State Sovereignty and International Human Rights

Vienna Declaration and the Program of Action, para. 4.

The Vienna Declaration and program of Action was adopted on 25 June, 1993 at the World Conference on Human Rights in Vienna, Austria. It aimed at promoting the implementation of human rights worldwide, while applying new strategies and remaining loyal to the UN Declaration of Human rights.

The importance of the adoption of the Vienna declaration and the Program of Action could be compared with the UN Declaration of Human Rights of 1948 in regards to the period and background. The adoption of the UN Declaration of Human Rights was a reflection to the atrocities implemented by Nazis during the Second World War. Meanwhile, the Vienna declaration was adopted in 1993 when the world has just faced a great number of human rights violations as a result of the breakup of Yugoslavia and Soviet Union. Besides, the Vienna declaration came to restate the adherence of the international community to the importance of human rights values proclaimed back in 1948 and to call for further international promotion of human rights.

One of the important proclamations made in the Vienna Declaration and the Program of Action is paragraph four which states: ¹

The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

This statement of the Vienna Declaration, as well as the preceding resolution of the International Law Institute of September, 1989 bring the need for international human rights protection to a higher level proclaiming that human rights are no more the responsibility of states but of the international community. This confirms that no State which violates its international obligation to protect human rights “will be able to avoid its international responsibility on the pretext that this issue is essentially one that falls under its internal jurisdiction”.²

¹ http://www.unhchr.ch/huridoca/huridoca.nsf/(symbol)/a.conf.157.23.en
To understand the essence of the paragraph 4 of the Vienna Declaration there is a need to find out what the international community is and what capabilities it has in the implementation of the protection and promotion of the human rights. The current reality of the international community is a family of states, international organizations and transnational corporations. All of the listed have their word in the distribution and discharge of powers, and of course, they can have their impact on both the enjoyment and breach of human rights. And this has its reasons. Everything depends on interests of the parties. If a state is permanently violating human rights on its territory, but it has valuable resources or geostrategic importance, the international community may easily close eyes to human rights infringements happening in the respective state. The same situation can have a different scenario of further development. The international community can be broken into two parts leaded by the most powerful states, each of them advocating for their “truth”. But when the interests change the same state may go opposite to the “truth” it was advocating so toughly in the previous situation.

Meanwhile, the fifth paragraph of the Vienna Declaration states:

“…the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind”.

This paragraph of the Declaration turns to be opposite to the universal notion of the human rights and its protection as part of international concern as stated in the first and fourth paragraphs of the Declaration accordingly. Furthermore, no state should be justified for avoiding the human rights protection within the territory of its jurisdiction while bringing its cultural peculiarities as an excuse.

Another issue arises here. Who is to measure the gravity of the crime committed within the context of human rights violation when the use of force is to be authorized so as to stop the mass violations of human rights? It may seem that with the creation and activity of the UN, an international body to maintain and promote peace, things should have gone easier. But the things don’t go on that way. Moreover, the failures of the UN in its capacity to prevent many crimes committed around the world have become frequent. The interests of the parties, but not the immediate and fair reflection to the reality rule the situations with human rights violations in many parts of the world. Let’s bring the case with the NATO’s intervention into Kosovo. According to the VII chapter of the UN charter only the Security Council can authorize the

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3 http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en
military intervention going against the notion of state sovereignty when there is an imminent threat to international peace and security. Thus, in Kosovo’s situation NATO’s unilateral activities are regarded illegal. It is important to stop on the veto issue within the UN system in this context. But who else then if not NATO could stop the ethnic cleansing in Kosovo if Russia was using its power of veto to ban the Security Council resolution authorizing the NATO’s activities beforehand but not post-factum. Russia justifies its activities appealing to the illegality of interference to the internal affairs of another state, the breach of the state sovereignty. But here again we have the situation where the interests but nothing else rule everything. What Russia does, it just tries not to lose its power over Balkans, a strategic region. And this is an example of a scenario described above where there is a clash of interests because of a strategically important region and this clash of interests brings to a mass violation of human rights. That’s why it was very appropriately stated by Kofi Annan in his report “In larger Freedom” that the UN system should be reconstructed, and the system of the formation of the Security Council members among them.

