



Sovereignty and Nuclear Weapons: The Need for Real Sovereign Authority Rooted in the People's Global Expectations about Survival, Peace and Security

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Abstract

The current international security framework is based on an incomplete, anachronistic conception of sovereignty shaped largely by historical circumstance rather than principles of universal justice. Evolution of the global community over the past half century necessitates a reformulation of the concept to justly represent the rights of individual citizens and the global community as a whole. The reconceptualization of sovereignty is an essential condition for the elimination of major threats to global security, most especially those arising from the continued existence and proliferation of nuclear weapons and other weapons of mass destruction.

Two decades after the demise of the Cold War, the proliferation of nuclear weapons and the possibility of nuclear war still represent the single greatest threat to global peace and security, human health, well-being and the environment of our planet. The fundamental source of this threat is not accidental detonation or nuclear theft by a terrorist organization, but rather the continued insistence by the nuclear weapons states that possession, threat of use and actual use of nuclear weapons under some circumstances are legitimized under international law. At the heart of this claim lies their assertion of a right to self-defense as territorially-organized, sovereign nation-states. Thus, the rights of national sovereignty are juxtaposed to those of humanity and the global community as a whole and the concept of sovereignty is made a central pillar of the prevailing global security system.

It is important to keep in mind that the distinctive character of nuclear weapons is that they have the capacity for global mass destruction. They represent humanity's greatest existential threat. An inquiry into the relationship between nuclear arsenals and sovereignty raises an important question: Where is the authority to be located to validate or justify the creation, threatened use or actual use of nuclear weapons? In practice, it appears that nuclear weapons fall under the authority of the sovereign state and its claim to defend its vital national interests or existence. Such an inquiry requires a more critical understanding of the authority foundations of both sovereignty and humanity under current conditions of world order. We explore this question in the context of the historical evolution of sovereignty itself.

1. Origins of Sovereignty

The theoretical basis for national sovereignty evolved with the emergence of the modern nation-state. In the 16th and 17th centuries, scholars Bodin and Hobbes developed a theoretical justification for the authority of monarchial sovereignty based on the myth of the divine right of kings supported in practice by the sovereigns' monopoly over coercion. These ideas cost Charles I his head. Early theorists stopped short of vesting the sovereign with absolutist powers. In *The Law of War and Peace*, the Dutch jurist Grotius focused on the problem of a world for multiple sovereigns. Sovereigns needed to find ways of communicating with each other and correspondingly tempering claims to absolute powers. This required international law understandings based on reason, morality and ethical clarity. His idea of subordinating sovereignty to a rule of reason and morality was a powerful and enduring insight, which still has important traction in international law.

Theory was translated into practice in Europe by the Treaty of Westphalia in 1648, which was founded on the premise of the nation-state as a political, territorial unit. Originally applied to strong monarchies such as England, France, Scandinavia and Spain, the treaty put into juridical form the idea of sovereignty based on the sovereigns' control over territory and populations, not on their form of government or the manner in which that control was achieved. Sovereignty arose from the rights of the monarch, rather than those of its people. Later, it was applied as a legitimizing principle for nationalist movements in Italy and Germany in the 19th century, for countries arising from the dissolution of empires in Eastern Europe after World War I, and for the independence movements which marked the end of colonialism after World War II.

The current international legal system was founded at a time when the concept of national sovereignty was conceived as an essential basis for affirming the right of peoples everywhere to self-determination and freedom from foreign aggression or imperialism. It was a rallying principle on which participating nations could concur. It is noteworthy that of the 80 nation-states that constituted the international community in 1950, only 20 could be classified as democracies. Little wonder that the representative government was not adopted by the UN founders as an essential criterion for sovereignty. In practice, the founders of UN system accorded inordinate power and privilege to the victors in World War II based on their dominant military and political power at that time, rather than on principles of democracy, representative government or universal justice. This temporary expedient forms the basis for continued claims by the five permanent members of the UN Security Council and other countries, which refuse to recognize a higher principle of justice and morality than national sovereignty.

