

**Sovereignty as responsibility,
or African regional organizations as norm-setters**

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Introduction

"Ex Africa semper aliquid novi", Pliny the Younger (There is always something new from Africa.)

Can any new light be shed on the topic of sovereignty by the African regionalist experience? Considering the tendency in the regionalist literature to discuss the issue of sovereignty almost solely from the point of view of the European Union, the answer would likely be 'no'. No consensus or re-definition of the concept of sovereignty has been achieved out of the debate about the nature of the European Union as an entity *sui generis*. This stagnation of the debate in Europe can be contrasted with the vibrant normative debate that took place in Africa during the last decade, leading to the transformation of the notion of sovereignty into 'responsibility to protect'. While the evolution of European institutions is fascinating in their own right, the debate in Africa has led to a modification of our understanding of sovereignty at the global level. And this new definition can be perceived as an even greater challenge to sovereignty than the European Union experiment.

The aim of this paper is to explore the roots of the evolution of the notion of sovereignty into the responsibility to protect not only at the global level but also in the African political reality and intellectual debate that took place in the 1990s. The reason why sovereignty has been redefined during the 2005 World Summit at the United Nations can be found in the different wars and deadly conflicts that occurred mainly in Africa during the 1990s, spurring the dramatic increase in peacekeeping operations managed by the United Nations and by African regional organizations. African countries, through their regional organizations, have been pioneers in addressing this issue. The future of sovereignty, understood as the responsibility to protect, is in Africa. This paper aims at portraying African countries as not only 'rule-takers' but also as 'rule-makers'.¹

In order to do so, a rapid history of the evolution of the notion of sovereignty will first be outlined. Then, this development at the global level will be put in perspective thanks to the specific approach to sovereignty than can be found in Africa, this unique approach and historical experience leading to its redefinition in the charters of African regional organizations in 1999 and 2000.² Finally, we will see how this new norm is being operationalized and implemented by the regional organizations of the African continent and what it implies for the future of sovereignty.

¹ See Andrew Hurrell and Ngaire Woods, *Inequality, globalization, and world politics* (Oxford, 1999). p.1 and p.20.

² See ECOWAS, "Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security," (Lomé, Togo, 10 December 1999), article 25. And African Union, "Constitutive Act," (Lomé, Togo, 11 July 2000), article 4(h).

Sovereignty: from Westphalia to the responsibility to protect (1648-2005)

Sovereignty is a staple concept for political scientists and is the cornerstone of international relations understood as inter-state relations. While central to international relations theory, it has sometimes been taken as a given without being questioned. We will see that it is in fact a multi-faceted concept that has evolved throughout history.

Origins and meaning of the concept:

According to seventeenth century political philosophers, sovereignty is a central and indivisible principle that governs international relations. The notion is binary: a state is either sovereign or is not a state. For Hugo Grotius, one of the fathers of the modern conception of sovereignty, 'sovereignty is a unity, in itself indivisible.'³ This view is still strong today among certain political theorists like Kal Holsti who maintains that 'A state either is sovereign or it is not. It cannot be partly sovereign or have "eroded" sovereignty no matter how weak and ineffective it may be.'⁴ As we shall see, this view has been successfully challenged over the years. The only way it could still be recognized as true today is if sovereignty is interpreted in a strict juridical sense. Only sovereign states, in the sense of being juridically independent, are accepted as full members of the United Nations. But this is only one aspect of sovereignty. The notion of sovereignty is in reality far more flexible and multi-faceted than these definitions suggest. 'Sovereignty is like Lego: it is a relatively simple idea but you can build almost anything with it, large or small, as long as you follow the rules.'⁵

Sovereignty is not a monolithic concept. As a historical phenomenon, it has evolved through some catalytic moments or 'revolutions.'⁶ It is also, in the long run, a relatively new phenomenon and just another form of arrangement of political life in Europe following the Respublica Christiana of the Middle Ages. 'There is nothing about it that is natural, inevitable, or immutable. Sovereignty is a juridical idea and institution.'⁷ As a socially constructed norm, it has thus to respond to changing historical circumstances.

The principle of sovereignty has its origins in the 1648 Treaty of Westphalia that recognized a new form of political organization in Western Europe when the horrors of the Thirty Years War (1618-1648) led to the conclusion that intervention and interference in the affairs of another state was the greatest threat to international peace and security.

³ Grotius, *De Jure Belli ac Pacis Libri Tres*, trans. Francis Kelsey *et al.*, Oxford: Clarendon Press, 1925, p. 123. Quoted in Edward Keene, *Beyond the anarchical society : Grotius, colonialism and order in world politics* (Cambridge, 2002).

⁴ K. J. Holsti, *Taming the sovereigns: institutional change in international politics* (Cambridge; New York, 2004). p.114.

⁵ Robert H. Jackson, *Classical and modern thought on international relations: from anarchy to cosmopolis* (New York, 2005). p.73.

⁶ Daniel Philpott, *Revolutions in sovereignty: how ideas shaped modern international relations* (Princeton; Oxford, 2001). He mentions two revolutions: Westphalia and decolonization.

⁷ Jackson, *Classical and modern thought on international relations: from anarchy to cosmopolis*. p.74.

This new principle of international relations was formalized by Hugo Grotius⁸ and, later on, by Emerich de Vattel who gave it the following definition: ‘Every nation that governs itself, under what form soever, without dependence on any foreign power, is a Sovereign State.’⁹

It is from this seminal moment that the definition of sovereignty as non-intervention has arisen. The closely intertwined concepts of sovereignty and non-interference are indeed the two sides of the same coin. However, sovereignty cannot be limited to that and entails other elements that are both external and internal. The Westphalian rule of sovereignty stresses non-interference from the exterior (external sovereignty) but implies also a certain amount of domestic or internal sovereignty.¹⁰ External sovereignty implies first the recognition by its peers that a state is a juridically independent territorial entity. Due to its status as a sovereign state, it has the right to freely decide which agreements or treaties it will enter into. This has also been called juridical sovereignty,¹¹ which also implies the principle of sovereign equality of states. This also means that other states refrain from intervening in the internal affairs of other states. Thus, each state has the right to determine its own political system and authority structures. Internal sovereignty, more than a norm, is a premise to external sovereignty. It ‘is rather a description of the nature of domestic authority structures and the extent to which they are able to control activities within a state’s boundaries.’¹² Put in other words, ‘Internal sovereignty is a fundamental authority relation within states between rulers and ruled, which is usually defined by a state’s constitution. [...] External sovereignty is a fundamental authority relation between states, which is defined by international law. Thus, as seen from inside a state, sovereignty is paramount authority, and as seen from outside it, it is independent authority.’¹³ In the ideal state system, often taken for granted by political scientists, external and internal sovereignty are concomitant and mutually supportive.

