THE JURISPRUDENCE OF ECONOMIC SOVEREIGNTY*

Abstract

Perhaps, the most outstanding characteristic of a state under international law is its independence. This concept of 'independence' was defined in the 1949 Draft Declaration on the Rights and Duties of States prepared by the International Law Commission, as the capacity of a state to provide for its own well-being and development free from the domination of other states, provided it does not impair or violate their legitimate rights. This principle of sovereignty of states underlies all facets of international relations and entails the right of every state, inter alia, to freely exercise full permanent sovereignty over its wealth, natural resources and economic activities including the regulation and exercise of authority over foreign investment within its territory in accordance with its laws and regulations and in conformity with its national objectives and priorities. This study examines in concrete outlives the philosophy of sovereignty in general and economic sovereignty in particular.

Keywords: Sovereignty, Economic Sovereignty, Jurisprudence, International Law

1. Introduction

Despite the existence of other personalities in international law, states are the primary and most developed subjects of international law. As Friedman observed, 'the basic reason for this position is, of course, that the world is today organized on the basis of the co-existence of states and the fundamental changes will take place only through state action, whether affirmative or negative'.[1]States are the repositories of legitimate authority over peoples and territories. It is only in terms of state powers; prerogatives, jurisdictional limits and law making capacities that territorial limit and jurisdictional responsibility for official actions, and a host of other questions of co-existences between nations can be determined.

One of the elements of statehood is government i.e. the organ having repository of political power, and exercising effective and exclusive authority over the territory and its population. Internally, the existence of a government implies the capacity to establish and maintain an effective and exclusive administration and a legal order in the sense of constitutional autonomy. Externally, it means the ability to act autonomously on the international level without being legally dependent on other states within the international legal order. This purports independence and sovereignty. Since all states are sovereign, and therefore equal in their sovereignty, which implies the absence of subordination in their relations, the conception of sovereignty as absolute power is unrealistic and unrealizable. According to the eminent jurist, Professor Charles Rousseau, absolute sovereignty can only exist in isolation and not in inter relations. He declares: 'The claim according to which

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[1]W Friedman, *The Changing Structure of International Law,* (1964), 213 quoted in I Brownlie, *Principles of Public International Law,* ((Oxford: University Press, 1990) p. 58

sovereignty is an absolute power is again contradicted by the institution of international responsibility. Sovereignty and responsibility are two antithetical notions and mutually exclusive'[2].

The term 'Sovereignty', evokes such spontaneous thoughts as jurisdiction, rule, supremacy, dominion, ascendancy, authority, hegemony, and control. These terms, all thought of within the context of a nation state, denote ability of a state to govern and direct what goes on within its territory. Sovereignty in political theory is the ultimate overseer, or authority, in the decision-making process of the state and in the maintenance of order. The concept of sovereignty has become one of the most controversial ideas in political science and international law and is closely related to the difficult concepts of state and government and of independence and democracy[3]. Economic sovereignty is only but an aspect of sovereignty. A clearer understanding of the nature of sovereignty is imperative, before purposing to understand economic sovereignty. This study is aimed at setting the respective limits of sovereignty and economic sovereignty via a doctrinal-analytical approach.

2. Nature of Sovereignty

Historically, the concept of sovereignty appears to be as old as creation. From the point of view of Christianity, as indeed for most other religions, sovereignty resides in the creator of the universe.[4] By His Omniscience and Omnipotence, God wields both power and authority to which two concepts man must submit in his material existence.[5] The word 'sovereignty' is in turn by etymological account derived from the old French word *soverainete* which itself is derived from the medieval Latin word *supremitas* or *supremapotestas* meaning 'Supreme Power'.[6] This fundamental element of supreme power emerges, from available literatures as the core of every normative approach to analyzing the meaning of sovereignty. This is vividly captured in the definition of sovereignty as 'a theory of politics that deals with an ultimate overseer, or authority in the decision-making process of the state and that explains the rules of maintaining orders....'[7]

Sovereignty is the central attribute of the state as a form of political organization. Sovereignty and statehood have become so closely interlinked that a non-sovereign state tends to be regarded as only a quasi-state. It does not signify merely a certain degree or quantity of power, as if the extent to which a state is sovereign can be measured simply by calculating its relative military and economic power. Sovereignty signifies simultaneously a right to act and a power to act. There are cases where the power of a state to act is so confined and limited that its sovereign right to act is rendered largely meaningless. Equally, there are times when the actual power of a state is so great that, although its sovereign right to use this power has not been formally acknowledged by others, it is tacitly recognized. These are extreme cases, however. Normally, sovereignty means the possession of a right and power, and disputes about sovereignty are disputes about right and power.

