

State Sovereignty and International Law: A Modern Legal Dilemma in Global Governance

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Abstract. This paper explores the tension between international law and the principle of state sovereignty in the social context of 21st-century global governance. In an increasingly interconnected world, the demand for global governance mechanisms has never been greater, as challenges such as climate change, human rights, and transnational security require cooperative, cross-border solutions. However, international law, which operates largely on state consent, often clashes with the principle of sovereignty—specifically, the Westphalian notion that states maintain exclusive authority over their internal affairs. This tension raises critical questions about the limitations of sovereignty in a globalised era. Through an analysis of legal theories and key case studies, this paper argues that while international law imposes constraints on state sovereignty, it remains essential for addressing collective global issues. Ultimately, the paper calls for a reinterpretation of sovereignty that aligns with modern legal frameworks, thus facilitating cooperation without entirely compromising national autonomy.

Keywords: Global governance, international law, state sovereignty, human rights, consent.

1. Introduction

As the world enters an age of globalisation and interconnection, the need for a cohesive global legal order is more apparent than ever. Achieving global governance requires solutions across national boundaries, which raises the relevance of international law in the global sphere.

International law is a relatively new legal framework that governs the relations and conducts between sovereign states in a de-centralised system. It “operates upon the consent of participating nations because no governing body exists to explicitly enforce international agreements” [1] and has no authority over the domestic law of states. According to the statute of the International Court of Justice (“ICJ”), international law is traditionally grounded in the explicit mutual consent of sovereign states through conventions or implicitly via custom [2].

The concept of state sovereignty in international law dates to the Westphalian model of sovereignty of 1648, which highlights the “separation of the domestic and international spheres, such that states may not legitimately intervene in the domestic affairs of another” [3]. Thereby, sovereignty grants state control over their territory, while limiting the influence states have on one another. This model is rooted in the understanding of state sovereignty on two levels: internal and external. Internal sovereignty is based on the “principle that each state is free to pursue its internal affairs without outside interference” [4]. In contrast, external sovereignty relies on the equal status of all states in the eyes of the law, as emphasised in the United Nations (“UN”) Charter that emphasises the sovereign equality of all its Members” [5]. External sovereignty grants the idea that because all states are equal, no states are subject to the jurisdiction of a foreign state or its law.

However, in the past few decades, the need for transnational cooperation has increasingly challenged traditional conceptions of state sovereignty. Globalisation has rendered states more interdependent, particularly in addressing issues such as climate change, which require international collaboration. For example, “global climate solutions require global cooperation” [6]. It is also recognised in the Universal Declaration of Human Rights that for human rights to be universally protected, they must be “applied today on a permanent basis at global and regional levels” [7]. Therefore, it no longer stands that the situation of one state is the exclusive concern of that state.

Instead, it is increasingly reinforced that international social and legal norms or standards be imposed by law to benefit more efficient global cooperation – one of the goals of international law.

As a result, modern international law creates tensions between the interdependence and independence of states. International legal scholar Philippe Sands concedes that “to claim that states are as sovereign today as they were fifty years ago is to ignore reality”, specifically that states “do not stay within the neat boundaries that states thought they were creating when they were negotiated” [8]. This calls for a modern interpretation of sovereignty – one that addresses the paradox of balancing the need for international law and maintaining the principle of state sovereignty.

This paper seeks to investigate the extent to which international law challenges the principle of state sovereignty, while simultaneously underscoring the critical importance of upholding international legal frameworks. To achieve this objective, the paper will first delve into the theoretical foundations concerning the erosion of national sovereignty brought about by the expansion of international law. It will explore key legal theories that highlight the tension between state autonomy and the growing need for transnational governance. Following this, the paper will present and analyse relevant case studies that illustrate how international law has both directly and indirectly impacted state sovereignty in practice. By examining these real-world examples, the paper will assess the degree to which states have had to cede aspects of their sovereignty to comply with international norms and obligations. Finally, the paper will argue for the increasing relevance and necessity of international law in addressing global challenges, justifying its role despite the inherent tensions it creates with the traditional concept of absolute state sovereignty.

