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Sovereignty and sovereignism

There has been a great deal of talk recently about national sovereignty. As is so often the case, the fact that so many people are talking about it is a sign that the principle is perceived as being fragile, threatened.

The phenomena entailed by globalization tend to trigger dynamics that move in the direction of a loss of autonomy. One of the consequences of globalization, it might be said, has been a reduction in the concrete possibility of making independent decisions. Both at the political or collective level and at the individual level, ours is an era of growing "heteronomy", of an inexorable subjection to external forces outside our control. These forces are propelling us towards cultural uniformity, with the loss

of traditions and roots, while at the same time exposing us to risks and threats that we can neither prevent nor control. This explains why people are talking about sovereignty today a great deal more than

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they did in the previous historical phase. Indeed, it even explains why, in the international policy of various countries, one can detect a full-fledged ideology that we might call "sovereignism". Skeptical of international law and critical of the way in which multilateral organizations operate (with the United Nations heading the list), numerous countries have rediscovered the concept of absolute – even idolatric – sovereignty. In truth, this amounts to out-and-out political and cultural regression. It is more than just a policy; it is an ideology masquerading as realism, as a healthy antidote to the illusions of multilateralism and to the rhetoric of international law.

THE MIRAGE OF SOVEREIGNISM. One has but to pause and reflect for a moment to realize that this is a pathetic illusion. This ideology is but a conditioned re-

flex highlighting the dubious nature of an allegedly unconditioned decision-making power. Indeed, that power may never have really existed other than as a myth, and, in any case, there is certainly not a great deal of room for it in the real world today. Who can seriously think that they are “sovereign” in a world where the majority of challenges and threats to security and prosperity – economic crises, pandemic diseases, terrorism, mass migration and environmental disasters – are beyond the control of the individual nation state?

Fiercely posturing behind their respective borders, nation states reaffirm their sovereignty with absolute intransigence. But in the meantime, their fate is being decided elsewhere. Very often, that is not even happening in any specific geographic locality, but more through non-linear global power structures and networks.

In order to impart some kind of meaning to the concept of sovereignty, and shear it of this ideological (and basically unreal) treatment, it first needs to be placed in the right context, that of international law. It seems absurd to present sovereignty as an alternative to international law when, in fact, it is one of that law’s basic underlying principles. Sovereignty is a regulatory principle and, at the same time, a guarantee that there is a limit to the abusive dominance of the stronger over the weaker. It is also a principle that has a meaning only with reference to law; therefore, it needs to be “set in context” rather than be seen as absolute. If we want to be totally realistic, then we have to realize that absolute, unlimited sovereignty makes sense only for the strong, for those who can hope to enforce their control outside any constraints or laws. That is why it is so ironic that the most ardent champions of sovereignism are often those countries that are less strong both militarily and economically. It may be understandable, but it is also pathetic and basically nonsensical.

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MIGHT IS RIGHT. In the eight years prior to Barack Obama’s election to the presidency of the United States, we lived through an era in which the sole remaining superpower (following the collapse of the USSR and the end of the bipolar system) attempted to affirm and impose its sovereignty at the global level. Recognizing no higher authority, George W. Bush’s United States claimed an absolute vision of its own sovereignty, in practice as well as in theory (in particular in the radical positions held by such figures as John Bolton, who once went so far as to deny the very existence of international law). The Bush White House acted with the presumption that it alone could remain in a Hobbesian state of nature, considering itself above the law, while other international players should submit to measures limiting their sovereignty.

Well, in the space of a very few years, some unequivocal events proved that not even the United States, for all its power, could succeed in enforcing its absolute sovereignty. And today – after jettisoning a hubris that turned out to be counterproductive for the country's own interests and prestige – the US has returned to a (realistic) policy of “power within law” (or rather “power through law”). So it is not a matter of rejecting the principle of sovereignty but, on the contrary, of making it credible and concrete by establishing its function and its limits.

If international law insists on sovereignty, it is above all – but not only – for the benefit of individual players. It is also intended to safeguard the system as a whole. In other words, it is difficult to see why international law should acknowledge a principle which, in favoring one of the players over the others, ends up having a negative, or even a disruptive impact on the system as a whole.

NATIONAL SOVEREIGNTY AND THE INTERNATIONAL INTEREST. In

this connection, the Italian Constitution contains an interesting formula that clearly points up the need to conjugate the individual player's interests with the collective interest. I am talking about article 41 on private initiative in the economic field: “Private economic initiative is free. It cannot be exercised to the detriment of what is useful for society or in such a way as to jeopardize human dignity, security or freedom.”

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In light of the international system currently in force – from the UN Charter to human rights conventions and, on a more general level, to the entire complex of international law – I believe that it is similarly possible to argue that “national sovereignty cannot be exercised to the detriment of the international community's interest or in such a way as to jeopardize human dignity, security or freedom.”

It is undoubtedly true (at least in countries governed by constitutional liberal-democratic systems) that the constitution and legal system in force offer better safeguards against the deprivation of the right to personal freedom than does the international system provide against breaches of national sovereignty. Yet the analogy still holds, albeit with one major “caveat”: the threshold beyond which sovereignty has no reason to be recognized by other players in the international community must be very high. Sovereignty does not include the right to attack one's neighbor (invading Kuwait certainly was not a sovereign right of Saddam's Iraq); nor, I would suggest, does it include the right to inflict genocide on one's own people. Would anyone really argue that the extermination of the Tutsi in 1994 was part of the Rwandan people's sovereign rights? Indeed, there even exists a convention against genocide and thus we are in the

sphere of law, not just of politics or of moral conviction. On the other hand, it is neither reasonable nor politically sustainable to argue that a fraudulent election should cause a country to lose the right to have its national sovereignty recognized. Nor, I would argue, should the outlawing of one or more political parties in a country necessarily justify outside intervention. Still, the focus should not be on “thresholds” – beyond which claims of national sovereignty cannot bar intervention by the international community – but rather on the mechanisms and institutions involved.



