

# The Principle Of "Sovereign Equality": A Paradigm Shift In The Concept State Sovereignty

**Key Words:** *Nation state, Sovereign Equality, Westphalian Sovereignty, Absolute sovereignty.*

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*The Westphalian sovereignty bestowed upon the States an inviolable right of non-interference, non-intervention and self-governance. Sovereignty came to be treated as an international norm which was absolute, indivisible and supreme. Political construct of the concept further shaped in the context of nation-states. The principle of "sovereign equality" infused in the international system some sense of justness by improvising the established external aspect of states" sovereignty and then synthesising it with the principle of equality. "Equality of states" in the international order brought about a conceptual shift to the State Sovereignty as the independent and sovereign states voluntarily gave away the external aspect of their sovereignty for the membership of the international community. And this became the source of validity and strength to the international organisations. The external aspect of sovereignty of nations was trimmed in a way to let the international society establish where peaceful coexistence of the states could be ensured.*

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## INTRODUCTION

The concept of statehood implies an exclusive and independent authority of a political entity over its population and territory, responsibility for its actions, decision making and other aspects of governance. The principle of sovereignty is understood as an international legal norm that ensures this exclusivity. Along with it ensures permanence and supremacy of the state authority.

Sovereignty is conceived by the scholars as the fundamental organising principle of the system of States in the international regime. In an anarchic world where the powerful state could have hegemony over the weaker states, the protection as well as insurance of this exclusivity was devised by the principle of sovereignty. As the 'independence' of a nation state gained importance under the international law, the absolutist sovereignty came to be accepted widely as an international norm. This absolutist conception of sovereignty ruled the international politico-legal order for decades and even today remains to be the most widely accepted notion of sovereignty.

This absolutist concept of state sovereignty was busted by the principle of sovereign equality which was basic to the establishment of the United Nations. United Nations sets down the sovereign equality principle in its introductory paragraph as well as under the Articles of the United Nations Charter. The principle is in essence the synthesis of two fundamental principles of law: 'sovereignty' and 'equality'. This principle made every sovereign entity in the world stand at an equal footing. Going by the plain meaning of the principle, the member states of the international community are equal to each other regardless of their economic, political, social strength or other inequalities.

## STATE SOVEREIGNTY AS A CONCEPT

Sovereignty as a concept finds mention in the work of famous philosophers like Jean bodin, Nicolò Machiavelli, Thomas Hobbes, Hans Kelson, J.J. Rousseau and John Austin. Sovereignty has been given various interpretations by the scholars.

As defined by Weber and Biersteker, it is 'a political entity's externally recognized right to exercise final authority over its affairs'. Their definition lays special emphasis on the external aspect of state's sovereignty.

While, Ruggie, explains it as 'the institutionalization of public authority within mutually exclusive jurisdictional domains'<sup>2</sup>, thereby highlighting its territorial context. It has long been treated as a 'fundamental pillar of the international system'<sup>3</sup> and even a 'grundnorm of international society'<sup>4</sup>.

The concept of sovereignty owes its existence to the Treaty of Westphalia that was signed at the end of the thirty years' war in the Holy Roman Empire and the Eighty years' war between Spain and Dutch Republic. It essentially was a series of peace treaties signed in 1648 in Osnabrück and Münster.

The concept of sovereignty although does not find an explicit mention in the 128 clauses of the Peace Treaty of Westphalia, but scholars credit this treaty with the first formal document that embodies the concept of Sovereignty. This is can be attributed to mainly two reasons:

1. The treaty introduced some major political changes in the central Europe. The political entities' sovereignty and thus non-interference in the internal matters of a nation were now established with a legal backing.

2. Also, the political thinkers tried to interpret sovereignty in a way that could ensure the much needed political stability and supremacy of authority in those times.

It is often debated that sovereignty was deliberately interpreted so, that the fears of political instability and permanence of the political authority could be won over.

The concept of State sovereignty was not known to the people of the middle ages. The time was marked by two-fold sovereignty. Pope and the emperor were the twin heads of sovereignty that enjoyed political supremacy over their subjects. The unquestionability of the authorities of the pope and the emperor was guarded by the duality of sovereignty.

But as the concept of nation state emerged, the sovereignty was more regarded in a monistic sense and being indivisible, resting in a single head. The internal-external dichotomy of the concept of sovereignty gained its roots in the light of the theory of nation-state. This was the era when sovereignty was so intrinsic to a nation state that 'statehood' was used interchangeably with 'Sovereignty'. The nation state theory implied that the state is supreme and there is no authority superior to it and that every prince was now 'emperor in his own kingdom', i.e., *rex imperator in suo regno*.<sup>5</sup>

#### **THREATS TO STATE SOVEREIGNTY:**

While theoretically the concept of state

sovereignty was sound and logical but in practice the picture was different. The greed for territorial expansion and natural resources made powerful states invade the weaker ones as per their whims and fancies. The Cuban Missile Crisis in 1962 was a result of political and military standoff between the then hegemonic powers- Soviet Union and United States. Same was the case with Korean Crisis whose stage was set by the United States. The end of cold war era saw increased numbers of military interventions justified on the basis on humanitarian grounds. The military interventions by Tanzania's in Uganda in 1978 and Vietnam's in Cambodia (then Kampuchea) in 1979 and the Unites States' armed invasions in Iraq and Afghanistan were condemned by the Human Rights Agencies across the world. The military coups in various countries of African continent aided by the United States and others are not a revealed fact either.

