

The Analytic Utility of Failed Sovereignty: Finding a Niche in Theoretical Sovereignty

Zach Mears

*Spread out and examine the pattern of events,
and you will find yourself face to face with a
new scheme of being, hitherto unimaginable by
the human mind.*

- H.G. Wells¹

Introduction.

“With the thawing of the bipolar Cold War world have come new threats among peoples of long-suppressed ethnic, religious, and cultural differences. As Yugoslavia disintegrated during the early 1990s and the Serbs, Croats, and Muslims took to slaughtering each other, the international community watched and wondered whether this anarchy was the first of a series of events that would play out in Central Europe, the former Soviet Union, and elsewhere. At the same time other civil wars raged, disease flourished, and children starved in various African countries, for example Somalia, the Sudan, Liberia, and Angola.”² All of these events, though unfolding approximately forty-five years after H.G. Wells’ vision, set the stage for evolutions in the international system which, ten to fifteen years ago, would not have been considered probable. Cold War politics took precedence over and/or manipulated almost every aspect of international political action

from the late-1940s to the late 1980s. Concern that true justice was achieved, bowed to surviving the Cold War battle. Since 1989, we have seen a shift from a bipolar to a multipolar balance of power, the growing significance of normative theory as an important scholarly area in academia, and the underlying belief that “normative notions about rights, democracy, self-determination, sovereignty, and just distributions, all have a role to play.”³ This change signaled the end of pure political realism⁴ and the burgeoning of international interdependence and increasing awareness of humanitarian concerns. The new awareness is largely due to the drastic increase in the number of violent internal wars occurring in Eastern Europe and central Africa and the increased consciousness of these atrocities. Today “where the need is apparent and masses of the population are affected, and the government is incapable or unwilling to provide protection or assistance, whether by itself or in cooperation with foreign donors, or the state has simply collapsed, then some form of international action becomes imperative.”⁵ International action is

(Philadelphia: The University of Pennsylvania Press, 1996), p.1.

³ Frost, Mervyn. *Ethics in International Relations*. (Cambridge: Cambridge University Press, 1996), p.6. The three concepts presented here are only five important ones vital to this argument. Many other arguments could be presented but that in itself would take another article and it would take me away from core of my argument.

⁴ By this I am referring to the end of the view that pure political and military power dominates all issues and interstate relationships.

⁵ Deng, Francis Mading. “State Collapse: The Humanitarian Challenge to the United Nations.”

¹ Wells, H.G. *The Mind at the End of Its Tether*. (London: William Heineman, 1945), p.4.

² Murphy, Sean D. *Humanitarian Intervention: The United Nations in an Evolving World Order*.

imperative because the existence of many international legal agreements that bind states to protect human rights. In the absence of due protection of human rights at home, the imperative exists for the international community to take actions to see that these agreements are properly upheld. Thus, sovereignty has striven to protect people and preserve their dignity. In cases where a state has been judged by the international community to not have fulfilled its obligation in that regard, that states obligations and responsibilities are transferred to those who can and will fulfill them.

The unfolding of the need for international action in humanitarian crises has fostered a renaissance of humanitarian intervention.⁶ In the words of Thomas G. Weiss, “humanitarian imperatives have led governments, intergovernmental, and nongovernmental organizations to redefine the words ‘which are essentially within the domestic jurisdiction of any state’.”⁸ Humanitarian

intervention continues to bring with it its own problems and complications, especially given the debate amongst states about whose interests are truly being served by the intervention. Such problems common to humanitarian intervention include the legitimacy of actions taken by international actors, perceived violations of the sovereignty of the target state, the perception of overwhelming weight of personal interests of the intervener, and the question: are these goals achievable and, if so, achievable at a perceived reasonable cost? Therefore, the necessary goal of the international community must be to develop a theory, and subsequently a practice, by which legitimate and justified action can be taken by the international community to remedy the internal humanitarian crises of states. One avenue that has garnered large-scale attention by international relations theorists as of late is the concept of failed sovereignty. The essence of the failed sovereignty argument is that sovereignty is not an enigma, but rather a set of functions, obligations, and protections constituted by the people of the state, coupled with mutual recognition of such by the international community and grounded in public international law. One group of prominent scholars define the situation as such

Collapsed States: The Disintegration and Restoration of Legitimate Authority. Ed. I. Willaim Zartman. (Boulder: Lynne Rienner Publishers, 1995), p.212.

