CHAPTER-I

THE CONCEPT OF SOVEREIGNTY IN
INTERNATIONAL LAW AND RELATIONS

1.1. Introduction

The doctrine of sovereignty, the fundamental organizing principle of contemporary inter-State relations, is based on the premise of mutual recognition of political independence among States, mutual co-existence, exercise of formal equality in mutual relations and the corresponding dictum of non-intervention in domestic matters of other States. Sovereignty as a concept, emerged as an attribute of the State at a particular stage of historical development and consequently, in the course of its evolution, has been accorded different connotations in the context of its substance, scope and principles. The chapter builds a theoretical construct of the concept of sovereignty. Section-I constructs a historical framework on the concept of sovereignty and analyzes the metamorphosis that the concept underwent in course of its application in international law and relations. Section-II analyzes the views of eminent international lawyers and political scientists on sovereignty in the context of the research problem. Section-III commences with an analysis of the application of the concept of sovereignty in the context of international organizations and proceeds to analyze the treatment of the concept under the United Nations [UN] Charter. Section-IV examines the application of the concept of sovereignty in international relations in the post-1945 period through two paradigms — the 'modernization theory' and the 'dependency theory.' These theories explain the reasons for the reduced status
of sovereignty of the developing countries on the international plane in the post-Charter era. The section proceeds to examine the underlying principles and substance of the General Assembly Resolutions on the Charter of Economic Rights and Duties of States, and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which were adopted following intense efforts by the developing countries to realign the inter-State relationships in wake of gross inequalities governing their relations with the industrialized countries under the garb of the principle of sovereign equality of States. Section-V analyzes the concept of sovereignty in the context of growing internationalization of environmental problems, and in this realm discusses the Principle of Permanent Sovereignty over Natural Resources.

SECTION-I

1.2. Emergence of the Concept of Sovereignty – A Historical Framework

The modern connotation of sovereignty as being associated with territorially defined State power is linked to the disintegration of feudalism of the medieval civitas maxima and the birth of the modern Nation State.¹ In the medieval period, the feudal

¹ See Djura Nincic, *Problem of Sovereignty in the Charter and in the Practice of the United Nations* (Martinus Nijhoff, The Hague, 1970) at pp. 1-2. However, in a sense, the notion of sovereignty was not unknown to the ancient world. In ancient Indian literature, there is an evidence of the concept of sovereign power e.g. in the Rig Veda, there are references to the powerful chiefs as reflected in titles to sovereign power such as rajya, swarajya, samrajya, bhaujya, vairajya, maharajya and adhipatya, which are mentioned in the ancient texts like the Atharva Veda (III.4.2; IV.8.1; XI.6.15; XII.3.31; XVIII.4.31), the Taittiriya Samhita (II.1.3.4; VII.58.3), and the Aitareya Brahmana (VII.23),
system was segmented into territorial units and quasi-autonomous institutions that were governed by overlapping loyalties and allegiances, and geographically interwoven jurisdictions and political enclaves, which lacked the possessiveness and exclusiveness associated with the modern concept of sovereignty. Thus the core implying a direct reference to the concept of sovereign. Cited in B.A. Saletore, *Ancient Indian Political Thought and Institutions* (Asia Publishing House, Bombay, 1968) at p.61. In Kautilya's *Arthasastra*, a monumental work on ancient India's polity, the sovereign power of the king is referred to as *rajatva*. See R. Shamasstry, *Kautilya's Arthasastra* (Raghuveer Printing Press, Mysore, 5th edition, 1956) at p.12. According to Romilla Thapar, monarchy, as a form of government, and concretized in the divine origin theory of the kings, whereby the king was declared to be "a great divinity in human form", held sway in the ancient period, initially in Kosala and Magadha. See Romilla Thapar, "The First Millennium B.C. in Northern India (Up to the end of the Mauryan Period)" in Romilla Thapar (ed.), *Recent Perspectives of Early Indian History* (Popular Prakashan, Bombay, 1996) at pp.117-118. In the second millennium B.C., there were gana-sanghas or the gana-rajyas along the Himalayan Terai such as the single clans of the Sakyas, Mallas and Licchavis at Vaishali, which have been referred to as democracies. In the opinion of Romilla Thapar, they were "oligarchies" or "even chieftdoms", for the fact that political and economic control was confined to the raja-kula clan alone. See Thapar, ibid. at p.111. In *Mahabharata* (Santi Parvan 67.16, cf. Satapatha Brahmana 11.1.6.24) and *Digha Nikaya* (3.80-98), again there is a mention of the need for a person to control the society through the maintenance of law and order and to protect it from aggression. The heightening of power was also associated with the performance of elaborate sacrificial rituals such as the *rajasya, asvamedha* and the *vajapeya*. In fact, through these rituals the raja claimed affinity and communication with divinity and was imbued with charismatic qualities, which differentiated him from the rest of the society. See Thapar, ibid. at p.102.

Though the Indian king yielded supreme power, but as maintained by Saletore, this power had to be in consonance with the righteous conduct or dharma. See Saletore, ibid. at p.319. In fact, Chapter XIX of the *Arthasastra*, while prescribing the duties of the king, considers the promotion of welfare of the people as most important. "In the happiness of his subjects lies his happiness; in their welfare his welfare; whatever pleases himself he shall not consider as good, but whatever pleases his subjects he shall consider as good." See Shamasstry, ibid. at p.38.

In the western political literature too, it is maintained that the Greek City-States were, in a way, sovereign and independent, and their mutual relations were based on 'Hellenic Law', the 'international law' of antiquity. "The division of Greece into independent City-States rendered possible the evolution of the law governing relations among them, in their capacity as sovereign powers." Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome*, London, Vol. 11 (1911) at pp. 29-30. Cited in Nincic, ibid. at p.2. The Romans, for their part, defined sovereignty in precise legal terms of which they were masters. See Nincic, ibid.


3 At this time, both the rulers and the ruled were subject to a universal legal order, which reflected and derived its authority from the law of the God. Thus, the sovereign was the God whose commands were generally acknowledged by Christians as demanding obedience. In the second instance it was the Pope, the bishop of Rome and Vicar of Christ, God's representative on the Earth, who presided over Christendom. See J. Canning, *A History of Medieval Political Thought*, 300-1450 (London,
political idea was that of the \textit{Respublica Christiana}, that was based on a joint structure of the religious authority (\textit{Sacerdotium}) headed by the Pope and the political authority (\textit{Regnum}) headed by a secular ruler designated as the Emperor. Robert Jackson aptly observes that:

"... if there was a 'Sovereign State' in medieval Europe, it was the Christian Empire: \textit{Respublica Christiana}.")

Respublica Christiana was thus a universitas rather than a societas.

During the sixteenth century, parallel developments in political, economic and cultural arenas led to the decline of medieval-ecclesiastical political order. With the growth of trade and manufacturing class and the introduction of royal taxes, power began to be centralized in the monarchies. At the same time, achievements of the Renaissance in art, literature and philosophy contributed to the secularization of life and corresponding decline in the spiritual and temporal authority of the church. Thus, out of the political chaos emerged a new system characterized by territorially bound sovereign States, each equipped with its own centralized administration and possessing a virtual monopoly over the legitimate use of violence. Thus emerged the core institution of the sovereign State and the corresponding dictum of \textit{societas} of

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  \item[5] A \textit{universitas} is a human association that has a commanding authority and an overriding purpose that is the standard against which all conduct is judged. Unlike a \textit{universitas}, a \textit{societas} accommodates different authorities, and is thus governed not by any commanding agent or purpose, but rather by a general rule or norm, which is recognized and subscribed by those authorities. Thus, international \textit{societas} consists of a number of sovereign States which are independent to pursue their national interests, provided they observe international law, which is a set of general norms that vouches for the authenticity of sovereign States. See ibid. at pp. 14-15.
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States.⁷ The seventeenth century, and particularly the Peace of Westphalia that settled the bloody war of thirty years (1618-1648), is considered the best historical reference point for symbolizing this fundamental turn in the European political life.⁸

Three specific elements were associated with the concept of sovereignty at this stage and which remained its attributes in the subsequent phases of its development. These elements were:

(a) Sovereignty is an essential attribute of State power.
(b) The essence of sovereignty is constituted by the independence of State power from any other power.
(c) A tendency to free the State from any form of limitation (both legal and moral both), as well as an inclination to identify sovereignty with force (i.e. with material force or the physical possibility of realizing sovereignty).

These characteristics bore close semblance to the theory of absolute sovereignty.⁹ At this juncture in the history of sovereignty, the concept was applied only in the internal context of the State to define the functions of the government to enable it to establish law and order; and there was no reference to its application in the

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⁷ See Jackson, n.4 at p.16.


⁹ See Nincic, n.1 at pp. 2-3. Bodin is usually considered to be the founder of the modern theory of sovereignty and his famous *Six Livres de la Republique* provides the first comprehensive formulation of that theory. He defines sovereignty as the "absolute and perpetual authority of a State" (*Les Six Livres de la Republique* de J. Bodin, Angouin, Paris, chez Jaques du Puys, 1576, Cf. L. I. IX. 125). Cited in Nincic, n.1 at p.3. In fact much before Bodin wrote, sovereignty and its characteristics were incorporated in the political academic literature. In these writings, sovereignty was considered as an essential and substantive attribute of State power, as the attribute which endowed it with the quality of 'State' power and which tended to become synonymous with that power and with the State itself. For a detailed review of writings on sovereignty by eminent scholars, see Nincic, n.1 at p.3.
international relations of the State, for the reason that international relations were of minimal importance to the States at that time.\(^\text{10}\)

During the late eighteenth and early nineteenth century, in the domestic realm, the concept of sovereignty was given a popular connotation following the transfer of power from the ruler to the 'people' (i.e. the bourgeoisie). On the external front, this was paralleled by the incorporation of the concept of equality of States as an external attribute of sovereignty. Thus the freedom and equality of the individuals within the State were paralleled by the independence and equality of the States in international life, and sovereignty constituted the legal expression of independence and equality, which in fact appeared as two aspects of a single concept.\(^\text{11}\) At the same time, another aspect was incorporated in the principle of sovereignty – the principle of non-intervention.\(^\text{12}\)

Closely related with the historical development of the concept, was the emergence of two theories on sovereignty, which brought to fore the contemporary thinking on the concept and focused on different connotations associated with State power.

\(^{10}\) See R.P. Anand, *International Law and the Developing Countries: Confrontation or Co-operation?* (Banyan Publications, New Delhi, 1986) at p. 75.

\(^{11}\) See Nincic, n.1 at p.4. Chapter XXIV of the “Draft Declaration on the Rights of Nations” submitted to the Convention in Paris on April 23rd, 1795 (Projet de Declaration du Droit des Gens), proclaimed that “all peoples are independent and sovereign, regardless of the number of individuals composing them or of the territory they cover, and this sovereignty cannot be taken away from them.” The natural rights philosophy thus appeared in a new guise – in the form of the doctrine of the fundamental rights of nations and States.

\(^{12}\) The linkage of the principle of non-intervention to sovereign equality owed its emergence to the writings of the Italian and Latin American political scientists. These scientists emphasized two closely interconnected principles of sovereignty – the right of peoples (i.e. of nations) to sovereignty and statehood, and the principle of non-intervention of other States in the process of the implementation and further enjoyment of that right. See Nincic, ibid. at p.5.
1.3. Theories of Sovereignty

1.3.1. 'Absolute' Sovereignty

The late nineteenth century was characterized by the growth of the theory (and the practice) of 'absolute' sovereignty in Germany, and later in England. The advocates of this doctrine articulated that sovereignty is not merely the supreme authority – *summa potestas* i.e. an authority over which there is no other authority, but also the *plenitudo potestas* i.e. full and more or less unlimited power.

The extreme consequences flowing out of the theory may result in States becoming independent of one another, of any other higher authority and of any higher principle. Further, they enjoy full freedom to either fulfill their obligations or to denounce them, in accordance with their national interests. This results in the negation of equality as an element of sovereignty on one hand, and on the other hand implies equation of sovereignty with the actual power to exercise it, which in the final analysis would mean its identification with force and lead to a distinction, made in

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13 See Nincic, ibid. at p.6.

14 The concept was theorized in this form in the works of Fichte, Savigny and his historical school, and especially by Hegel in his philosophy of law which reduced international law to 'external constitutional law', whose legal basis derived solely from the will of the contracting States, and according to which the 'supreme manifestation of sovereignty, was war.' See G.W. Hegel, *Grundlinien der philosophie des Rechts*, 3rd ed., 1880. Cited in Nincic, n.1 at p.6. Ihering, arguing on the same line, claimed that a State might be limited by its own will alone. See R. von Ihering, *Der Zweck im Recht*, Berlin, 1880 and *Der Geist des Romischen Rechts*, t. IV. Cited in Nincic, ibid.


