



To be, or not to be

Smart Defence, Sovereignty and Danish Defence Policy

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This background memorandum forms part of Centre for Military Studies' research-based public-sector service of the Danish Ministry of Defence. The purpose of this memorandum is to throw light on sovereignty and the Danish defence and whether the concept of sovereignty is under transformation. By special agreement, the project may continue for the purpose of communicating the problems. This is a translation from Danish of the memorandum "Suverænitetetsbegrebet under kontinuerlig forandring. Suverænitet og det danske forsvar" that was published in the spring 2012.

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Abstract

The concept of sovereignty is under transformation. The clear linkage between the state, its people, the monopoly of the legitimate use of physical force and the territory is challenged by, amongst others, 'responsibility to protect' (R2P) and pooling and sharing in NATO. Based on a review of literature, as well as a detailed study of certain sovereignty issues relating to the Danish Defence's enforcement of sovereignty and its involvement in international interventions, the paper presents a number of analytical perspectives on the transformation of the concept, and the relationship between state sovereignty and defence. The paper identifies two main issues in this regard: firstly state alliance relationships, and secondly humanitarian considerations. Alliances represent both a way to safeguard, and a challenge to, state sovereignty. Collective self-defence mechanisms in alliances support small states' ability to enforce their own sovereignty, but simultaneously challenge sovereignty through pooling and sharing. The issue of humanitarian concerns is brought into play in relation to the global community and the UN. The concept of R2P has been developed over the past 15 years within the UN. This development focuses on humanitarian issues and aims, through a number of items, to improve human conditions and prevent genocide and other abuses of human rights. R2P thus challenges state sovereignty by creating a space for interference in other states' internal exercise of authority. Historically, Denmark has supported the UN, and it is likely that Denmark in the future will participate in interventions where the enforcement and protection of human rights take precedence over state sovereignty. The conclusions are based upon a workshop conducted with an expert panel. This panel has subsequently carried out quality assurance of the paper. In the appendix a model is presented that can be utilised as a tool for further policy considerations of the concept of sovereignty.

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Introduction

The concept of sovereignty defines the power and responsibilities of states in relation to other states and in relation to the states' own citizens. In Denmark, there has been a debate for quite some time about loss of sovereignty in connection with EU membership. This debate concerns integration and voluntary loss of sovereignty. However, the question of sovereignty is to an increasing extent becoming an object of debate within the area of defence policy. The defence is a central part of the state's enforcement of its sovereignty; and the way in which the defence solves this task, alone or in cooperation with the armed forces of other countries, is of consequence to the role that security policy plays in the Danish state. In the international society, there is an intense discussion about state sovereignty. The intervention in Libya in 2011 was thus a violation of Libyan state sovereignty, as the international society gave the rights of the individual Libyan citizen higher priority than the sovereignty of the Libyan state. With the UN-sanctioned intervention in Libya, the phenomenon of responsibility to protect (R2P) was thus given higher priority than state sovereignty.

Simultaneously, 'smart defence' is being discussed in NATO, which to a wide extent means collaboration on military capacities. This raises the question of who has the sovereign control over the means to war and peace, and who does in fact enforce the national sovereignty. This creates a need to discuss sovereignty. The new discussion about sovereignty is about security, as well as interests, values and, not least, economy. In summary, the sovereignty discussion could be said to concern three issues:

1. How can a state best ensure its own sovereignty?
2. When may or should another state's sovereignty be violated?
3. What is the role of the state in the global community?

The Danish state secures its sovereignty and maintains its sovereignty by means of the defence. One example of this is the sledge patrol Sirius which helps secure Danish state sovereignty over East Greenland. Similarly, the Danish defence may be asked to intervene in another state if the criteria for exercising R2P are satisfied. This could be the case, for example, if genocide was imminent or had already started. Finally, the Danish defence may, for example, be asked to help the global community maintain security at sea as is currently seen in the pirate operations which are sanctioned by the UN. These three issues will be discussed in this memorandum. The memorandum will illustrate the factors that are at play, which concepts and statements research in the area defines as being central, and how this is implemented in a Danish defence context.

It is essential to understand that there is a difference between Danish interests and Danish sovereignty. The defence may be asked to perform tasks because Danish sovereignty is being violated, or it may be asked to perform tasks because it benefits Danish interests. Often, both aspects will be at play simultaneously.

This memorandum focuses on sovereignty, and three aspects will be examined in particular:

- Upholding sovereignty and territory
- Intervention
- Integration, including task sharing.

This memorandum has been prepared as part of Centre for Military Studies' research-based public-sector service of the Danish Ministry of Defence. The purpose of this memorandum is to throw light on 'sovereignty and the Danish defence and whether the concept of sovereignty is under transformation' (CMS, 2012: 5.4). Part of the assignment was to produce the memorandum within a very short time frame. The memorandum thus uses existing research to map the sovereignty problem and points out a number of challenges for Danish defence policy in that connection. Because of the complex character of this subject, much more can be said in this case; the purpose of this memorandum is thus to open a debate rather than closing it. In order to open this debate, the Centre set up a project group, supported by a scientific panel, which met for a one-day seminar on 10 January 2012. The composition of the panel appears from appendix 1. The panel members have expertise in international administration, European integration research, diplomacy and international law. Based on the panel discussions of the sovereignty problem, the project group prepared an outline for the memorandum and, on that background, analysed elements of the problem. These analyses were subsequently consolidated in this memorandum. The scientific panel has offered input during the production of the memorandum and has thus contributed with research input and functioned as a quality assurance mechanism.

This memorandum places the concept of sovereignty in a social science context and, for example by using historical examples, describes the function served by sovereignty in the modern state and the role of the defence in relation to performing this function. Thus, the memorandum does not offer a

legal definition of sovereignty, but focuses on the political conditions for the discussion of sovereignty.

The memorandum first discusses the international society and sovereignty, then Denmark and its sovereignty, and finally, a model will be presented for future discussions on sovereignty and the Danish defence.

