CHAPTER ONE

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With growing 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. One of the tenets
of modern international law is that the sovereignty of the independent State¹ is
less wholesome today than it has traditionally been. Even though a State can still
lay claim to sovereign powers within its territory, its freedom to legislate on
matters that were once deemed to lie within its reserved domain (domaine
reserve) has been substantially circumscribed.

In its traditional meaning, sovereignty presupposes supremacy or
superiority of the sovereign.² It is an attribute of all independent States that
manifests itself in both their internal and external conduct. The corollaries of
sovereignty are equality, independence and exclusive jurisdiction over a defined
territory.³ Under modern international law and practice, however, the sovereignty
of a State is encumbered with so many fetters that the State can no longer lay
claim to absolute sovereignty over all persons and property within its domain. It
is this dilemma of the modern law of nations, i.e., how to reconcile State
sovereignty with the limitations and encroachments placed upon it that constitutes
the focus of this thesis.

In the classical sense, 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 argues, the States

¹ In this thesis, ‘State’, with initial upper case letter, refers to the nation-State or country; ‘state’,
all in lower case, refers to a constituent part of State or its province.
² See discussion in chapter on Sovereignty.
³ See chapter 2, infra.
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.

This work is, in some ways, antithetical to the treatment of international
relations in John Rawls’s theory of justice and its assumption that any theory of
justice can treat a society as a ‘hypothetically closed self-sufficient’ unit because
the processes of globalisation are fundamentally altering the understanding and
significance of national and societal boundaries and generally, but not inevitably,
making them less important. Jeremy Paxman, one of Britain’s leading
broadcasters and political commentators, says that “in the 21st century the nation-
State will mean less and less.” Thus, it will become apparent as we go through
this thesis, that the once oxymoronic concept of limited sovereignty has now
become an integral part of the contemporary law of nations.

The construction of the title is pertinent in that ‘foreign intervention’ is
not parametrically qualified or limited. As such, both State and non-State actors
are included. The term is used in an exclusive rather than an inclusive sense.
International Law, as Starke says “may be defined as that body of law which is
composed for its greater part of the principles and rules of conduct which States

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(New York: Oxford Amnesty Lectures, 1993), at 44.
5 Twining, William, “Globalization and Legal Theory: Some Local Implications”, in Current
6 Speaking on BBC World Service radio’s Outlook programme on 19 October 1998.
feel themselves bound to observe, and therefore, do commonly observe in their relations with each other,\(^7\) and which includes also:-

(a) the rules of law relating to the functioning of international institutions or organisations, their relations with each other, and their relations with States and individuals; and
(b) certain rules of law relating to individuals and non-State entities so far as the rights or duties of such individuals and non-State entities are the concern of the international community.\(^8\)

This definition goes beyond the definition of international law as a system composed solely of rules governing the relations between States only.

Even international relations “which traditionally focused on relations between nation-[S]tates, have expanded to include non-[S]tate relations across frontiers (transnational relations) and the operation of the global system as a whole (global relations).”\(^9\)

The events in the former Yugoslavia since 1990; the case of Iraq v. west; the fall of Suharto in Indonesia in 1998; the simultaneous fall on the world stock markets as incontiguous as New York, Rio de Janeiro, London, and Tokyo; the conflict in the Democratic Republic of Congo (formerly, Zaire); the trials in China for “electronic” subversion by use of the Internet; the case of extradition of former Chilean President General Augusto Pinochet Ugarte from Britain; the economic crisis in south-east Asia and its impact, \textit{inter alia}, on oil prices and domestic régimes and international markets; international currency speculation; and the building of the International Space Station, are but some illustrations from the last decade of the millennium which highlight the growing inter-

\(^7\) The above definition is an adaptation of the definition of international law by Professor Charles Cheney Hyde; see Hyde, \textit{International Law}, 2\textsuperscript{nd} edition (Boston: Little Brown and Co., 1945) volume 1, § 1.