Today, international law and international relations remain largely based on the primacy of the territorially-organized sovereign nation-state. The sovereign state claims exclusive primacy and control over people and spaces within its own defined juridical sphere and an unqualified monopoly over national security. Its claim of near exclusive powers over national security rests on the idea that the state cannot be subject to a compact which may compromise its survivability. This claim of sovereign competence is applied to limit international obligation under the rule of law.

Viewed in an evolutionary perspective, it becomes evident that the concept of sovereignty was derived from prevailing conditions and based on the self-interest of consenting parties,

rather than on any peremptory principles of justice and morality. It is but natural that nation-states insisted on their own absolute authority and rights at a time when neither the individual citizen nor the global community was in a position to express or demand equal or appropriate recognition of authority over interests transcending the sovereign nation-state. In effect, the system was heavily skewed in favor of the national governments which conceived it, including many rulers who could make no legitimate claim to representing the will and aspirations of their own citizens.

The inherent limitation in the legitimacy of this principle became evident at the very founding of the UN system, when the principle of universal human rights was introduced into the UN Charter as a counter-weight to the absolute rights of nation-states. The UN Charter stresses that its authoritative character is rooted in the people of the world community. It sought to establish the idea that sovereign states are subject to the authority of the people of the world whose will represents the foundation for international law. Since then the global community has continued to evolve, but legal principle is still held ransom to the perceived vital interests of national governments. Recent developments pose new and further challenges to the traditional notion of sovereignty on multiple fronts.

This paper examines numerous factors which necessitate a reconceptualization of sovereignty in the light of humanity's evolutionary advance. Drawing upon significant earlier precedents and recent developments, it is intended to challenge the notion of sovereignty resting exclusively within the limits of a territorially-organized state. It argues for a wider, inclusive concept of sovereignty that accords full recognition to the rights of individual citizens and the rights of the human community as a whole.

2. Sovereignty and Nuclear Weapons

The question of nuclear weapons presents in stark form the limits of sovereignty as understood in the context of a broader, global eco-socio process. The central threat posed by nuclear and thermo-nuclear weapons is their potential for the partial or complete elimination of human civilization and planetary-scale destruction of the earth's biosphere. In short, the consequences of the threat of use or use of nuclear weapons transcend the interests of any nation-state and encompass the entire global community.

Although a small number of nation-states monopolize and deploy nuclear arsenals, those arsenals carry consequences extending far beyond the reach of the sovereign authority of the state. The conceptual foundations of modern international law limit the principle of sovereignty to exclusive jurisdiction over matters that are clearly within its compass of domestic competence (UN Charter, Article 2.7). Matters that are not exclusively within the domestic jurisdiction of a sovereign state are matters of "international concern." Limits to sovereignty arise from the fact that some matters which involve sovereign state powers and competences also affect the larger global community of states, as well as the global society of individual human beings in those states. Nuclear developments, deployments, threats and possible uses are clearly matters which impact international community of sovereign states and peoples.

A state's claim to be insulated from international authority is based on the fact that it has nuclear weapon systems under its exclusive control. On the basis of its territorial sovereignty, it claims immunity from international efforts to exercise control over such weapons systems.

This notion is, in effect, founded on the principle that force, control, and naked power trump the moral force and compulsion of global authority and the welfare of humanity.

3. Evolution of Sovereignty

Recent developments pose serious challenges to the traditional notion of sovereignty and a compelling case for reappraising the foundations on which prevailing international law is based.

