GLC-SPIL International Law Journal

Students for the Promotion of International Law (SPIL), Mumbai

Volume II **Article 1**
2022

Long Article

Title:	Analyses on State Sovereignty Hurdles against Private International Law and Justice
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Recommended Citation:
Kelly Ngyah, *Analyses on State Sovereignty Hurdles against Private International Law and Justice*, 2 GLC-SPIL INT'L L. J. 1 (2022).

ANALYSES ON STATE SOVEREIGNTY HURDLES AGAINST PRIVATE INTERNATIONAL LAW AND JUSTICE

- ***Kelly Ngyah***[1]

ABSTRACT

The concept of sovereignty de jure international justice mechanisms, as it is applicable with private international law, raises a problem for justice-rendering wherein, the difficulty of binding a State against its own jurisdictional competencies becomes unavoidable. Through the objective deployment of philosophical discerns within both theoretical and practical knowledge of suggested and experienced data analysis results, as hauled from an empiricist perspective, the conception of State sovereignty is thus demonstrated as the deceptive hurdle on true justice-rendering, and States' acquisition options are presented within the current private international law's judicial jurisdiction opportunities.

INTRODUCTION

Appreciation of the term sovereignty with regards the international relations and judicial considerations of States is given within article 2 (4) of the 1945 United Nations Charter which states that: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'. Besides the UN Charter, other appreciation stances of sovereignty have been purported within conventional dispositions and academic philosophies to defend, explain and maintain judicial and political ideologies.Thomas Nagel conceives State sovereignty within the State's territorial boundaries and the population that reflects diverse accidental and historical reasons for which the exercise of the State's sovereign power over its citizens is connected to the citizenry duties of justice towardsone another through the State's legal, social, and economic institutions and made possible

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through the same sovereign power.[2] This perception of sovereignty places State power on the advantageous and mutually beneficial relationship between the State and its citizens, which, if supported by the UN Charter's Article 2 (4) position, will entail the obligation for the sovereign State to protect its citizens even within a foreign sovereign territory no matter the tort, therefore, is an assessed international legal impasse.

As expressed by Rawls (1999), in *The Law of Peoples,* his anti-monism is essential to understanding both his domestic theory of a just society and his view of the relationship between domestic and international principles which today is experienced through what he believes to be the nature of sovereign States and in particular their comprehensive control over the framework of their citizens' lives, and that creates the special demands for justification and the special constraints on ends and means that constitute the requirements of justice.[3] His two principles of justice per se are designed only to regulate the basic structure of separate nation-States rather than the personal conduct of individuals living in neither a just society, the governance of private associations, nor the international relations of societies to one another. However, Rawls further identifies that the duties governing the relations among people include not only nonaggression and fidelity to treaties but also some developmental assistance to 'people living under unfavourable conditions that prevent their having a just or decent political and social regime.'[4] This highlights another facet of international justice-rendering consideration stance to which there is a need for further legalists' regulation of the international community. Besides Rawls' philosophies of justice towards a people under a sovereign State, there are several other theoretical arguments to the course of sovereignty that in one way or the other, tune the sovereign to discuss critical international justice rendering views.

I. THE THEORETICAL REVIEW OF STATE SOVEREIGNTY AT THE ENCOUNTER TO PRIVATE INTERNATIONAL LAW-JUSTICE

One more important consideration when addressing theoretical arguments with respect to 'State sovereignty' is the fact that it plays a role in defining the status and rights of nation-States, their

[2] Thomas NAGEL, *The Problem of Global Justice. Philosophy & Public Affairs* **(**Blackwell Publishing, Inc. Philosophy & Public Affairs 33, no.2, Spring 2005) pp 1.
[3] John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), pp 37, ISBN 0-674-00079-X.
[4] Ibid.

citizens and their officials. This somehow implies that if there is a need to recognize the sovereign immunity of States, there should also be such a privileged for its representatives.[5] Now, there's a logical connection between the sovereign privileges of the nation States and the authentication of international treaties form the foundational basis of the existence of international law, therefore sovereignty implies that the political autonomies of one State should for no reason be of 'higher or lower power' than another, then it can be argued that no international law can have value without concerning such sovereign States. The scope of this preliminary discern on sovereignty is to highlight, to what extent it would be judicially detrimental within international justice if sovereign States are faced with judicial issues of international laws to which they have not concerted to and worse more, faced in a situation of international private law justice in which another State of equal standing would have to render decisions over their sovereign privileges. Within the Public international law domain, this quarrel arises in the instance of many State party members to a multitude treaty. For example, when all parties consent to an original treaty and the details are changed or modified over time, such as the case when a treaty-based international institution sees its practice and 'jurisprudence' evolve over time and purports to obligate its members even though they opposed that evolution.[6]

A. Analysing literary conceptions of sovereignty

Before going into the basic theoretical concepts of sovereignty as highlighted in conventional dictums, it is worth a while appreciating and relating some critical conceptual views on the subject matter. In a view, an eminent scholar has described the sovereignty concept as 'organized hypocrisy' where he describes four ways that the term 'sovereignty' has been used.[7] In relation to justice in private international law, Krasner's third and fourth positions for sovereignty consider ─'international legal sovereignty, referring to the mutual recognition of States or other entities; and Westphalian sovereignty, referring to the exclusion of external actors from domestic authority configurations', this would imply that sovereign States should hold an extensive authority overall political and legal issues within its territorial limits & follow

[5] Arrest Warrant of 11 April 2000 (*Dem. Rep. Congo v. Belg*.), 41 ILM 536 (2002) (Int'l Ct. Justice, Feb. 14, 2002) (especially separate opinion of Judge ad hoc Bula-Bula, id. at 597 (in French)).
[6] United States, *Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body, WTO Doc. WT/DS58/AB/R, para. 130 (adopted Nov. 6, 1998). For more examples, Franck, Thomas M., *The Power of Legitimacy Among Nations*, (New York, Oxford: Oxford University Press, 1990), *supra* note 33.
[7] Stephen D. Krasner (1999), *Sovereignty: Organized Hypocrisy*, *supra* note 8, at pp 9, ISBN 0-691-00711-X

non-observance of foreign sovereign privileges of foreign representatives or citizens found within. Even if the third point indicates that international legal sovereignty should recognize the mutual cognition of other sovereign entities within or without its territorial limits, it does not indicate that such entities would have any legal immunities within the foreign territories, if not otherwise consented to by the host State. As such, if a State is a member of the international community, with due international privileges and also with an obligation to use such privileges in defending its citizens all over, then it would be failing if another Sovereign state denies it such rights, and most probably, the judicial decisions of opposite States may not be equal and thus, the path to justice within the international milieu becomes distorted.

