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SOVEREIGNTY AND LEGAL PERSONALITY: A LESSON FROM EUROPEAN UNION'S EVOLUTION TO SUPRANATIONALISM

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Abstract

Sovereignty remains a pivotal topic in international law, and regionalism introduces fresh challenges to traditional concepts of sovereignty, particularly when economic interests prompt states to cede aspects of their sovereignty. This paper explores the changing notion of state sovereignty in the context of economic globalization and examines the legal personality in international relations. It seeks to understand how sovereignty and legal personality have evolved in the 21st century amid increasingly globalized international economic relations. The research employs both historical and analytical methods, following doctrinal research approaches. It utilizes a historical analysis to examine international treaties and agreements, shedding light on the development and evolution of international economic law institutions. Furthermore, the paper discusses the transformation of the European Union, which illustrates how regional integration can transcend traditional state boundaries. This discussion includes an examination of the impact of Brexit on debates concerning state sovereignty and the notion of sovereignty waivers. The paper concludes by addressing the international legal personality of regional bodies, with a comparative analysis of the EU and ASEAN. Initially envisioned as a new governance structure, the EU has gradually challenged the traditional state concept established by the Peace of Westphalia in 1648, driven by its member states' ambitions to create a supra-state entity. The European Union thus presents a novel model of sovereignty, contrasting sharply with the Westphalian model and differing significantly from ASEAN's intergovernmental approach in terms of sovereignty and legal personality.

A. Introduction

In the aftermath of World War II, state sovereignty is pivotal, especially in the globalized world. It is even more crucial following the China[1] and the United Kingdom's withdrawal from the European Union.[2] Nevertheless, state sovereignty often links to the considerable debate on the domestic power to manage and legislate under the right to self-determination. As new underdeveloped and developing countries emerge in the post-decolonization era, the ongoing debate transcends the simple framework of colonialism and imperialism. The challenging interplay between globalism and emerging *hypernationalism* has become a key point of contention in the national interests of industrialized countries. This dynamic also sparks critical discussions within developed nations concerning the relevance and application of the Westphalian model of state sovereignty.

The globalized world requires every nation to collaborate with others for peacekeeping purposes and economic reasons. A globalized world encourages each to promote reciprocal relations, especially after World War II, primarily concerning economic matters. Although the discussion on sovereignty taps on its implications to domestic affairs,[3] it has never been understood as an absolute matter.[4][5] For instance, international security can be achieved if each state engages in treaties or other particular consensual agreements.

Cross-border relationship also requires cooperation among states, particularly in terms of economic activity. World Trade Organization (WTO) is the realization of the importance of economic relations among states. Each state member of WTO has a trade institution to develop negotiation forums and settle trade disputes. The establishment of the European Union also invokes economic interdependence among states in Europe by applying a single commercial policy within member states. This establishment has brought a new trend in domestic and international law, where many Domestic policies were gradually shifted to supranational power. The EU, serving as the regulator of this common policy, illustrates how globalization is compelling a redefinition of state sovereignty among its member states.

This paper examines the impact of economic globalization on state sovereignty and explores the role of the European Union (EU) as a transformative regional entity within the global system. It reviews literature on sovereignty and legal personality in international relations, particularly focusing on the EU's exercise of its powers. The EU, conceived as a new governance structure, challenges the traditional state concept rooted in the Peace of Westphalia (1648). Despite setbacks like the rejection of an EU constitution due to sovereignty concerns, the EU continues to represent a novel governance model. This research employs historical and analytical methodologies, including doctrinal research, to investigate international treaties and economic law institutions. Primary sources include declarations, charters, treaties, books, case law, and academic journals. This paper is divided into three parts: an historical overview of state sovereignty, an analysis of sovereignty in international relations in a globalized context, and a discussion on the spectrum of international legal personality.

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1 While Chinese leaders under the Chinese Communist Party (CCP) embrace globalization, China has attempted to control and regulate its socio-economic and political effects domestically with the aim to counter the so-called "negative" effects through the twin vehicles of nationalism and sovereignty. Andrew Coleman and Jackson Nyamuya Maogoto, "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World," *Asian Journal of International Law* 3, no. 2 (July 2013): 240, https://doi.org/10.1017/S2044251313000179.

