

# BEHIND the HEADLINES

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The Responsibility to  
Protect and the Duty to  
Punish: Politics and Justice  
in a Safer World

LOUISE ARBOUR

Affirming Canadian  
Sovereignty in an  
Interdependent World

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# The Responsibility to Protect and the Duty to Punish: Politics and Justice in a Safer World

LOUISE ARBOUR

**O**n 17 April 2002, Canadians celebrated the 20th anniversary of the coming into force of the Canadian Charter of Rights and Freedoms. Much was said on that happy occasion about the immeasurable impact of that constitutional document on our lives and on our aspirations, not only for ourselves, but also for others because this is indeed the genius of the charter. Inasmuch as it is truly a document asserting individual freedoms, liberties, and rights, its implementation invariably brings to the forefront of public awareness the existence of the rights and aspirations of others, usually those who claim to be ill-served by a democratic process reduced to a self-serving majority rule. One does not think of the charter as having any particular international significance. It has, of course, had implications for immigration and refugee law, and in that sense its impact is felt outside our immediate boundaries. It has also brought us closer to those, like the European Union, who are engaged in similar human rights litigation. And there is no question that Canadian charter jurisprudence is having an important influence on the thinking of constitutional courts in many jurisdictions confronting the difficult issues we have so recently tackled.

Beyond this, I believe that the contribution that Canada has made on the international scene, particularly in the last decade, reflects our new identity, born of charter awareness, about the universality of rights and the imperative of enforcing those rights. Michael Ignatieff addressed this issue in *The Rights Revolution*.<sup>1</sup> But in a sense he spoke even more forcefully about the idea of rights in *Virtual War*, his book about the war in Kosovo,<sup>2</sup>

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Prior to her appointment to the Supreme Court of Canada, the HONOURABLE LOUISE ARBOUR was Chief Prosecutor, International War Crimes Tribunals for the Former Yugoslavia and for Rwanda. This is a slightly amended version of the first H.R. MacMillan Lecture, held by the CIA in Vancouver in February 2002.

in which he documents the dilemma, very overtly expressed in particular in the United Kingdom, about the morality, the legitimacy, and the legality of waging war in defence of someone else's rights. His book precipitated a vigorous public debate about state sovereignty and military intervention. That debate led the secretary-general of the United Nations to question whether we had entered a new era of internationalism, one essentially dominated by concerns over the protection of fundamental individual rights.

The probing of these issues could not have been more timely for Canadians, who had themselves examined the outer limits of the state's obligations to support human rights and fundamental freedoms in two decades of charter litigation. We heard and understood the implications of the question raised by the secretary-general, and in particular I suggest that we understood that there had to be a legal framework, not just a political one, within which to search for answers. This led to the Canadian initiative of convening the International Commission of Intervention and State Sovereignty, which published its report in December 2001. The report, *The Responsibility to Protect*, is concerned primarily with establishing guidelines for triggering military intervention in the face of human catastrophes fed by either the collusion or the impotence of national states.'

To be fair, the report is not narrowly preoccupied with militarism. It argues that the international community has a responsibility to prevent, to react, and to rebuild: not surprisingly, it stresses prevention as the most important aspect of the responsibility to protect. But the most striking aspect of the conclusions reached by this international body of experts is the recognition that the concept of state sovereignty is not just a question of state prerogative, representing the always superior interest of the state, but that it is a voucher for human security. The rationale for the international order deferring to the will of individual states in the management of their own affairs is that the vindication of state sovereignty will best serve peace and, therefore, safety and security. In other words, sovereign states have a responsibility to protect their citizens, and if they forfeit that responsibility they surrender part of their sovereignty accordingly. In that sense, international intervention for human protection purposes is justified if and when a state no longer lives up to the obligations imposed upon it by its sovereign status.

There is little doubt that these ideas are rooted in part in the growth of international legalism. Since the Second World War, we have witnessed a proliferation of legal instruments, particularly in the human rights field, which have led to a similar growth of domestic legislation and, although at a much slower pace, a growth in enforcement of these international norms that are now universally accepted, if not universally implemented. We have

witnessed, particularly since the end of the cold war, a gradual consensus that the rule of law can and should override the pragmatism of the rule of necessity, the rule of convenience, and the rule of force.

