

Establishing Accountability for IGOs and States

Written by Andrea Raquel Hak

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Human Rights Without a State?

Introduction

The contemporary international human rights regime has evolved slowly but progressively since the beginning of the 20th century. One of the reasons for this slow progression has been due to the inherent conflict between international human rights and traditional state sovereignty. Increasingly we have seen states continue to accept the need for a common human rights system by submitting to international standards. However, from the creation of the Universal Declaration of Human Rights (UDHR) to the subsequent UN Treaty body system, states have been the primary focus of the international human rights regime. Due to the state-centric nature of the UN, it is only states that can ratify human rights treaties. Only states, and more recently individuals, can be tried for grave violations of human rights at the International Court of Justice and the International Criminal Court. Finally, it is only states that have the power to contribute to international decision-making on global issues.

In a globalizing world, states are not always the most powerful actors and certainly not the only violators of human rights, but they continue to be the only decision-makers and duty-holders at the international level. Other actors such as inter-governmental organizations, international companies, non-state armed actors, non-governmental organizations, and even civil society groups have been growing in importance. Despite this evolution in the global order, the international system for human rights protection has not progressed along with current reality. The consequences resulting from the failure to address these gaps have become particularly acute for many individuals in post-conflict situations.

Today, 90 percent of the world's conflicts are internal within a recognized state rather than occurring between states.[1] The nature of this type of conflict has meant that many individuals have now found themselves under the effective control of non-state actors including international organizations and non-recognized states. One of the most salient examples has been that of Kosovo. Since the end of the conflict in 1999, it has struggled to gain recognition as a state resulting in a dependency on international institutions, and a denial of basic human rights for the people living under its administration. Kosovo, Western Sahara, Abkhazia, Taiwan, and Somaliland are just a few of such examples that can be found across the globe. Despite the prevalence of cases without statehood, these unrecognized states cannot access international human rights mechanisms or be held accountable by them. This crisis has arisen from the reluctance of leaders, lawmakers, and academics to reconceptualise their views on the importance of statehood and sovereignty in the modern age. However, in the 21st century, we have seen two developments that have challenged these traditional conceptions: the Responsibility to Protect and the granting of UN non-Member State status to Palestine.

The aim of this essay is to discuss how these developments have gone against the contemporary international system and what affect this could have on the situation of non-recognized states and international organizations. In the first section, I will outline the dominant conceptions of sovereignty and the state in international relations theory, and then discuss how they have been challenged by the emergence of the Responsibility to Protect. The second section will begin with an overview of the legal pathways to statehood and then explain how the Palestinian decision has circumvented the limitations in the contemporary system. Finally, I will discuss the situation of Kosovo in the third

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section as an example of how the current human rights regime can be rendered ineffective by the system that has been devised to protect it. I will assess the effects of this by using a legal and political analysis of the current situation of Kosovo. Having established the need to address this gap, I will conclude with recommendations to ensure all actors are protected by and accountable for the implementation of global human rights.

Part 1: The State and Sovereignty in International Relations Theory

The connection between statehood and sovereignty is historically based on the outcome of the 1648 Treaty of Westphalia. In this Treaty, states became the primary actors at the international level and were defined by the sovereignty they had over a given territory. Equality of all states and the principle of non-intervention were key aspects of the Treaty.[2] Chapter I Article 2 of the UN Charter states, "The Organization is based on the principle of the sovereign equality of all its Members" and in Chapter II Article 4, "Membership ... is open to all other peace-loving states which accept the obligations contained in the present Charter," demonstrating the influence this definition still has on the contemporary system. Within the two dominant schools of international relations theory, realism and liberalism, these concepts have become firmly entrenched up to the present day. However, the evolution of the international human rights regime has progressively called into question traditional conceptions of the state and sovereignty, best reflected in the emerging constructivist theory. In this section I will outline how a realist and liberal defines these concepts and constructivist schools of thought, and then assess how they have evolved to explain the rise of the contemporary human rights regime.

For neo-realists, the state is the only important actor in the international system. They believe that the international system is anarchic and as such states are the only actors that can provide individuals with protection.[3] This idea has its roots in the writings of the classical realist Thomas Hobbes. In his famous work *Leviathan*, he argued that citizens enter into a social contract with the state whereby the state is given absolute sovereignty in exchange for protection. Sovereignty has been defined by Max Weber as, "the monopoly of the legitimate use of force within a given territory,"[4] while Stephen Krasner defines Westphalian sovereignty as "political organization based on the exclusion of external actors from authority structures within a given territory." [5]

According to this school of thought, in an anarchic environment states are constantly seeking to ensure their survival.[6] Therefore, to neo-realists, the rise of international and regional organizations can be attributed to states seeking to exert influence over others, or to the need to balance the power of larger states. However, the growing acceptance of international human rights norms has challenged these core assumptions. Though it can be argued that human rights have at times been used by states to exert their influence, this still cannot account for the plethora of human rights treaties that have been ratified by powerful and less powerful states.