2 Michael Gordon, "Referendums in the UK Constitution: Authority, Sovereignty and Democracy after Brexit," *European Constitutional Law Review* 16, no. 2 (June 2020): 213, https://doi.org/10.1017/S1574019620000152.

3 There is no clear definition of sovereignty. It is the power of an individual state to act independently. Karen E. Bravo, "Challenges to Caribbean Economic Sovereignty in a Globalizing World," *Mich. St. U. Coll. L. Int'l L. Rev.* 20 (2011): 34.

4 Vaughan Lowe, "Sovereignty and International Economic Law," in *Redefining Sovereignty in International Economic Law* (Oxford; Portland: Hart, 2008), 77.

5 Matthias Herdegen, *Principles of International Economic Law* (OUP Oxford, 2013), 65.

B. Discussion

1. Revisiting State Sovereignty

State sovereignty is a core constitutional doctrine that defines a state with a uniform legal personality, implying that all sovereign states are equal and their sovereignty is recognized by other states and state organizations under international law.[6] The concept of sovereignty represents legal competence and provides a rationale for its exercise[7], yet it is fraught with a complex and contentious history. This paper argues that sovereignty should not be conflated with any specific substantive right; rather, it is a foundational principle related to jurisdiction, encompassing legislative authority over a national territory.[8] Sovereignty also involves respect for territorial integrity and jurisdiction, which manifests as sovereign state immunity based on customary international law, independent of explicit consent from other states. In international relations, state sovereignty is crucial for maintaining constitutional independence, allowing states to manage their domestic affairs without external pressure or influence, emphasizing constitutional autonomy as outlined by James, who views the constitution as the supreme authority within the national framework.[9]

Crawford introduces sovereignty as a legal, absolute, and unitary condition, implying that the state is not subordinate to another sovereign state.[10] Absolute sovereignty is either present or absent, and a sovereign state is a supreme authority within the national jurisdiction.[11] This principle applies to all states, whether the unitary or federal constitutional structure, due to a sole authority in external relations remaining in the central government.[12] Otherwise, it would be more than one state, each with a unitary attribute.[13] In federal states, external affair is under the responsibility of the central government.[14] In this regard, the federal government has conferred the power on behalf of the government into international relations to satisfy the local and federal government's interests.[15] Therefore, while a federal system grants significant powers to local or regional governments, it typically reserves control of external relations to the federal government.

Sovereignty had been a substantial monopoly of power for the highest authority before It evolved as the nation-state in the 1648 Treaty of Westphalia referred to as the Westphalian sovereignty.[16] The US Government official has defined the concept of sovereignty as follows:

> [H]istorically, sovereignty has been associated with four main characteristics. First, a sovereign state enjoys supreme political authority and monopoly over the legitimate use of force within its territory. Second, it is capable of regulating movements across its borders. Third, it can make its foreign policy choices freely. Fourth, it is recognized by other governments as an independent entity entitled to freedom from external intervention. These components of sovereignty were never absolute, but together they offered a predictable foundation for world order. What is significant today is that each of these components---internal authority, border control, policy autonomy, and non-intervention---is being challenged in unprecedented ways.[17]

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6 James Crawford, *Brownlie's Principles of Public International Law* (OUP Oxford, 2012), 447.
7 Ian Brownlie, *Principles of Public International Law* (Clarendon Press, 1973).
8 Crawford, *Brownlie's Principles of Public International Law*, 448.
9 Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World*, Cambridge Studies in International Relations 12 (Cambridge: Cambridge University Press, 1999), 32.
10 *Ibid.*
11 *Ibid.*
12 *Ibid.*
13 *Ibid.*
14 *Ibid.*
15 *Ibid.*
16 John H. Jackson, "Sovereignty: Outdated Concept or New Approaches," in *Redefining Sovereignty in International Economic Law* (Oxford; Portland: Hart, 2008), 8.
17 *Ibid.*