⁶ I consider this Renaissance period of humanitarian intervention to have started at the end of the Cold War because humanitarian intervention is no longer carried out under the blanket of Cold War politics. Granted all motives for action and aid are still not purely humanitarian, but the true sense of concern for human survival and wellbeing has been restored. If one analyzes interventions during the Cold War, such as the Soviet Union in Hungary in 1956 or Czechoslovakia in 1968, the true nature of these interventions was to uphold Communism in Eastern Europe.

⁷ This legal issue is addressed in article 2(7) of the UN Charter which states that the United Nations will

not intervene in matters which are essentially within the domestic jurisdiction. However, it should be duly noted that this statement is then qualified by the later half of 2(7) where it states that “this principle shall not prejudice the application of enforcement measures under Chapter VII.”

⁸ Weiss, Thomas G. *Military-Civilian Interactions: Intervening in Humanitarian Crises*. (Lanham: Rowman and Littlefield Publishers, 1999), p.21.

No government that will allow hundreds of thousands, and maybe millions, of its citizens to starve to death when food can be made available to them, allow them to be exposed to deadly elements when they could be provided with shelter, or permit them to be indiscriminately tortured, brutalized, and murdered by contending forces can claim sovereignty. A government that allows its citizens to suffer in a vacuum of responsibility for moral leadership cannot claim sovereignty in an effort to keep the outside world from stepping in to offer protection and assistance.⁹

When a sovereign state cannot and/or chooses not to carry out its rights and responsibilities, fulfill its obligations, or provide protection to its citizens, then in effect, sovereignty has failed. This argument does not convey the difficulties inherent. In order to have a complete, functioning theory, the conflicts and/or situations creating a failed sovereign scenario must be defined, the evolution of sovereignty theories must be carefully defined (legally, structurally, morally, etc.), and the utility of the failed sovereignty argument must be assessed.

Conflicts and Atrocities: The Overwhelming Need.

In the last ten to fifteen years the international community has expressed the acceptance and the necessity for norms and actions that safeguard the lives of innocent civilians. The concern voiced by the

international community arose from the increasing number of violent, intrastate conflicts, that have led to the torture and/or deaths of millions of people around the world. For example, the struggles in Liberia in the early to middle 1990s produced approximately 150,000 civilians deaths, 1.1 million internally displaced people, and 785,000 refugees.¹⁰ The “civil administration, social services, and economic activities throughout the country began to disintegrate”¹¹ allowing for “periodic massacres of civilians by marauding armed militias.”¹² Also, in 1992-1994 Somalia was experiencing internal strife similar to what was seen in Liberia. The height of the fighting in Somalia delivered approximately 1.5 million internally displaced persons, 100,000 dead, and approximately 4 million civilians living in the famine afflicted regions of southern Somalia. In 1992, 238,000 deaths resulted from famine, of which 70 percent could possibly have been prevented had proper health and safety operations been implemented earlier.¹³ Thus, the human suffering that occurred in Somalia was evident to the international community, yet they had neither the mechanisms nor the will to act quickly and efficiently to remedy the situation. For example the United States underestimated the intensity of the internal clan fighting in

⁹ Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa*, (Washington: The Brookings Institution, 1996), p.33.

¹⁰ These numbers were taken from reports in the Murphy text. The Text gave approximations as to the numbers of civilian deaths, refugees, and IDPs. Murphy, p.158.

¹¹ Murphy, p.148.

¹² Ibid, p.158.

¹³ Weiss, pp.80-81.

Somalia and, after a six-month delay, only sent in 20,000 troops to help distribute relief items. These soldiers were under-equipped and misguided as to the nature of the situation and this conflict eventually took the lives of eight American soldiers. Consequently, the United States felt compelled to pull out. The fact that American military forces could not go into Somalia and effectively aid the suffering Somalis, while at the same time properly protecting themselves, offered a sharp memorandum to the international community. Internal conflicts are situations of grave danger to civilians and international peace and security, which must be dealt with early, often, and with extensive knowledge of all facets of the internal situation.