Similarly to realists, liberals also take the state as the most important actor within an anarchic system, but their perspective on state behaviour makes this theory better equipped to account for the current changes we are seeing. The classical liberal concept of the state is based on the ideas of John Locke. Like Hobbes, he also believed that citizens have a social contract with their state.[7] However, in his *Second Treatise of Government* he argues that it is the state that is given authority by its citizens, and that they have the right to take away this authority if the state violates their fundamental rights to life, liberty and property.[8]

Rather than attributing membership to international organizations to security interests alone, neo-liberal theorists contend that states not only join international organizations for security, but also in the pursuit of relative gains. Robert Keohane argues that states should not hold onto traditional concepts of sovereignty, but use it as a resource for economic and security gains. He believes that in Europe, the traditional Westphalian view of sovereignty has evolved to "pooled sovereignty." [9] In Keohane's article 'Ironies of Sovereignty', he contrasts the EU's use of these gains with the US's continued reluctance to give up traditional notions. He proposes that the idea of entering into agreements which limit sovereignty but are incentivized by economic and security gains could be a way for 'troubled societies' to encourage stability and demonstrate legitimacy.[10] Though Keohane's arguments raise some interesting possibilities in the context of this essay, by 'troubled societies,' he was referring to already established states such as Afghanistan, Somalia, and Macedonia. Though neo-liberalism's acceptance of the importance of other actors within the international community goes further in explaining the rise of international organizations than neo-

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realism, as can be assessed from Keohane's arguments, states are still given central importance.

Constructivism is a school that has become more popular since the end of the Cold War.[11] In the absence of heightened security concerns that had previously dominated political thought, constructivists began to question foundational concepts. Unlike realism and liberalism, they focus on how decisions are shaped by social forces such as ideas, knowledge and norms, rather than by material forces.[12] Therefore, constructivists would argue that as a socially constructed concept, the meaning of sovereignty changes according to the political environment in which it is used. Helle Malmvig in *State Sovereignty and Intervention* interestingly demonstrated that the concept of sovereignty not only changes through time, but also space, as she compared the justifications for intervention and non-intervention by the international community within the same timeframe in Kosovo and Algeria. She explains that as intervention violates the traditional concept of sovereignty, justifications by states which intervened in Kosovo were expected; however, the fact that states felt the need to justify their decision not to intervene in Algeria demonstrates that sovereignty is not a given, but an unclear socially constructed concept, whose meaning is dependent on the political context.[13]

In analysing the emergence of international organizations, constructivists have gone further in defining their nature and character. In 'The Politics, Power, and Pathologies of International Organizations' Michael Barnett and Martha Finnemore use a constructivist approach to argue that the authority given to international organizations has allowed them to act independently, at times going against the intentions of their creators. With this interpretation it can be concluded that their ability to not only act independently from states, but also their capacity to create and influence within the international community has given them an important position not just as a means for states to cooperate, but also as actors themselves.

The Effect of the Responsibility to Protect on State Sovereignty

The concept of the Responsibility to Protect was first put forward by Francis Deng and the Brookings Institution in 1996 in *Sovereignty as Responsibility: Conflict Management in Africa*. As in classical liberalism, the authors argued that when a state violates its citizens' rights, the state forfeits its sovereignty.[14] However, the concept goes further claiming that in such a case the international community has the right, and more importantly, the responsibility to intervene.[15] The Responsibility to Protect essentially went against the traditional Westphalian concept of sovereignty and created a new definition based on contemporary human rights norms. This concept was subsequently developed in the 2001 report of the International Commission on Intervention and State Sovereignty, and later adopted at the 2005 UN World Summit. Since then it has been elaborated on in various UN reports, and was the basis for the UN intervention in Libya in 2011.[16]

Though both neo-realism and neo-liberalism have attempted to adapt to the current changes in the international system, they both still rely on the fundamental importance of the state. Neo-realism in particular fails to answer why all UN Members would agree to a concept that allows for direct intervention by an international organization based on respect for human rights. Though the idea that sovereignty is contingent on the respect for fundamental rights conforms with the liberal idea of a social contract, in this theory it is individuals and not international organizations that have the right to take away state sovereignty. In neo-liberal theory international organizations are mainly seen as a means for cooperation between states and not as actors with responsibilities. The adaptability of constructivism makes it the theoretical school best equipped to explain how the diffusion of human rights norms has made it possible for the international community to redefine sovereignty through the Responsibility to Protect.

Though it is disputed whether or not the Responsibility to Protect has officially become a norm, it is certain that the concept has essentially created a social contract between the international community and all individuals. This development has three important implications in the context of this debate. First, in giving the UN the ability to violate a state's sovereignty, it has affirmed the importance of human rights over sovereignty. Second, giving an international organization this kind of power has underscored the importance of non-state actors in the modern era. Third, it has conferred direct responsibility for human rights upon an international organization for individuals. This final implication is particularly relevant to the case study that will be examined in the third section of this essay. If the UN has the responsibility to protect individuals from violations committed by their state, what obligations should it have

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when it acts as a state?

