

The Changing Nature of Sovereignty

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'Does Greater Intervention Mean that Sovereignty is More Frequently Violated or Rather that the Nature of Sovereignty is Changing?'

"The time of absolute sovereignty and exclusive sovereignty...has passed; its theory was never matched by reality" -Boutros-Ghali 1992

The concept of sovereignty has long been seen as a "fundamental pillar of the international system" (Badescu 2011:20) and even a "grundnorm of international society" (Reus-Smit 2001:519). Some scholars have argued that certain aspects of the contemporary international system, like globalisation, have led to its erosion (Krasner 1999:1). For some, the greatest challenge (or perhaps threat) posed to sovereignty stems from international human rights obligations (Donnelly 2004:1). Human rights and sovereignty are often seen as juxtaposed, competing and contradictory regimes. Krasner, for example, argues that human rights compromise conventional notions of sovereignty (1999:125), suggesting that the two ideas are opposed and irreconcilable. The relationship between human rights and sovereignty has often been viewed in zero-sum terms – "the stronger the principle of sovereignty, the weaker norms of human rights, and *vice versa*" (Reus-Smit 2001:519).

Following the end of the Cold War; a marked increase in the number of interventions occurred. This essay will define intervention as an invasive, military interference in the affairs of another state, often underpinned by a humanitarian rationale. During the 1990s, a series of military interventions supported by humanitarian justifications took place; (Welsh 2004:2) that arguably signalled the beginning of a more interventionist era in world politics. This essay will contend that the increased frequency of intervention and its increased permissibility in the post-Cold War world is a reflection of the changing and evolving nature of sovereignty. Although it is difficult to pinpoint when the nature of sovereignty changed, it certainly has undergone some sort of transformation. The rise of humanitarian intervention during the 1990s seemed to signal the beginning of this change. This author favours a constructivist take on sovereignty which maintains that it is "constantly undergoing change and transformation" and can be defined "in terms of the interactions and practices of states" (Biersteker & Weber 1996:10). This perspective allows the increased incidence of intervention and its greater permissibility – to be viewed as a change in the nature and understanding of sovereignty, not a violation of it.

The nature of sovereignty has seemingly changed from one that endows states with certain infallible rights, to one that grants them certain responsibilities. In order to demonstrate this change the essay will proceed in three stages. First of all, the essay will explore sovereignty as a concept, before outlining, and then debunking, the traditional, archetypal, 'Westphalian' conception. It will then proceed to highlight sovereignty's conception during the Cold War, when the norm of non-intervention was preeminent, in order to contrast it with its contemporary reimagining. The final part of the essay will discuss instances of humanitarian intervention during the 1990s to demonstrate that its increased usage, and permissibility, was indicative of the changing nature of sovereignty. It will also chart sovereignty's conceptual evolution in the post-Cold War period from notions of sovereignty as responsibility to the Responsibility to Protect (RtoP). Furthermore, tentative explanations for the shift will then be proffered before concluding.

Sovereignty as a concept has been characterised as "ambiguous" (Weber & Biersteker 1996:2) and "rather fuzzy"

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(Weber 1995:1). In spite of this, the essay will offer some definitions in order to ground the subsequent analysis. Sovereignty is defined by Weber and Biersteker as: “a political entity’s externally recognized right to exercise final authority over its affairs” (1996:2). Their definition stresses the external dimension of sovereignty. Whereas Ruggie, labels it “the institutionalization of public authority within mutually exclusive jurisdictional domains” (1983:275), thus highlighting its territorial aspect.

Krasner suggests that the term sovereignty has been used in four different ways, which he categorises as: domestic; interdependence; international legal; and Westphalian sovereignty (1999:9). Domestic sovereignty refers “to the nature of domestic authority structures” and the effective level of control they wield within a state’s borders (Krasner 2004:88). Interdependence sovereignty, on the other hand, describes a state’s ability to control trans-border movements. Moreover, international legal sovereignty refers to the process of mutual recognition (Krasner 1999:9). Perhaps the most significant use of the term sovereignty for this analysis is the notion of Westphalian sovereignty, which entails “the exclusion of external actors from domestic authority configurations” (ibid) i.e. autonomy. Interventionist practices are generally seen to violate the non-intervention norm associated with Westphalian sovereignty, as well as international legal sovereignty. It is important to note that the various kinds of sovereignty can co-vary – “a state can have one but not the other” (Krasner 1999:4).