Juxtaposed with the tragedies seen in Liberia and Somalia, the tragedies that occurred in Bosnia and Rwanda paint an even more telling picture of human suffering. At the height of the crisis from 1992 to 1994, Bosnia was the picture of chaos with: 250,000 killed, 35,000 wounded, 26,000 disappearances, 50,000 torture victims, 20,000 to 50,000 rape victims, and 2.7 million refugees at the height of the crisis.¹⁴ “In light of the horrifying television and print images of civilians dying in Bosnia-Herzegovina, there was a tremendous desire to maintain humanitarian aid to these victims and protect them from wanton violence.”¹⁵ Thus the international community demanded that help be

given to the civilians in Bosnia, but the desired infrastructure and communication of the UN and the superpowers to supply the relief in an effective and legitimate manner did not exist.

Similar to those in Bosnia, the problems and atrocities in Rwanda were horrendous and the size of the conflict seemed to paralyze the ability of the international community to help. From 1990 to 1994 there were approximately 500,000 to 1,000,000 killed, 250,000 to 500,000 rape victims, 63,000 internally displaced persons (IDPs) dead due to dysentery and 30,000 due to cholera.¹⁶ “The atrocities committed were brutal, vivid, and ultimately numbing. Ugandan officials reported that as many as 10,000 bodies had floated down the Kagera River into Lake Victoria. In one incident, 500 Tutsis seeking refuge in a church compound were hacked to death by Hutu soldiers over a two day period.”¹⁷ Unfortunately for the innocent Rwandans, “the United Nations’ efforts to respond to the crisis were halting, confused, and ineffective.”¹⁸

The reason for such a stalemate on the part of the United Nations resulted from inadequate mechanisms through which they could take immediate, decisive, and legitimate action. The number of deaths, however, was not the sole tragedy in the Rwandan crisis. The number of refugees and IDPs stretched to several million. This process happened at such a rapid pace the international bureaucratic process could not operate quickly enough and could not

¹⁴ Weiss, pp.99, 116, and 124.

¹⁵ Murphy, p.214.

¹⁶ Weiss, p.146.

¹⁷ Murphy, p.244.

supply enough aid to meet the demands of the suffering Rwandans. The conflicts that occurred in Rwanda, Bosnia, Somalia, and Liberia are very important at the same time that they are very tragic because they help to attract attention to atrocities happening all across the globe. As observed by David J. Scheffer:

In the post-Cold War...a new standard of intolerance for human misery and human atrocities has taken hold...Something quite significant has occurred to raise the consciousness of nations to the plight of peoples within sovereign borders. There is a new commitment-expressed in both moral and legal terms-to alleviate the suffering of oppressed or devastated people. To argue today that norms of sovereignty, non-use of force, and the sanctity of internal affairs are paramount to the collective human rights of people, whose lives and well-being are at risk, is to avoid the hard questions of international law and to avoid such attention.¹⁹

Without such attention, awareness and genuine compassion, and a true willingness to answer the hard questions, an end to such events will not be realized in the near future.

These events have created an international awareness of the serious atrocities that are occurring all across the globe. The goal here is to generate an effective and legitimate mechanism through which the international community can legitimately act to prevent, stop, and/or mitigate such bloodshed and suffering

¹⁸ Ibid., p.244.

¹⁹ David J. Scheffer, "Toward a Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review*, vol.23 (Winter 1992), p.259.

from continuing at its current rate. A beneficial and effective approach to finding a legitimate mechanism for aid and adherence to human rights treaties is to clarify sovereignty theories. From this clarification, an empirical link can be derived between sovereignty and humanitarian relief and a framework for immediate and proper aid to those in need can be constructed.

Sovereignty's Evolution: In Theory and Practice.

The concept of sovereignty, born out of the Peace of Westphalia of 1648, has remains the dominant structural factor in international relations for the past three and a half centuries.

The conference of Westphalia helped to establish a European system of sovereign states. Each of these states considered itself equal to its regional powers insofar as a handful of early rules of international law were concerned regarding such matters as concluding treaties, respecting territorial integrity, and receiving diplomatic envoys.²⁰

Embedded in this definition of sovereignty were equal sovereign rights and obligations held by all states considered to be sovereign over their territory. Today the concept of sovereignty is much more complex and its traditional monolithic, indivisible qualities are increasingly being called into question. Barry Buzan poses the debate this way:

Can sovereignty exist without being exercised? In other words, is it primarily a legal idea which exists as a right? Or is it primarily a

²⁰ Fowler, Michael Ross. *Law, Power, and The Sovereign State*.

