Sovereignty and human rights law international essay

Law

DraftIntroductionChapter 1 – Background

Sovereignty and Human rights

Quote – R2P is an important innovation, not a radical departure (Luck, 2012, p. 39). The underlying concept of humanitarian intervention and its relationship with R2P is evident by the way the relationship of sovereignty and human rights are perceived. They are both integral concepts that undoubtedly hold the fabric of international relations and global society in place. The principles of these concepts are trying to uphold the values of order and justice that allow for peace and security (Walzer, 1992). Define Order and justice. Humanitarian intervention, arguably seen as the prevention and reaction to mass atrocities, occurs through a careful calculated weighing of the necessity to maintain order while ensuring justice is not miscarried. The International Community tends to overlook the individual human rights of civilian populations to ensure that Westphalian based notions of state sovereignty are not compromised. Wheeler posits this being the difficulty that " arises when choices have to be made between conflicting rules, the application of which is contested" (2000, p. 25). Therefore, it could be argued that a distorted link between order and justice would be caused by a strong case for legitimation of humanitarian intervention and R2P (Weiss & Hubert, 2001, p. 130). This is because the concept of humanitarian intervention and the " right to intervene" is completely paradoxical within the confines of sovereignty (Kouchner, 1999). The nature of this idea formed the basis of humanitarian intervention discourse from the European states defending their right to help inhumanly killing of citizen's within the Ottoman Empire to the US Special Forces

response to ensure aid was received by the locals in Somalia 1993 (Simms & Trim, 2011, pp. 183-4; Murray, 2008, p. 141). There has always been backlash for a response by other states, be it unilaterally or multi-lateral, based on this ontology. The English School theory allows for an in-depth analysis of the international society that state-centric theories are unable to do and avoid. This can be illustrated by realist thought that base self-interests as paramount in the international sphere while it cannot explain how states mostly " judge it in their interests to conform to it [rules]" (Bull, 1977, p. 140). This suggests that the Hobbesian fear of anarchy impels order and conform. This allows for connections and interactions to be established through the recognition of common norms and interests that promote an affirmation of a societal rubric resulting in the communal engagement of global institutions (Bull, 1977, p. 13). Through initiating a compromising pathway of state interactions between Hobbesian ' realpolitik' perceptions of an international system and Kantian ' revolutionism' perceptions of world society; there lies an ability to explain the international configuration as a society that " conceive themselves to be bound by a common set of rules in their relations" (Buzan, 2004, p. 9; Bull, 1977, p. 13). English School theory tries to explain the relationship order and justice has within an international context in statist terms through their contradictory schools of thought: Pluralists and Solidarists (Linklater & Suganami, 2006, p. 115). The contention of these schools stem from the difference of significance placed on order and justice that inadvertently creates an estranged juxtapose between the concept of sovereignty and human rights. This can be seen as the root, focal point of conflict that extends to any debate regarding the

regulation and enforcement of the international system. Pluralists see the rules of society, namely Westaphalian sovereignty and the notion of non-intervention, as sacrosanct and the state-based arrangement as its bedrock resulting in a diversity of perceptions illustrating their " own idea of the good life and conceptions of justice" (Bellamy, 2003, p. 321; Bellamy, 2005, p. 7). This implies different connotations towards culturally based views on individual rights; however states are necessitated to ensure stability through adherence of the existing status quo: humanitarian law and sovereignty. Jackson (2000) further assists that the peaceful co-existence occurs through a non-hierarchy based ' society of states' that perhaps implies enforcement is constrained by the existence of sovereignty due to behaving on their own conceived moral principles (Wheeler, 2000, p. 29). On the contrary, Solidarists indicate a more accommodating approach in terms of humanitarian intervention where state sovereignty is not ontologically prior to humankind and that a universal solidarity exists between humans" (Bellamy, 2003, p. 321). This illustrates the idea of developing on the basic functions pluralists believe to ensure order with greater emphasis placed on the human rights protection for all. The thought paves way for an outlook based on global justice and citizenship where it can be characterised by the ideas traced back to John Locke and notions of natural rights; this is acknowledged as a vital component where equal rights are not just reserved for states by all humans (Boucher & Kelly, 2009, p. 219; Linklater & Suganami, 2006). Wheeler further elucidates that states should not be forced to " sacrifice vital interests in defence of human rights" however need to abandon any geo-political and economic " advantage" when it clashes with it

(2000, p. 49). The implication of the pluralist enigma over human rights and sovereignty is perhaps an overreaction to the fear of transition into the Hobbesian anarchic " state of nature" that impedes the legitimation of international society (Boucher & Kelly, 2009).