The events of 11 September 2001, which now dominate so many concerns in international relations, in a sense have temporarily obscured the common trends on security issues that had prevailed since at least the end of the cold war, in particular the proliferation of deadly armed conflicts within states or, as in the former Yugoslavia, between states emerging from the disintegration of previously sovereign states. What 11 September has not obscured, in fact what it has highlighted in the most tragic fashion, is the pernicious vulnerability of civilians, who are indeed often deliberately targeted by those who claim, explicitly or otherwise, to be waging war.

The report of the Commission on Intervention and State Sovereignty stresses the need for a framework for anticipating and then responding to acute crises in human security. It is not surprising that its existence was essentially a by-product of the multinational military intervention in Kosovo, the culmination of more than a decade of attempts at conflict management in that region. Indeed, the level, the diversity, and the intensity of international attention devoted to the Balkans will probably provide one of the most complex case studies in international diplomacy, NGO monitoring and pressure, and sustained media attention, all within the oversight of sophisticated organizations such as the United Nations (UN), the North Atlantic Treaty Organization (NATO), the European Union, and the Organization for Security and Co-operation in Europe (OSCE).

It is interesting, from my point of view, that the insertion, for the first time ever, of an operational international judicial institution both complicated matters and provided a fresh and promising outlook for the management of that unmanageable conflict. The original perception that international criminal justice was very much a misfit within this array of political interveners became acute with the Dayton Peace Agreement. There was to be an inevitable operational interaction between the theoretical and the practical international law enforcers in Bosnia and Herzegovina. Leading the former was the International Criminal Tribunal for the former Yugoslavia (ICTY), created two years earlier by the Security Council under its chapter VII powers. The tribunal, as a judicial organ of the Security Council, was mandated to investigate and prosecute serious violations of international humanitarian law on the territory of the former Yugoslavia from 1991 onwards. It was specifically directed to apply the law of command responsibility, and no immunities from prosecutions were given to anyone, including heads of state. The tribunal's jurisdiction encompasses genocide, war crimes, and crimes against humanity — crimes that continued to be perpetrated during the existence of the tribunal - and it had juris-

diction, some of it very theoretical indeed, to conduct on-site investigations. Under article 29 of the tribunal's constituting statute, all states were required to co-operate with it, and all states were compelled to obey its orders.

The more practical law enforcers in the field were, of course IFOR, subsequently SFOR, and then, in Kosovo, KFOR. IFOR, the Dayton implementation force, was a NATO-led, Security Council mandated military force in which more than two-dozen countries were represented, including Russia and other eastern European countries. At its peak, it deployed over 50,000 troops. It took over from UNPROFOR, the long-serving UN peacekeeping mission, first in Croatia then in Bosnia-Herzegovina. UNPROFOR had struggled with its ever-expanding mandate of providing humanitarian assistance as well as managing safe areas. Both the political and the military command of IFOR were firmly in NATO (the North Atlantic Council and the Supreme Allied Commander Europe). Its rules of engagement provided for the robust use of force both for force protection and to ensure the discharge of its mandate.

In annex 1-A of the peace agreement, the parties agreed to authorize and assist IFOR in the discharge of its mandate, including the use of necessary force. The Dayton agreement also dealt with the ICTY. Under article IX of annex 4 on the Constitution of Bosnia and Herzegovina the agreement said: 'No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective or other public office in the territory of Bosnia and Herzegovina.'

Referring to the role of IFOR vis-a-vis ICTY, the Dutch commentator, Dick A. Leurdijk, had this to say: 'The role of the IFOR troops when it comes to apprehending war criminals has been an extremely sensitive issue both for the military and diplomats. The position of the international community was, as so often before, ambiguous.' He added, with reference to the paragraph in the Dayton agreement quoted above: 'This paragraph would become one of the most contentious provisions of the Dayton implementation process. It was also directly related to another Dayton provision, which obliged all parties "to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law." Similarly, Security Council Resolution 1031, which authorised the deployment of IFOR, recognised that the "parties shall cooperate fully with all entities involved in implementation of the peace settlement, as described in the Peace Agreement, or which are otherwise authorised by the Security Council, including the International Tribunal for the Former

Yugoslavia." At NATO's headquarters, the consensus was that this paragraph did not provide a 'clear mandate for IFOR to arrest indicted war criminals, suggesting that it was up to the UN Security Council to take a decision.'

