T

his paper deals with the issues of national sovereignty and international law. The recent advances in international law are examined in the light of what are assumed to be the rights of sovereign states. These legal rights include the right of equality, existence, intervention, self-defense, independence, permanent sovereignty over natural resources, and the right of development. This paper also outlines the historical advances in international law, and how this has impacted state sovereignty.

The United Nations is put forward as the primary organization able to safeguard the rights of the lesser-developed and smaller states, although it too is subject to the whims of the more powerful states because of the make-up of the Security Council and its powers.

INTRODUCTION

A) Subject of the Study: More and more developing countries are clamouring for safeguarding their national sovereign rights.
B) Limitations: Emphasis is laid on basic sovereign national rights like Right to existence, right to permanent sovereignty over natural resources; and right to development etc. Other peripheral rights are excluded from the discussion.
C) Theoretical Framework: Concepts like sovereign rights, permanent sovereignty and their legal status have been conceptualized and elaborated.
D) Methodology: Historical, comparative and analytical tools of research have been applied.
E) Review of Literature: A cursory glance at the available plethora of literature on national sovereign rights demonstrates that no in-depth analytical research study projecting developing countries has been undertaken thus far. Hence this paper assumes significance.

PREFACE

Compatibility between sovereignty and international law entails that sovereignty comprises certain legal rights, which are conferred upon a state by international law. These sovereigns assume significance rights in two ways. Firstly these sovereign rights deal with matters which constitute the raison detre of
the state and enable the latter to pursue activity in the international context. Secondly these rights provide a legal edifice for this activity thereby enabling the states to conduct their affairs in a legitimate manner. Construed in this sense, sovereignty can be equated with legal independence in the sense that it entails the legal powers, which are sine qua non for a state to conduct its affairs in the international comity of nations.

Until the closing part of the nineteenth century Vattel and other jurists adhering to the natural law school had held that membership of the comity of nations conferred upon the member states what were called the sovereign rights of states. It was further opined that these sovereign rights were essential, absolute, and self-evident, since the international community comprised sovereign states and these rights were inherent in the very nature of such states. These rights were indispensable and to be preserved even by war as without them, no sovereign state could survive. Other rights enjoyed by the states were regarded as secondary.

During the early phase of the twentieth century, there prevailed conflicting opinions amongst the jurists regarding the meaning and classification of the sovereign rights of a state. However, there was general agreement on some distinct rights which interalia included; the right to existence, to independence, to equality, to respect, and to territory. Some jurists regarded these rights as absolute and inalienable. While other jurists who took a realistic view had opined that although during the past these rights had come to be regarded as essential conditions of the membership of the international community hence there was no need to assign to them an absolute and inalienable character. Oppenheim even argued that the notion of sovereign or fundamental rights should be excluded from Law of Nations.

However, the practice in vogue, as applied by the states, has been to accord recognition to the rights of states which came into existence by virtue of custom or as a sequel to treaties between states. In other words, the rights and duties of states must be those agreed to and consented by other states or stipulated by international law. The Montevideo Convention of Rights and Duties of states adopted in 1933 was the first authoritative declaration by American states on the subject of fundamental rights and duties of states. The Convention interalia declared:
A. The Political independence of states was independent of recognition and that the recognition merely signified the acceptance of international personality;
B. That the states were judicially equal;
C. That the fundamental rights of states were not susceptible of being affected in any manner and states possessed them by virtue of their existence as states; and
D. That no state has the right of intervention in the internal or external affairs of other states.
Before this declaration of the Montevideo Convention of American States could become universally acceptable and applicable, there broke out Second World War (1939-45). It was only after the adoption of the Charter of the United Nations in October 1945 that the controversy surrounding as to what were the fundamental rights of states came to an end. The UN Charter accorded recognition to the following principles as sovereign rights of a state: (a) sovereignty; (b) Equality of state; (c) Non-interference in the domestic affairs of other states; and (d) the self-determination of peoples. Incidentally, the UN Charter has also specified matching duties of the states which interalia include: (i) non-interference in domestic affairs of other state, (ii) settlement of disputes by peaceful means; and (ii) refraining from threat or use of force by states.

According to Starke the rights and duties of states are correlated. It implies that right of one state entails a corresponding duty on the part of the other state. Thus, relation of one state to other states or to international community has assumed significance under the UN Charter because it has laid down rules governing such relationship. In other words, the principles enshrined in the UN Charter and other norms, which have developed in the post-Second World War period in the international law, have their bearing on the conduct of relations between states or members of the international community. It is in this backdrop that the sovereign rights of a state are briefly analyzed here.

