How should the relationship between International law and sovereignty be conceptualised in light of the present practical enforcement shortcomings?

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ABSTRACT

Sovereignty and international law have been in tension with each other since the conception of Political Science. As international law is a vague concept, often lacking codification, its breach becomes a matter of discussion and impartiality suffers, constituting the failure to adhere to the Rule of Law. Thus, a gap in law enforceability has been created. The present thesis recognises the necessity to bridge said gap, in order to allow international commitments to have true legal binding.

In order to study the ways one may achieve that goal, it is helpful to assess the two concepts and their relationship through different prisms—the realist, rationalist and internationalist paradigms of political thought. Through this conceptual analysis the outcome proves that for the maintenance of the Rule of Law and the safekeep of rights dictated by the Universal Declaration on Human Rights, the rationalist paradigm should be the advisable way to conceptualise the relationship between the two notions. The rationalist view values the notion of sovereignty similarly to the realist dogma, nevertheless, it dictates that for the maintenance of order on the international arena, preventative measures–such as codification of the mechanism and permitted reasons for interventionism–must be taken.

	realist	rationalist	internationalist
Sovereignty	Supremacy	Conditional Supremacy	Inferiority
International Law	Inferiority	Conditional Inferiority	Supremacy

TAB 1 Different perspectives on the tension between Sovereignty and International law

CONTENTS

1. INTRODUCTION

The notion of national sovereignty could be dated back to the jurist Jean Bodin (1530–1596), who coined the term in 1566 within his landmark work titled *Methodus ad Facilem Historiarum Cognitionem* (Bodin, 1566). As described by John Hearsey McMillan Salmon, the notion of sovereignty is defined by Bodin as the "permanent and supreme power within a state, marked by the ability to make law without consent of any other human will. It was free from human laws" (Salmon, 1996). Since then, the notion of sovereignty has evolved to become an invaluable centrepiece in understanding and interacting with political science and its theories.

The discourse tied to the research question lies within the identification of the boundary of national sovereignty. With the aforementioned definition of sovereignty, it is difficult to imagine any entity overseeding or otherwise trumping that of sovereignty. However, in the modern political system, the existence of supranational organisations is observable without a doubt. In this case, how does sovereignty interact with a modern international system? Hence, it is important to establish and then relate the limits of sovereignty to those of the organisations tasked with creation and enforcement of penalties for breaches of international legal commitments. The relationship demonstrates a clash between the two competing sources of authority. The most notable real-life examples of the clash concern cases of human rights violations, issue of right to secession, inequality behind enforcement of international law on a state-to-state basis, or extradition laws.

This research engages with the wider debate of a jurisdictional clash between international law and national sovereignty, attempting to analyse this clash through the lenses of different conceptual perspectives. In order to comprehend the multitude of ways in which the clash of authority between international law and sovereignty may be conceptualised, it is most useful

to compare it through prisms of the realist, internationalist and rationalist paradigms of political thought. The present paper seeks to analyse said conceptual, as well as practical debates in order to identify the most suitable way to conceptualise the relationship, with the aim of correctly detecting issues and offering solutions. By assessing and identifying the underlying problems within the different conceptualisations of the relationship one may arrive at the most optimal view of the relationship in relation to the present international climate. Said understanding may be useful on a multitude of levels, including but not limited to the theoretical field, practical considerations, and structural reform.

In order to answer the research question, conceptual and content analysis will be employed. Content analysis of the available literature exploring concepts of international law and national sovereignty, including, but not limited to the interaction between the two, is the initial stage of this research (Collier, 2011). The following stage of this project would be analysing the conceptual intricacies of the interactions between the two notions through the three aforementioned paradigms. Finally, the findings will be contrasted with practical issues known to arise from clashes between international law and sovereignty. Solution suggestions will be presented on the basis of the combined outcomes of the previously mentioned analyses. Finally, it is important to acknowledge the limitations of this study and note that more research and in-depth case analysis would be most beneficial as an outcome of the present research. In order to produce generalizable results demonstrating the effects both concepts exhibit in relation to each other within their relationship, it would be highly advisable to conduct more thorough examinations on the problems and solutions offered within multiple case-studies for further theory building or policy advice.

It is imperative to note that at heart of this research project is a core belief of the author in the principles of human rights, as well as the general support for democratic governmental systems over other systems of governance. Further discussion should be viewed with this belief in mind. Author believes that the basic principles of human rights trump any other principle present on the international arena, or in this discussion, as it protects the basic dignity, equality, fairness and respect of people, regardless of race, nationality, age, gender, or sexuality (UN General Assembly, 1948). The basic rights of the same people that would be governed by all other principles and structures mentioned in this work. Unlike the other principles engaged in this debate, the principles of human rights are a tangible concept, with serious, oftentimes tragic consequences for groups and individuals when discarded. As such, this project operates with a belief that adherence to the conventions on human rights, such as the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), which are the two main documents ratifying the basic human rights defined in the Universal Declaration of Human Rights (1948) is of an utmost importance. It will be understood that respect for said principles will be treated as a prerequisite necessary to any political activity, regardless of the signatory status or ratification status of the covenants within a given state. As such, if the assumption that, morally, human rights are an a priori principle for any given political activity, any other conceptions that obstruct the respect for said rights or otherwise lead to the direct disrespect of people's freedoms dictated by the UDHR, it will be a considerable pitfall within the author's line of reasoning. As such, any conception, which would lead to the strengthening or further protection of the rights presented in the ICESCR and ICCPR would be considered preferential.

