

ROADMAP TO SUSTAINABLE SOVEREIGNTY: LIMITATION OF HUMAN OCCUPIERS*

Abstract

Sovereignty is the supreme power of a state. While every nation is recognised as a state, not every state is held to be sovereign. The state being an artificial entity is controlled, administered and headed by human beings. These human beings are not held to be sovereign by themselves, but can be regarded as human occupiers. A state is separate and distinct from its leaders and while the leaders ride on the sovereignty of the state while in the power of the office, that power is not of them. Once an occupier of an office in a sovereign state ceases to hold power, the state remains sovereign while the person relegates to the position of any other person not holding such office. This paper seeks to provide a template by which states can sustain their sovereignty independent of the human elements occupying the positions of maintaining and upholding such sovereignty. The paper would state the relevance of sovereignty to the legal system of a state using The Gambia as a major point of reference; as well as highlight the flickering issues of sovereignty in Taiwan. The various ways constituting a roadmap in which sovereignty can be sustained would be discussed. The paper would apply the various ways to the aforementioned states and conclude.

Key words: Roadmap, Human occupiers, State, Sustainable Sovereignty, Limitations

1. Introduction

Every politically independent state is seen as a sovereign state. Hence, any state that is free from external control and capable of executive control over its territory is a sovereign state.¹ While many have argued that the sovereignty of the state is different from its leaders,² some posit that it is the leaders who ensure and keep state sovereignty.³ This paper regards leaders who head state sovereignties as *human occupiers*. The concept of sovereignty has closely been related to the growth of the modern nation-state, and presently the term is used almost exclusively to describe the attributes of a state rather than a person. Every established entity is seen to be separate and distinct from its human elements.⁴ While thrones and dominions may derive their authorities from particular families as is the case in sovereign states like the United Kingdom and Saudi Arabia, once the particular person who rules becomes incapacitated, dies or disqualified, another person from that family or lineage fills the void and occupies the leadership position. Therefore, the United Kingdom of England, Scotland, parts of Ireland and Wales will not cease to exist when its king or queen is no more. While this is the case in nations operating monarchs, the same can be said for every democratic nation of the world. No nation ceases to exist at the demise of its rulers. While humans have a limitation to continuous living, the state is seen as one with perpetual

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¹ C E Merriam, 'History of the Theory of Sovereignty since Rousseau' (1900, reprinted 1968); H J Laski, 'Studies in the Problem of Sovereignty' (1917, reprinted 1968) as cited in <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 16 January 2017.

² The great debate throughout the 1990's was about the competing claims of intervention and state sovereignty. One side of the argument was the concept, coined by Bernard Kouchner, the founder of Medicines Sans Frontier and then France's Foreign Minister, of '*droit d'ingérence*' the 'right to intervene', or, more fully, the 'right of humanitarian intervention'. But while, from many perspectives this was a noble and effective rallying cry with a particular resonance in the global North around the rest of the world it enraged as many as it inspired. On the other side, equally vehemently claims, mostly coming from the global South, were made about the primacy and continued resonance of the concept of national sovereignty. Battle lines were drawn, trenches were dug, and verbal missiles flew: the debate was intense and very bitter, and the 1990's finished with it utterly unresolved in the UN or anywhere else. UN Secretary-General Kofi Annan at one stage made his own effort to resolve the conceptual impasse at the heart of this debate by arguing that national sovereignty had to be weighed and balanced in these cases against individual sovereignty, as recognised in the international human rights instruments. Gareth Evans, President, International Crisis Group, International Centre for Ethnic Studies (ICES), Colombo 'The Limits of State Sovereignty: The Responsibility to Protect' in the 21st Century Eighth *Neelam Tiruchelvam Memorial Lecture* (29 July 2007) <<http://www.gevans.org/speeches/speech232.html>> accessed 18 January 2017

³ Ibid

⁴ Concept derived from the case in *Salomon v. Salomon & Co. (1897) AC 22*

existence subject to very stringent exceptions.⁵ This paper states the relevance of sovereignty to the legal system of a state. Also reference would be made to issue of leadership handover in Gambia. Also the issue of sovereignty would be reviewed as to who determines sovereignty. A roadmap for sustainable sovereignty would be elucidated for present and future purposes irrespective of the conclusion of in Gambia and Taiwan. By applying the various inlets of the roadmap in the specific issues, the paper would proffer a template for various sovereignties and conclude.

