Privatization of border security: what remains of national sovereignty?

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Abstract :

Securing borders is essential for states' and national governments' security as criminal acts develop and perpetrators resort to various advanced technological means. The national state will adopt various effective solutions in order to counter them, based on systematic methods and sophisticated security measures with a view to effective monitoring and control of its various internal and external borders.

This study will show the concept of borders and the management of their security, with the definition of sovereignty, so that we can finally study the Impact of security privatization for national sovereignty.

Keywords: border security management, security privatization, national sovereignty.

1.   Introduction:

The concept of international borders, their definition, and demarcation have gone through various stages to reach their current known form. Initially, borders were vast areas separating peoples and tribes, relying on natural features such as rivers, mountains, and deserts to act as boundaries and prevent conflicts and wars.

With the establishment of the modern state through the Treaty of Westphalia in 1648, which emphasized the creation of states based on the concepts of people, sovereignty, and territory, the latter-territory-became one of the most important elements constituting a state, where it exercises sovereignty and territorial jurisdiction. This marked a shift in the notion of borders from border regions to border lines (Ibrahim, 1991, p. 53).

With the fall of the Berlin Wall in 1989, many theorists predicted the end of recognized borders. However, reality proved otherwise. Instead of disappearing, borders underwent profound changes in concept, evolving to become a flexible barrier and a changing legal framework.

Today's world no longer sees borders made of barbed wire and concrete walls. They have become more like a flexible barrier, primarily based on advanced technologies in this field and laws governing the movement of citizens. The COVID pandemic has also impacted this phenomenon.

The connection between borders and various security issues such as illegal immigration, terrorism, and resource conflicts has driven states to enhance their investments in border security within the framework of smart borders, which rely on the use of technologies, information, and communications to facilitate and control security, while also boosting their capabilities in combating transnational crimes.

Resorting to security services seems inevitable due to the expansion of the national state and the broadening of its concerns. However, this outsourcing of services makes the state appear to relinquish its powers, evade its responsibilities, and cede the trust granted by citizens through elections to a non-state entity that cannot be held accountable.

The trend of states turning to the private security sector to fulfill their duties towards their citizens can be considered a resignation from their functions, though it does not necessarily mark the beginning of the end for the state in its conventional sense.

From the above, it can be said that managing and securing borders has become a major concern for national states and governments, representing one of the greatest challenges for the state. What are the implications of privatizing border security management on the sovereignty of governments in a globalized world that tends to reduce the military and economic roles of borders while witnessing an increase in transnational organized crimes?

We start with the hypothesis that governments, under current international and regional changes, will shift from traditional border security to border management by delegating their powers to non-state actors, represented by private companies operating in this field, to securitize their borders and combat various criminal activities

This research paper aims to:

- Define borders and border management.

- Define the impact of security privatization on the sovereignty of the national state.

This will be achieved using the descriptive-analytical method.

To answer the aforementioned issue, this study will address the following points:

- The conceptual framework of borders and sovereignty.

- National sovereignty in the context of security privatization.

2. The Conceptual Framework of Borders and Sovereignty

2.1. First, the Concept of Borders:

The concept of borders is among the complex concepts that have not reached consensus, resulting in varying definitions.

2.1.1. The Linguistic Definition of Borders:

Borders, in its plural form, comes from the word "حد" (limit or boundary). According to Ibn Manzur, "a boundary is the line between two things to prevent one from mixing with the other and to avoid one encroaching upon the other. It is said that a person has set a boundary for another when his land is adjacent to the other's land" (Ibn Manzur Al-Ansari, 1414 AH, p. 537).

Al-Abadi defined it as "a boundary is the barrier between two things and the end of something is its limit, which distinguishes one thing from another," meaning that a boundary is a separator or barrier between two things to prevent their mixing or to avoid one overpowering the other (Al-Abadi, 2008, p. 1007).

Regarding foreign linguistic definitions, the French dictionary Larousse defines borders as the dividing line between two countries, administrative regions, or areas distinguished by different natural or human characteristics (Dictionnaire du français contemporaine, Larousse, 1971, p. 544). In English, the term "borders" corresponds to "boundaries," which, according to the Oxford dictionary, refers to a line that represents the separation between two properties (Oxford Advanced Learner's Dictionary, 1995, p. 129).

2.1.2. The Legal Concept of Borders:

The legal concept of borders is defined as a line that determines the extent of state sovereignty and separates the territory of one state from another (Ibrahim, 1991, p. 54).

