

The Evolution of “State Sovereignty” under International Institutions Led to Less Use of Force and More Efficient Dispute Settlement

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Abstract: The continuous amelioration of the principle of state sovereignty by international law and through international institutions has reduced states' use of military force since the Peace of Westphalia. This paper will focus on why and how the evolution of is “state sovereignty” contributes to the maintenance of peace and security around the globe. The first part will discuss why states respect and comply with the principle of equal sovereignty under the United Nations Charter. The second part reviews the amelioration of the right of self-defense and how it is significant in constraining aggressions. The third part will examine how the affirmation of independence and sovereignty helps resist colonial ideas and behaviors. Lastly, some challenges and controversies on the principle of sovereignty will be brought up and discussed.

Keywords: The Principle of Equal Sovereignty, the United Nations, the right of self-defense, autonomous right

1. Introduction

The 1648 Peace of Westphalia is a milestone that plays an irreplaceable role in forming the principle of sovereignty in the modern international law system. The League of Nations Covenant, born after the first World War, further confirms the concept of state sovereignty with the opposition to using force. However, it was not until the United Nations that the principle of equality was integrated into the principle of sovereignty in law to confirm the basic attributes of countries and promote peaceful international interaction.

Based on historical context and the conflicting views of past scholars, I hope to form a relatively accurate evaluation of the principle of state sovereignty under the changing international institutional context.

2. The Principle of Sovereign Equality of States

From the Treaty of Westphalia to the United Nations, the increased number of participants boosted their principles' effectiveness and binding force. Although in the face of many critical voices, the United Nations has gained unprecedented international support and played an irreplaceable role in protecting international peace and security. The relative success of the United Nations stems in large part from the integration of the two different but closely related principles: sovereignty and

equality.

In comparison, the League of Nations does not affirm the equality of states in either law or practice. Article 10 of the League of Nations Covenant only requires its members to “respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the league” [1]. In practice, the imperialist ideology reserved from the League’s establishment has seriously hindered the realization and affirmation of the equality of states. Scholars describe the League as “a growing instrument of political and economic internationalism” [2]. The conflict between states’ interests——German’s “inflam[ing] imperialism” and “Italian[‘s] resentment against the insufficiency of her share of the lands disposed of under the Treaties”——combining with “the conscious and avowed Imperialism of Japan” and disturbance in India had led the League towards failure [2]. The United Nations avoids this. The UN Charter solemnly proclaims that “The Organization is based on the principle of the sovereign equality of all its members” [3]. Article 78 reaffirmed that the relationship among members “shall be based on respect for the principle of sovereign equality” [3]. UN makes the notion of equality with other countries one of the basic attributes of a sovereign state and a behavioral regularity generated by a commonly shared understanding.

Small countries can enjoy the benefit of having equal status with large countries in law. But why do the ones with great power pay attention to and even respect the principle of sovereignty and equality of states? Next, I will discuss how the growing consensus and affirmation of the principle of sovereignty equality in the international community has changed the basic motivation of national foreign policy and the behavior of the great powers.

3. The Relationship between Sovereignty and National Interests

The principle of state sovereignty does not only constitutionally protect the right of governments to handle domestic affairs exclusively, but also potentially enables them to handle these affairs more conveniently under the support of the people. Among the many rights contained in the concept of “sovereignty”, domestic or legal sovereignty establishes states as the sole repository of sovereign authority and with the privilege of having jurisdiction over their nationals and affairs within its territory [4]. Governments enjoy this supreme domestic power. Moreover, JDB Miller put forward the view that it is easier for sovereign states to use nationalistic symbols and sentiments than imperialism.

But this still cannot fully answer the question: Why do states with great powers care? Small countries are more urged for an international law system to protect their government's jurisdiction over domestic affairs than the powerful ones because they were the ones that were oppressed back in the period of imperialism. In addition to the two reasons that were just mentioned, what makes larger countries actively or passively respect the sovereignty of other countries?

First, the principle of sovereignty equality provides an effective framework for diplomatic intercourse and promotes international cooperation. Sovereignty brings “convenience.” It is much easier to negotiate under the same diplomatic framework than to treat states with inequality. Moreover, only a sovereign state can participate in an alliance or association with others (a colony will be under the control of imperial power.) Small states can also contribute to solving global problems and have the potential ability to “make lucrative arrangements” [5].

