

The United Nations' Balance of Sovereignty and International Human Rights

The United Nations charter is a living document that is constantly reinterpreted with changing social and political ideologies. It is inherent in the Charter that an understanding of the struggle between state sovereignty and human rights exists and it is a mitigating factor when it comes to international intervention. Jack Donnelly sees the future of international human rights activity as a struggle that balances the competing claims of sovereignty and international human rights. N1 It is clear that the United Nations has a hand in both upholding state sovereignty and human rights, however the principles of sovereignty and international human rights in relation to the UN charter are not clearcut and the current ideology is most represented in recent and current UN missions. Starting in the 1990s, increases in conflict around the world that deny some of the most essential human rights, has empowered the UN to sacrifice the traditional Westphalian ideals of sovereignty and move towards a more open and liberal view, giving more time to focus on human rights. However, the debate on sovereignty and intervention still exists and I will attempt to discern the viewpoints of this debate and show a brief history of the most recent transformation of sovereignty ideology in the UN. I will also discuss how the UN Security Council, with its peacekeeping forces and other intervening missions, balances international human rights and state sovereignty. Finally I will discuss in detail the ten-year conflict in Sierra Leone and the UN involvement therein.

The Debate

Ideas about sovereignty change with the evolving social and political thought as well as with current events and it is when practices are not suitable for the current events that sovereignty is reevaluated. The 1648 Peace of Westphalia's view on sovereignty grants nations the authority to exercise a monopoly of power within their borders and implies that one nation cannot intervene

in the domestic affairs of another. N2 This view has been essentially the prevailing thought on State Sovereignty since its inception. However other definitions of sovereignty have evolved and they include Interdependence Sovereignty, Domestic Sovereignty and International Legal Sovereignty, which embrace a similar Westphalian definition. N3 This idea is that States are their own entity and do not have to answer to anyone higher regarding their territories.

While this is still the main view today, ideas about sovereignty are changing with regard to the responsibility states have to their citizens and the right of the international community to intervene when states do not uphold their citizens' basic human rights. The United Nations, at its creation, took on the initiative that it had a 'responsibility to protect' both morally and legally. When diplomatic measures fail, the UN through their Peace and Security force missions intervene. These missions represent the extremes the UN might face when balancing sovereignty and international human rights.

Article two, chapters six and seven of the UN charter (N4) defines the stipulations that frame UN intervention. The UN was careful to create a provision that was up for different interpretations, so for instance, today's idea of domestic jurisdiction, with civil unrest current throughout the world, is seen differently from back in the late 1940s when perhaps a stricter view on domestic jurisdiction prevailed. Kofi Annan, former Secretary-General of the United Nations addressed this idea of National Sovereignty and also reenforced a new Security Council mandate, he said, "National Sovereignty can be set aside if it stands in the way of the Security Council's overriding duty to preserve international peace and security." N5 Annan addressed this 'duty to preserve international peace and security' shortly before appointing a high-panel challenged to examine 'threats, challenges and change.' The final report addressed those issues while focusing "equally on the military and nonmilitary dimensions of collective security, turning first to the

"challenge of prevention," then to the use of force, and finally to institutional reform within the United Nations." N6 The new interpretations of the UN Charter emphasize the preamble's "We the Peoples of the United Nations," so that the UN can further justify its responsibility to all peoples of the world to uphold their human rights. He's not necessarily inferring to abolish state sovereignty, but rather to redefine its place in relation to other international laws.

Perhaps the debate, then, is not on the right of the United Nations to intervene, but on when and how the UN should intervene when human rights are being denied. The right to intervene can only be decided by the UN Security Council and is governed by chapters six and seven of the Charter. Practice has shown that in most UN missions, peacekeeping missions and other non confrontational missions are the only missions deployed. Paolini, et.al., expresses that, "A (non-peacekeeping) intervention ought to be undertaken only if the difference between the two sides, on the merits, is great and is of broad and legitimate international concern or the fighting is literally a threat to peace in the sense of Chapter VII of the Charter of the United Nations." N7 These types of stipulations placed on the UN Security Council keep it from acting in the most effective way. However, this poor performance with non-confrontational missions comes from the duty to respect State Sovereignty as well as to protect. The Security Council is fraught with the issue on how to intervene in the way that best resolves the crises and respects the UN Charter. N8 In addition to Chapters six and seven, there are three pieces of framework that the Security Council uses to decide on whether it will intervene. These include: Just Cause, Precautionary Principles and Right Authority. Just Cause is necessary in order to make sure there is no self-interest in the cause. Precautionary Principles include: Reasonable chance for success, exit-strategy, force as last resort, focused intervention, and right intention. These principles format a justification for intervention and define the type of intervention that will be undertaken.

Right Authority refers to who is intervening and whether it is respectable or not. The United Nations will tend not to support unilateral authority. Multi-lateral and regional are preferred. Because it keeps states from intervening for their own self-interest. N9

The United Nations has a duty to both protect the rights of people and the sovereignty of States. Disrespect of either, may lead to failure of the United Nations as an organization or contempt throughout the nations. Balancing human rights and sovereignty is wrought with many obstacles that the UN has both failed and succeeded in. Through these successes and failures, however, State Sovereignty and human rights become more defined and present in the world and therefore creates a standard body of precedents that the UN can look to in order to promote human rights throughout the world.

