HISTORICAL COMPARISON OF SOVEREIGNTY IN INTERNATIONAL LAW

LOUISE KAZEMI SHARIAT PANAHI,
Peoples' Friendship University of Russia (Moscow, Russia)

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The current article aims to study on the concept of sovereignty in international law. To this end, sovereignty is historically examined and compared in different legal doctrines. In fact, there is a verity of legal theories on the formulation and conceptualization of sovereignty. The dominant perspective of the contemporary legal doctrines sees sovereignty as worn-out and outdated concept which belongs to classical legal doctrines. This article argues such accounts and shows how the concept of sovereignty survived through historically legal developments and has still been influential in the sphere of international law. Although the main legal events comprising Westphalian truce, world wars, the foundation of United Nation organization and so on have changed the nature and content of sovereignty in the history of international law, it has remained as a fundamental principle of international law. The lack of correct understanding of this concept can reinforce the obstacles for legal modeling and doctrines. So, through such a historical comparison, the research elaborates the reconceptualization process in the concept of sovereignty and elucidates how sovereignty means in the contemporary international law and how this concept defined by the modern legal doctrine influences international law and globally affects the legal order among states. Discussing the different legal doctrines on the concept of sovereignty in different historical periods, the article reveals the present considerations on sovereignty in contemporary international law.

Keywords: international law; sovereignty; state; absolute sovereignty; limited sovereignty; relative sovereignty; state authority; natural law; divine law; positive law.

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Introduction

At the first glance it may seem that discussion over sovereignty in contemporary international law is a leitmotif and outdated argumentation. With a meticulous attention to details, however, one can find out the significance and influence of the concept of sovereignty in the sphere of international law at present, as before. Indeed, sovereign equality of states is the fundamental principle of international law and in order to understand the contemporary interpretation of the concept of sovereignty in international law, there is a need for a historical overview to shed the light on how the sovereignty concept has been evolved or transformed in different periods of time, to what extent its nature, dimensions and implications have been changed throughout its history and what the perception of international law is from the concept of sovereignty. In doing so, the current article strives, first, to provide a historical overview on sovereignty in the sphere of international law, then to make a comparison of different legal doctrines in order to reveal changes in the concept of sovereignty in terms of domain and sphere and, ultimately, to determine the current dominant perspective towards sovereignty in contemporary international law.

1. Historical Overview

> The growth of European notions of sovereignty and the independent nation-state required an acceptable method whereby inter-state relations could be conducted in accordance with commonly accepted standards of behavior, and international law filled the gap.[1]

Throughout its history, the concept of sovereignty has experienced a consistence conceptual growth in its nature and substance. Its primitive idea was formed in correspondence "the idea of private property."[2] It has been re-producing over and over in different periodical stages while establishing increasingly close-knit relations with monarch, state and international law, respectively.

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[1] Malcolm N. Shaw, *International Law* 13 (6th ed. 2008).

[2] Nicu-Răzvan Dobârceanu & Vlad A. Voicescu, *Sovereignty and Integration in Modern Era Perspectives*, 2(4) L. Rev. 1, 2 (2020).

Under various circumstances, sovereignty made different ties with international law while seeking for new sources and it became a constitutional basis of international law as its components and dimensions were historically varied. This concept historically differed in nature, essence, subject, source and substance. In the aspect of nature, sovereignty was under debates whether it could be absolute or restricted. As for subject, whether the sovereign could be the only person or the social entity such as the Pope, a state, nation and so on. Respecting its source, whether sovereignty could be political oriented or be of a legal basis, is another issue argued in historical legal doctrines. Substance of sovereignty might be comprised of free will, legal order, power, authority and correlation between compliance and obedience.

This study covers legal theories over sovereignty in international law as formulated in the classical period (within the 16th–19th century) and the contemporary one (since the 20th century onward).

2. Classical Legal Doctrine

The incipience of sovereignty dates back to once primitive communities evolved in more complex societies and social institutions such as religion, army, politics, law, etc. Nonetheless, the today's most common understanding of sovereignty can be traced in the late 16th century in Bodin's utopia. Jean Bodin (1530–1596) developed the concept of sovereignty in modern sense of the term.

> Sovereignty is the power to make law binding on the subject. But in such a case who will be the subjects that obey, if they also have a share in the law-making power? And who will be the law-giver if he is also himself forced to receive it from those upon whom he has imposed it?[3]

Through a theoretical model he elaborated sovereignty as the absolute power subject to God and natural law[4] as well as the sovereign as "the source of law."[5] In fact, the significance of Bodin's sovereignty is that his statement of sovereignty has influenced interrelations between state and law and later his successors' justification of absolutism in respect of the formation of binding on states within the framework of international law. Bodin highlighted that sovereignty is bound to nation by the virtue of the law of nature originated from the law of divine.

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[3] Jean Bodin, *Six Books of the Commonwealth* 52 (M.J. Tooley trans., 1967).

[4] Bodin in the "Six Books of the Commonwealth" states that "*majestas est summa in cives ac subditos legibusque soluta potestas*" (1583: I. 8.). His statement may apparently be interpreted that a sovereign making law is relieved of all laws. A meticulous probe into Bodin's account does not support such an interpretation.

[5] Samantha Besson, *Sovereignty* in IX *Max Planck Encyclopedia of Public International Law* 366 (2011) (Sep. 12, 2021), available at https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1472?print=pdf.

> There is no law human or divine that permits one to take the law into one's own hands.[6]

He came to the following conclusion:

> A commonwealth is to be esteemed happy where the king is obedient to divine and natural law … and where subjects are bound to each other and to their prince by ties of affection, for the enjoyment of the blessings of peace and true tranquility of spirit.[7]

In the mid-17th century, such an understanding affirmed itself in Europe through the treaty of Westphalia of 1648. It is a total consensus among legal thinkers to take into account the peace of Westphalia as the dawn of the classical legal doctrine of sovereignty.

> The peace of Westphalia marked a shift of paradigms by establishing the basis for transforming person-oriented law into territory-oriented law.[8]

Indeed, the treaty of Westphalia concluded in 1648 was a threshold to distinguish territory as feature of sovereignty and State as subject of international law. European societies witnessed a conceptual shift in implications of sovereignty from monarch to territory as the treaty of Westphalia laid the foundations of international law based on sovereign equality. A great deal of conceptual changings in Sovereignty took place in terms of nature and subject. The Westphalian understanding formulated sovereignty as a right of a state in its territory, in turn, unlashed power a substance of sovereignty from religious definitions and blended with state interests and legal order.

Through distinction between natural law from divine law, Hugo Grotius (1583–1645) theorized a new international law as a distinct rational system to regulate interstate relations.