In another view, some other authors have referred to Sovereignty as being 'of more value for purposes of oratory and persuasion than of science and law'.[8] This propaganda view indicates a very huge lapse and laxity in the concern of international justice. If it is considered that sovereignty is only a figurative term, that virtualises the subjects of international public law, then, the very essence of international law would be devoid of its substance and thus international justice baseless. Still, in another view sovereignty has also been explored as a 'social construct' in which 'numerous practices participate in the social construction of a territorial State as sovereign, including the stabilization of State boundaries, the recognition of territorial States as a sovereign, and the conferring of rights onto sovereign States'.[9] As a social construct, the administration of international justice becomes more permeable. However, if mutual understanding between the sovereign entities should fail, because of one or more reasons in such a way that there is a violent conflict, it will become impossible for justice to be rendered within matters of the private international law domain.

View of Haass, a former United States government official elaborates on sovereignty in a succinct manner that also bears the consideration that, modern analysis finds the concept problematic within the international justice arena. According to Haas, sovereignty has been associated with four main characteristics, including, one that enjoys supreme political authority and monopoly over the legitimate use of force within its territory, and the other one capable of regulating movements across its borders, able to make its foreign policy choices freely, and

[8] Michael Ross Fowler & Julie Marie Bunck (1995). *Law, Power, And the Sovereign State, Supra* Note 8, at 21 (Quoting Quincy Wright, Mandates Under the League of Nations 277–78 (1968)).
[9] Cynthia Weber & Thomas J. Biersteke, *Reconstructing the Analysis of Sovereignty: Concluding Reflections and Directions for Future Research, in* State Sovereignty as Social Construct, *supra* note 8, at 278, 278, (Cambridge University Press, May 1996).

recognized by other governments as an independent entity entitled to freedom from external intervention.[10]

Haass' first and fourth points purported for sovereignty, suppose the strong contradictory[11] inviolable privileges of sovereign nations. To the encounter of private international law, these two positions of sovereignty will entail that, States have all the rights to apply their national judicial system to all issues occurring within their territorial limits, even if it be of a foreign sovereign entity. By applying such a thought, it becomes difficult to apply Haass's third purport to foreign policy choices. If the sovereign entity would act as the sole justice system within its territory, it, therefore, implies that it would not be able to apply its foreign policies to other sovereign entities who would act the same in turn, except through a mutual understanding and non-obligatory consideration. As such, in the case of a legal issue arising within the domain of private international law, it would mean that justice can only be rendered if the concerned sovereign State in which such the matter arises wishes so. This, however, would create a very worrisome position for justice-seeking mechanisms with regard to cases such as transnational crimes. Thus, we see that from different author's perspectives or conceptive views on sovereignty, it becomes an important phenomenon of great attention and concern, with end to figure out the alternative measures for justice rendering within the international legal sphere especially with respect to issues arising from the private international law domain.

B. Analysing the critical philosophical growth of sovereignty at the encounter of justice

Before the age of enlightenment, Krasner demonstrates where four preponderant aspects were devoted to the definitional encounter of State sovereignty,[12] classical Ulpian's statements were known in medieval Europe, but sovereignty was an important concept in medieval times.[13] Medieval monarchs were not sovereign, at least not strongly so, because they were constrained by, and shared power with, their feudal aristocracy. However, both the sovereign and

[10] Richard N. Haass, *Sovereignty: Existing Rights, Evolving Responsibilities*, remarks at the School of Foreign Service and the Mortara Center for International Studies, (Georgetown University, at 2, Jan. 14, 2003), http://www.georgetown.edu/sfs/documents/haass_sovereignty_20030114.pdf.

[11] The term contradictory has been used to criticize the mentioned purports with regards private international law justice rendering mechanisms.

[12] Stephen D. Krasner (2001). *Problematic Sovereignty: Contested Rules and Political Possibilities*. pp. 6–12. ISBN 9780231121798.

[13] More at sovereignty (politics)". *Encyclopædia Britannica*. Retrieved 05 of August 2013.

aristocratic phenomena were strongly felt through customs.[14] This follows that around c. 1380–1400, the issue of feminine sovereignty was addressed in Geoffrey Chaucer's Middle English collection of *Canterbury Tales*, specifically in *The Wife of Bath's Tale,* which later in c. 1450,[15] had made use of the same elements of the tale, yet it changed the setting to the court of King Arthur and the Knights of the Round Table.[16] This ancient tale revolved around the English 'Authoritarian' romance, though, it may not be categorically linked to the modern conception of the international justice system, it, however, throws light to the aspect that, sovereignty is egocentric and calculative propaganda that denies the concept of egalitarian justice. The expression of Dame Ragnell, duly outlines that, the notion of women needing sovereignty is to point that, they need a totality of control for their selfish interest regardless that of any other. Such is not a way through which justice can be rendered if it is only one side's position that counts.

However, during the reformation era, a more appropriate understanding and meaning to sovereignty that would actually constitute or form justice-rendering were addressed by Jean Bodin in 1576. In his book, the 1576 treatise called *Les Six Livres de la République*, he argued from an absolute position that a sovereign must be 'hedged in with obligations and conditions, must be able to legislate without his (or its) subjects' consent, must not be bound by the laws of his predecessors, and could not, because it is illogical, be bound by his own laws'.[17] Meanwhile, Bodin makes it explicitly clear that a sovereign entity need not be bound by the laws within its jurisdictional competence, he subjectively highlights that such a sovereign bodyhowever must be bound by obligation and conditions to which the notion of international publiclaw could be held. This may be the case of international conventions and treaties but in the caseof international private law and for the sake of international private law justice-rendering assurances, these obligations need to be extended beyond the existent allowances granted untothe sovereign States. Though Bodin's conception scopes averagely within unique sovereign entities at the encounter of the political and the judiciary power, it may as well serve as an example to relate the international judiciary with the sovereign governing powers of the State.

[14] Ibid.
[15] This narrative concerned the knight Sir Gawain's wedding to Dame Ragnell and as what is purported to be wanted most by women: sovereignty. - *The Wedding of Sir Gawain and Dame Ragnell* (c. 1450).
[16] David Breeden (1450). *The Wedding of Sir Gawain and Dame Ragnell*. http://www.lone-star.net/mall/literature/gawain.htm (last visited on 11 January 2014).
[17] Jean Bodin (1576). *Les Six Livres de la République, Paris 1576* - La souveraineté.