2. Sovereignty in the Legal System of a State

Jean Bodin⁶ was the first theorist to formulate a modern concept of sovereignty. Bodin asserted that the prince, or the sovereign, has the power to declare law. Thomas Hobbes later explained the concept of kingly sovereignty by stating that the king not only declares law but creates it. He thereby gave the sovereign both absolute moral and political power. Hobbes, like other social-contract theorists, asserted that the king derives his power from a populace who have collectively given up their own former personal sovereignty and power and placed it irretrievably in the king.⁷ Hence, a sovereign state is often described as one that is free and independent. In its internal affairs it has complete jurisdiction over all persons and property within its territory. It claims the right to standardize its economic life without regard for its neighbours and to increase weaponry without limit. No other nation may duly impede in its domestic affairs. In its external relations it claims the right to enforce its own conception of rights and to declare war. This description of a sovereign state is denied, however, by those who assert that international law is binding. Since states are limited by treaties and international obligations and are not legally permitted by the United Nations Charter to commit aggression at will, they argue that the absolute freedom of a sovereign state is, and should be, a thing of the past.⁸ In current international practice this view is generally accepted. The United Nations (UN) is today considered the principal organ for restraining the exercise of sovereignty. Legal sovereignty is that person or body of persons with the power to make laws, enforce them and adjudicate upon them.⁹ This type of sovereignty is found in institutions that have the power to express the commands of a state in legal forms.¹⁰ However, in sovereign states, governments are generally held to be immune from suit for consequences of their sovereign acts.¹¹ The legal sovereign therefore is that authority which has the legal power to issue final commands. The power which has the legal authority to issue and enforce these laws is the legal sovereignty.

⁵ For example the sovereign states of the Union of Soviet Socialist Republics (USSR), Czechoslovakia, among others were sovereign states that were dismembered. Also countries like India gave birth to new countries such as Pakistan.

⁶ In his *Six Books of a Common Wealth* (1576) cited in B de Jouvenel, 'Sovereignty' (1957); J L Brierly, 'The Law of Nations' 6th ed (1963) <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 16 January 2017.

⁷ See C E Merriam, 'History of the Theory of Sovereignty since Rousseau' (1900, reprinted 1968); H J Laski, 'Studies in the Problem of Sovereignty' (1917, repr. 1968); B de Jouvenel, 'Sovereignty' (1957); J L Brierly, 'The Law of Nations' (6th ed, 1963); F H Hinsley, 'Sovereignty' (1966); A James, 'Sovereign Statehood' (1986) as cited in <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 16 January 2017.

⁸ See also the views of Stephen D Krasner, 'Sovereignty: Organized Hypocrisy' (Princeton University Press, 1999) cited in <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 16 January 2017.

⁹ Pooja, '5 Different Kinds of Sovereignty' <<http://www.politicalsciencenotes.com/articles/5-different-kinds-of-sovereignty/256>> accessed 17 January 2017.

¹⁰ The official website of Gambian government cites the three arms of government <<http://statehouse.gov.gm/>> accessed 18 January 2017. See also Dimitris Vardoulakis Fordham, 'Sovereignty and Its Other: Toward the Dejustification of Violence' (University Press, 2013). Vardoulakis asks how it is possible to think of a politics that is not commensurate with sovereignty. For such a politics, he argues, sovereignty is defined not in terms of the exception but as the different ways in which violence is justified. He shows how it is possible to deconstruct the various justifications of violence. Such de-justifications can only take place by presupposing an 'other' to sovereignty, which Vardoulakis identifies with radical democracy. In doing so, sovereignty and its 'other' put forward both a novel critique of sovereignty and an original philosophical theory of democratic practice <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 18 January 2017.

¹¹ Those acts the government was constituted or empowered to perform through its major arms- executive, judicial and legislative.

3. Sovereignty of a State over the Leaders: A Case of the Gambia

Sovereignty lies in the state and not in the human occupiers of leadership power. In Gambia, Yahya Jammeh ruled the country as president since he seized power in a bloodless coup in 1994.¹² His rule which by law ended with his defeat in 2016 in a general election by the main opposition candidate, Adama Barrow, a member of the United Democratic Party, signified the end of his occupation as leader of the sovereign state of Gambia.¹³ While Gambia continues as a sovereign state, Jammeh's power ceases. This is the law and the contemplation of sustainable sovereignty in a state. Even Dicey believed that behind the human occupiers of the leadership of a sovereign state which the law recognizes, is another sovereign called political sovereign to whom the legal sovereign must bow. The legal sovereign has the duty to pay due attention to the political sovereign. According to Gilchrist,

The political sovereign means the sum-total of influences in a State which lie behind the law. In modern representative government we might define it roughly as the power of the people. Political sovereign manifests itself by voting, by the press, by speeches, and in many other ways not easy to describe or define. It is, however, not organised and it can become effective only when organised. But the organisation of political sovereignty leads to legal sovereignty. The two are aspects of the one sovereignty of the state.¹⁴

Hence, the political sovereign is the whole mass of the people or the electorate or the public opinion. Political sovereignty rests in that class of people under whose influence the mass of the people is or the people are. While the legal sovereign is a law-making authority in legal terms the political sovereignty is behind that legal sovereign. Legal sovereign is determinate, definite and visible whereas political sovereign is not determinate and clear. In Gambia, the sovereign state is the country as a whole made up of the citizens and leaders. While Yahya Jammeh's power to claim legal sovereign is derived from the laws of the land as decided by the people, the political sovereignty of the people has no tenure. The sovereignty of Gambia over any human occupier of any leadership position is by law and cannot be shifted. Yahya Jammeh who became a legal sovereign by use of force via a coup, and subsequently by election, stood elected by the electorate or the people who have the ultimate political sovereignty. If these same people exercised their sovereignty in electing another person to occupy the legal sovereignty of the state, their will must be done to safeguard the continuous sovereignty of Gambia. In this regard, any human occupier whose power to exercise legal sovereignty has been determined by the political sovereign and relinquished by due process of the law, and remains will be regarded as a *de facto* sovereign from the day his power is withdrawn.¹⁵ Further exercise of authority based on physical powers after removal, where a legitimate sovereignty is able to enforce obedience is illegal.¹⁶