> Natural right is the dictate of right reason, shewing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature, and consequently that such an act is either forbidden or commanded by God, the author of nature … This mark distinguishes natural right, not only from human law, but from the law, which God himself has been pleased to reveal, called, by some, the voluntary divine right, which does not command

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6 Bodin 1967, at 96

7 *Id.* at 172.

8 M.P. Ferreira-Snyman, *The Evaluation of State Sovereignty: A Historical Overview*, 12(2) Fundamina 1, 9 (2006).

> or forbid things in themselves either binding or unlawful, but makes them unlawful by its prohibition, and binding by its command.[9]

According to his model, state gains sovereignty by the power of people. So, the law of nations must regulate interstate relations.

> The civil power is the sovereign power of the state. A state is a perfect body of free men, united together in order to enjoy common rights and advantages … But the law of nations is a more extensive right, deriving its authority from the consent of all, or at least of many nations.[10]

Ultimately, law of nations requires the consent of the world community to be founded as well as substance of international law such as commitments and rights can be observed by all nations.

In the legal doctrine of the 17th century, attributes and criteria such as territory, consent, reciprocity, autonomy, separation of policy and religion in international relations and so forth, were enumerated in the definition and implication of sovereignty. The nature of sovereignty became a combination of highly absolute power and legally restricted authority. Legal positivism was flourished by Alberico Gentili (1552–1608) and it overwhelmed the entire 18th century legal doctrine and has still a broad influence. To exemplify, conceptions such as self-preservation and relativization of sovereignty in relations between the state and the law of nations has been invented through his thoughts and became the main notions in the debates on national law and international public law in the early 20th century.

In 1598, Gentili wrote in the "Three Books on the Law of War" that

> reason shows that war has its origin in necessity; and this necessity arises because there cannot be judicial processes between supreme sovereigns or free peoples unless they themselves consent, since they acknowledge no judge or superior. Consequently, they are only supreme and they alone merit the title of public, while all others are inferior and are rated as private individuals … Therefore it was inevitable that the decision between sovereigns should be made by arms.[11]

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[9] Hugo Grotius, *On the Laws of War and Peace* 9 (Archibald C. Campbell trans., 2001).

[10] *Id.* at 13.

[11] Diego Panizza, *Political Theory and Jurisprudence in Gentili's* De Iure Belli*: The Great Debate Between "Theological" and "Humanist" Perspectives from Vitoria to Grotius*, IILJ Working Paper 2005/15 (2005), at 17 (Sep. 12, 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=871754.

He assumed that people's consent can characterize positive law and the source of international law is not religion, but international law is originated by morality and general consensus.

Gentili was

> opposed to the idea of identifying international law with natural law, advocated the interpretation of international law from the perspective of reality, recognized the existence of different nation-States, believed that every nation-State in reality had equal rights and for the first time attributed the basis or foundation of international law to the practice (and will) of the State, as reflected in treaties, voluntary obligations, custom and history.[12]

Having considered a quasi- absolute notion of sovereignty, Thomas Hobbs (1588–1679) is the leading pioneer that relates the concept of sovereignty to international law through his statements which are as follows:

> For the laws of nature, as justice, equity, modesty, mercy, and, in sum, doing to others as we would be done to, of themselves, without the terror of some power to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like. And covenants, without the sword, are but words and of no strength to secure a man at all. Therefore, notwithstanding the laws of nature (which everyone hath then kept, when he has the will to keep them, when he can do it safely), if there be no power erected, or not great enough for our security, every man will and may lawfully rely on his own strength and art for caution against all other men.[13]

For Hobbes, thus, sovereignty is not the product of the sovereign, nor the law but the concept of sovereignty might be embodied by the way it is ruling. So, in Hobbes' point of view sovereignty is not absolute; it is the ultimate authority formed on the basis of other sovereigns' rules.

> A Commonwealth [is] derived all the rights and faculties of him, or them, on whom the sovereign power is conferred by the consent of the people assembled.[14]

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12 Jianming Shen, *The Basis of International Law: Why Nations Observe*, 17(2) Penn State Int'l L. Rev. 287, 310 (1999).

13 Thomas Hobbes, *Leviathan: The Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil* 103 (1999).

14 *Id.* at 107.

Accordingly, sovereignty can be subject not only to the divine master and natural law but also to the individual right for protection.

Richard Zouch (1589–1660) presented international law as law of all nations as a whole through his treatise "*Juris et Judicii Fecialis*" published in 1650. He had an opinion that

> international law, being the law among States, was a law recognized by States with sovereign authority.[15]

As an early legal positivist, Zouch is of the opinion that custom and positive law are biding precedents in international law and expands the domain of international law by means of the law among nations.[16]

Cornelius van Bynkershoek (1673–1743) questioned the sovereignty over the seas, even though he was its pioneer. Grotius had argued a series of principles for free trade in free waters as international territories open to every state in his work entitled "The Freedom of the Seas,"[17] published in 1609. However, Bynkershoek took a compromise approach toward sovereignty over open waters through the determination of the certain distance within the "cannon shot" principle.

> The control of the land over the sea extends as far as cannon will carry. A cannon's range at that time was one league or three sea miles.[18]

In comparison to predecessors who stressed on the applied application, he placed greater emphasis on the law of nations rather than on deduced precepts.

> When [civil] law has prescribed certain methods of acquiring ownership, we must observe these since no state can subsist without laws, and very expediency, the mother ... of justice and equity, commands us to observe the laws. Even expediency obliges the several princes to keep their word, even though there are no laws between them, for you cannot conceive of empires without sovereigns, nor of sovereigns without compacts, nor of compacts without good faith.[19]

Bynkershoek argued that a sovereign has a rightful claim under the laws of nature, but one who applies may not prioritize laws of nature and the binding force

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15 Shen 1999, at 310.

16 *Jus inter gentes*.

17 *Mare Liberum*.

18 Johannes H. Rombach, *Cornelius van Bynkershoek*, 13(152) Int'l Rev. Red Cross 567, 570 (1973).

19 Tara Helfman, *Neutrality, the Law of Nations, and the Natural Law Tradition: A Study of the Seven Years' War*, 30(2) Yale J. Int'l L. 549, 576 (2005).

of international agreements can contribute to laws between sovereigns. He asserted that the foundations of international law were comprised of customary law and treaty on the basis of general consent of states of one international plane. Civil law guards the contracts of individuals, considerations of honor, those of princes. If you destroy good faith, you destroy all intercourse between princes, for intercourse depends expressly upon treaties; you even destroy international law, which has its origin in tacitly accepted and presupposed agreements founded upon reason and usage. The treaties must be kept in good faith lest you destroy all this is readily granted, even by those who have learned nothing but treachery and all but frustrate the rules of good faith by numberless exceptions. Whether, however, a public agreement is always and everywhere to be kept inviolate is a very difficult question.[20]

From the 17th century to the 18th, the legal doctrines on sovereignty were influenced by theology and the law of nature. That is why the prevailing point of view toward sovereignty was the school of thought of naturalism. The naturalist theory argues that there is no possibility and space for any laws to regulate interstate relations except the law of nature. From the naturalistic angle, sovereigns were subject to the law of nature created by God. In the other words every legal system was stemmed from divine law, spirituality and morality. Since the 18th century onward, the concept of sovereignty has growingly developed in line with the modernization in international law. Sovereigns also adopted themselves to new circumstances through a new definition of sovereignty resulting in more limitations of the classical legal doctrine.