political idea, which comes into being only when exercised?²¹

These questions are now commonplace in the sovereignty emerging in the last fifteen years. Typically, “either sovereignty is valued as an absolute that may be won or lost or as something variable that may be augmented or diminished.”²² However, how is a student of international affairs to have a true grasp of sovereignty no universal definition pinpointing “what confers sovereign status”²³ or “what sovereign status confers.”²⁴ As Vernon O’Rourke once noted, “The word sovereignty holds various conflicting connotations and by no means arouses identical patterns in the minds of different students.”²⁵ For the purposes of creating a theory of failed sovereignty, both legal and political theories of sovereignty must be analyzed. This analysis will also produce from the existing theories a legitimate sovereignty theory that is justified through international practice. The anchor of the failed sovereignty argument exists here by the very

²¹ Buzan, Barry. *People, States, and Fear: The National Security Problem in International Relations*. (Chapel Hill: University of North Carolina Press, 1983), p.41.

²² Fowler and Bunek, p.64. In this piece Fowler and Bunek give credit to the founder of these two conceptions of sovereignty, Professor Emeritus Inis L. Claude Jr. of the University of Virginia. Claude devised the “chunk and basket approaches” to sovereignty. The chunk approach is the legal, monolithic conception of sovereignty and the basket approach is the practical, functional approach to sovereignty.

²³ Ibid., p.63.

²⁴ Ibid., p.63.

²⁵ Quote was cited on page 64 in Fowler’s piece, *Law, Power, and The Sovereign State*.

principles that legitimate sovereignty, it can also fail.

Absolute Sovereignty.

“In essence, sovereignty is a declaration that if order is to have certain characteristics, then an ordering body or sovereign having certain qualities must exist.”²⁶ Under the perspective of absolute sovereignty, the qualities required of a sovereign state are enumerated in international law. For example, in one prominent international legal text, statehood is defined as such:

Under International Law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in or has the capacity to engage in formal relations with other such entities.²⁷

Having achieved the requirements for statehood, the state is then ascribed the rights of a sovereign as defined in Ian Brownlie’s classic text, *Principles of Public International Law*:

The principle corollaries of the sovereignty and equality of states are: (I) a jurisdiction *prima facie* exclusive, over a territory and the permanent population living there; (II) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (III) the dependence of obligations arising

²⁶ Stankiewicz, W.J. “In Defense of Sovereignty: A critique and an Interpretation.” *In Defense of Sovereignty*, Ed. W.J. Stankiewicz. (New York: Oxford University Press, 1969), p. 5.

²⁷ Henkin, Louis, Richard Crawford, Oscar Schanter, and Hans Smit. *International Law: Cases and Materials*. (St Paul: Westing Publishing Company, 1993), p.242.

from customary law and treaties on the consent of the obligor.²⁸

The rhetoric of these two definitions is clearly not based on varying degrees of power and function, but on obtaining listed criteria for the achievement of sovereign statehood. The origin of the criteria in these definitions dates back to the end of the Thirty Years' War and the Peace of Westphalia.²⁹ As noted earlier, the conference at Westphalia generated the absolute conception of sovereignty that ruled over international relations for three centuries:

Sovereignty often came to be an attribute of a powerful individual, whose legitimacy over territory rested on a purportedly direct or delegated divine or historic authority but certainly not ... on the consent of the people.³⁰

In congruence with this early conception of sovereignty, Hans Morgenthau, foremost

scholar and proponent of absolute sovereignty, stated,

Today, no less than when it was first developed in the sixteenth century, sovereignty points to a political fact ... the existence of ... the supreme authority to enact and enforce legal rules within that territory."³¹

Scholars like Morgenthau who adhere to an absolute definition of sovereignty believe that sovereignty was, is, and always will be monolithic³² and indivisible³³ in nature. All states enjoy the same amount of sovereignty based on equal recognition of each other as sovereign states. "No matter how large or how small the state, each sovereign receives from the international community an identical gift of upon attaining sovereign status-a package of rights and duties the same as those presented to every other entity gaining sovereignty in that same era."³⁴ Understood in these terms, sovereignty cannot adapt and carries no intention to adapt to the political and social actions in the international system. Instead, sovereignty is a concrete, static conception that either exists or does not. Alan James likewise concurs that this attribute of sovereignty is fundamental, for no state can be just 82 percent

²⁸ Brownlie, Ian. *Principles of Public International Law*, 4th Ed. (Oxford: Clarendon Press, 1990), p. 287.