The *de jure* sovereign whose sovereignty is based on law and not on physical force or power must be by compulsion vested with total power.¹⁷ Lord Bryce stated with respect to *de facto* sovereign that it 'is the person or a body of persons who can make his or their will prevail whether with the law or against the law; he or they, is the *de facto* ruler, the person to whom obedience is actually paid'. Thus, it is quite clear, that *de jure* is the legal sovereignty founded on law whereas *de facto* is the actual sovereignty. Garner has very aptly remarked that 'the sovereign who succeeds in maintaining his power usually

¹² Yahya Jammeh seized power in 1994 as a young army lieutenant and went on to win four largely criticized multi-party elections and faced down several coup attempts before his defeat at by the opposition candidate Adama Barrow in December 2016 <<http://www.bbc.com/news/world-africa-13376517>> accessed 20 January 2017.

¹³ *ibid*

¹⁴ C E Merriam, 'History of the Theory of Sovereignty since Rousseau' (1900, reprinted 1968)

¹⁵ A *de jure* sovereign is the legal sovereign whereas the *de facto* sovereign is a sovereign which is actually obeyed.

¹⁶ For example as stated in Tozun Bahcheli et al, *De Facto States: The Quest for Sovereignty* (2004) <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 18 January 2017, After the Second World War and before the Egyptian Revolution King Farouk was the legal sovereign. General Naguib's 'coup de'etat' in Egypt and the abdication of King Farouk is another example of *de facto* sovereignty. Nazib was expelled and Nasser succeeded him in *de facto* sovereign. After the death of Nasser, Mr. Sadat succeeded him. After the assassination, Hosni Mubarak became the President of Egypt. Also In Soviet Union, the Communist Government became the *de facto* government of the successful Bolshevik Revolution of 1917. But in course of time, it became the *de jure* government also.

¹⁷ Total power being both physical and legal.

becomes in the course of time the legal sovereign, through the acquiescence of the people or the reorganisation of the State, somewhat as actual possession in private law ripens into legal ownership through prescription.¹⁸ However, no human occupier whether *de jure* or *de facto* can claim sovereignty over the state unless the state recognises and duly swears him in as legal sovereign.

4. Sovereignty of a State as Determined by the Law: A Case in Taiwan

Some of the most pressing issues in the contemporary international order revolve around a frequently invoked but highly contested concept, sovereignty. Taiwan has been independent since 1950, but ROC regards it as a rebel region that must be reunited with the mainland. ROC has claimed sovereignty over Taiwan since the end of the Chinese civil war in 1949. Taiwan on its part has refused to be considered a part of ROC but has gone ahead to update its weaponry, including new surface-to-air missiles, to counter any perceived military threat from ROC.¹⁹ Taiwan has no seat at the UN, as it lost it to China in 1971. Recurring attempts to get back representation at the UN have been blocked. While the characteristics of sovereignty include permanence wherein the permanent and continuous existence of the state remains while the people and government are mortals²⁰ Internal sovereignty refers to the power or authority of a government to compel obedience to its will within the state and control the life and property within her territory. This sovereignty compels the people to comply with the will of the government. The same government also exercises external sovereignty from foreign control. It is the contemplation of the law that every sovereign state be free to conduct international relations with other states on equal bases.

Although Taiwan has its own democratically elected government, some observe the principle that there is 'one China' comprising the island and the mainland, hence in their eyes this is the ROC based in Taipei; others advocate for a *de jure* independent Taiwan. However, presently ROC and Taiwan maintain a fragile relationship. The contention remains as to what extent would the concept of sovereignty, as it plays out in institutional arrangements, rules, and principles, inhibit the solution of the issue between ROC and Taiwan. Can the rules of sovereignty be bent or ignored by international bodies as against the will of the indigenous people of Taiwan? Problematic sovereignty attempts to answer this and other fundamental questions by taking account of the multiple, sometimes contradictory, components of the concept of sovereignty in cases ranging from the struggle for sovereignty between ROC and Taiwan. The disaggregation of sovereignty has enabled political actors to create entities that are semi-autonomous, semi-independent, and/or semi-legal in order to solve specific problems stemming from competing claims to authority.²¹ It is the view of this paper that sovereignty of a state although determined by the will of the people, is also subject to the law. The case of Taiwan's sovereignty can only be cleared with binding internal and external positions of the law, as well as the will of the people from the region of Taiwan.

5. Proposing a Roadmap to Ensuring Sovereignty

Every nation of the world is being enjoined to pursue sovereignty of the state over the individual leaders and human authorities. In ensuring this, systemic structures are put in place to allow continuity of purpose which is not subject to the natural limitations of the human person. While a human being can die, become mentally incapacitated, be inaccessible or kidnapped, or be ruled by emotions and harmful mood swings, the state which is abstract and represents its citizens is in perpetual existence. For instance, the constitution of Nigeria for example provides in section 2(1) that Nigeria is one indivisible

¹⁸ The Columbia Encyclopaedia, 6th ed. Copyright© 2016, the Columbia University Press.

