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The Case for Sovereign Obligation



For nearly four centuries, since the [Peace of Westphalia](#), which ended the Thirty Years' War, the concept of [sovereignty](#)—the right of nations to an independent existence and autonomy—has occupied the core of what international order there has been. This made sense, for as every century including the current one has witnessed, a world in which borders are forcibly violated is a world of instability and conflict.

But an approach to [international order](#) premised solely on respect for sovereignty, together with the maintenance of the balance of power necessary to secure it, is no longer sufficient. The globe's traditional operating system—call it World Order 1.0—has been built around the protection and prerogatives of states. It is increasingly inadequate in today's globalized world. Little now stays local; just about anyone and anything, from tourists, terrorists, and refugees to e-mails, diseases, dollars, and greenhouse gases, can reach almost anywhere. The result is that what goes on inside a country can no longer be considered the concern of that country alone. Today's circumstances call for an updated operating system—call it World Order 2.0—that includes not only the rights of sovereign states but also those states' obligations to others.

Such a concept of "sovereign obligation," it is worth pointing out, differs from the notion of "sovereignty as responsibility," which lies at the heart of the legal doctrine known as "[the responsibility to protect](#)," or

An advertisement for Norwich University's Master of Arts in Diplomacy program. The background features a blurred image of a city skyline at night with many lit-up skyscrapers. At the top, the text "NORWICH UNIVERSITY®" is displayed. Below it, "MASTER OF ARTS IN DIPLOMACY" is written in a serif font. A horizontal line separates this from the word "ONLINE" in a smaller, sans-serif font. The main title "BECOME A GLOBAL GAME CHANGER" is prominently displayed in large, bold, white capital letters. In the bottom right corner of the advertisement, there is a blue button with the text "LEARN MORE »".

R2P. R2P refers to the obligations a government has to its own citizens—commitments that, if ignored, are supposedly enforceable by other states through measures up to and including military intervention. It clearly represents a potential infringement on classic Westphalian sovereignty, and it has supporters and opponents for that very reason. By contrast, sovereign obligation is about what a country owes to other countries. It stems from a need to expand and adapt the traditional principles of international order for a highly interconnected world.

Sovereign obligation thus retains a respect for borders and an opposition to their being changed through coercion or force. It supports actions to enforce the norm against aggression, whether the incident involves Iraq invading Kuwait or [Russia invading Crimea](#). And it retains a respect for governments' rights to act generally as they wish within their borders, subject to the constraints of broadly accepted provisions of international law, such as the Universal Declaration of Human Rights and the Genocide Convention. Sovereign obligation does not reject or replace the traditional approach to order—one that remains necessary but is no longer sufficient—so much as it builds on it.

FROM STATEHOOD TO TERRORISM AND BOMBS

A new international order will require an expanded set of norms and arrangements, beginning with a commonly agreed-on basis for statehood. There cannot be an unlimited right for any and all

communities to achieve political self-determination. Reaching a consensus on how to limit such a right will not be easy, but it is necessary lest unilateral actions trigger conflict. A good start would be to amend the concept of self-determination so that it is regarded as something that has to be not only asserted but also granted. (The 1978 Camp David accords between Egypt and Israel, for example, did not extend the principle of self-determination to the Palestinians but rather supported the notion that “representatives of the Palestinian people should participate in negotiations on the resolution of the Palestinian problem in all its aspects.”)

With such an approach, support for self-determination would be less automatic than it was in the era of decolonization. Existing governments would agree to consider bids for statehood in cases where there was a historical justification, a compelling rationale, popular support, and viability when it came to the proposed new entity.

