



**"Talk of the Nation"**  
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HEADLINE: Role of sovereignty in international law

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This is TALK OF THE NATION. I'm Lynn Neary in Washington, sitting in for Neal Conan.

The UN Security Council has unanimously adopted a resolution calling for the restoration of Iraq sovereignty as soon as possible. Exactly when and how that will occur remains unclear, but the resolution underscores international agreement on the idea of sovereignty. At the same time, the very existence of international institutions like the UN has forced a change in what it means to be a sovereign nation. Once, it was believed that sovereignty was handed down by God to certain rulers, so what exactly does sovereignty mean in the 21st century?

That's today's TALK OF THE NATION. Join the conversation. Do international organizations and treaties reinforce or erode national sovereignty? And what becomes of a nation's sovereignty when it is invaded and ruled by another country? Our number here in Washington is 1 (800) 989-8255. That's 1 (800) 989-TALK. The e-mail address is [totn@npr.org](mailto:totn@npr.org).

Here to talk to us about the role of sovereignty in international law is Hurst Hannum. He is a professor of international law at the Fletcher School at Tufts University, and he joins us from member station WBUR in Boston. Thanks for being with us.

Professor HURST HANNUM (Tufts University): Thanks very much. I'm happy to be here.

NEARY: Let's go way back in history. First of all, how old is the idea of sovereignty?

Prof. HANNUM: Oh, it's difficult to tell, but it's certainly several hundred years old, if not more than that. The earliest smallest communities really didn't have much of a sense of sovereignty. They knew who their governors were. They knew how relationships worked. Sovereignty wasn't necessary to define their relationships with anyone else. But as societies became more complex, as the whole idea of the state came forward, sovereignty became a necessary concept both to identify legitimacy and authority within a state and also for that authority to have relations with other states and other entities. The concept has changed over the years considerably, and I assume that that's one of the things that we'll be talking more about as the conversation continues.

NEARY: Yeah. Let's talk first about what a sovereign nation might have looked like when this idea of sovereignty first became important in international relations? How did it look? How'd it behave? How was it different from it is now, let's say?

Prof. HANNUM: Well, the idea of sovereignty didn't really begin with the nation or the state. It rather began with something larger. If you go back to the Middle Ages, for instances, sovereignty was thought to reside ultimately with God. Then we had something called the Holy Roman Empire in which in theory, the political leaders derived their legitimacy, derived their authority from the pope and directly from God. The big shift in this concept occurred in 1648, a date that's very well-known to international lawyers, with the peace of Westphalia, which ended the 30 Years War in Europe. And what this treaty did was to shift from this notion of a hierarchical structure--God on the top, then the pope and the emperor, and then various other sources of authorities underneath him--to a much more egalitarian horizontal kind of structure, where the independent states of Europe became sovereign with respect to one another. They were no longer subservient to the church or to the emperor, and they looked nowhere else outside their own borders to express their sovereignty. So sovereignty essentially became equated with independence.

NEARY: Hmm. And that lasted for how long or is that still how we think of it today or has that idea changed at all?

Prof. HANNUM: I think that's basically the way we look at it today. But what has happened is that the degree of freedom or the degree of independence that states get to act within, both within their own borders and with respect to others, has shifted. Sometimes you'll hear the phrase 'absolute sovereignty,' the notion being that if you were the recognized government of a territory, you could do anything you wanted to within that territory. That never really existed, because, of course, some of the things you do within your own territory might affect other states, and the notion of sovereignty carries with it the notion of equality. So that Germany is equal to France. It couldn't, for instance, even historically mistreat French citizens; although it could have mistreated its own citizens, and that was no one else's business.

As time has gone by over the last couple of centuries, and particularly in the last 50 or 60 years, international law--because sovereignty is an international legal concept--has increasingly tried to place constraints on what a state can do not only in its international relations but also within its own borders.

NEARY: How have international institutions, like the United Nations, primarily I guess, but there are many others--how has the existence, the development of those affected the whole idea of national sovereignty and individual nation sovereignty?

Prof. HANNUM: Well, changes in international law are ultimately made by states themselves. The United Nations has no authority to simply pass a resolution of the General Assembly and declare what international law is. But working through international organizations like the UN, states have gradually reached a consensus on how sovereignty should be seen today. For instance,

over the last 50 years, human rights has become recognized as a limitation on sovereignty. So it's no longer permissible for any state to commit genocide, to practice widespread racial discrimination, to commit torture, etc., etc. That's one way in which states have been constrained in their internal practices, and those standards have been articulated largely by the United Nations and also by some regional organizations.