In the Age of Enlightenment, the notion of sovereignty became measured among a sovereign people and their representatives in the sense that, the more the public authorities were granted a liberal trusteeship within the State, the more they demonstrated the likely tendency to abuse such powers. Rousseau, in his 1763 treatise *Of the Social Contract* argued, 'the growth of the State giving the trustees of public authority more means to abuse their power, the more the Government has to have the force to contain the people, the more force the Sovereign should have in turn, in order to contain the Government', with the understanding that the Sovereign is 'a collective being of wonder'.[18] Rousseau's position is similar to that of Bodin's but in a more liberal form, in that, it places real sovereignty in the hands of the people who are in need of the justice that is obtainable through such sovereign privileges. The scope of Private international law cuts across two or more distinctive sovereign considerations within Rousseau's perspectives, therefore, for there to be a real justice-rendering mechanism across the sovereign entities, the judicial jurisdiction ought not to come from a biased and one-sided source but that which is acknowledged, cherished and accepted by all. This position also ties with the legal maxim that 'there is no law without a sovereign'[19] predicated on the assumption that the people have an unbiased means to ascertain the general will. The general will, within the international community, will therefore arise on basis of a general consensus (usually held through international conventions and treaties) reached by the different sovereign State entities in independent international jurisdictions.

C. Analysing the theoretical dispositions of sovereignty from conventional dictums

The historical appreciation of this analysis is rooted within the discoveries of some scholars of international law who identified the modern western originated international system of States, multinational corporations, and organizations, as having begun at the Peace of Westphalia in 1648.[20] It has also been assessed that sovereignty is a term that is often misused.[21] Also, 'there exists perhaps no conception, the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was

[18] Rousseau (1763). *Treaties of Social Contract*. Book II Chapter I.
[19] Stallybrass, William Teulon Swan (1918). *A society of states: Or, Sovereignty, independence, and equality in a league of nations*. (Routledge, October 2019), ISBN: 9780429055447.
[20] Gabel, Medard; Henry Bruner, *Global Inc.: An Atlas of the Multinational Corporation*, (New York: The New Press, 2003) pp 2, ISBN 1-56584-727-X.
[21] Stephen D. Krasner (1999), *op, cit.*

universally agreed upon'.[22] These criticisms can however be understood to cover up for the undermined position of the UN charter with regards to States' sovereignty. Furthermore, in appreciating the sovereign-worry stance, H. V. Evatt of the High Court of Australia had held the opinion that 'sovereignty is neither a question of fact, nor a question of law, but a question that does not arise at all'.[23] The numerously variant criticisms, therefore, tie with the fact that sovereignty cannot be a considerable factor if there has to be an effective international justice rendering mechanism. In order to assure an efficient international justice system, there is a need to institute or most probably coordinated a true international justice-rendering jurisdiction that bypasses the sovereign privileges of nations.[24] Even though public international law provides for a series of international justice opportunities (e.g. ICJ and the ICC), it however still does not apply due to intervention opportunities to non-adherent member States. It is, as such, that critical thoughts on the origin of the 'sovereign' notion have indicated other more comprehensive understandings that could outline the early goals of the sovereign conception opportunism on international justice within and without States. Thus, goes that, in 2000, Germany's Foreign Minister Joschka Fischer had argued that the system of European politics set up by Westphalia was obsolete when he referred to the Peace of Westphalia in his Humboldt Speech.[25]

The criticisms of the Westphalian sovereign notion have also been held within terrorist discussions, for example, Lewis 'Atiyyatullah, who claims to represent the terrorist network al-Qaeda and its perception of the international balance of power at present and in the future, declared that 'the international system built up by the West since the Treaty of Westphalia will collapse, and a new international system will rise under the leadership of a mighty Islamic state'.[26]

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[22] Lassa Oppenheim, *International Law 66* (Sir Arnold D. McNair ed., 4th ed. 1928)

[23] S. Akweenda, *Sovereignty in cases of Mandated Territories, in 'International law and the protection of Namibia's territorial integrity*', (Martinus Nijhoff Publishers, 1997) pp 40, ISBN 90-411-0412-7.

[24] An example is given in the case of ICC and the ICJ whose decisions are bounded over all its adherent members.

[25] Fischer, Joschka (May 12, 2000), *From Confederacy to Federation - Thoughts on the Finality of European Integration*.http://web.archive.org/web/20020502231325/http://www.auswaertiges-amt.de/www/en/eu_politik/ausgabe_archiv?suche=1&archiv_id=1027&bereich_id=4&type_id=3, Retrieved on the 4th of August 2013.

[26] Berman, Yaniv (April 01, 2004), *Exclusive - Al-Qa'ida: Islamic State Will Control the World*, The Media Line, archived. http://web.archive.org/web/20040610173219/http://www.themedialine.org/news/news_detail.asp?NewsID=5420. Retrieved 4th of August 2013.

The most worrying position about the phenomenal theories, within the conventional dictums of sovereignty in the international legal sphere, is the isolator presupposition latitude for sovereign States, according to which, although State recognition may signify the decision of asovereign State to treat another entity as also being a sovereign State either expressly or impliedly, it doesn't necessarily signify a desire to establish or maintain diplomatic relations. This would obviously put the wealthier and more advanced nation-States in dominator and dictatorial positions over the poor and dependent sovereign States. The national judiciary dispositions of the superior States would always prime over those of the inferior ones, therebycreating a biased international justice-rendering opportunism. Provided that, there is factually no distinctive definition that is binding on all the members of the community of nations, on thecriteria for statehood, and to which the practical criteria are mainly political, not legal,[27] in a relative consideration, L.C. Green cited the recognition as 'since recognition of statehood is a matter of discretion, it is open to any existing State to accept, as a State any entity it wishes, regardless of the existence of territory or of an established government'.[28] State sovereignty opportunism in such a liberal and non-legally binding scope would be very detrimental to international justice mechanisms, especially at the encounter of private international law and justice. In thiscase, the conflict of laws would obviously prevent the equitable justice choicesof the politically and economically weaker sovereign nation-States. Though this is a blurred recognition stance, international law is however in possession of a number of theories as to how States should be recognized as sovereign entities.

Primarily, in the 19th century, the constitutive theory of Statehood which required that a State in international law was sovereign if and only if another sovereign state recognized it as such, was developed. To this, new States could not immediately become part of the international community or be bound by international law, and the recognized nations did not have to respect international law in their dealings with them.[29] This constitutive theory, a priori, indicates that there was really no effective international justice mechanism from which new States could benefit, from since they needed to be recognised before acquiring such privileges. The one-sided and non-egalitarian culture of the international justice system was enshrined in the 1815

[27] B. Broms, 'IV Recognition of States', in *International law: achievements and prospects*, (UNESCO Series, Mohammed Bedjaoui(ed), Martinus Nijhoff Publishers, 1991), pp 47-48 ISBN 92-3-102716-6 [3].
[28] Israel Yearbook on Human Rights (1989), Yoram Dinstein, Mala Tabory eds., Martinus Nijhoff Publishers, 1990, ISBN 0-7923-0450-0, page 135-136 [4].
[29] Hillier, Tim, *Sourcebook on Public International Law*. (Routledge-Cavendish, February 1998), pp 201–2, ISBN 1-85941-050-2.