' Responsibility as Sovereignty'

Based on this theoretical framework of the ' international society of states'; the principle of non-intervention and sovereignty are interlinked as are human rights and intervention. This meant a requirement to shift the framework to treating sovereignty as a duty and not merely an articulated entitlement which is perhaps why it gave weight to neo-colonialist critiques with reference to humanitarian intervention. The ICISS are perhaps erroneously depicted as creating this concept of ' responsibility as sovereignty' which Deng is credited to have shaped through his articulation of the inherent problems that the post-colonialist caused conflicts in Africa seemed to portray. The focus is seen on the internally displaced people who required protection of the state externally as well as being ensuring the states had " positive responsibilities for their own citizens' welfare" (Deng, 2007-2008). However, it must be emphasised that the ' sovereignty as responsibility' is not a novel concept. The implications of both Kofi Annan (1999) and others to try and reconceptualise sovereignty, in a manner that was compliant with the practice of human rights led to notions of dual sovereignty with individuals and states enjoying both, went to no avail. The breakthrough came when Cohen posited " sovereignty carries with it a responsibility" that governments will protect their citizens that may result in international implications if not kept (Cohen, 1991; Evans, 2008, p. 36). This

is evident within the solidarist conception of the international system where states not only need a popular mandate but an international recognition. ICISS therefore reaffirms values of socially accepted concepts where " state sovereignty implies responsibility" and that it is the sole purpose of the state was to ensure their citizens enjoy the freedoms through peace and security (2001, p. 13). Evidence of these values can be seen in Locke's view of the Hobbesian " social contract" that can analyse the source of state governance and therefore authority and sovereignty (Boucher & Kelly, 2009). Individuals form political communities that involve the mutual consent of an implicit contract constituting the submission of certain ' natural [human] rights' to establish a sovereign body that is required to protect them in return. Sovereignty should therefore be seen as a " means to an end" and " not an end in and of itself" (Marks & Cooper, 2010, p. 94). Therefore, when the sovereign fails to carry out its obligatory functions towards its citizens; it has lost its legitimacy. This illuminates the crux of the norm whereby the international community as a duty not only to the state but to the state's citizens to act as a proxy ' caretaker' and take over the state's responsibilities where they are " unwilling or unable to halt or avert" threats to citizens' basic human rights (ICISS, 2001, p. 13). Moreover, Shue emphasises that sovereignty has limits evident in its " duties that are constitutive of the right, and without which there can be no right, constrain[ing] the activity of every sovereign" suggesting that the rights of all states in the international community are constrained by the rights of one state (Shue, 2003, p. 15). The usage of the state as the central point with the international community as a secondary contingency to help ensure the

state can perform these ' responsibilities' illustrates the connection between order and justice. The ICISS (2001) may have utilised norms and rules that had already set precedence with conducting state practice within the international sphere; however the formation of individuals as the subject of the framework perhaps draws a connection to the social contract implicit between individuals and states and perhaps another variation between individual states and the international community itself. R2P can be seen through a solidarist perspective of undermining the purpose of a rule-based state system that gives states a great deal of latitude of discretion within its own borders that inherently goes against the rules that allow it to do so (Wheeler, 2000). Therefore, the " emerging international legal principle of solidarity" can be seen as an " additional conceptual source of the residual responsibilities of the international community" (Hoffmann & Nollkaemper, 2012, p. 53). Fusing together Wheeler and Walzer's perspectives results in an undisputed moral ' humanity' to justify crimes that " shock the consciousness of mankind" must inherently be exempt from the set of rules or an " explicit legal exception" for use of force in R2P (Wheeler, 2000, p. 28; Morsink, 1999, p. 300). The underlying notions of this concept of sovereignty utilised in a different manner cannot been seen as a " defining concept" in the doctrine of humanitarian intervention, from this perspective, however the reinforcement of conventionally accepted ideas proves room for success if illustrated into an effective normative framework. Chapter 2 – Norm Life Cycle Analysis of Humanitarian Intervention and R2P

Constructivist Thought on Norms

Constructivist thought is argued to easily define norms and shared values in the international sphere. It shares similarities with the soldiarist English School approach based on the idea that norms and principles matter (Finnemore, 1996, p. 130). This is explicitly shown by the common belief that democracy is the best form of governance and without this shared acceptance, the democracies today would not exist. Constructivist thought is understood to differentiate from other approaches in terms of what constitutes the international structure; it is entrenched on social interaction and relationships between all actors which use values and norms to understand change (Wendt, 1995, p. 73). This insinuates that the sharing knowledge would lead to socially constructed ideas that are representative of the states they originate from. Constructivism typifies this by illustrating an ideational manner in which the political structure is formed where the sense and relevance of material objects are based on states' social construction of them which have material consequences (Bozaglioglu, 2007, p. 126; Atkinson, 2006). This means ideas, interests and materialism have an intrinsic role within the international sphere that emphasises the " distribution of ideas" as constituting material circumstances (Wendt, 1995, p. 20&96). This is relevant as it places more of an emphasis how ideas evolve and are received by the international community. Therefore, from this perspective, interests are created from an endogenous interaction of ideas (Wendt, 1995, p. 336). The rules of the game are not expressly known beforehand and so shape the formation of individual and shared established identities that leads to the mutually accepted beliefs and institutional