Some discussions about sovereignty's role focus on the principle of subsidiarity,[18] where governmental functions should be allocated among hierarchical government institutions. Some believe that a higher government level requires special justification to achieve the desired goals.[19] After World War II, the concept of sovereignty evolved, particularly through the integration of Europe with the establishment of the European Communities. This transformation of sovereignty was marked by developments such as the customs union and market integration. Additionally, sovereignty expanded to include issues of human rights, reflecting a shift towards international justice in a globalizing world. This transition moved human rights from a constitutional framework to an international one, impacting the enforcement and realization of these rights through international legal mechanisms. Notably, the enforcement of human rights at both municipal and supranational levels was further influenced by the creation of the European Court of Justice within the EU. This evolution presents significant challenges to traditional notions of sovereignty, especially in terms of state power and territorial rights.

In trade policy, the concept of sovereignty often undergoes scrutiny, exemplified by the World Trade Organization (WTO). The WTO's membership includes not only sovereign states but also separate customs territories that possess full autonomy in external commercial relations, such as the Hong Kong Special Administrative Region.[20] The notion of political sovereignty, as presented in democratic constitutional law, diverges from the legal bases of constitutional sovereignty and the sovereignty of democratic entities and individuals. This perspective supports the argument that the increasing economic, political, legal, and other constraints on political sovereignty justify the current trends in globalization. Such trends involve reallocating governmental powers to democratic populations, indigenous peoples, international organizations, and individual human beings as legal bearers of inalienable rights. This dynamic transformation in international relations and international law creates tension with the principle of sovereign equality among UN member states, a fundamental constitutional principle enshrined in Article 2 of the UN Charter.[21]

a) Territorial Sovereignty and Non-Intervention

Territorial sovereignty is the physical boundary of the sovereignty among states as trust territory (*nullius* and *res communis).* A *res nullius* consists of an area legally susceptible to acquisition by states but not placed under territorial sovereignty.[22] A *res communis,* comprising the high seas (which for present purposes include exclusive economic zone) and outer space, cannot be placed under sovereignty.[23] State sovereignty is founded on both the government and the population within its clearly defined physical and social boundaries. The state's legal competence and the rules that protect it are predicated on the existence of this stable, physically identifiable, and typically legally demarcated base.[24]

Sovereignty and sovereign equality allow each state to freely determine its domestic affairs without external interventions. The non-intervention principle is universally recognized in the international law. The International Court of Justice (ICJ) refers to the principle of non-

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[18] European Union, "The Lisbon Treaty: The Principle of Subsidiarity, the European Summaries of EU Legislation," accessed April 15, 2015, http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0017_en.htm.

[19] Jackson, "Sovereignty," 9.

[20] *Ibid., 10.*

[21] Ernst-Ulrich Petersmann, "State Sovereignty, Popular Sovereignty and Individual Sovereignty: From Constitutional Nationalism to Mutilevel Constitutionalism in International Economic Law?," in *Redefining Sovereignty in International Economic Law* (Oxford; Portland: Hart, 2008), 28.

[22] Crawford, *Brownlie's Principles of Public International Law*, 203.

[23] *Ibid.*

[24] *Ibid., 206.*

intervention as the freedom of choices without external coercion. The principle forbids all states or groups of states to from making direct and indirect intervention to other states' internal and external affairs.

The principle of non-intervention closely relates to a state's freedom to choose its political, economic, social, and cultural systems, as well as to formulate its foreign policy. It considers coercion, particularly the support of subversive or terrorist activities without direct force, as wrongful intervention.[25] While economic pressure typically lacks the tangible physical component required to qualify as intervention, the debate persists on whether such pressure can equate to physical coercion. The 1974 Charter of Economic Rights and Duties of States prohibits economic measures aimed at subjugating one state to another in exercising its sovereign rights.[26] Furthermore, the principle has been contentious in the context of conditions imposed by the World Bank and other lenders, which link financial benefits to structural reforms. Although there is no entitlement to unconditional financial aid, these conditions are permissible as long as they do not compromise the core of a nation's self-determination.[27]

b) Sovereign Immunity of State

State immunity, which protects governments from the jurisdiction and enforcement actions of foreign courts, originates from the principle of sovereign equality, often expressed as "*par in parem non habet imperium*,"[28] meaning no sovereign can rule over another. As a result, one country's courts cannot adjudicate cases against another nation's government or interfere in its internal affairs. This immunity extends to both judicial and administrative proceedings and the enforcement of judgments or arbitral awards in other states.[29] However, states can waive this immunity either before any disputes arise or once judicial proceedings have begun in the issuance of state bonds to reassure and attract creditors.[30]