This definition of (external) sovereignty has been enshrined and given a legal expression in the Charter of the United Nations. The principle of sovereign equality of states can be found in article 2(1): ‘The Organization is based on the principle of the sovereign equality of all its Members.’¹⁴ The corresponding principle of non-intervention is proclaimed 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

⁸ See quotation above.

⁹ Emerich de Vattel, *The Law of nations: or, Principles of the law of nature, applied to the conduct and affairs of nations and sovereigns* (1758). Book I, par.4.

¹⁰ Stephen Krasner contends that there are three elements: international legal sovereignty, Westphalian / Vattelian sovereignty, and domestic sovereignty. See Stephen D. Krasner, "Sharing sovereignty. New institutions for collapsed and failing states," *International Security* 29 (2004). Overall, since international legal sovereignty and Westphalian sovereignty are so closely related, they can be subsumed under the notion of external sovereignty. See Jackson, *Classical and modern thought on international relations: from anarchy to cosmopolis*.

¹¹ See Robert H. Jackson, *Quasi-states : sovereignty, international relations, and the Third World* (Cambridge, 1990).

¹² Krasner, "Sharing sovereignty. New institutions for collapsed and failing states," p.88.

¹³ Jackson, *Classical and modern thought on international relations: from anarchy to cosmopolis*. p.75.

¹⁴ “Charter of the United Nations”, San Francisco, USA, 26 June 1945. See <http://www.un.org/aboutun/charter/>

jurisdiction of any state.’¹⁵ The norm of (external) sovereignty is hence protected by international law. The same norms can be found in numerous other treaties, like the Charter of the Organization of African Unity (OAU) where both the principle of sovereign equality (article 3(1)) and that of non-intervention (articles 3(2) and 3(3)) are mentioned.

The practice differs from the theory

Despite the fact that sovereignty is one of the pillars of international law, in practice, both external and internal sovereignty have been violated. The actions of states have been far from consistent throughout the years.

The norm of external sovereignty has been widely but not universally honored. For instance, state recognition has always been a rather controversial issue and it is usually political concerns rather than objective criteria that dominate the process. The most striking example is that of the People’s Republic of China from 1949 to 1971, an independent and Weberian state, that was nevertheless not recognized by many states and hence not a member of the United Nations. The principle of non-intervention has also frequently violated as the numerous wars since the end of World War II can bear witness. Furthermore, the conditions to achieve sovereignty have changed throughout the years ‘when national self-determination became a basic norm of sovereignty or when colonialism became illegitimate and illegal.’¹⁶ International law has then adapted itself to this new reality and the Declaration of the Granting of Independence to Colonial Countries and Peoples was adopted by the UN General Assembly in 1960. It asserts that ‘all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory.’¹⁷ These modifications of the norm of sovereignty have happened in the past and will happen again. The norm of external sovereignty is thus not as strong as it may seem at first sight.

The multiplication of peacekeeping operations during the 1990s performed with or without consent of the state has dealt a severe blow to the principle of non-intervention and has led to incursions in the domains under the internal sovereignty of states. Peacekeeping is but the most extreme and obvious of external restrictions on states. It has also started to meddle with issues of internal sovereignty such as constitution-writing in East Timor and the Democratic Republic of Congo with the United Nations, or in Iraq with the United States. In *Sovereignty: Organized Hypocrisy*, Krasner draws the history of these restrictions with examples ranging from how states treat their minorities (minority rights) and their citizens (human rights) to how they manage their economies (sovereign lending), and design their constitutional structures.¹⁸ While some of these restrictions can be considered as voluntary, the European experiment being a good example of this, many others are imposed from the outside. ‘These deviations, therefore,

¹⁵ “Charter of the United Nations”, San Francisco, USA, 26 June 1945. See <http://www.un.org/aboutun/charter/>

¹⁶ Jackson, *Classical and modern thought on international relations: from anarchy to cosmopolis*. p.77.

¹⁷ See GA resolution 1514 (XV), 14 December 1960.

¹⁸ Stephen D. Krasner, *Sovereignty: organized hypocrisy* (Princeton, N.J., 1999).

reveal a wide range of authority relations between actors with at least some measure of domestic or international legal sovereignty.¹⁹ These lesser or greater restrictions imposed on weaker states show that, far from being 'indivisible', sovereignty can be thought of as a continuum with variations in the degree of subordinate sovereignty.²⁰

Why sovereignty as the responsibility to protect?

The restrictions imposed on sovereignty, especially the increasing impact in recent decades of human right norms, have slowly brought 'a shift from a culture of sovereign impunity to one of national and international accountability.'²¹

The difference in political legitimacy between the international and national level has been brought to the fore. The inconsistency between the two is clear: domestically, only a legitimate authority can be considered sovereign; internationally, legitimacy is either not an issue or is provided by the recognition of a state by its peers. This dichotomy, this wall between domestic and international legitimacy has started to crumble with the increasing importance of human rights norms, accountability and democracy. The legitimacy of sovereignty has changed 'from efficacy (or, as I prefer to call it: "the prior successful use of force") to the active consent of the governed'²² or 'from sovereignty as control to sovereignty as responsibility.'²³ Previously, a dictator who had seized power through a coup d'état was recognized as head of states by its peers. This is still true today but is slowly changing in the African continent.²⁴ However, 'if sovereignty is seen as extending only over those to whom the sovereign power is democratically accountable, then this principle provides members of any group over which that sovereign power is claimed a right to democratic participation. [...] Sovereignty is no longer the recognition of a power over a people but the collective right of a people to participate in, and benefit from, an independent political community, participating as an equal in the community of nations. To put it another way, sovereignty becomes a human right.'²⁵

Sovereignty as the responsibility to protect emerged because external sovereignty now needs to stand on the shoulders of a legitimate internal sovereignty. Sovereignty as responsibility to protect is the first step towards legitimate sovereignty. Making

¹⁹ David A. Lake, "The new sovereignty in international relations," *International Studies Review* 5 (2003): p.309.

²⁰ Ibid.: p.311.