Emer de Vattel (1714–1767) assumes that custom and law of nature are source of the law of nations.

> Vattel, for instance, believed in a necessary law of nations that was based on natural law, as well as a positive law of nations that requires the consent of the sovereign state in order to be bound.[21]

He presumed that the law of nation is made of custom and the law of nature is on the basis of the equality of sovereigns. Every sovereign, therefore, should treat others in the way it expects to be treated.

In Vattel's point of view sovereignty

> is that public authority which commands in civil society, and orders and directs what each citizen is to perform, to obtain the end of its institution. This authority originally and essentially belonged to the body of the society, to which each member submitted, and ceded his natural right of conducting himself in everything as he pleased, according to the dictates of his own understanding, and of doing himself justice. But the body of the society

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20 Cornelius van Bynkershoek, *On Questions of Public Law* (Tenney Frank trans., 1930).

21 Laurel Davis, *The Law Among Nations* 7 (2012).

> does not always retain in its own hands this sovereign authority: it frequently entrusts it to a senate, or to a single person. That senate, or that person, is then the sovereign.[22]

The new concept of sovereignty was law-oriented rather than political as it survived through supplying sources from international law. As for Immanuel Kant (1724–1804) the most distinguishing feature of sovereignty is self-legislation.

> A rational being belongs as a member to the kingdom of ends when he gives universal laws in it but is also himself subject to these laws. He belongs to it as sovereign when, as lawgiving, he is not subject to the will of any other. A rational being must always regard himself as lawgiving in a kingdom of ends possible through freedom of the will, whether as a member or as sovereign.[23]

In other words, from Kant's perspective sovereign who has the ultimate freedom to self-govern, self-legislate, self-limit and self-bind.

> Sovereignty only finds its actualization in the ability to willingly surrender that power.[24]

> It consists in the freedom of states to voluntarily bind themselves, and to become subject to authority of an external entity.[25]

Even though, the idiosyncrasy of absolutism still had their own proponents. Georg W.F. Hegel (1770–1831) outlined sovereignty in his Encyclopedia of the Philosophical Sciences which is as follows:

> In the government – regarded as organic totality – the sovereign power (principate) is (a) subjectivity as the infinite self-unity of the notion in its development; the all-sustaining, all-decreeing will of the state, its highest peak and all-pervasive unity.[26]

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22 Emer de Vattel, *The Law of Nations: Or, Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns* 12 (Joseph Chitty trans., 6th ed. 1844).

23 Immanuel Kant, *Groundwork of the Metaphysics of Morals* 41 (Mary Gregor trans. & ed., 1998).

24 Cameron O. Hunter, *The Submission of the Sovereign: An Examination of the Compatibility of Sovereignty and International Law*, 4(5) Denver J. Int'l L. & Pol'y 521, 528 (2016).

25 *Id.* at 529.

26 Georg W.F. Hegel, *Encyclopedia of the Philosophical Sciences* 3/3 § 542 (William Wallace trans., 3rd ed. 1830).

In Hegel's view, free will of state is rational and freedom can distinguish between rights and duties of the sovereign. He regarded sovereignty as

> an absolute power subject to no jurisdiction … the right of the strong dominant.[27]

> This reality, in general, where free will has existence, is the Law (Right) – the term being taken in a comprehensive sense not merely as the limited juristic law, but as the actual body of all the conditions of freedom … For a mode of existence is a right, only as a consequence of the free substantial will: and the same content of fact, when referred to the will distinguished as subjective and individual, is a duty. It is the same content which the subjective consciousness recognizes as a duty, and brings into existence in these several wills.[28]

John Locke (1632–1704) might be the first legal philosopher who formulated the controversial account of Sovereignty in the context of human rights at his time. As Grotius regarded a sovereign as a supplement to free men for the enjoyment of their rights and common interest, Locke defined a sovereign is a human being who has only

> a divine unalterable right of sovereignty, whereby a father or a prince hath an absolute, arbitrary, unlimited, and unlimitable power over the lives, liberties, and estates of his children and subjects; so that he may take or alienate their estates, sell, castrate, or use their persons as he pleases, they being all his slaves, and he lord or proprietor of everything, and his unbounded will their law.[29]

In his opinion sovereign rights can be interpreted as human rights as human has the highest authority, the greatest sense of ownership and the most autonomous status. In opposite with Grotius, Locke believed sovereignty ultimately lies in the hand of people. Yet he explained a "complete forfeiture of autonomy constitutes a violation of autonomy."[30]

> According to Locke, the only legitimate purpose of the state is to protect the natural rights of the citizens. These rights precede the state and not

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27 Dobârceanu & Voicescu 2020, at 3.

28 Hegel 1830, § 485.

29 John Locke, *Two Treatises of Government* in *History of Economic Thought Books* 1, 12 (Rod Hay ed., 2004).

30 Hunter 2016, at 523.

> conferred by the governments on the citizens. Governments transgress their limited powers if they violate human rights.[31]
>
> Freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it. A liberty to follow my own will in all things where that rule prescribes not, not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man, as freedom of nature is to be under no other restraint but the law of Nature.[32]

Jean-Jacques Rousseau (1712–1778) explained another limited conception of sovereignty from different perspective. In his "Social Contract," he poses a question "how the right of sovereignty, extending from the subjects over the lands they held, became at once real and personal."[33] Sovereignty is the right of

> those who are associated in it take collectively the name of people, and severally are called citizens, as sharing in the sovereign power, and subjects, as being under the laws of the State.[34]

For him, sovereignty implies on the enforcement practice of political institutions such as constitution ceded in respect to social consensus. On the basis of his theory, sovereignty belongs to people submitted to the state and if the state neglects its people, then its sovereignty becomes illegitimate. So, he drew a relationship between sovereignty and Democracy through his theory.