¹⁹ This has caused the ROC capital Beijing to regularly express its anger at USA for their arms sales to Taiwan. See Eleanor Albert, Online Writer/Editor, "China-Taiwan Relations" (Updated: December 7, 2016) <<http://www.cfr.org/china/china-taiwan-relations/p9223>> accessed 18 January 2017.

²⁰ Joanne Barker, "Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination" (University of Nebraska Press, 2005). Much scholarship to date has treated sovereignty in geographical and political matters solely in terms of relationships between indigenous groups and their colonial states. Sovereignty Matters emphasizes the relatedness of indigenous peoples' experiences of genocide, dispossession, and assimilation as well as the multiplicity of indigenous political and cultural agendas and perspectives regarding sovereignty. <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 18 January 2017.

²¹ See Stephen D Krasner, *Problematic Sovereignty: Contested Rules and Political Possibilities* (Columbia University Press, 2001). <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 18 January 2017.

and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria. As this position has been reduced in writing and made binding on the people, it would be impossible for an individual occupying power to annul this provision in one day and by his own will. This is as a result of the structures in Nigeria in place to seek to amend and to consequently amend the laws. Also as an example, Sri Lanka also has structures which exist to help safeguard the supremacy of the constitution to sustain the sovereignty of the state. A leading statesman, Neelan Tiruchelvam²² in his lifetime helped achieve this by helping to found institutions such as the International Centre for Ethnic Studies (ICES) which continues to make intellectual and political mark not only in Sri Lanka and South Asia, but across the globe. Institutions worth building must be effective, unbiased, and sustainable in protecting the rights and interests of all their peoples, with conflicts and disputes being resolved through law, democratic process and effective government structures, not violence.²³ Going by what Neelan stated, political will is never waiting in a cupboard to be found: it has to be nurtured and generated, campaigned for persistently and relentlessly.²⁴ It is understood that there are limits of state sovereignty, and the nature of sovereign state responsibilities.²⁵ Many international rules restrict State sovereignty. In addition to treaty rules, which of course vary from State to State, limitations are imposed upon State sovereignty by customary rules. They are the natural legal consequence of the obligation to respect the sovereignty of other States.²⁶ This paper stipulates twelve basic in-lets constituting the roadmap by which sustainable sovereignty of a state can be protected irrespective of the activities of the human occupiers of the seat of leadership.

5.1 International Organisations

Almost every country of the world belongs to one international organisation or the other. The various international organisations with reference to key ones such as the UN, Commonwealth and ECOWAS have a role in sustainable sovereignty in a state. The membership of a state to any of such reputable international organisation creates an easy access to sustained sovereignty and stability of state laws. These organisations have laws which by mutual agreement must be obeyed to ensure continuous membership and avoid sanctions.²⁷ This may appear to make external sovereignty a farce but with the laws regulating such international organisations which have been ratified by member nations, arbitrariness and abuse of power can be avoided.²⁸ In 2013, the then president, Jammeh announced Gambia's withdrawal from the Commonwealth, as he describing it as a 'neo-colonial institution'. Although critics said that the move was prompted by wide-spread international condemnation over the government's human rights violations. By 2015 the President went ahead to declare the country an Islamic republic to break from the country's 'colonial legacy'.

When situations seem to cry out for some response, the international community may react erratically, incompletely, counter-productively or not at all. However if harnessed properly, international organisations have helped member states maintain sovereignty and rule of law. For international organisations, the responsibility to protect means the responsibility to warn, to generate effective preventive strategies, and when necessary to mobilise effective reaction to safeguard the sovereignty and stability of its member state.

²² He was closely involved in the constitution making processes in Sri Lanka, Kazakhstan, Ethiopia, and Nepal.

²³ Gareth Evans, President, International Crisis Group, International Centre for Ethnic Studies (ICES), "The Limits of State Sovereignty: The Responsibility to Protect in the 21st Century" *Eighth Neelan Tiruchelvam Memorial Lecture* (Colombo, 29 July 2007) <<http://www.gevans.org/speeches/speech232.html>> accessed 18 January 2017.

²⁴ *ibid*

²⁵ Neelan Tiruchelvam also played a major role in creating the Official Languages Commission, the Human Rights Task Force and later the Human Rights Commission. <<http://www.gevans.org/speeches/speech232.html>> accessed 18 January.

²⁶ Antonio Cassese, "Limitations on State Sovereignty: Immunities and Treatment of Individuals" DOI: 10.1093/he/9780199259397.003.0006 <<http://www.oxfordlawtrove.com/view/10.1093/he/9780199259397.001.0001/he-9780199259397-chapter-6>> accessed 18 January 2017.

²⁷ We sought to turn the whole weary and increasingly ugly debate about the 'right to intervene' on its head, and to re-characterise it not as an argument about the 'right' of states to anything, but rather about their 'responsibility' one to protect people at grave risk (n 31).