²¹ Gareth Evans and Mohamed Sahnoun, "The responsibility to protect," *Foreign Affairs* 81 (2002): p.102.

²² Charles Sampford, "Democratic and global challenges to the concepts of 'sovereignty' and 'intervention'," in *Fifth Plenary Session of the 19th World Congress in Philosophy of Law and Social Philosophy* (Pace University, New York, 29 June 1999).

²³ International Commission on Intervention and State Sovereignty, "The responsibility to protect," (Ottawa, 2001), p.13.

²⁴ For instance, General Pervez Musharraf who came to power through a military coup in 1999 is considered as a legitimate leader and as one of key allies of the United States in its 'war on terror.' However, the OAU has decided to suspend the membership of any country whose leader has seized power through unconstitutional means. See *Declaration on Unconstitutional Changes of Government*, adopted by the 36th ordinary session of the Assembly of Heads of State and Government of the OAU, Lomé, Togo, 10-12 July 2000.

²⁵ Sampford, "Democratic and global challenges to the concepts of 'sovereignty' and 'intervention'."

sovereignty legitimate means making it transparent and accountable. In other words, it entails the democratization of sovereignty. The legitimacy of a sovereign state now lies in the individual seen as the natural and ultimate source of power. It is this gradual empowerment of the people that lies at the root of this (r)evolution. Legitimate sovereignty is a way for the people to become masters of their own destiny, a destiny that is now shaped at the globalized level and not exclusively at the domestic level anymore. While the new definition of sovereignty as responsibility to protect is still far from this idea of sovereignty as a human right, it is nevertheless a milestone in this direction.

The rise of the responsibility to protect

The concept of the responsibility to protect was slow to emerge at the international level. In its 1992 *Agenda for Peace*, Secretary-General Boutros-Ghali was among the first to advocate a change by stating: 'The time of absolute and exclusive sovereignty [...] has passed; its theory was never matched by reality.' It is necessary for 'leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world.'²⁶ In 2001, Secretary-General Kofi Annan argued during his Nobel lecture that 'The sovereignty of states must no longer be used as a shield for gross violations of human rights.'²⁷ In the same breath, the Canadian government created the International Commission on Intervention and State Sovereignty assigned with the task of proposing a blue print on the question of humanitarian intervention. In its report *The Responsibility to Protect*, it came up with the new language of the 'responsibility to protect.'²⁸ From an ethical point of view, the change could not be more radical because it places the individual at the center of world politics and effectively displaces the sovereign state. The change in vocabulary from 'right to intervene' to 'responsibility to protect' is drastic and significant. The state has the primary responsibility to protect its population. If it fails to do so because it is unable or unwilling to fulfill its responsibility, outside intervention is then contemplated.

The notion of sovereignty as responsibility to protect was endorsed first in the 2004 report *A more secure world: Our shared responsibility* by the High-level Panel on Threats, Challenges and Change, and subsequently in the 2005 Secretary-General's report *In Larger Freedom*. It was finally endorsed and recognized as a new international norm by the 191 member states of the United Nations on September 16, 2005. It is defined as follows:

'Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

²⁶ Boutros-Ghali Boutros, "Agenda for peace," (New York, 17 June 1999), par.17.

²⁷ Kofi Annan, speech given to the Nobel Foundation, Oslo, Norway, December 10, 2001; available at www.nobel.se/peace/laureates/2000/annanlecture.html.

²⁸ International Commission on Intervention and State Sovereignty, "The responsibility to protect."

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peacefully means by inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.²⁹

While a significant and encouraging normative leap from Westphalian sovereignty, this definition suffers from two major limitations. It only partially answers the challenge set out by Kofi Annan in the aftermath of NATO's intervention in Kosovo. The dilemma of humanitarian intervention was expressed as follows: 'On the one hand, is it legitimate for a regional organization to use force without a UN mandate? On the other, is it permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked?'³⁰ Annan challenged the international society to avoid 'future Kosovos' (cases where the Security Council is deadlocked about whether to intervene) and 'future Rwandas' (cases where the Security Council lacks the political will to take decisive action).³¹ 'Future Kosovos' refer to the issue of legitimacy: who, besides the Security Council, should intervene? 'Future Rwandas' indicate that, ideally, there should be a duty and legal obligation to intervene. The responsibility to protect was to be a tool to achieve two aims: constraining power both internally and externally and legitimizing sovereignty.

Unfortunately, the 2005 definition of the responsibility to protect does not seem to be able to avoid 'future Kosovos' and 'future Rwandas'. First, there is no clear institutional process to overcome a deadlock of the Security Council or indications on how to deal with unauthorized intervention. Second, from an implementation point of view, the norm is limited to the most serious and heinous of crimes and there are no institutional mechanisms, besides those that already exist, that would ensure a consistent implementation. For instance, it can be argued that, at a minimum, ethnic cleansing is taking place in Darfur, yet no UN soldiers have been sent on the ground. We will see in the last section of this paper that the African Union has tried to bring a solution to these problems on its own terms.

²⁹ United Nations General Assembly, '2005 Summit Outcome', A/60/L.1, 16 September 2005, paras. 138-9.

³⁰ Kofi Annan, "Two concepts of sovereignty," *The Economist* 18 September 1999.

³¹ Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," (2005), p.2.

Sovereignty in Africa

After this quick outline of the concept of sovereignty and of its recent evolution, this section will explain how the contemporary normative evolution of sovereignty has its roots in the African experience. African regional organizations, especially the African Union, have acted as forerunners.

'Juridical sovereignty'³²

Westphalian sovereignty as a form of political authority was completely foreign to Africa before colonial times. Sovereignty, due to the geography of the African continent, was overall not defined by borders over which nations fought. Pre-colonial African societies tended to unbundle ownership and control of land. Ivor Wilks, in writing about the Ashanti theory of sovereignty, noted that "rights of sovereignty were regarded as distinguishable from the exercise of authority."³³ Sovereignty was thus a new and foreign concept when independence came in the 1960s.

