

A CONTEMPORARY VIEW ON INTERVENTION AND THE LIMITS OF SOVEREIGNTY IN A FLUID WORLD

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Abstract

Armed conflicts around the world have led to an impasse that appears to have hindered the growth of international law and its supposed influence on global affairs. The increasing insecurity and armed conflict between states could have been mitigated if there were robust international laws regulating intra-state affairs. However, this paper does not primarily focus on the inadequacy of laws, but rather on the seemingly absurd concept of sovereignty that certain international laws, such as the United Nations Charter, have shaped to the extent that it distorts the functionality of external intervention when deemed necessary. The paper offers insights into how international law and the regulation of state activities would benefit from a redefinition of the concept of sovereignty as outlined in the UN Charter. It achieves this by reviewing the conceptual grounding of sovereignty from a theoretical perspective, aiming to establish that sovereignty is now more relative than absolute. Therefore, external intervention should operate when circumstances demand it, to strengthen the notion of the responsibility to protect and underscore the value that the international community places on human life.

Keywords: *Armed Conflict, Sovereignty, International Law, External Intervention and Responsibility to Protect*

1.0 Introduction

The ongoing armed conflicts and secession movements witnessed in numerous states globally stem from multifaceted geopolitical, economic, and cultural factors. Despite these complex origins, the failure of the international community to effectively mitigate these crises underscores the persistent challenges in enforcing international laws to regulate state affairs. A significant impediment to such regulation lies in the contentious issue of intervention in the internal affairs of states, particularly when such actions are deemed necessary to safeguard the well-being of citizens. Presently, the world teeters on the brink of widespread violence, a testament to the profound divisions and escalating tensions across nations. These threats emanate from both interstate and intrastate disputes, which could theoretically have been mitigated through adherence to international legal frameworks. However, political and economic turmoil within states has engendered a rejection of certain global norms that could have fostered a more harmonious international order. While the principle of non-intervention remains a cornerstone of international relations, it is imperative to recognize that there are instances where external intervention¹ may be warranted to prevent humanitarian catastrophes or uphold fundamental rights.

On one hand, sovereignty, a fundamental concept in international law, guarantees a state the right to govern itself without external interference. However, as the United Nations (UN) Charter reinforces these principles with specific provisions,² it is evident that this concept has been pushed to its limits. At its inception, international law operated on a simple analogy and two basic premises: just as every individual is entitled to freedom, equality, and independence in personal matters, so too should each state enjoy freedom, equality, and independence in its domestic or

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¹As expressed in article 2(4) as well as article 2(7) of the UN Charter.

²Article 2(4) of the UN Charter prohibits the threat or use of force and calls on all members to respect the sovereignty, territorial integrity, and political independence of other states.

sovereign affairs.³ Nevertheless, the UN Charter underscores the importance of promoting respect for human rights by all nations. The clause within the Charter that prohibits interference in 'matters which are essentially within the domestic jurisdiction of any state' raises valid concerns about its applicability in light of contemporary realities.⁴

The current framework of the UN Charter appears inadequate in effectively managing state affairs, particularly in addressing armed conflicts, due to the overwhelming emphasis on obstructive principles such as sovereignty and non-intervention. This situation presents a direct challenge to the functionality of international law in a rapidly changing world where confronting human rights abuses is imperative. The increasing prevalence of war crimes, crimes against humanity, and genocide highlights the urgent need for action. Rather than prioritizing the prevention of such atrocities, humanitarian intervention remains sporadic and unfairly criticized as illegitimate and ineffective.

While some criticisms of intervention may have merit, particularly concerning issues of influence and oppression by powerful states, the practice itself is inherently justifiable as a means of protecting human rights. The international community has a moral obligation to safeguard the common interests of humanity, especially regarding life and survival. This obligation is enshrined in national legislation, reflecting a social contract that prioritizes the protection of life. Furthermore, there exists a legal obligation, codified in international law, for states to intervene in the face of widespread human rights abuses. Preserving and upholding this norm is crucial, rather than allowing it to be undermined by geographical or political considerations. It is essential to reevaluate the principles of sovereignty to justify a revision of the UN Charter, aimed at providing stronger legal grounds for humanitarian interventions in appropriate circumstances.