Congress of Vienna and the Final Act, which recognised only 39 sovereign States in the European diplomatic system, thus resulting in a firmly established practice that marginalised the faith of future of new States at the cognitive mercy of one or more of the great powers.[30] Pertaining to the constitutive theory, in 1912, L. F. L. Oppenheim highlighted that '...International Law does not say that a State is not in existence as long as it is not recognised, but it takes no notice of it before its recognition.[31] Through recognition, only and exclusively, does a State become an International Person and a subject of International Law'. This indoctrinated the international law procedure since the early 19th century, therefore it may imply that the recognition of other States by the great powers would only have been in accordance with an interest-based perspective since these great powers had the discretionary opportunity, as for which State was to be chosen for joining their league. From an analytical position, a new State could be recognised through the consistency of its judicial system or the due subordination of its legal opportunism to that of the 'great powers'; its economic potentialthat would promote an interest-based economic relationship with the great powers; its strategic military-based positioning to the great power's military interest for combat zones and other research opportunities; and its pledge of sustainable loyalty both within the economic and political domains towards the great powers.

The conditional considerations behind the constitutive theory that could very well have influenced the new States into joining the league of the great powers, therefore, implies that these new States did not actually or could not boast of enjoying full international justice protection under the dominancy and copied propaganda of the great powers. As such, in the case of issues arising from the private international law domain to which effective justice is expected to be rendered, the possibilities become very limited. This is because, the later sovereign States which probably may have pledged loyalty and allegiance to the great powers that recognised them as sovereign entities, would have no other option than to follow the leadership positions of their 'empowerment masters', even if the adjudicative conclusions are out-rightly not satisfactory. In addition, another principal criticism of this constitutive theory is the confusion that may arise if one State would recognise a new State and the others do not.To this, Hersch Lauterpacht, one of the theory's main proponents suggested that it is a State's

[30] Holsti, Kalevi Jaakko, *Taming the Sovereigns: Institutional Change in International Politics* (Cambridge University Press, 1935) pp 128.
[31] Lassa Oppenheim, Ronald Roxburgh, *International Law: A Treatise*. (The Lawbook Exchange, Ltd. 2005), p. 135.

duty to grant recognition as a possible solution. However, a State may use any criteria when judging if they should give recognition, along with having no obligation to use such criteria and as such States may only recognize another State if it is to their advantage.[32]

Secondarily, in contrast to the constitutive theory which requires a State to be recognised by one or more of the great powers to the final Act of the 1815 Congress of Vienna, the declarative theory as famously expressed in Article 1 of the 1933 Montevideo Convention defines a State as a person in international law if it meets the following criteria: 1) a defined territory; 2) a permanent population; 3) a government and 4) a capacity to enter into relations with other states. According to the declarative theory, an entity's statehood is independent of its recognition by other states.[33] In as much as this theory duly liberates the State from the parentaldictatorship of sovereign existentialism by some great powers, there is still a significant nuanceas to the acceptance of or the rendering of justice within the private international law domain. Because all States are granted autonomous juridical independence within article 4 of the Montevideo Convention,[34] the situation becomes further complicated within the scope of private international law. With issues arising from public international law and justice- rendering mechanisms, the results are almost very efficient and effective because the sovereignparties to such adjudicative instances have duly consented. Whereas in the case of private international law, the declarative theory becomes problematic because according to articles 5 and 8 of the convention[35], it may become very difficult for two opposing or non-allied sovereignStates to agree on the adjudicative instance of one another.

Tertiary, a new theoretical notion of contingent sovereignty seems to be emerging, but it has not yet reached the point of international legitimacy. Neoconservatism is earmarked to have developed this line of thinking further with the assertion that a lack of democracy may foreshadow future humanitarian crises, or that democracy itself constitutes a human right, and therefore nation-States not respecting democratic principles, open themselves up to just war by

[32] Hillier, Tim, *Sourcebook on Public International Law*. op, cit.
[33] Article 3 of the Montevideo Convention, 1933.
[34] Article 4 stipulates that: States are juridically equal, enjoy the same rights, and have the same equal capacity in their exercise. The rights of each one is not dependent upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.
[35] Article 5 stipulates that: the fundamental rights of States are not susceptible of being affected in any manner what so ever; and article 8 declares that: No state has the rights to intervene in the internal or external affairs of the other.

other countries.[36] The two conservatives, Stefan Halper and Jonathan Clarke, in their 2004 book, '*America Alone: The Neo-Conservatives and the Global Order*', provided a succinct introduction to neoconservatism at that time.[37] The current views of neo-conservatives unite around three common themes :

1) A belief derived from religious conviction, that the human condition is defined as a choice between good and evil and that the true measure of political character is to be found in the willingness of the former (themselves) to confront the latter. This neo-conservativist approach frames sovereignty within a moral auspice premise of the sovereign will and conscience. Thus, as a sovereign entity, it, therefore, belongs to the State to choose its collaborative moral obligation towards other sovereign States. This stance is yet not very supportive of the application of effective and efficient justice mechanisms within the scope of private international law, but it helps in hauling the representatives' consciences of the sovereign States to a moral and/or mutually beneficial understanding that may be necessary for justice rendering. But do States act on the basis of moral uprightness or on other interest-based perspectives?

2) An assertion that the fundamental determinant of the relationship between States rests on military power and the willingness to use it. This theoretical view is not very different from the constitutive theory of the 1815 Congress of Vienna because in one or more ways it draws light to the fact that the great powers would be in charge of the sovereign considerations of States. Thus, for the fear of military power and the probable reactions of the most powerful sovereign States, the others will in turn be intimidated into marginal and subordinate adjudicative positions at the mercy of the former; and

3) A primary focus on the Middle East and global Islam as the principal theatre for American overseas interests. This focus concentrates on the United States' zealous hegemonic sovereign control over particularistic contrary sovereignties which are likely breeding grounds for non-conformist movements against the US's neoconservativism. Here, international justice-

[36] Olivier, Michèle (October 3, 2011). '*Impact of the Arab Spring: Is democracy emerging as a human right in Africa*?', *Rights in focus discussion paper*, Consultancy Africa Intelligence. Available online at: http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=866:impact-of-the-arab-spring-is-democracy-emerging-as-a-human-right-in-africa&catid=91:rights-in-focus&Itemid=296. Retrieved 5th of August 2013.