Part 2: Statehood in International Law

Throughout history, two competing paths for statehood have been developed, constitutive and declarative statehood.[17] Under the constitutive path to statehood, territories become states through recognition by other states. Though historically this is the most common path to statehood it is fraught with controversy, as leading states have used recognition as a political tool. Although many international lawyers, including Hersch Lauterpacht, have argued that it is a state's duty to recognize other states, the ambiguity of the criteria for statehood means that states have been free to recognize others based on political gains.[18] In response to the dependency which can arise from a lack of clear guidelines and the political will of states to grant recognition, new and weaker states began arguing for the need for set criteria. This gave rise to the declarative method of statehood. The most famous expression of this was the Montevideo Convention of 1933, which outlined four criteria for statehood:

a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.[19]

The Convention completely rejected the notion that recognition by other states was necessary for statehood and, additionally, went so far as to provide rights for states before recognition. The debate between the legality of both methods continues today as can be inferred by the recent decision on the status of Palestine.

The Effect of the Palestinian Decision on Statehood

The vote that granted Palestine 'non-Member Observer State' status at the United Nations (UN) General Assembly on 29 November 2012 has been deemed to be a landmark event in history.[20] Prior to the vote, the President of the Palestinian Authority, Mahmoud Abbas, called on the UN General Assembly to "issue a birth certificate of the reality of the State of Palestine." [21] The result was an overwhelming vote of 138 for and 9 against.[22] Immediately following the vote widespread debates broke out about the implications it would have. Some questioned the ability of the UN General Assembly to grant statehood, and whether this would set a path for Palestine towards full UN Member status. Others deliberated on the impact this would have on the Israeli-Palestinian peace process. The hype generated by the addition of one word to Palestine's title, 'state', reveals the quintessential importance given to statehood in the international system.

Prior to the vote, Palestine lobbied to gain as much recognition as it could. However, though it was granted this new status with 138 recognitions in the UN General Assembly, only the Security Council has the competence to grant full membership as judged in the International Court of Justice advisory opinion: *Competence of the General Assembly For the Admission Of a State to the United Nations*. [23] In the case of Palestine, it is clear that as Israel's ally the US will continue to ensure that it does not achieve statehood through means outside of the Palestinian-Israeli peace talks. As Israel's Ambassador the UN stated after the vote, "There's only one route to Palestinian statehood and that route does not run through this chamber in New York." [24] The dependence on the Security Council's recommendation means that in cases such as that of Palestine, Kosovo, and Taiwan, when there is at least one permanent member against recognition, it is clear that the veto will be used to block admittance. However, while the General Assembly did not grant Palestine official statehood or membership to the UN, this new status has conferred new powers upon Palestine.

Previously Palestine has been denied access to both the International Court of Justice and International Criminal Court based on its uncertain standing. The famous 2008 International Court of Justice advisory opinion was one such example. Upon request from the General Assembly the Court issued an opinion on the legality of the building of a wall on Palestinian territory by Israel. It found that the construction of the wall was against international law and violated several rights including civil and political rights, the right to health, work, and self-determination.[25] Though it was judged that Israel should immediately cease with its construction and pay compensation to those affected, as an advisory opinion the judgment had no legal standing. In May 2010 Palestine submitted a declaration of recognition to the International Criminal Court to file claims against Israeli military offences, but their application was rejected on the

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grounds of statehood.[26]

Palestine's new status will now allow it to join international organizations and ratify UN Treaties. The most controversial aspect of all is that it will now be able to recognize the jurisdiction of the International Criminal Court. While access gives Palestine a means of protecting its citizens from human rights abuses committed by others, it will also mean that the Palestinian Authority, and Hamas, can be held responsible for their actions. Some academics have called this a 'double edged sword' as it means Palestine can now file claims, "against Israeli officials for the Gaza blockade, disproportionate attacks against and collective punishment of Palestinians, and the occupation of the West Bank... [but] Israel will inevitably counterclaim against Palestinian officials, including members of Hamas responsible for intentional attacks against civilian targets in Israel." [27] Though those that voted against the new Palestinian status argued that it could have a negative impact on the peace process, it seems that access to international mechanisms may actually act as a deterrent for both sides from committing illegal actions. In fact several legal academics have pointed out that due to the way in which the Israeli army carries out its attacks versus Hamas, the later may have more difficulty defending their actions under humanitarian law. [28] The vote was not only a historic step for the Palestinian people, but also highlighted an underlying issue facing the modern era: Is statehood a prerequisite for human rights?

PART 3: Kosovo

The case of Kosovo presents an important insight into the consequences of the exclusion of non-state actors from the state-centric international human rights regime. Throughout the conflict and post-conflict period from 1999 until the present day, different entities including international organizations, private companies, armed actors, and now the self-declared state of Kosovo have been active within the territory free from accountability. In this section, I will focus on the effects a lack of accountability and recognition by the international community can have in the post-conflict period.