2. Theoretical Framework of International Law

This section will discuss how the framework of international law threatens state sovereignty in its nature. It is important to recognise that although this section argues that international law does threaten state sovereignty, it does not necessarily evaluate that this threat is unbalanced nor justified.

2.1. International Conventions

International conventions, as codified in the Statute of the ICJ, represent one of the primary sources of international law. These treaties and agreements, which are formally negotiated and ratified by states, serve as binding commitments that often require signatories to implement specific legislation, amend existing laws, or abstain from certain actions. The UN has reported that there are more than 250,000 treaties in force today [9]. While these conventions are based on mutual consent, they restrict a state's authority over its jurisdiction. For example, a state may be obligated to adjust its domestic legal framework to comply with international commitments. Although such limitations are self-imposed, they nonetheless curtail state sovereignty by constraining a nation's autonomy within its borders.

In theory, a state has the right to reject a convention if it chooses to do so. However, in today's globalised world, refusal to adhere to international treaty obligations can isolate a state from the global community, hence reducing its ability to participate in international trade, diplomacy, or other forms of cooperation. As a result, states often face little practical choice but to accept these constraints on their sovereignty in exchange for continued engagement in international affairs [10]. Therefore, while conventions are designed to respect state consent, the pressures of globalisation and international interdependence make it so that these treaties still present a challenge to state sovereignty.

2.2. Customary International Law

Another main source of international law, as outlined in the statute of the ICJ, is “international customs” – defined as “a general practice accepted as law” [2]. In customary international law, “general practice” refers to “state practice or actions”, while “accepted as law” refers to “*opinio juris*”. “*Opinio juris*” is shortened from “*opinion juris sive necessitates*”, meaning “an opinion of law or necessity”; it “denotes a subjective obligation, in that a state perceives itself to be bound by the law

in question” [11]. In other words, customary international law is carried out through a sense of legal obligation, hence it also, in theory, relies on the consent of states wishing to be bound. However, in practice, and particularly in recent years, this theory has not been consistently applied in line with the traditional understanding of custom, especially concerning “the extent of state consent required for a customary rule to impose obligations upon the state” [12]. The principle of state consent is designed to safeguard national sovereignty within international law, but the question of whether state consent must be explicitly expressed remains controversial.

Despite the need for more comprehensive international governance, it is maintained that for a customary law to be formed, the element of *opinio juris* must be met. As an alternative to express consent to the formation of customary law, the theory of acquiescence allows the establishment of a custom without requiring the express consent of states that are bound. The acquiescence theory “explains that a passive state is considered acquiescent if it is aware of the development of a new rule and do not protest to its formation”, thus allowing the formation of a custom. If a state were to protest against the formation of a customary law, by showing express objection through actions and words, the state would become a persistent objector to the custom, allowing it to exempt itself from applying that customary rule [12]. Modern customary international law assumes consent based on the passiveness of states – an arguably unfair assumption. Yet, it requires explicit and persistent performances of protests, a process that requires resources, for a state to oppose the customary law and not be bound by it [13].

Therefore, certain scholars, such as Cassese, argue that it is increasingly such that customary laws impose obligations on states that in fact, did not consent to it [14]. The lack of explicit consent required for the formation of a customary law, as well as the need for express performance of protest for persistent objectors hinders the ability for a country to govern itself according to its law-creation processes and intentions, thereby challenging state sovereignty.

2.3. International Organisations

Although not a source of international law itself, international organisations such as the UN are an important part of the creation process and enforcement of international law. Organisations such as the UN, the World Trade Organization (WTO), and the International Monetary Fund (IMF) have significant influence over domestic and international policies, often dictating terms that impact state sovereignty. Their role in global governance, dispute resolution, and ensuring compliance with international agreements is essential, but it also raises concerns about the extent to which they may limit a state’s autonomy.

