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STATE SOVEREIGNTY AS A SUBJECT OF PUBLIC INTERNATIONAL LAW

Fide Maksut

University for Business and Technology
Department of Law, Political Science and Diplomacy

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Fide Maksut
2005070111

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University for Business and Technology

Department of Law, Political Science and Diplomacy

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Fide Maksut

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Supervised by Professor of Law: Emrush Ujkani

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ABSTRACT

The concept of s*overeignty* of states is a rather complex one to address but indeed one of central importance for any discussion pertaining to International Law.

This derives from the fact that only sovereign states are "recognized" subjects and makers of Public International Law[1] (PIL).

One aspect seems to be widely accepted: just as the birth of a human being marks the beginning of his or her *legal personality*[2], a state's recognition as sovereign will likewise acknowledge its capacity to be subject of international law normative framework. For that reason, the establishment of a State as sovereign has been the cause for countless conflicts - armed or diplomatic - and for extensive debate among scholars and practitioners of International Law.

International law regards sovereignty an independent personality. States are the paradigmatic image of this. Modern international law developed primarily by viewing states as individuals, and elaborating the natural law which ought to apply between them.

The first goal of this paper will then be the discussion of the definition of what Sovereignty is. Secondly, and perhaps even more challenging, we have to consider what sovereignty entails.

The concept closely links with that of *territoriality*, but it is not to be confused with the latter, which represents the boundaries[3] and limits of the state's existence as such. However, the purpose of the following thesis is not to address the philosophic conception of sovereignty, but rather to address the visible aspects of its manifestations of the interactions that might rise between sovereign states.

[1] We could add that even in regards to a state's Domestic Law, sovereignty is fundamental

[2] *Characteristics and qualities (such as age and domicile) from which human beings derive their legal capacity and status, within their society's legal order. It is the sum total of an individual's legal advantages and disadvantages.* In, http://www.businessdictionary.com/definition/legal-personality.html

[3] Including not only the land but also aerial space and, where applicable, the seas

Acronyms and Abbreviations

CoI	Commission of Inquiry
HR	Human Rights
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
LoN	League of Nations
NATO	North Atlantic Treaty Organization
PIL	Public International Law
R2P	Responsibility to Protect
UN	United Nations
UNC	United Nations Charter
UNEF	United Nations Emergency Force
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
UNTSO	United Nations Truce Supervision Organization in Palestine
UNGA	United Nations General Assembly
PM	Permanent Members

When the sovereignty of states must be questioned

In line with the philosophy of law, Sovereignty refers to the right of exercising the functions of State in a specific territory as well as to develop the capacities of the State in economic, political and social aspects. In order to be able to participate in international affairs, a state must be recognized[4] sovereignty by the other States or at least by a vast majority. Only after this recognition a state is considered to exist as subject of PIL and from there onwards acquires the capacity of enjoying fully its "rights and duties" under PIL.

[4] It cannot be a unilateral act.

The collision of responsibility to protect (R2P) and the sovereignty of states

More than 60 years after the founding of the UN, peacekeeping operations have become the most visible and important activity of the Organization.

But such operations were not anticipated by the founders of the United Nations and are not mentioned at in the UNC - hence the nickname of "Chapter VI ½ measures" as they somehow fit between measures under Chapter VI and VII of the UNC.

Peacekeeping was developed as a series of ad hoc practical mechanism used by the United Nations to help contain armed conflicts and settle them by peaceful means. They were devised by the Organization at the start of the Cold War because its original collective security system became ineffectual as a result of the increasing disagreement between the two superpowers.

The original system devised by the United Nations to ensure international peace and security is outlined in Chapters VI, VII and VIII of the Charter.

When a dispute arises between two States, the parties concerned are obliged, under Chapter VI, to seek a solution by peaceful means, mainly by negotiation, conciliation, mediation, and arbitration. If the peaceful means prove insufficient and the dispute escalates into armed conflict, then Chapter VII comes into play.

This Chapter, which constitutes the core of the United Nations collective security system, stipulates that in the case of a threat to the peace, breach of the peace, or act of aggression, the Security Council (SC) may take enforcement measures to restore peace. First, there should be an attempt at non-military measures such as arms embargoes and economic sanctions and, when these approaches are exhausted, the use of force[5].

Lastly, Chapter VIII states that the SC should encourage the peaceful settlements of local disputes through regional agencies and also should, when appropriate, utilize such agencies for enforcement action under its authority.

In theory, the key provisions of the United Nations collective security

[5] However, the UNC does not prohibit the SC from imposing directly measures under Chapter VII. In accordance with article 42: *"Should the Security Council consider that measures provided for in Article 41 [not involving the use of force}* ***would be inadequate*** *or have proved to be inadequate".*

system concern the use of force under Chapter VII. Plans for such use of force must be made by the Security Council itself, with the assistance of the United Nations Military Staff Committee. Since the five major powers that played a key role in the creation of the United Nations are permanent members of the Security Council, endowed with the right of veto, and since they also make up the Military Staff Committee, the Charter provisions on the use of force can be applied effectively only with their consent and continued co-operation.

This co-operation was impossible during the Cold War, when the relations among the major powers, and especially between the two superpowers, became marred by mistrust and disagreement. The inapplicability of the Charter provisions on the collective use of force created a vacuum that had to be filled somehow. Obviously, not all international disputes could be settled by peaceful means. Some were needed to stop or contain disputes that escalated into armed conflict and endangered international peace and security. Hence, traditional peacekeeping operations developed progressively and pragmatically.

The first peacekeeping operation was deployed in 1948: a military observer mission to Palestine called the United Nations Truce Supervision Organization in Palestine (UNTSO). In 1949, a similar military observer mission, The United Nations Military Observer Group in India and Pakistan (UNMOGIP) was deployed, and which continues to render valuable services today. In 1956 the first peacekeeping force, the United Nations Emergency Force (UNEF) was deployed in response to the Suez crisis. Since that time, the number of peacekeeping operations has steadily grown.