**RIGHT OF EQUALITY**

In the wake of the proclamation in the UN Charter of the “sovereign equality” of states, the principle of equality of states has become an integral part of international law. The assumption that all the states are equal entails that all the subjects of international law enjoy equality, one with another. Equality here means equality before law or equality of legal status. However, it should not be construed in the sense of a ‘physical capacity’ for rights. In international law, states having variable sizes, strength and resources are prone to possess different physical capacity, but all these can enjoy equal legal status in the international community.

The Treaty of Westphalia had echoed the principles of sovereignty and independence of states. The jurists belonging to the Naturalist school had introduced the doctrine of equality of state into international law. Another group of jurists who were disinclined to this naturalist’s principle opposed it on the grounds of its being contradictory to facts. However, some other writers tried to support it by making a distinction between the legal and political equality of states. This doctrine of equality of states implies that states are equal in law despite other obvious inequalities. In other words, all the states have the same rights and obligations.
Oppenheim has underlined following four conditions essential for the doctrine of equality of states in international law:

(A) Every state has a right to vote and to one vote only;
(B) The vote of a weaker state has as much weight as the vote of the most powerful state;
(C) No state can claim jurisdiction over another;
(D) Lastly, the courts of one state do not, as a rule, question the validity of official acts of another state in so far as those acts purport to take effect within the latter’s jurisdiction.

This shows that the rights of one state need legal protection as much as the rights of any other state irrespective of the fact of physical capacity or geographical size.

Broadly speaking, all states do not enjoy equal rights in the realm of international politics; big powers have experienced primacy among states for a long time. This political primacy got legalized both in the Covenant of League of Nations and in the UN Charter. Though in the UN General Assembly, the principle of equality of states is applicable because each member country is required to send equal number of representatives and each member country casts equal votes. However, this is not the case with the UN Security Council where only five great powers are given permanent representation and the principle of equality of voting is substantially impartial. The political predominance of great powers is not keeping in consonance with the principles of equality.

According to Alan James, the common possession of sovereignty enables the territorially based members of international society to speak of their sovereign equality. It is possible to draw “a contrast between them that all states are supposed to be sovereign and the fact that the rights which are at the disposal of some states are inferior to those at the disposal of others”. It equally misrepresents the position of the states to say that “though lip service continues to be paid to the concept of sovereign equality, it now bears less relation then ever to the treaties of the world.” Though Vattel had aptly stated that a dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom.” Yet the state practice continues to favor the big powers. The cause of small countries was echoed by the Prime Minister of Nigeria at the first Pan-African summit in 1963: “There must be acceptance of equality by all states. No matter whether they are big or small, they are all sovereign and sovereignty is sovereignty.”

In the post-Cold War period, the political dominance of great powers continues to rule the roost which in turn has affected the doctrine of sovereign equality of small and weaker states. Some of these states, being riven with ethno-religious dissensions or having geographic contiguity with great or powerful states, have been victims of inequality. Central Asia, Middle East, Africa and
Latin America provide instances of such factual position where the doctrine of sovereign equality of states has been reduced to a mockery.

RIGHT OF EXISTENCE

It is the fundamental, primary and basic right of every state to have its national existence. The renowned jurist Fenwick has opined that the right of a nation to exist is also known in international law as the right of national security or self-defence or self-preservation. When perceived in theoretical terms it looks very attractive but in real terms, the existence or survival of a state is dependent on its capabilities to protect itself from state having conflicting interests or aggressive designs. The existence of small and weaker states has always been at stake. History is replete with many instances, which demonstrate that powerful and ambitious states have violated the right of smaller states. Poland fell a prey to its powerful neighbors in 1772-1795, Korea to Japan in 1910 and Abysinia to Italy in 1936 etc.

Right of existence is closely akin to right to self-defence. Article 51 of the UN Charter contemplates the right of resistance to attack or invasion. Despite the prohibition on the unilateral use of force in Article 2(4) of the UN Charter, a victim of an armed attack may use force to defend itself and others can join in force to defend the victim pending action by the Security Council. Undoubtedly, the right of individual or collective self-defence continues to apply if the Security Council does not act at all. It is also generally accepted that self-defence against armed attack includes the right to take war to the aggress or in order effectively to terminate the attack or even to preserve or deter its recurrence. The states are permitted to organize themselves in advance, as in the case of North Atlantic Treaty Organization (NATO) in bona-fide self-defence arrangements for possible action if an armed attack occurs.

