

Research Article

The Transformation of Sovereignty After the NATO Intervention: From Humanitarian Intervention to the 'Responsibility to Protect'

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NATO's intervention in former Yugoslavia had a profound impact on the principle of sovereignty in International Relations. It challenged the conventional understanding of sovereignty as the absolute right of a state to exercise its internal authority without external interference from other states or the international community. The debate in international relations sparked by NATO's intervention shifted from the right of states to intervene to the international community's responsibility to protect civilians from ethnic cleansing and mass atrocities in any given state.

The humanitarian intervention in Kosovo served as a turning point in this regard. Despite lacking a legal basis in international law—a clear mandate from the UN Security Council—it was proven to be entirely legitimate because the situation in Kosovo had escalated into a genuine humanitarian crisis, with the threat of genocide evident. Furthermore, this case spurred debate in international law, particularly in affirming the responsibility to protect and redefining the limitations of non-intervention when a state fails to protect its citizens.

With the adoption of UN Security Council Resolution 1973 authorizing humanitarian intervention in Libya, the international community solidified this affirmative development that had begun with NATO's intervention. This marked a paradigmatic shift, as it not only challenged the constraints imposed by the principle of non-intervention in internal affairs but also created the preconditions for the establishment of the principle known as the “responsibility to protect.” Moreover, it strengthened stability, peace, and the respect for human rights in the region and beyond.

1. Sovereignty as a concept and principle in International Relations

After NATO's military intervention against the former Yugoslavia, the notion of sovereignty underwent fundamental changes, challenging its conventional meaning in many dimensions.

Thus, in the traditional sense, sovereignty means the exclusive right of the state to have control and establish authority within its borders. According to this understanding, the security of citizens within the territory and the representation of their interests outside it can only be done by a sovereign state. International relations are based on the principle of state sovereignty.

Thus, external sovereignty also depends on recognition by other states, as one of the basic attributes of citizenship, based on the Declaration of Montevideo from 1933. Therefore, sovereignty is defined in this way; "(...) as an acceptance by internal and external actors that the state has exclusive authority to intervene even by force in the activities and issues within its territory."^[1]

Sovereignty as an essential principle of citizenship and a central theme in law and international relations have been the subject of many scientific works since the time of the philosopher Jean Bodin (1529-1596), who elaborated sovereignty as absolute and inalienable authority, where the monarch had unlimited power and was untouched by anyone, not even by the people. Since that time, such a concept of sovereignty has evolved quite a lot and has been significantly exceeded, both in its application within states and in the practice of international law. Referring to the traditional concept of sovereignty, the rules for recognizing entities as independent states as international subjects also apply. Among the basic principles are that of legal equality between states as well as the principle of non-interference of a state in the internal affairs of another state. According to the well-known author on sovereignty Stephen Krasner, he lists four types of sovereignty.

- "Sovereignty under international law,
- Westphalian sovereignty, which is based on the principle of territoriality and external non-interference in internal affairs,
- Internal or local sovereignty which refers to the formal organization of political authority within the state, and the ability of authorities to exercise effective control within their own jurisdiction.
- Interdependent sovereignty that refers to the ability of the state to regulate relations and conditions in the global plan in different aspects" (Krasner, 2001:15ff.).

But sovereignty is a dynamic concept, which has evolved over time and political and social circumstances, thus constantly changing its meaning. In this context, Roland Paris describes this transformation in this way, where the first wave was with the American and French revolutions of which the freedom and equality of citizens were the main postulates, passing until the period after the First World War when the principle of self-determination entered that enabled some states in Europe to form a state until after the Second World War, when this principle was universalized within the framework of decolonization processes and spread worldwide. As well as the period after the Cold War where the principle of free elections and liberal democracy has become norms and standards of international legitimation^[2]. Despite the fact that sovereignty has undergone changes over time, the essential meaning remains as the highest authority within a given territory. Its importance lies in the fact that since its existence, sovereignty has been and remains the defining principle in relations between states and can be considered as the basis of maintaining international peace and security. Of course, the authority of states is not only based on coercive force and power as necessary means of extending and maintaining authority, they must also be accepted and supported as such by citizens and other states.