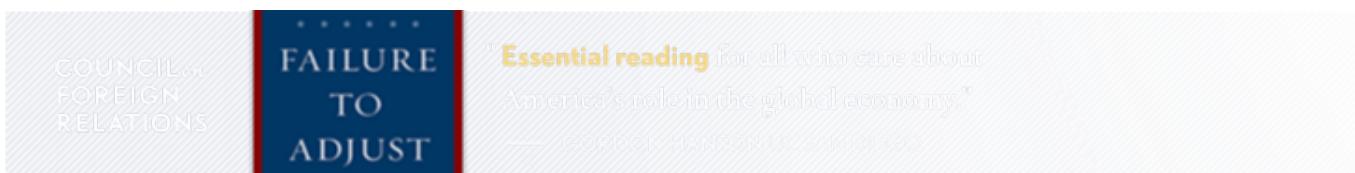
The impact of such a move on the viability of the country giving up territory and population would need to be considered as well, and governments would agree to consult with one another before making diplomatic moves.

An essential element of a framework for international order based on sovereign obligation would be prohibitions on carrying out or in any way supporting terrorism, defined as the intentional use

Globalization is here to stay, and the inadequacies of the traditional approach to order will only become more obvious over time.

of armed violence against civilians and noncombatants by nonstate entities in pursuit of political objectives. In recent decades, the world has moved away from tolerating terrorists if their cause was deemed just. International condemnation of terrorism is on the books, as is authorization for collective action against it. So long as governments that pursue counterterrorism strike at individuals or groups that are genuinely terrorists and design their attacks so that they are consistent with legal and ethical standards, including taking steps to protect innocent civilians, they will not face major criticism.

More controversial will be bolstering the norm against the spread or use of weapons of mass destruction. There is an existing international inclination (underscored by the Nuclear Nonproliferation Treaty) to prevent proliferation by limiting the access of countries to relevant technology and materiel, and major-power opposition to Iran's acquisition of a nuclear capability shows how that approach can facilitate diplomatic progress. But consensus often breaks down when it comes to the details of what to insist on and what incentives or sanctions to put forward —and governments have proved their ability to develop or acquire nuclear weapons against international opposition, if they make it enough of a priority.



Even more disputes arise over what to do once proliferation has occurred. One option is to live with it, as has happened in the cases of Israel, India, Pakistan, and, so far, North Korea. Such de facto acceptance can be risky, however, both because it can enable dangerous behavior and because it can further dilute the nonproliferation norm, thereby potentially encouraging additional proliferation. An alternative to acceptance is additional diplomatic efforts, backed by sanctions, to roll back a proliferator's nuclear capacity. The problem is that such efforts often fail. So another alternative is to live with proliferation until intelligence suggests that weapons are about to be used or transferred to a terrorist group—at which point the potential emerges for a preemptive military strike against an imminent threat. Such a strike would require timely, accurate, and relatively unambiguous intelligence, together with the will and the means to act on it. There is some support in international law for such a posture.

Yet another alternative would be to try to gain international support for the legitimacy of preventive action to stop proliferation. Preventive actions target imminent threats; preventive ones target threats earlier, when they are still gathering. Preventive actions could disrupt a country's nuclear program before any weapons were produced or destroy them afterward. But there would be little international support for such a stance, as it would be resisted by those governments that saw it as

issuing a license to the United States to attack countries such as North Korea or Iran. Nor would it necessarily be desirable, since among other things, a world of frequent preventive attacks would be more violent and dangerous.



BERNADETT SZABO /
REUTERS

Syrian migrants cross under a fence as they enter Hungary at the border with Serbia, near Roszke, August 2015.

There is considerable support for opposing proliferation but little for military action to prevent it or roll it back once it has occurred. Support for preemptive action in the face of imminent threats will depend on the details of particular cases and will increase to the extent that it can be demonstrated that such action is warranted. North Korea, which is developing the ability to place nuclear warheads on ballistic missiles that could reach the United States, promises to be a case in point. Making this a topic of discussion at bilateral and multilateral meetings makes sense, not because it would likely lead to a formal agreement but because it would focus attention on the sorts of circumstances that could lead to a consideration of preventive or preemptive action—something that

could in turn reduce the odds of such circumstances emerging.

FROM CLIMATE TO CYBERSPACE AND BEYOND

[Climate change](#) is in many ways the quintessential manifestation of globalization. It reflects the sum total of what is going on; countries are exposed to and affected unevenly by the problem regardless of their contribution to it. Borders count for naught.