In their relationships with one another, the UN also has stepped in, again, as reflecting the will of the member states; for instance, with the prohibition on the use of force. Remember, back in the 19th century, states were still sovereign, but one of the things they could do as sovereigns was to make war on one another, and this was the most common way in which territory was acquired, was simply to start a war and to take over the territory. Since 1945, at least, that's no longer been permissible. And states are prohibited from aggressive wars. They're prohibited from taking territory by force and annexing it, which is what Saddam Hussein tried to do in Kuwait, and these developments have been articulated by the UN. But again, the UN is more of a sounding board than necessarily a leader in establishing these new international norms.

NEARY: Now if a nation needs the protection of an international organization, does it, in a sense, give up any of its sovereignty in order to win that or get that protection?

Prof. HANNUM: Well, it's very curious in that essentially what's happened is that sovereignty has been both weakened and strengthened over the last several decades. It's been weakened to the extent that states are now more restricted in what they're allowed to do. They're not allowed to make war. They're not allowed to violate human rights, etc., etc. At the same time, once you're recognized as a sovereign state, no other state can make war on you. And we've had no occasion since 1945 where a state has gone out of existence because it's been invaded and annexed by another state.

Again, Iraq was the first one to try when it took over Kuwait. And while there have been a lot of wars and many recourses to force over the years, this notion of destroying a state essentially has disappeared. So in that sense, sovereignty is much better protected now by international law and by organizations like the UN than it was a hundred years ago.

NEARY: Well, what about the American decision to invade Iraq, to enter into Iraq? What has that done to Iraq's sovereignty?

Prof. HANNUM: Well, it's important to clarify that what is happening now is not the restoration of Iraqi sovereignty but rather just the restoration of the authority in Iraq to the Iraqi people, and this is one of the things that last week's resolution made clear. It reaffirmed the sovereignty and territorial integrity of Iraq. It reaffirmed the notion that sovereignty rests with the state of Iraq. And it talked about the temporary nature of the exercise by the transitional authority of obligations and responsibilities under international law. So what has happened is that the coalition, if you want to call it that, is exercising power within Iraq, but nothing's happened to Iraqi sovereignty anymore than the sovereignty of Kuwait was interrupted by its occupation by Iraq. The power was interrupted. The authority was interrupted, but the state itself continues.

NEARY: We're talking about what it means to be a sovereign nation today. The number's (800) 989-8255 if you'd like to join the conversation. Let's take a call from Peter. He is in Berkeley, California. Hi, Peter.

PETER (Caller): Hi. Thanks for having this topic. I think it's critical, and I just wanted to agree with your speaker that national sovereignty should no longer remain supreme when it comes to gross violation of human rights. And I think that was really a far more justifiable basis for intervention in Iraq than, you know, the story about weapons of mass destruction, because it was very clear that Iraqi human rights were being violated on a regular basis.

And I wanted to point out that Article IV, Section 4 of the United States Constitution has this wonderfully succinct statement. I'm just flipping through it now as we talk, but it basically says the federal government shall ensure to each state a republican or representative form of government, and on application of the legislature or the executive if necessary for help with domestic insurrection. And that's it. And then it goes on to the next article. And when I read that recently, I said, 'Oh, my God, there it is. There's the insurance of peace for all 50 states.' And by God, we're way behind time to have this at the global level. If a strong global government could guarantee to every member state a republican or representative form of government and protect each of them against invasion and on application for domestic violence, we'd have world peace.

NEARY: Well, perhaps we would. I'd like to hear Professor Hannum. Thanks so much for the call, Peter...

PETER: Thanks for the opportunity.

NEARY: ...and for introducing that idea, which I suspect, Professor Hannum, that that's just never going to happen, that...

Prof. HANNUM: Well, I'm not sure it will, and frankly, I'm not sure it would be a good thing if it did happen. I'm a bit skeptical about the powers of a world government, no matter how it is set up to deal with all of the problems in the world. It's also problematic when one talks about invading a country to protect human rights. That's a new concept. It's one thing to say that a state is obliged to respect human rights. It's quite another thing to say that an outside state can go in and kill the citizens of state one in order to save its people. I would agree that it would be a good idea if states were more willing to do this in the very extreme cases; Rwanda, for instance, during the genocide in 1994.

