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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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THE EVOLUTION OF SOVEREIGNTY IN INTERNATIONAL TRADE GOVERNANCE

AUTHORED BY - S. ARUNA

ABSTRACT

Sovereignty is a fundamental principle of international relations, ensuring states' political independence and protection from external interference. However, globalization and the evolution of international law have reshaped its nature, making sovereignty increasingly conditional and shared. While sovereign states remain central to global governance, their authority is influenced by multilateral treaties, international organizations, and legal obligations. This shift is particularly evident in international trade law, where economic integration and regulatory commitments challenge traditional notions of absolute sovereignty.

Developing nations, in particular, face sovereignty constraints due to economic dependencies on institutions like the IMF and World Bank, political interventions, and unequal trade agreements favoring developed nations. These challenges limit their policy autonomy and weaken their independence. To strengthen the sovereignty of these nations, global reforms are necessary, including a more equitable international financial system, minimized external political and military influence, and stronger domestic governance structures.

Furthermore, trade agreements and the regulations imposed by institutions such as the World Trade Organization (WTO) often require states to compromise aspects of their sovereignty to engage in the global economy. While these agreements aim to promote economic cooperation, they also raise concerns about national regulatory autonomy. The balance between sovereignty and international trade law remains a critical issue, reflecting the ongoing tension between state governance and the demands of a highly interconnected global trading system. This article examines on sovereignty, focusing on what is at stake. While few agree that sovereignty's meaning evolves, they disagree on its causes and consequences. Some see these changes as signaling a shift in global institutions, while others view them as proof of the Westphalian order's resilience. The article brings an understanding that this disagreement evolves more from differing views on the nature of concepts than from differing worldviews. It can be

concluded that the meaning of sovereignty complicates normative issues, posing a key challenge for legal and political theory in the future. This article highlights the dynamics, emphasizing the need for a balanced approach to safeguard national sovereignty while fostering international economic cooperation.

Key words: sovereignty, absolute, relative, international trade

INTRODUCTION

Sovereignty is the right and power of a nation to govern itself, control its borders, and manage its relations with other nations. It is not defined by how aggressively a nation exercises these powers but by its ability to make and enforce decisions. Choices like government-controlled or free-market economies, open or restricted borders, and diplomatic or hostile foreign relations all reflect sovereign authority. However, these choices can impact a nation's future ability to exercise sovereignty effectively.

Sovereignty refers to a state's independence from external and internal constraints, limited only by international law and voluntary commitments. There are two key elements: universality, which subjects all entities within a state's territory to its authority, and right-creation, where legal standards regulate all activities. Sovereignty includes authority (the state's power to command and be obeyed), supremacy, and territoriality.

Sovereignty has internal and external dimensions. Internal sovereignty relates to decision-making and enforcement within a state, while external sovereignty is its recognition by other states. It can be absolute, where no interference is justified, or non-absolute, where exceptions may arise. The doctrine of sovereignty underpins international relations through mutual recognition, coexistence, and non-interference.

Historically, sovereignty was first understood in an internal sense, defining state power and governance. Over time, its meaning evolved, incorporating elements such as state independence, freedom from limitations, and the association of sovereignty with force. These aspects closely align with the theory of absolute sovereignty. Initially, sovereignty focused solely on internal governance, as international relations were of limited significance at that time.

The essence of international trade is a decision by someone in one sovereign jurisdiction to buy something that will come from another sovereign jurisdiction. This simple version of trade oversimplifies in important respects but provides a useful starting heuristic for understanding trade. The fact that trade takes place across sovereign borders is important, but understanding trade begins with the considerations that drive individuals' decisions on both sides of a transaction.

THEORIES OF SOVEREIGNTY

There are two main theories of sovereignty: absolute sovereignty and relative sovereignty.

1. Absolute sovereignty

In the late 19th century, absolute sovereignty became popular, especially in Germany and England. It means a state has unlimited power, free from any higher authority. States can follow or ignore obligations based on their interests, with domestic law taking priority over international law.