structures. Subsequently, change or transformation of ideas only occurs in the structure through the ideational phenomenon of state interaction that exhibits international politics as the result of shared values and norms mainly about how the world should be [normative] and act (Onuf, 1989, p. 44). The logic formulates that norms are " what actors make of them" and that they will be as morally good as " what actors make them out to be" (Wiener & Puetter, 2009, p. 6). Norms are social constructed so they emerge, grow and possibly change. This leads norms when they emerge to ensure saturation by using exist norms to build on that foundation or more challengingly contest them fully. This is arguably evident with humanitarian intervention and its more compromising counterpart; R2P. Norms are seen as not barriers but collectively accepted mechanisms that can influence state practice. Furthermore, within constructivist thought allows for the balance between " logic of appropriateness" and " logic of consequence" which is observed within the debate of humanitarian intervention of whether the end justifies the means and its ulterior motives or the support of the norm because of its moral integrity (March & Olsen, 1989; Finnemore & Sikkink, 1998). The norm must be able to adhere to the set of principles communally agreed, " the standards of appropriateness", while ensuring it implements the function it was intended to perform. This illustrates that actions are " partial rational calculation[s]" based on " actors' interests and preferences" (Zotti, 2010, p. 68). Subsequently, for a norm to transpire, it must invoke the " logic of appropriateness to explain behaviour" which is complicated by the fact that the appropriate threshold is " precisely what is being contested" (Finnemore & Sikkink, 1998, p. 898). Placed in the context of R2P, it can be

argued the logic of appropriateness has shifted to be appropriate in terms of ' sovereignty as responsibility' which is validated by Russia when it tried to frame its " illegal intervention of South Ossetia" in terms of R2P because its social constructed to be the most appropriate form of state behaviour (Badescu, 2011, p. 10).

Norm Life Cycle Theory and Analysis

The norm ' life cycle theory" is used to illuminate the change in society that occurs with norms (Finnemore & Sikkink, 1998). The life cycle is divided into 3 separate stages indicating the strength of the norm and change at each stage is " characterised by different actors, motives, and mechanisms of influence" (Finnemore & Sikkink, 1998, p. 895). Figure 1 illustrates the 3 stages in the order and manner it takes. Figure . 1 - The Norm Life Cycle TheoryNorm emergence refers to the emerging prospect of normative idea that insinuates society need to alter the ways of thinking and acting about a certain issue or set of issues. This is normally accomplished through " existing organisational platforms" such as states that form collective identities on certain ideas and frame it through institutions such as the United Nations (Finnemore & Sikkink, 1998). Norms are critically affected by norm entrepreneurs who are agents with strong emotions and motivations for influence society to develop this norm as they draw attention to issues caused by the norms' lack of existence of the need for a norm to stop the existence of an issue (Finnemore & Sikkink, 1998, p. 896). Norm Cascade illustrates when the norm has reached the tipping point where states and norm entrepreneurs alike have influenced a " critical mass [enough states to form a consensus] of states to become norm leaders and adopt new norms"

(Finnemore & Sikkink, 1998, p. 901). This generates the process of socialisation where international legitimacy for the values it upholds and fear of being an outsider pushes further socialisation and enhances its reputation. Internalization personifies how embedded the norm is within the fabric of society and the automatic " taken-for-granted" usage that indicates habit and unquestionable naturalness of the norm (Finnemore & Sikkink, 1998, p. 904). This is perhaps typified by the norm of slavery and how the norm emergence of abolishing developed that exists today where it is natural to think any forms of slavery are wrong. Table . 1 - Norm StagesWhen considering the application of this theoretical approach to the Post-Cold war norm of humanitarian intervention and its newer norm counterpart, R2P; the differences in norm development can shed some light on the relevant stages each norm as reached in relation to the evident criteria from a historical perspective. The stage at which the norm of R2P is at in comparative relation with the stage at which the conventional " right to intervene" norm reached will offer some hindsight into whether the norm has made a landmark turning point in the doctrine of humanitarian intervention. This can be achieved through a retrospective approach of how much of an impact humanitarian intervention made while considering its shortcomings. Even when considering the military interventions that occurred after the culmination of the Cold War, it is still necessary to highlight that through interventions in: East Pakistan with India, Cambodia with Vietnam and Uganda with Tanzania; there was a historical precedent that generated contentious debate at its purest form of unilateral intervention (Chomsky, 1999). However, the end of the Cold War brought a new ' realpolitik'