Historically, the doctrine of absolute immunity prevailed under classic customary law, allowing states to claim immunity for nearly all their activities, with only a few exceptions. However, modern international law has shifted towards a more restrictive approach, distinguishing between sovereign acts (*acta iure imperii*), which remain immune, and commercial activities (*acta iure gestionis*)[31] which do not. This means that when states engage in business transactions akin to private individuals, they are subject to the jurisdiction of foreign courts, similar to other commercial actors. This restrictive model of immunity has been adopted in several international agreements and national laws, including the European Convention on State Immunity of 1972, the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004, the US Foreign Sovereign Immunities Act of 1976, and the British State Immunity Act of 1978.[32]

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25 Herdegen, *Principles of International Economic Law*, 68.
26 *Ibid.*
27 Ibid., 68–69.
28 *Ibid., 69.*
29 Richard Schaffer, Filiberto Agusti, and Beverley Earle, *International Business Law: A Conceptual Approach* (New Delhi: Cengage Learning India, 2009), 78.
30 Herdegen, *Principles of International Economic Law*, 69.
31 The concepts of *jure imperii* and *jure gestionis* are two things different. First deals with the state's action to enter into international agreements with other states or international organizations. However, the second deals with the entity which may enter into a private contract with domestic law's private entity. In the context of intergovernmentalism, it describes two instances: the EU, which has *jure imperii*. The second is ASEAN, which has *jure gestionis* so that ASEAN is treated as a private entity. Hikmahanto Juwana, "ASEAN's Legal Personality," 2010, http://www.thejakartapost.com/news/2010/08/26/asean%E2%80%99s-legal-personality.html.
32 Herdegen, *Principles of International Economic Law*, 69.

International organizations may also invoke immunity under certain circumstances. As a rule, the agreement between the organization and the host state or the founding treaty will define the extent of immunity. The scope of immunity in customary law is highly disputed. A more inclusive perspective might allow immunity for all actions encompassed by the objectives stated in its founding treaty. This approach may blur the lines between sovereign and commercial acts, raising concerns about the fairness of such broad immunities. It is questionable why an international organization should possess greater immunities than the states that established it. Consequently, the immunities granted to international organizations under customary law should align with those of their member states, specifically excluding commercial activities.[33]

c) Sovereignty and International Organizations

The concept of sovereign equality among states is impacted by the institutional structures of international organizations. For instance, in organizations that employ weighted voting systems, decisions and binding rules can be made without the explicit consent of all member states.[34] Nevertheless, by joining such organizations, each member state has tacitly agreed to this process. This arrangement upholds the principles that state obligations arise from consent and that sovereign equality is maintained.

However, international organizations can develop and adopt roles that significantly diverge from their initial purposes. In the case of the United Nations, the interpretation of the UN Charter has often emphasized effectiveness and implied powers, which may seem to undermine the sovereignty principles outlined in Articles 2(1) and 2(7) of the Charter. Historically, the courts have ruled that in the absence of a specific procedure for validating the acts of UN bodies, each body must define its own jurisdiction. This interpretation, some four decades later, has allowed the Security Council to issue several resolutions under Chapter VII of the Charter. These resolutions mandate member states to enact specific domestic laws, thereby extending beyond the General Assembly's advisory capacity and the standard treaty-making process, and challenging the principle of state consent.