All these cases of interventions regardless of the rationale that underpinned it, laid stress on the territorial integrity and state sovereignty which was an unsustainable situation under international law. Thomas Hobbes, in this context, writes that the inherent independence and supremacy of the authority of the states would be preventive for them to enter into a Commonwealth of states and peacefully co-exist.

'Though there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, Kings, and Persons of Sovereign authority, because of their Independency, are in continual jealousies, and in the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the Frontiers for their Kingdoms; and continual Spies upon their neighbours; which is a posture of War.'<sup>6</sup>

The principle of Sovereign equality came to the rescue of such a scenario and helped in establishing an equitable and just international legal order, if not on ground, at least in principle.

#### **PRINCIPLE OF SOVEREIGN EQUALITY: REVISITING 'SOVEREIGNTY'**

*'We are now physically, politically, and economically one world and nations so interdependent that the absolute national sovereignty of nations is no longer possible'*

Sir John Boyd Orr

'Sovereign equality' is a concept that is a result of amalgamation of two basic principles of international law: 'sovereignty' and 'equality': sides of the same coin. These two fundamental norms

have been strongly established as unquestionable in modern international law. 'Equality of states' fosters the idea of equality of the sovereign states as members of the international community.

#### **EQUALITY IN AN UNEQUAL WORLD:**

The Sovereignty of states, as a concept had such firm grounds that it could not be compromised with but at the same time the equality amongst the members of the international community was to be ensured. In the absence of any supranational body, the states claim to be sovereign externally and from within. The powerful states' abuse of power and frequent violations of international norms were to be checked. The United Nations, established at the end of the Second World War had restoration of international peace and security as its main objective. And this could be achieved only when the powerful states' anarchies were pulled down to a platform where the weaker states were to be treated at par with them. In principle Sovereign equality could do that. So, international legal order consists of separate independent entities that are sovereign and have absolute authority within their territorial borders. These sovereign entities have a relationship of 'parallel equality' amongst themselves regardless of the inequalities in terms of geographical area or political strength. As all states satisfy 'the same conditions according to which they qualify as states,'<sup>17</sup> they are equals in terms of their legal status. And this is the 'Sovereign equality' which is the foundational principle of the United Nations.

The states are unequal in terms of their geographical areas, populations sizes, political set up, economic forms, socio-cultural structures, military strength, Ideology they espouse, and other factors and despite this fact, as members of the international community, they are equals. They possess a legal identity that is same as others. This has been supported by Oppenheim as he remarks, 'the equality before International Law of all member-States of the Family of Nations is an invariable equality derived from their international personality'<sup>18</sup>. Also, Sir Robert Jennings, former president of the International Court of Justice, notes that:

'This equality is not equality of power, territory or economy: States are, by their nature, unequal as regards their territorial, financial, military and other characteristics. Rather, this equality is as members of the international community, whatever the differences between States. Thus sovereign equality refers to the legal equality of States, as opposed to the political

equality, and is often described as 'juridical equality,' i.e., equality before the law; in the case of States, international law.<sup>19</sup>

#### **EARLIER TRACES OF THE PRINCIPLE OF SOVEREIGN EQUALITY:**

The principle of equality as in sovereign equality is an improvised version of the tenet of 'all men are equal' which we find in the philosophical ideas of Hugo Grotius, Thomas Hobbes and John Locke.

Many thinkers argue that the basis of states' legal equality is the works of Grotius. Pieter H. Kooijmans debates convincingly that the equality of the states' principle was an inherent element of the Grotian theory<sup>10</sup> while on the other hand, another scholar, Edwin DeWitt Dickinson denies that Grotius established the concept.<sup>11</sup>

In several scholars' view, the equality of nation states is similar to the equality of individuals. This analogy finds a mention in the work of Emmerich de Vattel. In his book, published in 1758, 'Le Droit des Gens, ou Principes de la Loi Naturelle Appliqués à la Conduite et aux Affaires des Nations et des Souverains', he writes in the introduction:

'Since men are by nature equal, and their individual rights and obligations the same, as coming equally from nature, Nations, which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights. Strength or weakness, in this case, counts for nothing. A dwarf is as much a man as a giant is; a small Republic is no less a sovereign State than the most powerful Kingdom.'<sup>12</sup>

Hans Kelson refers, in one of his article, to the Moscow Declaration that held in 1943 in which the United States, United Kingdom, Soviet Union, and China jointly declared that they recognized 'the necessity of establishing at the earliest practicable date a general international organization, based on the principle of sovereign equality of all peace-loving States and open to membership by all such States, large and small for the maintenance of international peace and security.'<sup>13</sup>

The principle finds a reference in the introductory paragraph of the United Nations Charter's Preamble which states, 'We the peoples of the United Nations determined...to reaffirm faith...in the equal rights...of nations large and small.'<sup>14</sup>