It nevertheless became THE cornerstone of African international relations. The Western European concept of sovereignty was adopted and adapted to the reality of African politics. By examining the Charter of the Organization of African Unity, one can understand what principles were formally accepted and expected to govern the relations between African states. Rejecting the kind of supranational union proposed by the Casablanca group, the Charter of the OAU exalted external sovereignty through the principle of non-interference and *uti possidetis juris*. This latter principle made the fragile African frontiers permanent. The existing boundaries became the basis for determining territorial jurisdiction. The 1960 UN Declaration on Granting Independence to Colonial Territories and Countries formalized this notion by stating that 'any attempt aimed at the partial or total disruption of the national unity or territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.'³⁴ Immediately after independence, the priority of African rulers was to establish a certain degree of control over their own territory. Unable to resist any war of invasion at the time, it was in their common interest to declare their current borders permanent. Sovereignty was transformed as a tool for small and weak states. The greater emphasis on

³²The ex-colonial states have been internationally enfranchised and possess the same external rights and responsibilities as all other sovereign states: juridical statehood. At the same time, however, many have not yet been authorized and empowered domestically and consequently lack the institutional features of sovereign states as also defined by classical international law. They disclose limited empirical statehood: their populations do not enjoy many of the advantages traditionally associated with independent statehood. [...] These states are primarily juridical. They are still far from complete, so to speak, and empirical statehood in large measures still remains to be built. I therefore refer to them as 'quasi-states'.' Jackson, *Quasi-states : sovereignty, international relations, and the Third World*. p.21.

³³ Ivor Wilks, *Asante in the Nineteenth Century: The Structure and Evolution of a Political Order* (Cambridge: Cambridge University Press, 1975), pp.191-2. Quoted in Jeffrey Ira Herbst, *States and power in Africa : comparative lessons in authority and control*, Princeton studies in international history and politics (Princeton, N.J. ; Chichester, 2000). p.40.

³⁴ GA resolution 1514 (XV), 14 December 1960.

sovereignty by these new countries is understandable and logical since it was a question of political survival.

Sovereignty in Africa could thus be understood as follows:

'The OAU established a decision-making rule that preserved African borders and prevented any kind of external competition while requiring only minimal levels of effective domestic sovereignty. To do so, the OAU said, in effect, that if an African government is in control of the capital city, then it has the legitimate right to the full protection offered by the modern understanding of sovereignty. Thus, Olympio's killers were recognized as the legitimate government of Togo because they controlled Lomé, not because they were perceived by the Togolese as legitimate or because they physically controlled the territory of the country.'³⁵

Sovereignty, an elastic notion for African countries

While juridical sovereignty was the overriding principle of African international relations, African politicians were in practice not very respectful of the very norms they were promoting. The actions of the African states forty years after independence lead to question how deeply ingrained the norm of sovereignty actually is in Africa.

Sovereignty seems to be a rather elastic notion in certain areas of Africa. First of all, domestic sovereignty has faltered in many African countries. Due to the weakness of many African states after independence, many mechanisms of shared sovereignty were put in place. Even though they were not called as such, these processes nevertheless severely constrained and restricted the actions of numerous states. For instance, the Central and West African countries that are part of the Franc zone have given up their sovereignty over their currency. Its value is decided in a foreign polity, previously France, and now the European Union. The dependency of most African states on the world markets for commodities, as well as their high-level of debt, are also signs of another severe restriction of their economic sovereignty. In terms of security, 'most African states are unable to claim a monopoly on the means of violence, legitimate or otherwise.'³⁶ Pushed to the extreme, this means that some African states do not even possess an army. The President of Sierra Leone had to use the services of a South African 'private security company' called Executive Outcomes to wage war against the rebels in 1995-6.³⁷ Even under less extreme circumstances, many African countries lack the capacity to control the flow of unauthorized traffics, be it illegal trade, or more damaging traffics such as drugs or small arms. This lack of control also facilitates the infiltration of armed groups across their borders. 'The majority of African countries simply lack the capacity to deal with any large-scale security crisis, whether domestic or external,

³⁵ Herbst, *States and power in Africa: comparative lessons in authority and control*. p.110.

³⁶ Kevin C. Dunn, "The (Blank) African State: Rethinking the Sovereign State in International Relations," in *Africa's challenge to international relations theory*, ed. Kevin C. Dunn and Timothy M. Shaw (New York, 2000), p.55.

³⁷ See John L. Hirsch, *Sierra Leone : diamonds and the struggle for democracy* (London, 2000). pp.37-40.

without the direct support of foreign military forces.³⁸ There is a new meaning to “things fall apart” in Africa today.

Not only did several African states have vulnerable internal sovereignty, external sovereignty itself was often not respected. African states have not been very consistent in the implementation and respect of the principle of non-interference. They have violated this norm more than once, be it in the Democratic Republic of Congo, in Rwanda, Sudan, Uganda, or Liberia and Sierra Leone. This norm of non-interference seems all the more inapplicable to the African continent since there exists a greater degree of solidarity across borders with ethnic groups separated by the frontiers decided at independence. Overall, there does not seem to be a lot of states in Africa that really enjoy their full domestic sovereignty or that fully and consistently respect of sovereignty as a norm.³⁹

Sovereignty without legitimacy, a recipe for the abuse of human rights?

It is this very reality at the domestic level within weak and failed states that has forced African leaders to look beyond Westphalian sovereignty. In Africa, a continent of fully sovereign states is a juridical lie. ‘Failed, inadequate, incompetent, or abusive national authority structures have sabotaged the economic well-being, violated the basic human rights, and undermined the physical security of their countries’ populations. In some cases, state authority has collapsed altogether for an extended period, although such instances are rare.’⁴⁰ Liberia, Somalia, the Democratic Republic of Congo and Sierra Leone in the 1990s are just a few of the examples. They are universally recognized states, members of the United Nations, but they barely have any national institutions.

Without going to such extremes, under the mantle of external sovereignty, also known as juridical sovereignty, African leaders were free to build national unity and its consolidation was seen as an overriding imperative. In many instances, this policy had very serious consequences. ‘Politically, one-party rule, authoritarianism, and military dictatorship became pervasive features of governance. Unity was misconceived as requiring uniformity and homogenization rather than acceptance of diversity. [...] Economic mismanagement without transparency or accountability led to uncontrolled spending, corruption, and drastic deterioration in the economies of most countries.[...] Over the decades, the repercussions of the policies incrementally manifested themselves in mounting unrest, social tensions, civil violence, and ethno-regional conflicts. These repercussions in turn prompted more repression and militarization of politics, creating a vicious cycle of insecurity, instability, and even the collapse of states.’⁴¹ At first, the African obsession with sovereignty was a question of political survival and, later, in

³⁸ Ibrahim A. Gambari, "The role of regional and global organizations in addressing Africa's security issues," in *Africa in the new international order: rethinking state sovereignty and regional security*, ed. Edmond J. Keller and Donald S. Rothchild (Boulder, Colo; London, 1996), p.33.