The legislative power of these resolutions requires member states to address broad issues rather than specific situations in particular countries or regions, which deviates from the original role of the Security Council as a guardian of international peace and not as an agent of global restructuring.[35]

While international organizations can significantly influence domestic policies of member states, suggesting a shift towards a federation-like structure, the prevailing relationship between states and these bodies is unlikely to fully embrace such a model. Fundamentally, the relationship remains based on consent, which argues against the notion that state sovereignty is under threat from any form of supranational government.[36]

2. Sovereignty In International Economic Relations

In the 21st century, nations have formed alliances to foster cooperation, strengthen friendly relations, and deepen market integration amid ongoing globalization. This trend emerged in the aftermath of World War II when countries sought to rebuild their economies and address domestic challenges. The formation of the United Nations exemplifies how alliances can promote global peace and prevent conflicts. Moreover, the creation of the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), and the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO)

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33 *Ibid., 72.*
34 Crawford, *Brownlie's Principles of Public International Law*, 451–52.
35 *Ibid.*
36 *Ibid.*

played pivotal roles in reshaping national economies and integrating them into the global economic system.

Modern international economic law redefines state sovereignty in economic sectors and is crucial in addressing the complexities of human, economic, social, political, and environmental interactions globally. It aims to enhance the ability of individual states and the international community to manage global challenges such as climate change, protectionism, and human rights abuses. Sovereignty, a central element in discussions about power allocation, is a fluid and often debated concept, evolving without a definitive or universally accepted definition.[37] Sovereignty has been described in various perspectives and it has been widely contested in relation to the power allocation since sovereignty focuses on "the monopoly power."[38]

a) Economic Sovereignty in A Globalizing World

Economic sovereignty refers to a state's control over its economic affairs within the sphere of international relations. This concept of sovereignty implies legal independence from the authority of other entities in international dealings, as well as equality among states, which is supported by Article 2(1) of the UN Charter affirming sovereign equality. This principle is also reflected across various UN instruments and judicial decisions concerning economic and judicial matters.[39]

Economic sovereignty can be divided into internal and external domains. Internally, it encompasses the state's ability to organize its governance and maintain a monopoly of legitimate power within its borders, crucially including the right to development as recognized in international law. Although historically states held absolute sovereignty over their natural resources, this autonomy has been moderated by international environmental law and human rights advancements, especially regarding essential human needs, thus supporting the principle of sustainable development.[40]

Externally, the state's sovereignty over determining its economic system remains largely inalienable but is practically influenced by the globalized economy and evolving international economic laws. Notably, the impact of institutions like the Bretton Woods institutions has sparked debate about whether traditional sovereignty is being eroded in favor of a comparative advantage model in international economic law. The full implications of this shift are still uncertain, as not all international agreements have universal support, and institutions like the IMF and WTO primarily focus on external economic relations. Furthermore, despite globalization and international pressures, critical elements of state authority, such as taxation, remain predominantly under national control, indicating that some aspects of sovereignty are resilient to external influences.[41]

b) Sovereignty Concerns of Regional Organizations

The sovereignty concerns of regional organizations such as the Association of Southeast Asian Nations (ASEAN) and the European Union (EU) illustrate different approaches to regional integration and its impact on member states' sovereignty. Established in Bangkok on August 8, 1967, by Indonesia, Malaysia, the Philippines, Singapore, and Thailand, ASEAN is an intergovernmental organization that values the sovereignty of its members, contrasting with the EU, which plays a significant role in its members' domestic affairs and requires some cession of sovereignty. ASEAN, which later expanded to include Brunei Darussalam,

[37] Asif Hasan Qureshi and Andreas R. Ziegler, *International Economic Law* (Sweet & Maxwell, 2011), 47.
[38] *Ibid., 48.*
[39] *Ibid., 50.*
[40] *Ibid., 61.*
[41] *Ibid., 62.*

Cambodia, Lao PDR, Myanmar, and Viet Nam, has been recognized post-World War II as a successful regional body that initially aimed to strengthen its members against the spread of communism, later shifting towards broader regional cooperation. Over the decades, ASEAN has evolved significantly, exemplified by its ASEAN Vision 2020 for a stable, prosperous, and competitively equitable economic region, the Bali Concord II in 2003 setting the goal for the ASEAN Economic Community (AEC) by 2020, and the 2007 commitment at the 12th ASEAN Summit to expedite the ASEAN Community's formation by 2015, promoting freer movement of goods, services, investment, skilled labor, and capital. This evolution highlights ASEAN's progressive yet sovereign-sensitive approach to regional cooperation and integration, which markedly contrasts with the deeper political and economic integration seen in the EU.[42]