With the above in mind, this research project will be taking a rationalist approach to the debate, with the thesis statement arguing that it is necessary to strengthen the institutions of international law and systems of its enforcement in order to be able to preserve the non-derogable human rights or Jus Cogens, which are defined as a "peremptory norm", which is a "fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted" (United Nations, 2019). The lack of a higher overseeing body, as well as the seemingly untouchable concept of national sovereignty may be an identifiable perpetrator for compliance issues. The notion of sovereignty currently dictates the order of the international system, which allows nation states to, in theory, exist as equal bodies, creating laws in accordance with mutual agreements or customs. Nevertheless, such anarchic state of affairs also allows for evasion of punishment for breaches of legal commitments, due to the established power dynamics within the group of the involved political actors. As such, to grant a clear answer to the research question, the research argues that international law should supersede national sovereignty in their relationship in cases of severe violations of human rights or Jus Cogens, with the consequential development of stronger international law enforcement mechanisms with the goal of the increased protection of non-derogable rights and vulnerable states.

2. CONCEPTUAL OVERVIEW

In order to understand the debate within which the research question is situated, and furthermore understand the relationship of the two concepts through multiple lenses of different paradigms, it is important to first examine the intricacies of the theoretical framework of national sovereignty and international law.

2.1 International Law, a concept

International law in essence is not an independent entity, and conforms to sovereign bodies, in a sense that it must stem from a sovereign due to the anarchic nature of the international arena; thus, a law is only given its meaning once it has been suggested, agreed upon, ratified and recognised by other sovereign nations. The recognition presents itself in the restriction of the sovereign's own ability to act, as per the mentioned within Article 7 of the International Court of Justice Statutes contract principle *pacta sunt servanda* (United Nations, art. 7, 1946). Whilst the root of each law stems from the same point of origin—national sovereignty—it does not manifest in the same way. As codified in the previously mentioned Statutes of the International Court of Justice, the sources of international law may be international treaties; customs, otherwise known as Jus Cogens; or clauses agreed upon via membership or participation in given international organisations (United Nations, 1946). This does not however mean that the international organisation has any sovereignty of its own, as it stands now, each member state must sign away a partition of their own sovereignty to gift autonomy to the organisation in return for membership and benefits that come with it (Cooper, Hawkins, Jacoby, & Nielson, 2008).

Treaty law is the simplest form of international law as it involves parties directly signing negotiated agreements between one another. The only restriction applicable to this type of law

is the prohibition of ratification of any clause that opposes non-derogable rights or Jus Cogens, as well as prohibition of secret agreements between sovereigns following the conclusion of World War I. (Tadjdini, 2015)

International law stemming from organisations is, by virtue of technicality, a part of treaty law. Nevertheless, it differs in scope and scale; the agreement is drafted via a legally binding charter, which exchanges partition of sovereignty for the benefits offered within the charter. There are exemptions with less formal or even non-legally binding international organisations, however they therefore are not included in the list of sources of international law. Kristina Daugirdas gives examples of legally binding institutions including the United Nations, the European Union, or the International Monetary Fund. The property of international organisations, which makes them exceptional is the existence of the international organisations as separate legal entities from any state. Which means they as well are bound by laws and regulations despite being a source of such themselves. As stated further by Daugirdas, "IOs [International Organisations], like states, are bound by jus cogens rules, which are mandatory for states and IOs alike. And it means that IOs, like states, are bound by general international law—but only as a default matter." (Daugirdas, 2016)

This leads the narrative onto Jus Cogens rules, or otherwise known as Customary law. It is the most complicated and ambiguous part of international law, as the vast majority of these rules are not codified in any document, but the obligation to follow such rules is considered imperative by any participant on the international arena. Despite the strength of these laws, where derogation from them leads to an extreme reaction from the international community, there is a lack of clarity, which allows for room to negotiate the breach, or its extent as clear boundaries are not codified (Bassiouni, 1996).

As such there is an absence of a generalised constitution, so to speak, of existing laws the international community is obliged to follow. Due to this, limitations are observable in regard to enforcement. Due to a general lack of monopolised or centralised control over legislative activities and enforcement, it may be possible to be a member state to multiple international organisations with opposing legally binding clauses within their charters, or otherwise be party state to multilateral agreements, which oppose one's previous legal commitments. As such, the lack of an overseeing body or document is not only detrimental to matters surrounding international law, but even the international law in it of itself (Habermas, 2008).

