of drawing on aspects of ethics common to all or virtually all human societies could still meet with success. (It would, of course, be easier to agree on common ethical principles if we could first agree on questions that are not ethical but factual, such as whether there is a god, or gods, and if there is, or are, whether he, she, or they has or have expressed his, her, or their will or wills in any of the various texts claimed by the adherents of different religions to be divinely inspired. Unfortunately, on these matters we seem to be even further from agreement than we are on basic ethical principles.) If we are to achieve consensus on a common ethic, we are unlikely to be able to go beyond a few very broad principles. Hence, it may be said, these universally accepted ethical standards, if they exist at all, will not be the kind of thing that politi-

cal leaders can draw on to show that they are justified in intervening in the affairs of another state.

Consider, for example, a nation with a conservative, devoutly religious population that supports a hereditary monarch ruling in accordance with the laws of the dominant religion. Suppose that the citizens support the Golden Rule, since their religion endorses it, but are opposed to the idea of democracy. On what grounds can others tell them that their nation should become a democracy?

The first point to make here is one that has already been mentioned. That a regime is not democratic does not mean that any form of intervention should take place. If the regime is not engaging in genocide or other crimes against humanity, the question of intervention does not arise. It is reasonable to distinguish between rulers exercising traditional authority and those that gain and hold power by military supremacy and repressive measures. Second, however, if the people living under hereditary monarchies prefer their form of government to a democracy, that preference ought to be testable. Hence it is possible to envisage a country choosing, at a free and open referendum, not to have elections for political office. This could then itself be seen as giving legitimacy to the non-democratic regime.

Nevertheless, the ultimate question of the relationship between democracy and sovereignty has not been solved. What if the monarchy, though expressing confidence that its people support it, does not wish to hold a referendum on its own existence? How can we give reasons, independent of our culture, for the view that legitimacy requires popular support, rather than resting on, say, religious law? Attempts to argue for the separation of church and state will not work, since that begs the question against the defenders of the religion that rejects such a separation. In the end, the challenge cannot be met without confronting the basis

for belief in the religion. But one cannot argue that the religious faith of people of a different culture is false, while upholding a religious faith of one's own that rests on no firmer ground. That really would be cultural imperialism. In the end, at least as far as we are concerned with practices based on propositions about the existence of a god or gods and the authenticity of what are claimed to be divinely inspired scriptures, it is our capacity to reason that is the universal solvent. But this is not a question into which we can go further here.

Reforming the United Nations

I have urged that the United Nations should, within the limits of its capacities, authorize intervention to stop crimes against humanity, where it can reasonably expect to do so without doing greater harm than it prevents. This suggests not only a right to intervene, but in appropriate circumstances, a duty to intervene. To be able to do so, the United Nations needs to be able to draw on sufficient military force to make intervention effective. Ideally, the United Nations would have sufficient revenue to have its own military forces available for that purpose to defend civilians anywhere in the world threatened with genocide or large-scale crimes against humanity.

I have also suggested that there are reasons for moving toward a democratic idea of sovereignty, which would make it easier to justify intervention against a government that was not even minimally democratic. The combination of these two suggestions is not without its own irony: for the United Nations itself is scarcely a model of democracy. It was set up after the Second World War, and the Allies made sure that they retained firm control of it. This is most evident in the Security Council, which is the body that decides on matters of security, including whether to intervene in a dispute, either militarily or by means of sanctions. The Security

Council has five permanent members—the United States, the United Kingdom, France, China and Russia—corresponding to the major powers that were victorious in 1945. The General Assembly elects ten additional nations to the Security Council for two-year terms, but no substantive decision can be taken against the overt opposition of any of the five permanent members. The veto power of the permanent members, which was frequently used by both the Soviet Union and the United States during the cold war era, explains why during the 1960s and 1970s the Security Council effectively ignored the dominant conflict of the era, the Vietnam War.

There can be no justification today for giving special status to states that were great powers in 1945, but are no longer so today. Why should France or the United Kingdom have veto rights, and not Germany, or for that matter, Brazil? Why should China be a permanent member, and not India or Japan? Why should four of the five permanent members be European states, or states of European origin, when there is no permanent member from Africa, or Latin America or Southern or Southeastern Asia, or from anywhere in the Southern hemisphere? Is it desirable, if indeed we are facing a possible "clash of civilizations," that four of the five permanent members are states with roots in Christianity, and none of them is an Islamic state?[55]

What then should be done? To expand the number of permanent members with veto rights risks making the Security Council unworkable. A better idea would be to replace the veto with a requirement that substantive decisions be made by a special majority, two-thirds or three-quarters, of a reconstituted Security Council. To this it may be objected that the existing Security Council works reasonably well, and it is not clear that we would get a Council that worked better if we changed it to make it fairer. But if it is important and desirable to move toward greater global

governance in a variety of areas—trade and the environment, for example, as well as peace and the protection of human rights—then the structure of the Security Council will make this difficult, because it is a constant reminder that the institutions of global governance are dominated by the wealthiest and most powerful states. In the long run, it is hard to see that giving special privileges to a small group of states will be the best way to maintain either the authority of the United Nations, or world peace.