³⁹ While this is also true for other continents, the phenomenon is more pervasive in Africa.

⁴⁰ Krasner, "Sharing sovereignty. New institutions for collapsed and failing states," p.90.

⁴¹ Francis Mading Deng, *Sovereignty as responsibility: conflict management in Africa* (Washington, DC, 1996). p.25.

certain states, it was transformed into a perfect tool for the state to mutate into a plundering machine, the most extreme example being Zaire under Mobutu Sese Seko.

The breakdown of law and order in several African states has led to numerous interventions in the 1990s, notably the intervention of the Economic Community of West African States (ECOWAS) Monitoring Group (ECOMOG) in Liberia. 'The cruel calculus of sovereignty versus misery has changed the way the international community thinks about foreign intervention and the rights of states.'⁴² This intervention by an African regional organization reflects a change in African policy and approach towards the principle of sovereignty. As Fouad Ajami has said, 'In the face of an absolutist doctrine of the rights of nations, there is now a tentative right to interfere. Man cannot eat sovereignty, we have learned; the order within nations is just as important as that among them.'⁴³ Because African states are comparatively weak, they have modified their own institutional and normative context that differs from the one established by Westphalian states.⁴⁴

Intervention performed by African organizations is one of the most obvious signs that sovereignty was being reinterpreted. The deep reason behind that lies with the raging conflict between sovereignty on the one hand and human rights and democracy on the other within numerous African states. Sovereignty after independence was designed to give free rein to leaders at the national level. Whoever was in power could exercise it to deny the human rights of some groups or individuals. To a certain extent, this conception of sovereignty protects human rights abuse by the strongest within a particular territory. 'It rewards those who mount anti-democratic coups. It rewards those who rig elections. It rewards those who intimidate the population who rule through and for one ethnic or social group against others.'⁴⁵ But such a formula could not be sustainable in the long run. These gross abuses of power in a small number of African states were in the limelight during the 1990s. It is this raising profile of the abuses that led to the loss of legitimacy of this conception of sovereignty. The erosion of sovereignty was thus paralleled by the development of the norm of democracy in Africa, with people requesting that the state be accountable to them.

Legitimizing sovereignty

The erosion of the norm of sovereignty started in the early 1990s in Africa. It was part of a deliberative process among major African states and leaders, especially within the framework of the African Leadership Forum and of the OAU. This reflection took another dimension when the Economic Community of West African States decided to intervene in Liberia allegedly on humanitarian grounds in 1990 and subsequently

⁴² Fouad, Ajami, "Somalis: The work of order and mercy", *U.S. News and World Report*, December 21, 1992, p. 25. Quoted in Gambari, "The role of regional and global organizations in addressing Africa's security issues," p.31.

⁴³ Ajami, "Somalis", p. 25. Quoted in Ibid.

⁴⁴ Some might argue that, since conventional sovereignty is something relatively new in Africa, African states would be more willing than others to imagine an alternative to sovereignty and to find other ways of structuring political life.

⁴⁵ Sampford, "Democratic and global challenges to the concepts of 'sovereignty' and 'intervention'."

formalized this new right of intervention in its Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security of 1999. Later, this new norm was formalized at the continental level as part of the Constitutive Act of the African Union.

In May 1991, President Museveni of Uganda, Chairman of the OAU at the time, and Olusegun Obasanjo, then Chairman of the African Leadership Forum, gathered African Heads of States at a meeting on Security, Stability, Development and Cooperation in Kampala. The result of the meeting was the Kampala Document, which recognized that security, stability, development and cooperation were closely linked in any development strategy. One flows into the other and it is impossible to tackle one without concern for the other.

Salim Ahmed Salim, Secretary-General of the OAU, was issuing a similar call, suggesting that sovereignty should be transcended by building on the African values of kinship solidarity and the notion that 'every African is his brother's keeper.' Considering that 'our borders are at best artificial,' Salim argued, 'we in Africa need to use our own cultural and social relationships to interpret the principle of non-interference in such a way that we are enabled to apply it to our advantage in conflict prevention and resolution.'⁴⁶ On redefining national sovereignty, he said, "We should talk about the need for accountability of governments and of their national and international responsibilities. In the process, we shall be redefining sovereignty."⁴⁷ Yet another call for the redefinition of the concept of sovereignty was made by the former head of state of Nigeria, General Olusegun Obasanjo:

An urgent security need is a re-definition of the concept of security and sovereignty. For instance, we must ask why does sovereignty seem to confer absolute immunity on any government who commits genocide and monumental crimes of destruction and elimination of a particular section of its population for political, religious, cultural or social reasons? In an inter-dependent world, is there no minimum standard of decent behaviour to be expected and demanded from every government in the interest of common humanity?⁴⁸

It is in this context that ECOWAS decided to intervene in Liberia. The justification of the intervention was framed in terms of humanitarian concerns.⁴⁹ There can be exemptions to

⁴⁶ Council of Ministers, *Report of the Secretary-General on Conflicts in Africa: Proposals for an OAU Mechanism for Conflict Prevention and Resolution*, CM/1710 (L.VI), Addis Ababa: Organization of the African Unity, 1992, pp.12-13. Quoted in Deng, *Sovereignty as responsibility: conflict management in Africa*. pp.15-16.

⁴⁷ The statement by Salim Ahmed Salim, secretary-general of the OAU, in Olusegun Obasanjo and Felix G. N. Masha, *Africa, rise to challenge: towards a Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA)* (New York, 1993). pp.343-346. Quoted in Solomon Gomes, "The OAU, state sovereignty, and regional security," in *Africa in the new international order: rethinking state sovereignty and regional security*, ed. Edmond J. Keller and Donald S. Rothchild (Boulder, Colo ; London, 1996), p.40.

⁴⁸ Obasanjo and Masha, *Africa, rise to challenge: towards a Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA)*. Quoted in Gomes, "The OAU, state sovereignty, and regional security," p.40.

⁴⁹ See Margaret A. Vogt, *The Liberian crisis and ECOMOG: a bold attempt at regional peace keeping* (Lagos, Nigeria, 1992).

the principle of territorial integrity in specific cases, humanitarian reasons being one of them. While hotly debated at the time within West Africa and across the continent, this right to intervene was later adopted and formalized in the 1999 Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security:

The Mechanism shall be applied in any of the following circumstances:

In cases of aggression or conflict in any Member State or threat thereof;

In case of conflict between two or several Member States;

In case of internal conflict:

that threatens to trigger a humanitarian disaster, or

that poses a serious threat to peace and security in the sub-region;

In event of serious and massive violation of human rights and the rule of law.