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[2]C Rousseau, *Le DroitInternationale Public, Tome II, les Sujets de Droit*, (Siry, Paris 1994) p. 61 quoted in B O Okere 'State Responsibility' (Mimeograph Lecture, Faculty of Law, UNEC).

[3] Encyclopedia Britannica, <https://www.britannica.com/topic/sovereignty> Accessed 14/11/16.

[4]*New Catholic Encyclopedia* (New York: McGraw Hill, 1967) p. 487 cited in C A Ogbuagu& E L Okiche; 'Sovereignty: Emerging Issue' Being the Text of a Paper Presented at the 41st Annual Conference of the Nigerian Association of Law Teachers, Jos, June 2005, p. 1.

[5]C AOgbuabor& E L Okiche, *op cit.*

[6]*Ibid.*

[7]*Encyclopedia Britanica* (Vol. 17, United States: Benton Publisher, 1975) p. 309, cited in C AOgbuabor& E L Okiche, *op cit.*

Sovereignty manifests itself in different forms, and this largely accounts for the varying definitions that are given of it. Seen from one angle, the right and power of sovereignty is exercised over territory, and is akin to the right and power of possession or ownership of a portion of the earth's surface. This ownership of territory includes in turn a right and power over all that exists, whether static or mobile, human or non-human, within the territory concerned, and extends to so-called territorial waters and airspace.

Sovereignty can be defined more narrowly as the right and power to make the ultimate or final decision about the terms of existence of a whole territorially-based body politic. It denotes a central core of right and power which may be called the right and power of self-determination, that is, a right and power to determine for and by oneself—and not at the command of others—the fundamental issues relating to one's existence. No external body has the right to command or order a sovereign state to act in a given way about matters of fundamental concern to it.

The modern theory of sovereignty arose from the reaction of European states to the doctrine of the Holy Roman Empire (created in 962 A.D) according to which the Emperor was superior to all governments, monarchies or republics of the Christian countries. This reaction was also directed against the doctrine of the superiority of the Pope over all Christian rulers. In addition to the reaction against these two external factors, the theory of state sovereignty was also designed to combat, internally, the fissiparous tendencies and centrifugal forces of feudal barons[8]. The more modern doctrine of sovereignty emerged in Europe in the 16th and 17th centuries. For the Italian political scientist, Niccolo Machiavelli, the security of the prince and the stability of the state constituted an end, which justified all means for its attainment.[9]The French jurist Jean Bodin was the first to argue at length that sovereignty was an essential attribute of the body politic, and to define its characteristics. Thomas Hobbes provided a more refined and systematic exposition of the concept. These writers were chiefly concerned with the need or desire to preserve and strengthen the unity of the state against the very real dangers of religious civil war. They favoured a monarchical sovereign as being the most 'indivisible'. However, for John Locke and Jean Jacques Rousseau, the people as a whole constituted the sovereign. To Rousseau, the individual is subject to no other individual but merely to the *volonte Generale,* the will of the community. Hegel following the thought of Rousseau, stated, 'the state is the march of God in the world. Its formulation is the power of reason realized as will'.[10]Austin's sovereign has no external superior or internal rival. According to him:

> If a determinate human superior not in the habit of obedience to a like superior, receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in the society and the society (including the superior) is a society political and independent.

This perhaps justifies the contention that the meaning of the concept of sovereignty is largely contingent upon the context in which it features; that, there is no objective concept that is

[8]B O Okere, 'Evolution of the Concept of Sovereignty' , Mimeograph Lecture, Faculty of Law, UNEC.p.3 cited in E A Oji and MVC Ozioko, 'Effect of Globalisation on Sovereignty of States' (2011) *Journal of International Law and JurisprudenceVol 2*, p. 5.
[9]*Ibid.*
[10]Jacques Maritain, 'The Concept of Sovereignty', Vol. X/iv (1950).*American Political Science Review,* p. 353. Cited in B O Okere, *Ibid,* p. 9.

universally applicable and yet it is of foundational importance to the concept of a state and indeed of modern political knowledge.[11]

The issue raised by these conceptions of sovereignty is to determine if these concepts of absolute state power is consistent with modern life and the impact of the globalising world on sovereignty of states. In brief,[12] is the concept of sovereignty as absolute power compatible with international solidarity and inter-dependence and have scientific and technological advance which have reduced the world into a 'global' village' influenced or modified the orthodox conception of state sovereignty?