There is broad, if not universal, agreement that climate change is real, caused in large part by human activity, and constitutes a major threat to the future of the planet and its inhabitants. But consensus breaks down when it comes to determining what is to be done and by whom.

In principle, climate change is something that ought to fit well under the rubric of sovereign obligation, since what any country does within its borders in emitting carbon has implications for the whole world. Put differently, climate change is a cumulative consequence of local activity. It is thus fundamentally different from, say, air or water pollution, which is largely a local consequence of local activity.

The problem is assessing each country's appropriate share of the burden of combating it, by either reducing its own carbon output or helping others reduce theirs. Attempts to set global ceilings, allocate national shares, or affix a price for carbon have been resisted. The [2015 Paris conference](#), however, showed some realism and creativity alike

by taking a different approach. An overall goal was set for limiting climate change, but countries were not given specific instructions on what needed to be done to meet that goal. It was entirely voluntary and aspirational rather than mandated. Indeed, it was agreed that each country would set for itself ambitious but achievable goals in carbon reduction and then live up to its pledges.

This is a step in the direction of sovereign obligation, and wealthier governments should provide incentives to help other countries reach their goals, as well as consider penalties of one sort or another for those that do not. More will also have to be done to help countries adapt to the effects of climate change that are already in motion; given that developed countries have contributed significantly to the problem over decades, it makes sense that they should help defray the costs of others' mitigation and adaptation as part of their own sovereign obligations.

Climate change is in many ways the quintessential manifestation of globalization.

Cyberspace is the newest domain of international activity, one marked by both cooperation and conflict. Some activity in cyberspace is benign and has little to do with national security, whereas other activities are intimately connected to foreign policy, intelligence, and national competitiveness. The goal in this area should be to create international arrangements that encourage benign uses of cyberspace and discourage malign uses.

Governments would then have to uphold and act consistently within this regime as part of their sovereign obligations.

What might such a regime involve? Ideally, it would maintain a single, integrated global cyberspace network, limit what governments could do to stop the free flow of information and communication within it, prohibit commercial espionage and the theft of intellectual property, and limit and discourage disruptive activities in cyberspace during peacetime. Exceptions would need to allow for cyberattacks to frustrate both proliferation and terrorism.

Eventually, it may be necessary to develop a cyberspace annex to the laws of war specifying which actions in this domain are considered permissible and which are prohibited. And as with terrorism, so with cyberspace: governments would have the obligation not just to avoid engaging in prohibited activities but also to do everything in their power to prevent other parties from carrying out those activities from their territory and to stop and penalize those who do.

Achieving even limited consensus on such principles and how to uphold them will take enormous effort. But since these problems are still relatively new, the goal now should be to start elaborating an appropriate code of conduct for states to follow in this area.

[Global health](#) presents different challenges. In a globalized world, an outbreak of infectious disease in one country could quickly evolve into a serious threat to health elsewhere, as has happened in

recent years with everything from SARS to Ebola to Zika. The notion of sovereign obligation is already well advanced in this sphere, and nations are already supposed to be trying to detect infectious disease outbreaks, notify others around the world, and respond appropriately in the face of a crisis. But all that is easier said than done, and governments and the World Health Organization do not always have the capacity (and, in some cases, the political will) to fulfill their obligations. More technical and financial assistance in this area is required, and possibly some naming and shaming of shirkers to induce them to improve their behavior.



MIKE SEGAR / REUTERS

A scientist operates a centrifuge control panel while working on developing a vaccine for the Zika virus in Connecticut, United States, June 2016.

When it comes to refugees, there is no substitute for effective local action so that situations do not arise that generate large refugee flows. In principle, this is an argument for humanitarian intervention under the aegis of R2P. But translating this principle into practice has proved impossible and is likely to remain difficult given divergent political agendas (there are few, if any, situations that are

apolitical or solely humanitarian) and the high costs of an effective intervention even when objectives overlap. Even absent a consensus, however, there is an argument for increasing funding for refugees, ensuring their humane treatment, and setting fair quotas for their resettlement, all of which could and should be accommodated under sovereign obligation.