²⁹ Fowler, p.65.

³⁰ Reisman, W. Michael. "Sovereignty and Human Rights in Customary International Law." *American Journal of International Law*. 84 (Oct 1990), p.867. Here Reisman also elaborates on how the system of international law at the time of Westphalia was established for and by the European monarchs who, in order to ensure the power of their throne, coined the phrase "matters solely within the domestic jurisdiction."

Hans Morgenthau in *Politics Among Nations*, p. 250, also elaborated this point on: "It can be summed up as the transformation of the feudal system into the territorial state. The main characteristic of the latter, distinguishing it from its predecessor, was the assumption by the government of the supreme authority within the territory of the state. The monarch no longer shared authority with the feudal lords...nor did he share it with the Church."

³¹ Fowler, p. 65. The quote is from Hans Morgenthau cited in Fowler's text.

³² Ibid., p.67.

³³ Ibid., p.67.

³⁴ Ibid., p. 67.

sovereign.³⁵ A state is either duly recognized as being sovereign over its territory or it is another type of political community lacking sovereign status. These are the essential principles and beliefs that support the absolute sovereignty theory.

A New Absolute Sovereignty?

Although many scholars such as Morgenthau support the absolute, legal tradition of sovereignty, some recent scholars who support the legal tradition have taken a new direction. For example, Michael Reisman argued that just as the practice of domestic law and judicial interpretations change, so does international law experience changing interpretation. Reisman determines *what* is legally sovereign has not changed but the concept of *who* is sovereign has evolved to match today's customs, norms, and regimes. Although the criteria for sovereign statehood did not change, the dynamic political culture, as well as its customs, norms, and regimes that encompass sovereignty, have changed. "At first only for those states in the vanguard of modern politics, later for more and more states, the sovereignty of the sovereign became the sovereignty of the people: popular sovereignty."³⁶ Evidence to support this evolution is encompassed in the United Nations Charter and the Universal Declaration of Human Rights. "Article 1 of the UN Charter established

as one of the purposes of the United Nations, to develop friendly relations between states, not on any terms, but 'based on respect for the principles of equal rights and self-determination of peoples.'"³⁷ Also, Article 21 (3) of the Universal Declaration of Human Rights³⁸ states, "the will of the people shall be the basis of authority of government..."

Through these international documents and events, Reisman argues that who is sovereign has changed. His theory revolves around the term anachronism. Anachronism is an error in chronology, a chronological misplacing of people, events, objects or customs in regard to each other.³⁹ Reisman's purpose for utilizing the term anachronism is to signify that tyrannical sovereignty no longer has *prima facie* jurisdiction. "Anachronism can only be avoided in legal decision by systematic actualization, which considers inherited norms in the context of changed constitutive normative systems and makes sensitive assessments of the relative weight each is to be given and the various intensities with which each is demanded."⁴⁰ He supports this notion, writing:

International law is still concerned with the protection of sovereignty, but, in its modern sense, the object of protection is not the power base of the tyrant who rules directly by

³⁵ James, Alan. *Sovereign Statehood: The Basis of International Society*. (London: Allen and Unwin, 1986), p. 45.

³⁶ Reisman, p. 867.

³⁷ Ibid, p.867.

³⁸ This declaration has been accepted by many states and has been codified numerous in both international human rights treaties and regional human rights agreements (such as the Council of Europe).

³⁹ This is the definition cited by Reisman, which he took from *Webster's Third International Dictionary*.

⁴⁰ Ibid., p.874.

naked power or through the apparatus of a totalitarian political order,⁴¹ but the continuing capacity of a population freely to express and effect choices about the identities and policies of its governors.⁴²

Through Reisman's interpretation of sovereignty, the legal criteria for sovereign statehood are preserved while sovereignty is evolving in its current international environment. Thus, Reisman embeds the legal tradition of sovereignty into the constitutive nature of international relations practice. Reisman states that the legal conception of sovereignty is still vital to international affairs, but in order to be applicable, it must be interpreted in today's political environment with today's customs, norms, and regimes in mind.

Practical Sovereignty.