Krasner’s proposition that states can possess one form of sovereignty, but not necessarily others, is shared by Jackson (1990), specifically through his notions of positive and negative sovereignty. Negative sovereignty is defined as freedom from external interference (non-intervention) (1990:27). It is a formal legal condition, which can be bestowed onto a state by others (ibid). His categorisation of negative sovereignty resonates with Krasner’s Westphalian and international legal sovereignty. On the other hand, positive sovereignty describes the capabilities “which enable governments to be their own masters” (Jackson 1990:29). A positively sovereign government is one which has the capacity to provide political goods for those it claims to represent (ibid). A state may possess negative sovereignty, namely be recognised as sovereign, but lack the capability to provide goods for its citizens (see Somalia). Jackson argues that ex-colonial states have juridical independence (negative sovereignty) but possess only limited empirical statehood (positive sovereignty), leading him to label them ‘quasi-states’ (1990:21). This infers that some states can seemingly be more ‘sovereign’ than others. This hints at the existence of hierarchy in the international system, a theme which will be addressed below.

Both Krasner and Jackson suggest that sovereignty consists of both internal and external dimensions. Lake is even more forthcoming in his discussion of sovereignty arguing that it “possesses both an internal and external face” (2003:305). Internally, sovereignty defines the ultimate authority within a territory and entails a hierarchical relationship between the rulers and the ruled (ibid). Whereas externally; sovereignty involves the recognition of a state by others; implying a relationship of formal equality (ibid). The international system is deemed to be an anarchic arena as there is no higher authority (ibid). Lake (2003 & 2007) seeks to problematise the notion that relations between states are conducted on an equal footing. He argues that external sovereignty encompasses hierarchical (not just anarchical) relations.

The Westphalian Sovereign Ideal

The essay will now outline the conventional, ‘traditional’ conception of Westphalian sovereignty and the prerogatives that it grants its holder. The extent to which this ideal ever existed or was commonly agreed upon is certainly up for debate. The traditional tale of sovereignty is summarised neatly by Glanville, who suggests that it “is repeatedly told...that sovereignty was established sometime around the 17th century (at the Peace of Westphalia...) and, since that time, states have enjoyed ‘unfettered’ rights to self-government, non-intervention and freedom from interference in internal affairs” (2011:234). The sovereignty fairy tale holds that states, by virtue of being sovereign, enjoy the inviolable right to non-intervention, non-interference and self-government. Although, this ideal seemingly never existed; the discourse that it perpetuates is very significant. Without this ideal and the rights it supposedly grants to states, it would be impossible to discuss whether intervention violated sovereignty at all. Furthermore, this narrative also plays a significant role in entrenching the notion that states have a right to do as they please within their territories and to do so without interference.

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Debunking the Myth

It is possible to refute the Westphalia myth fairly easily. This essay will contest the myth on three grounds: firstly, the non-intervention norm did not originate at Westphalia; secondly, the myth has seemingly never matched reality due to frequent cases of intervention; and thirdly, sovereign power has never been truly unchecked. The norm of non-intervention often associated with the Peace of Westphalia was actually codified at a later date during the mid-eighteenth century (see Glanville 2011:236 and Krasner 1999:21). This undermines the rather dubious claim that “in the history of sovereignty one can skip three hundred years without omitting noteworthy change” (Philpot 1996:43). Philpot is here certainly guilty of perpetuating the Westphalian myth.

