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Human Rights and State Sovereignty

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Abstract

The concept of sovereignty may certainly be abused, leading to gross violations of human rights. Under international law, state sovereignty might protect criminals from condemning the international society. Too often in the meetings of the General Assembly of the United Nations, representatives of a member state justify its illegal actions, invoking the concept of sovereignty as a defense for their horrific acts against their people (often ethnic or religious minorities). Therefore, this essay will examine whether sovereignty and human rights can be reconciled. It is divided into several sections. Firstly, the definition of sovereignty is discussed. Secondly, the relationships between the UN Charter, sovereignty, and human rights are explored. Thirdly, conceptual argument is discussed, and the fourth part described humanitarian interventions by comparing the two case studies of Kosovo and Libya. Finally, this essay concludes that it is very difficult to reconcile between sovereignty and human rights

Introduction

Human rights have become an unquestioned cornerstone of governmental discourse since 1945. Governments habitually refer to human rights, and the human rights framework is almost universally espoused - no regime would declare itself to be against human rights. People relate to human rights in many different situations and for different policy areas. International politics is a good example of one of these areas. Traditional international politics were conducted based on the sovereignty of states, but grown emphasis on human rights in this area creates interesting new situations. The dual emphasis on both state sovereignty and the rights of individuals results in a conflict in the international system, between human rights and state sovereignty .

There are many reasons, leading to focus more and more on human rights. Individualization is a dynamic force behind identity in modern societies. The process of individualization, which sets human rights in focus, was dubbed by Zygmunt Bauman the 'second reform', a reform that, unlike the first, is secular (Bauman, 1999, p. 157). At the international level, this process of liberation has hit the nation-state and led to a cosmopolitan vision (Lash, 2002, p. ix). The individual is no longer primarily a citizen of a state, but a member of humanity throughout the world. Individualization, and greater emphasis on human rights, had emerged due to three factors: the meaning has changed territory, the emergence of the networked society, and the transformation of the conditions of production (Bjereld, Demker, and Ekengren, 2005, p. 23). These three factors emerged in turn from the communications revolution, which led to the development and use of new forms of transport, and to more rapids diffusion of information. These changes increased the chances for citizens to travel, communicate and obtain information quickly, increasing the independence of the

individual. New technology has contracted distances and eroded borders. The rapid transmission of information and faster means of transport have meant that knowledge of human rights abuses spreads faster. As a result, this process has led to decreased opportunities for the actors who violate human rights. At the same time, this process alone does not constitute human rights standards; the revolution of communication refers only to a restructuring of material conditions in terms of information transmission and transport, which is not the substance of human rights standards. The content of the human rights source should be studied in a conceptual context. This context, generally related to human rights, is natural law (Almond, 1993, p. 230).

Natural law states that nature gives humans rights simply by virtue of being human beings, a way of thinking that was an integral part of Christian traditions and classical liberalism (Finnis, 1980, p. 28). Philosophers and politicians in these two ideological traditions had a great impact on the mission of giving a strong emphasis on human rights after the Second World War, as expressed in the creation of the Universal Declaration of Human Rights in 1948 (Glendon, 2001). In the post-Cold War world, these ideas inspired by natural law have gained an even stronger position .

The nation's state has always a strong position in the international world order. Although the increased focus on human rights has challenged the hegemony of the nation's state, there are still no clear supranational structures to protect people if they are endangered by states. In theory, the UN 9 can protect the rights of citizens from abuse by their own's states, but because a requirement that a UN intervention should be preceded by a decision of the Security Council, where members can exercise their permanent veto power, there is often little chance for the UN to act on violations of human rights. Indeed, the Security Council apparatus (including vetoes) can even be used for the inter-nation state realpolitik. This was reflected in 2002 concerning the UN role in the invasion of Iraq, when Russia threatened to veto any proposed invasion if it came before the Security Council; this was ostensibly on humanitarian grounds, but Russia had recently signed a $60bn economic cooperation agreement. Although the United Nations can coherently and consistently intervene occasionally, as in the current military intervention in Libya or for the numerous humanitarian interventions worldwide, often a constellation of states (like NATO) or individual states intervene in other states unilaterally (as in the US wars in Vietnam and Cambodia). Arbitrariness and international disorder have been the norm since such doors were opened, and the UN framework certainly does not fulfill the intention of the founders to 'save succeeding generations from the scourge of war'. Since the early 1990s, the association between state sovereignty and human rights has witnessed a thorough examination in the academic world. The result has been the general position that the preservation of sovereignty, by its very nature, undermines the concept of human rights and that derogations of sovereignty necessarily mean progress in the field of human rights. Louis Henkin, a major scholar of international law, argued that human rights standards are a radical excepting the axiom of "sovereignty"' (Louis, 2000, p. 36).