The international society and sovereignty

Sovereignty is a concept which provides a political and legal solution to a problem that caused instability and war in the 16th and 17th centuries. The question was whether king or church, nobility or citizens had the right to control a given territory. This is the key question in the publications that are still the basic works of reference in the sovereignty debate (Spiermann, 2004: 5; Opello, 2004: 79). These are Jean Bodin's 'Les Six livres de la République' from 1576, Thomas Hobbes' 'Leviathan' from 1651 and John Locke's 'Two Treatises of Government' from 1689. Bodin considers the state to be a unit with a legal and political existence that is independent of transnational claims, as for example in the church. Hobbes develops the idea that state power is indivisible – the sovereign cannot surrender sovereignty. Both Hobbes and Locke work with a social contract according to which the individuals living in a given territory surrender their personal sovereignty for the purpose of achieving security in a community. This community is defined by its leader, the sovereign. In the original version, the front page of Leviathan was thus decorated with a picture of a king whose citizens were an organic part of him. The king holds a sword in his raised hand, defending his people against the enemies of the community. To Hobbes, writing with the British civil war still fresh in memory, these enemies could be both rebels and foreign powers. Sovereignty is thus based on the executive power having the ability to honour the social contract. Therefore, discussions on sovereignty are also closely connected to a person's view on the state and the international society and its institutions.

When signing the Treaty of Westphalia in 1648 in Münster and Osnabrück, the European states acknowledged a concept of sovereignty according to which no state may interfere with another state's internal affairs. Thus, sovereignty became the means to prevent gruelling religious wars. A state and its sovereign were responsible for deciding the religion of the citizens of the state. This could not be challenged by other states or transnational units like the Catholic Church. Today, this principle of non-intervention is challenged by concepts such as responsibility to protect. This principle confronts Hobbes' idea of the social contract and the claim of the Treaty of Westphalia of the inviolability of this contract by making demands to administration.

From then on, sovereignty formed the basis for the way in which a state legitimised its power in relation to its citizens and in relation to other states. The German sociologist Max Weber thus defined the modern state on the basis of its ability to legitimately maintain sovereignty:

(...) state is the human community which (with luck), within a certain territory – precisely this: 'the territory' is a characteristic of the state – claims to enjoy monopoly of the legitimate use of physical force. This is specific for the present: That you only grant all other unions or individual persons the right to use physical force to the extent that the state allows it: The state is considered the only source to 'the right' to use force (Weber, 1919 [2003]: 216).

In this quotation, Weber makes a connection between state dominance and the monopoly of the legitimate use of physical force in a given territory. Hedley Bull put it slightly different when writing:

(...) states assert, in relation to this territory and population, what may be called internal sovereignty, which means supremacy over all other authorities within that territory and population. On the other hand, they assert what may be called external sovereignty, by which means not supremacy but independence of outside authorities (Bull, 1977: 8).

Sovereignty is thus a description of the power of the state, but it is also a description of the way that this power, which, to the citizens of the state, may appear to be absolute, is relative in relation to the international society of which the state forms part. Firstly, the international society is the place where states meet. Secondly, it is based on a common understanding of certain rules and on working together to develop common institutions (Bull, 1977: 13). Thus, a set of international rules and targets is established. These targets can be summarised as wanting to limit violence, keep promises and maintain and stabilise sovereignty (Bull, 1977: 19).

The very starting point for the international relations is the existence of states that exercise sovereignty and control a given territory with a population (Bull, 1977: 8). In relation to international law, states cannot interfere with other states' internal affairs. Territorial jurisdiction is key in general international law (Germer, 2004: 23; Spiermann, 2004: 203), and states cannot exercise jurisdiction in other states' territory, which is why no state can interfere in other states' internal affairs. Sovereignty is key in the discussion of states and the international society, as sovereignty is present when states are born, exist and die. At the same time, the concept of

sovereignty helps ensure the integrity of states (Holsti, 2004: 113). Thus, sovereignty is what gives structure to the international society and the study thereof, while at the same time being the answer to the question of what the state is.

The purpose of the concept of sovereignty was to create stability in an unstable international system. From the 1800s onwards, this idea came under pressure by demands for democracy and nationalism. Religion as a trigger for wars was replaced by nationalism, for example, which touches on the legitimacy of the sovereign and affects the discussion about territory. The legitimate power of the state was increasingly being connected to its association with the national language and the national identity. This 'nationalisation' and thus 'territorialisation' of the concept of sovereignty was adopted in the Versailles treaty from 1919 which, to a large extent, drew the European borders according to national criteria. In South Jutland, the citizens were given the opportunity to vote on whether they wanted to be part of Germany or Denmark. Thus, sovereignty was challenged, as the population in a given territory was given influence on its sovereign. In the inner-war period, sovereignty and nationality were thus joined in international law. Article 1 of the Montevideo convention from 1933 establishes that:

The state as a person of international law should possess the following qualifications:

- (a) a permanent population;
- (b) a defined territory;
- (c) government; and
- (d) capacity to enter into relations with the other states (Montevideo, 1933).

Here, not only population, territory and government are coupled, but also the state's capacity to interact with other states. This definition points forward to present discussions on failed states that are not capable of living up to the qualifications of the convention. Finally, there is the Charter of the United Nations from 1945 which basically challenges the idea that the state is its own measure of right and wrong. With the ban against war as stated in the Universal Declaration of Human Rights and the Charter of the United Nations, the power of states is defined on the basis of international conditions. Thus, article 2, paragraph 4 of the Charter of the United Nations says: 'All 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' (UNRIC, 2012). The charter focuses on states' sovereignty over their own territory, and violation of sovereignty is only possible in special circumstances. This may be the case either if the Security Council approves it (article 42) or in case of individual or collective self-defence (article 51). Some international law lawyers have stated that article 1, paragraph 3 of the Charter of the United Nations which describes the purpose of the United Nations opens up the possibility that state sovereignty and territorial integrity may be overridden in case of massive violations of human rights.