In the wake of Suez Crisis it was argued by some that the inherent right of self-defence incorporated the traditional pre-Charter right of self-defence which was not limited to and did not have to await “armed attack”, that the right of self-defence “if an armed attack occurs” does not mean” only if an armed attack occurs”. Some have also argued that the only limitation on self defence was that implied in the famous Caroline dictum that the self-defence was limited to cases in which “the necessity of self-defence is instant, overwhelming and leaving no choice of means and no moment of deliberations.” It furthers applied that the use of force had to be reasonable and proportional.

However Louis Henkin finds these arguments as untenable and fallacious. According to him, Articles 51 of the UN Charter permits unilateral use of force in a very narrow and clear circumstances, in self defence if an armed attack occurs. Difference of opinion among jurists continues to prevail in this regard.
Justification for an invasion of territory of other states under international law is contingent upon two conditions. In the first place the necessity of self-defence by such invasion ought to be of gravest nature, and secondly, the state which was invaded should be reluctant or unable to prevent the impending attack, if it is by a third power. Grotius expressed opposition to an attack on the neighbour as it entailed the possibility of being attacked because the neighbour was amassing arms to defend itself. In Grotius view such an eventuality did not give a right to attack unless there were other just grounds of war. Vattel has also endorsed this view. However, in practice, the leaders and statesmen have generally ignored such views of the jurists and went ahead in piling up sophisticated arms including nuclear weapons. In the post-Second World War period advent of cold war kept the threat of war imminent because of intense rivalry between the United States and erstwhile Soviet Union. Massive build up of sophisticated arms and nuclear arsenals kept the threat of war alive and surrogate states having affiliation with either side were involved in some of the conflicts that afflicted the Third World during that period. Even in the post-Cold War period, the possibility of attack from a powerful neighbor continues to loom large for the weaker states especially in the Middle East and Central Asia.

The notion of collective defense is also advocated by some to ensure protection of the states. The idea of collective responsibility for security was incorporated in the Covenant of the League of Nations. It had also provided for the peaceful settlement of disputes. The pact of Paris also known as Kellog Braind Pact concluded in 1928 had sought to condemn recourse to war as a means to settle international disputes and laid emphasis on the peaceful settlement. Emphasis was also laid on renouncing war as a tool of national policy in relation with other states. However, in no manner did it impair the right of self—defence which is inherent in every sovereign state. The UN Charter provides for the maintenance of peace and security in the international community.

The UN Security Council is entrusted with the responsibility of taking appropriate measures to maintain peace and security in the world. The Security Council even decides upon military measures for which the member countries are called upon to contribute their forces and join in other measures.

In this way, the UN Charter envisaged the principle of collective security for the maintenance of peace and security in the world. During the Cold War period this principle was interpreted by great powers to forge military alliances like NATO, WTO, ANZUS, CENTO, SEATO etc. thereby seeking refuge under Article 51 of the UN Charter. Measures taken under such military alliances for collective defence have to be communicated to the Security Council. These measures are to be ceased when the Security Council takes appropriate measures to restore and maintain international peace and security. This shows that the right of self-defence under the Charter is a restricted right as exercisable only
until the Security Council has taken the necessary measures to maintain international peace and security.

Undoubtedly, the system of collective security as contemplated in the UN Charter is stronger than what was envisaged in the Covenant of the League of Nations. However, the League failed to instill mutual confidence among its members about the self-defence measures. However, the United Nations actions in Israel, Indonesia, Congo, Suez crises and many other conflict prone areas demonstrated that the UN collective defence system was stronger and effective. However, the collective defence measures taken against Iraq during the 1990-91 Gulf war and NATO’s military actions against Yugoslavia in 1998-99 have raised doubts about the legitimacy of collective defence because such arbitrary use is prone to endanger the territorial integrity of the state against which that action is directed.

