

A Study on the Paradigm Shift in Public International Law: Transition from Absolute to Relative Sovereignty

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Abstract — This research delves into the intricate evolution of sovereignty within the framework of Public International Law (PIL), exploring the transition from absolute sovereignty to the contemporary concept of relative sovereignty. Drawing upon foundational principles, including the nature, scope, and sources of international law, alongside modern theories of interpretation, the study examines the nuanced interplay between national and international legal regimes. Through a comparative lens, it scrutinizes the distinctions between absolute and relative sovereignty, elucidating how the latter concept recalibrates state autonomy within a globalized landscape. By evaluating pertinent case studies and legal precedents, the research elucidates how the freedom of individual states is intricately intertwined with the liberties of others, and how state independence is contingent upon adherence to international legal norms. This analysis offers valuable insights into the evolving dynamics of sovereignty in PIL, underlining the imperative of harmonizing national interests with the principles of international law. This study explores how the idea of sovereignty in international law has shifted from being absolute to relative. It looks at the basic principles, where international law comes from, how it has grown over time, and how we interpret it today. We also compare national and international laws and examine what sovereignty means for a state. Through examples and case studies, we see how the freedom of one state is affected by the freedoms of others and how international law influences a state's independence. This research sheds light on the changing nature of sovereignty in today's world, showing how states must balance their own interests with the rules of the global community.

Keywords — ***Sovereignty, Public International Law (PIL), Absolute and Relative Sovereignty, International Legal Regimes, State Autonomy, International Legal Norms, Comparative Analysis, Legal Precedents, Harmonization, State Interests, Global Community.***

Sovereignty, in constitutional philosophy, is the sole supervisor or power in the decision-making process of the state and in the maintaining of order. The principle of sovereignty is one of the most contentious theories in political philosophy and international law is closely connected to the complicated principles of state and government and freedom and democracy. Derived from the Latin word *superanus* by the French word *souveraineté*, sovereignty was initially supposed to be the equivalent to supreme authority.

It can be defined as the supreme power of a state to take any decision regarding the internal as well as external matters relating to the state. It can be of two types which are as discussed below.

a) **Internal sovereignty** (authority and ability of a state to exercise command within its national sphere).

b) **External sovereignty** (Freedom of a state from subjugation to or control by a foreign state). It is also regarded as the most fundamental principle of international law.

In fact, however it has sometimes differed from this conventional sense. Sovereignty is about the power to make laws and the ability to rule effectively. It is the supreme power of the State to take any decision regarding internal and external matters of the country. Krasner in "Sovereignty: Organized hypocrisy" (2000) has identified the following four aspects in which the word sovereignty is widely used:

- a) **Domestic sovereignty**, which refers to the organization of political authority within a state and the level of control enjoyed by a state.
- b) **Interdependence sovereignty**, which is concerned with the question of control, for example, the ability of a state to control movements across its own borders.
- c) **International legal sovereignty**, which is concerned with establishing the status of a political entity in the international system. The state is treated at the international level similarly to the individual at the national level.
- d) **Westphalian sovereignty**, which is understood as an institutional arrangement for organizing political life and is based on two principles, namely territoriality and the exclusion of external factors from domestic structures of authority. Westphalian sovereignty is violated when external factors influence or determine the domestic authority structures. This form of sovereignty can be compromised through intervention as well as through invitation, when a state voluntarily subjects internal authority structures to external constraints.

Thus, Sovereignty is a collective or umbrella concept that lays out the rights and responsibilities that a State has at a given time under international law. These sovereign rights and obligations constitute state Sovereignty. The legal relationship between two or more independent states constitutes another aspect of "relative sovereignty." For example: the generally accepted rule of international law, that no State in the sense of international law can be brought by another State before an international tribunal without its consent, can directly be traced back to the principle of the equality or mutual independence of states. In short, "relative sovereignty" as used with reference to the mutual independence of States is equivalent with the "sovereign equality of States" as guaranteed in Art. 2 (1) UN Charter.