- ***End of Colonialism and Imperialism:*** The right of all peoples to self-determination constituted the legal basis for the dissolution of colonial empires after World War II. Having suffered from centuries of external oppression and exploitation, new nations were necessarily most sensitive to protecting their claims to sovereignty as a counter to outside interference. These claims derived considerable legitimacy from the democratic form of self-government adopted by India in 1947. However, subsequent experience in many countries led to the formation of national governments based on arbitrary rule by a military elite or dominant majority, undermining the claim that these governments truly represent and act for the benefit of their own people. The apartheid regime formed in South Africa when it left the Commonwealth and became a republic in 1961 was only an extreme form of a prevalent practice. The intervention of the international community in Yugoslavia in the early 1990s was predicated on the premise that national governments were not entitled to suppress the national aspirations of significant minorities. Today human rights violations and genocide by national governments are widely recognized as taking precedent over national claims to sovereignty.
- ***Democratic Revolution:*** Although historically the notion of sovereignty was delinked from the type of government, the democratic revolution that has swept the world during the last half century poses conditions for the legitimacy of national governments. Between 1950 and 1970, the number of democracies doubled. During the decade of the 1990s, the number further increased by 60%. Today, 117 of the world's 195 countries are classified as democracies. It is now increasingly recognized that the claim of national governments to represent and speak on behalf of their own people derives from the free acceptance of that government by the people through some form of democratic mechanisms of governance.
- ***Rise of International Humanitarian Law:*** Violation of the human rights of their own citizens is now recognized as a legitimate basis for the international community to intervene in and even replace the controlling authority of a nation-state. The recent intervention of the international community in Libya and Syria exemplifies an underlying change in principle.
- ***Terrorism:*** The US invasion of Afghanistan in 2001 was based on the principle that national governments which provide refuge to populations that threaten other states or the international community are themselves not entitled to claims of sovereign legitimacy. This premise clearly limits the sovereignty of nation-states, even in instances when national governments do not actively participate in acts of aggression. The recent calls for classification of Pakistan as a rogue state for its active support to terrorism in India and Afghanistan are based on this premise. The rise of international terrorism is

compelling nation-states to adopt common standards of compliance as a requirement for participation in the international community, as evidenced by the near universal standards for airport security and the recent efforts to impose severe restrictions on tax evasion and money-laundering through the international banking system.

- **Plutocracy:** Democratic forms of government are the strongest present basis for the justification of national sovereignty derived from the will of the people. Yet even on the criterion that the governments represent the will of their people, few modern democratic nation-states actually meet objective standards of compliance. Many advanced Western governments may be more accurately described as plutocracies than democracies, since inordinate power is wielded by a significant elite who control most of the nation's wealth and dominate both its political and financial institutions. The incestuous relationships and active collusion between the government and the wealthy have been exposed with unprecedented clarity during the recent international financial crisis. A similar situation exists in most developing countries, where the power of the wealthy and the corruption of the political and administrative class distort national policy and the application of justice for the benefit of the few. According to one recent measure, today there are only 23 real democracies in the world, of which only 9 may be considered fully democratic nations.* Unless and until objective standards for demonstrating truly democratic principles of governance are established and applied, the sovereign claims even of democratic states will be suspect.
- **Rise of Multinational Corporations:** The past few decades have witnessed the rapid growth of multinational corporations whose ownership, asset base and operating territory literally span the globe. Some of these MNCs control annual revenues and budgets larger than those of many nation-states. Juxtaposing the interests of one nation against the other, they are often in a position to compel states to compromise the interests of their own people, e.g. as evidenced by the ruinous impact of global free trade on the people in many developing nations and the rising levels of unemployment in OECD countries due to massive relocation of production capacity overseas. MNCs represent a de facto challenge to national sovereignty. The pressure of international banks for deregulation of the financial industry is the most recent and dramatic instance, compelling nation-states to forge higher levels of international cooperation.
- **Rising awareness of Global Environment:** One of the most powerful factors undermining notions of national sovereignty has been an increasing awareness of the impact of human activity on the earth's environment and the absolute necessity of global cooperation to address environmental threats. Pollution of shared river resources in the 1960s, acid rain in the 1970s, and the nuclear fall-out from Chernobyl in the 1980s were earlier

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* Only 9 countries scored 9 or higher on the 10 point scale as reported by the Economist Intelligence Unit in *Democracy index 2011*. See http://www.sida.se/Global/About%20Sida/S%C3%A5%20arbetar%20vi/EIU_Democracy_Index_Dec2011.pdf

expressions of this growing awareness at the regional level. Concern over the rapid disappearance of the ozone layer of the atmosphere 20 years ago resulted in concerted international action to eliminate whole classes of chemicals. The rise of global concern over climate change during the past decade has globalized the issue, since actions by nations anywhere have environmental impact on other nations everywhere.