2. Relative Sovereignty

After the World Wars, relative sovereignty gained importance, adapting to an interdependent world. It recognizes international law while ensuring no state is above another. States remain independent but must follow legal norms and agreements for peaceful coexistence. However, the influence of Western powers in shaping international law raises concerns for developing nations.

VARIOUS ADVOCATES ON SOVEREIGNTY:

- Oppenheim: Sovereignty means full control within a state and independence from outside authority. However, in international relations, states are equal and interdependent. Sovereignty helps define statehood and legal rights.
- Lauterpacht: Sovereignty has two parts—internal (a state governs itself) and external (independence from others). However, sovereignty is still limited by international law, which states help shape.
- Anand: Rejects absolute sovereignty, arguing that states are interdependent. While states have full power internally, international law sets limits based on mutual agreements.

- Brownlie: Sovereignty means states control their own land and population but must respect international law and avoid interfering in other states. States voluntarily accept legal obligations.
- Laski: Sees sovereignty as a changing concept. A state's power should serve its people, and absolute sovereignty no longer fits in a world where states must cooperate internationally.

These views show a shift from *absolute* to *relative* sovereignty, recognizing legal limits and the need for global cooperation.

Sovereignty grants each state complete authority over its territory, but its impact is most evident in international relations. Bodin's idea that sovereigns are above their own laws has often been misinterpreted to justify absolute power. However, he acknowledged that sovereigns are bound by divine law, natural law, and fundamental state laws. Hobbes later equated sovereignty with absolute power, leading to conflicts between states. Over time, international agreements like the Hague Conventions, the League of Nations, and the UN Charter introduced legal limits on state actions, particularly regarding war. While sovereignty remains a core principle, states now accept legal restrictions to maintain international stability.

MEANING OF SOVEREIGNTY IN THE CONTEXT OF INTERNATIONAL TRADE LAW AND ITS INTERSECTION.

International trade law influences how states exercise sovereignty in the global economy, requiring a balance between national interests and international commitments. Several factors under international law limit absolute sovereignty. The rise of democracy reduced unchecked state power, leading to shared sovereignty through organizations like NATO, WTO, and the EU. The UN Charter upholds sovereign equality among states, as stated in Articles 2(1) and 78. Additionally, the prohibition of force under the UN Charter restricts states from using force, except in self-defense (Article 51), replacing unilateral actions with collective enforcement. A broader interpretation of "force" now includes economic and political pressure, promoting global fairness. Despite these restrictions, the UN retains authority in key issues like colonial conflicts, ensuring international cooperation.

The relationship between sovereignty and international trade law is complex, as it involves balancing national autonomy with global economic integration. While sovereignty grants states

control over their affairs, trade agreements often require them to cede certain regulatory powers, affecting their economic policies. This can create tensions as governments seek to protect domestic industries while meeting international obligations. Case studies show that countries frequently prioritize sovereignty in trade negotiations or disputes, sometimes implementing protective measures that impact their trade commitments. Ultimately, navigating this balance requires continuous dialogue to uphold sovereign rights while fostering international economic cooperation.

CONCEPT OF NATIONAL SOVEREIGNTY AND TRADE AGREEMENT

Trade agreements are formal arrangements between nations that define trade terms, including tariffs, trade barriers, and regulatory standards. While designed to promote commerce, these agreements can influence national sovereignty by requiring countries to adjust domestic policies to meet international commitments, raising concerns over independent governance.

Sovereignty may seem compromised when nations enter binding agreements, particularly when dispute resolution mechanisms prioritize international bodies. This concern arises when governments cede regulatory authority to uphold trade commitments.

Key factors in the trade agreements-sovereignty dynamic include:

- The impact of trade regulations on national laws.
- Balancing economic benefits with local priorities during negotiations.
- The influence of public opinion and political factors on trade policies.