Moreover, the extent to which the ‘traditional’ conception of sovereignty, specifically the non-intervention aspect, existed in practice is debatable. But it is unlikely it ever truly operated in the international system. As Krasner notes “the principles associated within both Westphalian and international legal sovereignty have always been violated” (1999:24), seemingly suggesting that the Westphalian ideal never existed. The frequent violation of sovereignty norms leads Krasner to deem them ‘organized hypocrisy’ as they are widely understood but frequently compromised (Krasner 1999:25). This take on sovereignty appears fairly rigid and static because it treats sovereignty as a constant with fixed characteristics, thus discounting the notion that it can change. Therefore, for Krasner, sovereignty constitutes something that can be violated by greater intervention. Moreover, Glanville also refutes the myth on the basis that the reality of sovereignty never matched the ideal anyway. He argues that sovereign authority has always involved varied and evolving responsibilities since it was first espoused (2011:234). He rebuffs the idea that sovereignty was absolute and empowered states with unfettered rights to do as they saw fit, instead arguing that sovereign power has always been to a degree – checked.

The Nature of Sovereignty During the Cold War

This essay will now depict the nature of sovereignty during the Cold War in order to lay the groundwork for a comparison with its contemporary reimagining. During the Cold War; the non-intervention norm associated with the political and territorial integrity of states was heavily stressed (Glanville 2006:155). Indeed, a “firmly non-interventionist conception of sovereignty” prevailed (Glanville 2011:248). Although despite the preponderance of this norm during this period, intervention by both superpowers did occur

During this period, military intervention in the affairs of another state, regardless of the rationale that underpinned it, was regarded as a violation of the non-intervention norm. Wheeler and Morris cite three instances of intervention during the Cold War: India’s intervention in East Pakistan (1971); Tanzania’s in Uganda (1978) and Vietnam’s in Cambodia (then Kampuchea) (1979) that were seen to be violations of the non-intervention norm (1996:142). They argue that “the international community chose to condemn... [them] as breaches of the principles of non-intervention and non-use of force” (ibid). Although they issue a caveat that the international response was influenced by overarching Cold War imperatives (ibid). Each of these instances of intervention arose as a response to genocidal violence (ibid), but nevertheless was perceived as an infringement of the statist, non-intervention norm.

Due to space constraints it is not possible to engage comprehensively with each case, although notable aspects of them and the international response will be highlighted. It is noteworthy that each intervention was, by and large, justified on the grounds of self-defence, not humanitarianism (see Wheeler 2000). For example, claims by India to justify its intervention rested predominately on grounds of self-defence, in light of Pakistan’s ‘refugee’ and ‘military’ aggression (Wheeler 2000:65). The international reaction to the intervention was condemnatory: “the overwhelming reaction...was to affirm Pakistan’s right to sovereignty and the rule of non-intervention” (Wheeler 2000:58). This is characteristic of the take on sovereignty that prevailed during the Cold War. Pakistan’s right to sovereignty was viewed as infallible regardless of its conduct; and India’s intervention was therefore deemed to be a breach of its sovereignty. It will be demonstrated later in the essay that the nature of sovereignty has changed markedly since then.

Moreover, the reaction to the Vietnamese intervention in Cambodia also exhibits the strength of the idea that sovereignty was inviolable and sacrosanct. Vietnam’s intervention, regardless of potential ulterior motives, ousted a

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regime that killed perhaps as many as one sixth of its six million people (Arend & Beck 1993:121). In spite of this, several states at United Nations Security Council (UNSC) meetings: “held that Vietnam had illegally intervened in Kampuchean internal affairs” (Arend & Beck 1993:122). The argument that the intervention was illegal was predicated on the idea that Vietnam had infringed upon Cambodian sovereignty, and that Cambodia’s ability to enjoy its sovereign rights was impervious, regardless of what the Khmer Rouge regime was doing to its people. This argument invokes notions of absolute sovereignty, which maintains that sovereigns can act with relative impunity.

Humanitarian Intervention during the 1990s – A Conceptual Shift?