16 Characteristic in this respect is the doctrine of the 'state of necessity' developed by the well-known German jurist – Kohler, in order to justify the violation of Belgian neutrality in 1914 (Kohler, *Notwehr und Neutralitat*, Berlin, 1914). Cited in Nincic, ibid. at p.8.
this context, between 'legal' and 'factual' sovereignty. Further, the theory accords
primacy to sovereignty (i.e. domestic law) vis-à-vis international law.

1.3.2. 'Relative' Sovereignty

In the period between the two world wars, the relativist approach to
sovereignty dominated the international legal and political thinking. It emerged in the
context of the need to adjust sovereignties in an increasingly interdependent
international community, and the main focus of the theory was to 'de-absolutize' the
concept of sovereignty.\(^{18}\)

The main feature of the theory of 'relative sovereignty' is that sovereignty can
be subordinated to international law; however, importantly, sovereignty of a State
cannot be subordinated to another State because all States in principle are equal.\(^{19}\) The
above premise leads to the following important consequences. The doctrine of relative
sovereignty establishes the primacy of international law over state sovereignty.\(^{20}\)

Furthermore, sovereignty is identified with external independence i.e. independence

\(^{17}\) See Nincic, ibid. at p.8.

\(^{18}\) The most prominent theory in this field was that of the Vienna or the Normativist School founded by
Kelsen and Verdross. It builds on the monistic vision of the legal system and considers that the
original norm of the entire legal system should be sought in international law. Within this system,
sovereignty merely signifies the delimitation of a State's sphere of competence. The confines of a
States' jurisdiction are drawn by international law. In words of Kelsen, "Sovereignty is thus actually
only an expression of a competence which is transferred by international law." See Kelsen, *Das
Problem der Souveranitat und die Theorie des Völkerrechts*, Tubingen, 1920. Cited in Nincic, ibid. at
p.10. Another school of thought led by the French internationalist Pillet believed in the traditional
dualistic line of thinking, but accorded a subordinate status to domestic law vis-à-vis international
law. See Pillet, "Recherches sur les droits fondamentaux des Etats," *Revue generale de droit
international public [R.G.D.I.P.]*, 1898. This theory was further developed by Anzilotti, Dupuis,
Barthelemy, Paul Duez and others. Anzilotti, *Cours de droit international* at p.51 (French translation):
Dupuis, *Le droit des gens et les rapports des grandes puissances avec les autres Etats avant le Pacte
Cited in Nincic, ibid. at p.11.

\(^{19}\) See Nincic, ibid. at p.12.

\(^{20}\) In other words, it is the law of nations and not the States themselves, which defines the sphere of
their competence i.e. the limits of their sovereignty. See ibid.
of a State from any other 'sovereign' authority, but at the same time does not imply 'independence' from the norms which govern the 'sovereign' States i.e. the international law. However, in exercising its sovereignty, the State can assume obligations towards other States through mutual agreement.\textsuperscript{21} Another consequence flowing out is that every State is sovereign within the sphere of its jurisdiction, and this means that it has the right to independence from any form of intervention. However, its independence and freedom are limited by the equal freedom and independence of other States, as well as by international conventions and specific agreements entered into by these States.\textsuperscript{22} Independence in turn, it is maintained, entails legal equality of States in their mutual relations and autonomy in their internal relations.\textsuperscript{23}

Thus, the theory of relative sovereignty provided the essential prerequisites for the co-existence of States within the international community. However, keeping in mind the preponderant western influence in the constitution of the norms of

\textsuperscript{21} In words of Cavaglieri, "Sovereignty simply means ... the independence of States with regard to any superior or foreign power...; it does not mean, however, that it (i.e. independence) may not be placed under certain legal limitations... but implies on the contrary that it may assume obligations towards other States through mutual agreement." Cavaglieri, "Regles Generales Du Droit De La Paix", Recueil Des Cours \textit{[R.D.C.]}, 1929, t. XXVI. Cited in Nincic, ibid. at p.12.


\textsuperscript{23} See Nincic, ibid. at p.13. Djura Nincic maintains, "equality is actually inherent in the concept of sovereignty – independence: \textit{pars in parem non habet judicium}. By equality in this sense is meant legal equality rather than equality in rights, formal rather than actual equality." Ibid. According to Rousseau, 'Autonomy' is the internal aspect of independence i.e. of sovereignty. It implies "the right of a human community to determine the condition of its own existence, to establish its government in accordance with its own principles and ideas and for a certain purpose, to decide upon its legislation without any interference from outside." Rousseau, n. 22 at p.234. Cited in Nincic, ibid. at p.13 Thus, according to Djura Nincic, \textit{autonomy, independence and equality} characterized the three basic elements of sovereignty in the period between the two world wars.
international law, the subjection of sovereignties of States to such norms may amount to erosion of sovereignty of the developing countries.24

The following section dwells on the meaning of the concept of sovereignty in the realm of international law and relations, as opined by eminent scholars.

SECTION-II

1.4. Meaning of Sovereignty in the context of International Law and Relations

Oppenheim accords supreme power as the defining attribute of sovereignty on the internal plane of the State when he says:

"Sovereignty is supreme authority, which on the international plane means legal authority, which is not in law dependant on any other earthly authority. Sovereignty in the strict sense and narrowest sense of the term implies, therefore, independence all round within and without the borders of the country." 25

However, on the international plane he de-absolutizes the concept, as relations between the States are characterized by equality and interdependence. In fact, the main function of sovereignty in the international realm, according to Oppenheim, is to provide the criteria for statehood in the international community, whereby; after

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24 According to Nincic, "this is the basic weakness of the theory – as the norms of international law to which sovereignties were to be subordinated, were not abstract or 'objective' norms but were to a greater or lesser extent, the reflection of a pattern of relations imposed by the more powerful and more highly developed countries upon the rest of the international community." Nincic, ibid. at p.15.

fulfilling the criteria the State would have a legal personality and the capacity to possess rights and duties in international law.26

According to Hersch Lauterpacht, international law recognizes the sovereignty of States in two aspects – the internal aspect in which, he maintains, a State can be recognized as a subject of international law if it is independent of other States and “possesses a sovereign government...”,27 and in the external sphere where sovereignty implies, according to him, independence from other States.28 At the same time, he subjects the sovereignty of States to the subordination of international law.29 Lastly, he maintains that sovereignty under international law confers upon the State the right to determine the future content of international law by which it will be bound, and at the same time, determine the present norms of international law.30

R.P. Anand, a staunch advocate of relative sovereignty, submits that the theory of absolute sovereignty:

“...is inconsistent with a system of international law which is itself based on the principle of reciprocal rights and obligations. It is against..., the interdependence of States.”31

Further, he maintains:

26 See ibid. at p.330.


28 Thus, he concedes, “sovereignty in international law is a legal right transcending that of independence in relation to other States.” Ibid. at p.7.

29 Thus, he says, “in relation to international law they are not sovereign...they (States) admit the existence and binding force of international law, States acknowledge that they are not sovereign.” Ibid. at p.8.


"All International Law of today is made up of limitations of sovereignty, limitations created by sovereignty itself."\(^{32}\)

However, he accords sovereignty as an integral attribute of state power in its internal sphere, when he says that "sovereignty,...denotes absolute and perpetual power within a State."\(^{33}\) In his words thus:

"...apart from the absence of a supranational executive authority, a State does not recognize a legislator above itself."\(^{34}\)

Ian Brownlie,\(^{35}\) in the context of international law, lists the following corollaries of sovereignty and equality of States:

(a) Jurisdiction of State, *prima facie* exclusive over a territory and the permanent population living there;
(b) A duty of non-intervention in the area of exclusive jurisdiction of other States; and
(c) The dependence of obligations arising from customary law and treaties on the consent of the obligor.\(^{36}\)

The last has certain special applications – it implies that the jurisdiction of international tribunals depends on the consent of the Parties; that membership of an international organization is not obligatory; and that the organizations have powers to

\(^{32}\) Ibid. at p.27.

\(^{33}\) See ibid. at p.26.

\(^{34}\) Ibid. at p.29.


determine their own competence, to take decisions by majority vote, and that the enforcement of decisions depends on the consent of the member States.\(^{37}\)

The above views on the concept of sovereignty affirm the relativist approach to the concept in the realm of international law. In addition, the application of the concept of sovereignty in the realm of environment necessitates examination of the views of an eminent political scientist – Harold J. Laski, on the concept.

The views of Harold J. Laski, on the concept of sovereignty, classically represent the relativist approach to sovereignty in the external sphere of State and de-absolutization of the concept in the internal sphere of the State. Laski views a sovereign State merely as “a historical incident in the evolution of the concept of power” and considers sovereignty merely “as one of the various ways in which use of power can be organized.”\(^{38}\) Giving a utilitarian perspective, he states that the most important aspect in the nature of power is the end that it seeks to serve, which should be the promotion of the interests of its citizens.\(^{39}\) Viewing State as a moral entity,\(^{40}\) he maintains that the legitimacy of the government depends on the conditions created by

\(^{37}\) See Brownlie, n.35 at pp. 287-288.

\(^{38}\) Thus, Laski views sovereignty as a theory of political organization. To reach this conclusion, he has dwelled upon the concept from three aspects:

a) Historical analysis, whereby, he views sovereignty as implying unlimited power of State as emerging out of historical circumstances. On the basis of an analysis of State from this perspective, Laski concludes that the future of sovereignty with all its grandeur of absoluteness is very bleak because an authoritarian and unlimited government will be incompatible with the interests of the people. See Harold J. Laski, *Grammar of Politics* (George Allen and Unwin Ltd., London, 4th edition, 1938) at pp. 48-49.

b) Sovereignty, as a theory of law. In accordance with this theorization, right is an expression of a particular will. However, Laski also rejects the legal theory of sovereignty on the ground that it is “impossible to make the legal theory of sovereignty valid for political philosophy.”

c) Sovereignty, as a theory of political organization. See ibid. at pp. 44-45.

\(^{39}\) See ibid. at p.45.

\(^{40}\) See ibid. at p.62.
it to enable its citizens to realize the best in themselves and promote their interests.\(^4^1\) The law, according to Laski, imposes a moral limitation on the power and authority of the State, and its most important aspect is that it should represent the will of the community.\(^4^2\) Further, like a true pluralist, Laski maintains that the State is just like any other association and has a clearly delineated sphere of power and responsibility, which is to exercise influence on the conduct of government itself.\(^4^3\)

On the external plane too, Laski argues, the concept of an absolute and independent sovereign State is incompatible with the structure of international relations. The growing interdependence among States and the growing consciousness of promotion of the human interests have necessitated international government,

\(^{41}\) See ibid. at p.57, p.287. In fact, this implies that every government is built upon a contingent moral obligation to provide and maintain rights to its citizens. Its actions are right to the degree that they maintain rights. When it is either indifferent about them, or imposes limitation upon them, it forfeits its claim to the allegiance of its members.

\(^{42}\) Thus, law, according to Laski, "is not the will of the State, but that from which the will of the State derives the moral authority, it possesses." Ibid. at p. 286. This view denies to the State its sovereignty and more subtly implies that the State is at once the master and the servant of law by willing to limit itself to certain tested rules of conduct. See ibid. According to Laski, law "is a function of the whole social structure...its power is determined by the degree to which it aids what that whole social structure reports as its desires." Ibid. at p. 287.

\(^{43}\) Thus, a control is exercised over the sphere of activity of the government by different associations and the will of the government is altered. See ibid. at p.59. In the Indian political literature, similar views have been advocated by Mahatma Gandhi. Gandhi, a pluralist, repudiates the concept of sovereignty of the State and considers that the unfettered growth of the power of State has proved to be inimical to the interests of the mankind. Gandhi pertinently observes that there is justification for looking upon "an increase in the power of the State with the greatest fear, because, although while apparently doing good by minimizing exploitation, it does the greatest harm to mankind by destroying individuality which lies at the root of all progress." M.K. Gandhi, India of My Dreams (Navajivan Publishing House, Ahmedabad, 1962) at p.80. Cited in Ramjee Singh, The Relevance of Gandhi an Thought (Classical Publishing Company, New Delhi, 1983) at p.62; See also M.K. Gandhi, Collected Works of Mahatma Gandhi (The Publications Division, Ministry of Information and Broadcasting, Government of India, Delhi, 1959) Vol. LIX, at p.319. Cited in Ramashray Rao, Gandhi: Soundings in Political Philosophy (Chanakya Publications, Delhi, 1984) at p.78.