Sovereign obligation takes on a different coloring in the economic realm, as governments already have self-interested incentives to act responsibly by maintaining a viable currency, ensuring that financial institutions keep adequate reserves, enforcing honest accounting, pushing back against corruption, honoring contracts, expanding trade, and fostering an environment that will attract investment. Following economic best practices, in other words, is something nations should do for themselves most of all. But there are some other-regarding aspects of economic activity that fall under the rubric of sovereign obligation.

Trade agreements, for example, are by definition pacts of reciprocal sovereign obligations regarding tariff and nontariff barriers. When a party believes that such obligations are not being met, it has recourse to arbitration; indeed, the principal breakthrough of the World Trade Organization was to provide a standing mechanism to deal with disputes regarding trade practices and to come up with settlements. Things are less clear in some other areas of economic activity, however, such as the provision of subsidies or currency manipulation

by a government to advantage its country's exports and disadvantage imports. The challenge will be to spell out appropriate sovereign obligations in these areas in future trade pacts and to create mechanisms to hold governments accountable.

FROM THEORY TO PRACTICE

It will be difficult to come to even a rough agreement on what specific sovereign obligations states have and how they should be enforced.

Getting the concept embraced as a pillar of international order will take years or even decades of consultations and negotiations, and even then, its embrace and impact will be uneven. But instead of being reasons for abandoning the project, those are reasons for starting on it seriously and soon, because the era of globalization will continue to evolve, and existing arrangements will be increasingly inadequate in dealing with contemporary challenges.

As a first step, Washington should mull what obligations it would accept itself and what it would require of others, trying to work out a generalized code of appropriate behavior that it could follow along with other countries. Such a code has the potential to provide something of a compass for U.S. foreign policy as it navigates what promises to be a complicated geopolitical era characterized by a growing number of challenges to stability at the regional and global levels alike.

American policymakers must also face up to the reality that any [world order](#) will

constrain U.S. choices as well as the choices of others. For although it is true that the United States has a special role in the world and unique responsibilities that sometimes call for bold unilateral actions, whenever it demands more of others than it does of itself, it appears hypocritical and forfeits authority and trust. In the South China Sea, for example, Washington has criticized Beijing for not following the UN Convention on the Law of the Sea—even as Congress has refused to ratify that very treaty. (Other similar cases, such as the U.S. refusal to join the International Criminal Court, can be managed through work-arounds, such as allowing for tribunals to be created to handle specific historical events.) Similarly, the United States' ability to persuade other countries to help refugees more is hampered by obvious limits on what the United States itself is prepared to do in this sphere. The United States must also take care to be transparent: it did little for the cause of R2P when its 2011 intervention in Libya quickly morphed into one of regime change; humanitarian interventions should be narrow in scope.

In some areas, such as public health or climate change, the example set by Washington's own good behavior, together with increased aid, might be sufficient to induce other countries to meet their obligations. In other areas, such as terrorism and proliferation, a willingness to use **military force** may be required on occasion—but if force turns out to be

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of others.*

necessary, any military operation will have to bear scrutiny in terms of both its justification and its implementation.

Given the role of the dollar as the world's de facto reserve currency, the United States needs to accept special obligations in the economic realm. This means taking into account the views of others when deciding on interest rates or asset purchases (also known as "quantitative easing"). Regular, serious consultations between the Federal Reserve and its central bank counterparts around the world are essential. And trade disputes should be taken to the World Trade Organization rather than acted on unilaterally.