This has now been set out in the final declaration from the UN World Summit 2005 where R2P was introduced. Thus, there is a discrepancy between the objective of the Charter of the United Nations to ensure peace and the individual states' sovereignty and the human rights regime, for example, that has subsequently been established and may necessitate intervention. Whereas previously, the subject of discussion was which territorial or national units could claim sovereignty, today, the subject of discussion is the extent to which states are sovereign as per Weber's description, i.e. inviolable in their control over a given territory. Non-intervention principles are codified in article 2, paragraph 1 of the Charter of the United Nations whereby all sovereign states are entitled to develop without foreign interference. An interim position en route to intervention is trade restrictions and embargoes which do not go against the intervention ban (Spiermann, 2006: 295). Ole Spiermann goes a little further and concludes the following about intervention: 'The intervention ban has probably been restricted over time, particularly in relation to the types of force that constitute intervention. Today, the essence of the intervention ban in its so-called customary law form is the ban against the use of force...' (Spiermann, 2006: 295).

Thus, sovereignty is at the same time an international law concept that assigns rights and duties to the states and a political reality according to which the content of the sovereignty is continuously being negotiated. Thus, sovereignty is a concept that has been under constant transformation because it has been the concept through which the role of the state was discussed. In 1931, the development of sovereignty was described as follows:

The importance of territories is diminishing, both in economic and political terms. The individual citizen is in no way connected to the country in the same way as previously: Utilisation of its natural resources is but one of many ways to create an

income. Trade and shipping businesses are independent of the territory, and even industry is based far more on the utilisation of the labour of the country than on the country itself (Schou, 1931: 375).

The existence of condominiums shows that sovereignty was never as precisely defined as the textbooks may seem to indicate. In a condominium, states share the sovereignty over a given territory (Aust, 2005: 31). One example is the New Hebrides, a British-French condominium from 1906 to 1980. Similarly, the Moselle River is today a condominium shared between Luxembourg and Germany. Schleswig-Holstein was a condominium after the Danish defeat in 1864 with Prussia and Austria sharing sovereignty until the Gastein Convention of August 1865. In 2001, an attempt was made to solve the conflict between the UK and Spain regarding Gibraltar by means of a condominium, which was rejected in a referendum. These are clear-cut exceptions, but they are practical examples to show that sovereign, sovereignty and territory are not unanimously coupled.

The concept of sovereignty comes into play every time new phenomena change the infrastructure of the global community or other conditions that define the international system. Globalisation and the occurrence of the Internet have also questioned the state and its territory to a certain extent (Held, 2003: 17; Beck, 2005: 296). In 1999, then Prime Minister Tony Blair said in an address in Chicago: 'Globalisation has transformed our economies and our working practices. But globalisation is not just economic. It is also a political and security phenomenon. We live in a world where isolationism has ceased to have a reason to exist' (Blair, 1999). For several years, many people probably thought that the Internet would neutralise borders, but it continues to exist in a sovereignty framework. On the Internet, the individual state has a country code (e.g. '.dk' or '.uk'), and as the Internet continues to be mainly based on cables, states can shut down or control access to the Internet. From the 1990s onwards, the concept of sovereignty has thus been the subject of renewed political and legal debate. At a general level, four current development traits in particular seem to give rise to debate in relation to the sovereignty of states (Adler, 2008: 4 ff.):

1. States have surrendered sovereignty in a number of settings regarding international collaboration. This means that states are no longer free to make their own decisions (Adler, 2008: 4; Halliday, 2003: 495).

2. State borders lose their significance to an increasing extent as money, goods and people cross borders at an incontrollable and increasing speed (Krasner, 2001: 2; Nye, 2003: 78; Beck, 2005: 98 f.).
3. Many states that came into existence in connection with decolonisation have severe problems maintaining and exercising authority within their own territory (Adler, 2008: 4; Sørensen, 2007: 269).
4. The development of human rights and EU legislation challenge the sovereignty of states (Adler, 2008: 5).

In the following, these development traits will be used to identify sovereignty challenges and possibilities in relation to the Danish armed forces and their tasks.

Sovereignty and Danish defence policy

The four above-mentioned development traits are aspects that Denmark is faced with in its international collaboration in NATO, the UN and the EU. They help secure Danish sovereignty, but challenge it at the same time. In the following, Danish sovereignty will be illustrated from the following three angles:

- Upholding sovereignty and territory
- Intervention, including R2P
- Integration, including task sharing and command.

Upholding sovereignty and territory

In its report, the Defence Commission 2008 concluded: '[i]t is assessed that in the near future, Denmark will not be confronted by direct, conventional military threats' (Defence Commission, 2008:60), but at the same time underlined the need for upholding the sovereignty of Danish territory. This is ultimately ensured by means of the defence. 9 April 1940 was a bitter pill to swallow for the defence and for Denmark. In 1952, what is today known as 'the royal operational order' was introduced to ensure that Danish forces, even in case of a surprise attack, will engage. The royal operational order makes it completely clear that if Danish territory or Danish forces outside Danish territory come under attack, they must 'engage without delay, without waiting for or obtaining an order, even if the declaration of war or state of war is unknown to the chiefs in question.' (Danish Defence Ministry, 1952). Thus, Danish forces have a standing order to secure the sovereignty of the kingdom in case of attack. However, this is rarely so – conceptually – simple.

Denmark has decided to be part of NATO to secure its sovereignty, and the Danish defence of sovereignty is thus not only in the hands of the Danish forces. Foreign troops may help secure Danish sovereignty, and Danish troops may help secure the sovereignty of allies. This is not new. For centuries, Denmark has formed part of alliances in which alliance partners offered military support to each other. During the First Schleswig war (1848-1851), Sweden supported the Danish war effort. A Swedish contingent was transferred to Funen, which made it possible to free Danish troops for other operations. This is a good example of Danish sovereignty being upheld with the help of foreign troops.