The UN and Human Rights Missions

Rwanda represents one of the United Nations and the world's biggest failures in human rights intervention. Hesitation and denial were prevalent themes throughout this highly charged, fast paced degradation of human rights in Rwanda from April 2004 to July 2004. The UN failed to act quickly and when it did act, it acted insufficiently. Hesitation on the UN Security Council's part on whether to intervene and in what way served to ultimately decimate the population of Rwanda. N10

Rwanda is the worst-case scenario when it comes to the balancing of sovereignty and human rights within the UN. The UN held off on Rwanda for so long, because of the simple definition of genocide that the UN was unwilling to use, because calling Rwanda a genocide would legally hold them accountable. Though many factors played into the United Nations' decision to abstain from intervening in Rwanda, the overarching factor for keeping the UN out,

was the definition of genocide. If there was no genocide then legally the UN, under the Charter, did not need to go in.

The United Nations' next big mission was in Sierra Leone. Following the Rwanda crisis, the United Nations stepped it up with Sierra Leone, having it critically acclaimed as a successful mission. This represents the trial and error existence of the UN Security Council actions as well as the evolution of sovereignty under chapter VI and VII. I will go into further detail about the UN in Sierra Leone in the following section. With the success of Sierra Leone, it is easy to say that the UN has dealt with some of its issues on sovereignty and intervention and perhaps has come to a set precedent on dealing with these crises. But, however, each case is different, and the problems in the Darfur region of Sudan and the recent and overdue July 2007 intervention by the UN proves that there is no strict guidelines and human rights abuses, sovereignty and intervention are things that the UN constantly struggles with.

A Case Study: Sierra Leone

Sierra Leone, as I mentioned earlier is the most successful United Nations intervention to stop human rights abuses and shows the power and capabilities of the United Nations to act in a timely manner to right the wrongs and initiate peace.

The Sierra Leone ten-year civil war represented some of the most grievous human rights abuses of recent time. The main rebel group, the Revolutionary United Front (RUF), supported by former Liberian President, Charles Taylor, instigated the civil war when it invaded eastern Sierra Leone in 1991. A largely political war, rather than ethnic war, the RUF did not distinguish between victims. Civilians, children, men, women and peoples of all ages were the targets. The RUF as well as the government forces fighting against the RUF used child soldiers. Amputations and extermination were part of the RUF's everyday campaigns. The rebels were driven by

personal enrichment rather than by a political goal or ideology. By the mid 1990s, the RUF controlled the diamond mining areas in the east and with that control they fuelled their revolt with the diamonds, commonly known as conflict or blood diamonds.

The United Nations became involved in Sierra Leone when the signing of the Abidjan Accord, including a ceasefire, took place in late November 1996. The government of Sierra Leone asked the United Nations to come in and help keep the peace. At this time only a few UN officials were dispatched to observe. The UN imposed an oil and arms embargo on Sierra Leone from October 8, 1997-March 10, 1998, but failed to invest more personnel until July 1998 when the UN created the United Nations Mission in Sierra Leone (UNOMSIL). Still, only a few hundred were deployed under the UN auspices but were unarmed. At this time again, the UN placed another arms embargo on the RUF.

The signing of the Lomé Agreements in May 1999 was the turning point for the UN's policy in Sierra Leone. Before Lomé the UN had limited involvement. Later that year in October 1999, the United Nations Mission in Sierra Leone (UNAMSIL) replaced UNOMSIL, and the UN forces snowballed from 1999 until the civil war ended with the 2002 elections. What could have been a major factor in the war was in May 2000 when several hundred UN peacekeepers were taken hostage and killed by the RUF. The UN could have easily pulled out like they did in Rwanda when ten Belgian peacekeepers were killed, but the UN learned a lesson and stayed in there, making the situation less of a mitigating factor in the UN intervention than it could have been.

The United Nations choice to intervene in Sierra Leone so quickly and with so much force, was likely in response to the horrible failure in Rwanda. Sierra Leone did not see too much international attention, which makes it seem that the UN was simply learning from old mistakes.

UNAMSIL stayed in Sierra Leone until the end of its mandate in December of 2005, and was succeeded by the United Nations Integrated Office for Sierra Leone (UNIOSIL), which largely observes.

The major triumphs of the United Nations with the Sierra Leone conflict were the speed, collaboration with other governing/peacekeeping bodies and the initiatives outside of the mission in Sierra Leone. The UN did not hesitate to send in more troops when the rebels took over Freetown. Not just once, but twice. A huge improvement from Rwanda, where troops continued to decline as problems became greater. The United Nations decided to work with peacekeeping bodies that did use force, including Economic Community of West African States Monitoring Group (ECOMOG) and forces from Britain. Although these groups weren't under the purview of the United Nations, the United Nations viewed them as a necessary element in pushing the RUF out of Freetown and disarming them. The initiatives outside of Sierra Leone included the oil and arms embargo, which served to stave off the RUF insurgencies, and the brokering of the Kimberly Process in Ottawa, Canada, by the world community. The Kimberly Process stopped conflict diamonds from getting into the global market, and with diamonds being the main source of funding for the RUF, the Kimberly Process slowed the rebels' progression.