On 17 February 2008, Kosovo unilaterally declared independence from Serbia. On 10 October 2008, Serbia, confident of what the outcome would be, supported a UN General Assembly request to the International Court of Justice for an advisory opinion on whether or not Kosovo's unilateral declaration was in accordance with international law. To the surprise of Serbia and many others, the court decided that it did not violate any applicable rule of international law. Though it might have been expected that the judgment would have had a major impact, the status of Kosovo has not changed. As Kosovo is not a member state of the UN, it is not able to recognize the jurisdiction of the court, and therefore cannot submit a case itself. For this reason, it was necessary for Serbia and the General Assembly to submit the question to the court. However, because Kosovo is not a party to the International Court of Justice, only a non-binding advisory opinion can be given. Much like the case of the *Legal Consequences for the Construction of a Wall in the Occupied Palestinian Territory*, an advisory opinion has no legally binding authority and so even when the court has judged that a violation of international law has occurred, the offending state has no obligation to follow through with the Court's recommendations.

Turning to the text of the advisory opinion, we see much less cause for surprise. In its opinion the court stepped over the political sensitivity of the issue by literally interpreting the question as whether or not the Declaration of Unilateral Independence was a product of the United Nations Interim Administration Mission in Kosovo (UNMIK) or the Provisional Institutions of Self-Government it has set up, and not

whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self determination confers upon part of the population of an existing State a right to separate from that State. [29]

In interpreting the question in this way, the Court avoided the controversial question of ruling on self-determination. It shielded UNMIK from being accused of violating international law by deliberating that its mandate made no reference to the future status of Kosovo. Strangely, it also judged that when signing the Declaration, the President and members of the Assembly of Kosovo were not acting in their capacity as members of the Provisional Self-Government, but externally in "their capacity as representatives of the people of Kosovo". [30] Finally, the Opinion

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judged that the issuance of the Declaration of Unilateral Independence was not, “an act intended to take effect, or actually taking effect, within the legal order in which those Provisional Institutions operated.”[31] In the end, the careful steps taken to avoid the actual question at hand meant that the judges found no violation of international law, but they also did not make any judgment on what the Declaration meant for the status of Kosovo.

Despite the inconclusive ruling of the court, it was followed by a slew of recognitions by other states, which today has reached a total of 98 out of 193 UN members. Serbia’s reaction was to promptly reiterate its rejection of Kosovo’s unilateral Declaration, and reaffirm its view that Kosovo is an integral part of its sovereign territory.[32] With Russia’s continued insistence that its recognition of Kosovo is contingent on Serbia, it is clear that no conclusion on statehood is near in sight.

Implications of Surrogate Statehood

In the aftermath of the conflict in Kosovo, the Security Council issued resolution 1244 (1999) authorizing a UN stabilization mission, the UNMIK, and a NATO led security presence, KFOR. UNMIK’s mandate was wide in scope as it was tasked to:

perform basic civilian administrative functions; promote the establishment of substantial autonomy and self-government in Kosovo; facilitate a political process to determine Kosovo’s future status; coordinate humanitarian and disaster relief of all international agencies; support the reconstruction of key infrastructure; maintain civil law and order; promote human rights; and assure the safe and unimpeded return of all refugees and displaced persons to their homes.[33]

To quickly begin carrying out these tasks, UNMIK was given far-reaching powers over the region, as stated under its mandate:

All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary- General.[34]

Additionally, UNMIK and its employees have complete immunity from legal process in Kosovo while acting in their professional capacity, as does KFOR and its employees, who much like UN peacekeepers can only be tried in their country of origin.

Since the resolution was issued, UNMIK and KFOR have worked in coordination to fulfil these objectives and in so doing have created both political and judicial institutions. While these institutions have been given increasing independence, they are still under the absolute authority of the Special Representative of the Secretary- General who has the power to appoint and dismiss members of the civil administration of Kosovo. As the Interim Government is not legally recognized, all international agreements must be concluded by UNMIK on its behalf. [35] The Mission’s absolute control over Kosovo’s domestic, international, and legal affairs is comparable to that of a state or an occupying force. Due to this the Ombudsperson Institution in Kosovo referred to UNMIK in its first special report as a ‘surrogate state.’[36] In this report several cases of rights violations by UNMIK and KFOR employees were highlighted, including the damage and destruction of personal property, injury, denial of citizenship, extrajudicial detention, a lack of freedom of correspondence for prisoners, and the detention of mentally incompetent persons.

At the time of the first report, there were no legal remedies available for individuals who had suffered from violations by UNMIK or KFOR, making the Ombudsperson Institution the only place complaints could be heard. However, the Ombudsperson Institution has traditionally been weak due to a lack of cooperation from UNMIK and the Interim Self-Government Institutions. It was not until November 2007 that a Human Rights Advisory Panel was established to examine complaints of violations by UNMIK. Despite this step forward in creating an external watchdog, the Panel was only given competence over violations that had occurred from April 2005, and only has the power to give advisory opinions.[37] In the case of a confirmed violation it is up to UNMIK to decide if they will follow the recommendations of the Panel.