The UN, through mechanisms such as Security Council resolutions, peacekeeping missions, and sanctions, often intervenes in a country’s domestic affairs. While these interventions may be justified by global security or humanitarian concerns, they can diminish a state’s control over its internal matters. UN sanctions, for example, can impose international legal obligations that restrict a state's economic or political decisions, creating tension between global governance and national sovereignty.

Similarly, the WTO exerts influence in the field of trade, compelling states to comply with international trade rules even when they conflict with domestic priorities. Its dispute-resolution mechanism can lead to rulings that force states to adjust tariffs, subsidies, or trade policies, potentially undermining their ability to manage their economies.

The IMF, through its lending programmes, also impacts sovereignty by imposing economic reforms on countries seeking financial assistance. These reforms often include austerity measures or restructuring of public institutions, which can limit a government’s control over its economic policies. Although intended to stabilise economies, such conditions may significantly constrain state decision-making.

In addition to these global bodies, regional organisations like the European Union (EU) and African Union (AU) also impose frameworks that influence member states' sovereignty. For instance, EU regulations can take precedence over national laws, requiring states to cede certain powers in exchange for the benefits of regional cooperation.

In conclusion, while organisations like the UN, WTO, and IMF play a vital role in global governance, their influence often extends into areas traditionally governed by states. This raises important questions about how much autonomy states are willing to cede for the sake of international cooperation. The case studies in section 3 will further explore the practical implications of these dynamics on state sovereignty.

3. Case Studies of International Law and Sovereignty

Section 2 identified how the sources of international law may challenge the principle of state sovereignty in theory. This section will explore case studies in the field of international human rights law to evaluate the real-life impact international law has on the principle of sovereignty.

3.1. The Evolving Concept of Sovereignty

A key issue in the application of international law is the changing interpretation of sovereignty. Traditionally, sovereignty implied that states had complete authority over their domestic affairs without external interference, a concept grounded in the Westphalian model. However, modern international law, particularly human rights law, has challenged this idea. One common objection to strict sovereignty is the belief that “all humans possess certain fundamental rights that cannot be denied, even by the consent of the majority” [8]. Before 1945 – the end of World War II, a state’s treatment of its citizens was considered to be a matter that was exclusively under the domestic jurisdiction of the state itself [15]. However, as modern awareness of human rights is increasing, this perception has changed to legitimise human rights as part of a global, ethical discourse [16]. This seems to oppose the core of the principle of sovereignty – the idea that states have sole authority and jurisdiction over domestic matters within their territory.

3.2. The 1994 Haiti Intervention

A case heavily cited by scholars is the Haiti case of 1994, in which the United States (US), authorised by the United Nations Security Council Resolution 940, led an invasion into Haiti to remove their military regime and establish democracy in the region [17]. This action was justified “strictly for humanitarian reasons”, yet historians and legal scholars argue that the underlying reasons that the US invaded Haiti were for “domestic politics” [18], such as the fear of “the flight of refugees to the United States”. In this case, Haiti’s military regime was “in effective control of the territory, and there was no starvation or civil war” [4], yet the UN was able to intervene in Haiti’s domestic elections and politics. This intervention clearly questions the sovereignty of states by using human rights as an excuse to justify this invasion.

3.3. Domingues v. USA: Sovereignty vs. International Customary Law

Before analysing the Haiti case, it is important to note that in most human rights international law cases, foreign states and international organisations are unable to gain precedence over domestic law. A key example is the US’s objection to the customary rule that prohibits capital punishment for juvenile offenders in the *Domingues v. USA* case. In this case, US domestic courts sentenced Domingues to death based on crimes he committed at 16 years old [19]. Domingues then brought the case to the Inter-American Commission on Human Rights, a commission of which the US is a member. In 2001, the commission concluded that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime”, and deemed that the US is not qualified as a persistent objector to this law [20]. Therefore, the commission recognised that the execution of juvenile offenders is prohibited under customary international law. However, the US continued to execute juvenile offenders following this judgment, including in 2002 and 2003. In this case, the US’s domestic ruling takes precedence over international law over the domestic matter of executing juvenile offenders, which is within the US territorial jurisdiction. This shows how it is often that international law is unable to be implemented in states

due to the lack of consent from states, thereby highlighting that the practical challenge of enforcing international law makes it so that it is difficult if not impossible to force states to act against their consent even by imposing an obligation to comply. Therefore, it is not often in real-life cases that international law is realistically able to challenge state sovereignty.