Second, most states generate a sense of obligation from active or tactic agreements, creating an international norm that implicitly binds the great powers. The past assumption was based on imperialism and colonialism that conquering small countries, or regions, is only a matter of partition and fighting between the great powers, and small states were treated as prey. This assumption has given way to the assumption that “great powers must find a good reason for interfering in other states' affairs,” and “interference has become harder to justify” [5]. Although it is impossible to

completely stop states from infringing other states' sovereignty, the current norm makes the states realize that malicious interference can get them into trouble.

From rationalists' perspective, states' compliance is a matter of "rational calculation" of national interest. From the constructivists' view, states' compliance is generated from the "normative power of rules" [6]. The theories coexist in practice to explain why states respect the sovereignty of another. Powerful states, from rational calculations, find out that they can be in problems if they try to force their will on smaller states, and the reason they might get into problems is that the principle of sovereignty equality is already developed as a universal norm and integrated into domestic laws. However, when incentives are strong enough for states to violate the consensus, will the principle of sovereignty equality lose its effectiveness? In other words, what can states do when others infringe on their sovereignty?

4. The Right of Self-defense Constrains Aggression and Provides Legitimate Means to Resist Aggression.

From the Peace of Westphalia to today, the establishment of the right of self-defense has been drastically improved and developed, which not only provides means for countries to resist aggressions but also effectively reduces states from conducting malicious armed attacks. The right to self-defense is based on the prerequisite of independence, sovereignty and autonomy. Although with no explicit provision or interpretation of the right to self-defense, the Westphalia Treaty affirmed states' autonomy with the right of "making or interpreting Laws, declaring Wars, imposing Taxes, levying or quartering Soldiers, erecting new Fortifications in the Territories of the States, or reinforcing the old Garrisons" [7]. From levying or quartering soldiers to reinforcing the old Garrisons, these are all actions for protection. The treaty, for the first time in history, brought up the idea that states, not only empires, can defend themselves by taking certain measures, paving the way for future establishments.

Nowadays, the amelioration of the specific procedure for states to self-defense has enabled them to legally and more effectively resist aggression. Let alone that the formation of international norms and awareness has reduced vicious actions such as aggression and conquering. Even if such acts occur, today's international law under international institutions can provide more active solutions.

During the first Gulf War on August 6, the Security Council made resolution 661 which empowers Kuwait to exercise its natural right of individual or collective self-defense [8]. Considering the Russian invasion of Ukraine, it is certain that Ukraine can exercise its natural right of individual or collective self-defense provided by Article 51 of the Charter. Unfortunately, self-defense seems to be the only affirmed right that Ukraine has under this situation. From the perspective of legal permission, only "passive" defense measures can be taken, while "active" actions under security council authorization that is binding to all member states against Russia are subject to the veto of the five permanent members of the Council, which includes Russia, who blocked the proposal. Russia's aggression rigorously reveals the institutional defect of the United Nations. The existence of this kind of situation further confirms the importance of the coexistence of the right to self-defense and consensus of peace in the international community.

In addition, it is fascinating that President Putin offers justifications for the invasion to protect Russia from NATO's eastern expansion and protect the people from oppression by the Ukrainian government. President Putin would be happy if these justifications could be understood as falling within the self-defense exception, but they are not. The Charter of the United Nations states explicitly the restrictions on the right to self-defense with the purpose of restricting states from invading other sovereign countries under the pretext of self-defense. First, the Charter clarifies the specific time and condition when states can exercise their right of self-defense: it should be under the occurrence of an armed attack and until necessary measures are taken by the Security Council"

[3]. If the Security Council took reasonable action, the country concerned must stop. Secondly, when the country concerned exercises the right of self-defense by using force, it "shall be immediately reported to the Security Council" [3] and follow the Security Council's instructions. This provision illustrates the authority of the Security Council in dealing with international peacekeeping affairs. Moreover, the text stipulates that it "shall not in any way affect the authority and responsibility of the Security Council under the Charter"[3]. This sentence points out that even if the State concerned reports to the Security Council that it will use force to exercise its right of self-defense, its actions cannot affect the subsequent peacekeeping operations of the Security Council. In short, the Security Council can announce the termination of the right of self-defense of Member States, and the announcement must be obeyed. The purpose is for the Security Council to determine whether a country's self-defense action conforms to the principle of "proportionality."

5. The Affirmation of Independence and Sovereignty in International Law Helps to Resist Colonial Ideas and Behaviors

5.1. Affirmation of Sovereignty in Customary International Law

The non-force principle together with the principle of non-intervention in each other's internal affairs have already become customary international laws and are binding on ALL sovereign states. From 1983-1984, Nicaragua accused the United States of its actions of illegal use of force and interference in Nicaragua's internal affairs. The World Court, in its 1984 decision, ruled that the Court had jurisdiction over this case base on Nicaragua's customary international law claims and the U.S.'s optional clause declaration, even though the U.S. has made a reservation so that Article 2(4) of the Charter cannot be applied. A reservation does not help with escaping from the duty of compliance. In the end, The ICJ tried the U.S. in absentia in accordance with Article 59 of the statute of the ICJ [9].