OF SEMANTICS AND POLITICS. For political reasons, use of the term “intervention” has been expanded to the point where it has lost significance. Particularly in the eyes of certain non-democratic regimes, any UN debate on their own human rights breaches is branded as “intervention” and thus at odds with their national sovereignty. It would behoove us all to allow the term to maintain its proper meaning, or to add an adjective to clarify understanding, perhaps calling it “coercive intervention”.

This brings us to article 2.7 of the UN Charter, which talks about “domestic jurisdiction”, the corollary of sovereignty. The article (“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially the domestic jurisdiction of any state [...]”) is often cited by “sovereignists”. However, they tend to forget the second part of the article (“[...] but this principle shall not prejudice the application of enforcement measures under Chapter VII.”).

This means that “domestic jurisdiction” cannot be claimed by a state if the Security Council declares that a given situation represents a threat to international peace and global security.

The issue at this juncture is not of a legal nature (the law is clear enough) but of a political nature; moreover, it is a dual issue. First of all, what emerges here, with its full problematical force, is the oligarchic nature of the Security Council, which can override everyone’s sovereignty except that of its own members. Second, it seems clear that there is an omission in the Charter with regard to a practice that has developed significantly in recent decades: namely, intervention on the part of the international community to stop the most serious breaches of human rights.

Naturally, it is always possible (and the UNSC has indeed done so) to call the worst breaches of human rights – such as genocide and ethnic cleansing – a threat to international peace and security. To be sure, it is not just possible, it is also sound, given that events of such magnitude can hardly take place without destabilizing entire regions of the world. The wars triggered in the Congo by the genocide in Rwanda, for example, continue to this day, providing clear proof of this truth. Nevertheless, by better defining the modalities and, above all, the limits of international intervention in a country’s “internal affairs”, this aspect of the UNSC mandate – safeguarding human rights against the worst breaches – would gain explicit legitimacy.

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SLIPPERY SLOPE. That said, we may legitimately harbor doubts about ever seeing such a day, precisely because of the recent slide toward “sovereignism”. Too many countries, having to tackle political dissent or restless minorities, would prefer to keep their hands free to control and to repress, rather than countenance the explicit introduction into the UN Charter of a potential constraint on their sovereignty in the event of extremely serious breaches of human rights.

The problem remains, and it is still serious. While, on the one hand, we hear suspect paeans of praise for absolute sovereignty (often for repressive domestic reasons rather than in connection with the dignity and equality of nation states), it is also true, on the other hand, that the weapon of so-called “humanitarian intervention” can be used, and has been used, in a politically suspect manner. In other words, it has not always been used in defense of the victims of slaughter and repression, but rather to pursue designs involving the pursuit of power or geopolitical adjustment.

The shift in focus that has occurred in the international debate from the “right to humanitarian intervention” to the “responsibility to protect” is of itself a major step for-

ward, both in methodological and political terms; however, a great deal of work still needs to be done to define limits and safeguards. At the same time, every effort must be made to rule out the possibility that sovereignty be used as a shield behind which to perpetrate genocide or ethnic cleansing.

LEGAL CLOUT. It would be a mistake to restrict the issue of sovereignty and its boundaries merely to the area of military intervention. The most interesting development in this field in recent years has been the growth of international criminal law. After the experience of *ad hoc* courts – always suspected of being “victors’ tribunals”, starting from Nuremberg – the establishment of the International Criminal Court (ICC) introduced a player with a certain amount of clout and a great deal of promise.

It is interesting in this connection to note, at a time when an overwhelming majority of countries has subscribed to the ICC, how any objections and reservations – not to mention open hostility in some cases – have tended to come from the two opposite extremes of the international “political spectrum”. Bush’s United States and radical Muslim countries have equally objected that the court would violate national sovereignty. Washington even went so far as to “erase” the signature that the Clinton administration’s delegate had appended to the Rome Statute of the International Criminal Court. While it is true that today, with the Obama administration, we may hope to see the United States adopt a different stance toward the court, we cannot be equally optimistic regarding the Muslim countries’ objections: at a recent meeting of the Organization of the Islamic Conference, one leader even argued that the ICC, having indicted Sudanese President Al-Bashir, was guilty of “terrorism”.

Given its problematic itinerary, it will be very difficult, but also necessary, to develop a corpus of international criminal law that is credible, effective, and capable, above all, of functioning as a deterrent in the face of those atrocities which continue to afflict mankind. The process, in fact, might even yet be sent into reverse by opposition and doubts. The latter, while in part legitimate, are often merely a façade for sovereignty exercised against international stability and security, and against the basic principles of humanity, which, we should not forget, are safeguarded by real, existing international laws.

Finally, we Italians should not forget what our Constitution states very clearly and with great political farsightedness, in article 11: “Italy [...] agrees – in conditions of parity with other states – to the limitations of sovereignty that are necessary to allow for a legal order ensuring peace and justice among nations [...]”