The implementation of Chapter VII of the United Nations Charter has been much less effective. In fact, although the SC can theoretically "make war to end war," in practice it rarely does so. When guns must be used to restore peace, the SC must delegate the task to others because it lacks its own army [6]— usually coalitions as in Korea in 1950 or in the Persian Gulf in 1990-1991.

The 1992 publication of UN Secretary-General's "Agenda for Peace" and its Supplement in January 1995 were especially influential in this development. According to these two important texts, peace operations can be defined as follows:

[6] Article 45 of the UNC could never really be implemented because such armed forces were not made available.

"A comprehensive term encompassing military support to diplomacy, observers and monitors, traditional peacekeeping, preventive deployment, security assistance to a civil authority, protection and delivery of humanitarian relief, imposing sanctions, and peace enforcement"

Peacekeeping involves **non-combat military operations** (in which arms are only used in self-defensive) that are undertaken by external forces **with the consent of all major conflicting parties**. It is designed to monitor and facilitate implementation of an existing truce agreement in support of diplomatic efforts to reach a political settlement to the dispute.

Traditional peacekeeping operations were originally thought to be temporary military interventions, intended to support cease-fire agreements while diplomats could seek to address what were fundamentally political issues, not military issues.

In recent practice, the distinction between peacekeeping and peace enforcement operations has become unclear. The complexity of the conflicts in which the United Nations has become involved as a peace-keeper under Chapter VI has sometimes shifted or escalated the operation into peace enforcement under Chapter VII. A prime example is the operation in Somalia, in which the United Nations' initial involvement was for humanitarian relief under a Security Council resolution adopted under Chapter VI of the Charter. The United Nations' involvement was then called up to enforcement mode under Chapter VII, authorized by the Security Council, to use "all means necessary" to establish a secure environment for the humanitarian operations in Somalia. In some circumstances, peacekeeping operations have been expanded to include peace enforcement operations.

After this brief overview of the "Peacekeeping" concept, let us concentrate in the notion of the "responsibility to protect" (R2P) and the controversy surrounding it.

Human Rights (HR) baseline has been provided by the United Nations Charter (UNC). It addresses the issue directly and employs the terminology of HR for the first time.

In UNC's preamble the State members "reaffirm faith in fundamental human rights, in the equal rights of men and women" and, on article 1 (3), the purpose of the United Nations (UN) includes "*promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or*

religion".

Article 55 (c) is even more daring and imposes that the UN shall promote "*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".*

When it comes to enforcement mechanisms however, the UNC lacks clear legal instruments to trigger enforcement against state members' violating HR.

The fundamental reason for this is the fact that Human Rights do greatly challenge "the rights" of States. As quick examples we can point out that HR investigations defy the inviolability of states sovereignty; the fight against terrorism (a right and duty of any State) is limited by the prohibition of the use of torture.

External military intervention for human rights protection purposes has been controversial both when it has happened – as in Somalia, Bosnia and Kosovo – and when it has failed to happen, as in Rwanda.

For some, the new activism has been a long overdue internationalization of the human conscience in an obvious defence of the "responsibility to protect" (R2P) approach;

For others it has been an alarming breach of an international state order, dependent on sacrosanct sovereignty[7] of states and the inviolability of their territory[8].

For some, again, the only real issue is how to go about in ensuring that coercive interventions are timely and effective;

For others, questions about legality, process and the possible misuse or establishment of precedents must be the sacred concern.

NATO's intervention in Kosovo in 1999 brought the controversy to its most intense stage. Security Council members were divided; the legal justification for military action without new Security Council authority was asserted but largely unchallenged; the moral or humanitarian justification for the action, which on the face of it was much stronger, was clouded by allegations that the intervention generated more bloodshed than it prevented; and there were many criticisms of the way in which

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[7] *"The Court should now mention the principle of respect for State sovereignty, which in International Law is of course linked with the principles of the prohibition of use of force and non-intervention"* (ICJ, Nicaragua 1986, para. 212, p.111).

[8] *"(…) between independent states, respect for territorial sovereignty is an essential foundation of international relations (…) the action of the British Navy constituted a violation of Albanian sovereignty"*. ICJ, Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania), 9April 1949, page 35.

the NATO allies conducted the operation.

More recently, the developments witnessed in North African and Middle Eastern countries, have again brought actuality and relevance to these discussions.

Syria is certainly the most worrying and most actual case. Every day the News passes on reports of gross violations of human rights being committed. Not anymore only by the Syrian government forces but also by the opponents to Assad's rule.

The death toll increases by the day under elaborated, not to say hypocrite, arguments. One side saying they are only saving their esteemed citizens from "terrorists" and the other considering themselves "freedom fighters".

And while all this is on-going, what is the international community doing in regards to Human Rights (HR) violations?

Little more than more or less elaborated oratory and inflamed speeches. Strong statements of condemn have been made, appeals to compliance with Human Rights and Humanitarian law have been done, warnings and promises of future prosecution or other forms of accountability enforcement have been directed against the most responsible.

What about the side of active and tangible measures undertaken or implemented aiming at restore peace and stop the gross HR violations?

A "**Commission of Inquiry on Syria**" (CoI) was appointed by the Human Rights Council[9]. This CoI has endeavoured to collect evidence, namely statements from alleged victims of human rights violations perpetrated by government agents, in order to insure the respect to the required standards of proof, regarding the allegations of Human Rights (HR) abuses against the Syrian government.

However, Syria has never allowed the CoI investigators performing those "fact-finding" missions inside Syrian territory. The collection of evidence was thus limited to interviews with refugee around the neighbouring countries (Turkey, Lebanon, Iraq and Jordan). Access has been therefore a major liability the CoI's has been faced with.

The **United Nations**[10] and the League of Arab States, in a joint effort to help explore a peaceful political solution to the conflict in Syria have appointed, on 23 February 2012, ex-UN Secretary General (UNSG) Kofi Annan as "**Joint Special**

[9] Created by the United Nations General Assembly on 15 March 2006 by resolution 60/251

[10] Department of Political Affaires (DPA).