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Since 2008 UNMIK has taken a step back from its operations in Kosovo allowing the European Union Rule of Law Mission in Kosovo (EULEX) to increasingly take over responsibilities beginning with the rule of law sector.[38] Judges in the EULEX court system have received positive feedback in the reports of the Ombudsperson due to their cooperation with the Institution, and a Human Rights Review Panel was established in 2009 to review complaints against EULEX. However, the Panel again only has the authority to issue recommendations, and an independent auditing report released last year showed that the mission has shown few results due to a lack of coordination, unqualified staff, and widespread corruption.[39] Indeed, the 2013 report of the Human Rights Review Panel found EULEX guilty of violating the rights of a group of witnesses, whose names and testimonies were shared with Serbian authorities.[40] It is EULEX's responsibility to protect the identities of witnesses, especially those that have witnessed violent crimes and could be targeted for speaking out. According to the report EULEX decided not to adopt interim measures that had been suggested to protect the witnesses, stating that the information was already released and therefore provisional measures would have no effect.

Having established that UNMIK, EULEX and KFOR exercise effective control over Kosovo why are they not held accountable for human rights violations, or at a minimum responsible for the obligations of occupying states towards individuals under their rule in accordance with humanitarian law? It is ironic that the mission created to institute stability, rule of law and democratic self-government to the region is essentially autocratic in nature. While some may argue that it would be too complicated to hold an intergovernmental organization accountable under international law, one could point to the EU's progressive decision to accede to the European Court of Human Rights (ECtHR). According to the Council of Europe:

The EU's accession will strengthen therefore the protection of human rights in Europe, by submitting the EU's legal system to independent external control. It will also close gaps in legal protection by giving European citizens the same protection vis-à-vis acts of the EU as they presently enjoy from member states.[41]

In an age when the European Union, an inter-governmental body with less power than UNMIK or KFOR over its citizens, will be submitting itself to the jurisdiction of the ECHR there is no reason for international organizations to use immunity as a shield, especially when the powers afforded to them are absolute, and the environment they are operating in is unstable and vulnerable due to a lack of legal and political protection. While the mission's mandate may have been created out of good will, centralizing absolute control into one entity is risky and can have adverse affects to those initially intended. What can happen when interim-government institutions in a highly sensitive post-conflict region are created and administered by an authority that is not accountable for human rights is discussed below.

The Case of Organ Trafficking

Despite the long-term presence of these organizations mandated to improve the human rights situation, and the millions that have been spent so far in post-conflict institutional building and rule of law, Kosovo suffers from widespread corruption and organized crime.[42] A 2012 corruption index by Transparency International ranked Kosovo at 105th most corrupt out of 174 states, interestingly sharing its ranking with Algeria.[43] The Ombudsperson Institution, which was established to be a watchdog for the Interim Government Institutions, has highlighted the failure of governmental and municipal authorities to cooperate and give heed to its recommendations.

One of the biggest on-going cases of human rights violations in Kosovo has been organ trafficking. Though it was alleged that members of the Kosovo Liberation Army had been trafficking the organs of Serb prisoners during the conflict, according to a report by the Council of Europe, "the international authorities in charge of the region did not consider it necessary to conduct a detailed examination of these circumstances, or did so incompletely and superficially." [44] Though it had been argued that there was no substantial evidence to warrant an investigation into these claims, the recent emergence of a scandal involving organ trafficking at a private clinic in Pristina shows that these operations have continued into the present day.[45] Former prosecutor for the International Criminal Tribunal for the former Yugoslavia, Carla del Ponte, published a book in 2008 revealing the details that the Court had received on instances of organ trafficking.[46] Through the EULEX investigation it has been estimated that the level of involvement has reached so high that a number of representatives of Kosovo's Ministry of Health are currently being

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investigated for involvement in the operation.[47] This extreme case highlights the effects the precedent of impunity and a lack of accountability can have in the delicate situation of post-conflict transition.

Possible Solutions

As long as Kosovo has no official status and therefore no legal capacity to act on its own behalf within the international community, a UN or EU mission will have to continue to administer over the territory. With the constant break down in the EU-led Serbian-Kosovar dialogue, it is clear that no agreement on statehood is near in sight. If we are to see the effective implementation of human rights in non-recognized states, such as Kosovo, it is time for the international community to let go of its out-dated conceptions of sovereignty and statehood, and explore new solutions. To address the specific issues discussed in this essay, there are two challenges that need to be tackled: accountability of international organizations operating in post-conflict situations and accountability for unrecognized states.

One necessary action is for missions which are effectively mandated to operate as 'surrogate states', by the UN or any other regional or international organization, to become party to the UDHR and other relevant UN Treaties. As the Responsibility to Protect has now given the UN the responsibility to protect civilians from the state, when acting in the capacity of a state UN missions should also have a responsibility towards the individuals under their administration. Missions operating in conflict and post-conflict situations where rule of law and governance structures are weak should not be granted unlimited immunity, but should accept the jurisdiction of an international or regional court for their operations extraterritorially. The purpose for the immunity given to UN missions is to allow them to operate free from intervention from the host state. As pointed out in the first Ombudsperson report, when a mission is acting as a 'surrogate state' it has effective control of all administrative aspects and therefore does not need immunity from itself.[48] Immunity for public authorities merely keeps a territory in a permanent state of public emergency in which human rights are suspended, and impunity is sheltered. As the Human Rights Commissioner of the Council of Europe stated in 2009:

when international organisations exercise executive and legislative control as a surrogate state they must be bound by the same checks and balances as we require from a democratic government. Lack of accountability may undermine public confidence in the international organisation and thereby its moral authority to govern. It also promotes a climate of impunity and sets a negative model for domestic governments.[49]

