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From the Concept of State Sovereignty to The Principle of Sovereign Equality

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Introduction:

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

Sovereignty is conceived by the scholars as the fundamental organizing principle of the system of states in the international regime. In an anarchic world where the powerful state could have hegemony over the weaker states, the protection as well as insurance of this exclusivity was devised by the principle of sovereignty. As the 'independence of a Nation State gained importance under the international law, the absolutist sovereignty came to be accepted widely as an international norm.

The absolutist conception of sovereignty ruled the international politico-legal order for decades and even today remains to be the most widely accepted notion of sovereignty.

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

Concept of State sovereignty:

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

As defined by Weber and Biersteker, 'it is a political entity's externally recognized right to exercise final authority over its affairs'.¹ Their definition lays special emphasis on the external aspect of the state's sovereignty. While, Ruggie, explains it as 'the institutionalization of public authority within mutually exclusive jurisdictional domains'² thereby highlighting its territorial context. It has long been treated as a 'fundamental pillar of the international system'³ and even a 'grundnorm of international society'.⁴

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

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

1. The treaty introduced some major political changes in the central Europe. The political entities' sovereignty and thus non-interference in the internal matters of a nation were now established with a legal backing.
2. Also, the political thinkers tried to interpret sovereignty in a way that could ensure the much needed political stability and supremacy of authority in those times.

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

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

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

Threats to State Sovereignty:

While theoretically the concept of state sovereignty was sound and logical but in practice the picture was different. The greed for territorial expansion and natural resources made powerful states invade the weaker ones as per their whims and fancies. The Cuban Missile Crisis in 1962 was a result of political and military standoff between the then hegemony powers - Soviet Union and United States. Same was the case with Korean Crisis whose stage was set by the United States. The end of Cold War era saw increased numbers of military interventions justified on the basis on humanitarian grounds. The military intervention by Tanzania's in

Uganda in 1978 and Vietnam's in Cambodia (then Kampuchia) in 1979 and the United States' armed invasion in Iraq and Afghanistan were condemned by the Human Rights agencies across the world. The military coups in various countries of African continent aided by the United States and others are not a revealed fact either.

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

“Though there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, Kings and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of Gladiators, having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the frontiers for their kingdoms; and continual spies upon their neighbours; which is a posture of war.”⁶

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

Principle of Sovereign Equality: Revisiting Sovereignty:

Sir John Boyd Orr said that “We are now physically, politically and economically one world and nations so interdependent that the absolute national sovereignty of nations is no longer possible”. Sovereign equality is a concept that is a result of amalgamation of two basic principles of international law: sovereignty and equality: sides of the same coin. These two fundamental norms have been strongly established as unquestionable in modern international law. ‘Equality of states’ fosters the idea of equality of the sovereign states as members of the international community.

Equality in an Unequal world:

The sovereignty of states, as a concept had such ground that it could not be compromised with but at the same time the equality amongst the members of the

international community was to be ensured. In the absence of any supernational body, the states claim to be sovereign externally and from within. The powerful states abuse of power and frequent violation of international norms were to be checked. The United States, established at the end of Second World War had restoration of international peace and security as its main objective, and this could be achieved only when the powerful states anarchies were pulled down to a platform where the weaker states were to be treated at par with them. In principle sovereign equality could do that. So, international legal order consists of separate independent entities that are sovereign and have absolute authority within their territorial borders. These sovereign entities have a relationship of parallel equality amongst themselves regardless of the inequalities in terms of geographical areas or political strength. As all states satisfy the same conditions according to which they qualify as states.⁷ They are equal in terms of their legal status. And this is the sovereign equality which is the foundational principle of the United States.

The states are unequal in terms of their geographical areas, population sizes, political setup, economic forms, socio-cultural structures, military strength, Ideology they espouse and other factors and despite this fact, as members of the international community, they are equals. They possess a legal identity that is same as others. This has been supported by Oppenheim as he remarks, “the equality before International Law of all member states of the family of nations is an invariable equality derived from their International personality.”⁸ Also sir Robert Jennings, former President of the International Court of Justice, notes that:

“This equality is not equality of power, territory or economy: States are, by their nature, unequal as regards their territorial, financial, military and other characteristics. Rather, this equality is as members of the International community, whatever the differences between States. Thus sovereign equality refers to the legal equality of states, as opposed to the political equality, and is often described as ‘judicial equality’, i.e., equality before the law; in the case of States, International Law.”⁹

Earlier Traces of the Principle of Sovereign Equality:

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

Many thinkers argue that the basis of states legal equality is the works of Grotius. Pieter H. Kooijmans debates convincingly that the equality of the states' principle was an inherent element of the Grotian theory¹⁰ while on the other hand, another scholar, Edwin DeWitt Dickinson denies that Grotius established the concept.¹¹