2.2 National Sovereignty, a concept

With the conceptual overview of international law completed, it is necessary to examine sovereignty. The notion of sovereignty has been briefly touched upon within the introduction, however, to delve deeper–the definition of sovereignty, as explained by Daniel Philpott in his work titled *Sovereignty: An Introduction and Brief History*, may be characterised by three main aspects. Such three aspects include an entity's supreme rule over a "politic", complete autonomy from external meddling, and finally an enforcing, controlling influence. (Philpott, 1995) Since the conception of sovereignty as a consolidated notion, it has become a centrepiece of conceptualising international relations, and with time has additionally been heavily codified within international law itself. (Haass, 2009) In this light, the notion of national sovereignty is granted a unique status, as it is at once the source of international law, but also a codified part of it. (Besson, 2011) With the usage of sovereignty, states agreed upon, and specified in written form the definition of sovereignty and its breach, all stemming from the central document known as the Treaty of Westphalia, a landmark document not only for the notion of sovereignty but the beginning conceptions of international law (Croxton, 1999). The international community has changed drastically since this landmark document, with the introduction of

more laws and actors on the international arena. As stated in the introduction section, the existence of international organisations seems to complicate the matter of affairs and change the relationship between international law and sovereignty with the introduction of a new structure and related actors. There were considerable concerns over the diminishing of power, with which sovereignty gripped the conceptualisation of international relations following the emergence of international organisations, as remarked by Haass, however, this could not be farther from the truth. Janice Thomson elaborates on this, stating that state sovereignty has not eroded and is only following natural cycles. Sovereignty appears to be under effective threat of becoming increasingly unimportant in some areas, nevertheless it tends to be consistently on the rise in others. The examples of such patterns have happened in practice, as she remarks, presenting the examples of sovereignty growing both weaker and stronger as states fail or disintegrate into smaller entities, such as the Soviet Union. The examples of the opposite can be seen in the case of the European Union, where states combined into a larger entity on the international arena, which increased their overall strength on the international arena. Thomson adds an additional hypothesis, speculating that states are progressively asserting sovereignty in multilateral, international institutions that are independent of social interventions or democratic processes. Multilateralism legitimises the “bypass of state-to-society negotiations”. The externally generated, multilateral, state-led derogation of democratic control is frequently misinterpreted as a loss of sovereignty, however state sovereignty may not be lost as a result of "democratisation" of the state system, as the actors remain within an anarchic system of governance. (Thomson, 1995) Thus, sovereignty, as a principle appears to have a consistent, strong hold over the general structuralisation of affairs on the international arena, with a certain concern of power abuses, as per Thomson.

2.3 Responsibility to Protect

Responsibility to Protect demonstrates the tense relationship between the two concepts, with the evident abuses of power against the rule of law. It is a great example of the issues created by the current operating mechanism of international law. Responsibility to Protect or the R2P principle, is a principle unanimously approved by the United Nations World Summit of 2005, articulated within the paragraphs 138–139 of the 2005 World Summit Outcome Document. R2P, in essence, is an initiative to allow other states to intervene in another sovereign's affairs should there be considerable threat to the non-derogable human rights of the state's constituency (UN General Assembly, 2005). Whilst the principle has been articulated within the outcome document, it lacks proper legal binding power, as it is not codified or ratified by the involved states. The general motion to support human rights, granting the ability to trump sovereignty has been launched, however, as the states refuse to part with their sovereign rights, the initiative has been left at a stage of an ambiguous, disputed, up-to-interpretation agreement. The agreement lacks substance and clarity of terms on which its usage would be justified or permitted, thus, the usage of said agreement is a matter up to discussion. The main arguments against the usage of this initiative is the principle of territorial integrity codified within the UN Charter in the Article 2(4) (United Nations, Art. 2(4), 1945), which is partially an aspect of the state's sovereignty, as stated by the earlier proposed definitions of sovereignty (Evans & Sahnoun, 2002). This double standard embodies the debate that is tackled within this research—the complete lack of guidance as to which principle should trump the other, and in which case either one is acceptable. The boundaries do not exist in nearly enough detail to set the rule of precedent or otherwise establish a well-run, robust system of law enforcement. The basic rights of people suffer from this lack of clarity as governments utilise this gap for personal or national gain (Suter, 2004).

In essence, whilst law is created by sovereign entities, or entities that have been lent sovereignty by said sovereigns, it is the same sovereignty that acts in a way to block the enactment of implemented laws. Whether it is delivering of punishments or otherwise ensuring the rule of law is applied universally, sovereign nations oftentimes find themselves act in a way, which ensures the completion of their own objectives, which oftentimes depends on the government in charge, as per Hafner-Burton and Tsutsui, the human rights law in its current state of the art specifically fails to influence non-democratic states, which are the ones notorious for the compliance failures (Hafner-Burton, & Tsutsui, 2007). That is consistent with the realist paradigm, prevalent amongst scholars and political actors (Saideman, 2018), which believes in the supremacy of sovereignty over international law in any given scenario. The tension between the two notions can be narrowed to a lack of clarity regarding the boundary and supremacy of either principle on the international arena. As of now, there is a lack of robust infrastructure, established procedures, or systematics for creation, ratification and enforcement of laws. The ones that have been created, as will be explained in the further sections of this thesis, suffer from large pitfalls due to restriction of powers in favour of sovereign states and their interests.