Denmark's choice of NATO was an active choice between neutrality and alliance. During the 1815-1945 period, Denmark had opted out of alliances and was fully in charge of upholding its own sovereignty and defence. Danish neutrality and arms limitation in the 1920s and 1930s led to a discussion of how little it would actually take for Denmark to uphold its sovereignty. The Danish neutrality discussion was thus partly a discussion about upholding sovereignty and how much one was willing to pay for defending the Danish government's monopoly to use physical force in the territory. Admiral Rechnitzer concluded:

It is also assumed that, in a fight for our existence against the forces that superpowers are able to bring into action, our means will always be insufficient.

Therefore, the objective must be to perform surveillance tasks that are intended to prevent lighter forces from committing violations of neutrality on Danish territory, for example putting out lighthouses, seizing navigation marks, laying out mine barrages, occupying individual islands, conflicts at the border brought about by irregular forces, use of our territory that goes against international law, etc. (Bjerg, 2003:197).

Thus, it was not practically possible to uphold Danish sovereignty according to the combination of arms limitation, neutrality and non-alliance policy at the time. Also, a war raged as the individual services were fighting for very limited resources, and the army and navy came up with very different solutions to this problem (Clemmesen, 2008: 218). This situation was never settled politically.

In the 1930s, however, it was very clear that it was necessary to uphold sovereignty in Greenland if Denmark wished to maintain these territories as part of the kingdom. This became evident with the Greenland case from 1933 where the Permanent Court of International Justice in The Hague claimed that Norway could not make territorial demands for East Greenland. This decision was mainly based on the fact that Denmark, prior to Norway's attempted usurpation, had exercised sufficient power in East Greenland to acquire title to the area (Spiermann, 2004: 269). Thus, the concrete upholding of sovereignty granted Denmark the right to the territory. Since then, Denmark has had to continuously redefine what upholding sovereignty means in Greenland (Larsen, 2012: 16). Today, it means that Denmark must uphold Danish sovereignty in Greenland as well as meet

the international treaty obligations that exist in relation to the Greenland waters. Denmark is currently performing these tasks by means of the Sirius patrol, for example.

The Greenland example also shows that the ability to uphold sovereignty in the entire Danish territory could be increased by partly surrendering sovereignty in parts of the territory. Up until 1949, the American bases in Greenland were a problem for Denmark, as Denmark feared that it would lose its sovereignty over Greenland as a result of the massive American presence. The Danish affiliation with NATO helped secure sovereignty against an attack from the Soviet Union, but it also secured Greenland from being taken over by the USA (DUPI, 1997: 537). Thus, the USA gained access to bases in the kingdom, and for extended periods of time, the USA was by far the most significant military force in Greenland, yet it helped secure Denmark's overall sovereignty during the Cold War. Thereby, NATO doubly secured Danish sovereignty.

NATO is the most recent example of the way in which states, by forming alliances, can use each other's forces to uphold their sovereignty. In the 1700s, it was generally accepted that a state, as part of an alliance, could make troops available for its allies without being involved in the war themselves. The state could thus transfer its own troops as auxiliary forces to allies (Schoubye, 1966: 566 ff.). An even more extreme method was for states to rent out their troops to other states. This is known from the American War of Independence (1776-1783) where Hessian troops were rented out to the British state. During the American War of Independence, the UK also wanted to rent large parts of the Danish fleet. The Royal Life Guards were rented out to England and took part, under English command, in the Battle of Boyne in 1690 in Ireland, for example. Thus, state sovereignty can be upheld by means of foreign forces, either by means of alliance affiliation or by renting or lending troops. This enabled England to uphold its sovereignty by means of Danish forces. The only Danish reservation in connection with renting was that Danish forces were not allowed to fight against Danish forces on the battle field. Today, the state's monopoly on the legitimate use of physical force is challenged by private security firms which, in the case of Denmark, help secure the safety of diplomats. This is a violation of the state's monopoly on the legitimate use of physical force and therefore a much debated issue in research (Verkuil, 2007; Avant, 2001). However, this is a way to secure the sovereignty of the state. The growing trend of the military forces to contract out security-related services during armed conflicts can sometimes challenge the classic concept of sovereignty. A classic example was when the private Spanish coast

guard cut off the ear of a British trade fleet captain, and the incident started a war – the War of Jenkin's Ear (1739-1748). Private operators may thus, especially if they are armed, act in such a manner that sovereignty is challenged and must be defended.

The First Schleswig war (1848-1851) is usually explained as a fight between Danish and German identity. However, it was much more complicated. The war was very much a question of who was to be the Danish sovereign – and of the form of government. Were Schleswig and Holstein to be not only subject to the Danish king, but also part of the German federation with their own representation (Bjørn, 2003: 81 ff.)? The entire Schleswig-Holstein matter was full of sovereignty issues. The Danish king was not king of Holstein, but duke and subject to the German federation (Rasmussen, 2005). This meant that the Danish kingdom worked with very different types of sovereignty at the same time. This complexity has not been present in Europe since the Second World War, but in Africa and Asia, different types of ethnicity across borders may create similar complex loyalty conditions that blur out borders which appear to be clearly demarcated on a map.

Finally, there is the question of what territory actually is. Since the 1700s, diplomats have enjoyed immunity, and embassies' territory abroad is national territory. This means that, in the capitals of most states, there are a large number of areas, embassies, in which other states are sovereign. Thus, an attack on an embassy or a diplomat is an attack on state sovereignty, and this may trigger war. During the so-called cartoon crisis, Denmark experienced how Danish embassies became the target of riots precisely because they were the symbol of the sovereign Danish state. Another challenge to territory and sovereignty are ships. These are the national territory of their flag state – so is an attack on a ship then an attack on state sovereignty? This is a problem, especially in international waters or waters in which the controlling state is not able to uphold its sovereignty. This problem is most apparent off the Somali coast where Somalia is unable to uphold order within the 12-nautical-mile limit and has not even claimed its 200-nautical-mile exclusive economic zone (EEZ). This is a case of not upholding sovereignty, which also leads to a risk of violation of the sovereignty of other states.

Upholding sovereignty and territory are key tasks of the defence. The Greenland case clearly shows that it is necessary to uphold sovereignty over a territory as it can otherwise be lost. At the same time, it is necessary to identify what is actually meant by sovereignty over a territory. Does the

royal operational order mean that an attack on Danish ships in international waters or on Danish envoys, embassies or web sites is an attack on Denmark that must be returned without delay by the defence?