Representative for Syria". By the 16th of March, Kofi Annan had drafted a plan[11] aiming to negotiate a truce that could stop the violence and the killings and open ways for the reconciliation and peaceful transition. To present, the implementation of that plan has not been accomplished with both sides to the conflict consistent and continuously violating it.

Kofi Annan resigned on the 2nd of August 2012, citing the intransigence of the Assad government and the rebels, as well as the impasse on the Security Council as preventing any peaceful resolution of the situation[12].

The **European Union** has also established a series of **economic and political sanctions** and an arms embargo against Syrian interests. However, their real impact in solving the humanitarian crisis has been too little.

In any case, regarding measures such as economic sanctions we need to be mindful of former UNSG Kofi Annan informed opinion:

"When robust and comprehensive economic sanctions are directed against authoritarian regimes, a different problem is encountered. Then it is usually the people who suffer, not the political elites whose behavior triggered the sanctions in the first place. Indeed, those in power, perversely, often benefit from such sanctions by their ability to control and profit from black market activity, and by exploiting them as a pretext for eliminating domestic sources of political opposition."[13]

The **UN**, particularly the **Security Council** (SC) – UN's only organ able of impose enforcement measures - has been unable to take hardly any substantive action[14]. Russia and China have been insistently exercising their veto invoking the above mentioned arguments of the inviolability of Syria's sovereignty who is dealing with its domestic problems, and the lack of legal support within the scope of the UN Charter to

[11] Known as the "six-point peace plan". Interestingly the middle point aimed at*: "(3) ensure timely provision of humanitarian assistance to all areas affected by the fighting (…)".*

[12]UNSG Ban Ki-moon just announced, on the 17 of August 2012, the appointment of Lakhdar Brahimi as the new "Joint Special Representative for Syria".

[13] Report of United Nations Secretary General "We the peoples: the role of the United Nations in the 21st Century", A/54/2000, 27 March 2000. Para. 219. Para. 231.

[14] Security Council Resolution 2043, of 21 April 2012, established a United Nations Supervision Mission in Syria (UNSMIS), for an initial period of 90 days – later renewed for another 30 days , by Resolution 2059 - under the command of a Chief Military Observer, comprising an initial deployment of up to 300 unarmed military observers as well as an appropriate civilian component to fulfill the following mandate: To monitor a cessation of armed violence in all its forms by all parties and to monitor and support the full implementation of the Envoy's six-point plan. The General Assembly has also passed Resolutions recommending the end of hostilities and a peaceful the transition of power. These however have no binding effect.

interfere without Syria's consent.

The inconformity from the nations[15] who abstain to vote or vote contrary to a possible resolution by the Security Council for collective actions in Syria, are based under Article 2(7) of the first chapter of the UN Charter:

"Nothing shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII"

Russia has been particularly representative of this view. However accurate this position in defence of Legality might be, the legitimacy of such position and the real reasons for those position can surely be questioned.

If we go back and see through the UNSC's actions in the case of Libya, a very similar and recent crisis, we conclude that Security Council did act. The differences between both crises, from a humanitarian point of view, are not really substantial but the UNSC has acted quite differently.

First through Resolution 1970 (2011), of the 26 February 2011, under article 41[16] of the UN Charter (UNC), the Security Council:

***"Urges** the Libyan authorities to: (a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors (...)"*

And soon after, on the 17th of March 2011, once confronted with Libya's noncompliance with Resolution 1970 and in face of a continuously deteriorating situation, the Security Council again decides to act. This time it hardens its position onto measures authorizing the use of force (under article 42 of the UNC):

*(...) 3.**Demands** that the Libyan authorities **comply with** their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance 4. **Authorizes Member States** that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the*

[15] China and Russia believe in the principles of sovereign equality and non-interference; Iran said that it violated the Charter principle of non-interference in the internal affairs of States etc.

[16] Chapter VII - "Measures not involving the use of armed force",

Secretary-General, ***to take all necessary measures****, notwithstanding paragraph 9 of resolution 1970 (2011),* ***to protect civilians and civilian populated areas under threat of attack*** *in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory (...)*[17]

If the legal instruments to act are not missing why then, is the SC now being blocked and thus prevented from taking a similar active role?

Some argue that in Libya things went too far in what international intervention is concerned and that it is therefore necessary to avoid establishing a precedent grounded on that intervention.

We can indeed question if the intervention in Libya was well coordinated and did strictly abide by the principles of necessity and proportionality. We can also perhaps accuse the SC's resolutions of having been too vague, a *carte blanche* that allowed for vast interpretation.

But does it really explain why the SC is now failing to agree on measures to stop the humanitarian crisis and thus blocked from taking any really effective action? I am afraid not.

It is rather the complex network of lobby's and domestic interests[18] together with the fear of disrupting the fragile coexisting Middle Eastern states what is really at stake.

Obviously, on the "underground" stage or non-official arenas things are quite different. The "game" there is about finding ways to capitalize on the state of things. States care about the satisfaction of their own private economic and political agendas and look the other way in regards to the humanitarian disaster happening there.

At the United Nations General Assembly in 1999, and again in 2000, Secretary-General Kofi Annan made compelling pleas to the international community to try to find, once and for all, a new consensus on how to approach these issues, to "forge unity" around the basic questions of principle and process involved. He posed the central question frankly and directly:

(...) if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common

[17] Points 3 and 4 of UN Security Council resolution 1973.
[18] Russia has a long standing military and strategic relationship with Syria and President Assad. China has in Syria an important commercial partner, particularly in terms of armament.

humanity?"

And he pointed out the possible way forward:

"To strengthen protection, we must reassert the centrality of international humanitarian and human rights law. We must strive to end the culture of impunity - which is why the creation of the International Criminal Court is so important. We must also devise new strategies to meet changing needs."[19]

In response to this challenge, the Government of Canada, together with a group of major foundations, announced at the General Assembly in September 2000, the establishment of the International Commission on Intervention and State Sovereignty (ICISS).