In the event of an overthrow or attempted overthrow of a democratically elected government;

Any other situation as may be decided by the Mediation and Security Council.⁵⁰

This was adopted after the 1994 genocide of Rwanda that had acted as a catalyst and a wake-up call for many African states. Setting sovereignty aside, they had pleaded at the time for the United Nations to intervene, and nothing was done. Out of this let-down, they decided that the only way for such a catastrophe not to happen again was to take matters in their own hands.⁵¹ ECOWAS was the first one to formally do so.

This 'belief that international society had generally neglected African problems and that the continent must take its own measures'⁵² was also key in the creation of the African Union out of the Organization for African Unity. Under the Constitutive Act signed on July 11, 2000, the African Union was given a right of humanitarian intervention. Article 4(h) of the Act established 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.'⁵³ Article 4(j) formalizes a state's right to request intervention from the Union. While the vocabulary is different from the notion outlined during the 2005 World Summit, the implications are the same in terms of humanitarian interventions.

⁵⁰ ECOWAS, "Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security," article 25.

⁵¹ The Declaration of African Heads of State that accompanied the Constitutive Act stated that they are: 'Deploring the fact that the International Community has not always accorded due attention to conflict management in Africa, as it has consistently done in other regions of the world, and that the efforts exerted by Africans themselves in the area of peacekeeping, as provided for under Chapter VII of the United Nations Charter, are not given adequate financial and logistical support.' *Declaration of African Heads of State and Governments*, Lome, Togo, 12 July 2002, Available at <http://www.africanreview.org/docs/arms/lome.pdf>

⁵² Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," p.25.

⁵³ African Union, "Constitutive Act," article 4(h).

Evaluating the implementation of the new norm of responsibility to protect in Africa

The African initiative to create a right to intervene for regional organizations is both a solution to the limitations of the 2005 definition of sovereignty as responsibility and a challenge to the Security Council that has the ‘primary responsibility’ for international peace and security. The AU definition tries to prevent ‘future Kosovos’ and ‘future Rwandas’. But it is also a challenge because, considering that the Security Council has failed to honor its responsibility, the Africans have decided to take things in their own hands. The African Union proposes an articulated project to provide an African alternative in order to bring peace to the continent.

Beyond the limitations of the 2005 definition of the responsibility to protect

How does the African Union address the limitations of the 2005 definition of the responsibility to protect? The mechanism that has been put in place seems designed to avoid ‘future Rwandas’ rather than ‘future Kosovos’.

Since Rwanda, the African states have tackled the challenge of avoiding future gross violations of human rights. They are in fact answering one of the appeals of the UN Secretary-General Kofi Annan following the 1994 genocide: ‘if, in those dark days and hours leading up to the genocide, a coalition of states had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorisation, should such a coalition have stood aside and allowed the horror to unfold?’⁵⁴ In Africa today, more than a moral duty or a norm, the responsibility to protect has been transformed into a legal instrument by ECOWAS and the African Union. With this legal basis, they are now building the mechanisms, both financial, logistical, and operational necessary for humanitarian interventions and peacekeeping operations.

It is worth noticing that African countries have been more reticent about the redefinition of sovereignty within the UN framework. However surprising at first sight, this is indeed logical considering that their aim was to avoid ‘future Rwandas’: in that case, the African Union will act without waiting for the UN Security Council to muster the political will to send troops. This was indeed the position of the Algerian Permanent Representative to the UN sitting at the Security Council when the resolution 1556 (2004) on Darfur was adopted: ‘As Africans, we believe that whenever and wherever there is a conflict in Africa, we — more than anyone else — have a special duty and a primary responsibility towards our sisters and brothers when they suffer and when their lives are at risk.’⁵⁵

The main problem with Rwanda was the lack of political will of the member states of the UN Security Council. How can one be sure that the same problem will not arise within the African Union? While certainty is not possible, there are three reasons to believe that Africans will not and simply cannot look in the other direction. First, their main reason to

⁵⁴ Secretary General’s Annual Report to the General Assembly, 20 September 1999.

⁵⁵ UNSC 5015th meeting, Statement by Mr. Baali, Permanent Representative of Algeria to the United Nations, 30 July 2004, S/PV.5015, p.5.

intervene is simply self-interest. Due to the interdependence of African countries today, no matter, especially concerning security and conflict management, can be exclusively contained within one country. In Africa, the spillover effects of conflicts are dramatic and have a direct impact on the neighboring countries, be it because of arms trafficking, smuggling or flows of refugees. The region cannot be immune to the tragedies that result from internal conflicts and massive human rights violations. Second, an African intervention might also be a way to avoid intervention from non-African states. A communiqué issued by an “African mini-summit” on Darfur led by Libya and Egypt reaffirmed a commitment to preserve Sudanese sovereignty and expressly rejected “any foreign intervention by any country, whatsoever in this pure African issue.”⁵⁶ Third, African states could also possibly intervene out of truly humanitarian motives. A joke says about the UN Security Council that they are ready to protect Darfur to the last Bangladeshi.⁵⁷ On the contrary, African nations are prepared to send their own people and their own soldiers. The Western nations are prepared to kill for those values... African regional organizations are prepared to take casualties.

When it comes to ‘future Kosovos’, it is not in the power of African states to avoid future unilateral interventions by great powers. While they have tried to constrain such possibility during the debates of the 2005 World Summit, they have been unable to make a significant impact. They are afraid that the responsibility to protect could be just another tool in the hands of the great powers in order to interfere in other countries’ affairs: ‘One might also wonder [...] whether the Darfur humanitarian crisis might not be a Trojan horse? Has this lofty humanitarian objective been adopted and embraced by other people who are advocating a hidden agenda?’⁵⁸ Alex Bellamy has argued that the 2005 World Summit outcome document has left open the possibility of unauthorized intervention: Paragraphs 77-80 ‘reiterate the obligation of states to refrain from the threat or use of force in *any manner inconsistent* with the UN Charter, insist that states “strictly abide” by the Charter, reaffirm the Security Council’s authority to mandate coercive action and asserts its “primary responsibility” for international peace and security.’⁵⁹ This could leave the possibility to intervene unilaterally in order to uphold the humanitarian principles outlined in Article 1 of the Charter or based ‘on the “implied authorization” of past Security Council resolutions.’⁶⁰ Arguably, since Africa is at the periphery of the interests of great powers, this is not an immediate problem. It has rather suffered from a lack of attention by the Security Council rather than the opposite. However, if a major power decides to intervene in a specific country, the African Union is powerless. Their

⁵⁶ By “foreign” the communiqué meant non-African. “Final communiqué: African Mini-Summit on Darfur”, Tripoli, Libya, October 17, 2004, p.2. Quoted in Alex J. Bellamy, “Responsibility to protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq,” *Ethics & International Affairs* 19 (2005): p.47.