Gandhi maintains that the sole justification for the exercise of power by the State is promotion of the well-being and progress of man, and for this he favors a reformulation of power, which would imply adoption of democratic decentralization or peoples' democracy in polity. See Singh, ibid. at p.62. Thus law, according to Gandhi, must necessarily be an expression of the direct will of the people. See ibid. at p.66. According to Gandhi, under this paradigm, the authority of the State (Raj-Sakti) should yield to the self-reliant moral power of the people (Jana-Sakti). See Suresh Ram, Vinoba and His Missions (Sevagram, A.B.S.S.S., 1954) at p.178. Cited in Singh, ibid. at p.65.
which in turn "implies the organized subordination of States to an authority in which each may have a voice, but in which, also that voice is never the self-determined source of decision." In fact, the main purpose served by the State, according to Laski, has been to:

"...secure self-government against the absorptiveness of power."

At the same time, the dynamics of a changing international scenario necessitate a shift in the nature of sovereignty, whereby it should accommodate the multiple interests of mankind transcending geographical frontiers, and permit the growth and development of the other organs along with the State in an environment of heightened cooperation.

Taking the League of Nations as an example of a form of international government, Laski maintained that it was an association of Nation-States that were politically unequal but juridically equal. Further in this forum, the representatives of the States were required to act upon the orders given to them by those from whom their authority was derived. In accordance with Laski’s views on the internal aspects of sovereignty, this implied that the source of this authority, in the final analysis, resided in the community that the State represented on the international plane.

After an analysis of the views of eminent scholars on the nature of sovereignty, it would be worthwhile to examine the application of the concept in the context of international organizations, and especially under the UN Charter.

44 Laski, n.38 at p.605.
45 See ibid. at pp. 664-666.
46 See ibid. at p.624.
47 See ibid.
SECTION-III

1.5. Sovereignty and International Organization

The act of joining an international treaty or entering an international organization, it is maintained, is a voluntary act, whereby a State voluntarily assumes certain obligations by transferring "certain prerogatives of its sovereignty"\(^{48}\) to the organization/ governing structure of the treaty, and agreeing to limitations on the exercise of its sovereignty to enable the organization to carry out its functions and to achieve its aims.\(^{49}\) However, it is assumed that the limitations affect all the members to the same degree, and that all the States participate equally to carry out the purposes of the organization; and that all gain equally from the benefits which the achievement of these purposes is expected to yield. However, Brownlie\(^{50}\) rightly observes that "institutional aspects of organizations of States result in ...qualification of the principle of sovereign equality."\(^{51}\) Consequently, an organization may adopt majority-voting, system of weighted voting; organs may be permitted to take decisions, and even to make binding rules without the express consent of all or any of the member States.\(^{52}\)

\(^{48}\) See Nincic, n.1 at p. 26.

\(^{49}\) A similar view is upheld by Middleton when he states, "The constraints imposed by the international law, it is maintained, is fully compatible with the exercise of State sovereignty since the State's right to enter into international agreements itself is an attribute of sovereignty." K.W.B. Middleton, "Sovereignty in Theory and Practice" in Stankiewicz, n.8 at p.153.

\(^{50}\) See Brownlie, n.35 at p. 290.


\(^{52}\) He maintains that the voluntary act of joining of an organization by States implies consent of the States to its institutional aspects. As a consequence, in a formal way, the principle that obligations can
1.6. Sovereignty under the United Nations

1.6.1. 'Philosophical' Aspects of the UN Charter

The ideological superstructure of the Charter rests upon the basic democratic values and the norm of establishment and maintenance of international peace, which was increasingly viewed as a 'common international value' in the post Second World War period when the Charter was framed. However at the same time, the general structure of the organization is based on 'oligarchy', which the UN inherited from the Grand Alliance and which gave these powers a special position within the organization. Thus by virtue of the above aspect, certain absolutist tendencies were introduced in the matrix of the UN machinery, whereby the co-relation between sovereignty and the 'actual' (i.e. material) possibility of making it effective, with the accompanying tendency of identifying sovereignty with superior force, was once again reinstated.

only arise from the consent of the States and the principle of sovereign equality are satisfied. See Brownlie, n.35 at p.290.


54 These include, among others, the principles of the sovereign equality of States, the right of peoples to self-determination, non-intervention in the internal affairs of other States etc.

55 It is called the 'solidarist philosophy' by many writers e.g. J. Robinson, “Metamorphosis of the United Nations,” R.D.C. (1958) at p. 514. Cited in Nincic, n.1 at p.33.

56 According to Djura Nincic, “a rationalization of these ‘oligarchic’ features of the Charter was sought in the ‘theory on the need of establishing a proper relationship between ‘rights’ and ‘responsibilities’ between the influence States are permitted to exercise within the organization and their actual capability of discharging their responsibilities.” See Nincic, n.1 at p.34.

57 See Nincic, ibid.
1.6.2. Sovereignty and Equality

The idea that the States are legally equal is based on the concept of sovereignty of States in their mutual relations. At the same time, sovereignty of States implies that they should not be subjected to one another, and this subjection is also precluded by their mutual equality.\(^{58}\)

The School of Natural Law led by Vattel\(^{59}\) and Hugo Grotius\(^{60}\) laid the doctrine of equality of States in international law and relations. However, the inequalities in the power of the States soon led to emerging dichotomy between the ‘actual inequality’ of States and the sovereignty of States in international relations. Thus a distinction was drawn between the ‘legal’ equality and the ‘actual’ equality, whereby, the former implied equality in rights and duties of the States within the community of nations in their capacities as the subjects of international law. At the same time, legal equality does not imply ‘equal capacity’ of the States to exercise their rights and duties, and thus also their attributes of sovereignty to create norms of international law to influence the course of international events. Thus, legal equality did not necessarily imply political equality. The Charter merely provides for legal equality and is silent on the issue of how to actually realize it.\(^{61}\)

\(^{58}\) See ibid. at p.37.


\(^{60}\) Grotius’ views were probably influenced by the fact that he was the citizen of a small nation facing the problems of the new international order established by the Peace of Westphalia. See Nincic, ibid.

\(^{61}\) See Nincic, ibid. at p.38. George Schwarzenberger also draws a distinction between political and legal sovereignty. He points out that stratification of the society into hierarchies — “world powers, middle powers and small States — indicates that political sovereignty still means, if not necessarily omnipotence, at least *pre-eminence* and *leadership*. This state of affairs is fully compatible with any of such entities enjoying *legal* sovereignty, that is equality in, and before international law or, as it is put in the Charter of the United Nations, with principle of *sovereign equality*.” George
The institutionalization of the factual inequality of States in the exercise of their rights and powers began in the post First World War period when the Covenant of the League of Nations was being drafted, by incorporating the doctrine of special position of the Great Powers. Efforts were made during the inter-war period, both in the realm of the doctrine and in the practical institutional field, for making both sovereignty and equality ‘more relative.’ This affected both sovereignty and equality, and their mutual relationship. The objective of rendering sovereignty more ‘relative’ was to de-absolutize the concept; while by making equality ‘more relative,’ the sovereignty of the various States was not being affected to the same degree and a certain scale or distinction was being established between the sovereignties, with the final effect of making the sovereignty of those States which had been rendered the least ‘relative’ (i.e. the sovereignty of the Great Powers), ‘relatively absolute’ once again.

1.6.2(A). Principle of Sovereign Equality under the UN Charter

Article 2(1) of the UN Charter proclaims, as one of its basic principles, that:

“The Organization is based on...the sovereign equality of all its members.”


The writers of the inter war period, especially Basdevant (R.D.C., Vol. 58, No. IV (1936) at p. 587), Garner (R.D.C., Vol.35, No.1 (1931) at p. 704) and Verdross (R.D.C., Vol.30, No.V (1929) at p. 415), considered that the doctrine of the equality of States should be taken to imply only ‘equality’ before the law (legal equality) and not the equal rights and duties of the members of the international organization. Cited in Nincic, n.l at p.40.

See Nincic, ibid. at p.41.
The provision defines the position of member-States with regard to and within the Organization, and thereby also determines the character of the UN as an ‘international’ organization, as distinct from a supra national organization.

Article 78 on the other hand, extends the scope of the principle of sovereign equality to the relations among the members of the United Nations in general, and constitutes the basis of the entire legal system of the United Nations. It provides that:

“The trusteeship system shall not apply to territories which have become members of the United Nations, relations among which shall be based on respect for the principle of sovereign equality.”

1.6.2(B). History of the Principle of Sovereign Equality in the Charter of the United Nations

The Moscow Declaration of 30th October 1943 emphasized the need to make sovereign equality of all peace-loving States as a firm ideological basis for the UN to be set up. However, in wake of certain ambiguities in the context of the meaning, scope and use of the concept of sovereign equality, the matter was taken up for clarification by the Committee 1/1 at the San Francisco Conference where the principle of sovereign equality was discussed. Though the Committee Report defined the general meaning of sovereignty in the Charter, it failed to provide a comprehensive framework for the explanation of sovereign equality under the UN

64 See ibid. at pp. 36-37.
65 Article 4 of the Moscow Declaration – emphasis added.
66 The main ambiguities were –
   a) Meaning and scope of the concept of sovereign equality;
   b) The inherent contradiction between the principle of ‘sovereign equality’ as proclaimed in the Charter and the latter’s general structure that has many elements of inequality.
Consequently, the clarification of the concept under the Charter necessitates an analysis of the normative and institutional aspects of the UN Charter.

1.6.3. Normative Aspects of the UN Charter

1.6.3(A). Article 1(1) of the UN Charter

The first ‘Purpose’ of the UN, as stated in Article 1(1), is “the maintenance of international peace and security.” Article 1(1) stresses on taking “effective collective measures,” which according to Kelsen, forms the center of the political system and which is at the basis of the Charter. Further, under the same paragraph,

67 The Report of Committee 1/1 where the principle of sovereign equality was discussed lists the “four essential elements” which constitute the concept. These elements are:
   a) The legal equality of States;
   b) Each State enjoys the rights which are considered to be the attributes of sovereignty;
   c) Respect of the personality of a State, as well as of its territorial integrity and political independence;
   d) States should carry out in good faith all their international duties and obligations. UNCIO Doc. 944 1/1, 34.

   The second sentence of the Report refers to the requirement that every State should enjoy the rights which constitute the attributes of full sovereignty i.e. all States should enjoy the attributes of sovereignty to the same degree. This interpretation linked sovereignty with equality and rejected the notion that there may be ‘degrees’ of sovereignty. The issue whether this implies ‘legal equality’ or ‘equality in rights’ is dependent on the scope of the concept of rights “which are considered to be the attributes of full sovereignty.” Some of the attributes are mentioned in the third sentence of the Report, wherein ‘personality of the State’, ‘territorial integrity’ and ‘political independence’ are mentioned. ‘The personality of the State’, though vague, is usually taken to include the basic attributes of the State, and sovereignty is one such attribute. Thus, ‘personality of the State’ is in fact a broader concept than sovereignty; it cannot be a helpful guide in ascertaining the attributes of sovereignty. ‘Political independence’ refers to the external aspect of sovereignty, while territorial integrity signifies the totality of the area over which the sovereign power of the State is exercised. These listings, though important as maintained by Djura Nincic for defining the general meaning of sovereignty in the Charter, are unable to provide a complete explanation of ‘attributes of full sovereignty’ within the context of sovereign equality. See Nincic, n.1 at pp. 45-46.

68 Article 1(1) states:
   “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, and for the suppression of acts of aggression or other breaches of the peace....”

69 See Hans Kelsen, The Law of the United Nations: A Critical Analysis of Its Fundamental Problems (Published under the auspices of The London Institute of World Affairs, Stevens and Sons Ltd., London, 1951) at p.15. According to Kelsen the “effective collective measures” come under the purview of the measures determined in Articles 41-50. Goodrich and Hambro have given a broader interpretation to the term “effective collective measures”, and opine that the term includes not only the measures under Chapter VII, but even the recommendation of collective measures by the General
the observance of justice and international law is stated as a special function of the organization for settlement of disputes and situations that might lead to a breach of the peace. 70

Another stated 'Purpose' of the UN is to prevent a breach of peace, and to promote international co-operation in all spheres. 71 It is maintained that international co-operation, in turn, would entail limitations on the sovereignty by making it more 'relative', and strive towards a more democratic international order. 72 The purposes of the UN, as enshrined under Article 1(1), lay emphasis on 'collectivism', 'justice' and promotion of 'international cooperation', all of which hint at the incorporation of a relativist approach to sovereignty under the Charter.