During the 1990s a flurry of interventions occurred which were predicated on a humanitarian rationale (Welsh 2004:2). Interventions which sought to protect civilians took place in Iraq, Somalia, Haiti and the Balkans (Wheeler 2004:29). These interventions were notable in several ways. For example, they were explicitly supported by humanitarian rationales, which represented a significant break with the Cold War period. Moreover, they were also noteworthy as they were authorised by the UNSC, which displayed increased activism during this time. The UNSC “extended its Chapter VII powers into matters that had previously belonged to the domestic jurisdiction of states” (ibid). This series of interventions suggested that the non-intervention norm which was preponderant during the Cold War – where any intervention seemingly amounted to a violation of sovereignty – was to an extent ceding to humanitarian concerns. Indeed, Wheeler asserts “that the traditional understanding of state sovereignty as a barrier to international intervention [was] robbed of its legitimacy during the 1990s” (2004:32).

Extra attention will be paid to the intervention in Northern Iraq in 1991, as it was arguably the first instance of humanitarian intervention during this period and because it is illustrative of two important trends. Firstly, it demonstrated that states could no longer necessarily expect to act with impunity towards their own populations without being rebuked, and secondly; that concerns over human rights could trump those over sovereignty. The intervention was launched in riposte to brutal government repression of Iraqi rebels and civilians following an uprising. This brutal repression led to large scale loss of life and subsequent mass refugee flows (Freedman & Boren 1992:43) which culminated in a humanitarian crisis. Media and political pressure mounted and the UNSC responded through Resolution 688 (Ramsbotham & Woodhouse 1996:70). ‘Operation Provide Comfort’ was launched in response by a Western coalition and entailed the delivery of vital supplies like food and blankets, the creation of a ‘no fly zone’, and the formulation of ‘safe havens’ (ibid). The creation of safe havens represented a particularly striking infringement of Iraqi sovereignty – as the core logic behind them was to essentially “establish western military authority over a substantial area of Iraq” (Freeman & Boren 1992:57).

In spite of the unique circumstances under which the intervention took place (in the aftermath of the Second Gulf War), it is noteworthy that the non-intervention norm (and Iraq’s sovereignty) was not construed as inviolable in this instance. This is in contrast with the East Pakistan case where the government’s repression of the Bengalis was essentially deemed to fall “within the domestic jurisdiction of Pakistan” (Wheeler 2000: 58), and therefore, India received international criticism for “tearing up the sovereignty rule book” (Evans 2008:24). The intervention in Northern Iraq, and the ones that followed, seemed to suggest that sovereignty was undergoing a degree of change. State-sponsored mass human rights abuse was no longer considered to be a strictly internal affair, which rendered the international community powerless, due to sovereignty norms. The new role of the UN as a legitimating agent and the intrusive nature of the Iraqi intervention itself seemed to suggest that the sovereignty rulebook was being revised – to echo the words of Evans.

The response of the international community to (some) instances of mass human rights violations during the 1990s demonstrated that state sovereignty was no longer sacrosanct and that leaders no longer had a free hand to act with impunity on their own territory. A new norm of military intervention for humanitarian purposes emerged which suggested that the apparent era of ‘sovereignty without responsibility’ – to borrow Glanville’s turn of phrase (2011:247) – was over. Sovereignty was no longer conceived of as an inherent right, and crucially, states that did claim this right had to recognise the accompanying responsibilities for protecting their citizens (Wheeler 2004:37).

Sovereignty as Responsibility

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Francis Deng's appointment as the UN Secretary General's Special Representative on internally displaced persons (IDPs) in 1993 served as a catalyst for the concept of sovereignty as responsibility (Bellamy 2009: 21). The concept arose in response to the complexities associated with the issue of IDPs. IDPs pose a dilemma because if civilians cross an international border, they can claim refugee status, but as IDPs they were afforded no extra protection and were vulnerable to the whims of their home state (Bellamy 2009:22). IDPs could be left "outside the reach of the international community because of the...approach to sovereignty as a barrier against international involvement" (Deng 2004:20). Deng's notion of sovereignty as responsibility was a method of circumventing the use of sovereignty to deny IDPs international assistance (Bellamy 2009:22).