3. EXISTING PROBLEMS

There are two main problems when it comes to the present operation of international law in its relation to sovereignty. The issues highly complicating the relationship between sovereignty and international law are the vague articulation of laws and the lack of effective enforcement mechanisms.

3.1 Pitfall One, Ambiguity

The vagueness of international law can be attributed to Customary laws or Jus Cogens. Jus Cogens are meant to describe international norms, stemming from common-place state practice

(Schwarzenberger, 1964). This definition in itself is a vague statement, as the notion of general state practice is one that may be contested on a multitude of levels. Perreau-Saussine and Murphy elaborate on this, stating that whilst there has been a plethora of written work on the legal status of customary law, far less has been written regarding the assessment of its content, or elaborating on said description. Interpreting customary law – or interpreting the custom that is to be part of the law – presents issues that are arguably more complex than those presented when considering the interpretation of constitutions, statutes, regulations, treaties, and even the common law, as any other source of law does, due to the abstract notions oftentimes present in customary law, as well as the lack of written and signed conventions on said laws (Perreau-Saussine & Murphy, 2009).

As per Goldsmith and Posner, the least contentious sources of state practice are policy pronouncements, legislation, and diplomatic correspondence. However, treaties, Jurists' works and resolutions of the United Nations General Assembly or other non-binding pronouncements and resolutions by multilateral bodies may all be regarded as the source of common state practice, albeit problematic in nature (Goldsmith & Posner, 2018). As such, the application of Jus Cogens or their interpretation varies on a case-by-case nature. A comparable issue is that of the universality of state practice. How common should the practice be, to be considered common state practice? It is highly implausible for over 190 states to uniformly repeat one pattern of behaviour. Which is where the power of the sovereign is used as a bias, as state practice is oftentimes honed towards the behaviours practised by “significant powers or interested states”, as argued by Jonathan Charney in his work titled *Universal International Law* (Charney, 1993). Furthermore, as explained by Brownile, even once one may form an argument regarding existence of common state practice—there is no record of customary laws or proceedings in connection to said customary laws. There are no clear decisions on the practical application or invocation of Jus Cogens. Should a state file a complaint on the basis

of a breach of commitments relating to a customary law, it is unclear whether this law exists, whether the reported act violated that law, and who could decide to rule on the legality of said violation (Brownlie, 1960). As a result, courts and scholars are choosing to ignore the state practice requirement in favour of opinio juris (Bradley & Goldsmith, 1997). A case of this neglect is present in the case of Filartiga which deals with customary law on the prohibition of torture, where the court ruled in support of the plaintiff, while still acknowledging that torture as state practice would technically be constituted as a customary law based on the common state practice requirement (Filartiga, 1980).

3.1.1 Pitfall One Example: The Filartiga Case

This lack of clarity within the process of identifying a particular customary law can be seen in practice, where the ultimate decision is largely influenced by the will of an involved sovereign state rather than principles of justice or Jus Cogens. Particularly, this refers to the above-mentioned case of the landmark Filartiga judgement dating back to 1980, which has triggered a wave of legal work regarding human rights law within the United States and abroad. Within this case, Filartiga made an appeal to the court that the practice of state-sponsored torture in any form should be prohibited on the basis of the principle of customary international law. The court ruled that in technicality the prohibition of state-sponsored torture did not meet the qualifications to become a customary law on the account of the state practice requirement. The state practice was in fact the opposite—many nations throughout the world do in fact torture their citizens, as such the opposite should become a customary law via the logic present in the articulation of customary law prerequisites (Filartiga, 1980). As such, whilst they satisfied the request of the plaintiff, the decision was not made on the basis of the classical interpretation of customary law. As per Goldsmith and Posner, by avoiding heavy reliance on state practice, Filartiga was regarded to deviate from the realist method and instead recognising customary

international law through technically nonlegal sources of law. Furthermore, the court stressed the moral reprehension of torture (Goldsmith & Posner, 2005). As such, it is observable that the vague articulation of such laws give rise to room for speculation. Thankfully within this case study, the decision of the representative of the sovereign's judicial branch took a favourable decision by reprimanding the use of torture, and even that decision was made in practice of alternative schools of thought, against the practices dictated by the ruling realist paradigm. However,the dismissal of this case could have resulted in an unfavourable outcome of setting an unfavourable precedent directly in the United States, but also towards the second-hand tolerance of state-backed torture abroad. Within this framework, laws and their enforcement are highly influenced by a state's conduct in a particular situation. This puts strain on international law since there is a loss of objectivity, as well as the loss of omnipotence behind the rule of law. The room for movement is granted by the lack of proper codification and articulation of these high-echelon laws, which paves way for sovereigns to bend the rules in their favour for the sake of interests or ideas imposed by the state's own stakes with the authority of their sovereign statuses.

