

**ODUMUNC 2010
Issue Brief for the
GA Sixth Committee, Legal**



The Rule of Law: State Sovereignty vs. International Obligations

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“For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

(Report of the Secretary-General on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 2004)

Introduction

As the only body able to establish basic rules for interaction between states, the United Nations plays a crucial role shaping all aspects of international politics. Rule of law, state sovereignty and international obligations are core elements of world politics and the UN system. Based on the sovereignty of states and the primacy of international law, the UN has an overwhelming interest in the maximization of global adherence to legal standards. But it also must deal with the tensions created by the sovereignty of states, who cannot be forced to accept international law when it clashes with their interests.

Over the years the meaning of key legal concepts has changed and adapted to suit the new constraints present in the international scene. Their interaction has resulted in important outcomes, where the importance of individuals in the international scenery is increasing. Disputes over states who are unwilling to accept limits of their freedom, and rising concern with human rights have become increasingly common. The definitions of these clashing rights and principles, their transformation, interactions and consequences will be the main topics of this essay.

Different views of international law were brought to a head in recent years by rising demands for greater restrictions on state behavior to protect human rights, and by states demanding greater freedom to fight terrorism and domestic dissent. With trends in favor of greater restriction on states and for greater state freedom in areas like counterterrorism, international agreement requires

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ever greater compromise. How the UN deals with these fundamental differences could influence virtually all aspects of international affairs.

The Rule of Law

General speaking, the rule of law, also recognized as the supremacy of law, is the respect of law as the maxim instrument that constrains individuals, governors and states. Nonetheless, when applied to the international system the concept of rule of law gains an added value that derives from the very characteristics of the international scene and the customary principles and laws that governs it.

In this sense, in the international arena the rule of law is the laws and principles that conduct interstate relations, whilst in domestic affairs it conducts civilians and governors relations. The rule of law serves then as a constraint regarding some practices and behavior that might harm the harmony of these relations.

Throughout the years, the rule of law agenda has changed accompanying the changes occurred within the international system. Nowadays, a special emphasis has been issued towards the promotion of development, women's and children's rights, especially in conflict zones, protection of civilians and human rights, etc. In this regard, the United Nations plays a special role as "promoting the rule of law at the national and international levels is at the heart of the United Nation's mission."¹

The milestone document is the *UN Charter* signed on 26 June 1945, in San Francisco, which defines the international standards of the rule of law and state responsibility. The United Nations General Assembly and Security Council are the main organs for modification and development of international law. The GA tends to stress general principles applicable to the entire international community and broad issues, while the Security Council tends to stress specific cases and enforcement. In practice, though, they often wander into each other's territory. The greatest difference is unlike the Security Council, General Assembly resolutions are not specifically enforceable; they rely on the consent of the sovereign states that vote for them or support them by consensus.

¹ United Nations, "United Nations and the Rule of Law". Available at: <http://www.un.org/en/ruleoflaw/index.shtml>

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There are other organs and important specialized agencies within the UN, whose core functions are closely related to the rule of law agenda and practices, such as the Peacebuilding Commission, the International Court of Justice, the Department of Political Affairs (DPA), the Department of Peacekeeping Operations (DPKO), Office of the High Commissioner for Human Rights (OHCHR), the Office of Legal Affairs (OLA), United Nations Development Programme (UNDP), The United Nations Children's Fund (UNICEF), UNHCR, the United Nations Development Fund for Women (UNIFEM) and the United Nations Office on Drugs and Crime (UNODC). Major treaties also affect freedom of states. Usually under treaties and conventions, states give up sovereignty to support stronger international standards. Classic examples are the Geneva Conventions of 1949. The International Criminal Court, established in 2002, also involved reduction of state sovereignty.

In the national level, the UN's agenda for the rule of law is related to institutionalization of the states function, governance capabilities, legal framework, human rights protection, etc. By the other side, in the International level, the rule of law is a necessary condition to the establishment of peaceful relations and the maintenance of peace and international security. According to the organization's figures, UN conducts "rule of law operations and programming in over 110 countries in all regions of the globe, (...) five or more entities [within the UN system] are currently working simultaneously on the rule of law in at least 24 countries, the majority of which are in conflict and post-conflict situations."²

Within the UN system there is a Rule of Law Unit and a Rule of Law Coordination and Resource Group, who are responsible for the maximization of efforts and coordination of actions. The main practical issues regarding the UN and the Rule of Law refers to the protection of civilians in conflicts, reconstruction and strengthening of failed states institutions and the responsibility to protect, that is whether and how the United Nations should intervene in countries where the states' institutions are collapsed, and which role should it play.