\(^8\) See, for a contrary view, Detter, \textit{The International Legal Order} (Aldershot, etc.: Dartmouth, 1994). Detter distinguishes between actors, subjects and creators within public international law, but suggests that nation-States are the only formal creators of legal rules (pp. 176-78).

\(^9\) Twining, \textit{ibid.}
dependence of nation-States, the blurring of national boundaries and the intermingling of national and international laws, and the variegated forms intervention in the internal affairs of a State can take. The Chilean independent newspaper, La Tercera, published a piece by international law expert, José Zalaquett, who said of the arrest of former Chilean president General Pinochet in Britain that “the process of globalisation has not only affected the economy of the world but also human rights.”

Hence, even though this is a thesis in public international law, due to the nature of the topic, it is approached in an inter-disciplinary fashion as it is this writer’s view that in terms of ‘foreign intervention’ as re-conceptualised in this thesis, sovereignty of States needs to be re-defined because international practice and relations have outpaced developments in international law. Such re-conceptualisation and re-definition as is posited in this thesis will put international law in step with international practice and make the idea of sovereignty more viable and that of foreign intervention more contextual.

Such re-conceptualisation and deconsecration will make the ‘sovereignty’ of States more plausible, contemporaneous and contextual in a globalised world and lend greater credence to the diagnosis that ‘nation-[S]tates will continue to be among the most powerful kind of actors for a long time to come.”

Also, while analyzing in the contemporary globalising world, as Twining says, ‘it is not enough to focus on the traditional small cast of actors: sovereign States, official international organisations, and individuals.” An adequate account of law in the modern world which does not incorporate the influence and significance of non-governmental organisations, peoples without States,

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11 Twining, ibid.
12 Twining, id.
organised crime, liberation movements, multinational companies, and trans-national legal practices, is not possible.\textsuperscript{13}

This thesis is ‘revisionist’ and grammatological in nature; revisionist in the sense that it aims at revising the concept of sovereignty.

The author first discusses sovereignty and then intervention in reverse order of titular construction, the idea being to first place the idea of sovereignty in context because it is in co-relation to the extant definition of sovereignty that intervention is de-constructed and re-interpreted. And, in a roundabout way it is from this reverse equation that the idea of sovereignty is sought to be re-conceptualised. The author discusses ‘sovereignty’ before illustrating the different facets of ‘intervention’ and how they erode sovereignty to be clear what ‘sovereignty’ means and to be able to operationalise it. Anecdotal evidence is relied upon to highlight the extent and degree to which sovereignty is under challenge and to illustrate the different forms of intervention. The discussion on intervention is followed by chapters on concepts of non-intervention and collective intervention before the author concludes his hypothesis. The author finds it necessary to devote a separate chapter to collective intervention because it remains a potent and most visible and overt form of intervention, and the discussion brings into focus realpolitik and some of the factors which force or influence State behaviour which, in some cases, are an assertion of its sovereignty and a desire to imprint that upon other State and non-State actors.

This is—if it has to be labelled or categorised—a liberal-realist thesis as it takes cognisance of both versions or interpretations of sovereignty. Liberal theorists define sovereignty in terms of the State’s ability to control actors and activities within and across its borders, while for realists the essence of sovereignty is the State’s ability to make authoritative decisions. Examples are

\textsuperscript{13} Twining, \textit{id}. 

Cooper\textsuperscript{14}, Keohane and Nye\textsuperscript{15}, Morse\textsuperscript{16}, and Rosecrance\textsuperscript{17}. The aim of the thesis is to focus on how interdependence and intervention impinge on the ‘functional’ aspects of ‘control’ and ‘ability’ of the State, and thereby affect its sovereignty in Austo-Kelsenian terms.

\textbf{METHODOLOGICAL AND THEORETICAL CONSIDERATIONS}

The author’s hypothesis is that intervention takes various forms so that ‘interdependence’ seems but a mere euphemism for intervention, if not a manifestation of it. And, with such a view of things, there has been a dilution in the sovereignty of States as traditionally postulated. Working within this construct, the author has discussed the concept of sovereignty and the conditions of Statehood, the ideas of international peace and security, collective security and balance of power, and the concept of non-intervention, most attention being given to sovereignty and the different forms intervention takes in a globalising world. Interspersed in the various discussions is the debate on globalisation.