Krasner, in his contribution, recognized that the term sovereignty is not an organic whole but has many components. According to him, having one component does not necessarily mean having the other. He categorises how sovereignty has been used into four[13]: domestic sovereignty; interdependence sovereignty; international legal sovereignty; and Westphalian sovereignty. Domestic sovereignty refers 'to the nature of domestic authority structures' and the effective level of control they wield within a state's borders. Interdependence sovereignty, on the other hand, describes a state's ability to control trans-border movements. Moreover, international legal sovereignty refers to the process of mutual recognition. Perhaps the most significant use of the term sovereignty for this analysis is the notion of Westphalian sovereignty, which entails 'the exclusion of external actors from domestic authority configurations' i.e. autonomy. Interventionist practices are generally seen to violate the non-intervention norm associated with Westphalian sovereignty, as well as international legal sovereignty. It is important to note that the various kinds of sovereignty can co-vary – 'a state can have one but not the other'[14].Krasner's proposition that states can possess one form of sovereignty, but not necessarily others, is shared by Jackson[15], specifically through his notions of positive and negative sovereignty. Negative sovereignty is defined as freedom from external interference (non-intervention). It is a formal legal condition, which can be bestowed onto a state by others[16]. His categorisation of negative sovereignty resonates with Krasner's Westphalian and international legal sovereignty. On the other hand, positive sovereignty describes the capabilities 'which enable governments to be their own masters'. A positively sovereign government is one which has the capacity to provide political goods for those it claims to represent.[17] A state may possess negative sovereignty, namely be recognised as sovereign, but lack the capability to provide goods for its citizens. Both Krasner and Jackson suggest that sovereignty consists of both internal and external dimensions. Contemporary state practices exhibit situations of the existence of both internal and external dimensions of sovereignty. For instance, internally, a

[11]Dan Saroochi, 'Sovereignty, Economic autonomy, the United States, and the International Trading System: Representations of a Relationship', *EJIL*, (2004), Vol. 15 No. 4, 651-676.
[12]As stated by B O Okere, *op cit,* p. 10.
[13]S D Krasner*, Problematic Soverignty: Contested Rules and Political Possibilities,* (New York: Columbia University Press, 2001) *pp. 6–12.* <https://books.google.com.ng/books?id=ISqwQIBQff4C&lpg=PA7&pg=PA7&redir_esc=y#v=onepage&q&f=false> Accessed 15/11/16.
[14]M Bolt, 'The Changing Face of Sovereignty', *E-International Relations Students,* <http://www.e-ir.info/2013/10/17/the-changing-nature-of-sovereignty/>Oct 17 2013, 10514 views Accessed 15/11/16
[15]R Jackson, *Quasi-States: Sovereignty, International Relations and the Third World*. (Cambridge: Cambridge University Press, 1990) cited in M Bolt, *Ibid.*
[16]*Ibid.*
[17]*Ibid.*

state may be unable to exert sovereign acts over its populations and territory; while externally having the recognitions of other states.

The meaning of the concept of sovereignty is largely contingent upon the context in which it is applied.[18] During the historical development of society, sovereignty appeared alongside the emergence of the State as a socio-political phenomenon and an attribute of the State. The definitions which have been given to this concept have, therefore, for a long time converged in a mutual assessment, that sovereignty means the independence and supremacy of the State.[19] The diversity in the definitions is as a result of the different manifestations of sovereignty. For instance, viewed from one angle, the right and power of sovereignty exercised over a territory is often to the right and power of possession or ownership of a portion of the earth's surface which in turn includes a right and power over all that exists; whether static or mobile, human or non-human, within the territory concerned including the territorial waters and the airspace. From another angle, it manifests in the right and power to make the ultimate or final decision about the terms of existence of a whole territorially based body politic. Yet a third angle involves what is termed as the right to self determination; a right and power to determine for and by oneself and not at the command of others, the fundamental issues relating to one's existence. Moca captures these core manifestations thus:

> State sovereignty is the unique, full and indivisible supremacy of State power within the limits of the territorial frontiers and the independence of this power, in relation to any other power, which is expressed in the State's exclusive and inalienable right to lay down and carry out its home and foreign policy independently, to discharge its functions, to implement the practical measures for organizing its social life at home and its foreign relations on the basis of respect for the sovereignty of other States, for the principles and norms of International Law accepted of its own free will.[20]

The essential features of sovereignty as can be gleaned from the above are *viz:* (a) Exclusive state power in discharging the functions specific to the state; (b) Indivisibility – that is, full freedom of choice in using the whole set of prerogative of state power and (c) Inalienability - which connotes the impossibility of ceding power either to some foreign power or to some international body.[21]

3. Sovereignty in a Globalised World

Globalization is the term used to describe one of the most contemporary phenomena of our time; involving the diffusion of ideas, practices and technologies through the various now available means of communication and interaction. It has led to internationalization of most issues in human and state existence. It is not merely liberalization of markets, though in many cases that has been

[18]D Sarooshi, 'Sovereignty, Economic Autonomy, the United States and the International Trading System: Representations of a Relationship' (2004) *EJIL Vol. 15 No. 4,* p. 652.

[19]G Elian, *The Principle of Sovereignty over Natural Resources* (The Netherlands: Sijthof & Noordhoff International Publishers. B.V., 1979) p. 1.

[20]G Moca, *Suveranitatea de Stat siDreptul International Contemporan [State Sovereignty and Contemporary International Law]* (Bucharest, Scientific Publishing House, 1970) p. 35 cited in G Eliam, *op cit,* p. 5.

[21]S Nastasescu, *SuveranitateasiDinamicaRelatiilor International [Sovereignty and the Dynamics of International Relation])* (Bucharest, Political Publishing House, 1976) p. 22-23, cited in G Elian, *op cit*.

the result. The definition by Giddens[22] aptly describes this phenomenon: 'the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa'. This involves a change in the way we understand geography and experience localness. As well as offering opportunity, it brings with it considerable risks linked, for example, to technological change. Globalization, thus, has powerful economic, political, cultural and social implications for sovereignty. Sovereignty used to mean final authority. This is no longer so. When philosophers Jean Bodin and Thomas Hobbes elaborated the notion of sovereignty in the 16th and 17th centuries, they were concerned with establishing the legitimacy of a single hierarchy of domestic authority. Although they both accepted the existence of divine and natural law[23], they believed the word of the sovereign was law. However, in the contemporary world, sovereignty primarily is linked with the idea that states are autonomous and independent from each other. Within their own boundaries, the members of a polity are free to choose their own form of government. Another point is that no state has the right to intervene in the internal affairs of another state. Sovereignty is also associated with the idea of control over trans-border movements. Finally, sovereignty also means that political authorities can enter into international agreements. States are free to endorse any contract they find attractive. Any treaty among states is legitimate provided that it has not been coerced. This is the new strength of sovereignty.

Technological changes over the last 200 years have increased the flow of people, goods, capital, and ideas. The response of states to globalization and its impact on their sovereignty is nothing compared to what followed the invention of the printing press. Most sovereign monarchs could not contain the spread of the concepts that spread with it and many lost not only their kingdoms but also their heads. Despite the perceived impacts of globalization on sovereignty of states, states appear to be stronger and more able to address internal problems and no leader has lost its state yet to globalization. In addition to attempting to control the flows of capital and ideas, states have long struggled to manage the impact of international trade. The opening of long distance trade for bulk commodities in the 19th century created fundamental cleavages in all of the major states. One thing is certain; globalization is changing the scope of state control. The reach of the state has increased in some areas and contracted in others. Rulers have recognized that walking away from issues they cannot resolve can enhance their effective control. For instance, beginning with the Peace of Westphalia, leaders chose to surrender their control over religion because it proved too volatile. Keeping religion within the scope of state authority undermined, rather than strengthened, political stability.