3.4. Revisiting the Haiti Case: A Question of Justified Sovereignty

Returning to the Haiti case, it is evident that international law, in this instance, does pose a threat to the principle of state sovereignty. The question that follows is whether or not this threat is justified. Although the Haiti invasion had the goal of installing democracy in Haiti, which is fundamentally a domestic issue rather than one of international concern, legal scholars argue that this invasion is a reflection of a modern interpretation of sovereignty, namely, the reinterpretation of sovereignty as “popular sovereignty”. The idea of popular sovereignty, put forward by John Locke, deviates from the traditional interpretation of sovereignty as Westphalian sovereignty [4]. The Commission on Global Governance goes as far as to argue that sovereignty is “a power to be exercised by, for, and on behalf of the people of a state”, and it is only when this is fulfilled should the sovereignty of a state be respected. This interpretation of sovereignty as popular sovereignty is an increasingly adopted theory as there is “a gradual shift towards re-accepting the individual as an international juristic entity”. It is also notable that “international law as originally conceived was a law of persons, not a law of Nations”.

Therefore, in evaluating the extent to which international law challenges state sovereignty, it is important to take into account the modern changing paradigms of international law, as well as the interpretation of sovereignty. It stands that the Haiti case does challenge the state sovereignty of Haiti in the Westphalian sense to a certain extent, but the human rights justifications in the context of the rise of importance in human rights and the rise in acknowledgement or acceptance of the “popular sovereignty” interpretation provide adequate reasons for why the invasion, albeit poses a challenge to state sovereignty, is reasonable.

4. Global Governance: Defending International Law

Reflecting on the theoretical framework of international law as written in section 2, and the realistic implications of international law on state sovereignty through cases as written in section 3, it is evident that international law serves an integral role in global governance. Its importance is multifaceted, extending from maintaining global and domestic order to protecting individual rights. For instance, in the Haiti case, the United Nations sanctioned the United States' intervention to restore democracy, exemplifying how international law can facilitate domestic governance reform. Similarly, the case of *Domingues v. USA* shows that while the U.S. did not comply with the ruling, the process of international law helped establish a customary legal norm that influenced other states willing to adopt it. Despite occasional non-compliance, international law's role in setting global standards is undeniable.

4.1. The Challenge to Westphalian Sovereignty

It is undeniable that international law poses challenges to traditional concepts of state sovereignty, particularly the Westphalian model that emphasizes absolute authority over domestic matters. International law, by nature, operates on the premise that states voluntarily consent to be bound by certain obligations, although exceptions exist for persistent objectors. However, as global governance increasingly prioritizes human rights and international cooperation, the concept of absolute sovereignty has been questioned.

While the theoretical framework of international law suggests that states relinquish a degree of sovereignty upon ratifying international agreements, this remains largely academic. In practice, the ability of international law to interfere in the domestic affairs of sovereign states is limited by the lack of direct jurisdiction international organizations have over states. This limitation is exemplified in the

Domingues v. USA case, where despite the Inter-American Commission on Human Rights ruling that executing juvenile offenders violated customary international law, the U.S. continued the practice. This highlights that international law's real-world impact often depends on the willingness of states to comply.

4.2. The Evolution of Sovereignty: Popular vs. Westphalian Sovereignty

A significant defense of international law's challenge to state sovereignty lies in the evolving interpretation of sovereignty itself. Traditional Westphalian sovereignty, which emphasizes state control and non-interference, is increasingly giving way to the concept of "popular sovereignty." Popular sovereignty, rooted in Enlightenment thinkers like John Locke, shifts the focus from the state's power to the rights and well-being of its citizens.

