

Sovereignty – The State and the Individual

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In recent decades, the traditional notion of sovereignty has evolved to include a demand that a state should govern under the rule of law with full respect for human rights. Tragically, reality has not always matched up to our aspirations. As ombudsmen, it is your responsibility within your own countries to deliver on this ambition. The international community must be prepared to accept its responsibility to ensure that this protection is extended. All states must acknowledge that the challenges humanity faces can only be successfully addressed through multinational solutions within a rules-based international system.

I am very pleased to be in Stockholm for the celebrations of the 200th anniversary of one of Sweden's greatest gifts to the world – the ombudsman system.

The modern ombudsman may have started here, but it has since been adopted and adapted right across the world, as is clear from the broad spectrum of countries represented at this conference.

It is a privilege for me to be with a group of people whose efforts do so much to promote good governance and to uphold and improve the rule of law.

With determination and thoroughness, you carry out your duty to protect the ordinary citizen against the abuse of power, whether intentional or through error or negligence. Your task cannot always be easy, but it is absolutely essential.

It means, too, that above almost any other group, you have a firsthand understanding of how the rights of states and the rights of individuals both interact and can, at times, seem to conflict.

In recent decades, the traditional notion of sovereignty has evolved to embrace the rights of the individual. But what more needs to be done internationally to adjust to this change? This is what I want to talk about today.

There is no doubt that our understanding of sovereignty has undergone dramatic change.

Ten years ago, I spoke at the UN General Assembly about how sovereignty was being redefined by the forces of globalization and the need for international co-operation to tackle global challenges. The devastating impact of the present world recession on every country and every continent shows that these forces are stronger than ever.

Our failures – to put in place the necessary actions to tackle, for example, climate change or to protect the people of Darfur – also demonstrate how our attitudes, structures and processes have failed to keep pace.

The traditional concept of sovereignty, which goes back to the Treaty of Westphalia some 360 years ago, is not, of course, dead. Territorial sovereignty remains a very important basis for stability and for international relations and international law.

The UN itself is based on the principle of the sovereign equality of all its members. It means their territorial integrity must be respected, regardless of the size of the country or the might of its army.

But the Westphalian concept of sovereignty is anchored in its time. It is, above all, about protecting nations and their rulers – not the citizens. What happened within national borders and, in particular, the way a state treated its own people was seen very much as an internal matter.

Over time this emphasis has changed. In the last century, in particular, we saw an increasing focus on human rights. International conventions were brought forward, setting out minimum standards. But there remained a marked reluctance to intervene or interfere in any way that could be seen as impacting on state sovereignty.

This reluctance was swept away by the Second World War and the determination of the international community to prevent any repeat of the horrors it unleashed. It led directly to the establishment of the United Nations and the adoption of the Universal Declaration of Human Rights, in which the countries of the world proclaimed, for the first time, fundamental rights for every individual. These rights have since been strengthened by an impressive list of international conventions and binding instruments.

Sadly, they have not, as we all know, meant these rights have been universally respected or that international law was adhered to. And like the Treaty of Westphalia itself, the post-WWII institutions and systems were very much a product of their era. They were the answer to a time when most problems were seen to be between nation states.

But we are now living in a true global age. We are interconnected as never before. Frontiers are increasingly irrelevant. Nation-states are increasingly powerless to act alone in the face of global forces.

The crisis in mortgage markets in the US triggered a worldwide recession. Conflict and environmental degradation in Africa is leading to greater flows of people into Europe. Swine flu in Mexico spread within days to every continent. Climate change can't be tackled by any one country alone, no matter how drastic the action taken.

Greater interdependence has underlined the need for multilateral cooperation. A global era needs global responses. It has also helped put an increased emphasis on human rights and protection of the individual. And by this I mean that we now recognize our common humanity and shared responsibility: That the state should be seen as the servant of the people rather than their master.

Sovereignty has evolved to include a demand that a state should govern under the rule of law with full respect for human rights. Tragically, reality has not always matched up to our aspirations. Throughout the 1990s – in Rwanda and the former Republic of Yugoslavia – the resolve and efforts of the international community were found wanting. These failures led me a decade ago

to urge the world to look anew at how it behaves in the face of massive and systematic violations of human rights.