I will spare you the detailed account of the efforts deployed by tribunal officials at persuading IFOR and then SFOR to take a more robust stance on the issue of arresting persons indicted by The Hague tribunal. Much of it was widely reported in the international press at the time. NATO's position was clearly expressed in a press release of 14 February 1996, which stated that the North Atlantic Council strongly supported the tribunal and that IFOR would provide logistical assistance, within its means, to ICTY and concentrate on providing a safe environment in which organizations like ICTY could best operate. As for apprehension of indictees, ICTY would provide detailed information about them to IFOR, and IFOR would apprehend them if and when 'they come into contact with such persons in carrying out their duties.' This was the 'no manhunt' policy that captured so well NATO's lack of enthusiasm for another chapter II institution, one that it preferred to view as another NGO, intent on doing good, but frankly just standing in the way of getting things done. That lack of enthusiasm, I must add, was not exclusive to NATO but was endemic even among some members of the Security Council, such as Russia, who just three years earlier had launched this unprecedented initiative.

This was the first of many interactions between international criminal justice and what it thought were its partners in the peace implementation process. Nowhere more than on this thorny issue of arrest was the latent conflict between peace and justice brought to the surface - a conflict, in my view, that has no rational foundation but that served to express the profound ambivalence of those who, unlike Canadians under their Charter of Rights and Freedoms, had difficulty embracing an international rights revolution.

Although the Report on Intervention and State Sovereignty does not address explicitly international criminal law enforcement, it is clear that the framework that it proposes will be relevant to the decision-making process of the Office of the Prosecutor of the imminent International Criminal Court (ICC). The report envisages a responsibility to punish as integral to the responsibility to protect. As I indicated earlier, the responsibility to protect is broken down into three elements: the responsibility to prevent, to react, and to rebuild. The duty to react encompasses the use of coercive measures such as sanctions and international prosecutions, with military intervention reserved for the most extreme cases. In the duty to rebuild, the report expresses the need not only for reconstruction but also for reconciliation - a task often linked to justice, particularly criminal justice. This endorsement of the continuing role that international accountability

through criminal justice is likely to play in serious conflict management comes at a critical moment in the rapidly moving history of the enforcement of the laws of war.

Under the Rome Statute that created the ICC, signed in the summer of 1998, 60 ratifications are necessary to bring the court into existence. This number was reached in April 2002. The consensus is that the court will be in existence before the end of the year. Despite the considerable assistance that he or she will derive from the work of the existing ad hoc tribunals, the work of the ICC prosecutor will be truly unprecedented.

The prosecutor will be dependent on the co-operation of many states, and that co-operation will not always be nudged along by the threat of Security Council intervention, if only in the form of an expressed concern or disapproval. The prosecutor will also have to exercise discretion over whether or not to launch an investigation, in an environment that is likely to be much more political than that which surrounded most of the decisions of the prosecutor for the Yugoslav and Rwanda tribunals. The work of the ICC prosecutor will be prospective only. It will therefore inevitably deal with ongoing conflicts, where the prosecutor's initiative will be intermingled with other forms of international attention and intervention. In short, it will have all the features that were so conducive to the SFOR-ICC clashes that marked the early years of the tribunal's attempt to impose itself as a genuine law enforcement institution in the Balkans.

On the eve of the launch of the ICC, it is more important than ever to recall the basic imperatives of any functioning and trustworthy criminal justice system. I can do no better here than to refer to a short speech that I delivered in The Hague on 13 May 1999. The occasion was the launch of a global ratification campaign for the ICC, organized by the Coalition for International Justice, during the height of the NATO bombing campaign in Kosovo. In my remarks, 'Despair and Hope: Kosovo and the ICC,' I added my voice to the call for an immediate, universal, and effective repression of the most serious violations of the most fundamental international human rights, perpetrated against civilian populations rendered particularly vulnerable by the collusion, the impotence, or the indifference of governments. We did not then have a language within which to cast that obligation. It can now be referred to as the responsibility to protect, in the terminology of the Commission on Intervention and State Sovereignty. The three arguments I advanced in support of the speedy ratification of the ICC statute – authority, universality, and urgency – are as cogent today as they were then.

My first point is that any international criminal jurisdiction has to be authoritative, both in theory and in reality. The existing ad hoc tribunals are powerful judicial institutions. The prosecutor of the tribunals is explicitly empowered by the Security Council of the United Nations, through

resolutions that all member states have agreed will bind them, to conduct investigations and prosecutions, acting independently and on her own initiative, and, in the exercise of that power, to question witnesses and to conduct on-site investigations. Furthermore, all states are required, by the same binding Security Council resolutions to comply with requests for assistance and court orders issued by the tribunal.