1.6.3(B). Prohibition of Force under the UN Charter

The Charter has deprived the States of ius ad bellum, and resort to other means of self-help 73 (except under Article 51 of the Charter). The incorporation of this

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70 Article 1(1), determines as a 'Purpose' of the United Nations:
"...to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;"

71 Article 1(3) says:
"To achieve international co-operation in solving international problems of an economic, cultural, or humanitarian character...."

Article 55 determines again the same purpose of the organization. It states:
"...the United Nations shall promote...b) solutions of international economic, social health, and related problems; and international cultural and educational co-operation...."

72 See Nincic, n.l at p.338.

73 The point stated in favor of this argument has been cogently dealt with by Djura Nincic, who says that Article 41 of the Charter transfers certain measures to the competence of the organization, which had previously constituted lawful self-help on the part of individual States, and thus in principle, radically changing and withdrawing them from the competence of the individual States. See ibid. at p.68.
provision in the Charter has profoundly limited the sovereignty of States by restricting their right to use force. By replacing the right of self-help with organized international enforcement action based on the Charter, it has centralized the hitherto decentralized sanction of international law. The introduction of new approaches to the problem of war,\(^7\) and a liberal interpretation of the phrase ‘threat of and use of force’\(^8\) implying not only provisions relating to armed force but even other forms of force as well (i.e. economic, political and other kinds of force),\(^9\) has further led to a more egalitarian international order.

Thus, viewing on a broader plane, by depriving the States of their *ius ad bellum* and removing from the field of international relations the threat and use of ‘force’, not only the concept of sovereignty is ‘de-absolutized’ but consequently, conditions of an international order have been created by the UN Charter for an

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\(^7\) They are found in the Preamble where the people of the United Nations proclaim, *inter alia*, their determination to “ensure...that armed force shall not be used save in the common interest”; in Article 2(3), whereby members pledge themselves to “settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered”; and above all in Article 2(4), wherein members assume the obligations to “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.” All these elements converge upon the principle of the “sovereign equality of States”, proclaimed in Article 2(1) of the Charter. See Nincic, ibid. at pp. 61-62.

\(^8\) Two Charter provisions, which are relevant to a broader interpretation of the concept of ‘force’ under the Charter, need a pertinent observation. Recital five of the Preamble proclaims the obligations of members to “practice tolerance and live together in peace with one another” which, in the words of Djura Nincic, implies the duty to refrain in their mutual relations, from the use of force in all its forms as well as from any threat of force. Similarly, Article 2(3) calls upon the members of the United Nations to “settle their international disputes in such a manner that peace and security and justice, are not endangered.” According to Djura Nincic, “any form of the threat or use of force, can scarcely be considered ‘peaceful means’ for the settling of disputes” and can lead to threatening of international peace and security. Thus, it precludes members from resorting to any threat or use of force in their international relations. See ibid. at p.65.

\(^9\) See ibid. at p.64.
evolution from ‘legal equality’ towards an ‘equality in rights,’ and achievement of a growing degree of ‘political equality.’ 77

1.6.3(C). Domestic Jurisdiction under the UN Charter

Another aspect of the UN matrix that bears an impact on the sovereignty of States is the ‘delimitation of competences’ between the UN and the member States. States have tended to broaden the sphere of domestic jurisdiction subject to non-intervention by the UN, 78 and have thus tended to safeguard their sovereignty. 79

Under the UN Charter, the following provisions are indicative of the above trend:

(a) Application of the norm of non-intervention by the UN in the domestic jurisdiction of States is applicable to all forms of the organization activities, including not only political but also economic and social arenas (with the exception of enforcement measures in the event of aggression). 80

(b) Absence of a reference to international law to decide whether a question falls under the domestic jurisdiction of the State concerned or not. 81

(c) The substitution of the word ‘essentially’ for ‘solely’ 82 for matters falling under the domestic jurisdiction, as it was contended by the Great Powers that sovereignty of States under Article 2(7) encompasses a “far broader

77 See ibid. at p.79.
78 See UN Charter, Article 2(7).
79 See Nincic, n.l at p.141.
80 See ibid. at pp. 155-56.
81 The omission of a reference to international law implies abandonment of an objective criterion for drawing a line demarcating the issues falling under the domestic jurisdiction of the States. See Nincic, ibid. at p.158. Thus, what emerges is a subjective political criterion, which is subject to imposition by the more powerful and politically influential States on the dynamics of the working of the organization. See ibid. at p.161. For a fuller discussion on the various dimensions of determination of what constitutes ‘intervention.’ See ibid. at pp. 165-169.
82 Article 15(8) leaves to the domestic jurisdiction of States only those questions, which may be considered belonging “solely” to the domestic jurisdiction. Thus, the range of matters under the domestic jurisdiction is much more limited.
number of matters within the domestic jurisdiction as compared to those falling under the same by virtue of the Covenant of League of Nations."83

(d) The Great Powers were inclined to a broader interpretation to the term 'intervention'84 at the San Francisco Conference, thus seeking to broaden the sphere of domestic jurisdiction of States. Further, the above trends on the treatment of the concepts of 'intervention' and 'domestic jurisdiction' under the UN Charter indicate that such interpretations of the terms have metamorphosed the character of sovereignty from a 'legal' to a 'political' one, and from an 'objective' to a 'subjective' one.

On the positive front however, it is encouraging to note that despite a broad connotation associated with the meaning of domestic jurisdiction, the competence of the UN has not been affected on some crucial matters85 that strictly could be interpreted as falling under the domestic jurisdiction of States. Consequently, in general, the members have supported the competence of the UN to discuss colonial conflicts and to adopt resolutions recommending settlement of the issues consistent with the purposes of the UN.86

1.6.3(D). Right to Self-Determination under the UN Charter

The right of peoples to self-determination incorporates the principle of right of 'all' peoples to create an independent State, thus encompassing the broad 'essentials

83 See Nincic, n.1 at pp.159-61.

84 See ibid. at p.163; See also Goodrich et al., n. 69 at p. 67.

85 See Goodrich et al., ibid. at p. 68. However, Goodrich maintains that the objections based on Article 2(7) have influenced decisions of the UN organs. In some instances, they have been decisive in preventing resolutions from being adopted, in others influenced the context of resolutions, by making it seem admissible or necessary to water down the proposal under consideration in order to achieve wide support. See ibid. at pp. 69-70.

86 For further discussion, see infra discussion on right to self-determination under Article 1(2) of the UN Charter; also see Rosalyn Higgins, The Development of International Law Through the Political Organs of the United Nations (Oxford University Press, London, 1963) at pp. 90-106.
of sovereignty’ (of sovereign determination independent of any superior will), while at the same time implying that its subjects are endowed with certain elements of international legal personality.\textsuperscript{87} The concept of self-determination, in general, covers two fundamental aspects i.e. ‘external’ and ‘internal’ aspects.\textsuperscript{88} The external aspect of self-determination comprises the right of peoples freely to determine their political status. This external aspect is synonymous with the right to independence and statehood, and therefore provides the essential framework for the realization of the ‘internal aspects of self-determination,’ which consist of the right of all peoples ‘freely to pursue their economic, social and cultural development.’\textsuperscript{89} The incorporation of the word ‘development’ emphasizes the dynamic nature of self-determination as a continuous process, which is not exhausted in the achievement of external aspect, and whereby, people continue to exercise the right to maintain their independence even after achieving political liberation from colonialism.\textsuperscript{90}

The right of peoples to self-determination has been incorporated in the UN Charter under Article 1(1) that states the purposes of the UN, and under Article 55 that deals with economic and social cooperation. By incorporating it in Article 1(1), the right to self-determination has been elevated to the status of constituting the ‘Purpose’ of the Charter and has been made an integral part of the general system of

\textsuperscript{87} See Nincic, n.l at p.220.

\textsuperscript{88} See ibid. at p.247.

\textsuperscript{89} See ibid.

\textsuperscript{90} See ibid. at p.248. In agreement with the explanation, Rivlin also states that “logically it must be recognized that both the attainment of independence and its maintenance or preservation, are part of the idea of self-determination...Once a nation or a people has achieved independence through self-determination, it must continue to have the right to maintain this independence and sovereignty.” B. Rivlin, “Self-Determination and Dependant Areas”, \textit{International Conciliation}, No. 501 (1955) at p.200.
values of the Charter. Further it is maintained that by virtue of the same, the principle has been brought into a relationship of mutual interdependence and interaction with the other elements of the UN system, especially with the principle of sovereign equality. ⁹¹

The practice of the UN organs has been to regard self-determination as a ‘Right.’ ⁹² Further, the right of peoples to self-determination is affirmed as a norm of international law and its contents are comprehensively listed in common Article I of the Covenants on Human Rights. ⁹³ On the economic aspects of self-determination, in 1962, the General Assembly adopted a resolution in which it referred to the ‘inalienable right’ of all States “freely to dispose of their natural wealth and resources.” ⁹⁴ Further, the principle of self-determination has played a key role in the concerted effort to end colonialism. ⁹⁵

⁹¹ See Nincic, n.1 at p.222.


⁹³ See Nincic, n.1 at p. 225. Under Article I:
   1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
   2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations deriving out of international economic cooperation, based upon the principle of mutual benefits, and international law. In no case may a people be deprived of its means of subsistence.
   3. The States to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.


⁹⁵ On December 14, 1960, the General Assembly unanimously adopted the Declaration on the Granting
1.6.4. Institutional Aspects of the UN Charter

1.6.4(A). Special Status of the Great Powers under the UN Charter

Under the Charter, the system of collective security represents one of the most significant departures from the principle of equality, whereby the position of the permanent members of the Security Council is elevated above the rest of the membership. Further extending the powers of the permanent members, the Charter calls for the need of their affirmative votes (or positive participation) for the admission of new members, and the admission of non-member States to the Statute of the International Court of Justice, for the suspension or expulsion of members.


According to Djura Nincic, “The concept of a Great Power is primarily a political one which grew into a legal concept. The greater impact of the Great Powers on international relations was reflected in their larger share in the defining of the norms of international law. These norms, created by the Great Powers tend to provide them a legal sanction to their special position thereby investing them with an international legal status (i.e. the de jure recognition of State as Great Power). This leads to a certain ‘gradation’ of sovereignty i.e. resulting in certain sovereignties becoming more ‘absolute’ and others more relative, as well as in the identification of sovereignty with the actual capacity of exercising it. See Nincic, n.1 at p.126.

Article 27 of UN Charter reads: “The concurring votes of the permanent members are required if the Council is to take decisions binding on the whole of the membership for the preservation of international peace and security.”

See UN Charter, Article 4.

See ibid., Article 93(2).

See ibid., Article 5 and 6.
for measures to enforce a judgment of the International Court of Justice, for the appointment of the Secretary General and for the amendment of the Charter.

At the time of framing of the UN Charter, the theoretical and ‘ideological’ rationalization of the privileged status of the Great Powers was sought in the ‘correlation between rights and capabilities’ doctrine, which in turn gave rise to the concept of correlation between sovereignty and the actual capability of implementing it and of making it effective. Thus, the political, economic and military power of the permanent members enabled them to bargain the power to exercise of veto in the functioning of the Security Council. Djura Nincic aptly observes that:

“...by exempting the sovereignty of the Great Powers many of the limitations to which the sovereignty of the other members is subjected, the Charter vests Great Power sovereignty with certain ‘absolutist’ implications, reminiscent of the concept it was designed to supersede.”