While trade agreements are crucial for global commerce, their effects on sovereignty require careful evaluation and consideration.

In **China v. United States** (WTO Case DS543, 2020), China challenged the U.S. tariffs imposed on \$250 billion worth of Chinese goods, arguing they violated WTO trade rules. The U.S. justified the tariffs by citing unfair trade practices, including forced technology transfers and intellectual property theft. In 2020, the WTO ruled in favor of China, stating that the tariffs were discriminatory and not justified under WTO exceptions. However, the U.S. rejected the ruling, arguing the WTO failed to address China's unfair trade practices and blocked the appeals process, leaving the dispute unresolved. This case underscored the limitations of WTO

enforcement and the ongoing tensions in U.S.-China trade relations.

Another illustrative case **the 2012 European Union (EU) ban** on seal products prohibited the import and sale of seal-derived goods, citing animal welfare concerns. Canada and Norway challenged the ban at the World Trade Organization (WTO), arguing it was discriminatory and violated trade rules. In 2014, the WTO ruled that while the ban restricted trade, it was justified under the WTO's "public morals" exception. However, the WTO also found that the ban was applied inconsistently, as it allowed exemptions for Indigenous hunts and certain commercial purposes. The EU later revised its regulations to align with WTO findings. This case highlighted the tension between trade rules and ethical concerns in global commerce. This scenario showcased the challenges of balancing trade law with national sovereignty, highlighting the conflict between internal regulations and international obligations.

Further more in **2012, Argentina** expropriated a 51% controlling stake in YPF, a major oil company owned by Spain's Repsol, citing national energy security. The move led to legal disputes as Repsol and international investors argued that Argentina violated investment agreements. Repsol filed a claim, and in 2014, Argentina agreed to a \$5 billion settlement to compensate the company. Additionally, U.S. investors sued Argentina in U.S. courts, claiming the government failed to follow YPF's bylaws, which required a tender offer when seizing control. In 2023, a U.S. federal court ruled against Argentina, ordering billions in damages. This case underscored conflicts between national sovereignty and investor rights in international investment law. These cases collectively illustrate the complex considerations of sovereignty and international trade law, revealing the nuanced relationships that define global commerce today.

SOVEREIGN AUTHORITY AND TRADE REGULATION IN A GLOBALIZED ECONOMY

Sovereignty refers to a state's right to govern itself, including setting trade laws and regulations. In international trade, regulatory jurisdiction defines the limits of this authority in cross-border commerce. While states regulate trade through laws on product standards, labor, and the environment, trade agreements may impose restrictions to promote free trade and cooperation. Conflicts arise when national regulations appear to violate trade obligations. For example, a country's safety standards may be challenged if they restrict imports. This highlights the

ongoing tension between sovereign regulatory power and international trade rules. Nations must balance their control over economic policies with international trade commitments. This involves aligning domestic regulations with trade agreements, preserving policy independence, and fostering global cooperation. Countries negotiate terms to protect their interests while maintaining economic ties, shaping the evolving relationship between sovereignty and international trade law.

Non-tariff barriers, such as quotas and product regulations, impact sovereignty by allowing governments to control imports. While they protect domestic interests and public welfare, they can also lead to trade disputes. For instance, the EU's strict GMO regulations have caused conflicts with exporting nations. Balancing sovereignty with trade commitments is essential in a globalized economy. Countries must ensure that trade laws respect both national interests and international cooperation.

Case studies, such as the The European Union (EU) enforces strict regulations on the import of genetically modified organisms (GMOs), prioritizing environmental safety, human health, and consumer rights. The EU's regulatory framework requires rigorous scientific assessments before GMOs can be approved for import or cultivation. Unlike some countries, such as the United States, which widely accept GMOs, the EU follows the precautionary principle, allowing member states to restrict or ban GMO imports based on potential risks.