> The constant will of all the members of the State is the general will; by virtue of it they are citizens and free. When in the popular assembly a law is proposed, what the people is asked is not exactly whether it approves or rejects the proposal, but whether it is in conformity with the general will, which is their will.[35]

Whether the subject of sovereignty is a state or people rests in the center of debates during the 19th century. Unlike the prevailing approach of the 19th century to distinguish between externa and internal sovereignty, Friedrich W. Nietzche (1844–

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[31] Ernst-Ulrich Petersmann, *How to Constitutionalize International Law and Foreign Policy for the Benefit of Civil Society?*, 20(1) Mich. J. Int'l L. 1, 3 (1998).

[32] Locke 2004, at 114.

[33] Jean-Jacques Rousseau, *The Social Contract* 16 (G.D.H. Cole trans., 1923).

[34] *Id.* at 13.

[35] *Id.* at 84.

1900) elucidated the problematic concept of sovereignty in hierarchy of power through calling for intellectual conscience:

> Do you know nothing of an intellectual conscience? A conscience behind your conscience? Your judgement, "that is right" has a prehistory in your drives, inclinations, aversions, experiences, and what you have failed to experience; you have to ask, how did it emerge there? and then also, what is really impelling me to listen to it? You can listen to its commands like a good soldier who heeds the command of his officer.[36]

For him the great majority requires intellectual conscience to become sovereign. Saying that "the great majority lacks an intellectual conscience,"[37] he emphasized "common values are sovereign."[38] The nobility "surrendered all its power and sovereignty and become compatible" in order to feel and forget "royal authority and plentitude of power without equal to which only the nobility had access."[39] A sovereign's will is "the decisive mark of sovereignty and strength"[40] and that sovereign ascertains the freedom of his will "in relation to laws, customs, and neighbors."[41] Ultimately "law of agreement"[42] regulates nations and provides them with "intellectual security"[43] universally.

Conceptions such as intellect and intelligence played key roles in one of most influential advocates of the 19th century legal positivism – Austin. John Austin (1790–1859) defined law as "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him."[44] This was what Austin determined as positive law. For him

> every positive law, or every law simply and strictly so called, is set, directly or circuitously, by a sovereign person or body, to a member or members of the independent political society wherein that person or body is supreme … Supreme power limited by positive law is a flat contradiction in terms.[45]

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[36] Friedrich W. Nietzche, *The Gay Science* 187 (Josefine Nauckhoff trans. & Bernard Williams ed., 2001).

[37] *Id.* at 24.

[38] Richard Lara, *The Problem of Sovereignty, International Law, and Intellectual Conscience*, 5(1) J. Philos. Int'l L. 1, 14 (2014).

[39] Nietzche 2001, at 125.

[40] *Id.* at 206.

[41] *Id.* at 144.

[42] *Id.*

[43] *Id.*

[44] John Austin, *The Province of Jurisprudence Determined* 18 (Wilfrid E. Rumble ed., 1995).

[45] *Id.* at 212.

He thought the sovereign could not be legally limited. However, he conceded that a sovereign may be limited in a non-legal sense by "popular opinion." He defined divine law as "law set by God to his human creatures."[46] Although he contends that God's (law) is above and beyond human law, he also states that "human laws which conflict with the Divine law are not binding, that is to say, are not law, is to talk stark nonsense."[47] He emphasized that a law set by a sovereign to a subject is not negated by any apparent conflicting divine or moral law.

> It was easy to argue, as a corollary to this theory, that the sovereign, possessing supreme power, was not himself bound by the laws which he made. Then, by a shift of meaning, the word came to be used to describe, not only the relationship of a superior to his inferiors within a state (internal sovereignty), but also the relationship of the ruler or of the state itself towards other states (external sovereignty). But the word still carried its emotive overtones of unlimited power above the law, and this gave a totally misleading picture of international relations. The fact that a ruler can do what he likes to his own subjects does not mean that he can do what he likes – either as a matter of law or as a matter of power politics – to other states.[48]

Herbert L.A. Hart (1907–1992) denounced Austin's point of view towards the concept of sovereignty.

> He distinguished rule-governed behavior from habitual behavior, and distinguishes legal rules from standards and from orders backed by threats. He also illuminatingly compares legal rules and moral rules.[49]

Based on Hart's explanation, sovereignty is a legal concept rather than a political notion.

In the 19th century, anyway, the dominant idea over sovereignty lead to a conceptual division into external and internal. The internal aspect of the concept of sovereignty pertains to international rights and legal obligations of the state on the basis of its ultimate authority and self-governance over the nation within the territory, whereas in the external respect, sovereignty relates to the equal position assigned to the state in the horizontal hierarchy. The former implies on integrity, independence and territorial power. The latter refers to sovereign equality, peaceful coexistence, interdependence, general consent and reciprocity.

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[46] Austin 1995, at 94.

[47] *Id.* at 158.

[48] Peter Malanczuk, *Akehurst's Modern Introduction to International Law* 17 (7th ed. 1997).

[49] Robert S. Summers, *Professor H.L.A. Hart's Concept of Law*, 1963(4) Duke L.J. 629, 632 (1963).

Hence, external sovereignty created strong ties with international law. As the development in international legal rules rose, the external dimension of sovereignty growingly preceded rather than the internal. Classical legal philosophers induced that if internal sovereignty provided the state with a highest authority inside its territory, then its external sovereignty made sense when it had a full independence outside its boundaries. The late 19th century brought a new different definition of sovereignty in the meaning of the sovereign equality.

Anyway, accountability, liability and compliance of independent sovereigns mattered, then consent and reciprocity were composed of the foundations of international legal order. In a word, the modern international law gradually emerged and flourished as international law of coexistence among sovereign states.

3. Contemporary Legal Doctrine

The 20th century was a transitional period for the concept of sovereignty. Transiting from the classical doctrine to the contemporary doctrine, this century brought a significant freedom on will of action to each sovereign across the world to subdue itself to new sets of rules. The relativism emerged in modern readings of sovereignty.

In contrast to the classical doctrine supporting the absolutism, the new emerged doctrine regraded the absolutism as an incompatible approach to the international peace. The attributes of absolute, unlimited and ultimate weren't used to describe the concept of sovereignty. Globalization and democratization brought about restrictions in the concept of sovereignty. The state came to realize that it cannot enjoy its international external sovereignty without consent for limitations on its internal sovereignty. The world community witnessed a growing number of treaties and international organizations namely, The North Atlantic Treaty Organization (NATO), the United Nations (U.N.), Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the International Atomic Energy Agency (IAEA) and so forth.

Relativization in the concept of sovereignty can also be detected in the 20th century legal thinkers' point of views like Pasquale Fiore (1837–1914). With the emphasis of need for the formulation of new rules in the sphere of international law, Fiore argued that the process of codification must be more different than a mere systematization of existing rules. Through a critical and constructive study, he tried to illuminate that a state can be bound by international law but not by other states.