Intervention and R2P

Sovereignty was intended to create stability after the period of instability that reached its climax with the Thirty Years' War (1618-1648). The wars of the following centuries were therefore very much characterised by non-interference in religious or other internal affairs, except if there was uncertainty about the sovereign – and especially if the order of succession was not in place. The wars of the 1700s are a long list of succession wars. Throughout this century, succession wars were fought for 25 years, and a large number of crises also followed from this issue (Holsti, 1991: 83 ff.; Struwe, 2009: 76). As previously mentioned, the development of the concept of sovereignty is closely connected to thoughts about administration of the state. In the 1800s, great stability was established in Europe. The relationship among the European states stabilised after the Napoleonic wars, and the European concert system ensured the individual state sovereignty and stability. Intervention was for the benefit of the existing state power, and an attempt was made to maintain the existing forms of government (Holsti, 1991: 138 ff.).

Today, the non-intervention principle is under pressure. This is, among other things, due to the civil war in Yugoslavia and the genocide in Rwanda in the 1990s (Bellamy, 2009: 1; 27). The international society does not want a repetition of these violations. This has specifically resulted in R2P which was presented in the 'Report of the Panel on United Nations Peace Operations, Comprehensive review of the whole question of peacekeeping operations in all their aspects' (United Nations Security Council, 2000 (the Brahimi report)). This was followed by the report by the International Commission on Intervention and State Sovereignty: 'The Responsibility to Protect'. The report laid down three principles of responsibility (International Commission on Intervention and State Sovereignty, 2001):

- Responsibility to prevent
- Responsibility to react
- Responsibility to rebuild.

This led to the final declaration from the UN summit 2005 in which ss. 138 and 139 maintained that UN member countries must assume responsibility for protecting civilians and, especially, for stopping genocide (General Assembly, 2005: 31). Basically, R2P is meant to be preventive, and it is only as a last resort that powers can be granted. The sections of the final declaration show that R2P rests on three pillars (the Department of International Law of the Danish Ministry of Foreign Affairs, 2012):

1. The individual state's responsibility to protect its citizens
2. The need for international assistance and capacity building
3. The international society's obligation to provide a timely and decisive response.

The three pillars indicate that R2P is about more than armed interventions in which state sovereignty is overridden. Initially, security must be created by offering assistance and capacity building. The third pillar, however, means that the international society has a political obligation to react in the case of violations against civilians, and in the case of severe violations, the Security Council may authorise armed intervention. This leaves us with the evident question of whether R2P leads to a new relative understanding of sovereignty in which state sovereignty is limited.

R2P is especially relevant as present conflicts are often internal wars (civil wars) and not wars between states (Seybolt, 2007: 1 f.). This often leads to the question of who – if anybody at all – has the monopoly of the legitimate use of physical force. In a failed state, who is to protect the citizens against violations, and who is to protect them in a dictatorship? In the discussion of sovereignty, it should be noted that a number of states formally recognised by the other states in the world are not capable of acting as practitioners of the monopoly of the legitimate use of physical force in their own territories. Thus, they are only to be considered formal, and not actual, sovereigns, and their sovereignty is only based on the recognition by the other states in the world. Currently, Somalia, in particular, seems to be an example of this problem, while several other states seem to periodically be characterised by non-execution of state authority.

However, the concept of R2P has not been clearly defined. For example, it is a rather big problem that Russia used R2P-like arguments for its intervention in Georgia in 2008 (Wong, 2009: 236). The following subjects are being debated in connection with R2P and armed interventions:

- Is it only genocide that will result in authorisation from the Security Council, or will the development and production of weapons of mass destruction or support to terrorists also give rise to such authorisation?
- How can abuse be prevented? Alf Ross touched on this in connection with humanitarian intervention (Ross, 1984: 220) – what is the situation with R2P?
- Can R2P lead to an obligation to intervene?

In connection with the development of R2P, the interventions in Kosovo and Libya seem to indicate that practical policy has gone before the legal development of concepts within an international framework. State sovereignty remains intact, but at the political level, there seems to be a development towards a more relative concept of sovereignty. Sovereignty is therefore challenged by a political development that emanates from a number of the established (Western) sovereign states. These states seem to pursue politics based on the fact that states must perform a number of basic functions and duties before they can be considered sovereign. If they are not capable of doing this, the international society is under a political obligation to intervene, and thus also to violate the sovereignty of the state in question.

In a Danish context, the question of sovereignty of states has, in recent years, been the topic of inquiry twice – the first time following Danish participation in the NATO mission in Kosovo in 1999 and the second time after Denmark's participation in the intervention in Iraq in 2003. In 1999, the Danish Foreign Policy Institute (DUPI) prepared the report 'Humanitær Intervention – Retlige og politiske aspekter' (*'Humanitarian Intervention – Legal and Political aspects'*), and in 2005, the Danish Institute for International Studies (DIIS) prepared the report 'Nye trusler og militær magtanvendelse' (*'New threats and military use of force'*). The DUPI report discussed humanitarian interventions based on four different politico-legal strategies: The status quo strategy, the ad hoc strategy, the exception strategy and the general law strategy (DUPI, 1999: 27). While the status quo and ad hoc strategies maintain the UN Security Council as the only institution that can authorise the use of force, the exception and general law strategies state alternative forms of authorisation (emergency powers and a general right to humanitarian intervention, respectively). Taking the four strategies as the starting point, the DUPI report concluded that it is not possible to give one single solution to the problem of state sovereignty and humanitarian interventions. Based on this, the report states '(...) that a combination of the status quo strategy and the ad hoc strategy, all things

considered, will be preferable to the alternative strategies (...)’ (DUPI, 1999: 131). This conclusion implies that it is in Denmark's best interest that the Security Council continues to be the only authority that can authorise the use of force, and therefore, humanitarian interventions should not be justified legally, but rather politically and morally (that is, on an ad hoc basis).