²⁸ When and to what extent should the United States participate in the international legal system? This forcefully argued book by legal scholar Jeremy Rabkin provides an insightful new look at this important question. See Jeremy A Rabkin, *Law without Nations? Why Constitutional Government Requires Sovereign States* (Princeton University Press, 2005) <<http://www.gevans.org/speeches/speech232.html>> accessed 18 January 2017.

5.2 Constitutional Limitations

Every nation has guiding *grund* norms often referred to as the constitution.²⁹ In Nigeria for instance, the Constitution provides for the Oath of Office of President, Governor of a State, Vice-President, Deputy Governor, Minister, Commissioner or Special Adviser and Member of the National Assembly or of a House of Assembly, which states *inter alia* that,

I,do solemnly swear/affirm that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as President of the Federal Republic of Nigeria, I will discharge my duties to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria;³⁰

The key phrase there for the relevance of this paper is, 'always in the interest to the sovereignty.' If we go by the actions of the former president of Gambia, Yahya Jammeh, every president will have the right to extend his tenure by simply declaring a state of emergency or cajoling their national assembly to extend their tenure with no recourse to the constitution. Although warships and military personnel from Senegal, Nigeria and Ghana were patrolling the shores of Gambia as subsequently after Yahya Jammeh declared a state of emergency in January 2017, it could not be seen that the country was technically at War. The constitution cannot be amended, manipulated or interpreted to meet the caprices of the few malicious human occupiers of power. The constitution must sustain sovereignty and ensure the rule of law. Sovereignty itself has been argued should not be seen as 'control' but as 'responsibility'. The starting point is that any state has the primary responsibility to protect the individuals within it. The legal sovereign is expected to enforce as well as obey the provisions of this *grund* norm, as the constitution often sets limitations of power to ensure the rule of law as well as represent the will of the people. This would help in spelling out the roadmap of a sustained sovereignty in any nation.³¹

5.3 International Laws

This is a system of laws regulating the actions of states in the international community. Sovereign states are expected to respect the laws of each other in agreements and treaties. International laws help limit state sovereignty, as the proper role of the international community is in responding to catastrophic human rights violations occurring within the boundaries of a single country. There may be a widespread concern that involvement of countries in the affairs of others, and in particular the involvement of developed countries in the internal affairs of developing ones, has not always been principled or consistent in the past. Article 2 (7) of the UN Charter is an all-embracing prohibition as it says that, '*Nothing should authorise intervention in matters essentially within the domestic jurisdiction of any State.*' Therefore, with the correct interpretation of the provisions of international laws, the sovereignty of a state can be sustained and ensured by provisions of binding international laws.³²

5.4 Role of Mass Media

Popular sovereignty is often described as being different from political sovereignty in that it does not necessarily refer to the electorate but to the masses of a political community. Where fundamental rights are guaranteed, pressure could be brought to bear on the erring legal sovereign through the mass media.

²⁹ Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton University Press, 2001) <<http://www.gevans.org/speeches/speech232.html>> accessed 18 January 2017. Philpott is of the opinion that revolutions in ideas about legitimate political authority profoundly altered the "constitution" that establishes basic authority in the international system. Ideas exercised influence first by shaping popular identities, then by exercising social power upon the elites who could bring about new international constitutions.

³⁰ 7th Schedule to the 1999 Constitution of the Federal Republic of Nigeria, as amended.

³¹ The Gambian Constitution 1997 begins with the phrase, "We the people of The Gambia have accomplished a great and historic task. We have had our say on how we should be governed. For this Constitution contains our will and resolve for good governance and a just, secure and prosperous society."

³² There are states that do not seek UN's approval before intervening in matters of other states. For example the U.S. Senate ratified the UN Charter fifty years ago. Yet it did not cede its sovereignty to the UN. Under the American system, when international treaties are ratified they simply become domestic USA law. As such, they carry no greater or lesser weight than any other domestic USA laws. See Helms Jesse, 'American Sovereignty and the UN The National Interest,' (Winter 2000) <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 18 January 2017.

Most developed and civilised nations ensure freedom of the press and freedom of information. Where a sovereign state has functional mass media, the will of the people can be fully channelled and revealed. Since every member of the electorate cannot occupy leadership positions to enforce their will, the media provides a platform for everyone to air their desires within the ambit of the law. It is clear that the law provides for jail terms for libel or sedition. But a ‘pervasive climate of fear’ forces most media practitioners to practice self-censorship or flee the country. In such tyrannical states, media practitioners are regularly arrested on ‘flimsy and superficial’ charges. During the occupation of Yahya Jammeh as president, the State-run Radio Gambia broadcast tightly-controlled news, which was relayed by private radio stations. The government operated the only national Television station and blocked critical websites. Many news websites and blogs had to be based overseas while some were run by exiled journalists.³³ The role of the mass media clearly paves a way for sustained sovereignty in a state where their freedom is guaranteed.