It was in that empowering environment that I affirmed publicly in March 1998 the jurisdiction of the tribunal over alleged war crimes and crimes against humanity being committed in Kosovo. It was in that same empowering environment that the Security Council in three separate resolutions throughout 1998 supported that position and reaffirmed the obligations of all states to assist our efforts to investigate. And it was also in that empowering environment that the tribunal's investigators and I were systematically denied visas for Kosovo and that I was turned back at the border of the Federal Republic of Yugoslavia, two days after the Racak massacre, on my way to conduct an on-site investigation, as I was mandated to do by the Security Council.

That experience has persuaded me that when it comes to the exercise of lawful authoritative powers, empty threats are a grave folly. The political spirit of accommodation and compromise, which is so crucial for the peaceful resolution of many types of conflicts, is entirely inappropriate when it comes to compliance with the law. It is an affront to those who obey the law and a betrayal of those who rely on it for protection.

What was activated in Rome in the summer of 1998 was the promise that something greater than force will govern, something that does not get traded away, something worthy of trust.

My second point deals with the need to expand the reach of accountability. Irrationally selective prosecutions undermine the perception of justice as fair and even-handed and therefore serve as the basis for defiance and contempt. The ad hoc nature of the existing tribunals is indeed a severe fault line in the aspirations towards a universally applicable system of criminal accountability. There is no answer to the complaint of those who have been called to account for their actions that others, even more culpable, were never subjected to scrutiny. Why Yugoslavia? Why Rwanda? Not that the impunity of some makes others less culpable, but it makes it less just to single them out. It therefore runs the risk of giving credence to their claim of victimization, and, even if it does not cast doubt on the legitimacy of their punishment, it taints the process that turns a blind eye to the culpability of others.

The broader the reach of the International Criminal Court, the better it will overcome the shortcomings of ad hoc justice. That is why the ratification of the Rome Treaty by 60 states should be only the beginning. A

broad-based and ongoing ratification drive should deploy all efforts to ensure that its reach is truly universal.

My last point is to stress the continued urgency of establishing this indispensable institution. The willingness to submit to impartial, unbiased scrutiny is not only the hallmark of law-abiding persons and institutions; it is, in my view, a prerequisite of their moral entitlement to calling others to account. The 120 countries that signed the text of the Rome treaty recognized that we live in a world where warfare inflicts unspeakable harm to many, often in the most unexpected ways, ranging from hand combat with agricultural implements and cheap landmines to high-tech precision instruments that still sometimes fail in catastrophic ways.

Justice Robert Jackson, the United States Supreme Court judge who was one of the four prosecutors at Nuremberg before the International Military Tribunal set up by the victorious allies to try the leaders of the Nazi regime for war crimes and crimes against humanity, made a powerful and often quoted opening statement at that extraordinary trial. Referring to the unprecedented nature of the international tribunal, he said: 'That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgement of the law is one of the most significant tributes that Power has ever paid to Reason.'

This statement lays the foundation of the morally superior choice of justice over brutal revenge. It also lays very explicitly the foundation for victor's justice. The choice that faces the international community today is of the same nature but of a different order. Justice Jackson might well have put it this way, referring to the countries who have and will ratify the Rome treaty creating the ICC: That these great nations willingly submit themselves to the judgment of the law is not only another vindication of Reason over Power, but is a most significant step towards equality, justice, and peace.

The legitimacy of the court cannot simply be asserted. It will have to be established, day by day, as is the case for all institutions in a democracy, under the scrutiny of the press and the public. Much has been said in Canada on the theme of the legalization, and indeed the judicialization, of politics. There is no doubt that since the advent of the Canadian Charter of Rights and Freedoms, the courts have indeed become for many Canadians the forum of choice for the vindication of claims based essentially on an idea, or an ideal, of justice. That was certainly the situation with the early cases dealing with procedural fairness in the criminal context, and it has become even more acute in the litigation dealing with fundamental freedoms and with equality. I am not so naive as to suggest that we are on the eve of experiencing a primacy of the juridical over the political on the

international scene. But I do think that legalism is the by-product of globalization of rights.

It is fair to say that in liberal democracies, not everyone views the legalization of politics as a positive development, just as the emergence of a juridical international regime of accountability for gross human rights violations is encountering everything from scepticism to outright hostility. Yet international criminal justice has become an inseparable component of the international efforts to make and to keep peace and security. Our ruling generation holds in trust the enforcement of the rules of governance. If we are to embark on wars of values, I think it is worth fighting for international justice. Authoritative, universal justice.