The DIIS report was an elaboration of the DUPI report, and it focuses on interventions in connection with 'new threats' such as terror, weapons of mass destruction and failed states (DIIS, 2005: 21 ff.). In continuation hereof, the DIIS report makes use of the politico-legal strategies employed in the DUPI report. Like the DUPI report, the DIIS report concludes that the Security Council regime should be maintained (the status quo strategy), but adds:

As it cannot be ruled out that, in certain instances, the Security Council will be unable to act against the new threats, it may be considered to couple this strategy with a remote willingness to carry out unauthorised preventive actions only justified on the basis of moral and political reasons in very exceptional situations where there is general international agreement that all criteria for preventive action have been met (DIIS, 2005: 141).

The DIIS report is thus an elaboration of the DUPI report, as it extends the conclusions of the latter to cover a number of new threats and furthermore points to the potential need to be able to intervene without the authorisation of the Security Council.

Although the R2P doctrine provides justification to intervene, it remains up to the individual state to assume the obligation to intervene as the intervening state is sovereign itself and must decide for itself whether intervention is worth the price. The discussion of R2P has therefore developed into setting criteria for intervention which are not only based on the events occurring in the state in which intervention is to take place, but also take into account the considerations that the state considering intervention must make. Here, national interests, the relationship with the international society – especially if there is a wish to bypass the UN – values and events in the broken-down state must be considered.

To the defence, intervention means that it is to act outside the classic defence of sovereignty. This means deployment far away from the territory – typically in a coalition. An intervention will be driven by a political decision – probably, but not necessarily, based on a UN decision. The R2P concept is under development, and in the years to come, it could become a key concept in Danish security policy. The overall political problem is twofold. Firstly, the concept is ambiguous, and secondly, it could be misused as a cover for other operations or invasion of a state. Finally, R2P challenges international law, as mentioned above, without R2P being a part of international law.

Integration

Integration and sovereignty can be discussed at several levels. Here, they will be discussed at an overall political level, at a level that relates to the distribution of burdens, task sharing in particular, and finally, at a level concerning the question of command.

Since Denmark became a member of the EC (later on EU), sovereignty has been a key element in the discussion of the role of the Danish state in the European community. The European Union is the clearest and most consistent example of integration development. NATO is another model for integration in which article 5 of the defence alliance is a cornerstone of integration at a general level. At the political and military levels, the NATO states have been working so closely together that joint doctrines and training have been developed. This has led to integration, or a common understanding, which makes it very difficult to back out when article 5 is activated. World history is full of alliances in which the alliance partners failed to live up to the obligations of the alliance. In the 1700s, Denmark was a less than flattering example of this. However, NATO seems to have reached a level of institutional integration where it is not possible to back out. Article 5 means that state sovereignty, and upholding it, is not only a matter for the individual state (Aalberts, 2008: 138). With a high level of integration, a state is at risk of being drawn into a war – often referred to as a chain gang or domino effect.

In spite of the close security policy and institutional integration in NATO, an actual integration of forces whereby sovereignty is suspended in order to set up actual joint NATO forces has never taken place. The closest the states have ever come was the establishment of the so-called AWACS planes (NATO, 2007). The AWACS planes were established as a joint NATO fleet in 1982 with joint financing for the purpose of giving SACEUR weight in its surveillance of the airspace and to

improve the surveillance of low-flying planes and missiles. National interests continued to exist, however, and Germany decided in both 2003 and 2011 to withdraw its troops from the operations as Germany did not support them. In this case, sovereignty limits the collaboration. The very fact that a country can withdraw its assets from collaboration is one of the arguments most often put forward against task sharing under the auspices of NATO.

The Americans were present in Greenland until 1968 (and later) without integration between the Danish and American forces. This gave rise to a large number of problems, for example by preventing transparent, and thus democratic, control of the sovereignty that had been surrendered by Denmark to the USA. On the other hand, Denmark has, from the 1970s onwards, become part of the technical integration with NATO's *Air Defence Ground Environment* (NAGDE), a jointly financed command and control structure with data links, radars and control centres. With the technical integration follows an operative integration with joint procedures (NAGDE web site).

Integration of forces, however, is not without problems. The Netherlands and Belgium established a joint air control station in the mid-1990s and agreed that the two countries were to take turns in the airspace violation response. This scheme was annulled after 9/11 when the Netherlands withdrew from the collaboration. In this case, faced with the risk of having to shoot down civilian planes with its own citizens, the sovereign did not want to surrender its sovereignty to others and re-established complete sovereignty. Thus, it is not always a question of surrendering sovereignty. In contrast, Iceland and other NATO partners leave their airspace violation response to other states without any major problems.

Integration of forces also gives rise to the question of democratic control. Can the individual state control a fully integrated force? Can it be ensured that sovereignty surrendered will not be abused? A fully integrated intelligence service would be desirable, ensuring a free flow of intelligence, but this would without a doubt also be a threat to the sovereignty of the individual states and their contract with the citizens. Here, the protection and consideration of the individual citizen and state sovereignty seem to outshine the benefit of surrendering sovereignty.

Air policing and task sharing

The Danish government's security policy report states the following: 'Over the past year, Denmark has contributed specifically to international task sharing within the area of 'air policing'.' (Søvndal, 2011: 3). Task sharing or pooling are classic reasons for entering into alliances. The idea that sovereignty can be safeguarded and, by means of collaboration, sufficient capacity be build to avoid attack has always been an important reason for Denmark to enter into alliances. In the 1700s, Denmark's military capacity was so extensive that France paid Denmark to uphold this capacity and refrain from making it available to others (Struwe, 2009: 121 ff.). The objective was to avoid pooling. When, in 1769, Denmark negotiated a new alliance treaty with Russia, an agreement was made for the two states to share their tasks. Denmark was to establish a fleet of liners consisting of 60 battle ships – thus doubling the capacity – while Russia was to provide land forces. Russia was to deliver timber for building the large new Danish fleet (Struwe, 2005: 229 ff.). This was an early version of burden sharing. These parts of the alliance came to nothing, however, as both parties feared the other party's possible armament. However, an agreement was made to make troops available to each other in case one of the two states was attacked. This was a case of pooling capacities to deter Sweden, which was the reason for forming the alliance.