5.5 Public Opinion

In a society where the people have the right to enforce and exercise their rights especially their right of freedom of speech, they would constitute the political sovereignty. This ensures that the people have the ultimate sovereignty in every nation. The electorate have the power to change the human occupiers of their state at will in accordance with the law. The public opinion of a state differs from the mass media. The latter is the medium by which the former is channelled and broadcast. Also public opinion is often exercised not just via the print and electronic media but through the ballot box. In election, the public opinion is expressed by the choice of candidate by the majority of voters. Ensuring the will of the public forms part of the roadmap to sustained sovereignty in any state.³⁴

5.6 Presence of Opposition

Opposition political parties usually serve as a mode of checking the excesses of legitimate powers. In a system of more than one political party, the parties which lose election often constitute the opposition. In a system where there is no democracy in place, the mass revolt by the citizens may form the opposition. However, where there is an opposition to checkmate the excesses of a legal sovereign, sovereignty can be guaranteed to be kept with the people as against human dictators. The roadmap to sustained sovereignty in any state would be greatly achieved by the legitimate actions of oppositions, not to secede or create parallel governments, but ensure strict adherence to the constitution and other international instruments.

5.7 Economic Policies

It is understandable that sovereignty should be a very sensitive subject indeed with the many states who gained their independence during the decolonisation era, that is, states in all cases proud of their new identity, in many cases conscious of their fragility, and generally inclined to see the non-intervention norm as one of their few defences against threats and pressures from more powerful international actors seeking to promote their own economic and political interests. Although states are sovereign the economic policies of nations of the world help each other check the excesses of their individual sovereignty in the world markets. Every state relies on others in the economic world. States which abuse powers and sovereignty can often be placed back on tracks by the economic policies of other nations. Such policies that do not fall within the standard of international economic laws are disregarded by the countries that own such policies. The increasing role of international financial institutions and globalization has led many observers to question the continued viability of the sovereign state.³⁵ Political leaders have usually but not always honoured international legal sovereignty, the principle that international recognition should be accorded only to juridical independent sovereign states, while treating *Westphalian* sovereignty, the principle that states have the right to exclude external authority from their own territory, in a much more provisional way.³⁶ In some instances violations of the

³³ <<http://www.bbc.com/news/world-africa-13376517>> accessed 19 January.

³⁴ *ibid*

³⁵ Stephen D Krasner, *Organized Hypocrisy* (Princeton University Press, 1999) <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 18 January 2017.

³⁶ *ibid*

principles of sovereignty have been coercive, as in the imposition of economic policies on sovereign states. But it is the position of this paper that such limitation helps to limit the roles of the human occupiers of leadership in such sovereign states, by ensuring that the economic decision they take are for the benefit of the state as a whole and not their personal interests.³⁷ The role of economic policies can be a yardstick for ensuring sustained sovereignty in every state by safeguarding its needs over and above the wants of its human occupiers of leadership.

5.8 The Role of the Judiciary

The courts as recognised by the constitution and other enabling legislation have the power to adjudicate cases involving the state and the government. Recognising that the government's primary responsibility, like that of any state, is to protect all its citizens, it must take steps to ensure that all its citizens are accorded the equal protection of the laws. The judiciary is therefore a major part of the roadmap to sustained sovereignty as it is the arm responsible for interpreting the laws of the state.

5.9 Multiplicity of Associations

The pressure to which most legal sovereign tend to respond to is political pressure. This has the combination of domestic pressure and external pressure. The existence of various associations constitutes a mode of limiting the excesses of government. Civil society groups have the responsibility to protect the will of the people by means if need, be to force the attention of policy-makers on what needs to be done, by whom and when. These associations include religious bodies, pressure groups, civil societies, trade unions, corporative societies, professional and student unions, among others. These associations often have considerable influence on the activities of government. Where the multiplicity of associations has a common goal of national unity, growth and development in an atmosphere of peace and security, it would constitute a part in the roadmap for sustained sovereignty of the state as against any human occupier of office.

5.10 International Public Opinion

The sovereign state has a responsibility to safeguard its citizens. Most countries would prefer a positive image of themselves. Where a state fails in its responsibility through either incapacity or ill-will, a secondary responsibility to protect falls on the wider international community. To attain this, the human occupiers must take actions which conform to internationally accepted standards of behaviour. Their actions hence can be influenced by external public opinion. In countries where rules of law are not adhered to but are violated, the leaders are put under pressure by the international community to modify their policies in conformity with standards accepted internationally. As stated above, the position of this paper is that international organisations have a role in safeguarding sustenance of state sovereignty, thereby limiting the excessive powers of the human occupiers. UN human rights monitoring plays an important role in supporting and developing the state's capacities to protect its citizen's rights. States therefore ought not to see UN monitoring as punitive, or invasive. Instead, as one designed to help government authorities do their job better, in part by increasing the confidence of witnesses. These witnesses are the international observers and opinion holders, who monitor dispassionately the affairs of member states. Each individual State has the responsibility to protect its populations from crimes against humanity and abuse of power by its human occupiers. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. The international community should as appropriate encourage and help States to exercise that responsibility. The role of the international community in rendering its opinion in matters concerning sovereign states would help sustain such sovereignty and keep such state from derailing along the path of incompetent human occupiers of leadership.