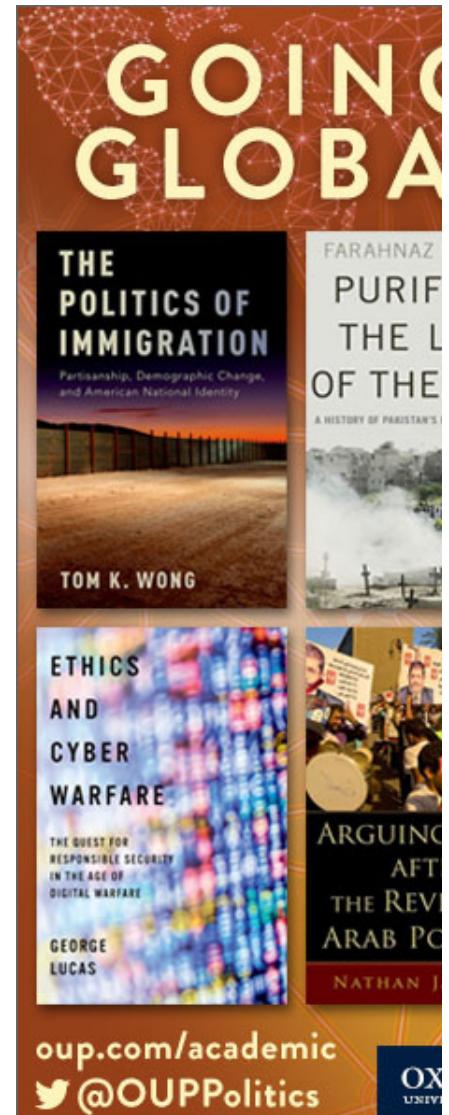
Promoting World Order 2.0 will require extensive consultations. In some areas, such as global health, the conversation is already far advanced, and the main challenge is building national capacity in countries that lack it. In other areas, such as cyberspace, the world is still far from agreement on what obligations should be required. And in still other areas, such as proliferation, norms are agreed on, but enforcement is highly controversial. As a rule, the United States can and should put forward ideas, but it is not in a position either intellectually or politically to present a blueprint for others to sign on to. To the contrary, others must participate in fleshing out the concept as much as its implementation.

Forward progress on this agenda will need to come voluntarily, from countries themselves, rather than as the result of some top-down edict from a

supposedly authoritative body or actor. Looking squarely at the mismatch between the nature and scale of contemporary problems and the capacity of existing arrangements to solve them, governments will have to decide whether they are prepared to sacrifice some autonomy in return for improved collective action. This sort of thinking is already common in the trade sphere (although currently under attack by angry populists in many countries), and it is beginning to materialize in the climate and cyberspace arenas, but its prospects are more mixed in the political-military realm.

But the power of discussion and persuasion in driving change over the long term is often underappreciated. Many issues are not sufficiently ripe for official negotiations to succeed, and in the interim, consultations can do much to generate understanding and tolerance of certain actions, make clear what behaviors are considered reasonable or acceptable, and clarify the likely costs and consequences of going beyond those bounds. The role of the U.S. secretary of state and other senior U.S. officials will need to change for the foreseeable future, with a greater emphasis placed on consultations over the contours of the international order and less on negotiations that solve explicit problems.

Most of the initial consultations will necessarily involve the other major powers, including China, France, Germany, India, Japan, Russia, and the United Kingdom. Talks will need to take place bilaterally and in other informal forums; it is



premature to think of either the G-20 or the UN Security Council as a venue. Progress will be elusive given clear disagreements over preferences; the phrase “the international community” is often invoked when in reality there is little evidence it exists. And these talks will be taking place against a backdrop of deteriorating major-power relations, in part fueled by resurgent authoritarianism in Russia and China and [populism](#) elsewhere, including in the United States.

There is, however, no good alternative.

[Globalization](#) is here to stay, and the inadequacies of the traditional approach to order, based on sovereignty alone, will only become more obvious over time. Moving toward [a new sort of order](#) that incorporates sovereign obligation is the best way to deal with the problem, but it will take time, talk, and effort. World order thus becomes less an all-or-nothing proposition than a matter of degree, less a formal agreement than a process, more advanced in some areas than others. What is certain, however, is that it is essential for a century in which globalization will be a reality, welcome or not.

Building a world order predicated on sovereign obligation is certainly ambitious, but it is an ambition born out of realism, not idealism. 

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