The problem with the US actions in Iraq is that human rights violations, while they were severe in the sense of being very repressive, in fact, weren't that much worse at the time of the invasion than they were in many other parts of the world. There was no genocide going on, even though it had occurred earlier. And the problem is that it's a bit difficult to define exactly what level of human rights violations should justify invasion from the outside. And I think that unfortunately, the lesson that Iraq has given to many countries is that that barrier's a bit looser, and while I spoke earlier about sovereignty being reinforced and the state being better protected, if we expand

this notion of either pre-emptive war or humanitarian war, we may well be opening the gates to something that won't look very pretty a few years from now.

NEARY: And the whole question of human rights, as important as it is, you do see accusations hurled back and forth between countries about the question of human rights violations.

Prof. HANNUM: Well, I think that's right, and that's one of the reasons that it's dangerous to just talk about human rights violations in a general sense as justifying the use of force. I think if one wanted to say that outsiders should be able to use force to prevent the widespread loss of life, for instance, that seems to me to be a somewhat more objective standard, one that we can measure. For instance, in the early 1990s when the United States went into Somalia to try to prevent the starvation of some half billion people, that would seem to me to be a justifiable intrusion into sovereignty. On the other hand, if you look at Iraq, if you even look at Kosovo, those are much more difficult to justify.

And as I say, we're really opening Pandora's box if we go too far in the direction of saying that unilaterally, particularly, a state has the right to decide whenever it should invade another state. The UN Security Council is far from a perfect beast. It's very difficult to get it to work, but it is one check on the notion of a single state or a bunch of states within a region attempting to go it on their own.

NEARY: We're talking about what it means to be a sovereign nation and how it fits into notions of international law. When we come back, we'll look at sovereignty in Islam as both Afghanistan and Iraq try to craft a new constitution. You can send us an e-mail at [totn@npr.org](mailto:totn@npr.org).

I'm Lynn Neary. It's TALK OF THE NATION from NPR News.

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NEARY: This is TALK OF THE NATION. I'm Lynn Neary in Washington.

We're talking about sovereignty and its relation to international law as the UN calls for a sovereign Iraq. Our guest is Hurst Hannum, professor of international law at the Fletcher School at Tufts University. Do you have questions about the idea of sovereignty and how it's evolved. Join the discussion. Give us a call at (800) 989-TALK. And our e-mail address is [totn@npr.org](mailto:totn@npr.org).

Let's take a call now from Phil. He's in California. Hi, Phil.

PHIL (Caller): Hi.

NEARY: Go ahead.

PHIL: It seems to me that the issue of sovereignty lately, the way I've been thinking that it is, there's the issue of sovereignty of the people, which, like the Constitution, I think, is inalienable, but then there's the issue of the sovereignty of the government in charge of those people, which can be abrogated by acts of that government. So, for example, in Rwanda, although the

government abrogated its rights against maybe foreign intervention because of the atrocities, there's no way a country can go in and invade and take over, that the people have sovereignty. And I think that's the problem often in US foreign affairs, is the two are kind of mixed up. So we'll see what happens with Iraq. Supposedly, the US went to Iraq to protect the sovereignty of the people by destroying the sovereign government.

NEARY: Professor Hannum.

Prof. HANNUM: I think that Phil has identified one of the important shifts that has occurred over the last few decades, and that, let's say, 50 years ago, a country was sovereign, and it didn't really matter exactly what its internal government structure was. It could be a monarchy. It could be a dictatorship. It could be a democracy. Again, because of the influence of human rights, some democratic expression of the will of the people is considered to be much more important. However, we haven't gotten to the stage yet where the international community is willing to say to a state,

'We are going to derecognize you as a state. We're going to refuse to recognize your sovereignty simply because you're a dictatorship or simply because you're not sufficiently democratic.'

Perhaps that day will come, but as I expressed earlier, I'm a bit skeptical that we're going to be able to make those judgments in a very ready fashion. The speaker was certainly right, though, in reminding us that sovereignty is something that rests inside the country, and so it's not something that is available to be expropriated by whoever the intervener happens to be. And certainly within human rights norms, the hope is that governments will become more representative, that we can begin to talk about the will of the people or the sovereignty of the people in a way that's more meaningful than has been the case over the last several centuries.