Sovereignty

In international relations, the concept of *state sovereignty* is fundamental. States are sovereign entities that comprise a territory, a population, a legal framework, cohesive force and institutions. In this sense, sovereignty has a double aspect; it is closely related to the state

² Ibid.

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capacity of governing itself and settling its own rules, and it is also related to its right of doing what it wishes, without external interference.

Nonetheless, it is important to bear in mind that as the international system main trends change, the concepts related to it also change. Sovereignty as a concept was born with the raising of the international system in the Treaty of Westphalia in 1648. At that time, sovereignty was mainly related to the supremacy of each state's own internal institutions over its domestic affairs. External interferences regarding internal politics were unimaginable and forbidden. This approach to sovereignty is present in the UN Charter, when it states in Article 2 the importance of respect for sovereignty and the principle of non-intervention, meaning that the domestic sphere is not subjected to international interference. Nonetheless, the same Charter urges promotion of democracy, protection of human rights and fundamental freedoms as some of the organization's goals, allowing reinterpretation of its core principles and leaving room for external interference in domestic affairs.

The old concept of sovereignty has gradually eroded as states accept more and more limits on their freedom, and as the rights of individuals become more important instead. Since the beginning of the 90's several international enterprises have intervened in domestic affairs based on the protection of human rights and fundamental freedoms. As UN Secretary-General, Kofi Annan spoke of the rise of two systems of sovereignty: one for states, another one emerging for individuals, he noted that the tensions between these two sovereignties is one of the hardest issues facing the international community. Many legal scholars now speak of state sovereignty in a different way, including an obligation of guaranteeing to citizens basic needs. When states do not meet these conditions, they are often called failed and collapsed states, and thus their sovereign status is affected, and more external interference is allowed.

Another aspect of sovereignty directly concerns GA procedures for changing international law. Because international law is based on the support of sovereign states, voting in the UN undermines law. States that vote against a legal resolution are unlikely to respect it. Legal progress tends to stress not voting but decisions by consensus. This often dilutes the power of resolutions, but insures they will be more effective.

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International Obligations

As sovereign units coexisting in the international system, states have international obligations so that they can coexist and socialize with other states. The international obligations are related to certain homogenized patterns that states might follow so that their practices are according to the harmony of international system. Some of these obligations widely accepted are the respect for other states' sovereignty and self-determination, leading to the non-intervention principle. But also, as stated before, other values are gaining importance, such as the defense and promotion of human rights. They are intrinsically related to domestic affairs that for hundreds of years have been a matter only of the states' governors and their populations. Nonetheless, the respect of human rights opens a gap between states' responsibility to provide their population basic survival needs and the international responsibility of keeping those standards, even when referring to internal matters.

This situation has led to international interventions based on humanitarian and human rights grounds. These interventions go against the classical definition of sovereignty and some basic principles present in the UN charter. So the question is raised: How should the international community, and in the areas the UN plays an important role, react in situations where civil populations are deprived from their most basic needs? Does the international community have the right to intervene in internal state affairs?

The most aggressive advocates of greater responsibilities for states, and greater rights for individuals, tend to be European, Latin American and sometimes African states, as well as Canada, Australia and New Zealand. On the other hand are Arab states, East Asia and South Asia who tend to be suspicious of anything that reduces the sovereignty of their states, led by China. The United States often waives depending on domestic political fluctuations. Under President Bush it stressed state sovereignty above all, especially to fight the Global War on Terror. Since the election of President Obama it has been more willing to agree to some reduction of sovereignty to facilitate tough global standards on state behavior.

Conclusion

These questions address the growing debate over the legal limits on the behavior of states. More and more states seek to respect international obligations and at the same time provide their citizens their basic needs. In other words, the states are losing their special status and

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individuals are gaining importance. It is not only the survival of states at stake in the international system but also, and especially the protection and safety of, the individuals that coexist within the states.

Recommended Resources

UN Charter is the primary document for issues regarding the rule of law, state sovereignty and international obligations. Available at: <http://www.un.org/en/documents/charter/index.shtml>

United Nations website is the main tool for any further research on the topic, but especially:

- UN and the rule of Law: <http://www.un.org/en/ruleoflaw/index.shtml>
- Peace and Security: <http://www.un.org/en/peace/index.shtml>
- Humanitarian Affairs: <http://www.un.org/en/humanitarian/>
- Human Rights: <http://www.un.org/en/rights/>
- Development: <http://www.un.org/en/development/>
- Department of Political Affairs: <http://www.un.org/Depts/dpa/>
- Department of Peacekeeping operations: <http://www.un.org/Depts/dpko/dpko/dpko.shtml>
- Peace building commission: <http://www.un.org/peace/peacebuilding/pbso.shtml>

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