This evolution is particularly relevant in human rights law, where the protection of individual rights often justifies international interventions in domestic affairs. As demonstrated in the Haiti case, the intervention to restore democracy was premised on the idea that the government no longer represented the will of the people, thereby legitimizing international involvement. This reinterpretation of sovereignty supports the notion that sovereignty should be exercised "by, for, and on behalf of the people," as argued by the Commission on Global Governance. Therefore, international law's challenge to sovereignty can be seen as justifiable, especially when it seeks to protect the rights of individuals and promote democratic governance.

4.3. Sovereignty as a Shield: The Limits of Non-Interference

State sovereignty should not be used as an absolute shield against all forms of international intervention, particularly in cases of egregious human rights violations. Many authoritarian regimes have historically invoked the principle of sovereignty to avoid international scrutiny of their domestic affairs, particularly in developing countries where human rights abuses are prevalent. While the concept of non-interference is foundational to the Westphalian model, its uncritical application has often enabled dictatorial regimes to evade accountability.

International law serves as a necessary counterbalance to unchecked sovereignty, particularly when states fail to protect the rights of their citizens. The evolution of international human rights norms underscores the need for a more flexible interpretation of sovereignty—one that allows for international intervention when domestic governments fail to uphold fundamental rights. As seen in the Haiti intervention, international law can provide the legal framework to support actions that challenge oppressive regimes while promoting human rights and global stability.

4.4. The Pragmatic Defense of International Law

The defense of international law in the face of challenges to sovereignty is threefold. Firstly, while international law theoretically challenges state sovereignty, its practical capacity to intervene in domestic matters is often limited. Most international legal bodies do not have direct enforcement mechanisms and rely on state consent for compliance, as shown in the Domingues v. USA case. Thus, the real-world impact of international law on sovereignty is more constrained than its academic implications suggest. Secondly, the shift from Westphalian to popular sovereignty provides a legitimate justification for international law's role in challenging state sovereignty. By focusing on the protection of individuals rather than the absolute power of the state, international law aligns with the broader goals of promoting human rights and global justice. This evolution in the understanding of sovereignty means that challenges to state authority by international law are not only inevitable but often necessary in the pursuit of a just global order. Thirdly, absolute sovereignty is no longer an appropriate defense for avoiding international accountability, particularly in cases involving human rights violations. The rise of international human rights law reflects the global consensus that certain rights are universal and should be protected, even at the expense of traditional notions of sovereignty. As international law continues to evolve, it provides the legal and moral grounds for holding states

accountable for their actions, especially when domestic governments fail to meet their obligations to their citizens [4].

5. Conclusion

This paper discussed the tension between international law and the principle of state sovereignty in the Westphalian sense. The development of international law, particularly in the context of globalisation and the rising prominence of human rights, increasingly emphasizes the need for transnational cooperation and the protection of individual rights. As a result, the traditional, absolute notion of sovereignty is being challenged, revealing the necessity for a more nuanced and adaptive definition of sovereignty in the modern era.

To address this tension, it is essential to rethink the rigid Westphalian notion of state sovereignty. A more flexible and pragmatic approach to sovereignty, one that acknowledges the importance of global governance and the interconnectedness of states, is needed. Such a redefinition should recognize that in today's world, the invocation of absolute sovereignty often serves as a means for states to justify human rights violations and avoid international accountability. By moving away from an uncompromising interpretation of sovereignty, international law can better address global challenges such as human rights abuses, transnational conflicts, and environmental crises.

However, this does not mean that Westphalian sovereignty should be entirely abandoned, or that popular sovereignty should wholly replace it. Rather, a balance must be struck between respecting state sovereignty and allowing for necessary international intervention, especially in cases where states fail to protect their citizens' fundamental rights. This balance would relieve much of the tension between the need for international governance and the preservation of state autonomy, creating a framework where sovereignty is not a barrier to global cooperation, but rather a concept that evolves alongside international norms.

In conclusion, the future of international law and state sovereignty lies in the following equilibrium: sovereignty that stays a core principle of statehood, but one that is adapted to the realities of an increasingly interconnected and interdependent global society. This balanced approach will allow states to retain their authority while ensuring that human rights and global governance are not compromised in the face of rising global challenges.

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