5.2. From the Mandate System to the International Trusteeship

The independence sovereignty was further implicitly affirmed by the transition from the mandate system under the League of Nations to the international trusteeship system under the United Nations.

The mandate system marked a new trend for the general policy of imperialist colonialism after WWI, that is, to settle disputes between great powers under the supervision of international organizations and in accordance with international law instead of private partition and direct annexation of colonies. However, not much actual progress was made by the mandate system. It does not stop imperialist powers from occupying colonies with their national strength. In essence, the powerful countries are exercising their colonialism under the guise of the League of Nations and its mandate system. Lenin once pointed out that: "the so-called distribution of colonies under the mandate system is the distribution of the right to be appointed to theft and robbery"[10]. The Covenant of the League of Nations stipulated that the victorious countries should redive the German colonies and the Ottoman possessions in the name of the League of nations and be ruled and managed by advanced countries [11]. In 1918, U.S. President Wilson put forward his idea of the way to deal with the colonies owned by the defeated countries after WWI in his speech to Congress: a colonial country should not act as the owner of the colony but as the client of local residents and their interests [12]. This is a very insightful idea that is in line with the principles of the later UN. However, due to the strong opposition of Britain, France, and some other countries, the system advocated by Wilson did not apply to all colonies but was limited to the colonies of defeated Germany and Austria-Hungary. In this way, the colonial problem has not been completely solved.

Around World War II, with the gradual collapse of the imperialist colonial system, the mandate system also existed and was replaced by Roosevelt's international trusteeship system. Compared with the mandate system, the international trusteeship system has made two improvements. First, the wording of the purpose of trusteeship in the charter is cautious, and there are signs of compromise. However, it does not promise political independence, the commitment to promoting "progressive development towards self-government or independence"[3]. It has accepted the intention of moving towards autonomy. The establishment of self-determination status is the direct source of world decolonization.

5.3. Restraint and Suppression Towards the Idea of Conquering or Annexing Other States.

The evolution of international organizations has made attempts to conquer or annex other sovereign states subject to faster and more effective opposition. Acts of aggression will immediately receive wide condemnation in the current international community. Based on these condemnations, the United Nations has provided some additional but significant support. In 1990, Iraq decided to invade Kuwait. The Security Council adopted resolution 660: Condemning Iraq's violation of articles 39 and 40 of the Charter, determining that Iraq's invasion of Kuwait constituted damage to international peace and security, and demanding Iraq to immediately and unconditionally withdraw its troops from Kuwait [13]. Based on how Iraq refused to perform under the Security Council's solutions, the SC authorized UN member states to take "all necessary means" to force Iraq out of Kuwait, and they succeeded.

There are many critical and pessimistic voices about the UN's effectiveness in settlement of military disputes. Indeed, the Security Council had often failed to take action promptly and effectively. Since its establishment, many cases can reveal the defects of the United Nations. How to mend these defects is a question that has generated heated discussions among contemporary scholars. However, it is noteworthy that we should not overly blame the UN's institutional defects for the failure in maintaining international peace, nor should we put immense anticipation on its future structural change so that it can better achieve its goals, but overlooking the fundamental reasons that state complies to the rules and principles. The focal point to reducing the use of force in international society does not lie in the cleverness or skillfulness of international institutions, but in the consensus between states: their true desire to cooperate and respect each other. The principle of sovereignty equality is a basic, essential, and significant notion that lies under this goal.

6. Controversies

It was briefly mentioned in the last section that the goal of protecting international peace and security still faced many obstacles and serious challenges, generating controversies among researchers and scholars.

6.1. Call for a Redefinition of Sovereignty

Professor Louis Henkin argues that the current meaning of state sovereignty should be abandoned because it is "outdated." At the domestic level, sovereignty is used as the "national mythology", while at the international level, sovereignty is a "catchword" and "a substitute for thinking and precision"[14]. Some voices emerged within the United Nations calling for a redefinition of "sovereignty". On January 31, 1992, the Secretary General of the United Nations Boutros Ghali made a report entitled an Agenda for Peace that called for the redefinition of sovereignty in order to strengthen the ability of the United Nations to conduct better peacekeeping and peacebuilding, "The time of absolute sovereignty and exclusive sovereignty has passed; its theory was never matched by reality"[15]. Subsequently, Secretary-General Annan also proposed that "State sovereignty, in its

most basic sense, is being redefined by the forces of globalization and international cooperation.”[16]. There are rising voices that promote more constraints on the freedom of action of states. Therefore, the concept of sovereignty, as how it has substantially changed in the past, might be further changed in the future.

