

Chapter II

The state system

- The state is ***basic unit*** of the international legal system.
- The State has international legal personality; it holds rights and duties, ***can sue and be sued*** in international legal order.
- States are ***equal*** before the law; and it is seen as an ***indivisible*** whole.
- State is different from government;

Elements of state

- a. Population
- b. Territory
- c. Government
- d. Sovereignty

State Sovereignty

Definition of Sovereignty and History

A State's sovereignty means

- ❖ its independence,
- ❖ Its ultimate authority, a master with no master
- ❖ freedom and autonomy

State sovereignty has two core elements.

- 1) the State has exclusive control over its territory and its internal affairs. (Internal sovereignty) Other States cannot go into Ethiopian territory without Ethiopia's permission.
- 2) States are autonomous entities and, in principle, cannot be bound to an obligation without their consent. Treaties are not imposed on Ethiopia but rather entered into upon Ethiopia's free consent. (External Sovereignty)

Implications on international relations

- Indivisibility (a state speaks with one voice)
- Non interference in internal matters
- Exclusive control of its own internal affairs

Art 2/7/ of the **UN Charter**

Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States (a **UN General Assembly resolution** adopted in 1970, not a treaty):

- [n]o state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are in violation of international law.

The treaty of Westphalia (1648)

- the Treaty recognized independent territorial States and gave State governments exclusive authority to deal with their internal affairs. The confirms the birth of the modern *secular* state.
- This gives us some history on the development of the first aspect of sovereignty – the exclusive control by the sovereign over internal affairs.

Erosion of State Sovereignty

- Though state sovereignty is believed to be a background principle in international law, many people have argued that States are no longer free and sovereign; that sovereignty has been eroded by **international laws and international bodies**; that such laws and such bodies tend to restrain the activities of States from the outside.
- Imagine, for example, that the Dispute Settlement Body of the World Trade Organization decides a case that in effect strikes down a domestic law of a Member State. The WTO is saying to that State's government, "You cannot have this law." Must a State change its laws to conform to the opinions of some panelists sitting at the WTO?

- Imagine how you might raise a State sovereignty argument in an international case. Let us say that Egypt is trying to prevent Ethiopia from building a hydro-electric dam on the Nile river. As representative for Ethiopia, you might say the following: “This portion of the Nile is in Ethiopian territory. According to the principle of State sovereignty, the Ethiopian government has exclusive control over its own territory. Therefore it is our sovereign discretion whether to build the dam or not.”
- On the other hand, Egypt may assert various treaty rights to the water that flows from Ethiopia into Egypt and furthermore may remind Ethiopia of its obligation under international custom to use its water resources in such a way as to not bring harm to downstream neighbors. How do we resolve such a conflict between State sovereignty and other international laws.

Jessica Matthews, *Power Shift*, 1997.

- The absolutes of the Westphalian system – territorially fixed states where everything of value lies within some states' borders; a single, secular authority governing each territory and representing it outside its borders; and no authority above states – are all dissolving.
- Increasingly, resources and threats that matter, including money, information, pollution, and popular culture, circulate and shape lives and economies with little regard for political boundaries.... Even the most powerful states find the marketplace and international public opinion compelling them more often to follow a particular course...

Lieutenant Colonel Jeffrey K. Walker, *SPEECH AND COMMENT: The Demise of the Nation-State, the Dawn of New Paradigm Warfare, and a Future for the Profession of Arms*, 2001.

In contrast, the *post-Westphalian* idea is that:

- 1) what a sovereign does to his own people isn't *necessarily* his own business – and other states may rightfully intervene under certain conditions;
- 2) *non-state entities* such as international organizations, regional alliances, and non-governmental organizations have a place at the international table; and
- 3) there are some *universally applicable ideas* that no one gets to reject, such as the inherent right of persons to fundamental human rights, the right of peoples to self-determination, and perhaps the right of everyone to democratic governance and environmental protection.

- First and foremost among these forces is a rapidly broadening and deepening ***global economic interdependence***. The paradigm example of a surrender of state sovereignty in the economic arena is, of course, the European Union... Today, the EU is moving almost inexorably toward deeper social and political union, with only a few self-selected and self-marginalized laggards like the United Kingdom and Denmark resisting. Soon, even one of the most emotional and tangible symbols of state sovereignty – national currency and coinage – will either disappear or undergo a radical transformation within the Euro monetary area. Even the brass in your pocket will no longer identify you as a Frenchman or a Spaniard or a German.

- the WTO, where trade disputes are authoritatively adjudicated and effectively enforced; the World Intellectual Property Organization, where international patent and trademark policy is set and enforced; meetings of the world's major central bankers, where interest rate and inflation targets are set; the G-8, where much international economic policy is hammered out; the association of the world's stock markets, where international trading and settlement rules are determined; transnational anti-trust enforcement, that makes it increasingly impossible for state governments to coddle and protect national corporate darlings; the domination of world investment flows by a handful of multinational banking conglomerates, whose allegiance is to shareholders and bottom lines, not sovereigns; or development and marketing of drugs by just a few multinational pharmaceutical companies, with enormous impact on everything from the worldwide price of aspirin to the availability of anti-AIDS drugs in Africa

- the free and rapid movement of ideas and information, with the result that there just are not too many secrets any more. Every corner of the globe is subject to the 24-hour news cycle – today even in the most remote reaches of the world, one can find a hotel with CNN. The internet and the world wide web have, at least as far as information and ideas are concerned, completely eliminated borders as well as distance.
- The second, and I think more important effect of this revolution in the movement of people, information, and ideas is that what we are now beginning to witness is the capability for the formation of *instantaneous transnational communities of interest* around almost any issue – big or small. It's simply no longer necessary to have a state sponsor for an interested group of people to effect changes within the international community. Anthony Lake, former national security advisor to President Clinton, described this phenomenon as "technology enabling local groups to forge vast alliances across borders, and . . . a whole host of new actors challenging, confronting, and sometimes competing with governments on turf that was once their exclusive domain."

- So the supposed sovereignty of our beleaguered nation-states continues to be undermined by increasing economic interdependence, the instantaneous and unimpedable flow of information and ideas, and the centrifugal forces of separatism. Of course, this is not to gainsay any future role for the state as we know it--just a greatly changed and vastly reduced role.

Theories of State Behavior