Definition of 'sovereignty:

The concept of 'sovereignty' became prominent in the seventeenth century, with the emergence of the modern nation's state in Europe (Andrew, 1994, p. 49). Prior to that, the absolute monarchies of Europe had accorded sovereignty to the monarch (and ultimately to the Church and God). The monarch was divinely ordained as vicarious Dei, the 'vicar of God', responsible for implementing the laws of the Gad and ruling the people. The only tension in this model was between the authority of the Papacy and that of the temporal kings (resulting in the Henrician Reformation in England for example). The modern concept of sovereignty that emerged during the Enlightenment period has traditionally been defined by the rules

established by the Treaty of Westphalia in 1648, and as such an idea indivisible and absolute. The concept's development over the last four centuries has led to controversy concerning its precise meaning. Philpott argued that the definition of sovereignty is 'supreme authority within a territory' (Philpott, 1997, p. 19). This interpretation of sovereignty can be traced to the general discussion of Jean Bodin in 1576, which defined sovereignty likes 'the most powerful people absolute and perpetual, subject to a common Weale ... more power to command' (Jean, 1962 edn., p. 84). Bodin meant that there was no authority higher than the ground or in the legislature (Joseph, 1990, p. 16). Therefore, Bodin argued that sovereignty is the uniqe power that makes and enforces the law, and such as it is an attribute of the state (David, 2002, p. 3). Rousseau accommodated democratic and absolutist models in The Social Contract, in which model the Sovereign implemented and was subject to the laws established by the people. Both Hobbes and Hegel defined sovereignty as absolute, and supreme power, claiming sovereign government, free from any limitation (Ruth, 1992, p. 326). The traditional concept of absolute sovereignty, which provides the state with its rights within its territories without restriction by non-state laws and other restrictions, with extraterrestrial laws (e.g. maritime boundaries and international fishing rights) being valid with the consent of the states involved (Hedley, 1999). Since the end of the Second World War, this absolutist concept has developed into a more nuanced view of rights, responsibilities, powers, and limitations on state sovereignty .

In fact, although 'sovereignty' remains integral, the traditional absolutist doctrine of the exclusive sovereignty of the state no longer exists and was never in fact as absolute as it was intended to be in theory (Boutros, 1992). As scientists and thinkers have questioned the importance of sovereignty and described the decrease in the absolutist conception, Henkin (1999) went so far as to suspect the legitimacy of the conception of sovereignty: sovereignty has been characterized as a myth, taking into account the impact is sometimes harmful to human rights, the environment and other competitors with international standards. Henkin argued that incorporating the concept of sovereignty for the domestic sphere (for example relations between a king and his subjects) at the international level was a mistake that led to 'distortion' and 'confusion'. Henkin also observed that human rights, globalization, and the need for international cooperation, including intervention in violent internal conflicts of states, have changed the understanding of sovereignty (Henkin, 1999). There are crucial and commonly accepted limitations to state sovereignty of international order. Moreover, the UN Charter stresses the tension between the sovereignty and equality of individual states on the one hand, and international obligations for maintaining security and peace on the other (Christopher, 1997, p. 77.

Sovereignty, human rights, and the UN Charter:

After the signing of the UN Charter in 1945, there was a growing network of human rights obligations. These form a dense set of state commitments to protect people and belongings and the rules of political and economic affairs. Sovereignty cannot, therefore, completely shield internal violations of human rights which violate international commitments. Under Chapter Seven, Sovereignty is not an obstacle to actions taken by the Security Council as a part of measures in response to a 'threat to peace, breach of the security or act for aggression'. In other words, the sovereignty of states, as recognized in the UN Charter, is secondary to the requirements of global security and peace. Secondly, state sovereignty might be restricted by customary and treaty commitments in international law and relations. In particular, Article 1 (2) requires that all States 'ensure all rights and benefits of membership, fulfill in good faith the obligations assumed by them in the accordance with this Charter'. Hence, 'Purposes and Principles' obliges member states to accomplish international cooperation in resolving economic, social, and humanitarian issues and in supporting respect for human