Monetary policy is an area where state control has contracted. With the exception of Great Britain, the major European states have established a single monetary authority. Along with the erosion of national currencies, we now see the erosion of national citizenship – the notion that an individual should be a citizen of one and only one country, and that the state has exclusive claims to that person's loyalty. For many states, there is no longer a sharp distinction between citizens and non-citizens. Permanent residents, guest workers, refugees, and undocumented immigrants are entitled to some bundle of rights even if they cannot vote. The ease of travel and the desire of many

[22] A Giddens, *The Consequences of Modernity*, (Stanford: Stanford University Press, 1990) p. 64.

[23]Even John Austin accepted that every government let it be ever so powerful, renders occasional obedience to the commands of other governments. This statement we believe concedes to the impracticability of absolute sovereignty.

countries to attract either capital or skilled workers have increased incentives to make citizenship more flexible.

Treaty is one of the sources of international obligation. It is a basic norm of law that one cannot derive rights and liabilities from a treaty to which he is not party. However, contemporary international law now envisages situations where rights and liabilities are created for states without their being party to such transaction. There are treaties that are assimilable to international executive acts and treaties assimilable to international legislative acts, such as treaties that create objective legal situations like neutralization, demilitarization, internationalization of human rights and conventions codifying existing norms of customary international law[24].Membership to an international organization has tremendous impact on the sovereignty of states. This can be appreciated from four sides. The activities of international organizations can have quasi-legislative, Administrative and Supervisory, as well as Jurisdictional effects. This hinders the freedom of member states to act as they please.

Transnational non-governmental organizations (NGOs) have much influence over state activities. Throughout the 19th century, there were transnational movements to abolish slavery, promote the rights of women, and improve conditions for workers. The number of transnational NGOs, however, has grown tremendously, from around 200 in 1909 to over 17,000 today.[25] The availability of inexpensive and very fast communications technology has made it easier for such groups to organize and make an impact on public policy and international law. Such groups prompt questions about sovereignty because they appear to threaten the integrity of domestic decision-making. Activists who lose on their home territory can pressure foreign governments, which may in turn influence decision makers in the activists' own nation[26].Thus, sovereignty and its import have changed over the past century. It is under this premise that various laws and policies made for the promotion of foreign investment, naturally affect economic sovereignty.

4. Philosophy of Economic Sovereignty

The meaning of the term 'economic sovereignty' is not entirely clear and is often a source of misunderstanding. Literature uses this term in at least four meanings[27]:

(i) State ownership;
(ii) Self-sufficiency which means that a state is economically sovereign if it is able to meet the needs of its population based on its own resources and its own reproduction.
(iii) Lack of budget deficit and subsequent lack of indebtedness to foreign creditors (commercial or institutional), financial stability of the state and regular servicing of the budget; and
(iv) Ability of the 'state' to independently decide on the use of its own resources (policies).

[24]The UN Charter, Article 2 (6) states that the organization shall ensure that states that are not members of the UN shall act in accordance with the UN Charter.
[25]S D Krasner, *op cit*, p.5.
[26]E A Oji and M V C Ozioko, *op cit.*
[27]A Savanovic, 'Economic Sovereignty', being the text of a paper delivered at the 12th International Academic Conference, Prague, 1st September 2014.

The fourth meaning is critical to this work given that the objective of the work is, *inter alia* to consider the effect of foreign investments on the Nigerian economy. From the perspective of the meaning and import of sovereignty and for our purpose, sovereignty would refer to the power of national governments to make decisions relating to economic and fiscal regulations of their country, independently of those made by other governments. With absolute sovereignty, would be ability to absolutely control the economy. However, just like in the political and other aspects of sovereignty, globalization has affected economic sovereignty. Almost all countries in the world have accelerated their tempo of economic opening up since the beginning of the 21st century. With the initiative, they expect to inject a new driving force into domestic economic development, and to create new market opportunities. They hope to integrate their domestic economy into the global market, and to develop economic muscles that can punch a worldwide weight. However, for any country, opening the economy to the outside world is by no means a free lunch. The policy will inevitably result in some cost. The cost can be perceived to be a weakening of the nation's 'economic sovereignty,' namely the erosion of permanent and exclusive privileges over its economic activities, wealth, and natural resources[28].