#### **Further, Article 2 of the Charter mentions,**

*'The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the*

following Principles:

1. *The Organization is based on the principle of the sovereign equality of all its Members.*<sup>15</sup>

It embodies the principle that all states are equal under international law in spite of asymmetries of inequality. It sorts to establish a non-hierarchical and horizontal co-existence of the states. It is noteworthy here, that this sovereign equality is not political in nature but is juridical, i.e., equality of the states before law. This is so as the political equality of states is not ensured: the political status of the states in the United National Security Council is different. Although to this logic, scholars argue that the position of the permanent member in the Security Council

*'must not be seen as a privilege; it is a right, conferred upon grounds ensuing from the essence of law, because it is the counterpart of a special obligation . . . International peace and security are largely dependent upon the extent to which the Great Powers are prepared to maintain them.'*<sup>16</sup>

This principle was reaffirmed and clarified by the UN General Assembly in the 1970 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations'. In its twelfth paragraph, it states that:

*'Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations...'*<sup>17</sup>

#### **CHANGES IN THE CONCEPT OF SOVEREIGNTY: ITS EXTENT**

The countries of the world were reposed with their sovereign rights to the fullest extent: their internal and external aspects of sovereignty were uncurtailed and unconstrained till the time the neo world order emerged. The Strict interpretation of sovereignty that manifested itself in the absolutist sovereignty could retard the growth of the international legal order.

Now, the States due to emergence of the supranational bodies as well as globalisation trends felt the need of establishing themselves as a part of the international community. The needs of economic integration of a state's economy to the global economy could gain priority.

*'In the age of globalisation, pooled sovereignty means more power, not less.'*

**Jose Manuel Barroso,**

President of the European Commission.

The states voluntarily gave away the external aspect of sovereignty to become a member of the

international community. The states were bound together and to some superior authority. The states were now bound by their own commitments to the Conventions and agreement they entered into with other states or the international community as a whole. Membership of various international organisations and signing of Conventions and Covenants called upon the states to trim the overarching external aspects of sovereignty. The fundamental legal principle of *pacta sunt servanda* which makes the states bound by the commitments they undertake. The international society as one single entity gained significance and the absolutist conception of state sovereignty lost some.

The unfettered state sovereignty was not caged but was shaped up in a way to let others peacefully co-exist. The sovereignty which was earlier regarded as a political concept as being related to the states' identity, now became a legal construction when interpreted in the light of the sovereign equality.

The Equality of states made every state stand at an equal footing as the constituents of the international community: no state was superior to any other state. This meant that states' interaction with other states was now protected under the principle of sovereign equality. This is reason why 'sovereign equality' can be regarded as 'corollary of sovereignty'.<sup>18</sup>

#### **CONCLUSION**

The Westphalian sovereignty brought some order in the anarchic and unequal world, whereby the states' had the right against interference and intervention. The notion that the state authority was independent, indivisible and supreme gained even more strength by the advent of the theory of nation state. Statehood, independence and sovereignty became interchangeable concepts in this regard.

As the new world order was being established, globalisation and the growth of supranational bodies urged the states to submit their external aspects of sovereignty to the international community and become the member of these international bodies. Moreover, by entering into various agreements and Conventions with other states and the international community as a whole, the states made themselves bound by their own commitments. The states that were till now unchecked and unconstrained were now bound by treaty obligations.

As the principle of 'sovereign equality' was introduced to the international legal order, the absolutist notion of sovereignty that was thought to be impervious and sacrosanct lost all credence. The

United Nations through this principle tried to infuse an equitable and just system in the international regime so that all the states of the world could be treated equally as legal personalities. This equality of states under the international law brought serious changes in the traditional conception of sovereignty. It no more remained a non-refutable canon of law and sovereignty that used to be interpreted in political terms. The principle of 'sovereign equality' has a significance role in giving a legal construct to the concept of state sovereignty.

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### (Continued from Page No. 70)

Joining CLOCK and going through the training, and also staying in the campus has brought in, many new experiences in my life. These experiences have formed my perceptions about different cultures, problems of people from different regions and also their adaptation strategies. The exchange programme has created a cross-cultural experiences and an exchange of methods and views for me. I am delighted that I could be a part of the programme and I look forward to give legal assistance to people in India and many other countries to ensure their rights which they are entitled to. With the support of Dr. Lakshmi Lingam, who is currently the deputy director at Tata Institute of Social Sciences, Hyderabad, I have initiated a Student Led Volunteering Services (SLVS) which promotes students to organise themselves in groups and work with Non Governmental organisations in Hyderabad.

### In the end I would humbly recommend the following:

1. Community Services should be made compulsory for the students in universities.
2. All the faculty members should extent their expertise for the betterment of the larger communities beyond the scope of their classrooms.
3. The law schools should make it compulsory for the students to become legal companions and adopt the CLOCK model to organise these efforts by providing training to the students.
4. Social Sciences Courses must encourage voluntary services and the students may choose the field that they volunteer for but the services of the students must be rendered for community upliftment.
5. Leading practicing psychiatrists and psychologists should render their services in the family courts for mediations as a social responsibility.

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