2. Resolutions of the UNSC for Kosovo

Following the efforts of the international community to prevent the bloody conflict, and find a solution to the Kosovo issue, there were also the resolutions of the Security Council of the United Nations Organization. The increasingly aggravated situation at that time in Kosovo was the subject of numerous Security Council resolutions, up to UN Security Council Resolution 1244 (1999), which approves the presence of an international civilian and military mission.

Thus, on 31.03.1998, the Security Council adopted resolution 1160, which condemned the armed attacks of the KLA as well as the Serbian police actions against civilians, and invited the parties to stop the violence immediately. Placing an arms embargo on Yugoslavia as well as warning that it could act under Article 7 of the UN Charter, on the basis of which it could carry out military intervention to stop the conflict^[3].

As a result of painstaking negotiations, as well as with the consent of the Russian Federation, the Security Council managed to adopt Resolution 1199 on September 23, 1998. In this resolution, the Security Council again strongly condemned the excessive use of violence by the Serbian security forces and the army Yugoslavia, which was exercised mainly on the civilian population and cost the lives of many citizens. However, its special importance was that the Security Council in Resolution 1199 clearly stated that “ *the deterioration of the situation in Kosovo (Federal Republic of Yugoslavia) poses a threat to peace and security in the region* ”^[4]. In order to adhere to UN Resolution 1199, NATO first issued a warning to the FRY on September 24, 1998, demanding an immediate cessation of all violent actions. In this context, NATO member states decided to issue an activation-warning (ACTEARN), which included the possibility of limited manoeuvres by the air force. Due to the violence of the Serbian forces and further massacres against the Albanian population, the NATO countries decided to increase the pressure with the activation order (AKTORD). With the activation order issued; NATO prepared for an eventual military attack. As a result of this, diplomatic efforts to find a peaceful solution were simultaneously increased. Meanwhile, US special envoy Richard Holbrooke was traveling to Belgrade to negotiate a cease-fire agreement with Milošević, according to which Yugoslav forces would cease operations, most police forces would be withdrawn immediately, and refugees would return to their homes. Thus, on October 13, the so-called Holbrook -Milošević agreement was reached, which included the stationing of 2,000 unarmed observers of the OSCE as well as the flights of unarmed NATO aircraft in the airspace over Kosovo. On October 24, 1998, the Security Council adopted resolution 1203, with which the OSCE Verification Mission in Kosovo (OSV) received its mandate^[5].

All these resolutions, i.e. resolutions 1160^[6], 1199^[7] and 1203 (October 24, 1998) were drawn up within the framework of the UN Charter, calling on the parties for a peaceful resolution of the conflict in Kosovo. In this case, the parties to the conflict was called upon to find a political solution acceptable to all. The UN Security Council described the situation in Kosovo as a threat to peace and security, but without authorizing the announcement of coercive measures and military intervention. However, the UN Security Council was prepared to consider taking further measures if other diplomatic and peaceful means failed. The UN Security Council finally passes resolution 1244 which approves the presence of a civil and military mission, thus opening the way for international administration in Kosovo. The presence of a powerful international force seemed necessary after all the experiences with the numerous violations of the agreement and the brutality of the Serbian side. Otherwise, neither the UN resolutions nor the OSCE and its verification mission were able to prevent the crimes committed by the Serbian forces, as the massacre in the village of Recak clearly proved. However, these were additional evidence for the need, as well as the premise for the creation of public opinion and political will that decided to stop further crimes of Serbia in Kosovo through humanitarian intervention.

3. Intervention as a guardian of human rights

What is humanitarian intervention and/or what is humanitarian about it? Intervention in the narrow sense of the word is a violent intervention in the affairs of another state against the will of the government of that state or at least of a significant

part of it. While humanitarian intervention refers to military intervention by states, alliances of states or international organizations in an armed conflict in a state to protect the lives of innocent people and avoid eventual genocide. Intervention can be considered humanitarian if its purpose is to prevent serious and systematic violations of human rights and crimes committed by the attacked state against citizens or against any minority under the power of the same state. This means that humanitarian intervention is opposed to the deportation, ill-treatment and killing of significant numbers of people under the pretext of exercising state authority or internal state affairs. "No country can admit that it is waging an aggressive war and then defend its actions. However, we understand the term 'intervention' differently; it is not defined as a criminal act, and although the practice threatens the independence of the states subject to occupation, it is sometimes possible to justify it. But it is more important to emphasize from the beginning that legitimation is always necessary"^[8].