This modern legal concept of borders differs from the ancient legal understanding, where borders were areas separating groups and acted as defensive lines to protect against external attacks, not merely as dividing lines. This concept has evolved alongside the development of societies and is a response to the cultural reality of communities in all their historical, political, social, and geographical components.

In ancient times, borders were subject to internal law only, and they were delineated unilaterally and arbitrarily. In the modern era, borders are established and demarcated through agreements between concerned states, either via international treaties, arbitration decisions, or rulings of international courts.

2.1.3. The Concept of Border Security:

Despite the great importance of border security and its central position among decision-makers and academics alike, there is significant difficulty in formulating a comprehensive definition of border security. However, various aspects of border security can be identified. According to the U.S. Department of Homeland Security, border security is defined as the protection of international borders from illegal transfer of weapons, drugs, human trafficking, and goods, while enhancing legal travel and trade in a way that ensures national security, prosperity, and strengthens national sovereignty (Amel, 2022, p. 282).

Some academic sources define border security based on its objectives as anything related to enhancing the capacity of international borders to hinder the movement of criminal activities across borders, aiming to reduce vulnerabilities resulting from loss of border control and the onset of chaos (Amel, 2022, p. 283).

Other definitions focus on the means, defining border security as the process of deploying personnel, technologies, and infrastructure to ensure the protection of borders from all threats (Amel, 2022, p. 283).

From the above, border security ultimately refers to the foundations of political modernity and is defined by two complementary concepts: the state and the nation. This raises two challenging situations: First, when a country suffers from a lack of national cohesion and legitimate governance, and second, more critically, when it loses control over its borders. The role of the central authority is pivotal in this task, as it is expected to operate within the framework of national interest and unified decision-making, equipped with appropriate material and human resources, while also enjoying international legitimacy. However, the question arises as to whether it is possible for the state to partially delegate border control to a non-state actor to provide the necessary protection.

2.1.4. The Concept of Border Management:

The concept of border security intersects with the concept of border management, which refers to the mechanisms through which a balance can be achieved between two contradictory objectives: facilitating the legal movement of people, goods, and merchandise between countries and limiting the entry of these through illegal means. These mechanisms include effective international relations, regional arrangements, and regulations for cross-border migration and trade. Border management also involves all methods and procedures applied to the movement of people and goods to ensure their compliance with the law, enforced by various specialized organizations and bodies that adopt unified standards using infrastructure of material and technical means (Amel, 2022, p. 283).

2.1.5. The Concept of Border Control:

In addition to the above, the concept of border control refers to all activities carried out by legally authorized authorities at international borders in response to any attempt to breach or impose threats on their immediate surroundings.

With global developments, this concept has expanded to include the establishment of an integrated system primarily based on information and involving the monitoring of cross-border flows at every stage, from departure to arrival (Amel, 2022, p. 284).

2.2. Second: The Concept of Sovereignty

No topic has sparked as much debate as the subject of sovereignty, which has drawn significant attention due to its abstract nature, governed by varying intellectual and philosophical foundations. Sovereignty is considered the supreme authority within the state, distinguishing it from other groups. It is original, deriving from itself and not subject to any other authority. Additionally, it is a legal authority bound by the law.

The concept of sovereignty has its roots in Plato's recognition of a common contract within the city, which entails the will of all. In ancient China, Confucius linked politics and ethics, considering politics as part of ethics, with the improvement of the latter leading to societal stability, and recognizing that the people are the source of power. Mencius, a disciple of Confucius, adopted this

view and added that a king who loses the people's approval also loses his right to rule (Omar, 2008, p. 146).

The intellectual debate intensified in France between the French and German theories regarding the existence of sovereignty in the state, due to the differing intellectual foundations and the historical circumstances each country experienced.

The concept of sovereignty found its initial roots in the struggle between kings and feudal lords on one side and the conflict between religious and temporal authorities on the other (Omar, 2010, p. 71).

2.2.1. Definition of Sovereignty:

The modern concept of sovereignty first appeared in the thought of Charles L'Oiseau, who defined it as a characteristic of the monarch. L'Oiseau distinguished between private sovereignty, exercised by feudal lords as a limited authority, and public sovereignty, exercised by the state through the king as an all-encompassing and absolute power.

Legal scholar Esman defines sovereignty in relation to the state, which he sees as the legal embodiment of the nation. The public authority, which overrides the wills of the nation's members, turns the nation into a state, and no higher authority exists to which the state is subject. According to Esman, the supreme authority in the political community is one that has no equal or comparable power (Saeed, 2008, p. 98).