[37] Halper, Stefan; Clarke, Johnathan, *America Alone: The Neo-Conservatives and the Global Order*, (Cambridge, United Kingdom: Cambridge University Press 2004), ISBN 0-521-83834-7

rendering becomes dependent on the will of the Americans which in most respects than not, becomes highly detrimental to both the declarative notion of sovereign States [38] and the implications of justice as a whole within the international community.

II. THE EMPIRICAL REVIEW OF STATE SOVEREIGNTY AT THE ENCOUNTER OF PRIVATE INTERNATIONAL LAW & JUSTICE

The empirical question of sovereignty at the encounter with the mechanisms of justice developed within the private international law domain to be discussed within this section is bounded to the considerations of several epistemic parameters in which the elementary composition of its (sovereignty) definition introduces more precautionary measures to both the violation of the term and the risks engaged against international justice.

A. Sovereign territorial integrity and the Earth's remote censoring satellite worry

The empirical conceptualization of this worry is brought up in terms of three dimensions which are control, autonomy, and authority- generally attributed to the sovereign State.[39] It also concerns the predominant materialistic reading of international relations which situates the operation of each of these three elements within the tangible domain of territory, resting upon the physical foundations of military power and/or economic wealth. In this spectrum, the epistemic lapses of several social constructs that have been overlooked would be briefly examined to determine the trail of the informational dimension of sovereignty and its probable support or opposition to the global status quo of justice within the private international law domain. It follows that in tune to Anthony Giddens' and Michel Foucault's arguments, though in different ways and reaching different conclusions, surveillance technologies have been the basis for the State's administrative power throughout the modern era.[40] Indeed Peter & Ronald have been able to bring out that, 'statistics' and 'State' are derived from the same root; and not

[38] Such as given in the 1933 Montevideo Convention: Article 5 stipulates that: the fundamental rights of States are not susceptible of being affected in any manner what so ever; and article 8 declares that: No state has the rightsto intervene in the internal or external affairs of the other.

[39] Janice E. Thomson, '*State Sovereignty and International Relations: Bridging the Gap between Theory and Empirical Research"*, (International Studies Quarterly, Vol. 39, Summer 1995); and Karen T. LitHn, '*Sovereignty in World Ecopolitics', Mershon International Studies Review*, Vol 41, Issue Supplement_2, November 1997).

[40] Anthony Giddens, *The Nation-state and Violence* (Berkeley and Los Angeles: University of California Press, 1987); and Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1979).

coincidentally, the large-scale collection of statistics began with the emergence of the modern State.[41] These statistics, therefore, form the basis of cross territorial monitoring and evaluation opportunism which may weaken the sovereign conception and/or position of any State at the encounter of its surveyors. Anthony notes, that the importance of surveillance as a medium of power has not been grasped by either the liberal or the socialist traditions in political and economic theory.[42] Empirical data on surveillance has proven to be very influential in many aspects of a State's economy and security integrity. Strange depicted the international knowledge structure and identified four intersecting structures in the world's political economy: security, production, finance, and knowledge to which she instigates that, while most international relations' theorists focus on relational power, or the ability of one agent to influence another's behaviour, the real structural power which 'confers the power to decide how things shall be done'[43] could most probably be obtained from territorial surveillance and intelligence assessment opportunism. The power to decide how things can be done out of intelligence assessment of another sovereign State to the one which is in a litigation instance will obviously turn around the course of justice to the benefit of the surveyors. Priority security concerns of the surveyed States may maintain them in lower demanding and rights seeking positions that duly obstruct the course of international justice.

In another regard, concerning the principle of territorial exclusivity, John Ruggie purports that an epochal development that marked the end of the medieval era has been the defining feature of the modern system of States to which he claims that the recent globalisation of human activities is precipitating the 'unbundling of territoriality' and the 're-articulation of political space'.[44] The worry posed by this globalisation and unbundling of territoriality is that the unbeatable technology of the Earth Remote Censoring Satellite is perhaps better suited to exemplify these trends which inherently erases territorial boundaries by virtue of the global scope of both its observations and its diffusion of information. Though this Earth Remote Censoring Satellite mechanism serves to foster global efforts on transparency, it however undercuts the sovereign principle of territorial exclusivity. The worry behind this territorial exclusivity principle, to a world rendered transparent by satellite technology because of the

[41] Peter J. Taylor and Ronald J. Johnston, '*Geographical Information Systems and Geography*", in John Pickles (ed.), *Ground Truth: The Social Implications of Geographic Information Systems* (New York: The Guildford Press, 1995).
[42] Anthony Giddens, *The Nation-state and Violence. op, cit.* Note 6, 308.
[43] Susan Strange, *States and Markets* (New York: Basil Blackwell, 1988), pp 25.
[44] John Gerard Ruggie, '*Territoriality and Beyond: Problematizing Modernity in International Relations', (*International Organization, Vol. 47, No.1, Winter 1993), pp 171.

non-territorial nature of outer space, is that it is incongruous with the conventional nature of the world's sovereign States. This technology breeds permeability and denies the State's territorial integrity. Worthwhile also remarking here is that as the air space above a State's territory lies within that State's jurisdiction, the space above the earth's atmosphere (outer space) was declared in the 1966 Outer Space Treaty to be a *res communis,* or the common province of humanity,[45] thus implying that, much injustice is committed to sovereign territorialintegrity through the Earth Remote Censoring Satellite system.

In specific terms, the developing countries have now understood States' epistemic sovereignty to be implicit in the norm of territorial exclusivity and the ability to control information about one's country denoted from the launch and threatening position of the Landsat as a crucial component of territorial sovereignty. For example, when NASA espoused an open skies policy with its first launch of Landsat, some Latin American countries such as Mexico countered that their sovereignty over natural resources extended to the dissemination of information about them ─ for instance, Mexico announced that 'no data would be collected over Mexican territory from air or space without prior permission'.[46]

B. The sovereign state's institutionalism worries

The functional comprehension in examining international cooperation has been a productive manner to generate hypotheses and focus empirical research on particular practical aspects of international law which includes how the design of legal procedures and organizations affect or orient outcomes. Though many political scientists and international legalists (lawyers) may see this comprehensive perspective as too narrow, the baseline critique may be rooted in three lines of arguments through which an analysis is made on the institutionalist dogma and its encounter with the international justice system.