In the chapters on intervention the author has discussed its place in international law and policy, the Monroe Doctrine through which, according to Oppenheim, ‘the subject of intervention becomes clearly apparent’, and compare this with the Brezhnev Doctrine, the concept of non-intervention, and civil wars and intervention whether by one or more or a collectivity of States in another State or States. The leitmotif is the numerous forms intervention can take place in and the way it impacts on the decision-making processes within the State and its sovereignty with its implication of freedom from external control and pressure.

\textsuperscript{14} Cooper, R: “Economic Interdependence and Foreign Policy in the Seventies.” \textit{World Politics} (1972) 24: 159-181.
The extant literature on the subject mainly focuses on the military and/or humanitarian forms of intervention construing that the term can only be applied to these types. This thesis aims precisely to break that mindset and bridge the gap in the knowledge of international law and practice thus created. To highlight and overcome this problem, the author has selected cases involving use of force and humanitarian aid and added to these other instances which support his thesis and help ‘deformat’ the traditional conception of intervention. For instance, the attempt within the European Union to establish an Exchange Rate Mechanism and introduce a single currency (the euro) is a case of monetary intervention which impinges on the sovereignty of the member-States as traditionally viewed, an independent currency being one of the attributes of nationhood, and symbolic of national pride and identity. In this thesis, the establishment of an International Criminal Tribunal for Rwanda (ICTR) is an example of legal intervention in the affairs of that State, whose courts are already trying and punishing alleged ‘war’ criminals from 1994 genocide under its municipal laws; therefore, the setting up of an international court for the same purpose amounts to an infringement of the sovereignty of Rwanda. The export of hazardous wastes and toxic substances by the industrialised States to the under-developed and developing countries constitutes environmental intervention. The author has delineated nearly twenty-five forms of intervention based on analysis of cases from international affairs.

The author’s interest in the issue of ‘foreign intervention’ emerged in the early 1990s while he was doing a series of articles on civil wars for a magazine. Each article was area-specific, and, over time the author realised that civil wars are not confined to the borders and parameters of one State, as the term implies, but are the result of a complex interplay of tribal, ethnic, cultural, economic, socio-political, inter-Statatal factors. This led to the incipient discovery that intervention was not only military or humanitarian in nature but took so many other forms. A recent illustration is provided by the ‘civil’ war in the Democratic Republic of Congo (DRC), formerly Zaire, where mining and geo-political
interests *inter alia* drew in several neighbouring States and led to the fall from power of Mobuto Sese Seko in the first place.

Most of the literature so far develops on the perception that intervention is either military or humanitarian in nature, or rather, seem to be content with limiting intervention to such a linear interpretation. Winfield\(^\text{18}\), for example, gives only three forms of intervention: *internal*, *external*, and *punitive*. Oppenheim\(^\text{19}\) discusses only the military form of intervention when he postulates seven grounds on which foreign intervention would be justified. This thesis tries to break that mould and bridge the gap in the extant literature on intervention by delineating the various forms intervention can take place in, which is crucial in any attempt to discuss the concept of intervention *vis-à-vis* the sovereignty of States. This has never been done before apart from the 1968 article by Howard Wriggins\(^\text{20}\) in which he postulates the “spectrum of intervention” with “influence” as one extreme and “intervention” as the other.

This thesis, then, aims to redefine intervention, or rather, put it in the right perspective of international law and politics by drawing in illustrative cases from around the world and fitting them in the various categories of intervention delineated. However, the intervention typologies may not be exhaustive, and with developments in international law and politics, and technology newer forms may emerge.

