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National Sovereignty: A Cornerstone of International Law and an Obstacle to Protecting Citizens

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NATIONAL SOVEREIGNTY

A cornerstone of international law—and an obstacle to protecting citizens.

By Ruti Teitel

Governments grow resentful when other nations tell them they can't run their affairs at home as they want. They expect other countries to mind their own business; they have little tolerance for nosy neighbors and interventionists. Whether dictatorships like Saddam Hussein's Iraq or established democracies like the United States, countries bridle when other states or international organizations judge them or, worse, tell them what to do. That's because governments cherish national sovereignty—the conviction that they hold complete authority over their own affairs, their own territory, and their own people.

National sovereignty has been a cornerstone of international relations for a long time, at least since the treaties of Westphalia of 1648, which put an end to Europe's Thirty Years War and created its modern state system. The treaties assumed that political stability among nations depended on each state having authority over its own domain. In return for having full authority at home, states pledged not to intervene in the affairs of others. By the next century, the Swiss lawyer Emmerich de Vattel recognized that interfering in another government's affairs ran counter to "the natural liberty of nations." He also supported the idea that sovereign states could create law through treaties.

European nations didn't turn wholly inward, but their common respect for national sovereignty determined how they chose to deal with one another. They depended heavily on reciprocity: They understood it was in their interest to respect the rights of strangers if they wanted their countrymen abroad to be treated decently. States' respect for national sovereignty has also meant that the rules of international law developed with the consent of the states themselves —or with their "free will," as the predecessor of the International Court of Justice once put it.

There is no overarching authority—no world legislature—to make international law; states make it by defining its rules in the treaties they sign among themselves and through their behavior. Through treaties, states voluntarily consent to legally binding relations. In the absence of international government, it is treaties, establishing so-called "conventional" international law, that constitute the first major expression of the prevailing world order. Even today, there are only a few standards of international law that can be issued as directives to a state, and those are prohibitions against the most egregious crimes, like slavery and genocide.

By leaving it to nations to protect the rights of their citizens, however, this idea of national sovereignty had a serious shortcoming. The Holocaust is the most drastic example of its cost, but that's only one of many dark illustrations: apartheid in South Africa; the treatment of the Kurds in Iraq; and the genocides in Cambodia, in the former Yugoslavia, and in Rwanda. These atrocities made it plain that some states can't be relied on to adequately protect their citizens and that citizens might have to be protected against their states. That's when the

interests of national sovereignty and human rights began to compete, or rather, when the competition became more intense because many countries were placing a higher value on human rights than ever before.

Traditionally, international law lent order to relations among states. After World War II, however, it began seriously to concern itself with individuals as well. The Nuremberg trials sought to hold German war criminals accountable for crimes against peace and for war atrocities. In 1949, the four Geneva Conventions were adopted to protect the rights of civilians and combatants during armed conflicts. The Genocide Convention, which prohibits state-sponsored mass murder, was adopted in 1948 by 41 countries; today it has been ratified by 133. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly (also in 1948) and the first international bill of rights, has become the basis for the modern human rights movement.

Encroachments on sovereignty have been tolerated, sometimes even encouraged, for humanitarian reasons. In 1979, for example, when Idi Amin, then the military dictator of Uganda, was overthrown by Ugandan dissidents and the Tanzanian army, there was no international protest. That same year, French forces expelled the repressive Bokassa regime from what is now called the Central African Republic. In each instance, the U.N. chose not to condemn the intervention. Similarly, when NATO forces intervened in Kosovo, many in the international community supported the action.

The concept of sovereignty didn't stop mattering when countries realized its deficiencies. Despite the horrors of the two world wars, the principle was nevertheless enshrined in the Charter of the United Nations in 1945, which states that the U.N. will be "based on the principle of the sovereign equality of all its Members." Today, still, nations retain full control over most of their internal affairs. Now, though, the concept has to be balanced against other interests, especially human rights.

The balancing act hasn't been easy, even when the interest at stake is so important. Take the United States' opposition to the recently created International Criminal Court, which can try acts of genocide, crimes against humanity, and war crimes committed after July 1 this year. Part of the United States' gripe with the court and the Rome Statute that created it are provisions of the statute that allow for prosecution of suspected criminals without the consent of their home state. The United States claims that it fears frivolous and politically motivated suits against its servicemembers, a risk attributed in part to merging in the court itself judicial and prosecutorial functions and to an all-too-powerful world prosecutor.

But the United States' objections are largely beside the point. The ICC will have jurisdiction only over people who commit the most heinous violations of humanitarian law, and even then only in those cases where a state is "unable" or "unwilling" to prosecute them. The United States appears to be confusing its political sovereignty with the ICC's sovereignty as a court: The ICC's jurisdiction is designed to complement, not supplant, the jurisdiction of the United States' home courts. In Europe, home of the idea of national sovereignty, the notion of "complementarity" has been recognized for many years, with the emergence of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the latter's related court. Over time, these structures have proved themselves, their membership increasing, and they have become sought after as a form of voluntary empire.

The rise of global politics has led to increasing cooperation among nations and to the emergence of a more humble conception of national sovereignty. To protect human rights, prosecute the war on terrorism, or meet some other overarching challenge, many of today's nations delegate to international organizations pieces of authority they once fought to reserve for themselves.

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