The other major concept of sovereignty is practical sovereignty. At the core of practical sovereignty is the belief that sovereignty is an evolving concept that operates not in a political vacuum, but in the continually fluctuating environment of international relations. Scholars who adhere to this belief do not brush aside formal sovereignty, but they believe that outside of such a formal accord, sovereignty is

inherently more complex. The main attribute of practical sovereignty "treats sovereignty as a variable matter, dependent upon the relative competence of the state carrying out the various functions of statehood."⁴³ This variability and the true utility of a state and its functions are captured by the practical sovereignty theory. Former United Nations Secretary-General Boutros Boutros-Ghali explains the necessity as such:

A major intellectual requirement of our time is to rethink the question of sovereignty-not to weaken its essence, which is crucial to international security and cooperation, but to recognize that it may take more than one form and perform more than one function.⁴⁴

Former Secretary-General Boutros-Ghali took a bold, but necessary step towards finding a remedy for international atrocities occurring within states. Only by recognizing sovereignty as it is truly exercised and understanding its strengths and weaknesses will sovereignty survive as the staple of international organization.

The time has come to face the realization that the 21st century is markedly different from the 17th century. Customs, norms, and regimes have emerged that quite possibly would have been unimaginable at the time sovereignty was legally created. For example, the regime of finance and trade has come to dominate most state-to-state relations today,

⁴¹ Unless that is what the people determine they want.

⁴² Ibid., p.872. For example, Reisman cites "the 'unilateral declaration of independence' by the Smith Government in Rhodesia was not an exercise of national sovereignty but a violation of the sovereignty of the people of Zimbabwe."

Also, "The Chinese Government's massacre in Tiananmen Square to maintain an oligarchy against the wishes of the people was a violation of Chinese sovereignty."

⁴³ Fowler, p.71.

⁴⁴ Boutros-Ghali, Boutros. "Empowering the United Nations." *Foreign Affairs* 71 1992/1993, p.99.

while human rights are quickly becoming an ever more settled norm⁴⁵ in the international community. Elements of sovereignty such as these are not enumerated in any type of formal definition of sovereignty, but are grounded in a states legal sovereignty and legitimated through that state's practices. Through this legitimation, practical sovereignty has become the dominant form of sovereignty expressed in international relations today.

An Example of Practical Theory.

Constitutive Theory

The essence of constitutive theory is that states are constructs of the people within the state and the people can only be treated as a legal entity if their state is mutually recognized by other states. Perhaps Mervyn Frost put it more appropriately when he stated, "rights and institutions presuppose and imply each other."⁴⁶ In other words, people cannot have recognized rights without states to recognize them and states cannot be recognized without a permanent population with rights.⁴⁷ Through this mutual recognition, constitutive theory "aims to bring to light the internal connections between being an individual rights holder of a particular land and being a member of a certain kind of social or

political institution, where both the rights and the institution are conceived of as being components of a wider practice."⁴⁸ Through mutual recognition that either one can exist. Also, recognition of sovereign statehood by another state can be seen in the same light⁴⁹ for

... in reality, other political actors decide whether or not some entity is wholly sovereign and is entitled to full complement of sovereign rights and duties after weighing such factors as geography, history, population, and economic and military strength.⁵⁰

"This struggle is the struggle to fix the meaning of sovereignty in such a way as to constitute a particular state-to write the state-with particular boundaries, competencies, and legitimacies available to it."⁵¹

Therefore, sovereignty under constitutive theory is not an absolute, but is a dynamic, political construct that is meant to serve the very people who constitute it. Louis Henkin noted:

The truth is that states are not persons, however convenient it may be to personify them; they are merely institutions, that is to say, organizations which men establish among themselves for securing certain objects, of which the most fundamental is a system of order within which the activities of common life can be carried on. They have no will except the will of the individual human beings

⁴⁵ Frost, Mervyn. *Ethics in International Relations*. (New York: Cambridge University Press, 1996), p.105. The term settled norm was coined by Mervyn Frost. The general purpose for such a definition is that a norm is regarded as settled when it is generally recognized that any argument denying the norm requires special justification.

⁴⁶ *Ibid.*, p. 139.

⁴⁷ The one exception given to nomadic peoples within territorial boundaries.

⁴⁸ *Ibid.*, p. 140.

⁴⁹ This would be the wider practice which Frost was referring to in the previous quote.

⁵⁰ Fowler, p. 77.