I argued that we had to be ready to intervene – by force as a last resort – to uphold the rule of law and protect people from genocide or mass-abuse if the state was not prepared or unable to stop their suffering.

This was not, of course, a new idea. The UN Charter itself specifically allows the use of force in the common interest. But this common interest requires a rigorous adherence to rule of law internationally. Indeed, in this global era, the rule of law within countries and between them is even more important.

There has been progress. We have seen the setting up of the International Criminal Court and those responsible for crimes against humanity, for instance, in the former Yugoslavia, Rwanda and Sierra Leone are being brought to justice. We have seen, too, the adoption of the principle of responsibility to protect civilian populations.

It is explicit recognition that the international community, through the United Nations, has the responsibility to use appropriate action to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

In the last resort and, on a case-by-case basis, the Security Council can authorize force. In Kenya last year, as well, we saw the international community led by the African Union act decisively to stop ethnic violence by bringing together the country's political leaders to resolve conflict through dialogue and compromise. There is a great deal more to do to secure a lasting solution, but this action did win a breathing space for the country's leaders to protect the lives of their citizens and to put citizens' interests first.

But we have not gone far enough or done enough to turn our ideals and values into sustained action and durable institutions. National governments must accept their duty to protect and uphold the rights of all their citizens including the rights of minorities within their borders. This means states must ensure their national legislation conforms to international human rights standards.

It also reinforces the critical importance of accountability, transparency, the independence of the judiciary and fundamental freedoms of speech, movement and assembly. A strong civil society is essential as well, to help ensure good governance.

Governments must also understand that the international community will not turn a blind eye to gross violations of these rights. If a country's leaders truly believe they will be held accountable for their actions, then this should be a powerful restraint on bad behaviour. As we have seen, this is not yet the case. Those accused of such abuses and crimes rely on inaction and lack of unity by the international community.

If we are to provide the protection that millions of people desperately need and help secure peace, countries must rise above narrow national interests. There must be leadership from the Security Council to show it can discharge its responsibilities fully and put aside partisanship, which has too often led to paralysis.

But just as we expect individual countries to behave within the rule of law and respect others, so international law must be respected. The actions of the international community must be based, too, on legitimate and universal principles.

We must expect this of all countries, but particularly of the most powerful nations on the planet. This has sadly not always been the case in recent years. We have seen the results. When countries ignore international law to deal with threats outside their borders, the outcome is not greater security but increased instability. We have seen that if countries ignore human rights to tackle terrorism, the result is not greater safety but greater division and instability.

We must all learn the lessons. Global challenges can only be met effectively by multi-national action within a rules-based international system.

Sovereignty shared is not sovereignty given up. The collective interest in the new century is also a national interest if we are to find fair, effective and lasting solutions.

Three years ago, the Security Council reaffirmed that the UN Charter and the rule of law are indispensable foundations for a peaceful, prosperous and just world. We must remember this important moment. Upholding and strengthening the rule of law will see the rights of the individual protected. It will lead inevitably to the spread of democracy, improved accountability and better government.

The rule of law cannot, of course, tackle all the world's problems. It is not the complete answer to those, for instance, struggling with poverty or disease. But it provides the essential framework for societies to address these problems. And without it, there is little hope of lasting solutions both within countries and across the international community.

Across Africa, the countries that have strengthened the rule of law and ensured that their judiciary is independent and impartial are those that best meet the needs of their people.

So, the balance between the state and the individual has shifted. The old concept of territorial sovereignty remains important. The nation-state remains an essential building block to security and good world governance. Indeed, it is the weakness of some states, not their strength, which poses one of the biggest threats to global stability. But sovereignty also now encompasses the need for the state to protect their citizens, to ensure that they live under fair laws and enjoy basic freedoms.

It is your responsibility within your own countries to deliver on this ambition. And the international community must be prepared to accept its responsibility to ensure that this protection is extended. All states must acknowledge that the challenges humanity faces can only be successfully addressed through multinational solutions within a rules-based international system.

I am indebted to my friend and former UN colleague Hans Corell, who unfortunately cannot be with us today, for telling me about the old Norse saying, "*Land skall med lag byggas.*" It means "a nation must be built on or with law."

We must ensure that this essential doctrine also applies to the international community if we are successfully to overcome the global challenges we now face.

I wish you well in your important work and with the rest of the conference.