Legal scholar C. Demalberg views sovereignty as having a negative meaning, represented by the denial of any resistance or restrictions to public authority. For him, sovereignty is a characteristic of public authority.

Legal scholar J. Dabin defines sovereignty as the state's supreme authority over individuals and private and public groups living or operating within it. For him, sovereignty means independence and has two elements: a positive one, represented by the ability of people to impose authority, and a negative one, which is the attribute of the sovereign in not being subject to external imposition. Jean Bodin, one of the jurists who developed the concept of sovereignty, elaborated on it in his book *The Republic* in 1576. He considered sovereignty to be the supreme power imposed on citizens and lords, and it is permanent. According to Bodin, rulers are not subject to positive law since it is of their own making, though this does not mean that the ruler's will is absolute, as they are subject to divine law and natural law, both of which arise independently of the ruler's will (Omar H., 2008, p. 147).

To understand Bodin's concept of sovereignty, it is essential to connect it with its historical context. France at the time was experiencing a power struggle between King Henry III and the nobility. Bodin called for unity by establishing a central authority that would impose itself on the aristocratic classes opposing the king.

Niccolò Machiavelli had previously adopted this view in 1516 in his book *The Prince*. The similar circumstances experienced by both Machiavelli and Bodin led them to advocate for unity against the church through the absolute authority of rulers.

The disagreement among jurists over the definition of sovereignty stems from the fact that it is not the result of research and studies but rather the outcome of a long historical struggle between the ruling authority and the governed.

From the above, it can be said that sovereignty, in its primary sense, refers to the supreme commanding authority within the state. However, since the state is a legal entity, who, then, holds sovereignty?

There are various opinions on this matter. Bodin and Hobbes agree that sovereignty belongs to the monarch, while Jean-Jacques Rousseau argues that sovereignty belongs to the general will, represented by the nation. The French Revolution also granted sovereignty to the nation. With the evolution of circumstances and the criticisms directed at the theory of national sovereignty, most modern constitutions have agreed that sovereignty belongs to the people.

2.2.2. The Basis of Sovereignty:

The subject of sovereignty presents a fundamental problem: how can one human will prevail over other human wills? Many theories have attempted to answer this question, the most significant of which include:

- **Religious Theories:**

These include the theory of divine right and the theory of indirect divine right.

- **Democratic Theories:**

The social contract theories of Hobbes, Rousseau, and Locke.

Various legal schools have also studied the issue of sovereignty, among them:

- The Historical School, led by Savigny.

- The Positivist School, founded by De Martens, which argues that law is a product of state sovereignty. Thus, the law itself restricts and governs the state, provided that it is issued by the state's will.

- The Absolute Sovereignty School: A German school founded by Jellinek, which holds that state sovereignty is absolute and unrestricted. Hegel also supported this view.

2.2.3. Manifestations of Sovereignty:

Sovereignty has two aspects: internal and external. The internal aspect refers to the supreme authority exercised by the state over individuals and entities within its geographical territory, in a mandatory manner, under the threat of sanctions. This contrasts with the view of De Malberg, who sees sovereignty only in its negative sense, asserting that internal sovereignty means the state's exclusive possession of supreme authority without any challenger, otherwise it would be incomplete (De Malberg, 1922, p. 72).

External sovereignty, on the other hand, means that the state is not subject to any foreign authority, and it does not receive any external orders or directives. De Malberg also emphasizes that external sovereignty is merely an expression of internal sovereignty in relation to other states, making the two inseparable (De Malberg, 1922, p. 72).

Furthermore, the external aspect is what distinguishes different types of states in terms of whether their sovereignty is complete or incomplete. For instance, states with incomplete sovereignty may enjoy internal sovereignty but lack external sovereignty, as is the case for states under protection, mandate, or trusteeship, where their external sovereignty is held by the protecting, mandating, or trustee state.

2.2.4. Sovereignty in the Modern Era:

It can be said that the earlier intellectual and practical characteristics of sovereignty have lost much of their significance. As the state's role evolved from merely maintaining security and order within its territory, the emergence of various actors and groups—such as governmental organizations, non-governmental organizations, and multinational corporations—has significantly constrained the state's absolute sovereignty (Saeed, 2008, p. 138).