The Commission was asked to deal with the whole range of questions – legal, moral, operational and political – linked to this debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.

On that report the ICISS recommended:

(...)" to the General Assembly: *That the General Assembly adopt a draft declaratory resolution embodying the basic principles of the responsibility to protect, and containing four basic elements: an affirmation of the idea of sovereignty as responsibility; an assertion of the threefold responsibility of the international community of states – to prevent, to react and to rebuild – when faced with human protection claims in states that are either unable or unwilling to discharge their responsibility to protect; a definition of the threshold (large scale loss of life or ethnic cleansing, actual or apprehended) which human protection claims must meet if they are to justify military intervention; and an articulation of the precautionary principles (right intention, last resort, proportional means and reasonable prospects) that must be observed when military force is used for human protection purposes.*
(...) to the Security Council: (1) That the members of the Security Council should consider and seek to reach agreement on a set of guidelines, embracing the "Principles for Military Intervention" summarized in the Synopsis, to govern their responses to claims for military intervention for human protection purposes. (2) That the Permanent Five members of the Security Council should consider and seek to reach agreement not

[19] Report of United Nations Secretary General "We the peoples: the role of the United Nations in the 21st Century", A/54/2000, 27 March 2000. Para. 211

to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.

(…) to the Secretary-General: That the Secretary-General give consideration, and consult as appropriate with the President of the Security Council and the President of the General Assembly, as to how the substance and action recommendations of this report can best be advanced in those two bodies, and by his own further action.(…)[20]

Other legal and policy texts, as well as scholar's statements have important references to the R2P concept[21], however the reluctance of states is still largely unbeaten. States fear opening a "Pandora box" by admitting to the R2P.

The R2P does have the potential to allow States' abuse, namely by invoking it with strategic interests rather than humanitarian concern.

But, on the other hand, sovereignty cannot allow states to brutally step on the Human Rights of its citizens without the international community being able to go on their assistance.

The protection of civilians is a legal concept based on international humanitarian, human rights and refugee law, while the R2P is still more of a political discussion. In any case, the concepts are interlinked and cannot be forgotten by the international community.

But still, perhaps the most fundamental mistake is to try to compare Human Rights treaties with "common" treaties. In other words, the Legality cannot be the prime aspect to look for when we address Human Rights violations.

We do already have enormous paraphernalia of instruments likely to avoid gross humanitarian crisis: UNC, Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The UN Security Council, the International Criminal and Human Rights courts, etc.

We have also seen that the international community sometimes intervenes in

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[20] "The Responsibility to Protect"- Report of the International Commission on Intervention and State Sovereignty, Pag. 74/75.

[21] Report of the High-level Panel on Threats, Challenges and Change, *A more secure world: our shared responsibility, UN Doc. A/59/565, 2 December 2004;*

ICJ, Legal consequences of the Construction of a wall in the occupied Palestinian Territory, Advisory Opinion of 9 July 2004, ICJ Reports 2004, paras.158-161;

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260 (III) A of the UN General Assembly on) December 1948, entry into force 12 January 1951

humanitarian crisis and sometimes doesn't, based on these same existing instruments.

The central question is, in my opinion, one of compromise and cooperation between states, not only in terms of empowering the existing prevention mechanisms but mainly in terms of not giving up to their selfish strategic interests in the face of humanitarian crisis.

I believe that former UNSG, Kofi Anan does provide the right path when he said that:

"Humanitarian intervention is a sensitive issue, fraught with political difficulty and not susceptible to easy answers. But ***surely no legal principle—not even sovereignty—can ever shield crimes against humanity****. Where such crimes occur and peaceful attempts to halt them have been exhausted,* ***the Security Council has a moral duty to act on behalf of the international community****. The fact that we cannot protect people everywhere is no reason for doing nothing when we can. Armed intervention must always remain the option of last resort, but in the face of mass murder it is an option that cannot be relinquished"*[22]

Only one thing is missing and perhaps overlooked by Mr. Kofi Annan: morality is often preached but seldom exercised and at times serves very vicious masters.

[22]Report of United Nations Secretary General "We the peoples: the role of the United Nations in the 21st Century", A/54/2000, 27 March 2000. Para. 219.

Prohibition of use of force and the right of states self-defense –

For centuries the state's primary self-help mechanism when *the power of law ceased*[23], was the resort to war. War was a right inherent to the concept of sovereignty of a state.

The grounds for this form of forcible self-help were progressively reduced[24] and presently the use of force by states as means for the settlement of disputes is circumscribed to situations of individual or collective *self-defense, if an armed attack occurs,* or if the use of armed force is in *the common interest*[25] of the international community, that is to say, if the United Nations Security Council (UNSC) endorses or imposes it.

Alongside the limitations to the use of force enshrined on the United Nations Charter (UNC), the refrain on states to resort to the use of force has been reiterated and echoed in case law generating customary international law[26].

While International Law recognizes the right of states to engage in lawful settlement of disputes[27] but, with the entry into force of the UNC, the resource to the use of force was been circumscribed. Instead, the UNC has established Judicial[28] and

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[23] "*The grounds of war are as numerous as those of judicial actions. For where the power of law ceases, there war begins.(…)The justifiable causes generally assigned for war are three: defense, indemnity and punishment*". In *The Law of War and Peace*, H. Grotius, 1625, book II, chapter I, II.1,2.

[24] Examples of the progressive attempts to limit the resource of states to the use of force can be found in: - Article 1 of the 1907 The Hague (III) relative to the opening of hostilities; - Article 2 (para. 1) of the 1907 The Hague (II) *Convention Respecting The Limitation Of The Employment Of Force For The recovery Of Contract Debts*; - Articles 10 and 12 of the *Covenant of the League of Nations* (1919); - Articles 1 and 2 of the *Pact on the Renunciation of War as an Instrument of National Policy* ('Briand–Kellogg Pact'1928).

[25] Preamble of the UN Charter, second paragraph.

[26] *"The Court should now mention the principle of respect for State sovereignty, which in International Law is of course linked with the principles of the prohibition of use of force and non-intervention"* (ICJ, Nicaragua 1986, para. 212, p.111).