#### NOTES

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1 Michael Ignatieff, *The Rights Revolution* (Toronto: Anansi 2000).

2 Michael Ignatieff, *Virtual War: Kosovo and Beyond* (Toronto: Penguin 2001).

3 International Development Research Centre, *The Responsibility to Protect: Report of the International Committee on Intervention and State Sovereignty* (Ottawa: IDRC 2001).

## **Canadian Foreign Relations Index (CFRI) 1945-2002**

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# Affirming Canadian Sovereignty in an Interdependent World

BILL GRAHAM

## INTRODUCTION

I must admit that I am somewhat nervous appearing before the Canadian Institute of International Affairs, comprising as it does so many people both experienced and expert in the area of foreign affairs, to talk about a subject so seemingly esoteric and theoretical as 'sovereignty.' Two things, however, encouraged me to take the risk of speaking to you today of Canadian sovereignty in an interdependent world.

The first occurred the other night in Ottawa when I was browsing through a recently published set of interviews with Noam Chomsky. In it I came across a passage in which someone challenged Chomsky over his credibility as an authoritative speaker, across the United States, about foreign affairs, a subject in which he had no recognized scholarly expertise. His answer was that there was nothing about foreign affairs that a reasonably intelligent fifteen-year-old could not grasp with some diligence and work, and that he was as expert as anyone. This analysis may have something to say about how I came to be foreign affairs minister and why I am here today to talk about sovereignty, our sovereignty.

The second is a realization that I have come to appreciate ever more acutely since I have had the good fortune to occupy this post: that defining what we mean by 'sovereignty' and clearly articulating how we intend to affirm and promote it are more important to Canadians than ever. Important because in today's increasingly interdependent world it deter-

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mines the choices that are available to us when we are making decisions about the way of life we wish to develop here in our own country, and, equally important, it shapes the way we participate in the global community of which we are such an integral part.

I say 'equally important' because a phenomenon that is sometimes labelled 'interconnectedness' is gradually blurring the distinction that governments and legislators have traditionally made between domestic and foreign policy. The choices that we make about Canadian foreign policy, then, most particularly in the domain of economic policy, but also in other important areas, will ultimately circumscribe the realm of choice that Canadians can exercise in creating their own national society.

In exploring with you how we should approach the notion of sovereignty today, I would like to consider a number of propositions. In the first place, the exercise of real sovereignty to me means promoting an ability to make choices and to act on them. And when it has come to making choices, Canadians have historically been open to sharing both responsibilities and opportunities with the world. Our foreign policy heritage shows that our economic prosperity and physical security result in large measure from a willingness to pool our sovereignty, that is, to pursue our interests by engaging the world, often by developing to our advantage the tools of multilateralism.

#### AFFIRMING AND SHARING SOVEREIGNTY IN THE CANADIAN INTEREST

Fundamentally, then, Canadian foreign policy is all about sovereignty - sovereignty as a functional principle of international relations, and beyond that, as the recognition of the equal worth and dignity of all peoples and an affirmation of their right freely to shape and determine their own destiny.

Sovereignty is neither unitary nor absolute. There are different types of sovereignty, ranging from the Westphalian norm of non-interference in domestic sovereignty to international legal recognition and the ability to regulate interdependence.

It is worth noting that state sovereignty has throughout history always been shared and pooled in many different ways and that, ultimately, its purpose is to define a people and to protect their interests, even when sovereignty is shared with others. What is frequently misconstrued by observers as the erosion of sovereignty may in fact contribute to its promotion and enhancement through properly calculated decisions. Canada arose out of this process when the Fathers of Confederation took a bold step in nation building by choosing to pool their sovereign interests to create this country. And since then, from Vimy Ridge to the North American Free Trade Agreement (NAFTA), our successes as a nation have largely been in and

through shared sovereignty arrangements. At all stages, the decision to enter into shared sovereignty arrangements has been vigorously debated by proponents and detractors. This was the case with Newfoundland's entry into Canada, as it was with the 1988 election, which turned on the appropriateness in Canada of a free trade agreement with the United States.

Although sovereignty has been shared for as long as territorial states have existed, I am sure that most of you would agree that the conditions under which sovereignty is exercised have changed dramatically since 1945 and may well be evolving in new directions since the collapse of the Soviet empire and the rise of the United States as the world's first *hyper-puissance*, to adopt a French phrase.