- **Overexploitation of Global Commons:** Side by side with rising concern over climate change has been the rising concern over the principles of justice by which the world's limited resources are shared and allocated. The Law of the Sea Convention which came into force in 1994 is based on the premise that the rights of nation-states are subject to international consensus. Treaties regarding the exploitation of Antarctica and prohibition of weaponization of outer space are other instances.
- **Internet:** The modern revolution in communications technologies now provides civil society actors with the capacity to communicate and organize as never before. The emergence of the Internet as the first truly global social organization is an event of unparalleled magnitude, which is already revolutionizing human relationships globally, but whose full significance and impact will unfold in the coming decades. The impact of Wikileaks, the Arab Spring, and the Occupy Wall Street Movement is only a tiny fringe expression of an underlying alteration in the global lines of power. The international financial crisis, which was itself based on the emergence of the internet as a global communication system, more accurately reflects the magnitude of the power the new social organization will wield in future.

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4. Rise of the Global Third Estate

Apart from these general developments, there are others which more directly and specifically apply to the legality of nuclear weapons. The recent development of transnational civil society represents one of the most significant factors impacting on the notion of national sovereignty. Until recently, the people of the world had no direct means, other than through and by the representation of national governments, to express and exercise their sovereign rights. The emergence of international civil society provides an essential foundation for the development of a more representative international system. For the first time in history, contemporary civil society now encompasses all levels of social organization from the local and national to the global level. A plethora of institutions both outside and inside the political sphere are now engaged in contributing ideas to the culture of global civil society and exercising influence over the actions of government. Together, they very loosely define a new ‘third estate’ representing global civil society.

The Global People’s Social Forum is an important example of the growing influence of this new global civil society. This non-partisan, non-governmental forum meets annually to

examine ways to secure a better future for humanity by championing a form of globalization that is counter-hegemonic and democratic. It stakes a claim to a global commons that affirms the most important values favoring the primacy of human well-being and dignity. The forum also represents a somewhat informal but serious global political drive to carve out a sphere of sovereignty that is global and rooted in people's expectations about security, well-being and dignity.

One of the most important consequences of the evolution of global civil society and the current state system has been the emergence of a new and beneficent diplomacy, sometimes called the 'new internationalism'. Central to this development has been the ability of global civil society to network with like-minded progressive states to forward an important component of the global agenda. For instance, global society played an important role in building support for establishment of the International Criminal Court and for the treaty outlawing personnel landmines. Global civil society also had a critical role in the agreement creating a global climate change treaty and continues to play an important role in this issue.

The food sovereignty movement targeting people's food security is another clear instance where global civil society is coalescing around an issue of importance to humanity as a whole, which cannot be adequately addressed at the national level. The movement focuses on the primacy of people's and communities' right to food and food production over trade concerns, their right to define land, fishing and agricultural policies economically, socially, ecologically and culturally appropriate to their unique circumstances. The food sovereignty movement seeks to secure the idea that food is a basic human right, to end the globalization of hunger, and to promote a more democratic and people's participatory global perspective.

5. People's Sovereignty in a Regional Context

The formation of the 27 nation European Union and the 17 nation Economic and Monetary Union (Eurozone) is only the most recent and dramatic instance in which national sovereignty is giving way to larger regional alliances that effectively undermine the traditional boundaries of national sovereignty. The current drama playing out in Europe regarding the financial failure of members of the Eurozone highlights the extent to which traditional notions of sovereignty have already given way. What is often lost sight of is the fact that the formation of the EU and the Eurozone was itself an effort by these nation-states to maintain and augment their competitiveness in the context of the increasing globalization of power. Civil society played a particularly important role in the founding of the European Parliament as an assembly popularly elected by citizens of the region.