These regulations have led to trade disputes, particularly with major GMO-exporting countries like the United States and Canada, which argue that the EU's restrictions act as non-tariff barriers to trade. The World Trade Organization (WTO) has addressed such disputes, questioning whether the EU's policies are scientifically justified or serve as protectionist measures. Despite these challenges, the EU maintains its cautious stance, emphasizing food safety, environmental protection, and consumer choice. The debate over GMO regulations highlights the broader conflict between national sovereignty, trade liberalization, and international trade law. Nations may argue that such regulations are necessary for public health, but exporting countries often view them as unjustified trade obstacles.

Overall, while non-tariff barriers can serve legitimate purposes aligned with sovereignty, they also pose challenges in the framework of international trade law. Maintaining this delicate balance is crucial for ensuring that trade laws honor both global commerce and individual

nations' rights.

SOVEREIGNTY AND GLOBAL INSTITUTIONS

International organizations play a key role in shaping global trade while influencing national sovereignty. These entities, such as the WTO, establish trade rules to promote economic cooperation, sometimes limiting a country's ability to set independent trade policies.

The WTO, for example, requires member states to follow agreements that can restrict national regulations in exchange for trade benefits. Similarly, regional trade agreements like the EU require states to share regulatory power, balancing sovereignty with economic advantages. Critics argue that such organizations overreach by imposing constraints on national governance. However, they also help maintain fair trade practices and resolve disputes, highlighting the ongoing challenge of balancing sovereignty with global economic integration.

SOVEREIGNTY AND REGIONAL TRADE AGREEMENTS

Regional trade agreements (RTAs) often present sovereignty concerns as they require member states to cede certain regulatory powers to supranational authorities. This transfer raises questions about the extent to which national governments can independently formulate policies, especially in areas like environmental standards and labor rights.

For example, agreements like the North American Free Trade Agreement (NAFTA) necessitated harmonization of various standards, leading to apprehensions about state sovereignty in enacting regulations beneficial to local populations. Such scenarios illustrate the tension between collective trade benefits and maintaining sovereign control.

Moreover, the dispute resolution mechanisms established by RTAs can further complicate sovereignty issues. When disputes arise, international arbiters may decide outcomes that diverge from national laws, challenging the traditional concept of state sovereignty in legal and commercial matters.

Ultimately, while RTAs aim to promote economic integration, they necessitate a delicate balance between shared prosperity and the preservation of national sovereignty. Policymakers must navigate these complexities to safeguard their nations' interests within an increasingly

interconnected global trading landscape.

SOVEREIGNTY AND DISPUTE RESOLUTION MECHANISMS

Dispute resolution mechanisms play a significant role in the dynamic between sovereignty and international trade law. These mechanisms ensure that trade conflicts are resolved in a manner that respects national sovereignty while adhering to international agreements. This intricate balance is essential for maintaining both legal fairness and sovereign rights in global trade.

International organizations, such as the World Trade Organization (WTO), provide frameworks for dispute resolution that often involve binding arbitration. Such mechanisms can raise concerns about sovereignty, as nations may feel compelled to adhere to decisions made outside their domestic legal systems.

Additionally, regional trade agreements often incorporate their own dispute resolution processes, which can further complicate the sovereignty landscape. States may face challenges reconciling domestic laws with international obligations, leading to tensions over compliance and authority.

Emerging trends, particularly in response to globalization, examine how these mechanisms evolve. Nations are increasingly advocating for dispute resolution that respects their sovereignty while also ensuring effective enforcement of trade agreements. This balancing act remains a crucial focal point in discussions on sovereignty and international trade law.

SOVEREIGNTY AND GLOBALIZATION

Globalization significantly impacts sovereignty and international trade law as nations engage in cross-border economic activities. To facilitate trade agreements, countries often cede some regulatory authority, affecting their control over key sectors. Economic integration encourages collaboration through shared trade standards, sometimes limiting independent policymaking and creating potential conflicts with national interests. Additionally, multinational corporations can influence government decisions, pressuring states to align policies with global market demands. This shift challenges traditional sovereignty, requiring nations to carefully balance the benefits of global trade with maintaining control over their domestic regulations.