One important factor influencing change is the way in which evolving international law constrains the actions of states in ways previously unforeseen. These limits on sovereignty have been accepted voluntarily, with the potential to benefit all participants. One unforeseen consequence of the growing number and increasing complexity of international instruments that create the framework for our system of global governance, however, is that not every country has the wherewithal to live up to its growing list of commitments, and there is a growing recognition that more developed states have an obligation to help build capacity in states that are confronting problems in adjusting to this new environment.

As a leading architect of the post-war international system, Canada recognizes this obligation, just as it had recognized the benefits it derived in ceding some of its sovereignty to the United Nations or to the North Atlantic Treaty Organization (NATO) or in the course of successive trade liberalization rounds.

We all know of the many multilateral ways of achieving Canadian national objectives, which were, in addition, consciously designed to benefit the broader international community:

- The United Nations, which grew out of our World War II alliances, has allowed Canada to 'punch above its weight' on international security through peacekeeping and to promote its social and economic vision through agencies such as the World Health Organization, UNICEF, and the UNHCR (United Nations High Commission for Refugees).
- For a half century NATO has provided Canada with a transatlantic bridge, has enabled Canada to bring an end to bloodshed in the Balkans, and now assures it of an expanding zone of security across the North Atlantic Alliance, a region that is, collectively, Canada's number two economic partner.
- The World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT), lowered tariffs and opened markets to Canadian products. For the next trade round, Canada is working to

create a new trade agenda tackling the issues of developing country capacity referred to above, as well as access to patented medicines and the integrity of international environmental regulation.

#### TESTING THE BOUNDARIES OF SOVEREIGNTY TODAY

In this new environment of growing global governance much has been said about the disappearance of the sovereign state but, paradoxically, for all the predictions from both the corporate and non-governmental organization (NGO) worlds about its withering away, sovereignty still matters, and national governments remain indispensable actors within the new global framework. It is clear, for example, that effective and legitimate states continue to be the best means of ensuring that the benefits of the internationalization of trade, investment, and technology are delivered to their citizens.

That said, it is also true that every major international problem that we are facing today - from governance in Africa to future campaigns against terrorism beyond Afghanistan - raises questions related to the concept of sovereignty and the interdependence of states.

On the one hand, humanitarian crises and genocide in failed states have prompted calls to override the principle of non-intervention by other states. Increasingly over the past decade these calls are being heeded. Canada has been at the forefront of rethinking the relationship between intervention and state sovereignty, sponsoring an international commission of eminent thinkers from both South and North, which recently reported its findings to the UN in a thought-provoking document entitled "The Responsibility to Protect."

The authors of the report found that even the strongest supporters of state sovereignty no longer claim unlimited power for the state. Rather, they acknowledge that sovereignty implies a dual responsibility: externally, to respect the sovereignty of other states; and internally, to respect the dignity and basic rights of all peoples within the state itself.

In international human rights covenants, in United Nations practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty expressed as responsibility has become the minimum content of good international citizenship, and this will increasingly be the case as more domestic issues, such as protection of the environment or the treatment of minorities or the obligation to hold free and fair elections, take on global dimensions.

When Canada, in concert with other states, took the grave decision to intervene in Kosovo and Afghanistan, for example, there was a vigorous debate both within the government and by all parties in the House of Commons concerning the circumstances and means that were necessary for that intervention to have international legitimacy. I believe that we and our

allies made the right choice in those circumstances. And let me remind this audience that we made those decisions because we had the sanction of NATO, in the one case, and the United Nations, in the other, unlike other situations to which some people are, in my view, drawing misleading comparisons.

Indeed, the present discussion concerning the dangers posed by an Iraq armed with weapons of mass destruction and the possible right of preventive intervention, to name only one case that we are facing today, raises similar issues, particularly whether one state is free to determine both the circumstances that justify intervention and the means by which it will be accomplished, free from the sanction provided by generally recognized regional or global institutions.

Canada's policy has been, then, always to act in these cases in a way that strengthens the international institutions to which it belongs; the alternative risks chaos and global instability.

In other areas, Canada has also sought and led new, distinct approaches to international dialogue - its pursuit of the broader more inclusive G20 on international financial issues, its championing of the new Partnership for African Development in the G7/8 summit context, and the prominent role it has played in preparations for the World Summit on Sustainable Development to be held in South Africa this year are but three recent examples. We have signed hundreds of international agreements that commit Canada not only to certain codes of international behaviour, but also to the obligation to implement at home the principles contained within them. To give just one example, the Department of Foreign Affairs and International Trade works with the Office of the Auditor General to monitor the domestic application of 88 international environmental agreements to which Canada subscribes.