Finally, the recent granting of non-Member observer state status to Palestine at the UN has provided an interesting possibility for unrecognized states that should be explored. Though the decision was controversial given possible accession to the International Criminal Court, legal scholars argue that accession would bring as much scrutiny to the actions of actors in Palestine as it would to those from Israel, thus creating a method of deterrence from humanitarian and human rights violations.[50]

Granting unrecognized states such as Kosovo non-Member observer state status would allow them not only to accede to human rights treaties, but also give them the ability to enter into other international agreements and organizations. Having the ability to independently enter into international agreements could not only bring economic stability, but also force them to improve rule of law structures to meet accession criteria. Additionally, numerous empirical studies have shown that ratification of UN treaties in newly formed democratic states with high violations of human rights can have the greatest impact, particularly in those with a strong civil society.[51] This means that accession, coupled with continued support by the international community for civil society, could have a great impact. Finally, the ability to accede to international courts could provide Kosovo with a means of protection from other states, while accession to the International Criminal Court could be a valuable tool used to combat corruption.

Conclusion

The complex and multi-dimensional challenge of establishing accountability for international organizations and unrecognized states can be met by addressing the need for inclusion of non-state actors at the international level as both rights holders and duty bearers, particularly in post-conflict situations: a global community in which all actors are

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protected by and accountable for the implementation of global human rights. However, this can only be realized once the international community can overcome its attachment to traditional conceptions of statehood and sovereignty. The progress that has been made through the evolution of the Responsibility to Protect concept and the new status of Palestine should serve to highlight the advancement which can be achieved in the universal implementation of human rights when these concepts are not used as a barrier. In an age of globalization non-state actors are becoming increasingly important on the international scene and as such should be included in the evolving human rights regime.

Bibliography

Balouziyeh, John. 'Palestine's Membership at the International Criminal Court: What it Could Mean for Israel.' *The Desmond Tutu Peace Foundation*. 27 December 2012. Web. 4 June 2013. <<http://www.tutufoundationusa.org/2012/12/palestine%e2%80%99s-membership-at-the-international-criminal-court-what-it-could-mean-for-israel/>>

Baylis, John & Smith, Steve & Owens, Patricia. *Globalization of World Politics: An Introduction to International Relations 4th ed.* Oxford: Oxford University Press, 2008. Print.

Council of Europe. 'EU Accession to the European Court of Human Rights.' 2012. Web. 20 April 2013. <<http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention>>

Council of Europe. "International organisations should be accountable when they act as quasi governments" says Commissioner Hammarberg.' Directorate of Communication: Press Release 450. 8 June 2009, Web. 22 April 2013. <<https://wcd.coe.int/ViewDoc.jsp?id=1455149&Site=COE&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>>

Council on Foreign Relations. 'Montevideo Convention on the Rights and Duties of States.' Primary Sources. 26 December 1933. Web. 22 April 2013. <<http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>>

Etzioni, Amitai. 'Sovereignty as Responsibility.' *Foreign Policy Research Institute*. Elsevier Limited, Winter 2006. George Washington University. Web. 30 April 2013. <<http://www.gwu.edu/~ccps/etzioni/documents/A347a-SoverigntyasResponsibility-orbis.pdf>>

Hillier, Tim. *Sourcebook on Public International Law*. London: Cavendish Publishing Limited, 1998. Print.

The Human Rights Advisory Panel. *HRAP Official Home Page: About Us*. Web. 21 April 2013. <<http://www.unmikonline.org/hrap/Eng/Pages/default.aspx>>

International Court of Justice. *Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion*, I.C.J Reports 2010. 22 July 2010. Web. 10 April 2013. <<http://www.icj-cij.org/docket/files/141/15987.pdf>>

International Court of Justice. From UN Secretary General Ban Ki-moon on behalf of UN General Assembly. *Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Request for Advisory Opinion*. Introductory Note, (Part II-G): 16-18. I.C.J Reports 2010. 10 October 2008. Web. 10 April 2013. <<http://www.icj-cij.org/docket/files/141/15022.pdf>>

International Court of Justice. *Legal Consequences of the Construction of a Wall on Palestinian Territory, Advisory Opinion*, I.C. J. Reports 2004. 9 July 2004. Web. 15 April 2013. <<http://www.icj-cij.org/docket/files/131/1671.pdf>>

Jilani, Hina & Meron, Theodor & Muntarhorn, Vitit & Pinhiero, Paulo Sergio & Govender, Pregs & Ibrahim, Sadd Eddin & Nowak, Manfred & Robinson, Mary. *Protecting Dignity: An Agenda for Human Rights*. Geneva: Swiss Confederation, 2011. Print.