American scholar Richard Haass points out that for 350 years, the concept of sovereignty remained the key indicator of the state as a major player on the global stage. The state's enjoyment of its free entity allowed it the freedom to act and make decisions within its territorial borders without interference from other states. However, this concept needs to be reconsidered. In a world with more than 190 countries, states now coexist with a large number of non-sovereign entities that possess independence, such as corporations, organizations, terrorist groups, and organized crime syndicates (Haass, n.d., p. 30). Sovereign states are increasingly influenced—either positively or negatively—by these entities, and the monopoly of power once enjoyed by states is gradually diminishing.

Haass also argues that under current global developments, the necessity may lead to a reduction or even disregard of sovereignty. When a state fails to meet the needs and requirements of its citizens, it becomes a failed state, having failed in its responsibilities toward its people. For this reason, some theorists are adopting a conditional contractual concept of sovereignty, where if the state fails to fulfill its obligations, it loses the privileges associated with sovereignty.

3. National Sovereignty in the Context of Security Privatization: Delegation or Abandonment of Sovereignty

3.1. Privatization of the State Monopoly Force

The state monopoly force is one of the most significant manifestations of sovereignty and functions of the state. Max Weber argues that one of the key features of the state is the application of law through the monopoly of legitimate physical coercion (Saeed T., 2000, p. 22). According to Weber, the state can enforce orders within its territory using an administrative organization that employs the threat or use of physical force.

Charles Tilly also asserts that the state controls the means of coercion because it is the holder of sovereignty (Charles, 1993, p. 6).

Sociologist Anthony Giddens believes that the state controls a specific territory by backing its authority with the law and the ability to use force. One of the state's core functions is the monopoly on legitimate force as a manifestation of its sovereignty, which should not be shared with any other

actor. However, this principle has been shaken by the restructuring of public administrations and the privatization of state institutions, which have become features of the modern state. The state has traditionally been entrusted with the task of defense, monopolizing the use of legitimate force. According to Weberian thinking, the state is the guarantor of violence, being the supreme authority capable of managing it.

The modern state, according to German sociologist Norbert Elias, is the result of a process of monopoly (Norbert, 1982, p. 92). However, Weber acknowledges that the state may delegate the use of force, allowing it to seek external sources (Weber, 2011, p. 161).

Security privatization cannot be viewed as an absolute attempt to undermine sovereignty. According to Eric Delebeque, the re-engineering of the state is more about redefining methods rather than the essence of sovereignty. He also argues that sovereign power can decide to delegate force temporarily (Delebeque, 2006, p. 30).

As the scope of the state has expanded in the modern era to encompass new dimensions, the traditional definition of international law, which states that a country must have three essential elements territory, population, and authority seems inadequate. This definition only considers the basic elements of statehood. Today, it is necessary to add the state's ability to exercise actual governance over its territory and citizens, while defending its internal and external interests, without neglecting the new dimension of outer space and its role in communication and warfare. In this context, can security privatization be seen as an added value that enables the state to manage a wide range of activities effectively? Indeed, as the state's responsibilities grow, its ability to exert direct influence diminishes, and its duties become intertwined with those of other states.

Some argue that, under globalization, the state has "died" in terms of its functional role. Others believe that the state is not dead but must adapt to modern times and transform into a broader, confederal   entity.

The importance of security privatization is evident in the emergence of internal laws and regulations designed to integrate private security companies into state functions, as seen in the United States, or to limit the disruptive capabilities of these companies, as in South Africa. Jean-Jacques Roche (Jacques,1999,p17) explains that enacting laws to restrict the activities of these companies is a reflection of the state's desire to protect itself from the adverse effects of private security standards. For instance, in 2003, France passed a law that specifically restricted the use of mercenaries. This law was inspired by Protocol I of the Geneva Convention of 1949. Through this law, France officially sought to protect itself from involvement with mercenaries without banning the establishment of French private security companies or prohibiting military-related contracts.

Research by Bruyn and Schimmel has shed light on the precise way in which states relinquish their legitimate functions by accepting the privatization of security.

3.2 The State's Responsibility in Providing Security: to where?

The idea of privatizing state functions poses a significant threat, manifesting in the loss of the state's authority through delegation. If a state, as the primary source of decision-making, neglects implementing its decisions, this diminishes its responsibility and importance, both to its society and to other nations. But what are we to think of a state that willingly weakens itself?

Additionally, is it ethically acceptable for a state to treat security as a commodity? When a state turns to external sources by employing private security companies, it becomes more inclined to commodify its security. Moreover, there arises the issue of separating the authority that issues orders from the entity responsible for executing them, which increases the risk of deviating from the intended   objectives.