[27] *"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by* ***negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements****, or other peaceful means of their own choice. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."*- Article 33, UN Charter.

[28] Chapter XIV of the UNC, Article 92: "*The International Court of Justice [ICJ] shall be the principal judicial organ of the United Nations (…)".* ICJ's Statute is annexed to the UNC itself.
Article 1 of the Statute of the International Court of Justice: "*The International Court of Justice established by the Charter of the United Nations as the* ***principal judicial organ*** *of the United Nations (…).*"-

Political[29] Organs to serve as states primary contentious arenas whenever direct or third party's sponsored negotiations fail to resolve states disputes.

A quick overview into the background and chain of events that led to the birth of the UNC allows us to realize that the "old systems" to insure peace[30] had proven to be weak deterrents against the ever present spectrum of war.

Events which occurred in the half of the twentieth century add substance to that statement: the increasingly destructive character of wars demonstrated to states that new ways were necessary.

Industrialization, the technological advances witnessed in the armament industries producing weapons of greater destructive capacity and the emergence of nation-states - adding the dangerous sense of nationalism - changed drastically the character of modern armed conflicts.

The battlefield is no longer a remote arena where small professional armies struggle for a victory leaving practically untouched the civilian populations. All citizens are now mobilized to contribute to the efforts of war, either participating in the fighting or working in the factories that insure war logistics. Thus, everyone becomes a target.

Nuclear technology is used militarily for the first time. This was perhaps the "red light" for states who realized that mankind's very existence would be at risk if strong collective measures were not imposed to proscribe the resource to war as means to settle disputes or settlement of borders.

The *League of Nations (LoN)* – the first serious attempt of the international community to circumscribe the use of force - had endeavored to restrain states from the

[29] The most relevant are the General Assembly (GA) – established by force of article 7 (1) of the UNC and regulated by the provisions of Chapter IV- and the Security Council (SC) – established by force of same article 7 (1) and regulated by the provisions of chapter V of the UNC.

[30] Those classical systems are described as:
The **empire system** (*Pax romana)* whereby a group of states was shielded under the protective umbrella of a higher monarch; The **political hegemony** of some nations over certain regions which they dominated by influence (classic example is the US vs the URSS), and the **equilibrium of powers** or "politique de la bascule", which was never very reliable or effective given the difficulty on assuring an equilibrium when all excelled to always be one step ahead.

resource to war[31], but it did not proscribe it entirely[32] and lacked the mechanisms and representativeness necessary to ensure effectiveness or enforcement. This bitter reality was well evidenced by the break of WWII which dictated its dissolution, officially declared in 1946 although the LoN was virtually terminated since the beginning of WWII.

Still, the collective wish for a supra national organ which could *save succeeding generations from the scourge of war*[33] and could avoid that yet another generalized conflict occurs - now with the potential to wipe mankind from the face of the earth - subsisted.

This idea of a collective security system was consecutively shaped and materialized into the UNC which gave birth to the United Nations (UN).

The UN was intended to pursue a number of fundamental purposes, enumerated on chapter I of the UNC and further detailed throughout the following chapters, but one was considered the direst, as it follows from its rather dramatic preamble: to insure that international[34] peace was not breached ever again.

In fact, article 1 (1) of the UNC provides clear evidence of the absolute priority given to that concern:

"The purposes of the United Nations are: 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace (…)".

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[31] Article 12 of *The Covenant of the League of Nations* imposed that *"The Members of the League agree (…) in no case to resort to war until three months after the award by the arbitrators or the judicial decision* (…)".
[32] Idem. After the three months deadline elapsed the resort to war was no longer unlawful.
[33] Preamble of the UN Charter, first paragraph.
[34] Force pertaining to "internal affairs" is not covered. In fact article 2.4 of the UNC leaves that very clear: *"All Members shall refrain* ***in their international relations*** *from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".* This preoccupation had naturally to do with the wish to respect the Sovereignty of states by limiting the room for interference with domestic affairs but intended also to keep out of the scope the relations between colonial powers and their dependent territories, which then was a relevant and sensitive matter.

But taking *"effective collective measures"* had proven to be a very difficult task during the times of the LoN and this time the UNC provides for another approach:

- The establishment of a collective organ mandated and effectively capable of enforcing the peace[35];
- The definition of the situations or circumstances in which that organ shall intervene[36];
- The eligibility of the cases for intervention to be determined by that organ alone[37] and;
- The exigency that the interests the organ is to defend are universal[38].

Such an organ materialized as the *Security Council* (SC) which was entrusted with the *"primary responsibility for the maintenance of international peace and security"*[39] and given the most extensive powers[40] *"to ensure prompt and effective action by the United Nations"*[41].

Those extensive powers and *effective action* go as far as to comprehend the use of force, which among all the organs established by the UNC, is a privilege reserved to the SC. The SC is therefore, *par excellence,* the competent organ on the UN to authorize states to use force.

Article 42 of the UNC reads:

"Should the Security Council consider that measures provided for in Article 41

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[35] Article 24 (2) of the UNC

[36] *"Any dispute, the continuance of which is likely to endanger the maintenance of international peace and security"*- Article 33 (1) of the UNC.
"Threat to the peace, breach of the peace, or act of aggression" - Article 39 of the UNC.

[37] *"The Security Council shall, when it deems necessary, call upon the parties"* - Article 33 (2) of the UNC.
"The Security Council shall determine the existence" – Article 39 of the UNC.

[38] Both the articles (33 and 39) opening Chapter VI (Pacific settlement of disputes) and Chapter VII (Action with respect to threats to peace, breaches of the peace and acts of aggression) clearly state the demand for an International character of the cases eligible for intervention. Internal disputes of States are excluded (provided that internal disputes do not threaten international peace and security or spread across national borders).