INTERVENTION AND SELF-DEFENCE

A state, finding developments in a neighbouring state portending threat to its national security, can declare a war on it and after latter’s defeat may impose conditions on it in the form of terms of peace to prevent recurrence of such conditions. However, it is an extreme step resort to which is seldom made. The aggrieved state can adopt simpler measure in order to get redressal by overturning the offending government in the neighboring state by intervening in its internal or external affairs. Thus, on the grounds of self-preservation the aggrieved state can have the right to intervene in the affairs of another state. Such situational intervention, in international law is a measure of self-defence, provided it is not in contravention of Article 2(4) of the UN Charter. This has introduced a new approach to self-defence.17

Oppenheim has opined that intervention is a dictatorial interference by a state in the affairs of another state for the purpose of maintaining or changing the actual conditions prevalent therein. However, some jurists have justified it as a measure of self-defence. The essential ingredient of intervention is the use of force or a threat to use force.

Intervention has two kinds, internal and external. Internal intervention is the interference by one state in the disputes between or among the different groups in another state, to support or protect either the government or its opponents or rebels. This is the interference in the internal affairs of another state. External intervention implies interference in the foreign affairs of another state with a view to creating enemies and hostile relations with other states. The intervention is legitimized under international law if it is for self-preservation or for the enforcement of treaty rights or on the grounds of humanity, or for the protection of property, persons and national honor of a state. The UN Charter
also permits collective intervention provided it does not affect the domestic jurisdiction of a state.

According to Oppenheim although the law of nations does not permit intervention yet there are circumstances when intervention can occur or is exercised as a right. There are also instances where intervention does not occur as of right, still it is permitted by the law of nations and excused inspite of the violations of the sovereignty of nations.

Legality of intervention, according to Brierly, is justifiable under three circumstances: - for self-preservation, for reprisals and for the exercise of treaty rights. Undoubtedly intervention is justifiable for self-preservation or breach of treaty rights but such circumstances should not be created as a ploy or pretext for intervention. Humanitarian grounds or grounds of protection of persons and property of or national honor can also justify intervention. Intervention for self-preservation has created many historical precedents. When at war with France in 1907, Britain apprehended the seizure of Danish Fleet by France. Consequently when Britain demanded its custody; Denmark refused it and Britain seized it in self-defence.

Principles of self-preservation have been explicitly laid down by the famous case of Caroline. According to it a necessity of self-defence should be instant, overwhelming and leaving no choice of means and no time for deliberations. Besides, nothing should be done unreasonable or in excess of the requirement of self-defence.

RIGHT OF INDEPENDENCE

Every sovereign state has a right of independence. This right of independence is a corollary of the right of existence. It demonstrates freedom of a state from outside control in domestic and an external affair. Independence of a state entails two aspects internal and external. Internal independence implies sovereign control of a state over persons and property within its territory. In other words, it is known as domestic jurisdiction of a state. Exercise of the right empowers a state to frame its national constitution, grant citizenship rights and regulate the economic, social and political life of the state. In other words, a state has full control in its internal affairs without any outside control. Article 2(7) of the UN Charter prohibits the United Nations from interfering with the domestic jurisdiction of any state, excepting when the Security Council is required to take action because of threat to breaches of peace under Chapter VII of the Charter.

External independence implies the freedom of a state to carry on or determine its relations with other states without the interference of any other state. A state can establish diplomatic relations or enter into treaties with other states. A
state is free to have pacts, alliances, commercial and cultural relations with other states. Both internal and external independence is essential for a state.

However, the right of independence of a state is subject to the prevalent limitations or restrictions in international law, which are binding on all the states. The rules and customs of international law and bilateral and multilateral treaties between and among the states serve as restrictions on the independence of a state. Each state as a responsible member of comity of nations has to abide by rules, standards, norms and human rights framed and adopted by the United Nations and its specialized agencies. These sovereign rights of states have been reiterated within Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations and the Charter of Rights and Duties of States.

RIGHT TO PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

Right to permanent sovereignty over natural resources is teleologically linked with the core principle of permanent sovereignty, which is duly acknowledged in contemporary international law. During the nineteenth century and early twentieth century, the notion of permanent sovereignty had been the bone of contention between the capital exporting and capital importing countries in respect of the question of limits imposed by international law upon the power of the host country to exercise control over alien economic interests within their territorial jurisdiction. The tangible outcome of this sort of contention or controversy could be discerned from the prevalent balance of power between the two groups of countries. This also formed the “practice” at the root of institutions like diplomatic protection as well as some of the elements of state responsibility.