5.11 Inter-dependence of State

Traditionally, a sovereign state is seen as having the highest and exclusive power on a its territory, and independence in international relations. But in modern times, states are required to respect the norms to whose creation they contributed, should the state want to benefit from other sovereign states. In the

³⁷ Despite its diplomatic isolation, Taiwan has become one of Asia's big traders. It is considered to have achieved an economic miracle, becoming one of the world's top producers of computer technology. Eleanor Albert (n 13).

globalized world the centres of power are regrouped according to factors other than simply the power and will of individual sovereign states.³⁸ Today, power is not measured by the territory one has, but by the influence one commands. This influence is displayed through private businesses, telecommunications, media, and international presence.³⁹

Countries depend on each other in economics, technology and sometimes military matters. Such interdependence limits the independence of sovereign states. The independence of countries sometimes compels nations to modify their policies. Various foreign states bear some of the responsibility in allowing certain human occupiers who adduce supreme sovereignty on themselves over the interest of their countries to build up power, in part on the misguided belief that they were in a legitimate cause. For instance, the Treaty of Lisbon requires a new definition of national sovereignty.⁴⁰ It is no longer enough for a state to just promote policies at home or speak to its individual national interests. They must also actively participate in the international community where coordination between individual states is paramount. Hence, nations must be clear in defining the border between where their national interests should be defended and what common interests and rights should be agreed upon and lent to the other sovereign states. A state does not just promote policies at home or speak to its individual national interests, but must also give opinions concerning other states. They must also actively participate in the international community where coordination between individual states is paramount.⁴¹ In this inter-state dialogue, nations must be clear in defining the border between where their national interests should be defended and what common interests and rights should be agreed upon and lent to each other. Thus, where states are actors within a larger supranational body, they must act, and to defend, what they perceive to be their national interests. This simple act of inter-state dependence ensures sustainable sovereignty.

5.12 Passing of Unpopular Laws

In a civilised nation where the majority of the people are politically enlightened, and have the freedom of speech, any unpopular law passed by legislature will not be obeyed. The law passed by the National Assembly extending Yahya Jammeh's tenure was not only ignored by the citizens but was also not adhered to by the UN which on the 19 January 2017 acknowledged newly elected president, Adama Barrow as the legal sovereign of Gambia.⁴²

6. Application of Roadmap to Troubled States

It has taken the world a long time to come to terms conceptually with the idea that state sovereignty is not a license to tyranny, that there is something fundamentally and intolerably wrong about human occupiers abusing power or forcibly displacing large numbers of their own citizens, or standing by when others do so. Now that there is the recognition of the principle of the responsibility to protect by the world's assembled heads of state and government, the roadmap to sustainable sovereignty of the state and the limitation of the human occupiers can be achieved. It will take effort and energy from people, states and institutions of goodwill all round the world to ensure not only that responsibility to ensure sovereignty of the state and protect its citizens continues to be accepted in principle, but is effectively

³⁸ White John, 'Where National Sovereignty Lies' [2009] *The New Presence: The Prague Journal of Central European Affairs*, Vol. 12, No. 4, Autumn <<https://www.questia.com/library/law/international-law/sovereignty-of-nations>> accessed 18 January 2017.

³⁹ *Ibid.* In legal terms, sovereignty is now defined by accepting responsibility for one's contracts and by retaining the right to pull out of a contract or international organization. Thus, no law or regulation can be imposed upon a particular Member State without that state's expressed consent. The guidelines of the EU under the 2001 Nice Treaty include this right of states, and Article 50 of the Lisbon Treaty maintains and clarifies the states' right to leave the EU if they so choose.

⁴⁰ In June 2008 a group of senators led by Jiri Oberfalzer petitioned the Czech Constitutional Court to look at six articles from the 2007 Treaty of Lisbon, a reform treaty which if ratified amends the Treaty on European Union and the Treaty establishing the European Community. The senators asked the Court to consider the articles' approach to Member State sovereignty, the role of national parliaments in European level lawmaking, and the nature of the Charter of Fundamental Rights of the European Union. The Charter is annexed to the Treaties and renders citizens of the Member States into legal citizens of the European Union. The Court ruled that the articles in question did not violate the Czech constitution or Czech national sovereignty.

⁴¹ *ibid*

⁴² (n 43)

operational in practice. This paper will at this juncture apply the above inlets to the cases in Gambia and Taiwan, which can form the roadmap for other states as issues arise.

6.1 Application in Gambia

Without a doubt where the constitution of Gambia has placed sovereignty on the people, no human occupier of power can allude to himself the right to obey and disobey the laws at will and go unpunished. For instance, in Nigeria, the extant Constitution in section 14(1) provides that ‘The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice; (2) It is hereby, accordingly, declared that Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;⁴³ If in Gambia therefore the constitution in section 2 provides that ‘The Sovereignty of The Gambia resides in the people of The Gambia from whom all organs of government derive their authority and in whose name and for whose welfare and prosperity the powers of government are to be exercised in accordance with this Constitution’,⁴⁴ it is clear that sovereignty in Gambia goes beyond any individual or group of individuals in any arm of government. The Gambia's National Assembly which adopted a resolution to allow Yahya Jammeh to stay in power for three more months can be seen to have passed an unpopular law which was rejected. Jammeh who had earlier lodged a complaint with the country's Supreme Court also declared a state of emergency. These were all seen by the international states as ways of evading legitimate laws and rules. The various international organisations such as UN, ECOWAS, and others responded swiftly by passing necessary resolutions to ensure state sovereignty and deploy military troops to enforce the laws. Going by the twelve inlets stated above, the sovereignty of the state o Gambia can be seen to have been effectively safeguarded to ensure its sustainability over the personal wishes and will of Yahya Jammeh and his cohorts.