Establishing Accountability for IGOs and States

Written by Andrea Raquel Hak

Keohane, Robert. 'Ironies of Sovereignty: The European Union and the United States.' *Journal of Common Market Studies* 40. 4 (2002): 743-765. *Wiley Online Library*. Web. 3 May 2013. <<http://onlinelibrary.wiley.com/doi/10.1111/1468-5965.00396/abstract>>

Krasner, Stephen D. *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press, 1999. Print.

Krasniqi, Gëzim. 'What it did not say: Secession after the ICJ's opinion on Kosovo.' *Citizenship in Southeast Europe*. 10 May 2011. Web. 18 April 2013. <<http://www.citsee.eu/citsee-story/what-it-did-not-say-secession-after-icjs-opinion-kosovo>>

Hathaway, Oona. 'Why do Countries Commit?' *The Journal of Conflict Resolution* 51. 4 (August 2007): 588-621. *JSTOR*. Web. 15 April 2013. <<http://www.jstor.org/stable/27638567>>

Malmvig, Helle. *State Sovereignty and Intervention*. New York: Routledge, 2006. Print.

Marty, Dick. 'Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo.' *Council of Europe Committee on Legal Affairs and Human Rights: Report AS/JUR* (2010) 46. 12 December 2010. Web. 16 April 2013. <<http://assembly.coe.int/asp/apfeaturesmanager/defaultartsiteview.asp?ID=964>>

Miley, Cynthia. 'EULEX Expands Indictment in Kosovo Organ Trafficking Case.' *Jurist: Paperchase Newsburst*. University of Pittsburgh School of Law. 24 March 2013. Web. 20 April 2013. <<http://jurist.org/paperchase/2013/03/eulex-expands-indictment-in-kosovo-organ-trafficking-case.php>>

Moravcsik, Andrew. 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe.' *International Organization* 54. 2 (Spring 2000): 217-252. *Princeton.edu*. Web. 15 April 2013. <<http://www.princeton.edu/~amoravcs/library/origins.pdf>>

Neumayer, Eric. 'Do International Rights Treaties Improve Respect for Human Rights?' *The Journal of Conflict Resolution* 49. 6 (December 2005): 925-953. *JSTOR*. Web. 15 April 2013. <<http://www.jstor.org/stable/30045143>>

Nielsen, Nikolaj. 'Corruption Reigns in Kosovo Despite EU Millions.' *euobserver.com*, 1 Nov. 2012. Web. 21 April 2013. <<http://euobserver.com/foreign/118071>>

Ombudsperson Institution in Kosovo, 'Special Report No. 1.' 26 April 2001. Web. 18 April 2013. <<http://www.ombudspersonkosovo.org/repository/docs/E4010426a.pdf>>

Schmidle, Nicholas. 'An Organ Trafficking Conviction in Kosovo.' *The New Yorker*, 29 April 2013. Web. 3 May 2013. <<http://www.newyorker.com/online/blogs/newsdesk/2013/04/an-organ-trafficking-conviction-in-kosovo.html>>

Transparency International, Corruption Perceptions Index. *Transparency.org*, 2012. Web. 21 April 2012. <<http://cpi.transparency.org/cpi2012/results/>>

Traynor, Ian. 'Former war crimes Prosecutor alleges Kosovan Army harvested organs from Serb prisoners.' *TheGuardian.com*, 12 April 2008. Web. 3 May 2003. <<http://www.guardian.co.uk/world/2008/apr/12/warcrimes.kosovo>>

Tsokodayi, Cleophas. 'The Legacy of the Treaty of Westphalia to International Relations.' *Examiner.com*. Clarity Digital Group LLC, 16 August 2010. Web. 22 April 2013. <<http://www.examiner.com/article/sovereignty-the-legacy-of-the-treaty-of-westphalia-to-international-relations>>

Tuckness, Alex. Edward N. Zalta (ed.). 'Locke's Political Philosophy.' *The Stanford Encyclopedia of Philosophy*. Metaphysics Research Lab CSLI Stanford University, Winter 2012. Web. 4 May 2013. <<http://plato.stanford.edu/archives/win2012/entries/locke-political/>>

Establishing Accountability for IGOs and States

Written by Andrea Raquel Hak

United Nations General Assembly. 1915th Plenary Meeting. *United Nations General Assembly, A/RES/2649. The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights.* 30 November 1970. Web. 20 April 2013.