> The duty of non-intervention, in any question concerning the political constitution of the state and the free exercise of any sovereign function and power within and without the state, is the indispensable condition of the real and independence of the state. Every right is correlative to a duty and it

> is clear that the rights of sovereignty which have been men refraining from any interference on the part of other states.[50]

In the view of relativism, sovereignty as a fundamental principle of international law doesn't entail arbitrary power; on the contrary international law can possess such power. The Hague conventions of 1899 and 1907, which are a series of international multilateral treaties and declarations negotiated about the international peace, initiated several key developments in the codification as well as the establishment of intergovernmental judicial system. They laid the foundation to introduce a consultative mechanism in line with arbitration as one of the oldest modes of conflict settlements. The Hague conferences highlighted crucial features of modern international law comprising the use of multilateral fora and international organizations for regulation and implementation of rules of international law, and the rising importance of international law in diplomacy. The conferences legitimized central topics for diplomatic negotiation including disarmament, non-proliferation of weapons, international arbitration, neutrality, and humanity values. That is to say, in the contemporary discourse, the concept of sovereignty has been interpreted from different aspects.

The covenant of the League of Nations (1919) was assumed by restrictions on resort to force and the acceptance of obligations which appeared in that instrument and to promote international co-operation and to achieve international peace and security. The debates over differentiation between dependence and interdependence of sovereign states lost their importance under the law of the United Nations.

> Only the realization of the right of peoples to self-determination and achievement of independence by colonial and dependent territories create conditions for their political, economic, social and cultural development. This right includes not only complete independence and sovereignty of peoples, but also their right to freely establish their socio-economic system and to control their natural resources. It is not by chance that the right to self-determination is affirmed not only in the U.N. Charter but also in the very first Article of both Covenants on Human Rights.[51]

The U.N. Charter emphasized on developing non-sovereign or less sovereign to gain their independence or self-governing (e.g. Non-Self-Governing Territories transmitted under Article 73e of the United Nations Charter). Trusteeship Council was also one of the principal organs of the United Nations which was designed to

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[50] Pasquale Fiore, *International Law Codification and its Legal Section or the Legal Organization of the Society of States* 256 (Edwin M. Borchard trans., 2013).

[51] Vladimir A. Kartashkin, *Global Consultation on the Realization of the Right to Development as a Human Right* 3 (1990).

supervise the government of trust territories and to lead them to self-government or independence. This principal organ of the U.N. stopped operating and declared suspended its activities in 1994, when Palau gained its independence. This principal organ of the U.N. stopped operating and declared suspended its activities in 1994, when Palau[52] gained its independence.

Making the improvement in the equality of sovereigns and power balance between them, the U.N. Charter adoption fueled the relativization of sovereignty in line the classical doctrine of absolutism. Interdependence among States increasingly grew. Sovereigns and citizens figured out that self-limitations on sovereignty only safeguard world peace. International organizations started to be erected in order to maintain peace at the expense of constrains on state sovereignty. The implication of sovereignty converted into the right of the people of the world which not only states but also international organizations could enjoy.

> Special mention should be made of the European Convention on Human Rights (ECHR). Created in accordance with the named Convention the mechanism is actually a supranational power. Its institution demanded that the member states of the Council of Europe abandon prevailing stereotypes and absolutization of state sovereignty. Decisions of the European Court of Human Rights (ECtHR) of Relevance precedent, have a significant impact on the formation and development of doctrines of European law.[53]

Of the 20th legal thinkers, Hans Kelsen (1881–1973) formulated sovereignty in the modern sense of international law.

> Sovereignty as a legal concept can only be the property of a legal system, and the problem of the sovereignty of the state is, therefore, the problem of the sovereignty of the state legal system in its relations to the system of international law.[54]

Proposing sovereignty as the identity of legal system, he argues that

> state can always change its own law and hence stand above its own law is utterly wrong.[55]

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[52] The last trust territory of the original 11 Pacific Islands.

[53] *Карташкин В.А.* Принцип уважения прав человека и государственный суверенитет // Международная защита прав человека и государственный суверенитет: материалы международной научно-практической конференции [Vladimir A. Kartashkin, *The Principle of Respect for Human Rights and the State Sovereignty* in *International Protection of Human Rights and State Sovereignty: Materials of the International Scientific and Practical Conference*] 11, 16 (Tamara A. Soshnikova ed., 2015).

[54] Hans Kelsen, *Sovereignty* 526 (Stanley L. Paulson & Bonnie Litschewski Paulson ed., 1998).

[55] Hans Kelsen, *Principles of International Law* 349 (2003).

Thus, he posed this question

> whether international law is considered to be superior to national law, or part of national law, the state as juristic person cannot be considered as sovereign.[56]

From Kelsen's perspective, State is an international legal entity since it has international rights to enjoy as well as international obligations to fulfill. Kelsen, indeed, concluded neither the national legal order is supreme nor international legal order is superior can suffice the problematic concept of sovereignty, but if states "were conceived of each other as equal actors within an international legal system."[57]

In contrast, Carl Schmitt (1888–1985) reflected a different idea of modernized international sovereignty. He defined a concept of sovereignty that is not derived from basic constitutional norms, and introduces legitimacy as the property of political power. As for him, Sovereign is who decides on the state of exception.

> [The sovereign] decides whether there is an extreme emergency as well as what must be done to eliminate it. Although he stands outside the normally valid legal system, he nevertheless belongs to it, who stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety.[58]

Schmitt distinguished power from law and decisions from norms. Sovereignty, therefore, is the absolute power imposed on its citizens based on social circumstances.

> The fundamental problem of the concept of sovereignty to be the connection of actual power with legally highest power.[59]

By using an eclectic and hybrid paradigm, Hermann Heller (1891–1933) strived to explain the concept of sovereignty in national and international laws as "inherently political."[60] As he enumerated "absolutist" quality for the sovereign, he tried to reformulates and reinterpreted Bodin's account on the concept of sovereignty, so he

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56 Kelsen 2003, at 349.

57 David Dyzenhaus, *Kelsen, Heller and Schmitt: Paradigms of Sovereignty Thought*, 16(2) Theor. Inq. L. 338, 341 (2015).

58 Paul M. Livingston, *Agamben, Badiou, and Russell*, 42(3) Cont. Philos. Rev. 297 (2009) (Sep. 12, 2021), available at https://www.proquest.com/docview/216797707.

59 Christian Volk, *The Problem of Sovereignty in Globalized Times*, L., Cult. Humanit. 1, 5 (2019).

60 Hermann Heller, *Sovereignty: A Contribution to the Theory of Public and International Law* 12 (David Dyzenhaus ed., 2019).