101 See ibid., Article 94(2).
102 See ibid., Article 97.
103 See ibid., Articles 108 and 109(2); also see Statute of the International Court of Justice, Article 69.
104 This implied that effective implementation of the purposes of the organization could be achieved in the light of a realistic appraisal of the position and the capabilities of the member States. See Nincic, n.1 at p.129. This required a revision of existing notions of equality, whereby the concept was to be construed in ‘functional’ and ‘relative’ terms rather than in ‘absolute’ terms. See generally Boutros-Ghali, R.D.C., Vol. 100, No. II (1960) at pp. 1-73. Cited in Nincic, n.l at p.129.
105 On the origins of veto, see Goodrich et al., n.69 at pp. 215-21.
106 Nincic, n.1 at p.131. Further, on the consequences of exercise of veto, C. Warbrick has commented, “the permanent members are protected against any decisions uncongenial to themselves while any other member is susceptible to being bound by a decision to which it objects.” Colin Warbrick, “The Principle of Sovereign Equality” in Vaughan Lowe and Colin Warbrick (eds.), The United Nations and the Principles of International Law: Essays in memory of Michael Akehurst (Routledge, London and New York, 1994) at p.211.
1.6.5. Sovereignty under the UN Charter: An Overview

The relationship between sovereignty as one of the organizing principles of States in international relations on one hand, and the UN, which represents institutionalization of international community on the other:

"...is a complex, dynamic and partly contradictory relationship, resulting from the various trends, social, political and international, at work in the world today."107

The Charter reaffirms sovereignty by defining in principle, the nature of the UN as an inter statal rather than a supra statal organization. The scope of sovereignty is defined and limited within the context of the scope of equality – by using the concept of 'sovereign equality' that de-absolutizes the concept. The concept of sovereign equality is also made, by the UN Charter, a part of the entire normative and institutional system of the UN, which is reflected in the following norms and principles:

(a) The obligation on part of the members to refrain from the threat or use of force in international relations.108
(b) The proclamation of the principle of "equal rights and self-determination of peoples" by the UN.
(c) The incorporation of the provision for limitation of the scope of sovereignty in inter-State relations as well as in relations of States with the organization, leading to de-absolutization of the concept.109

All the above principles, according to Djura Nincic, outline:

107 Nincic, n.1 at p.333.
108 See UN Charter, Article 2(4).
109 See ibid., Articles 2(1) and 78.
"...the stages of evolution of equality from 'legal equality' through 'equality in rights' towards a growing measure of substantive or 'political equality'."\textsuperscript{110}

However, the question of restriction of sovereignty involved in the relationship of States to the organization is intricate, as it involves the question of relationship between the normative and institutional aspects of the UN. At the same time, the inherent contradictions in the notion of maintaining peace through collective coercion under Chapter VII\textsuperscript{111} are aggravated by the introduction of elements of inequality and the tendency to 're-absolutize' the sovereignty of the Great Powers. Thus, clear antimony between the normative and the institutional aspects of the UN is visible. On one hand, the normative system of the UN is based on sovereign equality of States, while on the other hand, the institutional system of the Charter has strong centralizing and oligarchic overtones with its emphasis upon enforcement measures. Though the post Second World War realities, reflected in the increasing membership of the newly liberated developing countries and non-aligned countries, has led to the growing significance and role of the General Assembly, the oligarchy of the Great Powers in the UN institutional system remains predominant.

\textsuperscript{110} See Nincic, n.1 at p. 335.

\textsuperscript{111} Under Chapter VII direct threats to or breaches of the peace, referred to in Article 27 of the Charter, call for the application of the collective measures.
SECTION-IV

1.7. Sovereignty of Developing Countries in the Post-Charter Era

The UN Charter was framed by the Allied Powers, and consequently reflected the interests and ideologies of these countries. It stood for *status quo* of the international legal and political order i.e. the ‘de facto’ domination of these countries, and did not foresee any role for the developing countries who were under the shackles of colonialism at that time. The decolonization of 1960s engendered a process of political liberation and independence to the erstwhile colonies of the developing countries, endowing them an international legal personality. However, the realm of international law, grounded on the principle of the UN Charter of sovereign equality, continued to perpetuate iniquitous and unequal political and economic relationships among the States, leading to exercise of reduced sovereignty by the developing countries. To explain the inextricable link between the absence of effective political sovereignty and the problem of economic underdevelopment in the developing countries in the post second world war period, two theorizations emerged:

(a) Modernization theory, conceptualized by the American social scientists who viewed the underdevelopment as a result of endemic causes.

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112 It continued to rely on what Mohammed Bedjaoui has termed as “international right of confiscation i.e. confiscation of the independence and sovereignty of satellite States” in the economic sphere. Mohammed Bedjaoui, *Towards a New International Economic Order: New Challenges to International Law* (UNESCO, Holmes and Meier Publishers, New York, London, 1979) at p.12. The character of international law, the norms of which were predominately shaped by the industrialized countries, has been termed ‘neo-colonial’ by Bedjaoui, whereby the rules of free competition, reciprocity and non-discrimination were among those which made it possible to accentuate the unequal relationship between the industrialized and the developing countries, which in fact directly affected the sovereignty of the developing countries. See ibid. at p.61. The legal ‘baubles’ given to the developing countries such as the most-favored nation clause or the system of generalized preferences, are only one variant of the legal formalism designed to float above things as they really are, and thereby camouflage them and finally enable the States to operate freely behind a façade of generalities. See ibid.
(b) Dependency theory, conceptualized by the intellectuals deeply rooted in
the newly independent countries, who attributed underdevelopment to the
external causes.

1.7.1. The Modernization Theory

Scientists in this stream use the concept of 'political development', as they
view political underdevelopment to be the main cause for other underdevelopments in
the developing countries. For them, this political underdevelopment consists in the
lack of political integration in these countries, as well as, the incapacity of the
political system to cope with the new problems of integration. Further, they opine
that the political development of the underdeveloped countries can be achieved by
economic development, which implies resort to rapid industrialization of their
productive systems and a thorough modernization of their cultural superstructures (an
approach which they term “developmentalism”). The attempt is primarily to set a
liberal capitalist democracy in the underdeveloped States.

Critics of the theory however, attribute the main reason for the lack of political
and economic development in the developing States to the adoption by some States,

113 See A.S. Narang, “Capitalism, Development and the Third World”, Teaching Politics, Vol. XV, No. 2 (1989) at p.26. Scientists traced the occurrence of political underdevelopment (characterized by political instability and political fragmentation) to the persistence of tradition, the traditional social
structures and the value systems generated in the process. See ibid.

114 See Narang, ibid.

115 Modernization is thus, according to Huntington, a “transition, or rather a series of transitions from primitive, subsistence economies to technology intensive, industrialized economies; from subject to participant political cultures; from closed, ascriptive status systems to open, achievement oriented systems; from extended to nuclear kinship units; from religious to secular ideologies; and so on.” Samuel P. Huntington, Political Order in Changing Societies (Yale University Press, New Haven, 1968) at pp. 32-5; also see C.E. Black, The Dynamics of Modernization: A Study in Comparative History (Harper Torchbooks, New York, 1966) at pp. 9-26; S.N. Eisenstadt, Modernization: Protest and Change (Prentice-Hall, Englewood Cliffs, New Jersey, 1966) at pp.1-19; Dean C. Tipps, “Modernization Theory and the Comparative Study of Societies: A Critical Perspective”, Comparative Studies in Society and History: An International Quarterly, Vol.15 (1973) at pp.199-210.
and even imposition in other cases, of western system of political and economic values. The internalization of western ideas and values, they argue, generates institutions that prove to be an obstacle in the development by stifling the growth of indigenous economic and political institutions. In the context of African and Latin American countries, Mark. E. Denham and Mark Owen Lombardi aptly observe that:

"...the imposition of political regimes and structures patterned after western prototypes held little intrinsic value to solve the social, political and economic problem of these countries, leading to struggles for political power..., the imposition of a western notion of economic development has further led to political upheaval and economic instability, especially in Latin America and Africa, further weakening the State structure."117

The neo-liberal paradigm that emerged in the 1980s was portrayed to be an innovative new development strategy to address the key drawbacks of modernization models. However, much like the older modernization approach, it too is based on universalistic (ideal) theoretical constructs, whereby the western model of development is universalized as the ideal model for development.118 On the external front, the neo-liberal and modernization development framework provides the broad ideological support for the expansion of global capitalism, which in turn is


118 Neo-liberalism is rooted in, according to Hirschman, what he calls the “mono-economics of orthodox neo-classical theory.” It is the notion that there is only one body of economic theory with universally applicable concepts, just as it is in physics or chemistry. See A.O. Hirschman, “The Rise and Decline of Development Economics”, in A.O. Hirschman, Essays in Trespassing: Economics to Politics and Beyond (Cambridge University Press, Cambridge, 1981) at p.4. Cited in Broham, n.116 at p.126.
ideologically structured to open up South to transnational capital and help Western
Powers, especially America, to maintain their hegemonic global position in the
economic, political and military spheres. In doing so, it overlooks the basic
inequalities in the international economic and geopolitical structures and places the
onus for underdevelopment on the South itself (especially on ill-conceived policies
such as excessive state spending, the erection of trade barriers and failure to liberalize
markets). 119

At the same time, the insurmountable economic problems faced by the
developing countries in 1970s and 80s left them with no other option but to reel under
the pressure of the industrialized countries, and to adopt neo-liberal measures and the
conditionalities imposed by the structural adjustment programmes. 120 Initially, these
programmes were essentially economic and involved a contractual understanding of
policy reforms and debt (re)payments in exchange for assistance and investment
flows. However, by the end of 1980s, these ‘interventions’ expanded to include
political and even social and ecological conditionalities, political liberalizations,
social dimensions and sustainable development. 121 Thus, for the developing countries,
submission to a structural adjustment package had become, and continues to be a
condition for receiving external loans or other financial assistance not only from the
multilateral institutions but also from most other sources of private or bilateral
lending. The imposition of Fund/Bank conditionalities erodes the sovereignty as it

119 See Broham, n.116 at p.133.

120 The primary interest advocated through the structural adjustment programmes was to expand the
markets of the industrialized countries, to increase their exports and secure debt repayments through a
carrot and stick policy of providing loans to fiscally bankrupt developing country governments in
exchange for fundamental reforms in their political economy.

121 See Timothy M. Shaw, “Conditionalities Without End: Hegemony, Neo-liberalism and the Demise of
Sovereignty in the South” in Denham et al., n. 117 at p.102.
restricts the ability of the governments in the developing countries to determine policies and shape development in their societies according to local values, aspirations and tradition.122

1.7.2 The Dependency Theory

The dependency theory arose in the 1960s in the developing countries as a direct challenge to theories of modernization and development. The use of the term "underdevelopment" by the theorists in this stream, in sharp contrast to the term "political development" used by the thinkers of modernization thinking, highlights this clearly.123 The roots of the dependency theory can be traced to the theorization by Economic Commission for Latin America in 1948, under the leadership of Raul Prebish.124 The thesis emphasized that 'underdevelopment' in Latin America was the result of its position in the world economy and its adoption of economic policies that depended upon the export of raw materials and import of finished goods.125 A.G.Frank,126 Immanuel Wallerstein127 and Samir Amin128 are considered to be the

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122 See Broham, n. 116 at p.135.


125 It was therefore argued that, if the 'development towards the outside' was replaced by a strategy of 'development towards the interior', it would ensure independence in foreign trade. It was proposed that this change would shift the centre of economic decision-making to the local economy, resulting in greater political autonomy and democratic functioning. See S.D. Muni, "Dependency Theories and Development Dilemmas of the Third World" in Iqbal Narain (ed.), Development, Politics and Social Theory. Essays in Honour of Professor S.P. Verma (Sterling Publishers, New Delhi, 1989) at p. 81.


127 Immanuel Wallerstein has expounded his views in The Capitalist World Economy (OUP, London,
main theorists in this stream of ‘stagnationist theory’ thinking, in which the underdeveloped countries are seen as perpetual suppliers of raw materials in global capitalism as a result of their position in the international division of labor. On a general plane, all the three theorists organize their arguments around three major concepts – “world capitalism”, “center” (A.G. Frank calls it “metropolis”, Immanuel Wallerstein calls it “core”), and “periphery” (A.G. Frank calls it “satellite”). The core notion adopted by these theorists is ‘dependency’, whereby they reveal through their arguments that the functioning of global capitalism has made the peripheral societies dependant on the center societies.

According to Samir Amin, the capitalist relations in the center develop on the basis of the expansion of the home market, whereas capitalist relations in the periphery are introduced from the outside.129 This difference introduces, what Amin calls “distortions like inadequate industrialization and rising unemployment,”130 and consequently leads to underdevelopment. Further, the capital generated at the periphery is not accumulated at the indigenous level but is transmitted to the center. Consequently, the peripheral economy becomes an appendage of the capitalist world economy dominated by the center, in which the underdeveloped countries have no freedom of maneuver in relation to world capitalism.131


130 See Amin, n.128, Unequal Development at p.201.

131 Thus, he maintains, “So long as the underdeveloped country continues to be integrated in the world market it remains helpless...the possibilities of local accumulation are nil.” See Amin, n.128,
Arguing on the same lines, A.G. Frank, focusing his analysis on Chile and other developing countries, maintains that in the structure of the world capitalist system, the peripheral satellites have been subjected to high degree of external and internal monopoly which has resulted in the expropriation (and consequent unavailability to them) of a significant part of the economic surplus produced there and its appropriation by the metropolis. Thus emerges the inherent contradiction of capitalism that takes the form of polarization into economically developed metropolitan center and the underdeveloped peripheral satellites.