NATO has always been characterised by task sharing, during the Cold War mainly determined by geography. Thus, Denmark was responsible for being able to defend its own territory to an extent that made it possible for Danish forces to be reinforced by allied forces (Villaume, 1995). After the Cold War, task sharing took on a different logic in the alliance as the discussion was no longer about geographical efforts made by allied forces in Europe, but about the possibility of the individual country to specialise in a specific type of capacity or share capacities with others, or that the alliance could make forces available via centralised foundations or joint capacities. Task sharing is expressed in a number of different types of specialisation (Rasmussen, 2004) that will be clarified in the following:

'Role specialisation' also means a focus of investments made in materials, but not necessarily closing down the services or units that are not covered by the specialisation. It is necessary to distinguish between 'individual role specialisation' and 'multiple role specialisation'. If a country specialises in one single role, the armed forces will basically have only one function. This may lead to a specialisation of the service, but not necessarily, as it is possible to envisage specialisation in

the role of a fellow service. Multiple role specialisation is more common. Here, a country will specialise in a number of areas.

Role specialisation has been used in a moderate form by the EU and NATO where one or more countries have signed up as a lead nation for a number of capability development tasks which they then promise to be heading in relation to investments in materials. Role specialisation is mainly an opportunity to prioritise investments in materials in areas in which a country's armed forces have a comparative advantage to build on.

'Pooling specialisation' means that a number of countries achieve economies of scale by purchasing and operating material together. Defence material is very expensive, and it is tempting to seek to buy more with the same amount of money by utilising the economies of scale that can be achieved by having a pool of a given capacity. However, a precondition for pooling specialisation is a high degree of compatibility between the collaborating countries. This is mainly the case among the European air forces which use identical planes, and it is in this area that the idea of pooling specialisation has developed the most. Transport aircrafts and air refuelling capacity are thus the areas that are most often mentioned as being suitable for pooling specialisation. The UK and France have a British-French sharing of aircraft carrier capacity. Until sometime between 2020 and 2030, the UK will have no aircraft carriers. New ones are under construction, but until they are finished, the country does not have this capacity. The UK and France are solving this issue as the two states plan to share the French aircraft carrier capacity. Thus, the UK will maintain its knowledge and training within the area. Most probably, both states will be able to save money as compared with the situation of each country maintaining its capacity. So far, it seems that the two states have agreed to uphold their sovereignty, meaning that operations under British direction can be carried out under British command from a French carrier (Harding, 2011).

Air policing is a good example of this new task sharing discussion as it may be expressed in role specialisation. This is the case in the Baltic countries which do not have air combat forces, but can concentrate on other military capacities while Danish planes, for example, protect their airspace. However, collaboration on air policing may also be a case of pooling specialisation if the collaborating countries jointly purchase fighter planes and attend to each other's airspace in case of deployment. In the case of air policing, surrendering sovereignty can be discussed by viewing it

from two angles: On the one hand surrendering or delegating control of sovereignty in relation to one's own airspace, and on the other hand surrendering sovereignty of the capabilities in one's own airspace.

As regards sovereignty over one's own airspace, NATO Integrated Air Defence System (NATINADS) is worth mentioning. Despite the designation 'integrated', NATINADS did not lead to SACEUR taking over the upholding of sovereignty completely from the member countries. NATINADS was established as a mutually binding system (with a jointly financed infrastructure), but with planes and crews from the nations. NATO's command structure and NATO's planning of forces optimised the establishment of an airspace violation response, and NATINADS made it possible to exchange radar tracks and make expedient delimitations of the individual areas of responsibility. In practice, however, the common procedures and standards mean that the decision of when article 5 would come into force in case of an attack has in reality been delegated to the relevant NATO chiefs.

Denmark was excepted from NATINADS from the beginning – a Danish NATO reservation. The decision was made on the basis of the Danish defence policy debate about NATO's command structure and Danish defence integration (Villaume, 1995: 236 ff.). On the one hand, the Danish reservation regarding nuclear weapons was a problem, and on the other, it was feared that the task performed by Danish planes would be prioritised away from the Danish area (Villaume, 1995: 204 ff.). The Danish reservations were solved, among other things, by setting up the so-called unitary command 'Commander Baltic Approaches' (COMBALTAP) according to which the same Danish general was head of the defence's operative forces during peacetime and head of NATO during times of war. Thus, there would always be a Danish line of command, also within the area of air defence (COMAIRBALTAP), and the Danish air defence could thus be part of NATO's air defence without, however, being fully integrated during peacetime as was the case further south in Western Europe. Also, the Danes were free to decide when to switch to war structure.

The air policing discussion is just one element of the renewed discussion about task sharing in NATO which Secretary General Anders Fogh Rasmussen introduced in 2011 under the heading 'smart defence' (Fogh Rasmussen, 2011). From a legal point of view, task sharing of military capacities challenges the concept of sovereignty. Historical experience and political reality,

however, show that military capacity has often been shared among alliance partners. It could be said that this is the very idea of an alliance. Thus, the question is not whether to have task sharing, but how this task sharing can be administered, and which share of the national defence capacities can be covered by such collaboration.

Command

A highly practical problem in the integration part of the discussion of sovereignty is the question of command. To a small state, this question is particularly interesting as Danish forces in international missions, for example, by virtue of their number, often have to be placed under the command of other countries – as opposed to the superpowers. It has been said that the USA placed its forces under the command of another state for the first time in 1993 when an American battalion was under Danish UN command in Macedonia (Særmark-Thomsen, 2008: 103 ff.).

In Afghanistan, Denmark has decided to be part of the British Task Force Helmand, yet with its own area of operation from 2007 to 2012 (Rasmussen, 2011: 30 ff.). Thus, Denmark has placed itself under British command at the operational level, yet in reality, it has maintained the tactical responsibility for its own forces. Danish units have been lent to the British, and British units have been under Danish command, but it has been important to Denmark to be in control of tasks that the Danish forces have been performing (Rasmussen, 2011).