Historical Foundations and Evolution of Sovereignty

The concept of sovereignty has been central to the understanding and development of public international law, deeply rooted in the principles established by the Treaty of Westphalia in 1648. This historical model, which defined sovereignty as the supreme authority of a state within its territorial boundaries, was characterized by the notion of absolute sovereignty, where states had unchallenged control over their internal and external affairs (Krasner, 1999). This Westphalian model underlined the independence of states and their rights to non-interference from external powers, a principle that became a cornerstone of international relations (Shaw, 2017). However, as international legal scholar Daniel Philpott (2001) points out, the early 20th century saw a paradigm shift due to the rise of global interdependence, democratization, and the establishment of international organizations. This shift was further influenced by the evolving nature of state interactions and the recognition of shared global challenges, which called for a reevaluation of the traditional concept of absolute sovereignty (Jackson, 1990). Consequently, the rigid interpretation of sovereignty began to give way to a more nuanced understanding, termed relative sovereignty, which acknowledges the interconnectedness of states and the need for compliance with international legal norms.

In contemporary international law, the principle of absolute sovereignty is discouraged in several ways in comparison to ancient concepts and there are different reasons contributing to its wearing away. There is a rising pattern of interdependence and collaboration between states, especially because of globalization. Therefore, the autonomy of states continues to be restricted by the internationalization and universalization of human rights. While state sovereignty is a central concept of international law, the definition of the word sovereignty is not well established. The following alternative concepts of sovereignty have been proposed: sovereignty is the most comprehensive form of authority under international law. Today, the principle of absolute sovereignty is therefore replaced by a concept of relative sovereignty. To understand the differences and identify the reason behind the replacement it's necessary to understand both the theories and decide which one is better.

1. Absolute Sovereignty:

The late nineteenth century was marked by an expansion in the principle and practice) of 'full sovereignty' in Germany and later in England. The proponents of this theory have expressed that sovereignty is not only the ultimate authority – *summa potestas*, i.e. the authority over which there is no other authority, but also the fullness of the *potestas*, that is, complete and limitless control. The drastic implications of the theory could lead to states being independent of each other, of any other higher authority and of any higher concept. Furthermore, they possess complete independence either to satisfy their responsibilities or to denounce them in compliance with their national interests. This results, in the one hand, in the negation of equality as an aspect of sovereignty and on the other, in the equation of sovereignty with the real authority to wield it, which in the end, would mean its identification with coercion and would lead to a distinction made

in this sense between 'legal' and 'true' sovereignty. The doctrine therefore acknowledges the primacy of jurisdiction (for example domestic law) over international law.

2. Relative Sovereignty:

In the time between the two world wars, international legal and political thought influenced the relativistic approach to sovereignty. It originated in the sense of the need to change sovereignty in an increasingly interdependent world, and the key aim of the theory was to 'de-absolute' the definition of sovereignty. The key feature of the doctrine of 'relative sovereignty' is that sovereignty can be subordinated to international law; but most critically, the sovereignty of a State cannot be subordinated to another State since in practice, both States are equal. The premise alluded to above refers to the following significant implications. The theory of relative sovereignty sets the primacy of international law over state sovereignty. Moreover, sovereignty is synonymous with external separation, i.e. the independence of a State from any other 'sovereign power, but at the same time it does not mean 'independence' from the laws regulating 'sovereign' Governments, i.e. international law. However, by reciprocal consent, the State can assume responsibilities against other States in the exercise of its sovereignty.

The Transition to Relative Sovereignty in International Legal Frameworks

The transition from absolute to relative sovereignty reflects a significant evolution in international law, where the rights of states are balanced with their obligations to the global community. The principle of relative sovereignty emerged as a response to the limitations of absolute sovereignty, which often ignored the interconnected nature of modern statehood and international cooperation (Falk, 2002). This change is embedded in foundational international legal instruments, such as the United Nations Charter, which enshrines the principle of sovereign equality and mandates respect for international peace and security (United Nations, 1945). Articles like 2(1) and 51 of the UN Charter illustrate how sovereignty is not an unrestrained power but is limited by the legal norms and the collective will of the international community (Evans, 2014). As Keohane and Nye (2001) argue, the growing interdependence among states, facilitated by economic globalization and international institutions, necessitates a framework where sovereignty is exercised responsibly, considering the rights and freedoms of other states. This perspective is further supported by Buchanan and Keohane (2006), who emphasize the legitimacy of global governance institutions and the role they play in redefining state sovereignty within a collaborative international system.