rights and in basic freedoms for everyone, without distinction as to sex, race, color, or religion. This article also identifies the United Nations as the arbiter for harmonizing the actions of states in the achievement of these general ends. Hence, the Charter elevates the solution of economic, social, cultural, and human rights and international humanitarian aid. By definition, these problems cannot be said to be purely internal, and the solutions cannot be positioned exclusively in the area of state sovereignty (International Development Research Centre, 2001). Furthermore, Article 2 (3) stipulates that international disputes should be resolved in the promotion of justice and the principles of peace and security. In addition to being enshrined in the Charter of the United Nations LADE, human rights have been ratified by successive multilateral treaties. These have eroded sovereignty to some degree. These consist of the conventions on genocide, torture, refugees, race, and discrimination against women. These multilateral agreements have been approved by a majority of states in the UN, thereby establishing a limit to the scope of permissible actions that a state may take against its own's citizens, thus limiting, their sovereignty (Laurence, 2007). Although not demonstrated the fundamental importance of human rights, which, however, make obvious that human rights are a source of international concern, not only in the field of states, and, implicitly, the values of international human rights society, to a certain extent, sovereignty. In conjunction with the 1948 Universal Declaration of Human Rights, the conventions mentioned above have created an evolution of customary international law limitations that protect human rights and sovereignty, which is binding on all states, though not ratified by the Treaty on existing human rights (Christopher, 1998). Clearly; all these events constitute a formidable array of international legal obligations. Despite its political perspective, the Charter of the United Nations is often criticized for being short sight and ineffective because of the non-binding nature of the protection of human rights (Jason, 2009) .

Conceptual argument:

'Sovereignty' has a long history. Modern discourse stems from the work of Jean Bodin in the late sixteenth century. In the mid-seventeenth century, Thomas Hobbes associated sovereignty with the unlimited power of the sovereign. According to Bodin, the concept of sovereignty primarily involves the absolute and exclusive jurisdiction of legislative activity within the territorial limits of a State, and the State will not allow to any other law above it. He argues that sovereignty, as the supreme power in the state, cannot be limited, except by the laws of God and the natural law. No constitution can restrict the sovereignty of a sovereign state, and thus it is considered to be above positive law (Bodin, 1577, p. 44). Hobbes (1588-1679) went further than Bodin by arguing that a sovereign was not restricted by anything, and had a right above everything else, including religion (Cive, 1651). Sovereignty is traditionally referred to as the independent and supreme authority of a State (Silver, 2008). Thus, sovereignty is often considered likes an absolute concept, which involves the state being completely independent of the other states and above international law (Cryer, 2006). However, it is clear that the principles of international law do not consider state sovereignty as absolute and unlimited, but subject to higher standards (Nagan and Hammer, 2003). According to this traditional conception of sovereignty, international law has no binding force, and a state thus has the power to determine freely its powers (Gong, 2005). The notion of sovereignty developed in the eighteenth and early nineteenth centuries because the European revolutions led to the concept of the equality of states. The concept of sovereignty also contained an essential principle, 'but negative, non-intervention in internal affairs of other States. And generally accepted that sovereignty is an essential element of state power and that means the supremacy within the state and independence in its foreign relations' (Snyman, 2000). In 1945, this principle formed the basis for Article 2 (7) of the UN Charter: 'in this Charter nothing shall authorize the United Nations to intervene in issues which are essentially within the internal

jurisdiction of any state or shall compel the members to present such issues to solve under the present Charter, but this principle should not impede the application of measures enforcement under 'Chapter Seven" (Foakes and Wilmshurst, 2005.(

Positivist doctrines stated that sovereignty is not only supreme authority but the complete and more or less absolute power of a state. Throughout the nineteenth century, the connection of the nation-state and imperialism together led to what became known later as the 'anarchy of sovereignty.' The notion of sovereignty has been interpreted to justify the use of perpetual power and symbolizes the control for it (Fleiner, 2006). The sovereignty of a state was not perceived as a potential use for the common good of the international society, but as a particular right exercised in the interests of a state. The internal system of each member state has not been protected only by the intervention of other states, but also from any interference by international law. It is clear that international law was regarded as a series of voluntary norms found in treaties or derived from custom (Cabranes, 2006). However, the idea of absolute sovereignty is in many ways an outdated conception in modern international law and there are several factors that one contributed to eroding unlimited sovereignty .