Michael Walzer, who is one of the most prominent philosophers who treats humanitarian intervention from the principle of 'just war'. He considered that humanitarian intervention, even with military means, is justified only when the level of human rights violations within the state reaches such an extent that it shocks the conscience of all humanity. In this context, since the mid-1990s with the 'ethnic cleansing', genocide and war crimes in the former Yugoslavia and other conflicts, there has been a heated debate about whether the international community should intervene militarily in a state if an ethnic group is threatened by the state apparatus and if there is a systematic violation of human rights and a risk of crimes against humanity. In the debate on humanitarian intervention, there are basically two basic positions: one position considers military intervention in the internal affairs of a state as a violation of the principle of sovereignty and therefore of international law, while on the other hand there is the position that in emergency situations and with the risk of genocide, the international community is responsible for intervening with the military to save human lives, therefore the intervention is morally necessary and politically legitimate. Despite these dilemmas, the 1990s are considered by many researchers as the decade of humanitarian interventions^[9].

Based on this dilemma, former UN Secretary General Kofi Annan, posed the basic question of whether the international community should intervene in a state to end gross and systematic violations of human rights. He himself took the affirmative position that the international community must create valid legal norms to protect human rights within the framework of international law and create globally valid norms of action that can prevent serious violations of human rights. The Security Council must take on the task of a 'global parliament' and act on behalf of the international community, where not only the interests of individual states must be represented, but above all the collective will and human rights must be protected. Thus former UN Secretary General Annan^[10] described this new role of the UN as follows: "Our job is to intervene: to prevent conflict where we can, to put a stop to it has broken out, or- when neither of things is possible - at least to contain it and prevent it from spreading"

In general, Resolution 688 of April 5, 1991, for the protection of the persecuted Kurds in northern Iraq, is considered as the beginning of an era of humanitarian intervention within the framework of the UN. This resolution identified a threat to peace and human rights violations, but argued this with the international dimension of a refugee problem that could turn into a threat to neighboring states. The resolution led to the establishment of no-fly zones in northern and southern Iraq, which were secured by allied forces to enable humanitarian aid. In the case of Somalia, with Resolution 794 of December 3, 1992, the serious violation of human rights that resulted in a deep humanitarian crisis was for the first time described by the UN explicitly as a direct threat to peace. and international security. The Security Council more or less followed this

interpretation in subsequent resolutions on Haiti, Rwanda and Bosnia and Herzegovina. However, as seen in the case of Kosovo, the UN was limited to decide on humanitarian interventions. Although the UN Security Council had described the situation in Kosovo as a threat to peace in Resolution 1199 of September 23, 1998, it was unable to approve a mandate for military intervention due to the stance of Russia and China. This is the reason why NATO, which was already involved in the region and in Bosnia-Herzegovina, was ready to carry out military intervention to protect the population in Kosovo. She referred to Resolutions 1160 and 1199 of the UN Security Council already approved for the conflict in Kosovo. It should also be emphasized that the NATO attacks, apart from humanitarian motives, were aimed at avoiding the expansion of the conflict in the troubled Balkans.

The UN Charter recognizes the sovereignty and territorial integrity of member states; however, if a violation or threat to international peace is determined by the Security Council, it may authorize the use of force under Chapter VII of the charter. According to this chapter, only the UN Security Council is authorized to take relevant decisions and measures. However, this concept has proven not to be easily feasible in practice, because the Security Council has in many cases been paralyzed in its decision-making, due to the right of veto and conflicts of interests among its permanent members. The adoption of Security Council Resolution 1973 on March 17, 2011, which authorizes humanitarian intervention in Libya, represents a landmark and paradigmatic turning point in the history of international efforts to protect civilians from mass killings and persecution.