Another implication is that a State is sovereign within the sphere of its authority, which means that it has the right to be independent of some sort of interference. However, its autonomy and equality are constrained by the equal freedom and freedoms of other Nations, as well as by international treaties and particular agreements signed by those States. Democracy is retained, which means legal independence between States in their mutual ties and sovereignty in their internal relations. The principle of relative sovereignty thus established the basic prerequisites for

the co-existence of States within the international community. However, bearing in mind the preponderant Western hegemony in the constitution of international law norms, the subordination of sovereign states to those norms which contribute to the degradation of the sovereignty of developing countries.

The conversion of absolute sovereignty by relative sovereignty has in fact limited the excessive freedom of each state to the freedom of other states and the independence of a state is subjected to international law. A variety of considerations have brought into question the absolute and unregulated notion of the power of States to control their domestic affairs and to conduct relations on an equal basis with other countries of the world. It is described briefly below:

i. The Rise of Democracy

The idea of absolute, unregulated hegemony did not survive long after its introduction, either domestically or abroad. The rise of democracy placed major limits on the dominance of the sovereign and ruling classes. The rise in the interdependence of states narrowed the principle that would be right in foreign relations. In general, people and politicians have understood that without law there can be no peace and that without restrictions on jurisdiction there can be no law. They have thus begun to pool their authority to the degree required to preserve stability and development (e.g. the North Atlantic Treaty Organization, the World Trade Organization, and the European Union), and sovereignty is gradually being exerted on behalf of the world's nations, not only by national governments, but also by regional and foreign organizations. Thus, the principle of fragmented authority, first formulated in federal states, has started to apply in the international sphere.

ii. Within the United Nations Charter Theory of Sovereign Freedom

As one of its fundamental rules, Article 2(1) of the UN Charter proclaims that the Association is built on the sovereign dignity of all its members. The clause specifies the status of the Member States with respect to and within the Organization, and thus, as distinct from a supranational organization, also establishes the character of the UN as a 'universal organization.

In the other hand, Article 78 applies the application of the concept of sovereign equality to the ties between the members of the United Nations in general and forms the foundation of the entire legal structure of the United Nations.⁶⁴ It provides that the system of trusteeship shall not refer to the regions which have been members of the United Nations, the relations between which shall be formed on the basis of the respective provisions.

iii. Force Prohibition under the Charter of the United Nations

The Charter of the United Nations forbids a state from using coercion in its dealings with another state. This deprives the States of *ad bellum* and makes use of other forms of self-help, apart from those approved in compliance with Article 51 of the Charter. The inclusion of that

article into the Charter has severely restricted States' autonomy by limiting their ability to use force. The hitherto autonomous sanction of international law has been consolidated by replacing the right of self-help with coordinated international enforcement action focused on the Charter.

A more democratic world order has further led to the adoption of new approaches to the issue of conflict, including a liberal understanding of the term 'danger to and use of force' meaning not only laws pertaining to military force but also other uses of force (i.e. commercial, political and other modes of force). Thus, viewing the definition of sovereignty on a wider basis, by depriving the States of their *jus ad bellum* and eliminating the danger and use of 'power' from the area of international affairs, not only is 'de-absolutized' but, accordingly, the requirements of an international order have been established by the UN Charter for an evolution from 'legal freedom' to 'equal rights' and achievement.

On the positive front, however, it is encouraging to notice that, considering the large connotations associated with the sense of domestic jurisdiction, the competence of the United Nations has not been compromised by those main issues which may be viewed solely as falling under the domestic jurisdiction of the States. As a result, the members have traditionally supported the UN's competence to discuss colonial disputes and to implement resolutions proposing the settlement of problems compatible with the purposes of the United Nations.