Primarily, the creation of institutions and choosing of institutional designs by States are usually beyond just mere furthering of their interests, but such choices depend, in part, on other factors that are seen as appropriate and legitimate and not necessarily or simply on rational cost-benefit

[45] UN *Chronicle,* Vol. 29 (December 1992), '*Legislating the 'Last Frontier',* p.54.
[46] Pamela Mack, *Viewing the Earth: Tire Social Construction of the Landsat Satellite System* (Cambridge, MA: The MIT Press, 1990), pp 187.

calculations.[47] This provides a medium for ignored institutionalisation of ethics or consequential variables that create and build institutions within States which tend to orient particularist forms of behavioural modifiers and to which colossally induce some sort of overlooking attitude at the encounter of 'legal injustice' within, both, national and the international spheres. Duffield argues that important institutional forms, such as 'informal institutions, tacit bargaining, and inter-subjective institutions often arise from processes other than agreement, and that political science studies on rational design and legalization have ignored important independent variables such as interests, power/capabilities, institutional path dependence, and the role of ideas.[48]

Secondarily, another critical empirical review on sovereign States institutionalism has been drawn from concepts such as obligation, precision, delegation, and membership which are overly bureaucratic. Even though these criteria may matter in order to ensure delays for appropriate scrutiny, there is still however much to worry about because the law's role in world politics goes far beyond the public international legal bureaucracy.[49] The need for more precision and lesser ambiguity is just what is highly needed with regard to matters of justice within the international private law domain. Is there really a need to address a particular domain of justice as a 'conflict of laws'? This obviously arises because of the lack of precision and much tolerance of ambiguity in the sovereign context of States within the legal international atmosphere. Some political scientists have, however, examined the phenomenon of precision, to the tune and measure how clearly and unambiguously international agreements define what is required for compliance.[50] The standard assumption by legal analysts has been that precision yields more effective international legal institutions and rules, Jules & Michael; and Franck argue that the extent to which a particular law affects behaviour depends upon the clarity of the law, among other factors. [51] The ambiguity factor is a sure measure for disregard and

[47] Wendt, Alexander, *Driving with the Rearview Mirror: On the Rational Science of Institutional Design*, (International organization, Vol 55, Issue 4, Autumn 2001), pp 1019.
[48] Duffield, John S., *The Limits of "Rational Design*, (International Organisation, Vol 57, issue 2, spring 2003) pp 411.
[49] Finnemore, Martha & Toope, Stephen J., *Alternatives to "Legalization": Richer Views of Law and Politics*, (International Organisation, Vol 55, issue 3, summer 2001) pp 743; and Christian, Reus-Smit, *The Politics of International Law*, (Cambridge University Press, 2004) pp 14-44, *supra* note 46.
[50] Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter & Duncan Snidal. *The Concept of Legalization*, (International Organisation, Vol 54, Issue 3, 2000) pp. 401, *supra* note 131.
[51] Jules Lobel & Michael Ratner, *Bypassing the Security Council: Ambiguous Authorizations to Use of Force, Cease-Fires and the Iraqi Inspection Regime*, (American Journal of International Law, Volume 93, Issue 1, January 1999) pp 124; and Thomas M. Franck, *Recourse to Force*: *State Action Against Threats and Armed Attacks* 8 (noting the evolution of practice regarding the veto power under the UN Charter). (International & Comparative Law Quarterly, Volume 52, Issue 3, July 2002)

consequential non-compliance with legal dispositions to which sovereign States would easily evade due procedural international justice-rendering from the legal guidance of private international law. In fact, a leading legal study of compliance argued that ambiguity is one of the main causes of poor compliance.[52] The procedural manner and judicial force determining the imprecision of international laws at the encounter of sovereign entities falls among the major indicators to be considered, and through which the central finding of political science research has examined legal precision otherwise. Though with regards to nonbinding international agreements, imprecision, can lead to more cooperation because it allows for incomplete contracts, which may be unavoidable when interests diverge and uncertainty is high,[53] the dangers are however more critical than the opportunist liberal interest-based provisions of imprecise clauses. Also, ambiguous agreements may be favoured in some domestic political settings e.g. some research on international trade suggests that unambiguous international obligations can lead to greater political mobilization by domestic groups opposed to trade liberalization.[54] It is obvious that imprecise agreements are at times created to foster flexibility while sending across credible signals but these imprecision and other forms of flexibility must not be so elastic that sovereign States may misinterpret short-term variations in behaviour, as long-run deviations from compliance.[55] Generally, man's imperfect nature obviously requires that agreements be made flexible such that evolutionary phenomenal changes may be accommodated within such agreements through regular amendment proceedings and other modification processes. Some political science research studies on preferential trade agreements find that precision decreases cheating. By increasing the probability of detection and making it a favoured design choice, the task of resolving conflicts of interpretation and sanctioning deviant behaviour is eased.[56] Therefore, the fact that there is a general lack of precision within the private international law domain becomes a great call of concern with regard to aspects of Justice arising therein its legal scope.

[52] CHAYES, Abram & CHAYES, Antonia Handler, *The New Sovereignty: Compliance with International Regulatory Agreements*, (Harvard University Press, 1995), supra note 11.
[53] Abbott, Kenneth W. & Duncan Snidal, *Hard and Soft Law in International Governance*, (International Organisation, Vol 54, Issue 3, summer 2000) pp. 421 *supra* note 136.; Koremenos, Barbara, *Contracting Around International Uncertainty*, (American Political Science Review, Vol 99, Issue 4, November 2005) pp 549 *supra* note 130.
[54] Judith Goldstein & Lisa Martin, *Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note*, (International Organisation Vol 54, issue 3, summer 2000), pp 603.
[55] Jeffrey Kucik & Eric Reinhardt, *Does Flexibility Promote Cooperation? An Application to the Global Trade Regime*, (International Organisation, Vol 62, issue 2, July 2008), pp 477.
[56] McCall Smith, James, *The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts*, (International Organization, Volume 54, Issue 1, Winter 2000) pp 137.

Tertiary, there has been a critical study and a specific concern with regard to the legal designs of sovereign States which seems to have been edified in a contrary fashion to that of international law. This is in respect to those legal designs that result from prior historical choices and emerge, in part, through independence and now seem to constrain the modern choices.[57] There is a danger in this field with regard to the sovereign position of States. Prior historical, politico-legal frameworks across sovereign nations are different from several perspectives and as such, in the case of an illegality instant that arises from the domain of private international law, the separate sovereign entities may obviously have different views and approaches for rendering justice. However, considerable efforts are made by a large, growing community of *historical institutionalist* scholars working in international relations and comparative politics, as well as law, and blurring the lines between all these fields with an aim to explain the path dependence of institutions, including legal institutions.[58] These empirical lines may well be able to address probable root causes of private international law and justice rendering impasses.