Due to the nature of the subject, the sources of the author’s study have mainly been law journals and newspapers and it has involved a review of the literature on it. The hiatus in the latter, as aforementioned, is that most of the works focus on the military and humanitarian nature of intervention and it is to

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this shortcoming, in fact, that the present thesis owes its origin. The work on the thesis then is confined to the library and archival material and is observation-oriented and inductive in nature as it involves conceptual reinterpretations. The author has examined the United Nations Charter and the various U.N. documents and material on the rights and duties of States, intervention, and non-intervention, and similar provisions in the agreements constituting the regional security and economic groupings like the Organisation of American States, North Atlantic Treaty Organisation, and the European Union.21

The author had originally decided to have a separate chapter on case studies to underscore the hiatus in international law theory and relations, between the real and the conceptual. But, it was later decided to merge the case studies and contemporary history into other chapters in order to bolster the author’s arguments.

So, this thesis is quite like the DNA double helix: theory inter-twines history, past and contemporary. In jurisprudence, it would perhaps belong to the Realist School.

One caution and criticism in respect of the sources and extant literature on intervention is that most of it comes from the developed world which has been the source of most acts of intervention. [This is not to say that the developed world is safe from intervention. In this thesis, the developed world is seen as

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21 Some of the cases of civil wars and intervention will be sourced from the author’s published work which will be factually updated. The author shall also rely, in some of his observations, case studies and conclusions, on his own log, objectively maintained on a daily basis over the past nearly two decades, on international events and affairs recorded as these unfolded over that period, and which runs into, at the time of writing this, nearly 30,000 foolscap pages. This diary gives a compressed and condensed account of political, legal, social and scientific developments around the world from 1987 onward. The sources of the contents of this log-book are the news bulletins of the BBC World Service radio and newspapers and the Internet. From this angle, the observations and conclusions in the thesis are derived from an analysis of empirical data for as Abraham Kaplan (Conduct of Inquiry: methodology for behavioural sciences, San Francisco: Chandler Publishing Co., 1964) says, the aim of methodology is to help us understand, in the broadest possible terms, not the products of scientific inquiry but the process itself.
much at the receiving end as it is at the giving.] Hence, there might be inherent biases and emotions (resulting from ideological orientations, e.g.) and a subconscious effort to justify all acts of intervention as a "good thing". This is true for all academic works and is perhaps true for the present as well. This is not so much of a worry in this thesis for the author is attempting to deconstruct and reinterpret intervention in the light of sovereignty of States.

The approach of the thesis is based on the following: questions are asked, answers suggested, and reasons given to justify these while also discussing existing literature and taking into account international events.

Another problem encountered in writing the factual component— involving breaking case studies—of the thesis is that events outpace it. But that should not detract from the basic premise of the work. It is possible that because of certain unfolding world events newer, situation-specific, forms of intervention might develop; but, as the author has already stated, the forms of intervention the author enumerates are not exhaustive. The aim is at redefinition and reinterpretation of the concept in juxtaposition with that of sovereignty of States and thereby place it in the correct perspective.

The thesis relies on heuristics or case-based reasoning, using rules or past experiences to make assumptions and typologies. There is a fear of oversimplification in the author's effort to reinterpret and redefine the concept of intervention in such a manner. The author aims to counter this by the empirical data/case studies wherever possible. For, often, theory derives from reality and vice versa.

In the end, the question arises: why re-define sovereignty? It is merely a theoretical concept, a legal criterion for the State. Cannot we have States without sovereignty? Let us take a microcosmic example: a person on the street has to abide by certain laws, rules and regulations made and enforced by the sovereign.
If each one on the street starts ignoring the will of the sovereign, law and order will break down and there will be total anarchy. So it is with States. If there is no idea of sovereignty, there would be no notion of or respect for each other’s “sovereignty” or autonomy, and this could result in utter chaos, a free for all. Hence, the need to have a conception of sovereignty which is credible and acceptable to other States, saying that they can intervene in other States but to a certain extent and in a benign manner and within certain parameters. Something akin to the inviolability of basic human rights and personal liberty. The rights and duties of States.

Sovereignty as a concept is vital. A part cannot exist without the whole. It is said that if there was no God, we would have to invent one. With a slight modification, so it is with sovereignty. If there was no sovereignty, or if the idea became out-dated, we will have to re-invent one or re-define the existing one to make it viable.

The latter is what this thesis aims to do.