3.2 Pitfall Two, Lack of Enforceability

A piece describing the broader existing limitations of international law, the previously cited work curated by Jack L. Goldsmith and Eric A. Posner titled *The Limits of International Law*. The authors dive deep into the rhetoric and morality behind treaty and customary law. Authors bring up the issues behind their enforceability, touching upon the previously mentioned clash between the notion of sovereignty and international law, as there appears to be a lack of overseeing entity with the jurisdiction to be able to follow up on the enforcement and punishment for breaches of international laws (Goldsmith & Posner, 2005).

Other scholars further support this view, citing that the current state of international law and sovereignty is a by-product of the extreme lack of enforcement mechanisms. The worldwide community comprises governments, which are fiercely loyal to their independence and sovereignty and have failed to agree upon establishing credible procedures for enforcing international law (Fitzmaurice, 1956). This complicates the enforcement of meaningful decisions, which protect the rights of individuals across the board. Furthermore, the International Court of Justice (ICJ) and the International Criminal Court (ICC), which are an ambitious United Nations project to establish permanent courts and enforcement practices, together with chapter 40 found within the United Nations Charter, the international community offers no prescriptive mechanism for resolving conflicts. There is no initiative for an international police force, which would oversee the matters between sovereigns, with the power to enforce international treaties as the lack of alignment with a particular regime is an unpredictable dealbreaker, and perceived threat to international actors (Morgenthau, 1963). Thus, many international provisions are extremely difficult to put into practice.

All of the above-mentioned initiatives to create enforcement mechanisms are sabotaged by the principles of sovereignty as states weave in-between creating laws and evading from facing their enforcement. The ICJ's powers are limited by virtue of jurisdiction, as it may only hear cases transpiring between nations, not individuals. To further narrow the scope, all involved states must choose to bring issues to the Court willingly, as stated within the statutes of the court (United Nations, 1946). The ICC presents an unfortunate state as well as it lacks the necessary resources to implement the laws described in the Rome Statute. It is ineffective in obtaining arrest warrants for individuals who have already committed crimes against humanity or are currently committing them. It must rely on the assistance of the implicated states, which must in turn be signatories to the Rome Statutes. To be able to utilise its power fully, the ICC must achieve greater international acceptance, respect, and support. Individuals who commit

acts against humanity as defined by the Rome Statute are prosecuted and sentenced by the ICC, therefore a task force is required in order for it to be effective (Dezalay, 2015).

The enforcement framework drawn up by the United Nations Charter is even more complex, as penalties are frequently determined only by the unanimous decision of the Security Council. Additionally explained by Frederick Kirgis, the proposed “trade and diplomatic sanctions are slow to work. Moreover, their burden often falls most heavily on the segment of the sanctioned population-ordinary civilians-that is least able to influence the government's behaviour”. He adds that whilst existent, the “Security Council sanctions involving armed force have never been used in quite the form contemplated by the UN Charter”. Kirgis elaborates that If the Council makes a decision to use military force, it will do so in accordance with the agreed provisions, but such accords have never been made or ratified by any of the member nations. (Kirgis, 1996). The soft power in the legislation is what keeps the peace, since there are numerous incentives to comply with these laws, as states do not want to be criticised or even shunned by the rest of the international community, thus most governments endeavour to adhere or at least appear to observe international law.

The lack of a central enforcement mechanism plagues international law in general, however human rights legislation is notorious for this pitfall, hence it has become a centrepiece of this project. International human rights treaties are the result of multilateral negotiations; any state that ratifies a convention is free to implement the criteria in its own country. The treaty organisations that oversee each convention, however, issue 'General Comments' that serve as official interpretations of human rights norms for governments to follow.

3.2.1 Pitfall Two Example: The Navalny Case

The case of Navalny’s imprisonment is an example of the international law failing to trump over national sovereignty and enforce a punishment for the breach of the European Convention

on Human Rights, the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), all of which Russia is a signatory to. The failure to act on the breach of all the aforementioned treaties and exercise rule of law, constitutes the weakness of international law enforcement to the overwhelming authority of sovereignty on the international arena.

The case involves three main parties, namely the European Court of Human Rights, The Russian government, particularly the judicial branch and Alexey Navalny himself. The case may be summarised as a set of events—a Russian opposition leader Alexey Navalny filed a complaint against Russia for violating his human rights by fabricating a criminal case against him within the Russian judicial system, consequently threatening imprisonment on the basis of his political activity. The European Court of Human Rights ruled that Navalny's rights have been infringed on, therefore announcing Russia's breach of the UN Charter, and the aforementioned treaties, which the Russian Federation is not only a signatory party to but has also successfully ratified all of the agreements. (UN Treaty Body Database, n.d.) As of 2nd February 2021, Navalny has been sentenced to 3,5 years in prison on account of the same fabricated case, which has been ruled against by the ECJ (Kim, 2021). Navalny has received nine additional years of imprisonment since the first sentence (Amnesty International, 2022).