[39] Article 24 (1) of the UNC

[40] The powers are generically contemplated in Article 24 (2) of the UNC, but it is article 25 which does give virtually unlimited power to the SC to impose its decisions. That was the interpretation of the ICJ (in 1971, Namibia Advisory opinion) who considered that the SC is not only bound to decide only if there is a specific provision allowing it to decide.

[41] Article 24 (1) of the UNC

would be inadequate, or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations"

This article insures the SC a large margin of discretion: the element of *proportionality* is not demanded and even *necessity* is not much present[42]. On the other hand, there is no obligation to pass by the measures preconized by article 41[43] first, the SC decides as it pleases.

Although appearing legally permissive, the application of article 42 by the SC raises the issue of its enforcement as the SC has limited intervention capacity and may only recourse to state member's military assistance. Article 43 (1) of the UNC indeed provides for that:

"All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."

However, it was never implemented[44] and therefore the SC has only one way out: to delegate enforcement on State members with the capacity and willingness to intervene relying on their own military capacity to act on its behalf and with its benediction.

But this delegation of powers or "authorizations regime" does also pose rather challenging problems:

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[42] Although customary law still demands for its observance.

[43] Measures not involving the use of force.

[44] Which implies that the following articles 43, 44, 45, 46, 47 are somehow obsolete. The "Military Staff Committee" referred to in article 47 was indeed created and meets regularly but practically with empty agendas.

- The decision to implement collective defense is rather regulated by practice rather than by law.

Article 53 of the UNC does refer to the possibility of delegation or authorization stating that the SC may *"utilize (…) regional arrangements or agencies for enforcement action under its authority"*. However, the substance here is to grant the SC the possibility to resource to preexisting *"regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security"*[45]. Thus, the aim of article 53 is not to regulate upon the delegation or authorizations regime but to take advantage of the potentially higher likelihood for success these regional entities have in comparison to isolated or random groups of states. Their regional and collegial character confers them higher levels of acceptance from the state(s) being intervened. Their goal of maintaining international peace, common to the purposes of the SC, supposes more experience dealing with related matters than any other available "agent" the SC could recur to.

- Greatly exposes the SC original goals to the private agendas or arbitrary interpretations of the state members entrusted with the active enforcement of the measures[46] decided by the SC. This is still more troublesome because in many occasions the SC delegates in very generic or vague terms providing grounds for abuse.

A paradigmatic case is that of the operation codenamed *desert storm,* also referred to as first Gulf War.

On the 29th November 1990, after a series of previous other resolutions, condemning Iraqi's invasion and unilateral/forcible annexation of Kuwait, the SC decided, through Resolution 678, to authorize

"Member States co-operating with the Government of Kuwait…to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area; [Requested] *all States to provide appropriate support for the actions undertaken in*

[45] Article 52 of the UNC.
[46] The SC can only delegate in regards to the forces it wishes to be enforcing on its behalf. The measures themselves cannot be delegated.

pursuance ... of the present resolution;[Requested] *the States concerned to ... regularly* [inform] *on the progress of actions undertaken* [and decided] *to remain seized of the matter."*

A coalition force from 34 nations led by the United States responded to the SC's Resolution setting Kuwait free from Iraqi forces but further invading Iraqi territory stopping only a few kilometers from Bagdad.

The intervention forces argued that it was necessary to insure that Iraq would not repeat the aggression by debilitating to the most extent his armed forces. Others would say that the United States took advantage of the "blank check" given by the SC to promote its domestic interests of weakening and punishing Saddam Hussein.

Polemics aside, truth is that according the SC's wording in Resolution 678, its whishes were to "*uphold and implement resolution 660".* In turns, Resolution 660 central commandment to Iraq was that it would *"withdraw immediately and unconditionally all its forces* ***to the positions in which they were located on 1 August 1990****",* i.e, back within its internationally recognized borders: Bagdad is 600 kilometers away from the border with Kuwait!

- The states exercising effective enforcement under SC's Resolutions are free to step out when they unilaterally decide. This can have tremendous implications mostly in operational terms - the enforcement capacity is affected and the remaining forces, if any, are left more exposed themselves – but can also have political repercussions by undermining the credibility of the SC and exposing remaining contingents to enhanced animosities;

- The absence of temporal limitation might lead to incessant validity of the Resolution's dispositions through the (ab)use of "reverse veto"[47], i.e, one of the

[47] The veto is a negative vote by one of the PMs that prohibits a decision taken by majority. In itself the veto does not mean "no", it means "no" to a decision already taken by majority. The "reverse veto" signifies that the PM exercising it does not aim to stop the adoption of a particular measure but to stop the revision or suspension of a measure previously implemented.

Permanent members (PMs) opposes to the review or renewal of a Resolution already in force ("sunset clauses").

- The common scenario of multinational forces with different languages, different policies and rules of engagement, different and sometimes competing leaderships are all factors likely to potentiate operational and political added concern.

The resource to the use of force under the umbrella of article 42 is substantiated, *grosso modo,* in violations by states to article 2 (4) of the UNC:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

With reference to article 39 of the UNC:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace[48]*, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."*

But the UNC contemplates another legal provision accepting the use of force, which was briefly mentioned in the introduction to this paper.

The provision is article 51 which reads:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense ***if an armed attack occurs*** *against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.*

[48] In international relations terminology is very important. The SC normally prefers referring to "breach of the peace" instead of "act of aggression". This is because such attitude allows greater amplitude to the SC. Referring to a state as "aggressor" will surely limit the probability of success in the settlement of a dispute and can even be self-defeating to the SC due to the negative connotation of the concept and the stigma it imposes, unless the eventual transgressor is isolated. On the other hand, the label of "aggression" might also lead to consequences under the International Criminal Court (ICC) and thus the SC tends to avoid being entangled on these questions.

Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security"

This right to *self-defense,* represents, in UNC[49], the only exceptional cases in which states are still "tolerated"[50] the resource to the use of force without prior consent or determination by the SC.