6.2 Application in Taiwan

Although the position in Taiwan has not been totally settled, in applying the twelve inlets above it can be said that the sovereignty of Taiwan can be decided based on all twelve. For example, the Constitution of the ROC⁴⁵ is the fundamental law which since 1949 only controls the ‘free area of the ROC’, which is essentially the island of Taiwan and some minor outlying islands. If the constitution is to be seen as supreme, Taiwan has to yield to its provisions. On the bases of economy, ROC has states that nations cannot have official relations with it and concurrently with Taiwan.⁴⁶ Hence, there is no doubt that Taiwan is a sovereign state, but it has yet to become a normal one.⁴⁷ It has been put forward by some writers that the sovereignty of Taiwan can only be determined by three prerequisites: first, by abandoning the name ‘The Republic of China’ in favour of ‘Taiwan’; second, by establishing a Taiwanese constitution; and third, by becoming an official member state of the UN. If Taiwan succeeds in becoming a normal state, there will be no issue of sovereignty.⁴⁸ Another set of writers have however held the view on the other hand that Taiwan can be considered a nation as it fulfils all requirements for nationhood according to international law.⁴⁹ Unlike the argument given above, in the respect of international law, an independent country shall meet four requests, *viz*, independent government, a

⁴³ 1999 Constitution of the Federal Republic of Nigeria, as amended

⁴⁴ The Constitution of the Republic of Gambia, 1997, reprinted in 2002

⁴⁵ Chinese: 中華民國憲法, pinyin: Zhōnghuá Mínguó Xiànfǎ (n 13)

⁴⁶ Taiwan has formal diplomatic ties with only two dozen countries - Pacific, Latin American and African states in the main. Ironically, the latest country to break off formal diplomatic relations with Taiwan was Gambia. On 4 November 2013, the Government of Gambia announced its break up with Taiwan, but the Foreign Affairs Ministry of China denied any ties with this political movement, adding that they were not considering on building a relation with this African nation (Washington Post, 14 November 2013). Nigeria recently by its Federal Government said she will no longer recognize Taiwan as a country but rather pledged support for One China. The Minister of Foreign Affairs, Geoffrey Onyeama, stated this while answering questions from newsmen after a joint news conference with the Chinese Minister of Foreign Affairs in Abuja <<http://www.vanguardngr.com/2017/01/nigeria-severes-diplomatic-relations-taiwan-closes-abuja-office/>> accessed 18 January 2017.

⁴⁷ China wants to occupy Taiwan, but here's the problem: Taiwan is a democracy. Even if China wanted to merge with Taiwan, it would be swallowing a state that would sow the seeds of the Chinese aristocracy's ultimate doom. A state in which the power ultimately rests in the hands of the people in one province, with one-person-one-vote, but not in the rest of the country cannot endure- opinion of Craig Urquhart, 14 November 2016.

⁴⁸ (n 13)

⁴⁹ *ibid*

certain group of people, certainly controlled territory and most of all, the independent sovereignty. The last one means the country can behave in the international community independently such as signing treaties, establishing diplomatic relationships with other countries, accessing an inter-governmental international organization as a country instead of regions or separate customs territory among others. Since Taiwan has a population of 23 million people it has sovereignty over, and effective control of, the defined territory of Taiwan, Penghu, Kinmen and Matsu. These areas are controlled by a government which has the right to form policies and the ability to conduct diplomatic, economic and other types of exchanges with other countries throughout the world. Therefore, from the perspective of international law, Taiwan ceased to be a part of China in 1895.⁵⁰ This paper supports the UK government position that *'the future of Taiwan be decided peacefully by the peoples of both sides of the Strait'*. It can be safely concluded that Taiwan's status in the eyes of international law remains undefined.⁵¹

7. Conclusion

The sovereignty of nations must, of course, be respected. But, properly understood, nations derive their sovereignty, their legitimacy, from the consent of the governed. Ensuring sustainable sovereignty is paramount as it would prevent abuse of power by any individual or group of individuals. Citizens of sovereign states will continue to experience socio-political infringements of the sovereignty of their state until systemic structures are put in place to sustain state sovereignty. While every nation can decide the extent of its political and legal sovereign, a roadmap would serve as a yardstick to ensure compliance of the rule of law and limit any arbitrariness of legitimate power. If countries facing similar instances such as Gambia and Taiwan can implement the laws ensuring the sovereignty of their state, socio-political tension can be doused and peace and stability can strive.

⁵⁰ *ibid*

⁵¹ According to Lowther William, 'Taiwan 'Agrees' It's Part of China: Ex-US Diplomat.' *The Taipei Times* (Taipei, 30 March 2012), This issue was left unaddressed in the UN Resolution 2758 in 1971 (n 13).