2.0 The Principle of Non-Intervention under International Law

The principle of non-intervention has long been established as a cornerstone of international law, stemming from each state's inherent right to sovereignty, territorial integrity, and political independence. This principle is reiterated in various international instruments, including the Friendly Relations Declaration,⁵ which underscores the duty of states to refrain from interfering in the domestic affairs of other states, as outlined in the UN Charter.⁶ Historically, the concept of non-intervention has been viewed as protective, with interventions often leading to serious human rights abuses, as evidenced in the Corfu Channel Case.⁷ Subsequent rulings by the International Court of Justice (ICJ) and developments in customary international law have affirmed the principle, emphasizing the right of every sovereign state to conduct its affairs without external interference.⁸

Despite the clear articulation of the principle in international law, its application has been subject to interpretation and contextual considerations. The language of Article 2.7 of the UN Charter,

³The preamble of the UN Charter declares the organization's commitment to fundamental human rights and the equality of nations.

⁴Report on conflicts in the following states have caused at least 10,000 direct, violent deaths per year in battles between identified groups, in a current or past calendar year- For instance the conflict in Myanmar have a cumulative fatality rate of about 180,000 to 210,000 fatalities with about 14, 841 in 2023; Israel and Palestine at about 56,000 and 13,626 in 2023 etc.

⁵ UNGA Resolution 2625 (XXV) 1970.

⁶ UNGA Resolution 2131 (XX) 1965.

⁷ (1949), Merits.

⁸ ICJ reports in DRC v Uganda (2005) para. 164.

which prohibits UN intervention in matters within the domestic jurisdiction of any state, has evolved. However, in today's dynamic world, some argue that the significance of this principle has diminished. One major challenge lies in the ambiguity surrounding the exact scope of the provision, as evidenced by the Nicaragua case,⁹ where the court's interpretation focused only on aspects relevant to the dispute at hand. Consequently, determining what actions are prohibited by the provision remains elusive and context-dependent, varying based on the political dynamics and level of development among states.

Moreover, there is a growing argument for specific exceptions to the principle, particularly in cases of gross human rights abuses. Critics contend that a rigid adherence to non-intervention could hinder the international community's ability to effectively address humanitarian crises and prevent atrocities. As such, there is a call for a nuanced approach that balances the principles of sovereignty and non-intervention with the imperative to protect fundamental human rights.

3.0 Humanitarian Crises as a Limit to the Principle of Non-Intervention under International Law

The main thesis of this paper is that the domestic affairs of a state should not encompass cases of gross human rights abuses or humanitarian crises. Seeking to isolate the world from events that undermine the rights and integrity of individuals is inherently absurd. It should be undisputed that states not only have the right to criticize the human rights situation in other countries but also to intervene when the rights and well-being of people are threatened or compromised. The justification for intervention in such cases rests primarily on humanitarian grounds, stemming from a moral duty to protect citizens from human rights abuses. This moral duty is rooted in natural law, as the right to life is universally acknowledged. Regardless of geographical or racial considerations, all races and religions implicitly recognize and value the sanctity of human life. The universality of the right to life forms the foundation of humanitarian intervention, with the protection of life enjoying global consensus and actions aimed at its preservation deriving essence from moral obligations within the realm of international relations.

The moral imperative for states to intervene on humanitarian grounds is further reinforced by political philosophy, which argues that states systematically committing crimes against their citizens are accountable to the international community. The writings of Grotius¹⁰ provide an intellectual basis for humanitarian law, and the moral justification he espoused finds resonance in legal principles that enshrine the obligation of intervention. Therefore, the separation of moral and legal arguments for humanitarian intervention lacks merit, as international laws providing legal justification for intervention are largely rooted in morality. In essence, there is no legal framework that legitimizes killing based on class, race, religion, or creed. Governments and rebel forces engaging in such atrocities are unable to justify their actions within any legal framework.¹¹ The

⁹ ICJ Reports 1986, p. 106, para. 205.

¹⁰ As the Dutch Philosopher Hugo Grotius stated, "kings, and those who possess rights equal to those kings, have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard of any person whatsoever. Grotius, H (1925) "On the Law of War and Peace" Three Books, Oxford University Press, p. 584.