The term 'to go national' is known from the pirate operations off the Horn of Africa and means a change to national rules of engagement. Operations in this area are headed by the EU, NATO and the USA. However, talks with leading naval officers from various states during the so-called Piracy Week in London in October 2011 show that they are subject to the rules of engagement of the given operation, yet they will step out of the operation in a number of instances to go national. This allows the states to act more freely and thus to maintain a very high degree of sovereignty; however, the objective of the operation is sacrificed in favour of the interests of the country's own sovereign.

The Franco-British agreements on the development of common capacities from 2011 emphasise the intention of developing a common expeditionary force. When being dispatched, one chief – not two – will be in charge of this force. In principle, the states are prepared to place their own forces under the command of another sovereign. This, however, does not seem to apply to the planes on the

aircraft carrier as previously mentioned. It has always been a problem for states to decide on sharing command during common actions. How can a country surrender sovereignty over the forces whose job ultimately is to secure its own sovereignty? In 1756, Denmark and Sweden upheld armed neutrality at the break-out of the Prussian Seven Years' War (1756-1763). Joint patrols were made in the Oresund. The question of command was solved with an agreement that each country should be in command one month at a time.

Command and sovereignty are closely connected, and as it appears from the above examples, states are very cautious about surrendering command and thus control of their own forces. This is only natural as the forces are the state's ultimate instrument. However, it appears to be inefficient to a certain extent, and Denmark has also had a reservation in NATO regarding the surrendering of command during peacetime. Today, it would appear that this reservation is losing its importance, and there seems to be a willingness not only to surrender to a common NATO command during wartime, but also during peacetime. This is a natural consequence of the continuously growing institutional integration. However, it also raises the question of how Danish interests are handled when sovereignty does not automatically ensure a Danish decision within an area. The precondition for Danish participation in increased integration in NATO through smart defence is thus as much a question of Denmark identifying its interests in such a collaboration to itself and its allies as it is to clarify a number of issues regarding sovereignty. In other words, we do not only need to decide whether we want to join, but also what we would like to achieve.

To the defence, integration means that it will be better able to utilise the overall capacities of the alliance in collaboration with its alliance partners. This will take place by specialisation within the alliance. The question is: Can and will we solve a given task ourselves? And not least: Are we ready to surrender sovereignty within a given area or subject the forces of other states to Danish command?

Conclusion

The concept of sovereignty defines the power and responsibilities of states in relation to other states and in relation to their own citizens. The defence is a central part of the state's enforcement of its sovereignty. However, it is characteristic of the concept of sovereignty that the definition of power and responsibility has always been subject to debate. In a democracy, sovereignty is a concept that it is often more sensible to debate than to define. Within the area of defence policy, the sovereignty debate may be most intense in connection with alliances and in connection with the global community. Denmark is safeguarding its sovereignty by entering into an alliance like NATO. However, the concept of sovereignty is also challenged by alliances. Task sharing, role specialisation and pooling specialisation are performed, and in future, common capacities may be developed. This way, certain tasks of protection of the territory, and thus sovereignty, will be transferred to other states in the alliance whereby the defence's tasks and capacities change. This debate about sovereignty seems to be new, but historically, it can be found as a classic dilemma in alliances. Therefore, a democratic debate should be established about what we do want and do not want to do in an alliance. The starting point for this debate cannot be sovereignty in itself as sovereignty is the framework for the debate, not the subject. The starting point should be which interests and values one wants to protect with sovereignty.

The global community is the framework for a number of international institutions which help to ensure that small states are not trampled underfoot. Therefore, Denmark has joined the UN and supports its decisions and actions. Denmark considers itself a participant in the international society that wants to help assert its values. Values like democracy and human rights are thus highly valued by Denmark and the UN. Over the past 15 years, the concept of R2P has been developed because of civil wars and genocide, and this concept is intended to help ensure that people are not subjected to violations from their sovereign. If a state uses its monopoly of the legitimate use of physical force, or does not use it, to the detriment of the state's citizens, the social contract is broken, and the international society may consider it its duty to rectify this problem and install a new monopoly of the legitimate use of physical force. Eventually, this may mean that Denmark will participate in an intervention in which state sovereignty is disregarded for the benefit of individual people's welfare. Denmark may even be pushed into doing this outside the UN. In the extreme, this may mean that other states will also take a critical look at Denmark and its actions within Danish territory. Finally, the global community also means that there are a number of places where sovereignty does not exist, for example in space, in cyberspace and not least at sea. Here, it is very likely that problems

will occur in relation to who will assume responsibility for what. Pirates operating in international waters have the great advantage of no state having assumed sovereignty and thus law enforcement. Here, the lack of sovereignty is a problem.

Thus, the concept of sovereignty is undergoing transformation, and the close connection between the state, its monopoly of the legitimate use of physical force, its citizens and its territory is challenged. Similarly, the lack of sovereignty in the global community challenges the security of citizens that act in the global community. This pushes the states into using their monopoly of the legitimate use of physical force outside their territory.

Model for sovereignty dilemmas

In practical terms, the above account makes it possible to devise a model for the categories of considerations that follow from the security and defence policy discussion about sovereignty.

Model 1: *Categorisation of security and defence policy questions related to sovereignty*

		Territorial area	
		<i>Own territory</i>	<i>Outside own territory</i>
Involved in military action	<i>Independently</i>		
	<i>With partners</i>		

Model 1.1: *Categorisation of security and defence policy questions related to sovereignty – including cases*

		Territorial area	
		<i>Own territory</i>	<i>Outside own territory</i>
Involved in military action	<i>Independently</i>	Case: The Sirius patrol Question: <i>Can we?</i>	Case: Liberation of hostages Question: <i>Will we?</i>
	<i>With partners</i>	Case: NATO/air policing Question: <i>Is it more efficient or does it make us more vulnerable?</i>	Case: Pirates Question: <i>Should we assume responsibility?</i>

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