Still, like in the case of the use of force under article 42 of the UNC, the analysis of article 51 permits a numbers of legal and political considerations:

- As highlighted on the article's legal text above, the triggering mechanism or *conditio materialis* for the resource to *self-defense* is the occurrence of an "*armed attack*".
- At this point, it is relevant to look for the definition of *aggression* and which acts would fit the notion of *armed attack*. "Armed attack" is not the same as "use of force", to defend the terms as synonyms would mean to consider that articles 2 (4) and 51 of the UNC are alike in substance.

The notion of *act of aggression* is relevant as regards to article 39 and from there to justify the recourse to 42 by the SC whereas the question of what might constitute an *armed attack* interests particularly in regards to article 51.

UN General Assembly (GA) Resolution 3314 provides for both those definitions of *aggression* and the *acts of aggression* representing "armed attack".

*"**Aggression** is the **use of armed force** by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.*

[49] International Customary law also contemplates the right to *self-defense by states.*
[50] It is not an absolute and/or discretionary right.

Explanatory note: In this Definition the term "State":

(a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations; (b) Includes the concept of a "group of States" where appropriate." [51]

"Any of the following acts, ... qualify as an ***act of aggression****: (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,...(g)The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein".* [52]

We underlined "g" because the acts described can lead conflicting interpretations, notably with regards to acts of terrorism. In this connection, unless clear ties between a terrorist group and a harboring/sponsoring state are proved, article 51 would not apply[53].

In *Congo vs. Uganda* the ICJ considered that an attack perpetrated or coming from an armed group cannot trigger article 51 unless there are clear signs of complicity between that group and a specific state.

- Article 51 stipulates that the armed attack must be against a member of the UN. The aggression must be directed against the territory (sovereignty) of a state. However, others consider that an attack directed against citizens of a particular state, even if perpetrated out of its territory, might justify the resource to use of force *self-defense*[54].

- The second paragraph of article 51 also requires that any use of force in *self-defense* must be reported immediately to the Council, and that the state must cease using force once the Council has taken the measures 'necessary' to maintain international peace and security. It seems reasonable to admit that the adopted measures would have

[51] Article 1
[52] Article 3
[53] *"If the terrorist attack involves the responsibility of a State, it may, depending on the circumstances, constitute an armed attack and therefore justify action by way of self-defense"* . In "*Principles of Public International Law*", Part XIII, "The use or threat of force by States", Ian Brownlie, Oxford University Press, page 713.
[54] However, assuming self-defense could be argued on those terms, such arguing would not ground itself on article 51 but rather on the *self-defense* notion coming from customary law, reference made to the *Caroline case.* There *necessity* is said to justify *invoking and enforcing* self-*defense*. Article 51's notion of *self-defense* is stricter but customary law does go in parallel, even if its dominance would defeat the purpose of article 51.

to be implemented and proven effective before the state hands over its *self-defense* on those terms.

- Unlike other provisions or concepts in the UNC which resulted from the evolution and tailoring of preexisting texts, namely the Covenant of the LoN, article 51 has no predecessor. This "regulation" of *self-defense* was mentioned for the first time in the UNC. The reason for that is that the use of force had not been prohibited before.

- The right of states to *self-defense* is also framed by customary law. The *Caroline* Case, in 1837, being its historic source. The case referred to the seizure and destruction, by British forces in US territory of a vessel being used by US nationals in assisting an armed rebellion by Canadians over the border, Canada then being a British colony. It framed the right to *self-defense* within the principle of absolute necessity and proportionality. US Secretary of State Webster then declared that, in order to be lawful, such recourse to force in self-defense required:

"A necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation [and involving] nothing unreasonable or excessive; since the act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it."

- Reprisals or punitive attacks do not constitute *self-defense*, since by definition they would be disproportionate. To be defensive, and therefore lawful, the armed reprisals must be future-oriented[55], and not limited to a desire to punish past aggressions.

- In the case of *collective self-defense*[56](as under Article V of the North Atlantic Treaty), there must first be a request from the state eligible to argue for *self-defense*. A collective security organization like NATO can only 'decide' to use force as an internal

[55] Not to confuse with measures of "anticipatory" *self-defense.* These would be unlawful and it is unrealistic to expect that if such permeability was to be supported legally it would not give grounds for abuse.
[56] The *self-defense* measures are undefined; however "collective measures" take precedence over "individual measures". Feared to be more anarchical the later are superseded by the former.

decision. Only with the endorsement of the SC or a legal basis in customary international law, such as *self-defense* can pass to action.

- Case law has been proficient in underlining the inadmissibility of flexible and extensive interpretation of article 51 of the UN Charter in general and the concept of *self-defense* in particular. Emphasis is placed on the existence of alternative means at the disposal of States to whom they may/must address their disputes or concerns:

"(…) Article 51 of the Charter may justify a use of force in self-defense only within the strict confines there laid down. It does not allow the use of force by a State to protect perceived security interests beyond these parameters. Other means are available to a concerned State, including, in particular, recourse to the Security Council (…)"[57]

- The strict inviolability of the States territorial sovereignty has also been reminded in case law. In the Corfu Channel Case, the ICJ has adjudicated that the invocation of *self-defense* will not consubstantiate into permeable and liberal interpretations that might transmute into mere violations of States sovereignty:

"(…) between independent states, respect for territorial sovereignty is an essential foundation of international relations (…) the action of the British Navy constituted a violation of Albanian sovereignty" [58]

We have already referred above to the *veto* power of the SC/PMs. Still, because since the birth of the UNC it has in many occasions, particularly during the *cold war* period[59], played a central role, it deserves further consideration.

The exercise of *veto* is probably the best example of the exposure of a legal rule – provided for in article 27 (1) of the UNC - to political purposes or interests. The *veto*

[57] ICJ, Judgment of 19 December 2005, Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda) - Para. 148
[58] ICJ, 9 April 1949, Corfu Channel case (United Kingdom of Great Britan and Nothern Ireland v. Albania), page 35.
[59] Unanimity among the PMs was impossible to achieve and the SC was constantly blocked. The GA attempted to overcome that and assumed a more relevant role during that period, still the UNC does not grant the GA similar powers as to the SC. The GA can only make recommendations.

has blocked[60] the SC in many occasions and that has granted it a somehow negative connotation but it has also been the grant that decisions can actually see the light of day as well.