¹¹ It has been noted that genocidal forces never justify actions under any legal provision or framework. They rather deny their actions. Ottawa, (2001), "The responsibility to protect", Report of the International Commission on Intervention and State Sovereignty: International development Research Centre.

global codification of the right to life and the obligation of citizens to protect it implies that humanitarian intervention is not only morally justifiable but also legally justified.¹²

4.0 Impacts of Globalization on the Principles of Sovereignty on a Fluid World

Despite the well-founded moral and legal justifications for humanitarian intervention, the practice has been vastly subjected to criticism. Humanitarian intervention has been taken to be illegal and subversive of the sovereignty principles and a form of neo-colonialism.¹³ Regardless, the perception of intervention in the affairs of states has been relaxed by the effect of globalization which means that intra-state activities have already gone beyond prohibited lines. Globalization is the process of interaction and integration among people, institutions, companies, and governments worldwide. It has been defined as a relatively recent process of worldwide integration, cooperation, and conscious building whereby an increase in the flows and trade of ideas, people, goods, and services between national state borders is prevalent.¹⁴ Globalization is considered by some as a form of capitalist expansion that entails the integration of local and national economies into a global, unregulated market economy in which case no forum claims exclusivity.¹⁵ The International Labor Organization defines globalization as a process of growing interdependence between all people on this planet.¹⁶ The era in which the modern state emerged can be traced back to the *Westphalian Peace Treaty* where the idea of state sovereignty arose and set the foundations for the normative structure of international relations. As the sovereign state arose because of a particular conjunction of social and political interests in Europe, so too have interests dictated that sovereign states be drawn into union in the post-modern era.¹⁷

Political, economic, and security imperatives have given rise to new paradigms in international relations. For instance, the dynamics of international political relations in the 20th century have fundamentally altered the nature of cooperation among nation-states. The significant political integration witnessed underscores the diminishing relevance of the traditional concept of *Westphalian sovereignty*.¹⁸ The growing interconnectedness facilitated by international and regional organizations like the United Nations, the European Union, and the African Union suggests a trend towards greater consolidation among nation-states, thereby challenging the notion of sovereignty over independent states.

Sovereignty traditionally implies a right to non-interference or intervention by foreign or international entities, rooted in the presumed superiority of nation-states as the ultimate source of governance. However, if sovereignty implies that no authority or power is higher than the legal structures of states, it undermines the validity of international legal norms unless states have

¹² Universal declaration of Human rights and the Cairo declaration on Human rights in Islam.

¹³ Kinloch-Pichat, S (2004) "A UN Legion: Between Utopia and Reality" London, Frank Cass.

¹⁴ Globalization and its Effect on Sovereignty, Essay in politics, available at <https://www.ukessays.com/essays/politics/understanding-globalisation-and-its-effect-on-sovereignty-politics-essay.php> (accessed 23/2/2024).

¹⁵ Guttal, Shalmali, "Globalization." *Development in Practice* (2007) 17 (4/5): 523-531.

¹⁶ <https://www.ilo.org/global/topics/economic-and-social-development/globalization/lang-en/index.htm> accessed 23/2/2024.

¹⁷ McGrew A. and Held, D. "Governing Globalization: Power, Authority and Global Governance", Cambridge, UK, Polity Press.

¹⁸ Globalization and its Effect on Sovereignty, "Essay in politics" Available at <https://www.ukessays.com/essays/politics/understanding-globalisation-and-its-effect-on-sovereignty-politics-essay.php>. Accessed 23/2/2024.

consented to them.¹⁹ Globalization further complicates the concept of sovereignty and the prohibition of external intervention due to increased interdependence in trade and shared political agendas. As states collaborate on policies to enhance cooperation across various sectors, traditional notions of sovereignty become increasingly fictionalized. This dynamic creates tensions between traditional notions of sovereignty and the demands of international institutions, as evidenced by disputes addressed by bodies like the World Trade Organization's (WTO) dispute settlement system.²⁰

The elaborate jurisprudence of the WTO highlights the tension between internationalism and national governments' desire for autonomy in governance. Globalization has blurred borders and facilitated the free flow of people, goods, services, and information based on shared policies among nations. Thus, the notion of absolute sovereignty, where no interference from external entities is tolerated, is more idealistic than realistic in today's fluid world. The concept of absolute sovereignty emerged as an assertion of local dominance but is increasingly challenged by the realities of global interconnectedness and shared governance. Richard Haass in defining the concept of sovereignty espoused its problems and contemporary dimensions when he stated thus:

Historically, sovereignty has been associated with four main characteristics: First, a sovereign state enjoys supreme political authority and monopoly over the legitimate use of force within its territory. Second, it is capable of regulating movements across its borders. Third, it can make its foreign policy choices freely. Finally, it is recognized by other governments as an independent entity entitled to freedom from external intervention. These components of sovereignty were never absolute, but together they offered a predictable foundation for world order. What is significant today is that each of these components-internal authority, border control, policy autonomy, and non-intervention- is being challenged in unprecedented ways.²¹

The above reflects the majority view on the notion of sovereignty as a concept that must not be expressed in absolutism. Even if sovereignty was absolute, the contemporary claim seems to be that its absolute effect has been eroded. Most literatures are critical of the idea of sovereignty as it has generally been known. One eminent scholar has described the sovereignty concept as 'organized hypocrisy.'²² Fowler refers to sovereignty as being 'of more value for purposes of oratory and persuasion than of science and law.'²³ The approach today seems to be that no particular characteristic is stable in the concept of sovereignty, but that its nature depends very much on the customs and practices of nation-states and international systems,²⁴ which imbibe the tendency of change over time. One could see the antiquated model of sovereignty that should be relegated. The

¹⁹ John H. Jackson, 'Sovereignty-Modern: A New Approach to an Outdated Concept' (2003) Georgetown University Law Center, 97 Am. J. Int'l L. 782-802.

²⁰ John H. Jackson, *The Jurisprudence of The Gatt and the Who: Insights On Treaty Law And Economic Relations* (2d Ed. 1997); Jackson, Davey, & Sykes, *supra* note 6, ch. 7; John H. Jackson, *Dispute Settlement and the WTO: Emerging Problems*, 1 J. INT'L ECON. L. 329 (1998).

²¹ Richard N. Haass, former ambassador and director of Policy Planning Staff, U.S Department of State, *Sovereignty: Existing Rights, Evolving Responsibilities*, Remarks at the School of Foreign Service and the Mortara Center for International Studies, Georgetown University, at 2 (Jan. 14, 2003).

²² Stehen D. Krasner, "Sovereignty: organized hypocrisy" (1999) Princeton University Press.

²³ Michael Ross Fowler & Julie Marie Bunck, *'Law, Power, and the Sovereign State* (1995).

²⁴ C. Weber & Thomas J. Biersteker, *Reconstructing the Analysis of Sovereignty: Concluding reflections and Directions for Future Research*. Weber eds., 1996 at 278.

position that sovereignty implies the absolute power of a nation-state over its subjects and territory, unfettered by any higher law or rule unless the nation-state consents in an individual and meaningful way has been grounded. A multitude of treaties also continue to play down the scope of the sovereignty of states. It is the UN Charter that extensively provides the basis for humanitarian intervention as it underscores the importance of human rights.²⁵ The charter further limits the exercise of force by a state against another but does not specify how to exert such limitation. Ordinarily, it is easy to conceive the point of regulation of state power by a higher authority in international law which is essentially made up of the comity of nations. Thus, it is common sense to rightfully assume that the provision gives international actors the duty to engage in humanitarian intervention.²⁶

More so, by its application, an intervention on humanitarian grounds neither distorts a territory geographically nor the political independence of the state involved. As such, conforming with the most fundamental peremptory norms of the charter, an intervention could not have been precluded by Article 2(4) of the charter.²⁷ The criticism of intervention may be properly situated in the context of moderating external influence that may be exerted arbitrarily. Otherwise, the argument to discontinue the practice may translate to a denunciation of liberal peace-building which is unwarranted. The practice of intervention for good reason has the potential to do more good than harm and its denunciation may be tantamount to abandoning a people to fear, lawlessness, brutality, predation, and genocide. Powers at local levels have always been abused to the point of human rights breaches. This triggers the awareness that there are humanitarian cases as evident in the states of Israel and Palestine, Russia and Ukraine, Spain and Catalonia, Nigeria, Sudan, and many more states experiencing armed conflicts which call for an explicit departure from traditional absolute sovereignty concepts. It is submitted that a new dimension to sovereignty may shape certain issues not resolved by traditional sovereignty, as the world faces humanitarian crises.