The notion of sovereignty as responsibility recognises that "sovereignty carries with it responsibilities for the population" (Deng et al 1996:32) and that "a government that allows its citizens to suffer... cannot claim sovereignty in an effort to keep the outside world from stepping in" (Deng et al 1996:33). The concept has two aspects; firstly, it confers a responsibility on states to ensure "a certain level of protection for" and to provide for "the basic needs of the people" (Deng et al 1996:27). Additionally, it also confers a responsibility on the international community to offer assistance to those in need and to hold governments accountable for fulfilling their responsibility (Deng 2010:354). This understanding of sovereignty was novel as it conferred explicit responsibilities on both; states, and crucially the international community at large. The responsibility allocated to states challenges notions of absolute sovereignty. Moreover, it also confers a new responsibility on the international community to do something about situations where states fail in their responsibilities. This dramatically contrasts with traditional notions of sovereignty which merely impelled states to stay out of the affairs of others. The idea of sovereignty as responsibility is noteworthy as it served as an intellectual precursor to the RtoP norm which will now be discussed.

The ICISS and the RtoP

The notion that sovereignty entails responsibilities and not just rights was a theme central to the report of the International Commission on Intervention and State Sovereignty (ICISS) published in 2001. The crux of the report is that "sovereign states have a responsibility to protect their own citizens from avoidable catastrophe...but when they are unwilling or unable to do so, that responsibility must be borne out by the broader community of states" (ICISS 2001:VII). Clear parallels can be seen between the RtoP and the concept of sovereignty as responsibility. Both suggest that states have a responsibility towards their own citizens to provide basic protection and if states fail in this capacity then there is some license for the international community to act. The report sought to modify the language of the debate around humanitarian intervention, which had been framed in terms of the right to intervene, toward the responsibility to protect, and thereby place emphasis on the rights of the victims, not the interveners (Bellamy 2005:35).

For the ICISS, a "residual responsibility...lies with the broader community of states" and this "responsibility is activated when a particular state is clearly either unwilling or unable to fulfil its responsibility...or is ...the actual perpetrator of crimes or atrocities" (2001:17). The international community is envisioned as a guarantor or a back-up enforcer of basic rights. The report envisioned a range of coercive measures to resolve or contain situations of compelling need for human protection including political; economic; and judicial measures (2001:29). Additionally; in extreme cases, it also envisioned a role for the use of military force (ibid). Although, for the commission, military intervention for human protection purposes has to meet six criteria, those being: right authority; just cause; right intention; last resort; proportional means; and reasonable prospects (ICISS 2001:32).

Like its precursor; the RtoP styles sovereignty as a conditional concept, which its holder is only granted in its entirety upon the fulfilment of certain duties. As Bellamy notes: "only those states that...fulfil their sovereign responsibilities are entitled to the full panoply of sovereign rights" (2009:19). Therefore, "living up to the responsibilities of sovereignty becomes in effect the best guarantee of sovereignty" (Deng 2010:364). The right to non-intervention and non-interference in internal matters is not a given, it is contingent. This is far removed from sovereignty's formulation during the era of decolonization in the period after the Second World War where "sovereign statehood was...granted...regardless of the capacity of the state" (Glanville 2011:247). The apparent conditionality which underpins sovereignty's contemporary reformulation, led Zaum in his discussion of state-building to argue that notions of sovereignty as responsibility constitute a new standard of civilization[1], similar to those which prevailed in

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the nineteenth and early twentieth century (2007:40). Although this is certainly a powerful critique, perhaps it is worth living with if it will aid the prevention of future Rwanda's and Srebrenica's?

The UN and the RtoP – 'Rtop Lite'?

The RtoP principle was adopted by the UN following the 2005 World Summit (Bellamy & Drummond 2011:181). Although it is important to note that it was a different version than that proposed by the ICISS[2] (Bellamy 2008:622). The RtoP adopted by the UN[3] held that states have a responsibility to protect their populations from: genocide, war crimes, ethnic cleansing, and crimes against humanity (UN 2005:30). Moreover, it also says that the international community should help states exercise this responsibility and take action, at first peacefully, and if necessary more forcefully, when a state is 'manifestly failing' to protect their population from the four crimes (ibid). Bellamy and Drummond contend that the member states adopted the language of RtoP, but chose not to adopt the ICISS recommendations in a wholesale fashion, instead centring the new principle on the notion of sovereignty as responsibility (2011:183). The divergence between the ICISS RtoP and the UN's RtoP led to criticism from some quarters, as the UN version was perceived to be 'watered down' (see Byers 2005) or even 'RtoP lite'(see Weiss 2007:117).