dimension and shifted the focus to humanitarian and security. Therefore, one could argue the ' norm emergence' stage occurred at the climax of the Gulf War in 1991 when the significance of safe havens in complains with the UNSC resolution recognised " for the first time that a state's internal repression could have trans boundary consequences…and that a group of states" were justified in enforcing " compliance with a Security Council resolution [688]" to implement no-fly zones and protective Kurdish enclaves to halt any ethnic cleansing (Wheeler, 2000, pp. 168-169). It pulled against the normative fabric of the current Westphalian state sovereignty system. Humanitarian intervention was therefore pushed by norm entrepreneurs like Annan who illustrated that there are " times when the use of force may be legitimate in the pursuit of peace" on his organisational platform as SG of the UN (Dunoff, 2006, p. 893). His rationale came from the threat of interstate war having receded illustrating the need for promoting human rights as taking a larger role in international relations which is in coherence with the moral obligation to help ' our brothers'; thus creating empathy through persuasion (Stein, 2004, p. 17). The tipping point was evident in the widely undisputed yet ignored systematic demarcation and annihilated Rwandan " genocide which was well-publicized by widespread international media coverage" that resulted in the widespread belief (socialisation) that there must be a legitimate manner to conduct military intervention (Gordon, 1996, p. 55). It was understood to be a " moral failure" but also accentuated the strategic interests that were a primary motive in discussing whether to intervene and the authenticity of conflicts that were clearly humanitarian in nature (Heinze, 2005, p. 176). This led to the norm cascade phase ensuring

support and general consensus had been gained and when genocide did occur under the " guise of ' ethnic cleansing'" where Milosevic learned that his actions would not be tolerated in Europe (Tatum, 2010). The world realised that actions needed to be taken with the Security Council legitimising actions undertaken by NATO. However, the usual discourse according to the norm life cycle would be to internalization and become a norm of ' habit' which did not occur further undermining the norm and the sustained problems it occurred throughout its emergence and stunted development. Kosovo in 1999 explicitly illustrated this whereby the moral motivations to stop the ethnic cleansing of the Kosovar-Albanians were not ' violent enough' to warrant an international response from the Security Council. This forced NATO to act without Security Council authorization gaining yet another ambiguous phrase of " illegal but legitimate" through the " tacit SC consent" only after Yugoslavian sovereignty was encroached but there being " no other way to stop the killings" (I. I. C. K., 2000). The moral conviction combined with lack of conformity and institutionalisation of the norm indicates the need to change the normative value of the norm itself. This is illuminated by the lack of trust in the norm framework whereby any failure (Somalia) resulted in inaction in the subsequent conflict (Rwanda) (Wheeler, 2000). R2P illustrated very similar problems with humanitarian intervention and based on historical precedence; the counterarguments and critiques exhibit similar discussions about its effectiveness therefore insinuating that R2P may dematerialise as quickly as it emerged. R2P started in the aftermath of Kosovo with the need to combine the moral, political and legal motivations that had been separated to conceptually and practically

judge its success. The ICISS (2001) report and commission where it produced a new perspective of ' sovereignty as responsibility' shows the norm emergence through the organisational platform of the UN again and the sustained norm entrepreneurship of both Evans and Annan. The ability of placing further emphasis on states having control and responsibility of its people with international oversight elucidates the combined stasis of old sovereign values and humanitarian intervention. The conceptual logic behind it can perhaps been seen as a step in the right direction as it does not challenge " existing logics of appropriateness" that humanitarian intervention did conceptually where it was " explicitly inappropriate" in terms of trying to redefine sovereignty (Finnemore & Sikkink, 1998, p. 897). The ICISS report entitled this success to its innovative manner in which it presented existing norms in a novel manner (Weiss & Hubert, 2001). However, this brings emphasis onto the UN World Summit that demonstrated " all member states" normative commitment and formal acceptance of the persuasive elements of the ICISS 2001 report (UN, 2013). This indicates the tipping point as well as the move into the ' norm cascade' stage through the socialisation of the norm in the context of political discourse and UN intrastate frameworks. However, the sustained problem lies in the difference between the ICISS report and the 2005 Outcome adoption of the report which Evans posits as cosmetic and explanatory but can be supported by Chomsky as a ' weaker' version trying to illicit consensus but resulting in blurring the normative framework that states are committing to (Chomsky, 2011). Moreover this means that the lack of repetitive action, that was crucial for the norm in humanitarian intervention and the sustained problems

of the weaker widely adopted framework of R2P, instils weaker conformity with no prospect of internalisation due to the similar problems of application and integration into state practice that occurred with humanitarian intervention. This is supported explicitly by the case of state practice in Libya compared to the similar indefinite position on Syria. Therefore, the case for R2P remains an incremental step which cannot be seen as a watershed especially with problems incurred with legitimate application and a certain degree of norm contestation because of the relative inexperience of the norm in international society. Chapter 2