The cooperation strategy of ASEAN consists of two key elements. First, ASEAN seeks to deepen and accord among its members by developing an ASEAN Community with three inter-related components, *inter alia*, economic, political-security, and socio-cultural. Second, ASEAN strives to consolidate its position at the center of cooperation in East Asia overall. The ambitious step taken by ASEAN through the creation of AEC affirms that ASEAN desires to transform its region. AEC is designed with a single market and production base to enter into a worldwide competition with free movement of goods, services, investment, skilled labor, and freer capital flow. The single market and production base also include two essential components: the priority integration sectors and food, agriculture, and forestry.

AEC promotes cooperation to a broader range of regional cooperation with the economic community within the region. An economic community is an essential part of achieving more significant benefits in international economic relations. In Europe, the economic community began with the free flow of goods (integration of trade), the free flow of capital (integration of investment), and the labor movement.[43] However, ASEAN does not set the Customs Union as applied by the EU in establishing AEC.[44] ASEAN economic integration is rather characterized by market-driven, while the EU is government-driven. Market-driven approach allows ASEAN to adopt an "open regionalism" framework, which widens ASEAN's economic cooperation to non-member states.

The EU's customs union exemplifies an exclusive approach to trade liberalization among its member states, highlighting a key difference in the economic community models between ASEAN and the EU and their impact on sovereignty.[45] ASEAN's market-driven strategy in forming an economic community deliberately avoids establishing a single supranational authority to regulate markets, which is a cornerstone of the EU's model. Consequently, sovereignty remains a critical concern for ASEAN as it aims to build a regional community without undermining the autonomy of its member states.

In contrast, the EU adopts a governmental approach to economic integration, which contrasts sharply with ASEAN's market-based strategy. This fundamental difference dictates the policies and the extent of integration within each organization. While the EU has evolved into a political union where member states share governance under EU institutions, allowing for the creation and uniform application of policies across its members, ASEAN maintains a looser, more flexible configuration that preserves member states' sovereignty. This divergence

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42 ASEAN Secretariat, *ASEAN Economic Community Blueprint* (Association of Southeast Asian Nations, 2008), 5.

43 A. M. El-Agraa, ed., *The European Union: Economics and Policies*, 9th ed. (Cambridge, UK; New York: Cambridge University Press, 2011), 34.

44 The European Economic Community began with the customs union. There is free trade in all goods that come through any union members, even imports from outside the customs union. Thus, it has a common customs tariff and, under its operating treaties, has the power to negotiate with other countries on behalf of its member states.

45 Kiki Verico, "Can ASEAN Achieve Economic Community?," The Jakarta Post, accessed December 29, 2017, http://www.thejakartapost.com/news/2012/12/24/can-asean-achieve-economic-community.html.

reflects not only different political and economic philosophies but also distinct historical and regional imperatives that shape each organization's approach to integration and sovereignty.

Despite ongoing debates, the EU displays characteristics of a federal governmental system, acting in international relations on behalf of its member states and engaging in agreements with other nations or international organizations. This involves a division of power similar to a federal system, where certain powers are reserved for local governments. This structure suggests that the EU functions more as a federal entity than merely a regional organization. A clear example is the EU's Common Commercial Policy (CCP), which maintains uniform trade relations with non-member countries through common customs tariffs and joint export and import policies. Enhanced by the Treaty of Lisbon, which took effect in December 2009, Article 207 now includes aspects of Foreign Direct Investment (FDI) in the CCP.

c) The Warning of the State Sovereignty

The classical concept of international law, which presupposes the equality of states and focuses solely on their interactions, has evolved significantly with the emergence of international organizations now recognized as subjects of international law. This has introduced a dynamic dimension to sovereignty, expanding beyond merely satisfying the constitutional independence of other states. Today, state sovereignty must also accommodate the constitutional independence of various entities, including other states, international organizations, and multinational enterprises. Consequently, a state's sovereignty is limited by its commitments under international agreements, requiring deeper interactions with various entities, especially international organizations.