Immanuel Wallerstein views the world system as a social system, in which there is a “single division of labor, multiple cultural systems and is characterized by the capitalist mode of production which has been in existence for last four or five centuries.” The strength of the State structures in the core States is owed, according to Wallerstein, to slightly different starting points (the initial entry of core countries in the world capitalist system was earlier than that of the peripheries), which is described as a historical ‘accident.’ From this stage, it is the operation of the world market forces that accentuate the differences, institutionalize them and make them impossible to surmount over the short run. There is consequently, the operation of ‘unequal exchange’ that is enforced by the core States on the peripheral areas and which results in an appropriation of surplus of the whole world-economy by the core areas.


132 See Frank, n.126, Capitalism and Underdevelopment in Latin America at p.31.

In wake of the above theorizations, the developing countries soon realized that the fictitiousness of the political independence achieved by them and their effective economic subordination were the characteristics *par excellence* of their state of economic underdevelopment. Thus they became aware that the political sovereignty obtained during the first stage of their independence gave them no power over the reality of their underdevelopment. Further, even the UN Charter set down in 1945 incorporated only the traditional concept of State sovereignty in terms of political factors to the exclusion of economic considerations. In the above context, the developing countries realized that the principle of economic independence must be invested with a crucial new legal function and must be raised to the rank of a principle of modern international law, whereby it could reflect the right of peoples and States to dispose of their own natural resources, prohibit all forms of illegitimate interference in their economic affairs, and ban from international economic affairs all forms of force and constraints. That was the outline of a New International Economic Order [NIEO]. The main principles of the NIEO were all embodied in the Charter of Economic Rights and Duties of States that was adopted by the General Assembly in 1974. In fact, the NIEO Declaration and the Charter are among the most important instruments in international law that are of primary significance for the process of formation of principles of a new economic order enshrining the following three

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134 See Bedjaoui, n.112 at p.81. At another place he maintains that “the developing countries realized that the real political sovereignty of States would be rendered non-existent as long as their economic sovereignty continued to be confiscated by the developed and affluent States.” Ibid. at p.152.

135 See ibid. at p.81. It failed to discern the forms of real dependence based on organized economic subordination, which is incompatible with the notion of sovereignty. See ibid.

binding principles i.e. the principles of equity, interdependence, and common interests of all States.

1.8. The Charter of Economic Rights and Duties of States

The Preamble to the Charter of Economic Rights and Duties of States [hereinafter Economic Charter] highlights the fundamental purpose of the Charter as promoting the establishment of the new international economic order based on equity, sovereign equality, interdependence and cooperation among all States. Under

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137 General Assembly, Charter of Economic Rights and Duties of States, GA Res. 3281(XXIX), UN GAOR, Supp. No.31 (1974). The text of Resolution has been reproduced in 14 ILM (1975) at p.251. The Charter as a whole was adopted by 120 votes to 6, with ten abstentions (UN Doc. A/PV.2315). See Yearbook of the United Nations 1974, Vol.28, at pp. 381-382. Belgium, Denmark, the Federal Republic of Germany, Luxembourg, the United Kingdom and the United States of America (U.S.A.) voted against, while Austria, Canada, France, Ireland, Israel, Italy, Japan, the Netherlands, Norway and Spain abstained from voting. The industrialized countries who voted in favor of the Charter as a whole, were Australia, Finland, Greece, Iceland, Portugal, New Zealand, Sweden, China and all the Socialist countries. The Charter entered into force on 3rd January 1976. The main contention of U.S.A. and other industrialized countries who voted against the resolution was that the “Charter would be meaningless without the agreement of countries whose number might be small but whose significance in international economic relations and development could hardly be ignored.” The Statement of U.S. in UN Doc. A/AC.2/SR.1649 at pp. 21-22: See P. Chandrasekhar Rao, “Charter of Economic Rights and Duties of States”, Indian Journal Of International Law [IJIL], Vol. 15, No. 3 (1975) at p.355; See generally T.O. Elias, “Basic Principles and Perspectives of the NIEO” in Francis M. Ssekandi (ed.), New Horizons In International Law (Martinus Nijhoff Publishers, Netherlands, 2nd revised edition, 1992) at pp. 180-220.

138 The elaboration of the Economic Charter was initiated by Mexico at the third session of the United Nations Conference on Trade and Development [UNCTAD] in April 1972. While making this proposal, the President of Mexico said, “We must strengthen the precarious legal foundations of the international economy. A just order and a stable world will not be possible until we create obligations and rights, which protect the weaker States. Let us take economic cooperation out of the realm of goodwill and put it into the realm of law.” (UN Doc. A/PV.2315 at p. 67). The Charter was drafted by a Working Group established by the UNCTAD, in which, significantly both the industrialized countries and the developing countries had an equal representation. The main objectives placed before the Working Group of UNCTAD which drafted the Charter were:

a) Formulation of a Charter, which would determine juridical rights and duties arising in economic relations between States.

b) To ensure that the instrument contributes to the progressive development of law, keeping in mind the political realities of international life.

c) The instrument should be acceptable to all States.

d) It should recognize the need to strengthen international cooperation and protect the economically weak and most vulnerable States.

See UN Doc. TD/B/AC.12/1 at p.5. Cited in C. Rao, n.137 at p.353. The Charter was adopted after two and a half years of intensive deliberations on 12th December 1974.
chapter-I, sovereignty and sovereign equality of all States form a part of fifteen principles of international economic relations, which are envisaged to govern economic as well as the political and other relations among States. Other important principles incorporated under it were - territorial integrity and political independence of States; non-intervention; mutual and equitable benefit; peaceful co-existence; equal rights and self-determination of peoples; remedy of injustices brought about by force; no attempt to seek hegemony and spheres of influence; promotion of international social justice; international cooperation for development. See United Nations, Yearbook of the United Nations, Vol. 28 (Office of Public Information, United Nations, New York, 1978) at p. 383.

Chapter-II forms the 'essence' of the Economic Charter and sets out the economic rights and duties of States. The important rights of States incorporated under it are:

(a) Right to choose the economic, political, social and cultural system in accordance with the will of its people, without interference, coercion or threat in any form whatsoever.

(b) Right to freely exercise full permanent sovereignty including possession, use and disposal over all its wealth, natural resources and economic activities.

(c) All States are juridically equal, giving them as equal members of the international community the right to participate fully and effectively in the international decision-making process.

In the realm of duties, importantly, it calls upon the States to cooperate in facilitating equitable international economic relations, especially keeping in mind the needs and interests of the developing countries. Lastly, the Charter proscribes the 

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139 Other important principles incorporated under it were - territorial integrity and political independence of States; non-intervention; mutual and equitable benefit; peaceful co-existence; equal rights and self-determination of peoples; remedy of injustices brought about by force; no attempt to seek hegemony and spheres of influence; promotion of international social justice; international cooperation for development. See United Nations, Yearbook of the United Nations, Vol. 28 (Office of Public Information, United Nations, New York, 1978) at p. 383.

140 See C. Rao, n.137 at p. 358.

141 See Economic Charter, Article I; also see ibid. Article 7.

142 See ibid., Article 2.

143 See ibid., Article 10.

144 See ibid., Article 8.
use of economic, political or any other measure by a State on another to obtain from it the subordination of the exercise of its sovereign rights.\textsuperscript{145}

The novel feature of the principles constituting the Economic Charter is in fact, the call upon the affluent States to remedy the injustices that have been brought about by force and which have deprived the developing countries of their natural means necessary for their normal development, and in the process, to promote the principle of international co-operation for development.

Though the Economic Charter was not adopted unanimously, nevertheless, its importance stemmed from the fact that no country denied the importance of the exercise undertaken.\textsuperscript{146} Mohammed Bedjaoui, focusing on the significance of the Economic Charter, has opined in radical terms:

"The Charter of Economic Rights and Duties of States is to economic decolonization what Resolution 1514 (XV) is to political decolonization."\textsuperscript{147}

P.C. Rao, on the importance of Economic Charter, has commented:

"The Economic Charter looks forward in the direction of laying the foundations for the evolution of a just and equitable international economic law."\textsuperscript{148}

Sobhi Mahmassani, on the legal validity of the Economic Charter, has opined that it is:

\textsuperscript{145} See ibid., Article 32.

\textsuperscript{146} This was reflected in the fact that the Economic Charter received more than two thirds of general support, and only six industrialized countries were against it. See Rao, n.137 at p. 369. For an analysis of the voting pattern of the states on the Charter see n.137.

\textsuperscript{147} Bedjaoui, n.112 at p.185. He further maintains that the Charter incorporated into the concept of State sovereignty the economic dimensions, needed for it to become effective. See ibid.

\textsuperscript{148} See Rao, n.137 at p.370.
"...evidence of the recent dominant trend of international opinion concerning the sovereign right of States over their natural resources."  

Another phenomenal development catalyzed by the persistent efforts of developing countries to make the international legal and political order more participatory and responsive to the need of realignment of their relationship with the rest of the international community, was the General Assembly Resolution on the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States.

1.9. Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

The Declaration is supremely important as its outcome on formulation of certain legal norms emerged from decade long negotiations between the developing and the industrialized countries, and the former Socialist States. Its importance squarely rests on the fact that it interprets and formulates the principles contained in the UN Charter, particularly from the perspective of the developing countries. The Declaration is founded upon the principles of sovereign equality of States, self-

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150 General Assembly Resolution 2625 (XXV), n.36. This Resolution epitomized the shift in classical international law in the direction of more participatory, just and equitable international order in the post-Charter era. The contents of the resolution sought to elaborate the basic principles as embodied under the UN in the light of contemporary times, especially in wake of emergence of the developing countries. The Resolution called upon all the States to be guided by these principles in their international conduct. See V.S. Mani, *Basic Principles of Modern International Law* (Lancers Books, New Delhi, 1993) at p.278.
determination of peoples, and international cooperation. The debates on the various principles in course of their formulation under the Declaration, which would be discussed below, brought to fore the contemporary thinking and practice of several States on these issues.

1.9.1. Prohibition of Force

The formulation of the principle, under the Declaration, in general follows the language of the UN Charter 151 and states:

"States 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."

In the deliberations on the principle, the term 'force' was viewed by most countries (especially the developing and the former Socialist countries) to be interpreted broadly and encompass not only 'armed force' but all other forms of coercion. 152

1.9.2. Non-Intervention

The Declaration forbids every State from using or:

"...encourage[ing] the use of economic, political, or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind." 153

151 See Mani, ibid. at p.261. Further it provides: "Such a threat or use of force constitutes a violation of international law and the Charter and shall not be employed as a means of settling international disputes."

152 See Mani, ibid. at p.263.

153 See ibid. at p.265.
Further, it asserts the ‘inalienable’ right of every State to choose its political, economic, social and cultural systems, “without interference in any form” by another State. 154

1.9.3. Sovereign Equality

The Declaration states that all States enjoy sovereign equality and that they have equal rights and duties, and are equal members of the international community, “notwithstanding differences of an economic, social, political or other nature.” 155

Further in the discussions it was observed that the concept of sovereignty is not incompatible with the idea of world integration, and the renewed focus of importance attached to the protection of State sovereignty is owed to the emergence of a number of new States “as a result of demise of colonialism.” 156 In the course of deliberations, it was viewed that though a State may assume international obligations by renouncing certain of its rights, no State has a right to surrender altogether “the substance of its sovereignty” to another State, 157 thus implying that attributes of sovereignty must be protected from diminution.

On equality, deliberations focused on juridical and economic aspects of equality. It was maintained that juridical equality implied that notwithstanding economic, political or military differences, all States were juridically equal, and that the stronger States were not entitled to dictate to or dominate over the weaker ones. Equality operated with respect to not only rights, but also duties of States as subjects

154 See ibid.

155 See ibid. at p.267.

156 See Delgado (Colombia), GAOR, 20th sess, 6th Cmtee, 883rd mtg., at p.256. Cited in ibid. at p.142.

157 See Coomaraswamy (Ceylon), GAOR, 18th sess, 6th Cmtee, 805th mtg., at p.128. Cited in Mani, ibid. at p.143.
of international law. Further, economic equality was considered an integral part of sovereign equality. A broad-based agreement was reached among the States during deliberations that the industrialized countries had an obligation to narrow the economic differences between them and the developing countries.

