Chapter Seven

CONCLUSION

It follows from the discussion and hypotheses enunciated in the foregoing Chapters that sovereignty exists in abstraction and definition alone a la the consciousness of the State. Its only purpose is to justify State existence. And, we have seen the progression from a time of strong sovereignties to weak sovereignties, a result of increasing international integration. Notwithstanding the progression toward a vanishing point of sovereignty as a consequence of closer biocoenosis, we will continue to need the concept of sovereignty so long as we need to impart discrete identities to States.

When the word cosmopolitan gets truly cosmic proportions and there are inter-planetary governments to be dealt with in the future, then the concept of sovereignty will have to be re-moulded from its State construct to the global and planetary: reminiscent of the Federation of Planets from *Star Trek* science fiction television series from the 1970s.

As discussed hereinbefore, with the rapid growth of globalisation, nation-States are becoming increasingly inter-dependant. This multi-lateral mutual dependence impinges on one of the essential attributes of statehood: sovereignty, both internal and external. This has to be put in perspective with the view that globalisation is nothing new. Globalisation is the quotient of the inherent migratory nature of the human being. The world would not have been populated as it is had not the human being left its centralised abode. Globalisation, then, has taken different overtones and it has gained a new rapidity and, as such, gained its own momentum and concentration.

Ideally, sovereignty implies, *inter alia*, a free will: the capacity of a State to take decisions independent of any external and internal control, and allegiance...
of a mass of people. But, this thesis has argued, the States have little or no free will while making policy decisions due to this 'extreme dependence' scenario. Each and every State decision has to be moulded to fit and to take stock of the concerned State's own variegated constituents as well as the numerous players on the international arena with whom that State acts and reacts. All this bodes the absence of a free will and, hence, impinges on the concept of sovereignty of the State. When a State-entity acts or reacts, omits or commits to a particular situation it is accommodating various external and internal pressures. Certain external influences which impress upon its internal policy decisions could adversely affect the interests of the people, and thereby impinge upon mass allegiance to the government and/or State concerned.

A classical definition of 'sovereignty' can be found in the statement of judge Huber in the Island of Palmas Case (1928), connected with a dispute between the Netherlands and the United States over sovereignty on the Island of Palmas (Miangas) in the Pacific:

"Sovereignty in the relations between States signifies independence, independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State."366

The idea of independence was, again, defined by the Permanent Court of International Justice (PCIJ) in the Austro-German Customs Union Case as:

"...the continued existence of [a State] within her present frontiers as a separate State with the sole right of decision in all matters economic, political, financial or other..."367

366 Island of Palmas Case, II United Nations Reports of International Arbitral Awards (UNRIAA) p.829
367 PCIJ: Austro-German Customs Union Case, Ser.A/B 41 p.45
A Constitution Bench of the Supreme Court of India in Synthetics and Chemicals Limited and others Versus State of U.P. and others held that “Sovereignty is difficult to define. It is the exercise of sovereign power which gives the State sufficient authority to enact any law subject to limitations of the Constitution to discharge its functions. The Indian State, between the Centre and the States, has sovereign power. The sovereign power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals and education and good order of the people. This power of sovereignty is, however, subject to constitutional limitations.” This exposition is mutatis mutandis relevant for our purpose under International Law. Each State is sovereign subject to certain international duties and obligations. This conditionality, pointedly, connotes that sovereignty does not mean untrammelled supremacy, as already discussed earlier. Semble, the answer may lie Beyond Sovereignty.

Iraq, Afghanistan, Sudan, Iran, even Climate Change (which even the United Nations Security Council chose to debate in April 2007) the economic isolation of the democratically-elected Hamas-led government in Palestine in order to oust it from power and “the secular development of...increasingly globalising capitalism” in the 21st century could well provide a pointer to where the concepts of sovereignty and intervention are headed. It is posited by Jha that “modern globalisation has an incomparably greater potential for destruction” and the end of the nation-State.

Jha is perhaps right when he says “that something had changed irreversibly by the time the Cold War ended, which was exerting a remorseless pressure on the hegemonic power to intervene more and more frequently, and more and more obtrusively, in the internal affairs of member-[S]tates of the U.N.

368 (1990)1 SCC 109
370 Ibid.
This pressure was making the preservation of the Westphalian state system, enshrined in the United Nations charter, progressively more difficult.371

This view finds corroboration in Joseph Stiglitz’s work.372 A former Chief Economist at the World Bank and winner of the Nobel Prize for Economics 2001, Stiglitz argues that the West has seriously mismanaged the process of privatisation, liberalization, and stabilisation, and that by following its advice many so-called Third World countries and former Communist States are actually worse off now than they were before.