4. The 'responsibility to protect' as a re-conceptualization of sovereignty

According to a moral perspective of human rights, if a person possesses these rights, then this implies that other persons have a moral obligation to protect their rights from them endangerment or violation by other persons. Consequently, states must also act according to this logic, that is, not only do they respect the rights of their citizens, but they also have the responsibility to protect them even in those states that do not respect these rights. NATO's military intervention against the former Yugoslavia, namely in Kosovo, happened without any decisive mandate from the Security Council, and in this way, I can interpret that it was an intervention in the internal affairs of a state and was considered a violation of the sovereignty of his. However, the international community justified the intervention on the basis of humanitarian necessity and the protection of human rights, emphasizing that all diplomatic possibilities had been extended to find a peaceful solution to the conflict and a series of resolutions had been adopted inviting the Serbian side for restraint and de-escalation. Including here the resolutions adopted by the UN, such as resolutions 1160, 1199 and 1203 which are all based on Chapter VII of the UN Charter. However, it was veto-wielding Russia and China that rejected another resolution authorizing the use of force against the former Yugoslavia. Meanwhile, NATO's military action was justified by invoking Resolution 1199 and referring to Chapter VII of the UN Charter. As a result of this argument, the NATO attacks were not contrary to the spirit of the UN, which foresees the possibility of intervention. In addition, Chapter VIII, Article 52 of the UN Charter provides the legal framework for regional agreements and their operation to maintain international peace and security.

The sovereignty of the state, as it is known since the "Peace of Westphalia", has changed radically, especially during these last two or three decades. After humanitarian crises and conflicts such as those in Rwanda and Somalia, an independent and international commission was formed, which presented its report 'Responsibility to protect' in December 2001^[11]. The

report emphasized that sovereignty should not be understood more like control or absolute sovereignty, but like responsibility. This means that the protection of citizens and human rights is not only a matter of each state, but an obligation related to international norms and criteria.

Therefore, the concept of sovereignty has changed "(...) from *sovereignty as control* to *sovereignty as responsibility* in both internal functions and external duties". According to the 'responsibility to protect' doctrine, sovereignty no longer protects states from foreign interference, because they are responsible and held as such for the welfare of citizens. The state therefore, has the responsibility to protect its citizens and is obliged to respect their human rights. If the state fails to fulfil this duty, the report recommends that the international community should come to the rescue and undertake the protection of the threatened population. The actions of the international community must be developed in three dimensions. "The substance of the responsibility to protect is the provision of life-support protection and assistance to populations at risk. This responsibility has three integral and essential components: not just the responsibility to react to an actual or apprehended human catastrophe, but the responsibility to prevent it, and the responsibility to rebuild after the event."^[11] Thus, it is worth emphasizing that the growing tendency of the international community to intervene in crisis situations and to establish clear criteria for the protection of human rights considers, among other things, the issue of security. Meanwhile, NATO's intervention and the rescue of the civilian population in Kosovo by Serbian military and paramilitary forces from ethnic extermination and genocide, as well as the immediate and massive return of refugees have served as a proper example of the need for the international community to put the principle of human rights before the principle of sovereignty and non-interference in the internal affairs of the state. The concept of human rights essentially has an interventionist character: human rights also apply within the family, the state must, for example, take measures against violence between spouses or abuse of children by their parents. The same principle generally, applies to international relations. States are legitimate if they express the will of their citizens and are thus based on the principle of popular sovereignty as a responsibility and not only as an internal matter and indisputable right.

5. Conclusion

Many political and academic questions and discussions have been raised regarding NATO's intervention and international administration in Kosovo. In general, the case of Kosovo has been of great importance in rethinking the concept as well as regulating the principle of sovereignty in International Relations. Since that time, the case study of Kosovo has often served to argue the importance of the engagement of the international community in the heart of conflicts as well as in ensuring peace in the world. After NATO's intervention, brutal and murderous regimes could no longer freely claim 'territorial integrity' or the right to regulate 'internal affairs' when they systematically violated human rights. When a state abuses its sovereignty to "ethnically cleanse" or to force a minority to migrate, it cannot be justified so easily without consequences in the new world order, created after NATO's intervention. The war crimes in Kosovo were not an 'internal issue' of Yugoslavia or Serbia, this has been sealed by the new principle of sovereignty on which NATO's humanitarian intervention was carried out. Meanwhile, the International Court of Justice has decided that genocide violates the fundamental principle of justice for which all states have a legal interest to protect. The greatest contribution to NATO's humanitarian intervention in International Relations was not only in the re- conceptualization of sovereignty but also in shifting the focus of the debate from the right to intervene to the responsibility to protect for the international community.

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