However, in the post-Second World War period or the latter half of the twentieth century, the notion of permanent sovereignty over natural resources or PSNR has emerged as one of the main principles of international law. Having been formulated, developed and reiterated by virtue of various resolutions adopted by the UN General Assembly, the principle of PSNR has found its roots in two main concerns of the United Nations: (I) economic developments of under developed countries; and (ii) human rights and self-determination of peoples. As early as in 1952, the UN General Assembly vide its resolution 523 (VI) of 12 January 1952 had interalia observed that the under developed countries had the right to “determine freely the use of their natural resources and that they must utilize such resources in order to be in a better position to further the realization of their plans of economic development in accordance with their national interests. This principle was further reaffirmed in subsequent
UN resolutions from 626 (VII) of 21 December 1952 through 1803 (XVII) of 14 December 1962, 2158 (XXI) of 25 November 1966 to resolution 3201 (S-VI) of 1 May 1974.24

The stakes in right to permanent sovereignty over natural resources found manifestation in the perception that during the colonial period inequitable and onerous mechanism, mainly in the form of so called “concessions” was thrust upon reluctant and gullible masses. It was in this backdrop that UN General Assembly resolution 626 (vii) of 21 December 1952 had interalia reiterated that the people could, for their own requirements, freely dispose of their natural wealth and resources and in no case a people could be deprived of its own means of subsistence. This was reiterated and reaffirmed by subsequent UN resolutions.

Until recently, it was generally assumed that the principles of permanent sovereignty were embedded in the right of self-determination. Accordingly the broad normative provisions were incorporated in paragraph 2 of Article 1 of the two widely ratified international human rights covenants of 1966. This principle was also embodied in Article 13 of the Vienna Convention of Succession of States in respect of Treaties 1978. However, with the progress of the process of decolonization during 1960s the emphasis on the right to PSNR of “Peoples” and its linkages with “self-determination” got gradually obliterated. The post-decolonization period resolutions on PSNR generally address more and more exclusively to states as the subjects of the right to PSNR. Paragraph 5 on PSNR in the Seoul Declaration (1986) of the International Law Association does not contain any reference to “peoples” but refers to “state”.25

Initially the principle of PSNR was confined to “natural resources” or “natural wealth and resources”. The term natural wealth was deemed to include the natural harbours rivers, the sun, the sun and the wind, inclusive of activities like tourism, generation of electricity etc based on them. In the wake of the developments of the law of the sea, the UN General Assembly vide its resolution 3016 (XXVII), 1972, extended the right of states to permanent sovereignty to include all the natural resources, on land within their international boundaries, as well as those found in the sea-bed and the sub soil thereof within their national jurisdiction and in the superjacent waters.”26 The UN Convention on the Law of the Sea 1982 more explicitly and clearly identified these aspects of the PSNR. The Charter of Economic Rights and Duties of the States (CERDS) 1974, further widened the scope of the PSNR by incorporating “all its wealth, natural resources and economic resources.”

N.J. Schriwer has summed up the significant implications arising from the principle of PSNR, which confer upon each state, within the framework of other principles and rules of international law, the right:

(a) to possess use and dispose of its natural resources;
(b) to regulate the admission of foreign capital and to exercise authority over the activities of foreign investors;
(c) to control the out flow of capital;
(d) to nationalize or expropriate property both of nationals and foreigners. This is worth mentioning here that the principle of PSNR is based on resolutions adopted by the UN General Assembly, which merely have the status of the recommendations. Though the principle of PSNR is a widely accepted and recognized principle of international law but it does not enjoy the status of a norm of jus cogens.

Broadly speaking right to permanent sovereignty is inalienable. It cannot be alienated or diverted or ceded. However, a country can accept obligations with regard to the exercise of its sovereignty through the instrumentality of agreement or treaty entered into by its own free will. Words like “permanent” ‘inalienable’ and ‘full’ are commonly used interchangeably to qualify the sovereignty. According to one opinion, the objective of such expression is to lay stress on the fact that “the sovereignty is rule that can be exercised at any time, that limitations are the exceptions and cannot be permanent but limited both in scope and time.”

To characterize right to sovereignty over natural resources as permanent entails that “the territorial state can never lose its equal capacity to change the destination or the method of exploitation of those resources, whatever arrangements have been made for their exploitation and administration.” It also implies that such control over its resources can be exercised by a state even if a predecessor state or a previous government engaged itself by treaty or contract to do so. While expressing reservations about this viewpoint, Brownlie has opined that these arguments would carry weightage “if and when the principle of permanent sovereignty emerges as a new premptory norm of general international law or jus cogens.” Incidentally, Brownlie himself is of the view that permanent sovereignty is the assertion of the acquired rights of the host state which are not defeasible by contract perhaps even by an international agreement.