The basic premise of this thesis is that these external pressures and influences emanating from State or non-State actors in the international arena are, in fact, different spectra of intervention in international law, which dilute the sovereignty (both internal and external) of the State as traditionally understood. In fact, States are, given the traditional construct of sovereignty, no longer sovereign. And, *a fortiori* external sovereignty is a myth. The international community can constrain sovereignty by resorting to intervention, isolation or influence. This has already been analysed in Chapter 4 (Typologies of Intervention) *supra*. Further, the concept and practice of intervention has been enshrined in numerous international treaties, covenants and agreements starting from the United Nations Charter itself, that wishing it away would be foolhardy, irrational and impractical. Therefore, it is true either to say that States are no longer sovereign or that sovereignty needs to be redefined, taking into consideration foreign influences and intervention most of which have become acceptable to States as an adjunct to *realpolitik*.

The domain reserved to the exclusive jurisdiction of the State is now quite small; international law has evolved to the point that matters that would have been unthinkable for States to have relinquished only twenty or so years ago are

now subject to international scrutiny. The most recent and exciting development in this field, according to Fernando Tesón, is the principle of *democratic legitimacy*. And the principle that the international community has a right to intervene to uphold basic human rights is supported by the recent practice of the United Nations, in particular in Iraq, Somalia, Rwanda, Haiti, Lebanon (investigation into the assassination of former Prime Minister Rafiq al Hariri), Afghanistan, former Yugoslavia, and Cambodia (joint UN-Cambodian tribunal for trial of surviving former Khmer Rouge leaders). As already discussed in the chapters before, even the conduct of national elections is being monitored by international or regional groups, and tested on the benchmarks of freeness and fairness with the absence of voter intimidation, ballot rigging and abuse of state machinery. [Here, however, the *tyranny thesis* has to be borne in mind. Which is that democracy promotes a ‘tyranny of the majority’ which undermines the freedom of the minorities and therefore freedom itself. This is also called the *paradox of freedom*—the proposition that democrats are obliged to accept a decision reached by the majority even when the majority favour rule by a tyrant. Hoffmann argues that democracy must be seen as a governmental process which exists at the global as well as at the regional, national and local levels. International (like domestic) political institutions will still require the use of force where differences cannot be resolved governmentally. But this force can be justified only if it creates space for policies which make the State itself increasingly redundant.]

Interestingly, the Supreme Court of India in another case, *inter alia* quoting J.G. Starke and Herson Lauterpacht, held that ‘any State in the modern times has to acknowledge and accept customary restraints on its sovereignty inasmuch as no State can exist independently and without reference to other States. Under general international law the concept of interdependence of States

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376 *Union of India and others v Sukumar Sengupta and others* 1990 (Supp) SCC 545
has come to be accepted...In the present and modern context sovereignty has and must have a more restrictive meaning than it had in the earlier centuries when on the emergence of individual national States, no limits on the power of States were acknowledged. The complexities of the modern societies need amicable and peaceful boundary disputes which are in the interests of the international community. The older and absolute ideas of sovereignty and independence has [sic] thus necessarily to be modified in the dawn of the 21st century.'

A majority of the modern writing on globalisation, which prophesise the end of the Nation-State is based on an economic evaluation of the circumstances as these ordain in the modern world. For instance, Francis Fukuyama writes of "the universal and homogeneous state that appears at the end of history can thus be seen as resting on the twin pillars of economics and recognition." Kenichi Ohmae theorises that nation States are dinosaurs waiting to die since they have lost not only their ability to control exchange rates and protect their currencies but also to generate real economic activity. As a consequence, he maintains, the nation States have already forfeited their role as critical participants in the global economy. Once efficient engines of wealth creation, nation States today have become inefficient engines of wealth distribution, whose fates are increasingly determined by economic choices made elsewhere. Ohmae contends that four great forces—capital, corporations, consumers, and communication—have combined to usurp the economic power once held by the nation State, while governments cling to jingoistic celebrations of nationhood that place far more value on emotion-grabbing symbols than on welfare of their citizens. The by-line of Ohmae's book betrays the true premise of his hypothesis: The Rise of Regional Economies: How new engines of prosperity are reshaping global markets. Even Horsman and Marshall warn that the traditional nation-State is under threat; changes in the structure of the international economy, technological

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379 Ibid.
advance, and the end of the Cold War together will force a realignment of the relations among States, citizens, and the international economy.\textsuperscript{380}

Citing the examples of the Soviet bloc and before that the European world empires, Martin Shaw predicts, that theoretically it is clearly possible that the Western-global State will fracture, as other large-scale State structures have done before.\textsuperscript{381} The caveat that he sounds is that complex conflicts of interests between component national, regional and international entities will certainly provide many occasions of crisis, and that nothing guarantees that these will be managed successfully.\textsuperscript{382} Shaw further says that the emerging global structure of power cannot be judged simply according to historical precedents. “It is a novel form, not merely because of its global character, and the extensive internationalisation and democratisation which it involves, but also because of the relations of worldwide society which it includes.”\textsuperscript{383}

The argument is that transformation of societies and States through development will not come about if only a few people or States dictate the policies a country must follow. Closely analyzed this again implies there is ample scope for intervention in various forms, some of which have been enumerated in Chapter 4 of this thesis. Thence, globalisation and intervention could well be synonyms. They co-exist and enjoy a symbiotic relationship. The casualty in this paradigm is sovereignty, which, then, needs to be re-defined and re-conceptualised to keep the politico-legal notion of a State viable.