⁵⁷ Bangladesh is one of the major contributors to the UN peacekeeping missions.

⁵⁸ UNSC 5015th meeting, Statement by Mr. Erwa, Permanent Representative of Sudan to the United Nations, 30 July 2004, S/PV.5015, p.13. See also Bellamy, “Responsibility to protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq.”

⁵⁹ Bellamy, “Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit,” p.39.

⁶⁰ *Ibid.*, p.40.

only weapon is the normative condemnation of this intervention as illegal and illegitimate.

Who implements?

Now that the legal basis and the rationale for intervention have been outlined, we will see who, beyond the state, has the responsibility to protect. In Africa, the future of the responsibility to protect seems to be in the hands of regional organizations. They are the ones enforcing this new norm.

Indeed, what is striking about article 4(h) is that it does not defer to the UN Security Council for authorization. As Ben Kioko, a senior legal advisor to the AU explained: 'Article 4(h) was adopted with the sole purpose of enabling the African Union to resolve conflicts more effectively on the continent'.⁶¹ The Constitutive Act has also created a parallel mechanism to the UN Security Council that permits the African Union to launch humanitarian intervention. The existence of these mechanisms is also acknowledged in the UN definition of the responsibility to protect.

The question of 'whose responsibility to protect' remains hotly contested. According to the formulation of the principle in the 2005 World Summit outcome document, this responsibility is in the hands of the international community, and more specifically in the hands of the Security Council. However, an opposing consensus seems to emerge around the crisis in Darfur. In the debates following the latest resolution on Darfur, while acknowledging the fact that the Sudanese government had failed in its responsibility to protect, the US, UK, Germany, Chile and Spain did not claim that responsibility for the Council.⁶² On the contrary, just like the Algerian representative, they came close to recognizing the African Union as bearing primary responsibility. At a minimum, the African regional organization has a leading role in the crisis. 'This was evidenced by the widespread political support offered to AMIS and by the fact that in the West, at least, there was little suggestion that an AU intervention required either an authorizing Security Council resolution or the Sudanese government's consent. Although AMIS subsequently received Sudanese government consent for its limited civilian protection role, it is significant that when Rwanda unilaterally gave its peacekeepers a civilian protection role prior to the revised AMIS mandate, liberal states did not criticize it for doing so.'⁶³

Beyond the acceptance by the international community of the responsibility to protect falling on the African Union, it also seems that the African Union has greater legitimacy to intervene. In general, it is easier to be judged by one's own peers. Indeed, 'a doctrine attributing authorizing power to regional organizations could be more easily reconciled with respect for the principle of sovereignty, if such power could be exercised only with

⁶¹ See Ben Kioko, 'The Right of Interference under the African Union's Constitutive Act: From Non-Interference to Non-Intervention', *International Review of the Red Cross* 85 (6) 2003, p. 817. Quoted in *Ibid.*, p.25.

⁶² UNSC 5015th meeting, S/PV.5015, 30 July 2004, especially pp. 10-12.

⁶³ Bellamy, "Responsibility to protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq," p.51. AMIS refers to the African Union Mission in Sudan.

respect to actions against member states. In their case, one can argue prior consent to the procedures whereby the organization acts. If the target is a non-member state, reconciliation is far more problematical.⁶⁴ From a legal point of view, the same argument of prior consent could be made: by signing and ratifying the Constitutive Act of the African Union, member states have consented to intervention if the African Union decides to do so. The same can be said of ECOWAS.

How to implement?

African regional organizations are addressing the issue of enforcement and implementation head on, but with difficulty. The African Union is a work in progress and is attempting to answer this question right now in Darfur.

The Protocol relating to the establishment of the Peace and Security Council of the African Union was adopted during the First Ordinary Session of the Assembly of the AU at Durban, on July 9, 2002. It provides the African organization with 'a standing decision-making organ for the prevention, management and resolution of conflicts' supported by the Commission, a Panel of the Wise, a Continental Early Warning System, and African Standby Force and a Special Fund.⁶⁵ Composed of 15 members,⁶⁶ it recommends to the Assembly of Heads of State and Government intervention based on article 4(h) of the Constitutive Act, authorizes the deployment of peacemaking, peacekeeping, and peacebuilding missions, institutes sanctions and implements the common defense policy of the Union.⁶⁷ Decisions are taken by a two-thirds vote of the members of the Peace and Security Council.⁶⁸ There is no veto.

Shortly after the election of its members, the Peace and Security Council (PSC) addressed the issue of Darfur and during its 5th session on April 13, 2004, it 'requested the Chairperson of the Commission to take urgent steps, including dispatching a reconnaissance mission to Darfur, to ensure the early setting up and deployment of the Ceasefire Monitoring Commission.'⁶⁹ This reconnaissance mission and Ceasefire Monitoring Commission later developed into a full-fledged AU Mission in Sudan (AMIS) with 4890 troops, 686 military observers, and 1176 civilian police deployed as of

⁶⁴ Tom Farer, " Legal and Legitimate Use of Force: The Case for Moderate Reform of the Original Understanding," (2005), p.29.

⁶⁵ Article 2 of Protocol relating to the establishment of the Peace and Security Council of the African Union, Durban, 9 July 2002.

⁶⁶ Today, the Peace and Security Council of the African Union is composed of Algeria, Cameroon, Congo, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Libya, Mozambique, Nigeria, Senegal, South Africa, Sudan, and Togo. See Press release no. 018/2004, 'African Union elects members of the Peace and Security Council and two new commissioners', Addis Ababa, 16 March 2004.

⁶⁷ Article 7 of Protocol relating to the establishment of the Peace and Security Council of the African Union, Durban, 9 July 2002.

⁶⁸ Article 8 of Protocol relating to the establishment of the Peace and Security Council of the African Union, Durban, 9 July 2002.

