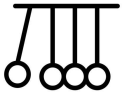


Sovereignty vs. Global Accountability: The Challenge of Enforcing Human Rights

LAW

Deniz Kalaycioğlu



Abstract

International law is built on the principle that states have sovereign authority over their territory and governance. State sovereignty is protected by the UN Charter, which prohibits any and all external interference in a state's internal affairs. The principle of maintaining sovereignty creates significant challenges when faced with global accountability. International humanitarian law and human rights law impose obligations on states and individuals to act in respect of fundamental human rights and prevent atrocities such as war crimes, genocide and crimes against humanity. Although the states carry the responsibility to protect civilians from atrocious crimes, the enforcement of accountability is frequently constrained by the invocation of sovereignty. This article explores the legal foundation of sovereignty and global accountability and their role in enforcing human rights in an international context.

Definition of Key Terms:

Sovereignty:

The exclusive right and authority of a state to govern itself within its territorial boundaries without external interference. The United Nations Charter affirms the sovereign equality of states and prohibits any intervention in matters which are essentially within the domestic jurisdiction of any state.

Non-Intervention:

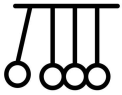
A legal principle that restricts other states or any international bodies from interfering in a state's internal affairs unless authorized by the UN Security Council or with the consent of the state involved.

Global Accountability:

The principle that states and individuals are subject to international legal obligations to uphold human rights and prevent atrocities, including genocide, war crimes and crimes against humanity.

International Court of Justice (ICJ):

One of the six main bodies of the United Nations that is responsible for solving disputes between states and providing advisory opinions on legal matters.



International Criminal Court (ICC):

A permanent international court that is responsible for prosecuting individuals for genocide, war crimes and crimes against humanity. ICC's jurisdiction only applies to crimes committed within the countries that are parties to the Rome Statute or when the cases are referred by the UNSC.

UN Security Council (UNSC):

One of the six main organs of the United Nations, responsible for maintaining international peace and security. UNSC consists of 15 members, including five permanent members that are the US, UK, Russia, China and France, with veto power.

Responsibility to Protect:

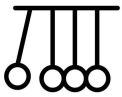
An international principle, established in the 2005 World Summit, that states each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

The Concept of Sovereignty

The concept of sovereignty is rooted in the Peace of Westphalia (1648), which established the precedent of states having exclusive authority over their territory and domestic affairs. The United Nations Charter further demonstrates that with Article 2(1) affirming sovereign equality of all Member States and Article 2(7) prohibiting the UN from interfering in matters essentially within the domestic jurisdiction of any state. Although the initial purpose of the principle was intended to protect States from corruption, invasion and colonisation, currently it serves as a shield for states from taking accountability for their violations of human rights. In international law, Member States hold obligations to protect individuals from various atrocities. However, in practice, many States use sovereignty to block investigations, deny access to international organizations and prevent accountability.

The Role of the International Court of Justice in Global Accountability

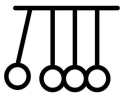
The International Court of Justice serves as the primary judicial organ of the United Nations, responsible for resolving disputes between Member States and giving advisory opinions



on legal matters. Despite being one of the six main bodies of the UN, the ICJ's reach is limited by the consent of states. One fundamental aspect of the ICJ's jurisdiction is that the Court only has jurisdiction in crises if the States involved have accepted its jurisdiction via treaty, special agreement, etc.. Myanmar's refusal to take accountability for its treatment of the Uyghur Muslims is one of the most prominent examples of this case. While the Uyghur Muslims have resided in Rakhine State for decades, they have faced years of systematic discrimination, especially by the 1982 Citizenship Law, which officially excluded them from one of the ethnic minorities in Myanmar. In 2017, Myanmar's military launched clearance operations on the Uyghur Muslim minority. According to a 2018 United Nations Fact-Finding Mission, these operations included mass killings, gang rapes, burning of various villages and forced displacement of over 700,000 Uyghur Muslims into Bangladesh. The UN report concluded there was sufficient evidence to demonstrate "dolus specialis" which is the specific intent required under international law to establish the crime of genocide. In 2019, Gambia initiated proceedings before the ICJ, claiming Myanmar had violated its obligations under the Genocide Convention. In 2020, the ICJ ruled that Myanmar must implement provisional measures to prevent genocide. However, Myanmar has done nothing to deter the ongoing genocide and has constantly denied all of the allegations. Additionally, Myanmar requested that the ICJ remove the case from the list, claiming that it would intervene with its internal affairs. Another example of this problem is the *Nicaragua v. United States of America* case. In 1986, Nicaragua filed a suit accusing the United States of unlawfully supporting Contra rebels in its territory and mining Nicaraguan harbors. The ICJ found that the US had indeed violated international law, specifically the principle of non-intervention and the prohibition on the use of force. Therefore, the ICJ ordered the US to cease its activities and pay reparations. However, the United States withdrew its recognition of the Court's jurisdiction during the proceedings and refused to comply with the judgment. Furthermore, the US vetoed all enforcement actions taken against the country in the Security Council. These cases demonstrate how the ICJ's reliance on state consent prevents its aim to enforce human rights and fails to ensure global accountability.