⁵¹ Weber, Cynthia. *Simulating Sovereignty: Intervention, The State, and Symbolic Change*. (New York: Cambridge University Press, 1995), p.3.

who direct their affairs; and they do not exist in a political vacuum but in continuous political relations with one another.⁵²

Here Henkin accurately points out that states are institutions constructed by humans for the purpose of order and to secure relations in international affairs. Due to the fact that different populations with different needs and desires constitute different states, states differ in their sovereign goals, functions, and obligations. Since different communities construct institutions to fulfill their needs, “what counts and/or functions as sovereign is not the same in all times and places.”⁵³ Thus, sovereignty is not the same for every state, but it varies in relation to the population that “writes the state.”⁵⁴

Utility of Sovereignty Theories to Humanitarian Aid.

The review of current sovereignty theories is vital to the original priority of finding and/or creating a necessary framework for humanitarian aid. Having analyzed existing theories and practices of sovereignty, one can identify the methods by which sovereignty is legitimated for a state. In instances where humanitarian aid needs to be administered due to tragedies existing within a state but cannot because the existing government claims it would be a violation of its sovereignty, methods of sovereign legitimation are extremely useful. The

process that leads to legitimate sovereignty can theoretically be reversed to deligitimate sovereignty if the condition of the state justifies such action. Reisman’s example portraying the Tiananmen Square massacre as a violation of sovereignty is the perfect example.

In modern international law, sovereignty can be violated as effectively and ruthlessly by an indigenous as by an outsider, in much the same way that the wealth and natural resources of a country can be spoliated as thoroughly and efficiently by a native as by a foreigner. Sovereignty can be liberated as much by an indigenous as by an outside force.”⁵⁵

During times of internal crisis such as this, sovereignty can be said to have failed. This characteristic of sovereignty was noted earlier by Henkin when he stated that states “are merely institutions, that is to say, organizations that men establish among themselves for securing certain objects,”⁵⁶ namely internal and external order and security. “The job of the state is to ensure that the basic needs and demands of its people are provided for and that the conflicts arising among them are managed.”⁵⁷ When the very governmental institution that is supposed to secure it violates that security, the state’s sovereignty has failed.

Another example of failed sovereignty can be seen in the country of Somalia. Somalia’s sovereignty, however, failed in a much more

⁵² Henkin, p.14.

⁵³ Weber, p.3.

⁵⁴ A phrase coined by Cynthia Weber to denote the process by which a sovereign state comes into being through its practices.

⁵⁵ Reisman, p.872. Reisman goes on to note, “As in the interpretation of an other event in terms of policy, context and consequence must be considered.”

⁵⁶ Henkin, p.14.

legal manner than most others, for at the end of its internal strife it could be said and supported that the state can no longer fulfill its rights and responsibilities as the sovereign.

The purpose of such examples is not to signal the end of sovereignty and its utility in international relations; the exact opposite is the ultimate goal. By realizing that the international community of states today operates in a far different political, moral, and economic structure than states of the seventeenth century, we can realize what practical sovereignty, or operational sovereignty,⁵⁸ is today. Through a common understanding and collective recognition by states, a constitutive definition of sovereignty will evolve from state practice today.

Balancing between national sovereignty and the need for international action to provide protection and assistance to victims of international conflicts would mean reaffirming the responsibility of sovereignty and accountability to the domestic and external constituencies as interconnected principles of the international community.⁵⁹

When states fail to meet the sovereign obligations and rights enumerated to them, the international community is permitted to take action in order to create an internal environment within the state whereby sovereignty can be restored by the people and the institutions within

the state. Only by admitting the weaknesses of sovereignty can we truly make it strong.

External violations of sovereignty have existed and been debated in international relations for many, many years. Internal violations, however, have not been properly evaluated or realized by the international community of states. It is this failure that has truly weakened sovereignty.

Thus, the failed sovereignty argument is vital today; it is time to face the difficult situations and conflicts that arise in international affairs today by properly evaluating the sovereignty of a country. Only by admitting that sovereignty can fail to fulfill its obligations and functions can the international community strengthen sovereignty. It is through such measures that relief and aid can be administered to those who see it, while also strengthening and reaffirming the concept of sovereignty.

⁵⁷ Deng and Co., p.XX.

⁵⁸ Term coined by Robert Keohane in *Sovereignty, Interdependence, and International Institutions*. Working Paper no.1. (Cambridge, Mass. : Harvard University, Center for International Affairs, 1991), p.1.

⁵⁹ Deng and Co., p.27.