In a study undertaken by Peters, Schrijver and de Waart, it has been argued with respect to right to sovereignty over natural resources as being inalienable and not defeasible, that a state enjoys the right on behalf of its people to part with its natural resources by entering into contracts with whomsoever it chooses to do so taking “into account the interests of people and mankind as a whole, subject only to the limitation that the state’s freedom of disposal does not allow it to transfer its sovereign powers, in the sense of legislative, judicial and executive powers, to a private party.”

Viewed in broader perspective the principle of permanent sovereignty does not restrict a state from agreeing to certain specific limitations of its right to control or dispose of some of its resources for a specific period of time. There also seems to be almost agreement on the fact that a state cannot totally transfer its sovereign powers in respect of its resources to a private party. In
Taxaco V. Libya arbitration case, the view was expressed that the principle of permanent sovereignty precludes a state from divesting itself of its sovereign rights over its natural resources or ‘alienating’ its sovereignty over them, that a state may by agreement accept a partial limitation of the exercise of its sovereignty in respect of certain resources in particular areas for a specified period of time. 32 In this regard, S.R. Choudhary has opined that what is of significance is appraisal in terms of arrangements under which rights to exploit any natural resources are granted to a foreign investor in order to determine whether in fact they amount to a partial limitation for a specified period of time or whether the grant of rights is for so long a period and on such terms, as in effect to amount to ‘alienation’ of sovereignty. 33

The principle of permanent sovereignty over natural resources cannot be construed as an articulation of an absolutist concept of state sovereignty, which is not compatible with the concept of supremacy of international law. On the contrary, it manifests the progressive developments in international law. It also represents the articulation of a felt need for a legal framework which can be instrumental in replacing the traditional concessions or identical arrangements for harnessing of natural resources by more equitable arrangements. As Oscar Schachter has aptly remarked: “on the international level, the principle of permanent sovereignty has become the focal normative conception used by states to justify their right to exercise control over production and distribution arrangements without being hampered by international law of state responsibility as it has been traditionally interpreted by the capital exporting countries.” 34 In other words, the principle of permanent sovereignty over natural resources is not an expression of national chauvinism but in articulation of the manifest desire of developing countries for greater equality and opportunities to promote developments by harnessing natural resources.

**RIGHT TO DEVELOPMENT**

It is widely acknowledged that “the right to development is a human right and that equality of opportunity for development is as a prerogative of nations as of individuals within nations and the right to development is regarded as an inalienable human right belonging to all persons and to every individual.” 35 Being an independent human right, the right to development is also a sine qua non for the enjoyment of other human rights. The Secretary General of the United Nations in his report entitled The International Dimension of the Right to Development as a Human Right, has explicitly declared that the realization of the human potentialities in harmony with the community “should be seen as the central purpose of development and human person should be regarded as the subject and not the object of the development process.” 36
The linkages between international law and economics were almost non-existent in the past. In recent decades when concepts like development and developing countries started giving currency; the emphasis was also focused on international legal concepts relating to development and the position of developing countries in the system of international law. The right to development is credited to have attracted attention of the International community in 1972 when the then President of the Senegal Supreme Court, Keba M’Baye, while addressing the International Institute of Human Rights in Strasbourg had asserted that all fundamental rights and freedoms are basically linked to the right of existence, to an increasingly higher living standard and therefore to development. The right to development was construed as a human right because man could not exist without development.

The UN General Assembly on 4 December 1986 adopted resolution 1986/128 regarding Declaration on the right to development as an inalienable human right and this happened just after two decades of having adopted the International Covenants on Human Rights. Article 1(1) of UNGA resolution 1986/128 interalia asserts that “the right to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to and enjoy economic cultural, social and political development, in which all human rights and fundamental freedoms can be fully realized.” Article 2(3) further envisages: “states have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”

There prevails difference of opinion on the legal status for the right to development. In this connection it is worth mentioning here that UN General Assembly had adopted resolution 1986/128 on 4 December 1986 by 146 votes to 1 (USA), with 8 abstentions (Denmark, Finland, West Germany, Iceland, Israel, Japan, Sweden and U.K.). The United States rejected the notion that the right to development is somehow a principle of international law and opposed any codification in this area. The United States and other industrialized countries contended that the human rights concept was related to rights and freedoms of individuals only which should not be confused with that of the rights and responsibilities of states in international relations. The US representative emphasized that any definition for the “right to development must take account of the fact that human rights were exercised by individuals and that economic rights, unlike civil and political rights, did not lend themselves to legally binding or enforceable commitments.”