Another question to be explored in this context is that if the paragraph 4 of the Vienna Convention brings to a contradiction between two notions: state sovereignty and international human rights. To answer this question, we first need to know what we understand when saying state sovereignty and international human rights. Are they equal or any of them can prevail over the other in relevant situations?

The Human rights are rights and freedoms to which all humans are entitled. The human rights were internationally acknowledged with the adoption of the UN Charter and UN Declaration of Human rights. Meanwhile, sovereignty is the quality of having supreme, independent authority over a geographic area, such as a territory.

One may say that there is a contradiction of the same character between the parts of the UN Charter. Thus, Article 2 (4) of the Charter which reads:

“Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”

5 A report made in 2005 as a follow-up to the outcomes of the UN Millennium Summit. In the report the former Secretary general discusses the future towards development, security and human rights for all.
6 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/270/78/PDF/N0527078.pdf?OpenElement
Article 2 (7) of the Charter reads:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

On the other hand, in its preamble, the UN states the importance of the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. Article 55(c) of the Charter also obligates a state to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

But in reality there is no contradiction because another notion comes to the stage, the responsibility of the state to protect.

The excuse by a state that interference in the internal affairs of a state for protection of the human rights is against the notion of state sovereignty is not justified. Sovereignty is not called to be used as a right to do everything within the jurisdiction of the state territory, it is rather a duty and responsibility because the sovereignty derives from the people. As stated by Stanley Hoffmann, a professor at Harvard University: “The State that claims sovereignty deserves respect only as long as it protects the basic rights of its subjects.” So, the state authorities must have the responsibility to provide the atmosphere where the rights of these people can be fully enjoyed. Thus, responsibility becomes an important component of the state sovereignty and has an important role to play when speaking about human rights. The United Nations current Secretary General Ban Ki Moon says: “…We can save lives...We can demonstrate that sovereignty and responsibility are mutually reinforcing principles…”

In 2009 in his report “Implementing responsibility to protect” Ban Ki Moon has quite well described the link between the sovereignty and responsibility. As stated in the report: “The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect”.

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9 http://findarticles.com/p/articles/mi_m1309/is_4_41/ai_n13803088/pg_2/
11 http://www2.ohchr.org/english/bodies/chr/special/docs/17thsession/SG_reportA_63_677_en.pdf
Sovereignty will be protected as long as the human rights are protected within the jurisdiction of that sovereignty. Human rights are entitled to all the people in the world without discrimination and why the same people within the jurisdiction of the state whose sovereignty may be put under question because of its non-fulfillment of its obligations to human rights protection would be willing to keep that sovereignty granted by themselves to that state as a right and meanwhile a duty to protect these people. Thus, the statement that sovereignty exceeds human rights has no grounds to be applied, and the statement that the human rights exceed the sovereignty is well-founded. As stated by Locke, the protection and promotion of individuals’ natural rights was the sole justification for the creation of government.\(^{12}\)

I no way approve the intervention into the state without the UN consent, especially if the intervention has far-going intentions much differing from human rights protection which could be easily considered as neo-colonialism, the colonialism of nowadays. That’s why there is an immediate need for the UN system reformation, especially when speaking about timely and appropriate reaction to human rights abuse in any state of the world.

Any state of the international community should realize the role it plays in creation and maintenance of international peace where human rights have an essential role, of course. No peace, no human rights and vice-versa. Only then we could have not just a nice-worded proclamation of the Vienna declaration; “…the promotion and protection of all human rights is a legitimate concern of the international community…”, but also its correspondence to real life. Each state should acknowledge the importance of its responsibility. Each state should realize that any wrongful act it may commit may bring to a situation which if not right there, but later on would affect the welfare of its own. Only in this case both human rights and state sovereignty can be treated equally.

**Bibliography**


\(^{12}\) http://www.iep.utm.edu/hum-rts/


7. Popovski V., 2004, “Sovereignty as duty to protect”, UN Chronicle, Article, (http://findarticles.com/p/articles/mi_m1309/is_4_41/ai_n13803088/pg_2/)

8. Internet Encyclopedia of Philosophy, Human Rights (http://www.iep.utm.edu/hum-rts/)