The increase of the number of international organizations and the expansion of their functions has undeniably restricted an individual country's sovereignty to certain extent. The most typical example is the increasingly extensive involvement of the world's three leading financial institutions; the World Bank (WB), the International Momentary Fund (IMF) and the World Trade Organization (WTO) in domestic economic affairs of their members.[29] When states also resort to borrowing and other forms of foreign assistance and intervention, they lose the control of their economy and other resources. This loss of economic independence becomes a sign of loss of political sovereignty. It therefore aligns with the Locke-Kantian propositions on sovereignty. According to the classical theory of Kant and Locke, the sense of the transfer of arbitration right among citizens to a single sovereign authority is 'economic', in the broad sense of the word. Adopting the Constitution, citizens meet the requirement for unanimity in the 'constitutive' phase. After this, in the 'post-constitutive' phase, the government acts as an arbitrator within the Constitution. If we were to require unanimity in the post-constitutive phase as well, it would be absurd and the society would be impossible – this would require a referendum decision for each question. This arrangement enables citizens to pursue their own affairs. This involves the appropriation of ownership on the basis of labour, as well as exchange. It also means that the constitutive framework (guaranteed by the government) is in fact a system of rules under which resources may be legitimately appropriated, exchanged and consumed. Therefore, the ownership theory is not so evident but crucial factor in understanding sovereignty, because sovereignty does not exist in a vacuum of some sort; it is not an abstract legal concept. This also serves to clarify the confusion in the formulation of 'territorial sovereignty'. The state is simply an 'agent authorized to exercise certain limited forms of control over the citizen's private property.' 'Territorial sovereignty' means that the state aspires to be the sole arbitrator ('agent') on the territory, superior to external factors[30]. The Locke-Kantian propositions lead us to a consideration of the role of the controlling factor. Where the control factor becomes external, external considerations begin to apply in what ordinarily should be internal, as evidence of sovereignty. This leads to some form of reduction of sovereignty.

[28]P Zhongying, 'Globalization vs. Economic Sovereignty', *Yale Global Online,* China Daily, 2 December 2005, <http://*yaleglobal.yale.edu/content/globalization-vs-economic-sovereignty*> *Accessed 16/11/16*
[29]*Ibid*
[30]*Ibid.*

Most theorists believe that the reduction of sovereignty in globalization occurs as a three-dimensional process. Firstly, it is a process of transferring decisions to supranational entities, such as the African Union (AU), which are given the legislative powers in certain (many) aspects of social, economic and political life. Secondly, it represents an increasing inferiority of states in relation to requirements that come from some external institutions, such as the IMF, WB and WTO. Based on their powers, these institutions are able to force the states to make certain decisions. Third, and perhaps the most interesting, there is a process in which large transnational corporations (TNC), based on their economic power, can influence economic and political decisions of sovereign states[31].In making laws and policies that will enhance foreign investments, the national government makes laws and policies that conform to the standards set by these international and supranational organizations and agencies.

Savanovic[32] presents a typical example of the reduction of sovereignty in the process of formation of supranational entities in the experience of the EU. He makes an illustration with the EU policy of subsidies and support to economic sectors or enterprises of 'national' importance for a member state. European Commission makes decisions on support policies, based on formal but arbitrarily adopted criteria. It is obvious that this practice dislocates the sovereign will of a nation to decide on the allocation of its own economic capacities to some sort of external entity. He points out various attempts to overcome this democratic deficit, while remaining within the scope of the 'Locke-Kant' scheme. We reproduce them here. The first of them is the top-down model. The concept of linking states into regional, supranational entities such as the EU is considered by many as an aspect of sovereignty decline, but it can be discussed in the opposite context as well. The idea is to preserve the classical form of sovereignty by expanding the scope; to introduce some sort of a supranational state formation instead of a nation-state. The general model, which is particularly discussed in the context of the 'global state' idea, is the so-called 'post-Westphalian transnational public sphere', which would raise the concept of civil sovereignty to the 'global' level or to the regional level in the previous phase. This model is actually a variation of the original Locke-Kant scheme of sovereignty, only expanded. The issue of democratic legitimacy here is reduced to the technological question of existence of a 'planetary square' (owing to new communication technologies) or a global forum/agora and/or emergence of supranational elections for supranational parliaments. The second one is the bottom-up model. Contrary to the previous one, this model proposes policies of decentralization and transfer of power to local areas and regional levels. It can occur in the form of secessionist movements. The theoretical model that promotes this option of the radical decline of sovereignty of nation-states and transfer of power to local levels is *anarcho-capitalism*, a radical libertarian branch. It promotes the politics of secession of regional and local entities from the central government. The arguments here are not national but strictly economic – the need for local communities to handle their own tax money, instead of transferring it to the national government. This second proposition will certainly violate certain principles of the United Nation Charter in that it encourages disintegration of the state and may create anarchy and threaten international peace and security.