At times, it seems evident that the state distances itself from its primary role of ensuring peace and security for its people. The problem of reducing responsibilities stems from the fact that some states treat their rights as negotiable. Article 3 of the 1948 Universal Declaration of Human Rights, adopted by the United Nations General Assembly under Resolution 217 A, states that everyone has the right to life, liberty, and personal security.

Thus, if states no longer directly guarantee this right and relinquish their responsibilities, it is legitimate to ask whether we are witnessing the bankruptcy of the state and its withdrawal from its obligations toward its citizens.

Citizen security has always been a core function of the state. Defense is the primary reason for the existence of the state, and according to Charles de Gaulle, the state should destroy itself if it fails in this role. Does security privatization, then, represent the state's evasion of its duties and responsibilities?

In democratic countries, elections reflect the people's choice of representatives in whom they trust, and consequently, they trust the political authority. The state is given full authority by its citizens in political, economic, and social spheres. Naturally, the citizen who casts their vote expects the state to provide what they cannot achieve individually. However, privatization, by turning to external sources, can be seen as the state's abdication of responsibility. Delegating the responsibility of providing security to a private entity amounts to a form of abandonment.

Implementing the principle of delegating authority in the security sector, even partially, suggests that the private entity possesses the necessary capability and resources to address an issue the state has failed to manage.

Governments that have adopted this approach have relied on various frameworks to justify their resort to private security standards. The idea of privatizing state functions poses a significant threat, manifesting in the loss of the state's authority through delegation. If a state, as the primary source of decision-making, neglects implementing its decisions, this diminishes its responsibility and importance, both to its society and to other nations. But what are we to think of a state that willingly weakens itself?

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3.3 Justifications for Resorting to Security Privatization:

- **Economic Approach:**

This approach primarily focuses on reducing military expenditures. Private security companies do not impose permanent costs on governments, as they are only paid when their services are used or

purchased. In contrast, regular armies require governments to pay salaries, allowances, and expenses regularly, regardless of whether they are in active service, training, or on leave. Jean-Marie Vignol notes that the contract between Sierra Leone and Executive Outcomes in 1995 was valued at \$35 million for eight months of intervention, which is a modest amount compared to the \$247 million cost of deploying international observers for 21 months (Marie, 2006, p. 88). Thus, the use of private companies to reduce defense budgets is a significant attraction for governments.

- **Political and Social Approach:**

Using private security companies provides flexibility and freedom of maneuver. According to Hobak, these companies offer an additional force to foreign policy, allowing for indirect intervention. In the case of failure, it becomes easier for the state to deny involvement (Olivier, 2005).

- **Military Approach:**

The use of private security companies aims to free up conventional forces from support and logistical tasks. By outsourcing logistical management, the regular forces can focus on their primary mission, which is combat.

4. Conclusion:

Given the rise of transnational crimes and the influx of illegal migration, exacerbated by the effects of globalization, and the thesis of the end of traditional borders alongside the declining role of the national state, securing borders has become a pressing concern for states and governments. Today, in the era of globalization, border security demands new, multidimensional approaches, utilizing advanced methods based on the latest scientific developments in this field.

Thus, it can be said that border security will undergo a significant transformation, moving from the traditional concept of border protection to more efficient approaches and means. These will focus on managing human flows and curbing the various crimes that accompany them. National states, adapting to modern times, will increasingly turn to available technologies that provide vital security data and information services necessary for monitoring border security. The traditional management of borders is fading, being gradually replaced by smart border technologies, despite their high cost.

In their efforts to secure borders, states and governments will turn to various companies and actors operating in the security sector, either to assist and accompany them in managing border security or to delegate their authority in this area to international institutions and companies. This marks the emergence of security privatization in the management of border security.

The state's adoption of privatization standards has led to a relinquishing of its sovereignty in favor of the private sector, resulting in the loss of part of its authority to private companies. Additionally, non-public entities are now sharing the state's right to legitimate coercion. If not properly regulated and controlled, this partnership poses a threat to the state's sovereign functions.

It appears that the general trend is for states not to revert to reclaiming the authority of coercion. Instead, there is an increasing demand for these services. Therefore, it is crucial for states to quickly

establish local and international laws to govern and regulate the activities of private security companies.

If states fail to enact the necessary legislation, private interests will undoubtedly take precedence over public interests, and the state will inevitably abandon its sovereign functions and willingly cede its powers to military and security companies.

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