Another of the main triumphs that I have yet to refer to came after the war. The Special Court for Sierra Leone (SCSL) served to prosecute "those who bear greatest responsibility" for crimes committed in Sierra Leone from November 1996 when the Abidjan Agreements were signed until the 2002 elections. N11 The government of Sierra Leone asked the UN to help with the prosecutions, while the government mainly worked on a Truth and Reconciliation Commission with little government input. The major human rights crimes of the civil war included, amputations, child soldiers, extermination, and sex crimes, however with the signing of

the Lomé Agreements, amnesty was given to the smaller individual crimes, and only the high officials were exempt from this amnesty. About twenty individuals will be prosecuted in the Hague with the SCSL.

The SCSL has primacy over the national courts and does not share information with the government's TRC. This has mixed reception because on the one hand, people won't testify before the TRC if they could possibly be prosecuted for it, but on the other hand, as Elizabeth Evenson says "both institutions operate to provide a measure of truth; if these truths conflict in the end, it is unclear what contribution either will have made to the process of transitional justice." N12 The UN also did something different with the courts in that it has a Juvenile chamber where kids would be specified as both victims and defendants.

Also, for the first time in June 2004, there was an exchange between SCSL, ICTY and ICC judges on procedural and substantive matter, including courtroom and case management, elements of crimes, theories of liability, and witness issues. N13 The overall response to the SCSL is positive and according to Human Rights Watch, "In a meeting of civil society groups in March 2004, a representative stated, 'We believe that the SCSL is helping change the views and perceptions of justice in Sierra Leone society in a good, healthy way.'" N14

The situation in Sierra Leone involving the United Nations largely serves to reconcile the two principles of sovereignty and human rights through its quick turnaround from the Rwanda conflict. Whether this is a complete principle turn around, or just luck, it shows an understanding on the part of the United Nations that the Rwanda effort, although legally acceptable, was not handled in the best legally acceptable way it should have been. The flexibility of these two concepts is one that the United Nations is still testing, as seen in the current Darfur conflict, and seems to fluctuate with new each case.

As I have said, the Sierra Leone conflict is one of the best examples of model peacekeeping to date, however there are some things that I would suggest for improvement, regarding Sierra Leone as well as across the spectrum of UN interventions. First, more funding should be allocated to Sierra Leone for the SCSL and national government's TRC. With a lack of funding, it could lead to inefficiency in rendering decisions and unreliable records. The fighting may be over, but if not enough attention and resources are placed on reconciling the nation, there's a very real chance that conflict could happen again in the near future. Also regarding the SCSL, I suggest that efficiency should be key, it took a long time for the appointments of the judges to be handed out, and that only served to slow down justice. Another suggestions would be to hold lesser human rights criminals accountable. Although the Lomé Agreements gave these people amnesty in exchange for a ceasefire, I still find it important to hold these people accountable. The TRC is one way of holding these people socially accountable, but only if the perpetrator comes forward. Perhaps a way of holding these criminals accountable is to sentence them to community service and have the Lomé Agreements' amnesty, represent amnesties from harsher sentences. The most important thing that can be done in Sierra Leone is for the UN to stay in there and insure peace as well as encouraging economic and infrastructure development.

Across the spectrum of UN intervention I believe it is important to create a consistent record of how one could expect the UN to react to human rights abuses. And although the UN moved quicker than usual in Sierra Leone, increased diplomatic measures should be taken earlier on in the conflicts, rather than waiting for them to explode, and so that the UN must immediately resort to peacekeeping forces.

The United Nations' action in Sierra Leone is the action that I would like to see on a continuous basis with the UN. It represents an understanding of the need for international human

rights interventions at the most liberal use of chapters VI and VII of the UN Charter, but also with those chapters, represents a balance of sovereignty.

Endnotes

N1 Donnelly p.29

N2 Volcansek p.13

N3 Volcansek p.13-14

-Interdependence sovereignty: focuses less on authority and more on control, in particular the ability of a nation to control its borders.

-Domestic Sovereignty: captures the more historical role of nation-states to control behavior within their territorial confines.

-International Legal Sovereignty: is the diplomatic term for sovereignty that is based on mutual recognition and carries with it expectations that, among other things, diplomatic immunity will be respected and that state actions are not challenged in courts of another country.

N4

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

N5 Annan p.5

N6 Slaughter 619

N7 Paolini, et. al., p.65

N8 Paolini, et. al., p.103

N9 Von Stein lecture Nov. 1, 2007

N10 Barker

N11 Williamson, p. 4

N12 Evenson, p. 12

N13 HRW 2004, p.17-18

N14 HRW 2004, p. 37

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