This shift is further exemplified by the European Union (EU) and World Trade Organization (WTO). EU membership redefines state sovereignty through shared commercial and monetary policies and a political union enforced by supranational institutions like the European Court of Justice. This court allows EU citizens to seek remedies that transcend national jurisdictions, showcasing the evolving concept of sovereignty. Similarly, WTO obligations mandate specific trade policies for member states, illustrating how modern globalization and the liberalization of trade are diminishing traditional state sovereignty, transforming political and economic relations among states and other global entities.

The debate over state sovereignty has been central in the UK's constitutional politics, particularly evident from the pre-Brexit era to the post-referendum period. The contentious withdrawal of Britain from the European Union reignited discussions on the significance of sovereignty among EU member states.[46] Although the UK was not one of the EU's original members and thus did not significantly influence the EU's supranational governance model, its involvement brought the concept of British sovereignty into question, particularly highlighted by the 2016 referendum on EU membership. This referendum underscored misunderstandings about constitutional doctrines that contrast parliamentary sovereignty with the EU's concept of pooled competence. Experts like Gordon suggest that debates over the balance between national sovereignty and EU powers will persist post-Brexit[47], while Agnew views the UK's decision to "take back control" as an indication of British discomfort with ceding significant national authority to a supranational entity, reflecting ongoing tensions within the UK's constitutional framework regarding the balance of national versus supranational entities.[48]

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[46] Michael Gordon, "The UK's Sovereignty Situation: Brexit, Bewilderment and Beyond …," *King's Law Journal* 27, no. 3 (September 2016): 333, https://doi.org/10.1080/09615768.2016.1250465.

[47] Ibid., 341.

[48] John Agnew, "Taking Back Control? The Myth of Territorial Sovereignty and the Brexit Fiasco," *Territory, Politics, Governance* 8 (December 16, 2019): 12, https://doi.org/10.1080/21622671.2019.1687327.

3. International Legal Personality

International legal personality originates from international law and is also a fundamental concept in municipal law. Understanding legal personality requires examining its role in municipal private law, where a legal system identifies which entities possess rights and duties and whose actions have legal consequences. Municipal law typically includes a law of persons, historically categorizing individuals into groups like nobles, clerics, serfs, or slaves, each with varying degrees of legal recognition. By the nineteenth century, most of these distinctions had disappeared, and the right to form groups and associations led to the introduction of new categories of legal personality for corporate entities. In law, these entities are recognized as separate from the individuals who compose them.[49]

In international law, determining which entities have legal rights and duties is crucial. International legal personality[50] is a term used to describe entities that have rights and duties under international law.[51] Such entities are significant because they can engage in international relations, including entering international agreements. An entity with international legal personality can directly claim protection under international law to exercise its rights and fulfill its duties. Without the necessary legal capacity, an entity cannot possess international legal personality.

a) The Spectrum of International Legal Personality

Some views presuppose different criteria for an entity to possess international legal personality. According to Portland, there are at least five concepts recognized in international legal discourse: (a) the states-only conception; (b) the recognition conception; (c) the individualistic conception; (d) the formal conception; and the actor conception.[52] These concepts recognize different entities as international persons, use different mechanisms for achieving such status, and attach various consequences to this recognition.[53] These views collectively span the spectrum of what it means to be an international legal person.

The first concept is the states-only conception, which reserves international legal personality exclusively for states. According to this view, there are no conditions for gaining international personality beyond achieving statehood. The rights and responsibilities associated with this personality are synonymous with those of being a state. While this perspective is less common today[54], it remains important historically and occasionally relevant for current legal issues. The second concept is the recognition conception. This approach sees states as the original primary subjects of international law. However, it also allows for other entities to acquire international legal personality, often referred to as derivative or secondary international persons. This acquisition occurs through explicit or implicit recognition by states. Entities recognized in this way, in principle, hold fundamental international rights, duties, and capacities analogous to those of states.[55]

Third, this is the individualistic conception, which assumes that individuals can be regarded as international persons under fundamental international law norms. This concept also extends to states and various other entities. When international norms target individuals, they can be held internationally accountable for breaches of these norms, whether they act in a public

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49 Roland Portmann, *Legal Personality in International Law* (Cambridge; New York: Cambridge University Press, 2010), 7.