LEGAL PRECEDENTS INFLUENCING SOVEREIGNTY AND GLOBAL TRADE

Courts interpret trade agreements, often addressing conflicts between sovereign policies and international obligation.

The Shrimp-Turtle Case (WTO Case DS58, 1998) was a landmark dispute at the World Trade Organization (WTO) between the United States and several Asian countries (India, Malaysia, Pakistan, and Thailand). The case addressed the balance between environmental protection and free trade under international law. The U.S. implemented a law requiring shrimp exporters to use Turtle Excluder Devices (TEDs) in their fishing operations to prevent the accidental killing of sea turtles, a protected species. Countries that did not comply faced a ban on shrimp exports to the U.S. The affected countries argued that this measure was an unfair trade restriction.

The WTO initially ruled that the U.S. violated General Agreement on Tariffs and Trade (GATT) rules because the ban was discriminatory and arbitrary, as it did not provide equal opportunities for all countries to comply. However, the ruling acknowledged that environmental protection could justify trade restrictions under GATT Article XX (General Exceptions). The case established that countries can enforce environmental policies affecting trade, but they must do so fairly and consistently. The U.S. later modified its policies to comply with WTO rules, showing how international trade law can accommodate environmental concerns while maintaining sovereign rights.

The **EC – Tariff Preferences** case involved a dispute between India and the European Communities (EC) at the World Trade Organization (WTO) over the Generalized System of Preferences (GSP). The European Union (EU) granted tariff preferences (lower import duties) to certain developing countries based on specific non-trade conditions such as environmental protection and drug control policies. India challenged this system, arguing that it discriminated against countries that did not meet these additional conditions.

The WTO ruled that while the EU could grant tariff preferences, it must do so in a non-discriminatory manner. The GSP scheme must be open to all developing countries on equal terms, rather than favoring specific nations based on unilateral conditions. This case clarified

how trade preferences must align with WTO rules, ensuring that sovereign decisions on trade policies do not unfairly discriminate against other nations. It reinforced the principle that preferential treatment in trade must be applied fairly, balancing sovereign trade policies with international trade law obligations.

CONCLUSION

International organizations are often criticized for limiting national sovereignty through binding regulations and enforcement mechanisms. Critics argue that these entities restrict a state's ability to create policies tailored to its needs. Trade agreements enforced by bodies like the WTO can make domestic laws seem secondary to international rules, raising concerns about autonomy. Additionally, power imbalances favor wealthier nations, prioritizing their interests over smaller or developing countries, fueling debates about fairness and sovereignty.

Nations increasingly struggle to balance sovereignty with international trade obligations. New trade agreements aim to protect sovereign rights while promoting cooperation. Regulatory cooperation is growing, as countries seek to harmonize standards while safeguarding national interests. Meanwhile, protectionist policies are rising, reflecting concerns over global trade's impact on domestic industries.

Technology further complicates the sovereignty debate, with digital trade regulations addressing privacy, data protection, and jurisdiction. These trends highlight the ongoing tension between national control and global trade rules. Trade itself neither strengthens nor weakens sovereignty; rather, a nation's trade policies, whether open or restrictive are an exercise of its sovereign power. However, these choices can impact future sovereignty. Open trade can enhance sovereign power by increasing options for citizens, while trade that compromises national security may weaken it over time. The key challenge is not defining the trade-sovereignty relationship but crafting policies that protect national interests. Policymakers should critically assess trade arguments, as they often reflect self-interest, and apply economic analysis with attention to specific circumstances. Moving forward, international trade law may require reforms to balance sovereignty with economic collaboration, ensuring nations retain autonomy while benefiting from global markets.