Whilst the ECHR itself lacks any power or authority to enforce laws, the present ruling should have invoked Chapter 40 of the UN Charter, a protocol used for the punishment of states breaching international commitments (U.N. Charter, Art. 40, 1945). The least measure that should have been evoked according to the ruling is a start of an investigation, nevertheless the necessary measures have not been undertaken. As per MEP Riho Terras, European inaction stems from the necessity of the "day-to-day" relations with Russia and the supplies "of energy raw materials to Europe" (ERR News, 2021).

The Navalny case demonstrates an example, in which a clear-cut decision made by an international judicial body on the basis of a blatant breach of international law, is unable to enforce its decision and invoke the existing systems of enforcement due to the state-to-state interests present within the process. The ECHR in its decision on application number 76204/11 has declared the case of Navalny to be fabricated, and any detainment to be non-adherence to the existing pledges made in the covenants and treaties codifying the principles ruled out in the UDHR, as well as awards Navalny and Yashin material compensation on the basis of the breach (ECHR, 2015). The lack of response is proof of the ineffective system of international law enforcement dependent on state cooperation. In practice however, sovereign states act in the interest of the state over the interests of the rule of law, adopting individual punishments in accordance with their own set of interests. If the breach of fundamental documents such as ICESCR and ICCPR may be overlooked by signatories of said multilateral agreements, it sets a negative precedent, thus the current processes cannot be judged to be reliable or effective. Consequently, an argument can be made in favour of the organisations embodying international law or those tasked with enforcement attaining a higher degree of power and jurisdiction on the international arena to be able to protect the non-derogable human rights and Jus Cogens by independently acting in serving the interests of international rule of law.

It is important to mention however, that whilst there are arguments made in support of international law and its representatives gaining more power, there are scholars arguing for the opposite. Robert Howse and Ruti Teitel argue that looking at the aspirations of international law "through the lens of rule compliance leads to inadequate scrutiny" and lack of understanding of details and crucial complexity within each of the cases explored, creating a "tendency to oversimplify if not distort the relation of international law to politics" (Howse & Teitel, 2010). This view however does not provide adequate options for solutions to global inaction towards crimes against basic human rights or Jus Cogens.

4. DEBATE – REALISTS et al.

With the full understanding of the background behind international law and sovereignty as well as their relationship, it is possible to continue with the discussion of the debate relevant to the research question. The principal debate surrounding the present research question is the interpretation of the relationship between sovereignty and international law, specifically the competing sources of authority and clash of jurisdiction, in the light of present-day enforcement issues. There are three main approaches to assessing this relationship. Each of the three approaches belong to their respective schools of thought within political science. There are scholars supporting the current framework, which agrees with the supremacy of sovereignty, scholars, who believe that sovereignty needs to lose relative strength for the preservation of peace, and the scholars which position themselves in the middle. Within this debate, the scholars supporting sovereignty claim that the current state of affairs is acceptable, stating that sovereignty must remain untouchable to avoid another entity usurping power on the international arena (Krasner, 2001). Whereas the opposite side of the debate argues that sovereignty must be challenged to create an environment in which accountability is a must, oftentimes referring to an overseeing body or system for the purpose of upholding the principles of international law to maintain order (Brophy, 2009).

4.1 The Realist Paradigm

The former side of the debate is oftentimes supported by the realist paradigm of thought, advocating for the absolute right of states to untouchable sovereignty, as it creates equal opportunity to govern on the international arena (Nwogbaga & Onwe, 2015). This view currently represents reality, as demonstrated by the earlier presented examples of the R2P principle, the case of Alexey Navalny, or the Filartiga v. Pena-Irala case. In all of these cases national sovereignty trumps international law, albeit in different ways. The present widespread

support of the realist paradigm amongst scholars and people in power has also been settled earlier on in the thesis. This belief is reliant on the idea that the international community is in a state of anarchy, which is in itself a concept that would defy the existence of enforcement of international law, specifically tied with human rights interventions, as meddling within domestic state affair is likely to be seen as a breach of sovereignty (Enabulele, 2010), thus logically contradicting any illusions of inclusivity offered by this paradigm for any other concepts but sovereignty. Sovereignty, by default, within the realist paradigm, wields a stronghold of power, wherein law is derived from and applied with the means gifted to it by the sovereign. Without sovereignty and its influence, there may be no laws or their enforcement. That is, once again, a problematic outlook on the issue, as the enforcement of law, and consequently the rule of law, comes second to the sovereign, especially with the non-existent overseeing body or rule of precedent to oversee the true application and lawfulness of such (Pelc, 2014). As such, the conceptualisation of the relationship between sovereignty and international law, as per the realist paradigm, includes the supremacy of sovereignty on all accounts and most closely matches the present reality of the relationship.