A second objection to reform of the Security Council is simply that it is unthinkable, and would be perilous, for the Security Council to take military action against the implacable opposition of the United States or whatever other military superpower may in time emerge. Hence political realism requires allowing such superpowers a veto. This claim may be true; but if it is, the veto rights of the superpowers should be seen for what they are: the exercise of might, not right.

Compared to the Security Council, the General Assembly of the United Nations, which includes all 189 member states, seems more democratic. It is certainly not dominated by the same small circle of states that dominates the Security Council. The General Assembly, however, can take action only in very limited circumstances. Moreover its appearance of egalitarianism is misleading. It is an assembly of the world's states, not of the world's people. Some of the states are not themselves democratic, but even if we overlook this, there is the problem—as in the case of the WTO—that the government of India has the same voting power as the government of Iceland. In fact, if the 95 states with the smallest populations were to line up against the 94 states with the largest populations, it is possible that a General Assembly resolution could be supported by a majority of states that represented a combined total of only 198.5 million people, while on the other side, the outvoted 94 largest states would represent 5.7 billion. States representing less than 4 percent of the total United Nations member-state population could carry the day in the General Assembly.

There is an obvious solution to this problem, and it is not a new idea. At the end of the Second World War, when Britain's House of Commons debated the plan for a new United Nations, Ernest Bevin, the British Foreign Secretary, called for the "completion" of the United Nations design with "a world assembly elected directly from the people (to) whom the governments who form the United Nations are responsible."[56] In this respect the European Union, with its parliament directly elected by the people, could provide a model for a future, more democratic, United Nations. The European Parliament has, at present, only very limited powers. The plan is, however, for these to expand as the people and governments of Europe become comfortable with the parliament playing a larger role. There are, of course, major differences between the European Union and the United Nations. Most important to our present concerns is that, as we have seen, the European Union is in a position to set minimum standards for admission, including a democratic form of government and basic human rights guarantees. If the United Nations took a similar view, and ceased to recognize undemocratic governments as eligible for United Nations membership, it could then turn its General Assembly into a democratically elected World Assembly, as Bevin envisaged. But arguably, a United Nations that denied a voice to China, Saudi Arabia, and many other states would be less effective at maintaining world peace than one that was more inclusive.

A position halfway between the present system and one that excludes undemocratic governments is worth considering. The United Nations could remain open to all governments, irrespective of their form of government or observance of human rights, but it could replace the present General Assembly with a World

Assembly consisting of delegates allocated to its member states in proportion to their population. The United Nations would then supervise democratic elections, in every member country, to elect this delegation. A country that refused to allow the United Nations to supervise the election of its delegation would have only one delegate, irrespective of its population. That system would provide experience in democracy for the citizens of most countries, but would retain the inclusiveness that is an important feature of the United Nations.

Summing Up: National Sovereignty and a Global Ethic

A global ethic should not stop at, or give great significance to, national boundaries. National sovereignty has no *intrinsic* moral weight. What weight national sovereignty does have comes from the role that an international principle requiring respect for national sovereignty plays, in normal circumstances, in promoting peaceful relationships between states. It is a secondary principle, a rule of thumb that sums up the hard-won experience of many generations in avoiding war. Respect for international law is vital, but the international law regarding the limits of sovereignty is itself evolving in the direction of a stronger global community. As we have seen, the International Commission on Intervention and State Sovereignty has sought to reframe the debate in terms of "the responsibility to protect" rather than "the right to intervene." In doing so, the commission is suggesting that sovereignty is no longer simply a matter of the power of the state to control what happens within its borders. The limits of the state's ability and willingness to protect its people are also the limits of its sovereignty. The world has seen the horrific consequences of the failures of states like Cambodia, the former Yugoslavia, Somalia, Rwanda, and Indonesia to protect their citizens. There is now a broad consensus that, if it is at all possible to prevent such atrocities, they should be prevented. Only the United Nations should attempt to take on this responsibility to protect. Otherwise, national interests will again conflict and plunge the world into international conflict. If, however, the world's most powerful nations can accept the authority of the United Nations to be the "protector of last resort" of people whose states are flagrantly failing to protect them, and if those nations will also provide the United Nations with the means to fulfill this responsibility, the world will have taken a crucial step toward becoming a global ethical community.