Even the provinces are increasingly bound by international instruments, not only in the economic field but also with respect to international human rights norms.

We expect no less of other signatories. International peer review is increasingly a way for governments and their publics to hold each other to account and a means for developing institutions of global governance.

Witness also the momentum growing behind the establishment of the International Criminal Court (ICC). Next week we may reach the 60 ratifications needed for entry into force of the Rome Statute.

By taking the lead in promoting the ICC, Canada is supporting the rule of law internationally. The creation of the ICC will ensure that those responsible for the most serious crimes known to humankind - genocide,

\* Editor's note. On 11 April 2002, 11 more countries ratified the statute, thereby surpassing the necessary 60 ratifications.

war crimes, and crimes against humanity - will be held responsible for their actions and will be judged in accordance with commonly accepted principles applied with full respect for the rights of the accused.

It was one of the proudest moments in my parliamentary career when I was able to table in the House of Commons the Standing Committee's report that adopted the legislation necessary to implement this historic development in international law. And I am equally proud as foreign affairs minister to speak of Canada's leading role in developing this crucial international instrument.

Trade has probably been the area, however, that most firmly entrenched the principles of collaborative rule-making and revealed most clearly the bottom-line benefits of sharing sovereignty. For Canadians, NAFTA has helped stimulate a remarkable growth in trade - nearly doubling in the past eight years - within an increasingly integrated North American market.

Agreements, of course, will always be tested. Canada is taking a firm stand on issues such as softwood lumber. We have made it clear that our approaches to resource management are based on Canadian needs and circumstances and must not be a licence for protectionism by others. Failing a recognition of our rights, we will vigorously pursue our multilateral options, including invoking the dispute settlement provisions of the WTO, as well as those of NAFTA.

Some argue that the softwood lumber dispute illustrates the weakness of NAFTA as an institution when faced with American protectionism exercised in a highly politicized environment. One must say that, after several previous successful challenges to similar complaints, millions of dollars in legal fees, and years of managed trade, it is discouraging to face the disruption that this represents to our legitimate trade with the United States and the pain that it is causing to workers and investors who relied on assurances of open unrestricted markets. When dealing with the United States one is sometimes ruefully reminded of George Will's dictum: 'Free trade ranks somewhere between Christianity and jogging, as something much talked about but little much practised.'

That said, it is also true that the vast majority of our trade with the United States proceeds free from any dispute, to the great benefit of both our economies. And the fact that we have effective dispute resolution systems, both in the WTO and in NAFTA, to which we can turn with confidence for a fair result in circumstances such as this, is a credit to the new multinational institutional framework that Canada has had a significant role in constructing.

#### CANADIANS: NORTH AMERICANS AND GLOBAL CITIZENS

While Canadian sovereignty is largely built upon our identity as both North Americans and global citizens, today it may also be said that we are 16

becoming more and more a nation of the Americas, evidenced by our deepening economic ties in North America which includes, let it not be forgotten, Mexico, and our growing profile throughout Latin America. Meanwhile, our multiculturalism has helped us welcome the entire world within our borders, and the way in which we have managed this process has made us a model for much of the rest of the world.

The terrorist attacks on the United States on 11 September 2001 made us all aware how much we feel a part of North America in particular. It was, as has often been said, as much an attack on Canadian values as on American values. Canadians understood this. Our efforts to co-operate on enhancing border security demonstrated the maturity of our relationship.

In taking the initiative to work together quickly across levels of government and with the private sector, Canada was able to produce a package that allowed us to co-operate with our American partners in an environment of uncertainty around the border and to address both commercial and security needs without giving in to demands for extreme solutions that would have seriously compromised our sovereignty.

Working with the United States secretary of state, Colin Powell, I have also stressed the importance of a multi-dimensional American approach to the anti-terrorism campaign and other pressing issues.

As close allies, we want our friends in Washington to resist the temptation of unilateralism and to draw on the strengths and insights of other players in the global system, whether they be military contributors, economic partners, or transnational virtual communities that can be brought into our coalition for a more secure world.

But Canadians clearly have aspirations beyond a North American relationship. Indeed, both Canada and the United States are multicultural societies that expect their governments to be active in the outside world from which they have come. This multiculturalism, in turn, gives us connections and a depth that many other states do not have.