4.2 The Internationalist Paradigm

Meanwhile the opposite is supported by the internationalists, which claim that sovereignty is an outdated idea, hindering society from advancing forward, as the environment that is created as a by-product of the current framework is that of lawlessness rather than equality (Keller, 2005). This side of the spectrum however is dangerous for a similar reason, giving full authority for legislative decisions and enforcements to international entities without proper democratic processes to elect the representatives to run them presents an issue similar to that of the realist paradigm. The issue with conceptualising the relationship between sovereignty and international law through the realist paradigm paves the way for abuse of power, as there is no

higher overseeing body that would dictate whether the laws, that are being introduced are lawful, and whether the enforcement is proportional. However, should the opposite be true, and international organisations would be fully able to dictate that process outside of sovereign entities, it would result in a democratic crisis, fully susceptible to similar dangers. A high concentration of power without partition, or democratic involvement of the people may open a window for abuse of power (Zweifel, 2006). Whilst not all states are accountable in a democratic sense, most are subject to electorate processes, which allow for a certain varying degree of choice in either a delegation of power to an elected representative, or direct popular participation in foreign policy decisions. With the glance at current global affairs, it becomes evident that the majority of the world's nations lack representation within the higher echelons. Specifically, with the steadily rising rates of the global democratic backsliding in the last decade (V-Dem Institute, 2020), should states be fully removed from this equation, there would be no clear processes for election of officials reigning international affairs. The same officials that would be responsible for protection of human rights, rule of law or even commercial or essential commodity trading. This presents a massive issue, as with the current system, this arrangement would be highly centralised due to a limited number of international organisations with the authority to decide on matters of such magnitude, and the lack of accountability towards a constituency, thus abuses of power of unprecedented degrees are a viable outcome (Keohane, 2005). Consequently, conceptualising the relationship between the two notions via the route of the internationalists is problematic, as the supremacy of international organisations, in the current shape of their existence will lead to further democratic alienation of constituents from important international decision-making, even via a remote choice of a representative (Dahl, et al., 1999). Thus, it may create more issues than it solves in the current international climate.

4.3 The Rationalist Paradigm

The rationalists, who position themselves in between of the two paradigms in this debate, conceptualise sovereignty in a similar way to the realists, however, breaches of sovereignty are at times considered necessary in cases of severe violations of international law, such as human rights law violations, for the goal of preservation of international peace (Heuser, 1997). This position is considered to be the most viable way of conceptualising the relationship between sovereignty and international law in the opinion of this research, on the basis of the previously explored ideas, as it provides a well needed balance between the two notions. Within the rationalist dogma, states retain their power to exercise sovereignty, with hopeful delegation of power towards elected officials from their constituency, however maintaining a system of checks and balances from abuse of power from the states as well as third party organisations (Cole, 2005). This paradigm solves the paradox between supremacy of sovereignty and international law and offers a middle ground for the existence of the powers of the sovereign and the protection of individual rights. With clear codification of conditions under which international organisations responsible for the enforcement of international law may intervene, sovereignty would cease to be an obstacle for enforcement (Keohane, 1988). Such change would have to be a legally binding commitment from the current sovereigns to delegate power towards the restructuring of the international community, as detailed by Bellamy, the rationalists conceptualise sovereignty in a close manner to the realists. He also mentions that this paradigm and strict codification of the conditions under which intervention would be legal and rightfully requested, would also protect the weaker states against the stronger actors by creating real consequences for the already outlawed in Article 2(4) of the UN Charter interventionist behaviour (Bellamy, 2003). This approach would be most compelling when applied to case studies, especially the examples brought up earlier in this project. For example, the groups falling under the R2P principle would have an easier time receiving help from the

international community with clearer codification and cautious, in-depth approach towards interventions, or the ruling decision by the ECHR would have enough enforcement power to overturn the domestic ruling of the Russian Federal Court.

Having assessed each of the paradigm's approaches towards the research question of conceptualising the relationship between international law and sovereignty, as presented by the thesis statement, the present research takes the rationalist stance, opposing the extreme ends of the realist and the internationalist paradigms of political thought. As stated previously, this research operates with the underlying bias towards the protection and respect of the principles of human rights. Retaining this bias in mind as an objective in understanding the conceptualisation of this relationship, it is logical to side with the rationalist paradigm, as it allows for the variation from the extremes. The realist extreme allows for the total control of sovereignty, however, under heavily codified conditions, the ability of international law to override the sovereign, which oftentimes stands to defend the basic human rights, such as the Responsibility to Protect or the R2P principle, as described earlier. The total trump of sovereignty may be detrimental in this framework, since, as previously presented, action on the basis of the R2P principle is oftentimes contested due to the lack of power granted to it by the sovereigns agreeing upon its adoption. As such, the realist extreme would not further the basic framework indicated by this research; the opposite extreme, however, would equally not suit the same framework. The internationalist approach towards this question would not be suitable, as the complete supremacy of international organisations, as presented currently would lead to a democratic deficit, since the current presentation of the main international bodies lack any means of popular vote. This may lead to the similar type of corruption, feared within the realist paradigm—lawless usurpation of power. This would specifically be dangerous, as the current leading international organisations are tasked with the facilitation and creation of international laws.