[31]A Savanovic, *op cit.*
[32]*Ibid.*

Writing in 1968, Vernon[33] commented on a statement made by the President of the United States thirty-six years previously. The President had observed that the U.S. tariff was 'solely a domestic question,' a subject inappropriate for international bargaining. This view was valid at the time. The times have certainly changed. Today, the commitments of nations to the WTO, cover the subject of tariffs, import and export licenses, and subsidies; the level of foreign exchange rates and the price of gold; the price and quality of international air service; the price of coffee, wheat, sugar and tin; safety-at-sea standards, deep-sea fishing and whaling rights; wild life preservations, environmental usage, human rights and humanitarian issues. There is a pooling of foreign-aid funds through the World Bank and various regional banking institutions; a pooling of international technical assistance efforts through numerous U.N. agencies. More important still, through institutions such as the International Monetary Fund and the Organization for Economic Cooperation and Development (OECD) there are well-entrenched habits of international consultation and international persuasion on 'domestic' subjects of the most sensitive sort: on internal interest rates, on budgetary and fiscal policy and on employment and incomes policy. A decent respect for the opinions of mankind now seems to require a willingness on the part of sovereigns to expose many critical national economic policies to the collective scrutiny of a jury of peers[34].Be that as it may, one must not lose cognizance of the fact that in the final instance, the sovereign will of the citizens, represented by the sovereign functions of the state, given that states have become members of a globalised world, the exercise of these wills are influenced by standards set from outside the state. It is certain that the government and the people are not economically sovereign; even the political sovereignty is also reduced to a great extent. However, the decision, itself, to be part of the global political and economic interaction, is itself an expression of the sovereign will of the polity.

From the above exposition, it can safely be surmised that the regulation by a State of its economic affairs is a legitimate exercise of sovereignty. Okorodudu-Fubara posits that one of the most distinctive features of sovereignty is the State's prerogative to determine the country's political or economic course without compelling interference from external influences or dictates.[35] As remarked by the league of Nation Committee in 1937, 'every country seeks and seeks rightly, to protect its own economy'.[36] As Elian asserts 'sovereignty includes the right of the State to freely exploit its resources and wealth on the basis of its economic independence. This right is part and parcel of state sovereignty'.[37] In the *Austrian-German Custom Union*[38] which dealt with the interpretation of the Treaty of St. German and the Separation of Austria from Germany as a means of weakening the latter, the PCIJ indicated the essential nature of economic sovereignty as follows:

> The independence of Austria, according to Article 88 of the Treaty of St. Germain, must be understood to mean the continued existence of Austria within her present frontiers as a separate State with sole right of decision in all matters, economic, political, financial or otherwise with the result that the

[33]'Economic Sovereignty at Bay', *Foreign Affairs,* 1968 Issue, Available at <https://www.foreignaffairs.com/articles/1968-10-01/economic-sovereignty-bay> Accessed 16/11/16
[34]*Ibid.*
[35]M T Okorodudu-Fubara; 'State Control and Intervention in Strategic Business and the Promotion of Private Investments' in I A Ayua and B Owasanoye (ed), *Privatization of Government owned Banks and the Issue of Ownership and Contro*l (Lagos; NIALS, 1996) p. 22.
[36]Survey of International Affairs (1937) p. 1, 73.
[37] G Elian, *op cit*, p. 5.
[38] PCIJ Series A/B, no 41, 1931, 61LR, p. 26 cited in M. Shaw, *op cit*, p. 150.