The difference of opinion with regard to the legal status of the right to development continues to prevail. Undoubtedly the expression right to develop-
ment has become established UN language and the 1986 Seoul Declaration has
dealt with it as a principle. In view of the ongoing debate on the right to develop-
ment, the term “Principle” seems to be more appropriate because unless the
consensus grows in its favor it cannot be regarded as an absolute legal state right
or human right to development. Development as a concept is gaining wider
recognition as an edifice on which may be erected arguments and actions in the
light of both general international law and international human rights law. It is
also reckoned as a force of mind, which exerts influence and provides direction
to the activities of states and non-state actors. Development should be treated
as a continuous process to meet the requirements of human beings. At the same
time the international legal community should continue it endeavors to get rec-
ognition to the principle of development as a legal right to development so that
the level of poverty can be gradually eliminated.

There seems no exaggeration in saying that the principle of development
has insulated the international legal system with a sense of priority of equality
of opportunity for all individuals in their access to basic measures like food,
health, education, housing, unemployment and a fair distribution of income.
This principle also bequeaths responsibility on all human beings to promote and
protect a political, social and economic order congenial to development despite
the fact that the onus for the creation of national and international conditions
lies with the states.

States have both right as well as duty to frame suitable development pol-
icies subject to the active, free and meaningful participation of the entire popu-
lation. The principle of development entails every likelihood of gaining universal
recognition as of legal right to development because of its akinness to the
principle of permanent sovereignty over natural resources which is almost now
accorded a legal status. Besides, the developing countries should continue their
endeavors to elicit the support and recognition of developed countries to con-
vert the principle of development into the right of development.

CONCLUSION

In modern times of interdependence – economically and technologically
– no state can either live in isolation or exclusively exercise its national sovereign
rights. Besides, problems like terrorism, drug-trafficking, proliferation of small
arms, degradation of environment etc require international cooperation and
inter-state interaction for their resolution. Thus, a state, while exercising its sov-
eign rights, has to see that similar interests of other state are preserved. The
process of globalization and clamour for attracting a foreign direct investment
demand fluctuations and not rigidly in the capabilities of a state to exercise its
sovereign rights.
Non-State actors like international terrorist groups and multinational corporations have emerged on the scene as effective pressure groups which have immense potential of influencing domestic as well as external policies of a state. These and related developments have necessitated the urgency of safeguarding the national sovereign rights. This also calls for recasting of measures designed to protect these rights.

Political predominance of great powers which are represented in the group of eight or G-8, in Security Council as permanent members Council for Security and Cooperation in Europe (CSCE) and NATO etc. poses a sort of threat to the sovereign national rights of small and weaker states. The possibility of this threat has assumed added dimensions in the post-Cold War period in the aftermath of the unraveling of former Soviet Union. NATO is expanding eastward and its role in Bosnia Herzegovina and then in Kosovo has raised apprehensions. The American role in Iraq also raised skepticism. The mandate of the UN Security Council was exercised by individual countries.

Thus, the protection of national sovereign rights of a State calls for expansion of the permanent members of the UN Security Council where Veto power should be abolished and all decisions are taken by consensus or at least by two-thirds majority. Only a strong United Nations is the surest guarantee for protection of national sovereign rights of the states. Besides an ambience of entente cordiale between the developed and developing countries would augur well for eliciting the support of developed countries to the principles of permanent sovereignty over natural resources and principle of developments to convert these principles into international legal rights.
NOTES

13. See Articles 1,5, and 7 of the NATO Charter in UN Treaty Series 1949.
19. Cited in Oppenheim n.2, pp. 300-301.
20. UN General Assembly Resolution 2625 (XXV) 24 October 1970.
26. For full text of UNGA resolution 3016 (XXVII) of 1972, see yearbook of the Untied Nations 1972 (New York: 1973)
36. UN Secretary General’s report, The International Dimension of the Right to Development as a Human Right UN Doc. E./CN.4/1334.
39. UN General Assembly resolution 1986/128 of 4 December 1986, for full

40. Paul De Waart et al. (eds.), n. 39, p.421.

41. Ibid.