However, despite the differences between both versions, the fact that the essence of the doctrine is retained by the UN version is perhaps the most important thing to note. The crux of the ICISS RtoP – that states have a responsibility towards their own population, and if they do not live up to it, the international community can assist them in doing so, or if necessary fulfil its obligations for them – is retained. This represents a very significant normative shift. During the Cold War era the supremacy of the non-intervention norm seemed to suggest that the only responsibility states really had was to stay out of each other's affairs. This is a far cry from today where states have recognised and made a commitment to the idea that they not only have responsibilities towards their own population; but potentially even to others as well.

How Can the Change be Accounted For?

This essay has so far sought to argue that the nature of sovereignty has changed by charting how its practice and understanding has evolved, with a stress on the post-Cold War period. But how did this change come about? The essay will now offer some tentative explanations.

The end of the Cold War and the demise of the Soviet Union arguably played the most significant role. During the Cold War era; "the normative tensions between principles of human rights and non-intervention were suppressed by bipolar tensions" (Glanville 2011:248). Additionally, "the superpowers were largely indifferent...to what happened inside the other block and were incapable...of doing much about atrocity crimes...because of the inevitable...Security Council veto" (Evans 2008:22). The end of the Cold War changed this. Following the break-up of the USSR, the UNSC was able to address this tension between human rights and non-intervention (ibid). It seemed to – in a way – liberate it, as evidenced by its increased activism during the 1990s. During this period it played a crucial role in legitimating instances of humanitarian intervention and thus contributed to the redefinition of sovereignty.

Moreover, the increased saliency of human rights norms during this period also played an important role. Ignatieff argues that "since the end of the Cold War, human rights [have] become the dominant moral vocabulary in foreign affairs" (2002) underscoring their increased prominence. It was increasingly appreciated that mass human rights abuse was a matter of international concern, not a mere domestic one, as demonstrated by the greater frequency of humanitarian intervention.

Conclusion

To conclude, greater instances of intervention demonstrate that the nature of sovereignty is changing. The fact that intervention has occurred with greater incidence since the end of the Cold War, and is increasingly permissible as a policy tool, underscores the notion that sovereignty has changed. The process of change seems to be on-going as the RtoP norm matures and is further utilised. This essay has contended that the nature of sovereignty has changed

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from one which vests states with certain rights, like the right to non-intervention, to one which grants them certain responsibilities – primarily towards its own population. The rise of humanitarian intervention during the 1990s supports this argument. Human rights violations perpetrated by governments were no longer perceived to be an internal matter, which the international community could do little about, due to the binds of sovereignty norms.

The notion that a state's sovereignty was sacrosanct and impervious, regardless of what it was doing to its people, lost all credibility. During the Cold War; military intervention within another state, regardless of its rationale, was deemed to be a violation of sovereignty. Interventions that did take place during this period, which arguably had grounds to be viewed as humanitarian, were construed as sovereignty violations. As Evans notes "the state of mind that...massive atrocity crimes such as those of the Cambodian killing fields were just not the rest of the world's business was dominant..." (2011:116). This perception changed during the 1990s when mass human rights abuse was deemed to be a matter of international concern, that in some instances warranted coercive military intervention. This change was underpinned by a growing recognition that states had a basic responsibility towards their own people, a principle at the very heart of notions of sovereignty as responsibility and the RtoP. The adoption of the RtoP by UN member states arguably demonstrates just how much sovereignty has changed. In 2005; states recognised, at least in principle, their responsibility towards their own people and also to those of other states as well.

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[1] The new 'standard of civilisation' theme has also been addressed by Donnelly 1998

[2] For an analysis of the differences see – Bellamy & Drummond 2011 and Bellamy 2006

[3] The UN's RtoP was built upon and given greater substance in the Secretary-General's 2009 report entitled 'Implementing the responsibility to protect'.

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