In the final, discussions on the principle converged on the following elements as constituting integral elements of sovereign equality. These are:

(a) States are juridically equal;
(b) Each State enjoys the rights inherent in full sovereignty;
(c) Each State has the duty to respect the personality of other States;
(d) The territorial integrity and political independence of the State are inviolable;
(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

1.9.4. International Co-operation

The Declaration provides that States have “the duty to co-operate with one another,” irrespective of the differences in their political, economic and social systems, in the various spheres of international relations (this would include economic, social and cultural fields as well as the field of science and technology) in order to maintain international peace and security, and to promote international


159 See Mani, ibid. at p.145.

160 The observations of Sahovic (Yugoslavia) tend to project this view. See Doc. A/AC.119/SR.33, at p.10. Cited in Mani, ibid. at p.140.

161 Resolution 2625 (XXV), n.36, Principle 6, para. 2.
economic stability and progress, the general welfare of the nations and international co-operation free from discrimination based on such differences. Further, it postulates that States ‘should’ co-operate in the promotion of economic growth throughout the world, “especially that of the developing countries.” The Declaration, it is maintained:

“...for the first time, attempts at a juridical formulation of the principle of international co-operation.”

1.9.5. Self-Determination

The Declaration reaffirms the principle of self-determination enshrined in the UN Charter and states that:

“...all peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development,”

and that every State has:

“...the duty to respect this right in accordance with the provisions of the Charter.”

1.9.6. Good Faith

The principle of good faith implies that every State has the duty to fulfill the obligations assumed by it in accordance with the Charter of the UN. The same has been incorporated under Article (2) read with Article 103 of the Charter. In wake of

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162 Mani, n.150 at p. 268.

163 See ibid. at p.272.

164 Article 2(2) reads, “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” Further, the Charter obligates upon the Organization to ensure that “states which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security” (Article 2(6)). Lastly, Article 103 reads, “In the event of a conflict between the obligations of the Members of the United Nations under the Present Charter and their obligations under any other international agreement, their obligations under
near consensus on the principal aspects of the principle, the formulation on the principle in the Declaration was adopted with more ease. The Declaration formulates, importantly, that every State has the duty to fulfill in good faith:

a) The obligations assumed by it “in accordance with the Charter of the United Nations”;

b) The obligations “under the generally recognized principles and rules of international law”;

c) The obligations under international agreements “valid under the generally recognized principles and rules of international law.”

On the legal significance of the Declaration, V.S. Mani pertinently observes that:

“... legal significance of the whole Declaration squarely rests on the jural consciousness -- opinio juris -- of States that they have been engaged in legal formulation of certain legal principles which form the core of international law, with a view to reinterpreting them as part of the Charter...It is not its form, but its substantive content and the process through which it has evolved that emphasize its 'law-creating' character.”

The Economic Charter and the Declaration importantly represent the crystallization of first systematic efforts undertaken by the international community to respond to the interests of the developing countries, whereby the latter were given an

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165 Resolution 2625 (XXV), n.36, Principle 6. However, the principle failed to focus on the important aspect of the theory of abuse of rights, and the interdependence of rights and obligations, which have been incorporated under Article 2 of the UN Charter. See Mani, n.150 at p.217.

166 Mani, n.150 at pp. 277-278; Also see Case Concerning Military and Para-Military Activities in and Against Nicaragua (Nicaragua V. United States of America), International Court of Justice Reports (1986) at pp.100-101.
authoritative voice in the formulation of the emerging international economic and political order.

SECTION-V

1.10. Sovereignty and International Environmental Law and Relations

The common vulnerability to environmental degradation is the driving cause for the growing internationalization of environmental concerns. Whether a certain matter is or is not solely within the domestic jurisdiction of a State is, as the Permanent Court of International Justice notes, “an essentially relative question; it depends upon the development of international relations.”

By this standard, protection of globally sensitive natural resources is a matter of legitimate international concern. The application of the principle of sovereignty in the context of environment has made an observer to comment that:

“... the rights that emanate from the concept of sovereignty are not unfettered freedoms but powers shared between the holder of the power and the community of States.”

In other words, sovereignty signals no longer a simple status negativus, a legal basis for exclusion; but has become the legal basis for inclusion, or of a commitment to co-operate for the good of the international community at large: Souverainete oblige.


The international political and legal system is grounded on the legal principle of State sovereignty. However, the environmental problems emerge from a class of problems whose solution is not possible within the traditional norms and practices of sovereignty, thus necessitating the modification of sovereign practices, and suppression of domestic activities of the States to preserve the environment outside their traditional jurisdiction. The most important measure of sovereignty in the context of environment relates to the extent to which the States agree to regulate their domestic actions for the conservation of environment. Thus a striking dichotomy emerges between the seamless web of ecological interdependence on one hand, and the fragmentation of the international political system on the other, which poses the greatest challenge to the effective management of international environment protection policies.

The need for internationalization of global environmental problems cannot be denied, but at the same time what is indispensable is the evolution of a just, equal global environmental international order in which the developing countries are given an effective voice and opportunity in its crystallization, leading to incorporation of their interests. In the post Stockholm period, though the developing countries have laid greater weight on the importance of protecting the environment and have been moving towards more sustainable patterns of economic development, at the same time, focus on development continues to be a major characteristic of the national policies adopted by these countries. They have maintained that development cannot be sacrificed as a means of stabilizing the global environment because, firstly, it is the industrialized countries which bear the greatest responsibility for existing environmental problems, and secondly, because the governments of these countries
face enormous domestic social and political pressures for pursuing the same. Consequently, they have viewed the emerging global consciousness on environment with skepticism, as they fear that environment may be used as a pretext to encroach upon their external and internal legal authority. In the words of Hedley Bull:

"It is no accident that ...it is the countries of...the Third World that are most insistent on the preservation of State sovereignty...They regard the institution of sovereignty as one which provides safeguard against attempts of more powerful States to wrest from them control of the economic resources they now enjoy. It has been by creating sovereign states in defiance of colonial powers, and by defending these States against the intrusion and penetration of them by so called 'neo-colonial powers' that the poorer nations have been able to achieve for themselves some measure of international justice and, in some cases, of human justice for their inhabitants."\(^{169}\)

A major development initiated by the developing countries in the realm of international environmental law and relations that has been instrumental in providing them with a shield to protect their economic and environmental sovereignty, and defend it from the onslaught of external intrusion, has been the crystallization of the principle of permanent sovereignty over natural resources.

1.11. Principle of Permanent Sovereignty over Natural Resources\textsuperscript{170}

1.11.1. Evolution of the Principle

Latin America, especially Chile, initiated the introduction of the principle of permanent sovereignty over natural resources [hereinafter principle of permanent sovereignty] in the UN in 1952, to be included as part of right of peoples to economic self-determination under the Draft Covenants-on Human Rights.\textsuperscript{171} Consequently, the General Assembly, in its Resolution 626 (VII) passed in December 1952, incorporated that "the right of peoples to use and exploit their natural wealth and resources is inherent in their sovereignty."\textsuperscript{172}

\textsuperscript{170} Many concerns and developments in the post world war period catalyzed the evolution of principle of permanent sovereignty over natural resources. One of the important concerns was the demand for \textit{economic independence and strengthening of sovereignty}. The decolonization process entailed a claim to economic self-determination, which was accorded importance in the context of a Draft Article on the Right of Peoples to Self-Determination to be included in the Human Rights Covenants. See Nico Schrijver, \textit{Sovereignty over Natural Resources: Balancing Rights and Duties} (Cambridge University Press, Cambridge, 1997) at p.6. Secondly, Latin American countries wanted to demonstrate their independence from the unequal relationships they had with USA, as maintained by S.R. Chowdhary, "These countries wanted to annul the many unfair inequitable legal arrangements under which foreign investors had obtained title to exploit resources in the past because they conflicted with the concept of permanent sovereignty." See Subrata Roy Chowdhary, "Permanent Sovereignty over Natural Resources" in Kamal Hossain and Subrata Roy Chowdhary (eds.), \textit{Permanent Sovereignty Over Natural Resources in International Law: Principle and Practice} (Frances Pinter Publishers, London, 1984) at p.1. Lastly, the newly independent countries of Asia and Africa, and the liberation movements in non-self governing territories, wanted to assert an independent political and economic position to avoid joining sides with the western and eastern blocs in wake of the emerging cold war scenario, later termed 'Non-Alignment.' For the background of the Non-Aligned Movement, see J.J.G. Syatabuw, \textit{Some Newly Established Asian States and the Development of International Law} (Martinus Nijhoff, The Hague, 1961) at p.2 and pp. 4-17, "The Non-Aligned Movement at the Cross-Roads: The Jakarta Summit. Adapting to the Post - Cold War Era", \textit{Asian Yearbook of International Law}, No. 3 (1994) at pp.132-35.

\textsuperscript{171} Chile proposed –

"The right of the peoples to self-determination shall also include the principle of sovereignty over their natural wealth and resources. In no case may a people be deprived of its means of subsistence on the grounds of any rights that may be claimed by other States." UN Doc. E/CN.4/L.24, 16 April 1952.

Different connotations have been associated with the meaning of the concept of permanent sovereignty in the course of evolution of the principle.

In the period 1952-1962, the emphasis under the principle has been on the formulation of the right of peoples to use and exploit their natural resources as a right inherent in their sovereignty. The recognition of this right as an important component of the right of self-determination gradually developed in the debates connected with the Draft International Covenants on Civil and Cultural Rights and was eventually incorporated in common Article 1 of both the International Human Rights Treaties of 1966. At the same time, a full survey of the status of the principle of permanent sovereignty was being conducted by the United Nations Commission on Permanent Sovereignty over Natural Resources, which emphasized, inter alia, that the right to self-determination includes permanent sovereignty over natural wealth and resources. The efforts culminated in the adoption of Resolution 1803 (XVII) of 14 December 1962.

In the period 1963-70, the principle was firmly ingrained in the developmental and social context of the emergent independent States with the passing of the General

173 See International Covenants, n.93.


175 UN Doc. A/AC.97/10, 25 May 1961 – Draft Resolution submitted by the Commission on Permanent Sovereignty over Natural Resources. Nico Schrijver contends that the 1962 Declaration on Permanent Sovereignty over Natural Resources is widely considered as “embodying a balance between the interests of capital-exporting and capital-importing countries, and between permanent sovereignty and the international legal duties of States.” Schrijver, n.170 at p.125.
Assembly Resolution on Permanent Sovereignty over Natural Resources. The Resolution also highlighted the importance of 'indigenous' endeavors to exploit and market the natural resources. Thus at this stage, there was, both in conceptual and legal terms, “a shift from the self-determination of peoples to the sovereignty of States.”

From the mid-seventies, the focus of debate on the principle shifted to its linkage with the economic development of developing countries and to the question of international co-operation. Thus, at the Stockholm Conference in 1972, at the instance of the developing countries, the issue of environment was linked with development in the entire structure of the Stockholm Declaration, which incorporated twenty-six principles. At the same time, the provisions relevant to permanent sovereignty under the Declaration on the Establishment of a NIEO and the Program of Action on the Establishment of a NIEO, extended the scope of permanent sovereignty to not only “natural resources” but to “all economic activities.” Further, Article 2 of the Economic Charter affirmed the “full sovereignty” of States over their wealth and


177 See Schrijver, n.170 at p.88.

178 See ibid. at p.166.

179 See ibid. at p.167.


181 Declaration of the United Nations Conference on the Human Environment, in Report of the United Nations Conference on the Human Environment, ibid. The developing countries were apprehensive of the outcomes of the Conference and feared that environment could be used as a pretext for further deteriorating their terms of trade with the developed countries.

182 See UN Docs. A/AC.166/SR.21, at p.2 and A/AC.166/L.50 and L.51, 30th April 1974 – Draft Resolutions adopted by the Ad Hoc Committee, which were later adopted by the United Nations General Assembly.
natural resources.\textsuperscript{183} Moreover, the principle has been once again explicitly placed in the developmental context in Principle 2 of the Rio Declaration,\textsuperscript{184} which emphasizes the need for exploitation of natural resources in accordance with the developmental needs of the developing countries.\textsuperscript{185}

Thus by the seventies, a perceived linkage of the statist notion of the principle to the global approach to management of natural resources was visible. At this time, there was an emerging international concern over the global depletion of natural resources and environmental degradation that engendered the need for conservation of these resources. Thus, Principle 21 of the Stockholm Declaration emphasized not only on the principle of permanent sovereignty, but also incorporated the principle of state responsibility for trans-boundary environmental damage.\textsuperscript{186} In totality, the Stockholm Declaration stipulated, "Sovereignty over natural resources must be exercised in an environmentally sustainable way and for the benefit of both the present and future

\textsuperscript{183} Article 2(20) of the Economic Charter reads:
"Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal over all its wealth, natural resources and economic activities." UN Doc. A/C.2/SR.1648, 6\textsuperscript{th} December 1974 at p. 439. By inserting the word 'shall', an assertive and mandatory connotation was attached to the right to 'freely exercise full sovereignty.' Further, the scope of permanent sovereignty was extended to include 'wealth' in general (previously only natural wealth) and economic activities.