These and many other initiatives, especially in the area of globalizing human rights, compel formulation of a new conception of sovereignty as a complement to prevailing notions based almost exclusively on nation-states. They are contemporary expressions of the interests of "the people" outside the boundaries of conventional sovereignty. These developments represent an important challenge to the omnipotence of sovereignty-dominated political and legal processes over important issues that affect the fundamental interests of people worldwide. The present conception fails because of its exclusivity and arbitrary attribution of legitimacy to national governments. The emerging conception must necessarily be far more inclusive and founded on truly representative democratic principles.

6. The Common Heritage of Mankind Doctrine

The doctrine of the common heritage of mankind asserts that there is a global doctrine for the protection of people's rights on a universal basis. First developed by Grotius as a foundation for modern international law of the oceans, whose views were a response to the Portuguese claim of a *mare clausum*, meaning that wherever the Portuguese flag was planted, the ocean was to be for the exclusive use of the Portuguese. Grotius challenged this with his doctrine of the freedom of the oceans based on the idea that the oceans were a common heritage of mankind.

The concept of heritage, which includes both natural and cultural creations, is reflected in the UN Law of the Sea Treaty. The common heritage of mankind has also been extended to the spatial reach of Antarctica as well as to outer space. Modern international law includes the moon and other celestial bodies that cannot be subject to appropriation by individual state sovereigns. The UN Outer Space Treaty specifically prohibits nuclear weapons being deployed in outer space. This provision also applies to the Moon Treaty. This doctrine is directly relevant to the elimination of nuclear weapons. Specifically, it prohibits the use of space for strategic nuclear-war-making purposes in the name of humanity.

There are other applications of the common heritage principle that touch on the right to life and future existence. For example, the UNESCO Declaration on the Human Genome and Human Rights stipulates that the Genome is the biological factor that underlines the unity of humanity. It extends the value we place on life to the human rights dimension of the Genome itself. This supports the notion of a people's right to the integrity of the Genome and applies to sovereigns and corporate entities alike. If we protect the Genome as a common heritage idea, the logic seems inescapable that humanity's existence as such is also a valid contender for inclusion as a common heritage value.

Additionally, the UNESCO declaration on the responsibilities of present generations towards future generations also contains provisions that are related to the common heritage of mankind idea. For example, Article 4 of the Declaration stipulates that present generations have the responsibility to bequeath to future generations an Earth which will not one day be irreversibly damaged by human activity, to use natural resources reasonably, to ensure that life is not prejudiced by harmful modifications of the ecosystems, and to ensure that scientific and technological progress in all fields does not harm life on Earth. Article 9 mandates that present generations ensure that both they and future generations learn to live together in peace, security, respect for international law, human rights and fundamental freedoms. To that end, they should avoid exposing future generations to the harmful consequences of armed conflicts, as well as all other forms of aggression and use of weapons, contrary to humanitarian principles.

People's global expectations about inclusive responsibility for the survival of present and future generations rooted in the doctrine of the common heritage of mankind must of necessity and logical coherence include the concern for threats to the extinction of the existence of humanity. These threats are inherent in the development, deployment, and possible uses of nuclear weapons. These expectations strengthen the claim of a global sovereignty rooted in the authority of all the people comprising mankind. The implications of the common heritage doctrine have also influenced the Global Eco-Village Network. Emergent ideas of a common

heritage inspire evolution of planetary democracy as well as the principles informing the Earth Charter civil society initiative.

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7. Global Commons Spaces

The emerging doctrine of the global commons originated in spaces within sovereign states preserved by sovereigns for the benefit of the people as a commons. From this idea, progressive scholars have sought to develop a strong body of scholarship stressing the importance of a common heritage which may be applied to designate spaces outside the reach of sovereign authority, including the earth’s atmosphere, oceans, tropical forests, biodiversity and Antarctica.