Independence of a state relates to the concept of sovereign states and international law is based on sovereign states as its subjects, but the states freedom of the action was increasingly limited by the international laws. Sovereignty is the freedom of action of a State inside and outside its territory, but only within the framework of those rules of international law which are binding upon the State. Thus, a particular state can be only independent when certain rights, powers or privileges can be exercised in international law, such as:

a) Power exclusively to control its own domestic affairs:

For instance, a breach of IL for a state to send its agents to the territory of another state to apprehend their person accused of criminal offenses against its laws.

For example: Abduction from Argentina to Israel of Adolf Eichman, a Nazi war criminal to be tried by an Israeli court, was an infringement of Argentina's sovereignty.

b) The power to admit and expel aliens.

It is the duty on a state to prevent within its borders political terrorist activities directed against foreign state

For example: In 1934, the Yugoslavia formally accused the Hungaria Government of assisting the assassination of the Yugoslav Monarch by the terrorist of Yugoslav

c) The privileges of its diplomatic envoys in other countries.

Diplomatic envoys, like ambassadors, have special rights when they work in other countries. These rights, called diplomatic immunity, mean they can't be prosecuted or punished by the laws of the country they're in. This rule helps them do their job without fear of interference. One important rule for diplomats is called diplomatic immunity. This rule means that diplomats can't be punished by the laws of the country they're working in. It's like a shield that protects them, their homes, their official communications, and even some of their personal belongings. The reason for this rule is to make sure diplomats can do their job without any problems, like talking to other countries without worrying about getting into legal trouble. A big example of how important diplomatic immunity is can be seen in the Vienna Convention on Diplomatic Relations from 1961. This agreement sets out the rights and privileges of diplomats and how they should be treated by the countries they work in. It says that diplomats can't be prosecuted by the legal system of the country they're in, which helps them do their work without fear. But diplomatic immunity isn't a free pass. Diplomats still have to follow the laws of their own country, and if they do something wrong, they can be sent back home. The country they're working in also has the power to kick them out if they're causing problems. Over time, the idea of diplomatic immunity has changed to fit with how the world works today. There's been a lot of debate about when it should apply, especially if a diplomat is involved in serious crimes or human rights abuses. This shows how countries balance respecting each other with making sure everyone follows the rules.

d) The exclusive jurisdictions over crimes committed within its territory and so on.

Thus, the more developed international relations become, the more limited will be the freedom of the state. The "independence" of the state implies only that the state has freedom of action within the scope of law; this is only a kind of special jurisdiction enjoyed by the state or government and is based upon international law. Hence from all points of view, sovereignty confers on the recognition of the State by other States and gives the State the right to have an equitable relationship with other countries irrespective of their size. Sovereignty confers on a State the freedom to enter into diplomatic and economic negotiations with other Nations. In the international sphere, the definition of autonomy is very relevant because, aside from international bodies, only States are subject to international law. Treaties and other multilateral instruments signed at a supranational level are binding on the member states. Without sovereignty, no State may have rights, responsibilities and obligations under international law. Similarly, without sovereignty, it will be impossible for a state to enjoy the rights and privileges of statehood and to maintain relations with other states which justifies the principle of absolute sovereignty is therefore replaced by a concept of relative sovereignty, where the freedom of each state is limited by the freedom of other states and the independence of a state is subjected to the area of international law.

Implications and Case Studies of Relative Sovereignty

The contemporary understanding of sovereignty has profound implications for international relations and global governance. Relative sovereignty recognizes that while states have the right to govern themselves, their autonomy is conditioned by their commitments to international law and norms. This is evident in the principles governing diplomatic immunity and state responsibilities under international treaties, as outlined in the Vienna Convention on Diplomatic Relations (United Nations, 1961). Compliance with these norms ensures that states act not only in their national interests but also in ways that uphold international order and human rights (Chayes & Chayes, 1995). Walker (2003) further explores this dynamic by highlighting how sovereignty is increasingly viewed through the lens of constitutional pluralism, where multiple layers of legal authority interact to shape state behavior. Case studies, such as the Eichmann trial, demonstrate how international legal norms can influence state actions, even in areas traditionally reserved for sovereign discretion (ICJ Reports, 2002). In this sense, sovereignty is not absolute but relational, a concept that promotes the harmonization of state interests with global standards, ensuring that sovereignty is a tool for cooperation and peace rather than conflict and isolation.

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