> independence in violated, as soon as there is any violation thereof, either in the economic, political or any other field; these different aspects of independence being in practice one and indivisible.[39]

This concept of economic sovereignty has found ample expression in many International Law instruments and norms which affirm the right of every State to permanent sovereignty over the resources that are found within its territory with all its attendant connotations. Starting with the United National Charter,[40] Elian writes that permanent sovereignty of States over natural resources can be considered a principle which can be inferred from numerous texts of the Charter.[41] Article 1, for instance, reflects a nation's right to determine and shape its own fate and the equal rights of nations in their friendly relations with each other. Article 55 affirms the necessity for the United Nations to promote higher standards of living, full employment and conditions of economic and social progress and development as well as solutions of international economic and other related problems through recognition and respect for the principle of equal rights and self-determination of people. Thirdly, Article 76 provides for the promotion the political advancement of nations and the support they must be given with a view to obtaining independence and to administering themselves. As Elian further asserts,[42] these are among the principles recorded in the U.N. Charter on whose basis one cannot imagine complete sovereignty without the right of the States exclusively to dispose of the goods and resources on their own territories. Indeed, in December 1952, the UN General Assembly passed a resolution[43] which asserted that 'the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accord with the purposes and principles of the charter of the United Nations'.[44]

Resources became more crystallized by the adoption in 1962 of the United Nations General Assembly (U.N.G.A.) Resolution 1803 (XVII)[45] which declared, *inter alia*, that the rights of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well being of the people of the State concerned. It furthered declared that the exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorisation, restriction or prohibition of such activities.[46] The text of this resolution is widely considered as reflecting the International Law on the subject and accepted as such in a number of cases such as the *Texacocase*[47] and the *Aminoilcase*.[48]Nonetheless the most assertive and authoritative international law instrument relating to economic sovereignty of States appears to be the Charter of Economic Rights and Duties of

[39]*Ibid*. See also U O Umezurike: Self Determination in International Law (Lagos: Archon, 1972) p. 205
[40]Adopted in 1945.
[41] G Elian, *op cit,* p. 24.
[42]*Ibid.*
[43] U.N.G.A. Resolution 626 (VII) of December 21, 1952 described by some as the 'Nationalization Resolution'.
[44]See M Bedjaoui (ed), *International Law: Achievements and Prospects*' (UNESCO: MartinusNijhoff publishers, 1991) p. 601. See also Article 1(2) of the International Covenants on Human Right 1952 dealing with self determination.
[45]Adopted on 14 December 1962.
[46] See Articles 1-3.
[47]*Texaco Overseas Petroleum Co and California Asiatic Oil Co. v Libya* (1977) 53 I.L.R. 389.
[48]*Kuwait v American Independent Oil Co*. (1982) 21 I.L.M. 976.

States adopted by the UN General Assembly on 12 December 1974.[49] The tone for the adoption of the Charter was set by the Declaration on the Establishment of a New International Economic Order adopted earlier in the same year by the UN General Assembly.[50]By Article 1 of the Charter, every State has the sovereign and inalienable right to close its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever. Article 2 provides that every state has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth natural resources and economic activities. To this end, each State has the right:

> (a) to regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities....
> (b) to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply within its laws, rules and regulations and conform with its economic and social policies....
> (c) To nationalise, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the state considers pertinent.'

Article 4 of the Charter guarantees to every state the right to engage in international trade and other forms of economic co-operation, irrespective of any differences in political, economic and social systems. Furthermore, by Article 7 'every State has the primary responsibility to promote the economic, social and cultural development of the people, to choose its means and goals of development, to fully mobilise and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its peoples in the process and benefits of development'.

4. Conclusion

In summary, it seems inescapable to conclude from the above enquiry into the meaning of economic sovereignty, that all states, whatever their social-political organisation, have their competence over the unfolding of their economic relations both at home and abroad. This competence is nothing else, other than an expression of State sovereignty of translating into life one of its characteristic features of independence.[51] As Elian holds, 'the State's political independence does not and cannot actually exist without the achievement of economic independence. In its turn, economic independence is asserted to the extent to which the State manages to answer national economic interests and first of all to meet the necessities for development, without for one moment forgetting the satisfaction of its citizens' economic requirements. The States' economic tasks are fulfilled as a manifestation of sovereignty, which from this point of view as well remains the principal prerogative of the modern state'.[52]

[49]U.N.G.A Res 3281 (XXIX).
[50] See U.N.G.A. Res 3201 (SVI) of 1974.
[51]Elian, *op cit*, 16.
[52]*Ibid.*