The global commons idea implicates spaces within sovereign states that are crucial to the well-being of humanity as a whole. This would include, for example, the importance of the Amazonian rain forests for world climate. The global commons idea focuses on interests that require cooperation or limitations on absolutist ideas of sovereignty. It also requires fresh thinking on the regimes needed to manage such spaces on behalf of the commons.

The global commons idea has important strategic implications for the empowerment of people’s interest on a global basis. It represents yet another initiative to establish the legitimacy of the people’s interest in a global commons, with the intention to empower the people in the commons and limit the power of sovereignty of the state. The global commons provides support for the idea that a threat to the earth/space community as a whole is a threat to the commons of humanity as a whole and a threat to the authority of sovereignty rooted in mankind as a whole. In this sense, the global commons thinking supports the principle of universal nuclear abolition.

8. People’s Sovereignty and Nuclear Threats of Global Extermination

It has long been declared that the use of nuclear and thermo-nuclear weapons far exceeds the scope of war as conventionally understood. Indeed, nuclear weapons have the capacity for the destruction of all of humanity and civilization. There is no system of law that can regulate the irrationality of this possibility. In 1962, the General Assembly declared that the use of nuclear weapons cannot be contained in armed conflict between rival contestants. All of mankind would be affected by their use. It concluded that using such weapons is contrary to the elementary laws of humanity and constitutes a crime against mankind and civilization. In 1972, by resolution, the General Assembly stipulated that there was a clear “desire of all peoples to eliminate war and above all, to prevent a nuclear disaster.” It called for

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“a permanent provision on the use of nuclear weapons.” In 1980, the General Assembly stated by resolution that it was alarmed by the threat to the survival of mankind and the life sustaining system posed by nuclear weapons and their use, inherent in the concepts of deterrence. It again stated that the use of nuclear weapons was a crime against humanity.

In all of these references, the General Assembly, the most popular representative of the United Nations, has consistently referred to humanity as a whole in terms that are reconcilable with the sovereignty, common heritage, global commons ideas developed earlier. It would, therefore, appear that even the General Assembly of the UN roots the idea of abolishing the nuclear weapons in the authority of

the people comprising the earth/space community. This is, at least, a tacit acceptance of the idea of residual sovereignty rooted in people’s expectations of the entire world community.

In the Delhi Declaration in 1985, issued in the names of Rajiv Gandhi, Raul Alfonsin, Miguel de la Madrid, Julius Nyerere, Olof Palme and Andreas Papandreou, we find the voice of “we the people” in the background. These leaders stated that nuclear disaster can be prevented “if our voices are joined in a universal demand in defense of our right to live,” and that the future “of all peoples is at stake.” They urged “people, parliaments and governments... to lend forceful support” to their appeal for the elimination of nuclear weapons.

9. Conclusion

Clearly, there is a powerful emergent dynamic in practice and theory that insists upon the relevance, indeed, the vital importance of the idea of a global people’s sovereignty over spaces and issues that threaten the survivability and extinction of humanity. Until now the concept of global sovereignty has been undermined by the difficulty in evolving mechanisms to determine the will of humanity. Recent advances in communications technology substantially reduce this difficulty. Indeed, it is now feasible to poll global public opinion electronically. The legitimacy of people’s sovereignty with regard to nuclear weapons can be affirmed by instituting a global referendum calling for the expeditious elimination of all nuclear weapon systems on earth. Such a referendum could make unambiguous the demand of the people’s sovereign authority of the earth for an end to war and an end to the prospect of a nuclear version of it. The people’s sovereignty could affirm the illegality of both possession and use of nuclear weapons under any circumstances. It can call upon the International Court of Justice to review and revise its advisory opinion of 1995. It can also call for the mobilization of all available strategies to speed the advance of nuclear disarmament, including prohibition of the arms race in space or on earth and the testing of nuclear weapons. A global referendum in the name of the sovereignty of all peoples could affirm a universal demand of the right to live in a world free from the threat of nuclear weapons and the further demand that everything be done to avoid a nuclear disaster.

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