Canadians are global citizens drawing on a distinct set of values and a diverse culture. Exercising our sovereignty, thus, also means providing Canadians with a choice so that we can read about, listen to, or view our own stories. This interest extends far beyond our borders. As our media exports and international book prizes show, the world does indeed want more Canada.

It is in our interest, then, to promote cultural diversity, not only at home but also internationally, and we will continue our efforts to arrive at an international instrument that sets out the means whereby states may achieve that very important goal. I am pleased to say today that our government has the instruments to project Canada and its interests across the board. Thanks to prudent fiscal management, Canada is again able to boost overseas development assistance. We are not only increasing our contribution, as Prime

Minister Jean Chretien pledged at Monterey, but we are also helping to shape a new consensus among both donors and recipients on making aid more effective, an approach that has shaped our G8 Africa initiative.

The Department of Foreign Affairs and International Trade has 164 missions abroad, which are focused on extending Canada's global reach and bringing home the benefits of globalization, at the same time as they help to tackle potential threats to our security or well-being at their place of origin.

#### CONCLUSION

In a recent issue of *The Economist*, Joseph Nye wrote a provocative piece entitled 'The New Rome Meets the New Barbarians,' in which he reviewed United States ability to project its power onto the world. In so doing he made an analogy between the exercise of global power and playing on a complex three dimensional chess board; the moves on any one level will influence the pieces on the other levels.

For Nye, the three chess boards represented, respectively, military power, economic strength, and 'the realm of transnational relations that cross borders outside government control.' As he put it: 'at first glance, the disparity between American power and the rest of the world looks overwhelming.' But, while it is true that on the top level that proposition is accepted, it is less so on the second, where the US is not the leader but must deal with Europe and an emerging China.

On the third board, which is the domain of international bankers wielding enormous influence over currencies and the wealth of nations, or of computer hackers, or of international terrorist operations like Al-Qaeda, power is widely dispersed. Nye concludes that the United States needs allies if it is to exercise its sovereignty in the world; it cannot dominate all three chess boards at once: 'in a three dimensional game, you will lose if you focus only on the top board and fail to notice the other boards and the vertical connections among them.'<sup>2</sup>

I believe that Canadians, perhaps because we have never dominated any of the boards, have always been intuitively aware of the need to build consensus and have sought to develop global influence where we may be most effective: modestly on the top board, more significantly on the second where our G8 status and leadership of the G20 give us standing well above our simple economic ranking, and very aggressively on the third board where our highly educated multicultural population extends our influence considerably.

Many examples of this will come to mind to this audience of experts, but I would like to share a recent experience that struck home for me. When I was in Quebec recently, I had an opportunity to meet with groups of highly energetic and motivated students from high schools, CEGEPS (Colleges d'enseignement general et professionnel), and universities. All of

them were engaged in the world, helping their counterparts in far less developed and less fortunate places in this world. One group I met with, at the Universite de Quebec a Montreal, was leaving shortly for francophone Africa to teach the principles of human security. I knew from speaking with them, sensing their enthusiasm and determination, that they were Canada's players on that third level and that their Canadian spirit, added together with that of thousands of NGOs, church groups, companies, and individuals, will influence our chances of projecting Canadian interests and values on the other two levels as well.

I had the same sensation when I attended a meeting at a local church in my riding in Toronto to welcome a group of refugees from Georgia, brought into Canada through years of work and devotion of that church community. These are only two examples - we can all cite so many more from corporate good behaviour to altruistic NGOs - of how individual Canadians are reinforcing Canada's sovereign presence in the world.

Canada will continue to be an aggressive player in this three-level game, developing new patterns of association with states and non-state actors alike. We will make sound choices to promote our sovereign interests and create improved conditions for the success of those choices. That is the tradition of Canadian engagement in the world, built up through our experience of multiculturalism, espoused through our expertise in governance, and demonstrated through our social cohesion and the integration of new Canadians who continue the nation-building experiment that began with Confederation.

Those values represent our sovereign interests as a nation, and our sovereign responsibilities to our citizens and to the world. For Canada, the responsible exercise of sovereignty means to continue to make the choices necessary to carry on those traditions, and to expand the reach of our values by grasping the opportunities inherent in the challenge of managing the increasingly interdependent world within which we continue to contribute and to prosper.

#### NOTES

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1 International Development Research Centre, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: ID RC 2001).

2 Joseph Nye, 'The new Rome meets the new barbarians,' *Economist*, 23-29 March 2002, 24.

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