6.2. The Continuous and Unstoppable Infringement of State Sovereignty in Today's International Community

Under the theory of enforcement, there are incentives for states to violate the principle or their commitment as they grow larger [6]. Due to the political complexity of states, it is almost certain that they have incentives, and some have both incentives and power to deviate from the rule.

There are controversies on whether sanctions are a violation of state sovereignty. Stephen D. Krasner states that “Economic sanctions aimed at domestic institutions, policies, or personnel are an example of coercion” [4]. In connection with the Russian invasion of Ukraine, the sanctions imposed by western countries on Russia are controversial. Although there may be more people supporting sanctions on the moral level, some have argued that it is unlawful to impose sanctions on Russia since Chapter VII of the UN Charter stipulates that only the Security Council has the right to decide on the imposition of sanctions. However, from the Western viewpoint, the sanctions are legitimate and are generally considered a permissible “countermeasure” to a prior violation of international law by Russia. In addition, the countries imposing sanctions must intend to induce the violating state to stop the breach [17]. The debate between the two conflicting views suggests that the lawfulness or legitimacy of sanctions are both strongly controversial and remains a problem in international law directly related to the substance of state sovereignty.

There are some more obvious examples throughout history, such as the United Kingdom's attempt to remove the Bolshevik regime in the Soviet Union after World War I with economic sanctions. The European Community imposed economic pressure on Turkey in 1981 to promote the restoration of democracy. Are these sanctions legitimating enough to surpass the supreme domestic authority or any other rights provided by the principle of state sovereignty? Although there was a large improvement compared with the past, the deeply rooted imperialism in the history of international law always reminds us of the possibility and danger of overly assertive interference towards other states.

6.3. The Conflict between State Sovereignty and Human Rights

In 1999, NATO launched a military strike against the Federal Republic of Yugoslavia on the grounds of the existence of a large-scale “humanitarian crisis” in Kosovo and implemented the so-called “humanitarian relief.” According to the provisions of “regional arrangements” in Chapter VIII of the Charter [3], enforcement action under regional arrangements can only be taken with the authorization of the Security Council and the Security Council timely and fully informed NATO's military action against the Federal Republic of Yugoslavia has not been authorized by the Security Council, nor has it fulfilled its obligation to fully report to the Security Council. Therefore, it can be seen as a violation of the Charter [18].

The above situation is problematic because the guise of “humanitarian intervention” makes the legitimacy of the action more ambiguous and controversial. International law should make an effort to restrict the abuse of humanitarian intervention. However, some voices argue that “humanitarian intervention” should be a legal action under the UN Charter to protect individual rights. Annan put forward the importance of human rights protection in his annual report to the General Assembly and called on the United Nations to take more actions. The balance between state sovereignty and the necessity of solving human right crisis leaves a serious and tough question for politicians and

scholars.

7. Conclusion

The evolution of the principle of state sovereignty in history plays a great role in maintaining world peace, reducing the use of force, and resisting the use of force. The word "evolution" refers not only to the affirmation of the principle of sovereignty but also, more importantly, to the continuous improvement and amelioration of the concept and substance of sovereignty. From the peace of Westphalia to the present, the principle of sovereignty has been gradually integrated into the principle of non-use of force and equality, which helps to build a consensus of mutual respect and peaceful settlement of disputes among current countries. Although we cannot completely prevent the act of malicious infringement of other states' sovereignty, countries are having a universal and common goal to do so. The current situation is very different from how the world used to be filled with imperialist mindsets and behaviors, and the principle of sovereignty—how it had developed into a more affirmed, specific, ameliorated concept—was the key factor to breaking that shackle.

We cannot deny the importance of the principle of sovereignty, but we also cannot ignore the many criticisms of the current studies on state sovereignty. Just as how it has been strengthened, changed, and improved in history, it is bound to experience changes in the future. The principle of sovereignty was "relative" in the history of several centuries ago, but now, as the basic attribute of a country, it is "absolute." Considering human rights and other factors, will the principle of state sovereignty become relative again? While the right of self-defense is restricted under the UN Charter, should other rights also be restricted? Will the supremacy of "state sovereignty" be weakened? SHOULD it be weakened? These are all questions worth discussing.

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