C. The empirical review of judicial independence at the encounter of international law & justice

Much empirical research on political science has recently analysed several ways in which delegation of problems and conflicts to international courts shape legal evolution.[59] A remarkable finding was, pointed out that the extent of such delegation increases with two variables relating to the design of courts: judicial independence (which depends on the selection method and tenure of judges) and access.[60] Another finding in line with the work done by lawyers on the impact of independent tribunals[61] is that access for private, non-State litigants

[57] Pierson, Paul, *Increasing Returns, Path Dependence, and the Study of Politics*, (American Political Science Review, Vol 94, Issue 2, June 2000) pp 251; Mark Axelrod (2008). *Saving Institutional Benefits: Path Dependence in International Law* (unpublished Ph.D. dissertation, Duke University) (on file with the authors); and Katerina Linos, *Path Dependence in Discrimination Law: Employment Cases in the United States and the European Union,* (Yale Journal of International Law, Vol. 35, No. 1, 2010) pp 115.

[58] Henry Farrell, *The Political Economy of Trust: Institutions, Interests, And Inter-Firm Cooperation in Italy And Germany*, (Cambridge University Press, September 2009).

[59] Shaffer, Gregory & Ginsburg, Tom, *The Empirical Turn in International Legal Scholarship: A Review and Prospectus*, (American Journal of International Law, Vol 106, Issue 1, January 2012) *supra* note 4.

[60] Keohane, Robert O., Andrew Moravcsik & Anne-Marie Slaughter, *Legalized Dispute Resolution: Interstate and Transnational*, (International Organization, Vol 54, Issue 3, Summer 2000) pp 457 *supra* note 150.

[61] Posner, Eric A. & Yoo, John C., *Judicial Independence in International Tribunals*, (California Law Review, Vol 93, No.1, January 2005), *supra* note 102.; Laurence R. Helfer & Anne-Marie Slaughter, *Why States Create International Tribunals: A Response to Professors Posner and Yoo*, (93 *California Law Review 899-956, 2005*), pp 899 *supra* note 151.

and compulsory jurisdiction both contribute to judicial independence.[62] Karen's position correlates with the argumentation focus of this paper that requires a new justice system for legal issues arising within the domain of Private international law and which the concept of sovereignty within States has so undermined.

Besides Karen's findings, political scientists, meanwhile observing the operational mechanisms of the World Trade Organization (WTO), have struggled to explain why some disputes brought in front of its jurisdiction are settled, while others are not. One major findinghas been pinned pointed to the fact that democracies are more likely to settle disputes with eachother at the consultation stage.[63] Busch specifically argues that these 'settlements occur becausedemocracies are better able to credibly commit to negotiated settlements and that this finding indicates that democracies use WTO's dispute settling mechanism (DSM) not to ensure adherence to international legal norms, but to tie the hands of other parties'.[64] International trade which forms one of the most important areas (besides transnational criminality), is most likely to have gained the global regard for several international justice systems because of the priority of economic interests held by the influential sovereign States. However, judicial matters within the WTO are still sceptical of the issues brought before it because of, in part, the sovereign State's liberal opportunism to choose its adherence options. Another finding whythe WTO's DSM may not work or fails to address commercial judicial matters is that: in 'low-velocity' industries with relatively few product lines and low turnover, early settlement is lesslikely, perhaps because vested interests are greater and the costs of delay are less onerous than in more vibrant industries.[65] And another worrying finding is that developing States tend not to bring cases to the WTO's system, because of high start-up costs in pursuing such legal action.[66] How can justice, therefore, be rendered in such a materially inconsistent and financially marginal judicial system? Are the international adjudications dependent on the soleauthorities of the international judges?

[62] Karen J. Alter, *Private Litigants and the New International Courts*, (Comparative Political Studies, Vol 39, Issue 1, February 2006) pp 22.
[63] Busch, Marc L. *Democracy, Consultation, and the Paneling of Disputes Under GATT*, (Conflict Resolution Journal, Vol 44, issue 4, 2000), pp 425, 426–27.
[64] Ibid.
[65] Davis, Christina L. & Shirato, Yuki, *Firms, Governments, and WTO Adjudication: Japan's Selection of WTO Disputes*, (World Politics, Vol 59, No.2, January 2007) pp 274.
[66] Davis, Christina L. & Bermeo, Sarah Blodgett, *Who Files? Developing Country Participation in GATT/WTO Adjudication*, (Journal of Politics. Vol 71, No.3, 2009), pp 1033.

Attempts to shed light on the debate of international judges (with regards to their delegation of national governments) have sought to incorporate insights from the study of domestic judicial behaviour, looking at questions such as the causes and effects of judicial decision-making.[67] There are arguments that international judges are a type of agent, to whom national governments delegate important, but limited, authority.[68] Some other international judges are 'thought of as 'trustees', meaning that they have substantial independent powers because their authority derives from sources other than a delegation from national governments'.[69] For example, some studies of the European court found that some judges are more 'activist' than others.[70] The diversity of Judges, therefore, forms the basis for different explanations of the evolution of the legal doctrine within the international justice system, more obviously understood as one rooted in State interest and the other in independent judicial interpretation. More empirical research on other international tribunals to explore the strategic behaviours of judges has come up with similar issues of concern.[71] These empirical results highlight diverse resolutions for the persuasive reasons why some States, over time may become willing to ratify particular Court Statutes and cede authority to the Court. It is so prompted that, such research induced in the 'fourth race of power, looks to persuasion as a driving force for cooperation, rather than to the structure of a problem or narrow calculations of State interest'─ Deitelhoff argues that 'States' willingness to give up sovereignty to the International Criminal Court resulted from persuasion during negotiations that caused States' interests to change.[72]

[67] Staton, Jeffrey K. & Moore, Will H., *Judicial Power in Domestic and International Politics*, (International Organization, Volume 65, Issue 3, July 2011) pp 553.

[68] Garrett, Geoffrey & Weingast, Barry, *Ideas, Interests and Institutions: Constructing the EC's Internal Market*, (in IDEAS AND FOREIGN POLICY: Believes, Institutions and political Change, Edited by Judith Goldstein and Robert O, Keohane, pp 173-206, N.Y Cornell University Press, 1993) *supra* note 37; Garrett, Geoffrey, Daniel Kelemen & Heiner Schulz, *The European Court of Justice, National Governments and Legal Integration in the European Union*, (International Organisation, Vol 52, issue 1, Winter 1998), pp149; and Carrubba, Clifford J., *Courts and Compliance in International Regulatory Regimes*, (Journal of Politics, Vol 67 No.3, 2005), pp 669. DELEGATION AND AGENCY IN INTERNATIONAL ORGANIZATIONS, *supra* note 148.