> seeks to demonstrate the resources that his account provides for an analysis of sovereignty in both nation states and in international law.[61]

> The role of sovereignty includes a place for a final legal decision.[62]

Heller wished to emphasize that

> the ultimate decider, the sovereign decision unit of the political order of liberal democracy, is entirely legally constituted.[63]

To sum up, Heller crafted a dialectical relationship between power and law which leads to regulations legal order in not only in national level but also in international level.

In the meanwhile, the doctrinal trend in the Soviet Union was the same. In fact, the legal doctrine of Soviet Union adopted positivism with respect to interstate peaceful coexistence. Grigory Tunkin (1906–1993) clarified this in his statement under the title "The Contemporary Soviet Theory of International Law":

> Contemporary general international law can be defined as international law in a period of coexistence of states belonging to diametrically different socio-economic systems, the norms of which are created by the co-ordination of the wills of states and which have a general democratic character, regulate relations between states in the process of struggle and co-operation in the direction of ensuring peace and peaceful coexistence, freedom and independence of peoples and which are enforced, when necessary, by coercive measures taken by states either individually or collectively or by international organizations.[64]

For him, international law is composed of treaties and custom. Such sources provide for a comprehensive base for international legal norms to include all states into itself. He defined sovereignty as

> the supremacy of the state "within," and as independence in international relations. The sovereignty of the state is of a class nature, just as the state itself.[65]

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61 Heller 2019, at 11.

62 *Id.* at 13.

63 *Id.* at 16–17.

64 Grigory I. Tunkin, *The Contemporary Soviet Theory of International Law*, 31(1) Curr. Leg. Probl. 177, 187 (1978).

65 Grigory I. Tunkin, *The Problem of Sovereignty and Organisation of European Security*, 1 Revue de Droit International 1, 2 (1974).

According to him, the Soviet Union managed to optimize generally accepted norms of domestic and international law in the administration of the state affairs and in conducting relations with foreign states. The international law acts through an interpretation of the concept of sovereignty. Tunkin noted that both general and socialist international law observed the concept of sovereignty.

The 19th century began along with a series of radical changes in the concept of sovereignty in the western discourse.

> As tradition lost its role as a cohesive device of monarchical rule, the more unstable the legitimacy of that rule became and the more exposed the monarch was likely to be to public discontent and criticism.[66]

The domain of sovereignty wasn't limited to only monarch anymore. Nation, people and citizens were included and regarded for the elaboration of national sovereignty. In turn, the legitimacy of absolute monarchical sovereignty and authority became obsolete. The transfer of the monarch to the nation can be recognized through The French Charter of Constitution, the American State Declaration of Independence and the Frankfort Constitution.

> The only way to reform constitutional monarchism long term was by means of a fundamental change in governance, which would inevitably deprive the system of its very soul.[67]

In this respect, sovereignty goes beyond of states and entails nations.

The 20th century flourished globalization after two world Wars and the Cold War which had devastating effects on the classical legal doctrine and laid the foundation of a new doctrine of sovereignty in global society and postmodern discourse. The modern international law was provided through not only the coexistence of sovereigns but also their international cooperation. The foundation of the U.N. in 1945 was an attempt to let sovereign states cooperate each other while they coexisted in peace internationally. Accordingly, international organizations were created to facilitate such a cooperation in various aspects. Literarily, the European Union has been by far the most peculiar instance for regional cooperation and integration. In the second half of this century, various dimensions of sovereignty became more distinctive and distinguishable. External sovereignty joined and integrated into international law. So modern sovereignty has become "the most extensive form of jurisdiction under international law."[68]

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[66] Markus J. Prutsch, *Monarchical Sovereignty and the Legacy of the Revolution: Constitutionalism in Post-Napoleonic Germany*, 15 Historia Constitucional 177, 199 (2015).

[67] *Id.*

[68] Ferreira-Snyman 2006, at 1.

In 1906 the United States of America found out Netherlands claimed sovereignty over the Palmas Island ceded to the USA in 1898. Max Huber (1874–1960) was charged to determine "whether the Island of Palmas (or Miangas) in its entirety forms a part of territory belonging to the United States of America or of Netherlands territory."[69] In the *Island of Palmas* case (1928), Huber elaborated that sovereignty is not only the main feature of a state which needs to be defined as the most supreme power within territorial boundaries of that state but also is the alienable right which requires to be recognized without other states' intervention.

> Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organization of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations.[70]

In fact, he included attributes such as territorial boundary, citizens and supreme power to tailor the abstract term of sovereignty. As far as Huber's territorial sovereignty concerns, state is eligible to use force upon its citizens within its territory and international law is a normative entity aimed to make a balance of power or distribution of power among states at international level.

In the Montevideo Convention on the Rights and Duties of States of 1933, moreover, Huber's point of view and Jellinek's triad can be traced. In his well-known triad, Georg Jellinek (1851–1911) marked three key characteristics of the state: "state territory, the constitutive body of people, and state authority."[71] His triple components of the state can be identified in Article l of the Montevideo Convention on the Rights and Duties of States of 1933 which characterized 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.

In Huber's opinion, if one of the constituent features of the state malfunctions, the state needs to let other states' interference.

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[69] *Island of Palmas case*, Scott, Hague Court Reports 2d 83 (1932), (Perm. Ct. Arb. 1928), 2 U.N. Rep. Intl. Arb. Awards 829.

[70] Max Huber, II *Reports of International Arbitral Awards – Recueil Des Sentences Arbitrales: Island of Palmas case (Netherlands, USA)* 829, 838 (2006).

[71] Georg Jellinek, *Allgemeine Staatslehre* (3rd ed. 1914).

> The underlying the idea is that a state can be accepted as such only when it is in a position to guarantee that law and order, in whatever precise form, will be upheld.[72]

During the two world wars, sovereignty was blended with concepts such as the conflict of interest, maximum pressure, abuse of force and legally unlimited power. So, there were some attempts to reconceptualize the sovereignty through questioning whether state might have the legal personality and in turn, possess rights and obligations. Leon Duguit (1859–1928) suggested if "sovereignty is in the process of disintegration, we ought to find an increasing tendency to confer on the courts the power of judicial review."[73]

He enumerated three main factions of the state which are as follows:

> (1) National defense; (2) the maintenance of internal security and order, and (3) justice. To-day these services are not enough. There are indeed some economists of the study antiquated enough to say that the state has no other function than defense, police and justice, and that all other activities must be left to individual arrangement which usually assures a satisfaction of all social needs. For such theories the facts are too strong; the modern attitude refuses to accept them.[74]

Therefore, Duguit tried to substitute sovereignty with the concept of "public place" as he believed

> The clear interdependence of peoples, the solidarity of economic interests, growing commercial relations, the circulation on all hands of intellectual ideas and scientific discoveries, impose on the state the duty of organizing such public services as will permanently assure international communication.[75]

After the foundation of United Nations in 1945, sovereignty involved the process of internationalization. Consequently, a new dimension of the concept revealed which was a loose tie for national sovereignty as it grew beyond the sovereign state's will and interest, while made strong ties with other modernized concepts such as human rights, world community, diplomacy, free trade, immigration and democracy. Hannah Arendt (1906–1975) shortly after the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 posed the following question: The rights of man: what are they? She elucidated that the implication of human rights requires sovereign

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72 Jan Klabbers, *International Law* 71 (2013).