Koskenniemi still supports the ideas of sovereignty and States. He says that the State’s exclusive right to decide what acts shall take place in its territory is virtually undisputed and functions as an independent, overriding justification.

\textsuperscript{381} Shaw, Martin: \textit{Theory of the Global State: Globality as an Unfinished Revolution} (Cambridge: Cambridge University Press, 2000)
\textsuperscript{382} Ibid.
\textsuperscript{383} Ibid.
The very term “intervention” suggests the idea of the wrongfulness of the act. It should not be forgotten, he further argues, that sovereignty was originally taken as a progressive, egalitarian principle and that it still carries these connotations. He says that what is manifest in recent international developments is the view that what is needed is not to do away with national barriers but to strengthen them against external, imperialistic pursuits of other States.  

Koskenniemi further opines that it is impossible to define ‘sovereignty’ in such a manner as to contain our present perception of the State’s full subjective freedom and that of its objective submission to restraints to such freedom. If we start by associating sovereignty with an initial aprioristic freedom of the State, we shall either have to conclude that no State is free or that the international order is not really binding. If sovereignty is associated with the momentary set of rights, liberties and competences given by the normative order to the State, then we shall have to reject the idea that the State would be free to do anything which it is not specifically empowered to do. 

These conclusions seem both mutually exclusive and equally incapable of being accepted as such. Clearly, Koskenniemi suggests, we need to think that the State is both free in areas where it has no engagements as well as restrained by the engagements it has. Whatever we think sovereign statehood to mean, it should be compatible with both. But States have undertaken different obligations and have widely differing spheres of freedom and restraint in this respect.

Realism regards the international system as anarchical. States are, as the author has been at pains to repeat, the constituent elements of the system. Each State has the capacity to independently formulate its own domestic and foreign policies. The degree of stability in the system, both the disposition for peaceful dispute resolution and the robustness of the international regimes, per Lyons and

385 Ibid.
Mastanduno, is a function of the distribution of power among States. Change occurs because of alterations in the distribution of power. As a consequence, interventions have always been a feature of the international system. The pervasiveness of intervention poses problems for both liberal and realist perspectives. For realism, interventions are consistent with understanding of international politics that emphasizes anarchy and the primacy of State power. States do what they please. For interventions, though, overweening power or hubris is a prerequisite. Constraints on State sovereignty not only have a long history, but have been increasingly significantly in recent years as a consequence of both growing interdependence and the end of the Cold War. Thus, we can conclude that intervention is omnipresent in the internal affairs of other States.

The aim of the present thesis is precisely this: to re-conceptualise the ideas of sovereignty of States and foreign intervention, and try to re-define the former apropos of the latter. Because in spite of all the developments on the international stage, the growth of trans- and multi-national corporations of immense size and influence, non-governmental organisations, regional and inter-regional groupings, and other international fora with whatever formidable presence, no viable alternative to the society of sovereign States is immediately foreseen. The status quo will continue, as has been repeatedly submitted hereinbefore, albeit with the steady erosion of the traditional authority of the sovereign State perhaps, arguably, not to a vanishing point. The shift from the sovereignty of kings to the sovereignty of the people provides a good measure of the time scale that may be involved in the processes whereby conceptions of sovereignty undergo transformation. Whether or not the expanding constraints on internal sovereignty will lead ultimately to a fundamental transformation of the Westphalian system depends on the extent to which recent, prominent cases of

387 Ibid.
388 A historic transition was marked in the conception of sovereignty by the settlement of Westphalia in 1648, which ended the Thirty Years’ War and opened the quest to find a way for independent States, each enjoying sovereignty over a given territory, to pursue their interests
international intervention represent the beginnings of a trend or are single occurrences in exceptional circumstances.\footnote{389}

Could 'sovereignty' be defined as "the ability of a State or of a people systematically organised to take decisions—taking into account and/or accommodating various influences emanating from its national and international obligations, commitments, and interaction—binding on the mass of people and organisations within the territory of that State without compromising its fundamental status \textit{inter se} other States at International Law"?

\footnote{389 \textit{Ibid.}}

\footnote{\textit{Ibid.}}