<<http://unispal.un.org/UNISPAL.NSF/0/14DA6ECEAD5F088A8525630A0072450D>>

United Nations General Assembly. 'General Assembly votes overwhelmingly to accord Palestine 'non-member observer State' status in United Nations.' *Department of Public Information, United Nations GA/11317.* 29 November 2012. Web. 14 April 2013. <<http://www.un.org/News/Press/docs/2012/ga11317.doc.htm>>

United Nations General Assembly. Sixty-seventh General Assembly 44th and 45th meetings. 'General Assembly Grants Palestine non-member Observer State Status at UN.' *UN News Centre.* United Nations GA 11317. 29 November 2012. Web. 14 April 2013. <http://www.un.org/apps/news/story.asp?NewsID=43640#.Ui5CvuAba_v>

United Nations Interim Administration Mission in Kosovo. *UNMIK Background.* United Nations, Web. 19 April 2013. <<http://www.un.org/en/peacekeeping/missions/unmik/background.shtml>>

Unrepresented Nations and Peoples Organization. *About UNPO.* Web. 20 April 2013. <<http://www.unpo.org/section/2>>

Human Rights Review Panel. *W v. EULEX. Decisions and Findings, Case 2011-07.* 10 April 2013. Web. 7 April 2013. <<http://www.hrrp.eu/docs/decisions/Decision%20merits%202011-07%20pdf.pdf>>

[1] Unrepresented Nations and Peoples Organization, *About UNPO*, <http://www.unpo.org/>.

[2] Tsokodayi, 'The Legacy of the Treaty of Westphalia to International Relations,' 2010, <http://www.examiner.com/>.

[3] Baylis, Smith, & Owens, 2008, p.172.

[4] Ibid.

[5] Krasner, 1999, p. 4.

[6] Baylis, Smith, & Owens, 2008, p.174.

[7] Tuckness, 'Locke's Political Philosophy,' 2012, <http://plato.stanford.edu/>.

[8] Ibid.

[9] Keohane, 2002, p. 744.

[10] Ibid, p. 755.

[11] Baylis, Smith, & Owens, 2008, p. 256.

[12] Ibid, p. 252.

[13] Malmvig, 2006, p. 170.

[14] Etzioni, 2006, p. 71.

[15] Ibid.

Establishing Accountability for IGOs and States

Written by Andrea Raquel Hak

[16] see UN Security Council Resolution 1973, S/RES/1973 (2011).

[17] Hillier, 1998, pp. 201-202.

[18] Ibid.

[19] Council on Foreign Relations, 'Montevideo Convention on the Rights and Duties of States,' <http://www.cfr.org/>.

[20] UN General Assembly, 'General Assembly votes overwhelmingly to accord Palestine 'non-member observer State,' GA/1137, 2012, <http://www.un.org/News/Press/>.

[21] Ibid.

[22] Ibid.

[23] see Competence of the General Assembly For the Admission Of a State to the United Nations, (ICJ, 1950).

[24] UN General Assembly, 'General Assembly grants Palestine non-member observer State status at UN,' <http://www.un.org/>.

[25] International Court of Justice, *Legal Consequences of the Construction of a Wall on Palestinian Territory, Advisory Opinion*, (ICJ, 2004).

[26] Balouziyeh, 2012, <http://www.tutufoundationusa.org/>.

[27] Ibid.

[28] Ibid.

[29] ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion*, (ICJ, 2008), p. 8.

[30] ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion*, (ICJ, 2008), p. 12.

[31] Ibid, p. 14.

[32] Krasniqi, 'What it did not say: Secession after the ICJ's opinion on Kosovo,' 2011, <http://www.citsee.eu/>.

[33] UMIK, *UNMIK Background*, <http://www.un.org/en/peacekeeping/missions/unmik/>.

[34] Ombudsperson Institution in Kosovo, 2001, p. 2.

[35] ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Request for Advisory Opinion*, (ICJ, 2008) Introductory Note Part II-G, pp. 16-18.

[36] Ombudsperson Institution in Kosovo, 2001, p. 8.

[37] The Human Rights Advisory Panel, *HRAP Official Home Page: About Us*, <http://www.unmikonline.org/>.

[38] UMIK, *UNMIK Background*, <http://www.un.org/en/peacekeeping/missions/unmik/>.

[39] Nielsen, 'Corruption Reigns in Kosovo Despite EU Millions,' 2012, <http://www.euobserver.com>.

Establishing Accountability for IGOs and States

Written by Andrea Raquel Hak

[40] HRRP, *W. v EULEX*, (HRRP, 2013).

[41] Council of Europe, “International organisations should be accountable when they act as quasi governments” says Commissioner Hammarberg,’ 2012.

[42] Nielsen, ‘Corruption Reigns in Kosovo Despite EU Millions,’ 2012, <http://www.euobserver.com>.

[43] Transparency International, 2012, <http://www.transparency.org/>.

[44] Marty, 2010, pp. 1-2.

[45] Schmidle, ‘An Organ Trafficking Conviction in Kosovo, 2013, <http://www.newyorker.com/>.

[46] Traynor, ‘Former war crimes Prosecutor alleges Kosovan Army harvested organs from Serb prisoners,’ 2008, <http://www.guardian.co.uk/>.

[47] Miley, ‘EULEX Expands Indictment in Kosovo Organ Trafficking Case,’ 2013, <http://jurist.org/>.

[48] Ombudsperson Institution in Kosovo, 2001, p. 8.

[49] Council of Europe, “International organisations should be accountable when they act as quasi governments” says Commissioner Hammarberg,’ 2012.

[50] Balouziyeh, 2012, <http://www.tutufoundationusa.org/>.

[51] see Hathaway, 2007 and Moravcsik, 2000 and Neumayer, 2005.

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