73 Leon Duguit, *Law in the Modern State* 89 (Frida & Harold J. Laski trans., 1921).

74 *Id.* at 45.

75 *Id.* at 46.

state's protection, whereas the state itself is modernized on the basis of national sovereignty.[76] International sovereignty, according to Arendt, faced a barrier in making links with national sovereignty. On contrary, state sovereignty started to seek for its sources in international law in addition to constitution and custom.

Nevertheless, the implications of sovereignty have not remained and will not remain the same. In today's legal order consent, reciprocity and transparency indicate the sovereign will. Article 4 of the Vienna Convention on Diplomatic Relations (VCDR), 1961, emphasizes that

> the sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State. (1) The receiving State is not obliged to give reasons to the sending State for a refusal of agrément. In today's legal order consent, reciprocity and transparency indicate the sovereign will. (2).

In 1969 of the Vienna Convention on the Law of Treaties (VCLT) was concluded to regulate treaties between states. This convention is regarded an international treaty among states as international law subjects for creation, adoption, amendment and denunciation of their rights and legal obligations through their consent. The VCLT is a practical legal instrument to respond to the theoretical question of how sovereign states can be bound to the legal obligations through their own free will and consent. Struggles between legal obligations and sovereignty could be illustrated in Article 56[77] of the VCLT stating that either if parties of a treaty accept the possibility of denunciation or if the treaty implies on the right of denunciation, then the parties are subjects to denunciation. Thereby, this Article makes a balance between sovereign states' rights and legal obligations, in general between sovereign's free will and rules of law.

> Much in this event depends upon the character of norms contained in the convention. Norms reflecting the requirements of international order, basic human values, humanitarian norms, are considered to be generally biding despite significant derogating practice. Illustrative on this plane are the provisions of the Geneva Conventions on the protection of victims of war. They are constantly violated in the course of armed conflicts and nonetheless are regarded as generally recognized norms binding even upon those states which do not participate in the conventions.[78]

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[76] Hannah Arendt, *'The Rights of Man': What Are They*?, 3(1) Modern Rev. 24 (1949).

[77] VCLT, Art. 56: "1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless: (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty."

[78] Valeri Ivanovich Kuznetsov & Bakhtyar Tuzmukhamedov, *International law: a Russian introduction* 72 (Eleven International Publishing 2009).

The idea of sovereign immunity was cultivated by means of United Nations Convention on Jurisdictional Immunities of States and Their Property. State immunity under Article 5[79] expounds that one sovereign state must have the consent of another sovereign state, then the sovereign may sue before its own courts. Put it in nutshell, a sovereign state is immune from the jurisdiction and arbitrary of other sovereigns' legal systems. Sovereign immunity is originated from the theory of exterritoriality which is of theories of diplomatic immunity.

Article 38(1)[80] of the Statute of the International Court of Justice (ICJ) clarifies that sovereign immunity is subsidiary means and cannot be regraded and implied as a main source of international law. Practically it is quite difficult to prevent sovereign immunity as main source of the international legal rules from its application in and its influence on the development of international law. Proposing the Convention for accession by each member of the United Nations, Article 105 of the U.N. Charter remarks

> the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

In 2004, the U.N. Convention on Jurisdiction Immunities of States and Their Property was adopted by the U.N. General Assembly.

Since the 1972 European Convention on State Immunity onward, this treaty has been the first and most important instrument to articulate a comprehensive approach to the concept of sovereignty, because by virtue of its adoption sovereign immunity can be restricted through a restrictive doctrine.

Sovereignty can be divided into three types by nature:

> International legal sovereignty, Westphalian/Vatellian sovereignty, and domestic sovereignty.[81]

> The basic rule of international legal sovereignty is to recognize juridically independent territorial entities. These entities then have the right to freely decide which agreements or treaties they will enter into. In practice, this rule has been widely but not universally honored.[82]

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[79] U.N. Convention on Jurisdictional Immunities of States and Their Property, Art. 5: "A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention."

[80] ICJ Statute, Art. 38(1)(d): "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

[81] Stephen Krasner, *Sharing Sovereignty: New Institutions for Collapsed and Failing States*, 29(2) Int. Secur. 85, 87 (2004).

[82] *Id.* at 87.

International legal sovereignty is an international political entity leading to how one state treats with another in the way it treats its citizens.

> For policy purposes, it would be best to refer to shared sovereignty as partnerships. This would more easily let policymakers engage in organized hypocrisy, that is, saying one thing and doing another. Shared sovereignty or partnerships would allow political leaders to embrace sovereignty, because these arrangements would be legitimated by the target state's international legal sovereignty, even though they violate the core principle …[83]

The process of internationalization of modern concept of sovereignty was the other side of the coin of democratization of international law. It can be seen in Fassbender's point of view. Some legal experts tend to resolve the problem of sovereignty

> by understanding the Charter as a constitution we gain a standard that permits adequate (legal) solutions to issues such as the interpretation of the Charter, the relationship between its law and "general international law," the meaning of state sovereignty in contemporary international law, U.N. reform, and the question of the extent to which the U.N. Security Council is bound by international law.[84]

This point of view criticizes the permeable of United Nations on the basis of sovereign equality recognized by Kelsen's interpretation "in favor of a lasting international constitutional order no longer dependent on the capriciousness of sometimes well-meaning, sometimes egotism."[85] It can be realized that

> behind sovereign equality, sovereignty lingers on … images of sovereignty constructed in the past centuries remain, on longer than was expected or hoped for in 1945.[86]

To this end, a democratic legitimacy becomes a prerequisite of modern international law to regulate the domestic sovereignty.

Sovereignty can be re-conceptualized in the post-colonial sense of international law. This perspective stipulates that the non-European states lack "all sovereigns

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83 Krasner 2004, at 108.

84 Bardo Fassbender, *International Constitutional Law: Written or Unwritten?*, 15(3) Chin. J. Int'l L. 489, 510 (2016).

85 Bardo Fassbender, *Sovereignty and Constitutionalism in International Law* in *Sovereignty in Transition* 115, 142 (Neil Walker ed., 2003).