The Role of the International Criminal Court in Global Accountability

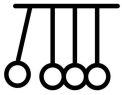
The International Criminal Court (ICC) was established by the Rome Statute as the first permanent international court responsible for prosecuting individuals for genocide, war crimes and crimes against humanity. The ICC's jurisdiction depends on the ratification of the Rome Statute by Member States and situations referred by the UNSC. As the ICC is not one of the organs of the United Nations, its reach is minimal. One of the most recent examples of the ICC's reach being limited is the arrest warrant against Vladimir Putin in March 2023. The reason for the arrest warrant is the alleged unlawful transfer and deportation of the Ukrainian children from



the occupied territories of Ukraine to Russian territory. These acts are considered prosecutable acts under Article 8 of the Rome Statute and grave breaches of the Geneva Conventions. However, Russia and most of its allies are not party to the Rome Statute. Consequently, they do not recognize the ICC's jurisdiction and Putin continues to travel to allied states, avoiding arrest due to the lack of enforcement capacity of the ICC. An older example of this case is the arrest warrant against the former Sudanese president Omar al-Bashir. In 2009 and 2010, the ICC issued two warrants against al-Bashir for genocide, crimes against humanity and war crimes committed during the Darfur conflict. However, al-Bashir was able to travel freely to States that were members of the ICC without being detained. The ICC's dependence on state cooperation and its limited jurisdiction prevent achieving global accountability in human rights violations.

Veto Power of Permanent Members of the United Nations Security Council

The United Nations Security Council is responsible for upholding the main goal of the UN, maintaining international peace and security. Five permanent members of the UNSC have the veto power, which gives them the ability to block resolutions related to investigations or sanctions against themselves or their allies. The veto power gives the permanent members the privilege to exempt themselves from taking accountability for their actions. For example, China, as one of the permanent members of the UNSC, has been using its veto power over resolutions on its treatment of Uyghur Muslims within its territory. Since 2017, the government of China has been implementing surveillance and counter-extremist policies targeted towards Uyghur Muslims. Reports from human rights organizations, leaked reports and survivor testimonies documented mass arbitrary detention, torture, forced labor and suppression of religious practices. Although international organizations, including Human Rights Watch, Amnesty International and UN experts claimed that these actions can be considered as crimes against humanity, China rejected the allegations and stated that the facilities were used as vocational education centers aimed at integrating Uyghur Muslims into Chinese culture. As one of the permanent members of the UNSC, China vetoed all attempts to investigate its territory or refer the situation to the ICC. The situation in China is still ongoing; however, no international body has the authority to hold the country accountable for its actions. Furthermore, the permanent members of the UNSC can use their veto power to shield their allies from taking responsibility. To illustrate, the US has continuously vetoed resolutions that called for investigations of potential human rights abuses during the conflict between Israel and Palestine. The United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict and various human rights organizations has documented severe violations of human rights, including cases involving extreme use of force, destruction of



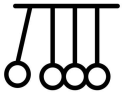
civilian infrastructure and war crimes. Despite these documents, the US veto prevented the Security Council from authorizing any formal investigations regarding the issue.

Conclusion

While sovereignty was established to protect states against external powers, it has increasingly become a legal and political tool that states use to shield themselves from accountability. Although international institutions like the ICJ and ICC were established to prevent impunity and ensure justice for victims of grave crimes, their effectiveness is directly affected by political pressure and structural limitations. Both courts remain reliant on state consent, cooperation, and, in some cases, authorization from the Security Council, leaving many human rights violations unaddressed when powerful states or their allies are involved. The ICJ's dependence on state consent limits its ability to solve critical disputes. Similarly, the ICC often gets blocked by non-member States or vetoes in the Security Council when trying to prosecute powerful individuals who breached international law. These constraints have contributed to a selective application of international justice and have prevented global accountability from being achieved. To strengthen global accountability, reforms such as limiting veto use in atrocity cases, expanding universal jurisdiction and enhancing support for domestic prosecutions are essential. Without addressing these imbalances, international law risks remaining a framework shaped more by politics than by justice.

Sources

1. <https://www.un.org/en/about-us/un-charter>
2. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf
3. <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/report-myanmar>
4. <https://www.icj-cij.org/case/178/orders>
5. <https://www.icj-cij.org/case/70>
6. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>
7. <https://www.icc-cpi.int/darfur/al-bashir>
8. <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-situation-ukraine>
9. <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-opening-palestine-investigation>
10. <https://www.hrw.org/news/2021/04/19/china-crimes-against-humanity-xinjiang>



11. <https://www.amnesty.org/en/documents/asa17/4137/2021/en/>
12. <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>
13. <https://www.ohchr.org/en/hr-bodies/hrc/coi-gaza-conflict/report-coi-gaza>
14. <https://www.aljazeera.com/news/2021/5/17/us-blocks-un-security-council-call-for-israel-gaza-ceasefire>
15. <https://www.securitycouncilreport.org/un-security-council-working-methods/veto.php>