[69] Karen J. Alter, *Who Are the "Masters of the Treaty"? European Governments and the European Court of Justice*, (International Organisation, Vol 52, Issue 1, 1998) pp 121; and Karen J. Alter, *Agents or Trustees? International Courts in Their Political Context*, (European Journal of International Relations, Vol 14, Issue 1, March 2008) pp 33.

[70] Voeten, Erik, *The Politics of International Judicial Appointments: Evidence from the European Court of Human Rights*, (International Organization, Vol 61, Issue 4, October 2007) pp 669; and Voeten, Erik, *The Impartiality of International Judges: Evidence from the European Court of Human Rights*, (American Political Science Review, Vol 102, Issue 4), November 2008) pp 417.

[71] Carrubba, Clifford J., Gabel, Matthew & Hankla, Charles, *Judicial Behavior Under Political Constraints: Evidence from the European Court of Justice*, (American Political Science Review, Vol 102, issue 4, 2008) pp 435; and Busch, Marc L. & Pelc, Krzysztof J, *The Politics of Judicial Economy at the World Trade Organization*, (International Organisation, Vol 64, Issues 2, April 2010), pp 257.

[72] Deitelhoff, Nicole, *The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case*, (International Organisation, Vol 63, issue 1, 2009), pp 33, 35, *supra* note 50.

The relative doctrines of the international justice system, have been drowned within the sovereign-egoism dream of the most influential States, as had been the case since the 1815 Congress of Vienna (Final Act which recognised only 39 sovereign States in the European diplomatic system) to which the constitutive theory demanded that every other State had to become Sovereign only if it was recognised by one or more of the great powers. Modernity has now advanced with very strong principles of equality and other auto-determinative means for the sovereignty of States but the great powers of yesterday seem to hardly digest this aspect. Their tactical mechanisms to ensure their 'super-sovereign' positions over other sovereign nations are numerous. It follows that an important question recently analysed by political scientists studying the content of international judicial decisions as an evident pattern of legal citation[73] is why the European Court of Human Rights would choose to cite its own precedents so extensively (despite the absence of a norm of stare decisis in international law)[74] and why the Court's tendency to cite precedents varies widely across cases. Also, Legal scholars have already paid significant attention to similar questions, such as the use of foreign law in domestic courts.[75] It can, thus, be deduced that such usage of decisions of precedence will lay a strategic framework and legitimize them, maximizing the likelihood of domestic courts to comply with the judgements. In the tail, the findings become suggestive of the fact that the international judges may not only be trustees under the pressure of domestic governments but inculcate more constrained characteristics towards what they can achieve by domestic courts and otherexternal audiences of estimable value.[76]

The relational empiricism of international judges' adjudicative trials and strategic political appurtenance to different sovereign States to the conceptual focus of this paper is in line to edify the problem of having a non-consolidated judicial framework that would overcome favouritism of the world powers and the subordination of less significant sovereign States towards an efficient and a non-biased justice-rendering system within international private law domain. The conclusive analysis of the findings of the international judges has proven that they

[73] Voeten, Erik, *Borrowing and Nonborrowing Among International Courts*, (Journal of Legal Studies, Vol. 39, No. 2, 2010) pp 547.
[74] Adeleye, Gabriel et al. (1999). *World Dictionary of Foreign Expressions: A Resource for Readers and Writers*, page 371.
[75] Eyal Benvenisti, *Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts*, (American Journal of International Law, Vol 102, Issue 2, April 2008) pp 241.
[76] Yonatan Lupu & Voeten, Erik, *Precedent in International Courts: A Network Analysis (*British Journal of Political Science, Vol 42, Issue 2, 29 February 2012); and Steinberg, Richard H., *Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints*, (American Journal of International Law, Volume 98, Issue 2, April 2004) pp 247 *supra* note 149.

make their decisions, not based on the true ethics and principles of equality, fairness and justice, but because of the desire to defend other external values and also upon the basis of doctrinal influences. Likewise, such doctrinal influences are copied and applied within sovereignnational judicial systems and courts. This may very well, as would be further analysed, pose asevere issue of 'conflict of laws' or 'legality conflicts' between two litigant parties in an instance of private international law and who face different doctrinal influences within their different sovereign judiciary systems.

CONCLUSION

The analyses and criticisms of the theoretical descendants with respect to the hurdles to State sovereignty within the international justice system especially with respect to the Hague's conventional guidelines for justice rendering mechanisms within the private international law domains implicate:

- That both the constitutive and declarative theories pertaining to the possession of States' sovereignty are flawed and immature or non-considerate mechanisms by which international justice can be achieved, with issues arising from the private international law domain. The theoretical frameworks only represent an ideal option which is almost in-practicable because the analysis of the study has indicated that the sovereign perspectives on States tactically reclassify the notion between higher and lower sovereignties and as such permitting the existence of superior and inferior sovereign States. Also, empirical analysis of the study, indicates that the existent international justice-rendering instances are corrupted by the nationalistic interest-driven and other global policy influences on the independent Judges;

- That the United Nation's Charter had failed from the onset in defining, restricting and guiding the sovereign opportunism that privileges States to hold adjudicative powers within issues arising from the private international law domain, and also that the Statute of the International Court of Justice is a little ambiguous with regards its jurisdictional opportunity over legal disputes concerning public international law and those that have to do with the national legal opportunities;

- That because of the little ambiguity found within the ICJ's Statute; much injustice is being committed to several litigants and/or applicants seeking the arbitral judicial powers of the International Court of Justice;

- That nature of and eventualities of crimes and torts (such as transnational organized crime, terrorism, and other international commercial torts) within the domain of private international law are becoming too cumbersome for their judicial jurisdiction to be left only within the judicial opportunities of national courts;

- That the numerous conventional guides from the Hague's instances and other international treaties enacted as guides for national judicial opportunism at the encounter of the wrongs committed within the domain of private international law are yet insufficient to assure real justice within the mentioned domain;

- And that, the most efficient way of obtaining Justice within the wrongs arising from the domain of private international law is to have a separate arbitral international jurisdiction over issues of the mentioned domain.

The implications therefore should contribute to the international legalist arena by sorting judicial understandings from impact-based approaches in voting texts, and such should attract different conceptual and definitional understandings of terms such as 'State-sovereignty' within multinational conventions, which would be appreciated by a wide majority of legal opportunists in different national languages.