In several scholars' view, the equality of nation states is similar to the equality of individuals. This analogy finds a mention in the work of Emmerich de Vattel. In his book, published in 1758, *'Le Droit des Gens, ou Principes de la Loi Naturelle Appliqués à la Conduite et aux Affaires des nations et des Souverains'*, he writes in the introduction- "Since men are by nature equal, and their individual rights and obligations the same, as coming equality from nature, nations which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights. Strength or weakness, in this case, counts for nothing. A dwarf is as much a man as a giant is; a small republic is no less a sovereign state than the most powerful kingdom."¹²

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

The principle finds a reference in the introductory paragraph of the United Nations Charter's Preamble which states, 'We the people of the United Nations determined to reaffirm faith in the equal rights of nations large and small.'¹⁴ Further Article 2 of the charter mentions, 'The Organization and its members, in pursuit of the purposes stated in article 1, shall act in accordance with the following principles: 1. The Organization is based on the principle of the sovereign equality of all its members.'¹⁵

It embodies the principle that all states are equal under international law in spite of asymmetries of inequality. It sorts to establish a non-hierarchical and horizontal co-existence of the states. It is noteworthy here, that this sovereign equality

is not political in nature but is judicial i.e., equality of the states before law. This is so as the political equality of states is not ensured: the political status of the states in the United Nations Security Council is different. Although to this logic, scholars argue that the position of the permanent member in the Security Council 'must not be seen as a privilege; it is a right, conferred upon grounds ensuring from the essence of law, because it is the counterpart of a special obligation international peace and security are largely dependent upon the extent to which the great powers are prepared to maintain them.'¹⁶

This principle was reaffirmed and clarified by the U.N. General Assembly in the 1970's 'declaration of principles of International Law concerning friendly relations and co-operation among states in accordance with the charter of the United Nations', In its twelfth paragraph, it states that: 'Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if states enjoy sovereign equality and comply fully with the requirements of the principle in their international relations'¹⁷

Changes in the Concept of Sovereignty: Its Extent:

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

Now, the states due to emergence of the supranational bodies as well as globalization trends felt the need of establishing themselves as a part of the international community. The needs of economic integration of a state's economy to the global economy could gain priority. Jose Manuel Barroso, the President of the European Commission, said, 'In the age of Globalization, pooled sovereignty means more power, not less.'

The states voluntarily gave away the external aspect of sovereignty to become a member of the International community. The states were bound together and to some superior authority. The states were now bound by their own commitments to the conventions and agreement they entered into with other states or the international community as a whole. Membership of various international organizations and

signing of conventions and covenants called upon the states to trim the overarching external aspects of sovereignty. The fundamental legal principle of *pacta sunt servanda* which makes the states bound by the commitments they undertake. The international society as one single entity gained significance and the absolutist conception of state sovereignty lost some.

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

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

Conclusion:

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

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

As the principle of 'Sovereign equality' was introduced to the international legal order, the absolutist notion of sovereignty that was thought to be impervious and sacrosanct lost all credence. The United Nations through this principle tried to infuse an equitable and just system in the international regime so that all the states

of the world could be treated equally as legal personalities. This equality of states under the international law brought serious changes in the traditional conception of sovereignty. It no more remained a non-refutable canon of law and sovereignty that used to be interpreted in political terms. The principle of 'sovereign equality' has a significant role in giving a legal construct to the concept of state sovereignty.

References:

1. Biersteker, T., & Weber C. : The Social Construction of State Sovereignty, In: State Sovereignty as Social Construct, Cambridge: Cambridge University Press, 1996.
2. Ruggie, J.G. : Continuity and Transformation in the World Polity: Towards a Neorealist Synthesis, World Politics, Vol. 35:2, pp. 261, 1983.
3. Badescu, C.G. : Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights, Oxon: Routledge, 2011.
4. Reus-Smit, C. : Human Rights and the Social Construction of sovereignty, Review of International Studies, Vol. 27, 2001.
5. Kooijmans, P.H. : The Doctrine of the Legal Equality of States: An Inquiry into the Foundations of International Law, Leyden, 1964.
6. Hobbes, T. : Leviathan, Ch. XIII, Penguin, Richerd Tuck ed., 1986.
7. Gilson, B. : The Conceptual System of Sovereign Equality, Leuven Peeters, 1984.
8. Oppenheim, L. : International Law: A treaties, Longsman, 8th ed., Vol. I, 1955.
9. Jennings, R. : Opinion Regarding the Exclusion of Israel from the United Nations Regional Group System, 1999.
10. Supranote 5.

11. Dickinson, E.D.W. : The Equality of States in International Law, Harward, 1920.
12. Vattel, E. : The Law of Nations, Book 1, 1916.
13. Kelson, H. : The Principle of Sovereign Equality of States as a basis for International Organization, Yale Law Journal, 1944.
14. United Nations Charter Preamble, 1945.
15. United Nations Charter, 1945.
16. Supranote 5.
17. UNGA Resolution XXV, 1970.
18. Supranote 7.