⁶⁹ See Press release no. 039/2004, 'The AU dispatches a reconnaissance mission to Darfur', Addis Ababa, 7 May 2004.

October 20, 2005.⁷⁰ It is however worthwhile to note that this mission was deployed with the authorization of the government of Sudan as part of the Agreement on the Modalities for the establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur.⁷¹ In this case, the new norm of responsibility to protect was not directly pitched against that of sovereignty and the resolve of the Peace and Security Council was not tested.

A first striking characteristic of the mechanism set up by the African Union is that it does not have a set of clear criteria to help the African Heads of State in taking a decision about intervention. This can be on the major deficiencies of the African approach. The ICISS had proposed a list of clear principles for military intervention: the just cause threshold, the precautionary principles – these include right intention, last resort, proportional means, and reasonable prospects –, right authority – arguably, the African Union has brought its own answer to this question –, and operational principles such as clear objectives, common military approach, rules of engagement, etc. It is worth mentioning that the United Nations has also rejected any criteria to the responsibility to protect. In any case, their absence just proves that the African Union is just functioning on ad hoc basis following the urgency of the moment.

From an operational point of view, there is still no clear blueprint or well-trodden path towards intervention even though the African Union has already intervened twice, in Burundi and in Darfur. ‘Procedurally, there remains confusion about which body would actually invoke intervention and the legal relationship between the AU and Security Council. Under the Act, the fifteen-member Peace and Security Council would recommend action to the AU Assembly. In turn, the Assembly is authorised to defer its responsibility in a particular case to the Peace and Security Council. The problem here is that the Assembly meets only once a year and takes decisions on the basis of consensus or, failing that, a two-thirds majority. The process of activating Article 4(h) against the will of the relevant member state would therefore be time-consuming. Moreover, given the continent’s traditional reluctance to endorse interventionism and fractious sub-regional alignments, the possibility of securing a two-thirds majority in the face of a hostile host must be thought unlikely at best. In practice, the two AU peace missions in Burundi and Darfur have been conducted with host state consent.’⁷²

Arguably, the African Union is on a learning curve on ‘how to implement’, helped in that by the United Nations that has learnt from its past failures. In Darfur, the United Nations, NATO and the European Union are providing support to the African Union. While this raises important issues of coordination, it nevertheless shows that there is a wide support for the African endeavor and for the alternative represented by African regional organizations.

⁷⁰ See PSC/PR/2(XLII), ‘Briefing note on the renewal of the mandate of the AU mission in the Sudan’, 42nd meeting of the Peace and Security Council, Addis Ababa, 20 October 2005.

⁷¹ See Press release no. 51/2004, ‘The Sudanese parties sign the Agreement on the Modalities for the establishment of the Ceasefire Commission and the Deployment off Observers in the Darfur’, Addis Ababa, 28 May 2004.

⁷² Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," p.27.

Conclusion

A new norm – *aliquid novi* – can indeed emerge from Africa. Because the reality of the African states differs from that of Western states, they have developed a new norm of sovereignty that reflects this gap. African regional organizations have responded to the challenge of re-conceptualizing sovereignty and of implementing the changes implied by this normative shift from control to responsibility to protect.

Sovereignty is no longer absolute but still persistent. Sovereignty is still the cornerstone of international relations and of African politics. The AU formulation of the principle of sovereignty tries to reconcile the respective place of the state and of the individual in international relations. While the ultimate goal of each African state is still the control of its territory, a normative shift has occurred: this control cannot be achieved at all costs. The actions by ECOWAS and the African Union should be viewed in terms of precedent. This shift is also a true revolution because African states have reached a point where they stop thinking of intervention necessarily in terms of invading a neighboring country. They seem to have achieved and accepted a certain amount of internalized reciprocity that is rarely achieved in other continents, with the exception perhaps of the European Union.

For now, the concept of responsibility to protect only concerns the worst-case scenario. But, it could be a trigger, the starting point of a wider reform that would lead to a greater recognition of ethical considerations and human rights within the African Union and at the United Nations. According to the 2005 World Summit, the state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. It is only a minimum and populations who can hold their states accountable ask for much more. In the UN Secretary-General's words, they ask for 'freedom from want, freedom from fear, and freedom to live in dignity,'⁷³ or more concretely physical security, food, shelter, medical care, and education. These public goods can and should be provided by the state. But when the state fails, either because it cannot provide for its population or because it will not, what is the ethical responsibility of the regional organizations and of the United Nations? If these organizations are truly accountable and if 'we the peoples' are indeed at the heart of their mandate, they have the ethical responsibility to provide for the populations abandoned by their state.

⁷³ Kofi Annan, "In larger freedom: towards development, security and human rights for all," (New York, 21 March 2005).

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The concept of sovereignty in international law most often connotes external sovereignty. Alan James similarly conceives of external sovereignty as constitutional independence – a state’s freedom from outside influence upon its basic prerogatives (James 1999, 460–462). Significantly, external sovereignty depends on recognition by outsiders. To states, this recognition is what a no-trespassing law is to private property – a set of mutual understandings that give property, or the state, immunity from outside interference. The authors assert that sovereignty can no longer be seen as a protection against interference, but as a charge of responsibility where the state is accountable to both domestic and external constituencies. In internal conflicts in Africa, sovereign states have often failed to take responsibility for their own citizens’ welfare and for the humanitarian consequences of conflict, leaving the victims with no assistance. This book shows how that responsibility can be exercised by states over their own population, and by other states in assistance to their fellow sovereigns. Sovereignty as Responsi... A sovereign state is a political entity that is represented by one centralized government that has sovereignty over a geographic area. International law defines sovereign states as having a permanent population, defined territory, one government and the capacity to enter into relations with other sovereign states. It is also normally understood that a sovereign state is neither dependent on nor subjected to any other power or state. According to the declarative theory of statehood, a sovereign state Law is what sovereigns command, and it cannot limit their power: sovereign power is absolute. In the international sphere this condition led to a perpetual state of war , as sovereigns tried to impose their will by force on all other sovereigns. This situation has changed little over time, with sovereign states continuing to claim the right to be judges in their own controversies, to enforce by war their own conception of their rights, to treat their own citizens in any way that suits them, and to regulate their economic life with complete disregard for possible repercussions in other states. Once a territory achieved self-government, as defined in resolutions of the General Assembly , supervision by the UN ceased, even though independent status was not reached. Divided sovereignty.