86 *Id*. at 143.

are equal and that sovereign states have absolute power over their own territory"[87] which is a classical reading of the concept of sovereignty.

> The non-European world plays an insignificant role within each of these schemes. Certainly, the non-European world posed numerous problems to the international system.[88]

In the post-colonial accounts, non-European states are non-sovereign state as western doctrine of sovereignty remove from its realm. Consequently, such a removal is

> as essential a part of the sovereignty doctrine as the mechanisms of incorporation and transformation, colonialism and decolonization that are the subject of the conventional histories of international law.[89]

The influence of international law is to "establish a universal system of order among entitles characterized as belonging to different cultural systems" and in turn to posit a gap of "dynamic of difference."

> In short, cultural difference precedes and profoundly shapes sovereignty doctrine-whereas the traditional approach asserts that an established sovereignty manages the problem of cultural difference.[90]

"Whether the concept of sovereignty can be reconciled with obligations to others; what are the reasons; and finally, what are these obligations and how are they to be operationalized"[91] are still questions has inherited from kelsenian perspective which remain open for further discussion and appropriate answers. Sovereignty as trustee argues international law is able to equally distribute power among sovereign while interpret sovereign rights as human right.

> Kelsen presents a vision of sovereignty that derives its authority not only from the human beings forming the state, but from the whole of humanity.[92]

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87 Antony Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, 27(5) Third World Q. 739, 740 (2006).

88 *Id.* at 741.

89 *Id.*

90 *Id.* at 742.

91 Eyal Benvenisti, *The Paradoxes of Sovereigns as Trustees of Humanity: Concluding Remarks*, 16(2) Theor. Inq. L. 535, 536 (2015).

92 *Id.* at 540.

In this respect,

> even if sovereignty can be reconciled with inherent (external or internal) obligations toward outsiders, this does not mean that such a commitment is necessarily beneficial to the disadvantaged stakeholders. However, this perspective reaches a conclusion that trusteeship doesn't make sufficiently legal bonds between states on the international plane.[93]

> These new bonds are grounded in deep suspicion … We should not trust our trustees … they are inherently suspicious … Because trustees are inherently suspect, they carry the burden of proving that they serve our interest.[94]

Sovereignty is formulated in international law through

> the identification, in positivist sources, of certain state rights to which those sources attach special characteristics.[95]

> It is important to emphasize that seeing certain rights as corollary of statehood does not necessarily imply a fall back upon natural law, as Kelsen argues: in fact, the opposite is true.[96]

> In light of the increased scope of action and self-understanding of authority of the U.N. Security Council in particular, all U.N. member states would appear to have a strong self-interest in developing and clarifying the concept of the fundamental rights of states in international law … This is especially true for developing states, which are particularly susceptible to economic and financial sanctions imposed by the Security Council, as well as unilaterally by powerful states. This susceptibility has been significantly amplified in recent decades due to the increased internationalization of markets and interdependence of national economies, a phenomenon often referred to as globalization.[97]

This statement implies that the classical considerations of the concept of sovereignty did not last long after its adoption as a fundamental principle of

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93 Benvenisti 2015, at 543.

94 *Id.* at 548.

95 Daniel H. Joyner & Marco Roscini, *Is There Any Room for the Doctrine of Fundamental Rights of States in Today's International Law?*, 4(3) Cambridge J. Int'l & Comp. L. 467, 468 (2015).

96 *Id.* at 478.

97 Daniel H. Joyner, *Iran's Nuclear Program and International Law: From Confrontation to Accord* 215–216 (2016).

international law. Law enforcement practice and authority of international law bodies including U.N. Security Council reflect the interests of powerful states as powerless states are susceptible and vulnerable in terms of economy and financial sanction.

Contemporary legal doctrine rose from ashes of the fundamental accounts of classical legal doctrine. The dominant point of view is that the legal personality has a political and legal property in international law which ascertains sovereignty. Nonetheless, states are not only legal entities which have the legal personality. In contemporary legal doctrine view, the emergence of intergovernmental organizations widens a new horizon over international legal actor and personality within international law. States can enjoy and exercise their sovereign rights through the fora of such international organizations.

Conclusion

Positivism, which reflected the bright side of the concept of sovereignty in international law with emphasis on sovereign equality, paved the way for critical analysis to expose the abuse of power and challenge the principle of sovereign equality at international level. Regardless what constitutes sovereign- whether sovereign is religion, state or nation- sovereignty is a quality of sovereign which is subject to international law possessing rights and duties. We shouldn't abandon such an epochal prerequisite of international law. Sovereignty is a main attribute of state which differentiates it from other subjects of international law such as international organizations and individuals.

At the same time, state may be empowered by its rights and it may be limited by its duties. It seems state traps between paradoxical principles. In the light of its sovereignty, every state inherently has rights to possess legal personality. State's international legal personality is distinguished through its territorial boundaries and national integrity and cohesion. Among classical legal philosophers, the angle of broad interest is the contradiction and or compromise between national highest power originated from domestic political system and international highest authority stemmed from universal legal order, because the prevailing interpretation towards sovereignty was political. In this respect, the concept of sovereignty was assimilated through nation state, political legitimacy, national independence, autonomy.

The concept of sovereignty has over time become the main reasons for frustrated relationship between freedom and justice and balance between rights and obligations. The concept of sovereignty doesn't only affect the jurisdiction of a state but it also influences interstate relations and international legal order overwhelmingly. The entire history of sovereignty, legal thinkers have tried to develop, formulate and conceptualize under social circumstances affecting interstate regulation and jurisdiction. In different periods of time, sovereignty has included

absolute power, judicial authority, independence, hegemony of colonial states, humanity and trusteeship.

Therefore, sovereignty cannot be ignored where international law comes to determine the thresholds of rights and obligations of legal personalities. Because sovereignty is still influential in international law as Joyner argues, such an overwhelm influence has penetrated into the bodies of international law. Thus, it is significant to determine implications and effectiveness of such an abstract notion in international law. As international law is putting more emphasis on humanity and human rights than sovereignty and sovereign rights. This pivotal orientation to constrain the free will and action of states revealed during the 20th century. In contemporary legal doctrine, however, some treads of truth can be found. A part from all effuse and adverse accounts of contemporary legal doctrine, it has a focal point which explores sovereignty in the sphere of international law.

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Information about the author

Louise Kazemi Shariat Panahi (Moscow, Russia) – Postgraduate Student, International Law Department, Law Institute, Peoples' Friendship University of Russia (6 Miklukho-Maklaya St., Moscow, 117198, Russia; e-mail: 1042208139@pfur.ru).