There is a growing trend of interdependence and co-operation between states, and many Treaties were announced concerning human rights which have started working in the international arena recently. For instance, 'Responsibility to Protect', is a rule or a set of principles based on the notion that sovereignty is not a privilege but a responsibility. Responsibility to Protect focuses on preventing and stopping four crimes: genocide, war crimes, crimes against humanity and ethnic cleansing' (Kikoler, 2009). Responsibility to Protect decided that the state must be responsible for protecting its citizens from war crimes, crimes against humanity, genocide, and ethnic cleansing. In addition to this, if the State cannot protect its people alone, the international community has a responsibility to help the state through building its capability. Moreover, if the state is failed to protect its population from these crimes, and peaceful measures do not work, the international community has a responsibility to interfere diplomatically at first, then more coercively, and ultimately using military force (Rosenberg, 2009). In the international community, Responsibility for Protect is a standard and not a law. It provides a framework for the use of existing tools (such as mediation, the mechanisms for early warning, economic sanctioning, and the powers of Chapter VII) to prohibit atrocities. One can see that Responsibility to Protect interfered with state sovereignty in many cases, such as Rwanda, Somalia, and Sierra Leona, to protect the people of those countries. Despite the fact, that conflict between human rights on one hand and state sovereignty on the other has become manifest, human rights have recently received greater importance both nationally and internationally. With the UN Declaration of Human Rights, Council of the European Treaty on Human Rights, and the integration of the European Charter of Human Rights in the new constitutional treaty, international standards and the codification of human rights are strengthened. This has simultaneously exposed clear conflicts in international law between state sovereignty and human rights. That is because the sovereignty of states has remained a standard encoded by human rights (Beck, 1997, p. 33). The above discussion shows the impossibility of conciliation between human rights and state sovereignty at the theoretical and practical levels because these concepts are indivisible.

Humanitarian intervention :

In the post-Cold War world, the concept of humanitarian intervention has become a controversial debate in the realm of international relations (Keohane, 2003, p. 1). This argument between various schools of thought focuses primarily on the issue of legality and the right of states to interfere militarily in the affairs of another state in situations of substantial violations of essential human rights guaranteed by international law. The problem begins when humanitarian

intervention conflicts with the principles of sovereignty and non-intervention. Several (ostensibly) humanitarian military interventions occurred during (or as part of) the Cold War, but the end of the War offered chances for more intensive humanitarian interventions (during the War, interventions by the superpowers in other states could escalate the larger conflict). The United Nations gave permission to use humanitarian intervention tools in some cases, and not in others. For example, the intervention in Libya in 2011 was based on a Resolution of the UN Security Council (Bieber, 2011), while in Kosovo a mandate was difficult to achieve because of opposition from Russia and China. The intervention in Kosovo followed a conflict that begun to take a more violent turn a year earlier, in March 1998. A fundamental difference between the two cases was the intervention of a protected group. Albania was attacked by the Milosevic regime in 1998-9, as they perceived Albania as a supporter of the KLA secessionist movement seeking independence from Serbia, whereas In Libya, the opposition was clearly not interested in seceding from Libya, but in overthrowing the dictator Gaddafi and establishing a democracy and human rights. The important outcomes were that NATO struck Kosovo, and the intervention was supported politically by the USA and the UK, while in Libya the decision to impose a no-fly zone and to protect civilians was made by UN Security Council resolutions (1970/1973) (Bieber, 2011). In both cases, one can see that states and international governmental organizations can violate state sovereignty, especially since the end of the Cold War and the concept of human rights has begun to clear impinge upon state sovereignty in the field of international relations .

Conclusion

Human rights and state sovereignty are crucial concepts that have received great attention from scholars and thinkers in the field of international relations. State sovereignty is an old concept that crystallized in its modern form in the Treaty of Westphalia (1648), and which has developed greatly to the present. The general essential definition of 'sovereignty' is topping authority within a territory, but after WWII this concept decreased in importance and conflicted with other concepts in the international arena, such as the protection of human rights, which appeared clearly in Declaration of Universal Human Rights in 1948. Both state sovereignty and human rights were accommodated in the UN Charter, highlighted in many articles of Chapter Seven. Moreover, there is a conceptual argument about these notions between schools and thinkers, including the legal positivism approach and Responsibility to Protect; potential conflict with human rights, and the possibility of reconciling sovereignty and human rights which they cannot find relationships among them because they are indivisible concepts. Finally, humanitarian intervention is a tool challenging state sovereignty. Considering the Libyan and Kosovan interventions to protect civilians shows that there is no easy answer to reconcile the two notions of human rights and state sovereignty. However, from point of my view, human rights increasingly erode state sovereignty in the international order because globalization plays a crucial role in supporting human rights, and one can see that historically globalization assisted western Europe in the sixteenth century to globalize nation's state and state sovereignty. Thus, I think that for the end of the twentieth century, globalization plays the same role but it globalizes human rights which have become a fundamental key act, whether on the level of states and non-state actors .

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