\textsuperscript{185} It repeats the Principle 21 of the Stockholm Declaration except the first part, which proclaims the sovereign right of States to exploit their own natural resources pursuant to their own environmental and developmental policies (emphasis added). According to Nico Schrijver, "this phrase expresses the conviction of developing countries that their environmental policies cannot over ride their developmental policies, especially not as regards the exploitation of natural resources." Schrijver, n.170 at p.136.

\textsuperscript{186} Principle 21 reads:
"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign rights to exploit their own resources pursuant to their environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." The text placed sovereignty over natural resources in an environmental context, but it did not substantially limit it ("pursuant to their own environmental policies").
generations.»187 Over the years following the Conference, the concept has been more firmly engrained in the environmental context,188 which can be judged from the nature of the various UN Resolutions that have gradually elaborated guidelines for nature management, conservation and utilization of natural resources within the States, at the same time recognizing permanent sovereignty over natural resources.189

1.11.2. Rights and Duties of States

The key legal rights of States emanating from the principle of permanent sovereignty are:190

(a) To possess, use and freely dispose of their natural resources;
(b) To determine freely and control the prospecting, exploration, development, exploitation, use and marketing of natural resources;
(c) To manage and conserve natural resources pursuant to national developmental and environmental policies.191

The important correlative duties of the States are:192

187 Schrijver, n.170 at p.127.
188 See ibid. at p.168.
190 See Schrijver, n.170 at p.393.
191 The other important legal rights are -To regulate foreign investment, including a general right to admit or to refuse the admission of foreign investment and to exercise authority over the activities of foreign investors, including the outflow of capital; and to nationalize or expropriate property, of both nationals and foreigners, subject to international law requirements.
192 See Schrijver, n.170 at pp. 393-394.
(a) The duty to exercise permanent sovereignty-related rights in the interest of national development and to ensure that the whole population benefits from the exploitation of resources and the resulting national development; 193

(b) The duty to have due care for the environment;

(c) Duty to recognize the correlative rights of other States to trans-boundary resources and at least to consult with them as regards concurrent uses with a view to arriving at equitable apportionment and the use of these resources;

(d) Duty to observe international agreements, to respect the rights of other States and to fulfill in good faith international obligations in the exercise of permanent sovereignty.

1.11.3. The Legal Significance of the Principle of Permanent Sovereignty over Natural Resources

The genesis of the principle of permanent sovereignty can be discerned in the various UN General Assembly Resolutions. Thus, like other General Assembly Resolutions, the declarations on the principle provide evidence of customary law in as much they formulate a new *opinio juris communis* with respect to the principle of permanent sovereignty. 194 Further, main elements of the principle of permanent sovereignty have been included in several multilateral Treaties, 195 and recognized in a

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193 This includes the duty to respect the rights and interests of indigenous peoples and not to compromise the rights of future generations.

194 See Schrijver, n.170 at p.373.

series of Arbitral Awards.\textsuperscript{196} Thus it goes without saying that the principle of permanent sovereignty has a firm legal status in international law and is now widely accepted and recognized principle of international law.\textsuperscript{197} Highlighting the importance of the principle on permanent sovereignty, which has been codified in Principle 21 of the Stockholm Declaration, Phillipe Sands has remarked:

"Principle 21 (of Stockholm Declaration) is the cornerstone of international environmental law."\textsuperscript{198}

1.12. Conclusions

The chapter built up a theoretical framework on sovereignty. On a broader plane, it analyzed three aspects of the principle of sovereignty. The first aspect dwelled on the evolution of the concept and the general characteristics associated with it in context of its application in international law and relations. The second aspect


\textsuperscript{197} See Schrijver, n 170 at p. 377. However, the Resolution which led to concretization of the principle from being a political claim to a principle of international law is subject to controversy. Nico Schrijver views the 1962 Declaration as the hallmark Resolution that metamorphosed the claim to a principle of international law. He contends that the “Declaration is widely considered as embodying a balance between the permanent-sovereignty rights and international legal duties of States; its preparation was careful, its adoption was virtually unanimous, and it received an extensive follow-up.” Ibid. at p.372. On the other hand B.S. Chimni, keeping in mind the neo-colonial character of contemporary international law, considers the Economic Charter as the hallmark of the evolutionary process for the same. See B.S. Chimni, “The Principle of Permanent Sovereignty Over Natural Resources: Towards A Radical Interpretation” Review Article, \textit{Indian Journal Of International Law}, Vol. 38, No.2 (1998) at p.213. Clarifying this stand, Chimni contends that “the main criticism addressed against Article 2(2) of the Charter of Economic Rights and Duties of States which dealt with the problem of nationalization and expropriation of private property was the absence of any reference to the applicability of international law to foreign investment.” See, Eduardo Jimenez de Arechaga, “State Responsibility for the Nationalization of Foreign-Owned Property”, in Richard Falk et al (eds.), \textit{International Law: A Contemporary Perspective} (Boulder, Col., 1985) at pp. 546-59. Cited in ibid. at p.213.

\textsuperscript{198} Phillipe Sands, \textit{Principles of International Environmental Law} (Manchester University Press, Manchester, 1995) at p.186.
related to the application of the principle of sovereignty under the UN Charter, which
enshrines those principles that govern the law of inter-State relations. In the third
instance, the chapter analyzed the endeavors undertaken by the developing countries,
reflected in the various General Assembly Resolutions, to interpret the principle in the
light of changed circumstances since their independence.

The theoretical framework on sovereignty, as analyzed under the chapter, led
to three conclusions. Firstly, the meaning of the concept implying supreme State
power emerged in the context of internal chaotic political and economic conditions
prevalent within the territorial boundaries during the middle ages. However, when the
concept was placed in the international context, the growing internationalization of
problems faced by the States led to the de-absolutization of the principle and
emergence of the concept of relative sovereignty. The pervading spirit of the norm of
relative sovereignty is the principle of sovereign equality of all States. It implies that
the sovereignty of States can be subordinated to an objective body of international law
but not to the authority of another sovereign power, for in that case, it will result in
diminution of the sovereignty of that State to the one under whom it is subjected to.
Secondly, the act of a State to join an international agreement and undertaking legal
obligations by surrendering certain prerogatives of its sovereignty is an expression of
its sovereign will to do so. On a realistic plane, such an act is justified on the ground
of promotion of its national interest. The national interest, as conceptualized by Laski,
implies promotion of the interests of the members of community, which it
legitimately represents on the international plane. Thus, it follows that an act of
joining an agreement necessarily must lead to promotion of the interests of the
community that the State represents. Lastly, since inter-State relations are governed
by the principle of equality, the limitations imposed by an agreement on the freedom of action of its member States should also be equal. Thus, it follows from the above premise that the moment equality of States under the agreement is made relative, there would arise a distinction between the sovereignties of its member States, which in the penultimate act would result in making the sovereignty of those States that had been rendered the least 'relative', 'relatively absolute' once again. Thus, it leads to the conclusion that the legal regime under the Treaty must squarely rest on the principle of sovereign equality of its member States.

From the above discussions, it can be argued that to the extent the subordination of States to the obligations emerging from the regime are equal, and are incorporating the interests of its States, the principle of relative sovereignty is affirmed under it.

The above theoretical framework on sovereignty, when analyzed in the context of the UN Charter, led to the following observations:

The normative structure of the organization is based on the principle of sovereign equality, but its institutional structure has strong oligarchic tendencies, which leads to subordination of sovereignty of less powerful States to that of the Great Powers. The Charter incorporates only the norm of 'legal equality,' and is silent on the norm of 'political equality.' Thus it is concluded that under the UN Charter, the sovereignty of the developing countries is not subject to an objective body of international norms, but to those norms which reflect the unequal power relationships between them and the industrialized countries, and consequently, the interests of the 'more powerful' are being promoted at the cost of the interests of the developing countries that are being disproportionately curbed.
The discussion in the fourth section followed the third section, as it highlighted the need confronted by the developing countries in the post Charter era, to reinterpret the principle of sovereign equality to establish a more egalitarian and participative international order. It was in this context that the General Assembly adopted the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States, the Declaration on Establishment of NIEO and the Economic Charter. The Economic Charter and the Declarations on Friendly Relations were important milestones in the endeavors by the developing countries to codify a more just and egalitarian international political, legal and economic order.

The last section, importantly, analyzed the application of the concept of sovereignty in the realm of international environmental law and relations from the perspective of the developing countries. The global nature of environmental problems calls for qualification of the State sovereignty and necessitates international cooperative endeavors to halt the deterioration of natural resources. Despite a growing consciousness among the developing countries to undertake conservation measures, they have been skeptical of the emerging international environmental agenda, as they view the emerging environmental concerns as intruding on their developmental policies and eroding their sovereignty over natural resources. The evolution and development of the principle of permanent sovereignty was a part of their struggle to reaffirm their sovereignty over domestic natural resources and economic activities.

The above broad framework on sovereignty in the realm of international law and relations, and environment in particular, and the conclusions derived thereof, are of paramount importance in analyzing the research problem i.e. analyzing the impact of obligations emerging from the climate change regime on the sovereignty of
developing countries. The inferences derived from the discussions in the chapter indicate that the sovereignty of developing countries under the climate change regime is affirmed if:

a) The regime incorporates the national interests of the developing countries;
b) The regime rests squarely on the fundamental principle of ‘relative sovereignty’ or ‘sovereign equality’ of its member States.

In the context of climate change regime, the main national interests of the developing countries can be identified further as:

a) The creation of a predictable, implementable and equitable architecture for combating global climate change that can stabilize atmospheric concentrations of green house gases [GHGs] within a reasonable period of time. The prevention or mitigation of the problem of climate change is the prime concern for the developing countries, for it has been increasingly established that the maximum impact of the adverse climate change would be borne by the masses residing in these countries.

b) At the same time, no legal commitments should be imposed on them to curb GHG emissions at this stage. Three reasons can be cited in its favor: (i) Developing countries are at a critical stage of economic development, and imposition of commitments to curb GHG emissions would tantamount to further pushing down their economies and bringing down the standard of living of its teeming poverty-ridden population. (ii) The problem of global warming has, for most of the part, been caused by the unrestricted GHG emissions of the industrialized countries, and in accordance with the principles of ‘equity’ and ‘state responsibility,’ it is their responsibility to rectify the problem. (iii) It is argued that the per capita GHG emissions in developing countries are very low as compared to that in the industrialized countries.

c) There should be an adequate and predictable flow of financial and technological resources to the developing countries to enable them to implement their obligations under the regime to undertake measures
relating to mitigation and adaptation, including finances for compensation
for the damages caused by phenomenon of global warming and impacts of
implementation of response measures under the regime.
d) The regime should carve a comprehensive and implementable framework
on adaptation and capacity-building for the developing countries.
e) The norm of sustainable development should be the central goal of the
global climate change regime.

Regarding incorporation of the principle of 'sovereign equality‘ under the
regime, it is worthwhile to mention that the regime is progressive as it incorporates
the principle of 'equity,' which is reflected in the principle of 'common but
differentiated responsibilities and respective capabilities.' Thus the regime, on the
normative plane at least, moves much ahead of the principle of 'sovereign equality'
by incorporating the principle of 'equity' and giving a 'differential treatment' to the
developing countries in wake of their low levels of economic development. In
consonance with the principle of 'common but differentiated responsibilities and
respective capabilities,' it is only the industrialized countries which are legally obliged
to reduce their GHG emissions by 5.2 percent of their 1990 levels in the first
commitment period 2008-2012 under the Kyoto Protocol. Further under the regime,
for the first time, a legal mandate has been laid for the industrialized countries to
transfer financial and technological resources to the developing countries to undertake
climate change mitigation and adaptation measures. However, mere incorporation of
'equity' in the normative structure of the regime provisions does not ensure 'equity'
in the functioning of the regime. What is important therefore, is an analysis of the
substantive provisions and the actual implementation of the regime, which will serve
as the real litmus test to gauge the application of the principle of 'sovereign equality'
and 'equity' in the context of the climate change regime.
The next chapter builds groundwork on the evolution of the climate change regime from the perspective of the developing countries, highlighting the role played by them in the negotiations and analyzing how they have assumed obligations under the regime. It will provide a broad overview of the provisions under the climate change regime, followed by other chapters that will dwell in detail on those aspects of the regime, which have an impact on the interests of developing countries.