50 Roland Portmann, *Legal Personality in International Law* (Cambridge; New York: Cambridge University Press, 2010), 7.

51 Dapo Akande, "International Organizations," in *International Law*, 4th ed. (Oxford University Press, 2014), 251.

52 Portmann, *Legal Personality in International Law*, 13.

53 Portmann, *Legal Personality in International Law*, 13.

54 *Ibid.*

55 *Ibid.*

or private capacity.[56] Fourth, the formal conception views international law as an open system without predefined assumptions about who qualifies as a legal person. International personality is determined a posteriori; thus, any entity deemed an addressee of international law norms according to general principles of interpretation is considered an international person, without any specific consequences associated with this status.[57] Fifth, the actor conception challenges the traditional understanding of international personality. It operates on the presumption that all effective actors in international relations are significant within the international legal framework. The specific rights and duties of these actors are determined through an international decision-making process, where participation is influenced by their effective power.[58] The table below details the foundational assumptions of these conceptions of international personality, highlighting how they vary in multiple aspects.[59]

b) International Organizations' Legal Personality

Although traditionally, states were regarded as the sole subjects of international law during the 19th and early 20th centuries, a pivotal case demonstrated that other entities, specifically international organizations, also hold international legal personality. This shift was underscored by the Reparation for Injuries Advisory Opinion resulting from the assassination of a UN mediator in Jerusalem by a Jewish group. Following this incident, the UN General Assembly sought an opinion from the International Court of Justice (ICJ) regarding whether the UN could present an international claim against Israel to seek reparations for the harm inflicted on the organization and its agents.

Under Article 104 of the UN Charter, there is a mandate for member states to recognize the legal personality of the UN within their domestic jurisdictions. The Charter does not explicitly confer international personality on the UN. However, the ICJ concluded that the UN does possess international legal personality, a status deemed essential for the organization to effectively perform its functions. The Court reasoned that the UN's international personality could be inferred from its endowed powers and rights, such as decision-making authority, immunities, privileges, and treaty-making capabilities stipulated in the Charter. These provisions suggest that the UN operates with a degree of independence from its members, possessing the necessary attributes to function and exercise rights on the international stage, indicative of a significant level of international personality.[60]

The notion that international organizations with international legal personality are entitled to international rights, capacities, or duties is widely recognized, though this status alone does not specify the exact capacities, rights, or duties these entities possess, nor does it imply uniformity among them.[61] A more nuanced view suggests that international organizations can attain objective legal personality independently by functioning on the international stage, a stance affirmed by the International Court of Justice (ICJ) in the Reparation for Injuries case. In this decision, the ICJ unanimously recognized the UN as a legal entity capable of suing both member and non-member states for direct injuries, linking this capability directly to its legal personality. Moreover, the court's reasoning on implied powers and the principle of effectiveness indicates that the capacity to initiate claims depends not only on the recognition of legal personality but also on the interpretation of the organization's founding document

56 *Ibid.*
57 *Ibid., 14.*
58 *Ibid.*
59 *Ibid., 245.*
60 Akande, "International Organizations," 252.
61 *Ibid.*

relative to its operational functions, a rationale that could extend to other international organizations.[62]

C. Conclusion

Globalization has fostered increasingly reciprocal relations among states, yet the issue of state sovereignty remains paramount. This tension is particularly evident in the intersection of globalism and rising hypernationalism, which complicates national interests among industrial nations. A prime example is the United Kingdom's departure from the European Union, reflecting a contentious debate linked to the Westphalian model of state sovereignty. While the European Union's integration has reshaped the landscape of international law and state relations, offering a new model for organizing power from national to regional levels, the Brexit experience serves as a cautionary tale. Economic globalization seeks to liberalize state-to-state economic relations, yet Brexit highlights enduring obstacles to regional integration, suggesting that efforts to create a more integrated economy may consistently encounter barriers. This scenario is likely to influence other regional organizations such as ASEAN, potentially curbing their integration ambitions to preserve the sovereignty of their member states.

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[62] Crawford, *Brownlie's Principles of Public International Law*, 180.

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