5.0 A New Model for Intervention in International Law

It will be useful to adopt the line of reasoning here that calls for a redefinition of the concept of sovereignty. In its later context, sovereignty will be more meaningful to the operation of international law if its authority is placed on the sovereignty of the people rather than the government of a state. Thus, the sovereignty of a people will invariably transmit power to a people and not a select authority that exercises power. The acclaimed absolute power to govern a territory without external intervention may be diluted if it is up to a people through a constituent assembly to decide whether such external force is necessary under certain circumstances. In a sense, this avenue allows a collective use of power that may be for the good of a population. After all, even in the most effective form of democracy, the voice of the people in decision-making is rarely heard as seems to be the case in the conflict between Russia and Ukraine. The yearning for external help by besieged people may be downplayed by the ego, bias, and self-centeredness of political and state actors in governance. As such, a decentralization of power from state actors and a wider accommodation of nongovernmental opinion in the international community may enable a better development of a general theory of international law that unconditionally permits external

²⁵ Article 1 (3), 55, and 56 all explicitly deal with issues of human rights.

²⁶ It is useful to consider the import of section 39 of the UN Charter which gives the Security Council the power to authorize the use of force in response to "any threat to the peace, breach of the peace or act of aggression. I Kant, (2006) "Toward perpetual Peace" in P. Leingeld (ed.) *Towards Perpetual Peace and other writings on Politics, Peace, and History*" New Haven: Yale University Press.

²⁷ M Kaldor (1999) "New and Old Wars: organized violence in a global era" Cambridge: Polity Press.

intervention in the face of human rights abuses. This approach can guarantee viable people-oriented policies at international levels with wider acceptance by states.

Nevertheless, since sovereignty is a concept fundamental to the logical foundations of traditional international law, discarding it risks undermining international law and certain other principles of the international relations system. What is proposed is a reconsideration of the sovereignty concepts in a way that reflects its relativity in a fluid world. But this must be done carefully because burying these concepts without adequate replacements could lead to a situation in which pure power prevails at the higher levels of international law. The risk of a higher level of abuse of power which may distort the order in states may be more enhanced with an extermination of the sovereignty concepts. Thus it is considered necessary to disaggregate and analyze the complex array of sovereignty concepts and examine the aspect of the assumption that external intervention is a confrontation to sovereignty. The fact that external intervention is confrontational to sovereignty should not constitute justification to forgo intervention altogether. Any expressed inability whether by statute or conduct, of the global community to respond to the violation of human rights means that there is either no higher power in international law or that same exists in a vacuum. Yet it is useful to appreciate the pragmatic functionalism of the allocation of power at higher levels over nationalities particularly in cases of humanitarian concern. It is quickly understandable how humanitarian concerns come to the fore in matters relating to whether there should be external intervention in the affairs of a state.

6.0 Conclusion

It is observed that abuse of power is common at the lower levels of the power structure and nationalities often undermine the scope of human rights to the detriment of citizens. However, the concept of sovereignty which shields a state from external pressure and influence is not without merit. However, no matter what that merit may be, the concept of sovereignty as expressed in the UN Charter should not be defined as absolute particularly as globalization has propelled cooperation among states. The preferred scope of sovereignty should reflect that relative substance that should permit intervention when it is necessary to do so. Thus the international community must intervene with force against all actions of human rights abuse. The universal acceptance of the right to life obliges that we do no less, otherwise, unpopular governments will inflict on their people a massive scale of harm at all levels. The benefits of external intervention on humanitarian grounds outweigh the risks.

7.0 Recommendation

It is recommended that the comity of nations adopt a new model of sovereignty that allows external intervention on humanitarian grounds. This can be accomplished by way of a global pact or treaty which will require assent of states after votes by people of all nationalities. The collated opinion will help to cope with the current and prevalent challenges of armed conflicts occasioning human rights abuses in many forums. The new development suggested here expresses the thought that the concept of sovereignty must not be relegated but must allow external intervention on humanitarian grounds.