Demanding unanimity to pass decisions[61] would represent in itself a *veto* to the extent that one dissenting vote would block the decision. The *veto* has been a way to insure decisions are managed by the states with actual power and resources to act. At the same time it is a way of avoiding that those states (PMs) do not actively turn against each other.

The figure of *abstention*, despite the provision set on article 27 (3) of the UNC, is not to be regarded as a *veto,* on the grounds of an 1971 ICJ's Advisory Opinion on Namibia setting customary law.

By way of conclusion, we can say that much criticism and disbelief can be argued against the UNC and its organs.

As regards to Chapter VII almost absolute powers of the SC[62], one can wonder what can really states do when confronted with an unreasonable or despotic decision. The "saving" feature is that Chapter VII decisions relate to "police measures" aimed at emergency situations, the SC cannot legislate[63]. Hence, decisions can and have been questioned by the member states considering themselves victims of excessive zeal.

Its legal texts have often been interpreted with dubious respect for the spirit they were embedded with at the time of their conception. Political interests have often been spoken louder and manipulated it to their advantage. The SC has been blocked by the exercise of *veto,* conceived to be an enabler for decisions but in many occasions exercised to defeat that very purpose.

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[60] When the SC is blocked by veto the GA may recommend measures, but it cannot really act.
[61] The case with the LoN, which required unanimity in the Council.
[62] The SC is not bound by International or treaty law (article 102 of the UNC). Despite article 103 of the UNC stating its precedence in case of conflicting rules, some scholars have arguably defended that *Jus Cogens* normative rules have in fact precedence over the UNC.
[63] Resolution 1373 is an exception: it was approved under Chapter VII and it is binding under article 25, of the UNC.

It has been said to be contrary to long standing rules of customary law, arguably by truthful concern about their precedence but rather to enjoy the preferential ruling of the later. Active violations to its principles and purposes have not been few either. There is certainly still a long way to go in the perusal of all its self-imposed purposes and principles.

However, a disaster such as those of WWI and WWII has so far been prevented. Despite all the limitations discussed above, and certainly others we failed to mention, the UNC is still the most effective instrument, if not the only, for the enforcement of peace in the world.

CONCLUSION

In view of the above, it seems that the State's sovereignty is definitely compromised. In order to have peace and stability in the world, the United Nations may intervene to resolve State's conflicts or disputes. This intervention must primarily choose a diplomatic and thus peaceful, path[64].

But when these methods prove themselves ineffective or insufficient and thus all means for the peaceful settlements of disputes between states have been exhausted the international communities, through the Security Council, can resource to the use of force against a sovereign state[65].

This possibility to resource to the use of forcible means, which may go as far as military intervention[66], has place not only regarding ongoing breaches of peace – when hostilities have already materialized- but it may also assume a preventive character in order to stop a serious threat to peace from developing into actual active hostilities[67].

As such, sovereignty is indeed not an absolute shield for states against states, allowing those with such status to do whatever they please, either inside or outside their borders. In terms of the obligations dictated by the UN Charter, this is only true regarding actions from states that might represent *a threat to the peace, breach of the peace or act of aggression*[68].

In any other case, the *sovereignty* of the state and its territorial integrity rests immaculate. Article 2 (1) of the UN Charter establishes very clearly that *the Organization is based on the principle of the sovereign equality of all its Members* and, in point 7, establishes that *the United Nations [cannot] intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter*.

In more specific terms, we must also consider other limitations to State's sovereignty. In legal terms, the late professor Antonio Cassese dedicates a full chapter to the subject of *Limitations on State Sovereignty.* He starts it by referring quite clearly

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[64] *"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".* Article 2 (3) of the UN Charter

[65] Under UN Charter, Chapter VII (article 2 (6) .

[66] Article 42 of the UN Charter

[67] *"...to maintain or restore international peace and security"* in, article 39 of the UN Charter

[68] Article 39 of the UN Charter

that:

"S*tate sovereignty is not unfettered. Many International rules restrict it. In addition to treaty rules [...] limitations are imposed upon State sovereignty by customary rules. They are the natural legal consequence of the obligation to respect the sovereignty of other states"*[69]

But other aspects, other than those ruled by international law legal principles, have become unavoidable when discussing state's sovereignty.

Globalization is perhaps the most relevant and the one impacting most on states sovereignty.

The effects of modern technologies, which allow for "real time" and worldwide exchanges, pose a threat to individual identity of nations. This is more so in regards to economic repercussions. The increasing and continuous economical interdependency between the nation states weakens the governments; just as well the economical 'war' taking the lead, definitely degrades the original meaning of a state's sovereignty.

Political and legal sovereignty could never be dissociated from the international economic arena. Economic interests have always been part of the relations between states. Many wars and disputes took place for economic reasons. Initially the reason was to insure subsistence - fight for fertile lands and rich territories – and later to insure hegemonic trade monopolies.

However, in current times the global economy has taken the dominant role. It is no longer to be seen as just another factor to take in consideration but as the central concern of sovereignty. Modern disputes, military or not, even if at times masked with social, cultural, ethnic and religious motivations, all derive from that centrality of global economy.

This is well corroborated with the prevailing tendency for states to associate into economic frameworks in order to diminish the effects of their exposure to economic globalization.

The European Union is a good recent example. States of the "old continent" realized that their individual survival would be best assured if they associated into a stronger allegiance. This allegiance did allow them the enhanced capacity to confront the economical might the United States, Russia, China.

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[69] "*International Law",* by Antonio Cassese, Oxford University press, Second edition, pag. 98, 1st para.

But this was not possible without a demand for permeability of the individual states to concessions in their political/legal sovereignty: like the treaty of Schengen and its abolition of border control for state members' nationals.

Hence, modern Sovereignty tends to be more a concept representing the boundaries of a certain cultural identity and less the condition of absolute independence of a state to discretionarily rule a nation on a given territory.

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