4.4 Discussion

At their conception, the notion of nation-states have been utilised as a way of organising agricultural land, with authority spreading as far as local cavalry would roam, and at a later period taxation and other monetary policies. (Lachmann, 2020) Most current-day problems however don't fit that nation-state mould. Thus, they require a different solution. Yet strangely, the nostalgic identity politics and tribalism still seemingly conceptualise sovereignty as a non-tradeable asset. Not an asset to exploit and share in order to solve global problems. As such, with the reviewed pitfalls of sovereignty's supremacy in its relation to international law, it is evidently unproductive to let the current state of affairs remain in this form for the creation of a safe and fair future.

With the review of alternative ways of articulating the relationship between international law and sovereignty, extremes, such as the one currently in place, must be avoided. Thus, Realist and Internationalist paradigms may be discarded due to their narrow-minded conceptualisations, in favour of the middle ground between the two options–the rationalist paradigm. That is the viable way to conceptualise the relationship between international law and sovereignty, as the rationalist stance allows for the retainment of power to the states, nevertheless allowing for the necessary interventions in case of emergencies. That allows for the interventions on the basis of human right violations or the violations of Jus Cogens laws. The urge of the dogma to tightly present the framework for the justification of said interventions additionally may facilitate the creation of efficient intervention mechanisms and methods, which could lead to a robust system with clearly defined boundaries and procedures for interventions. This approach towards restructuring of the international community would offer a well-needed balance between sovereign bodies and international law, additionally granting extra protection for the non-derogable rights and laws.

The solution suggested by the scholarly body in line with the outcome of the above conceptual analysis and the supremacy of the rationalist agenda within the said analysis is to avoid the complete alienation or deletion of the two principles. There has to be a proper transfer of authority from the sovereign to the organs of international law, to create an agreed upon set of rules and procedures detailing punishments and enforcement relative to given crimes (Martinez, 1996). Nevertheless, this would be a difficult vision to implement to reality in practice, as this would, in all likelihood, lead to a practical issue of implementation, as the current system is still built on the necessity of consent from the actors on the international arena. The agreement would be difficult and lengthy to achieve.

There are existent efforts to rebrand sovereignty as a new typology of law instead of it being a structural reality to assist in that inclusive vision of the future since sovereignty, as previously mentioned, in it of itself is a principle codified within the international agreements and documents. (Loghlin, 2016). By being naturally a part of international law as is, the rebranding of sovereignty into a legal element, defended by the rule of law, instead of being an intangible measure of incontestable power granted to certain groups, structuring the way the international arena operates, it perhaps offers a pathway towards change.

5. CONCLUSION

Perhaps the two concepts are not meant to be separated and in part enhance one another. Sovereignty is respected only insofar as international law as a whole. Thus, should one defy the existence of international law and cease abiding by it, sovereignty loses its meaning in tow, as it is also codified within a treaty. Hence, the tension between sovereignty and international law is an issue discussed since the conception of the field of political science. As the notion of international law is a rather vague concept, codified in an olden document, its breach becomes

a matter of discussion, one widely influenced by politics and power dynamics of the nations involved. As a result, impartiality suffers constituting the failure to adhere to the Rule of Law. The clash between international law and national sovereignty created a paradox, in which international law protects national sovereignty, yet national sovereignty often prevents the enactment of international law.

As such, an effort should be made to bridge that gap to allow international commitments to have true legal binding, creating a system, which would allow for the definitive, hard enforcement of repercussions following breaches of international laws a nation has committed to follow. The enforcement of which would allow for the clear definition of sovereignty within it, avoiding the patchy application of laws, commitments and customs. With the present research project, the different ways of assessment towards the relationship between two notions has been analysed, specifically with utilisation of the three prisms—the realist, rationalist and internationalist paradigms of political thought. Through the analysis it was determined that for the maintenance of the rule of law and the safekeep of rights dictated by the Universal Declaration on Human Rights, the rationalist paradigm should be the advisable way to view the relationship between the two notions, as it allows for a bit of leeway for the merge of the advantageous features of the two concepts to shine through without the development of an eroding relationship between the two. The rationalist view values the notion of sovereignty similarly to the realist dogma, nevertheless, it believes that for the maintenance of order and peace on the international community certain preventative measures must be taken. A clear, definitive structure and mechanism for intervention on the basis of humanitarian disasters is necessary. The codification of the mechanism and permitted reasons for interventionism does not only protect people when invoked, it additionally protects weaker nations from exploitation. For further research, in-depth studies and models would be preferable to examine

the practical application of this framework, to create a replicable theory, which could serve as an advisory piece for policymaking reference.

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