

CHAPTER 1

SOVEREIGN AND EQUAL, UNCONDITIONALLY? THE PRINCIPLE OF SOVEREIGN EQUALITY IN INTERNATIONAL LAW



KATARÍNA ŠMIGOVÁ

Abstract

According to the principle of sovereign equality, a cornerstone of international law, all states hold equal legal status and rights irrespective of their status. However, in the context of international organisations, this principle might encounter practical limitations owing to structural hierarchies and power asymmetries. This chapter examines how sovereign equality applies within the United Nations (UN), and to a lesser extent, the European Union (EU). The analysis begins with a historical and theoretical exploration of sovereign equality, tracing its foundation in the Westphalian system and being verbalised legally within the UN framework. Particular attention is given to the Security Council's veto power, emphasising the status of the UN Charter as an international treaty that has been adopted by all UN member states. Furthermore, the study explores the broader implications of globalisation and the relationship between states and international organisations, assessing how these developments reshape the relationship between these complementary international actors.

Keywords: sovereignty, equality, international law, international organisation, member states

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1. Introduction

The principle of sovereign equality, a foundational concept in international law, states that all states possess equal legal standing and rights, regardless of their size, power, or wealth. This chapter aims to critically analyse how this fundamental principle of international law manifests and encounters limitations within the current functioning of international organisations, with a particular focus on the United Nations (UN) and to some basic extent within the European Union (EU), since this international organisation is the focus of the following chapters.

In the Westphalian framework of inter-state relations, sovereignty has two dimensions: internal sovereignty, in which a state exercises exclusive authority over its territory and population, and external sovereignty, in which a state functions autonomously from external powers.¹ However, as globalisation and supranational governance evolve, the traditional view of sovereignty has been questioned, especially within international organisations where the practical application of sovereign equality is frequently limited by power asymmetries and challenged by different hierarchies.²

This chapter explores the ways in which globalisation and supranational governance have reshaped the understanding of sovereignty in international law. Questions arise as to whether States are genuinely sovereign and equal in today's international system, particularly in terms of how power dynamics and institutional frameworks shape interactions within bodies such as the UN and the EU. Despite the theoretical basis and background of sovereign equality, practical realities offer significant disparities in influence and decision-making power between states. The UN, an organisation founded to promote peace and cooperation, expressly sets forth sovereign equality in its establishment charter; however, the veto power of the Security Council's permanent members is considered to express a certain departure from this principle or its challenging manifestation. Similarly, the EU's decision-making processes, while striving for equality among Member States, frequently struggle to balance national sovereignty and collective interests within the promotion of loyal cooperation. Therefore, this chapter aims at the principle of sovereign equality from a historical and foundational perspective. It then proceeds to a subchapter focusing on its legal basis in the UN framework and its application within selected UN operations. Finally, it explores the principle from the perspective of the establishment of international organisations and examines the relationship between an international organisation and its Member States, considering their common goals, if specified and specifiable.

1 Anand, 1986, p. 22.

2 Köchler, 2013, pp. 427–444; upon legal equality and principle of non-discrimination see e.g. Casolari, 2017, p. 83.

2. Conceptual Foundations of Sovereign Equality and Its Limitations

The principle of sovereign equality means that by virtue of their sovereignty, all states are legally equal according to the international legal system. This notion, derived from natural law and social contract theory, was conceptualised in early modern political thought, particularly in the works of philosophers Hobbes, Locke, and Rousseau, who posited that states, such as individuals, retain inherent rights within a political society.³ In the international arena, this leads to the idea that states, regardless of differences in power, must respect each other's sovereignty and independence because of *pari parem non habet imperium* principle (equals have no sovereignty over each other).⁴

Sovereign equality allows states with different values and political systems to coexist without any hierarchical interference.⁵ As has already been pointed out, the consequence is present on two faces of sovereign equality: internally, it means a state's absolute authority within its territory, and externally, it denotes independence from external control.⁶ These two aspects of sovereignty create tension between equality and autonomy, which has been part of classical international law since the Treaty of Westphalia,⁷ or even before.⁸ This phase of the development of international law completed the process of creating states that had since become independent from the ecclesiastical state and the emperor.⁹ Having already started in 1555 with the Augsburg Peace with the principle *cuius regio, eius religio*, independent states came to the forefront. The primary feature of an emerging system is the coexistence of equally independent states. The state, defined by fixed borders and represented by noble families, asserted its legitimacy during this period; it no longer needed an emperor or the coronation of a pope. At this stage of its development, Europe was divided into territorially delimited units which presented themselves as sovereigns and equals.¹⁰

The beginning of the Westphalian period can be regarded as a phase in the development and emergence of sovereign equality in the state. The subsequent phase of the development, transformation, and confirmation of sovereignty can be observed in the decolonisation period of the 20th century, when new independent states were

3 Hobbes, 1660; Locke, 1690; Rousseau, 1762.

4 Higgins, 1994, p. 79.

5 Roth, 2011, p. 67.

6 Köchler, 2020, pp. 875–885.

7 Greenwood, 2013, p. 267.

8 Osiander, 2001, pp. 251–287.

9 For more information see Britannica, 2025. The biggest difference lies in the sole fact that the Treaty of Westphalia was ratified not only by the Emperor and the King but by all the states of the Empire. See the Treaty of Westphalia, see: Yale Law School, no date.

10 Klučka, 2004, pp. 12–16.

formed.¹¹ Moreover, after the Second World War, an organisation, one of the guiding principles of which is the principle of sovereign equality of all its members, was established, namely the UN.¹² It was adopted that both states and the organisation itself should act in accordance with this principle.¹³ In this phase, the existence of a system of individual sovereign states was confirmed, and state sovereignty was understood as one of the cornerstones of international law and international relations from which other rules of general international law could be derived, such as the principle of non-interference in the internal affairs of the state.¹⁴

The notion of sovereignty is closely related to the notion of mutual equality, namely, equality under law. It is the basic rule of law between nations, *ius inter gentes*, law inter nations, that is, inter-national law.¹⁵ Nevertheless, although there is no 'hierarchically supreme power' to force states to fulfil their obligations, states do not live in a vacuum: their sovereignty has its limits.¹⁶ Without sovereignty, the international community struggles to cooperate and coexist. In this context, it is important to note that the role of sovereignty in state cooperation can be viewed from two distinct perspectives. On the one hand, sovereignty is often perceived as a major obstacle that limits the potential for collaboration between states. On the other hand, sovereignty is also the most crucial expression of a state's authority and independence, making it essential for genuine and meaningful cooperation between states. Sovereignty, therefore, not only defines the limits of state interaction but also empowers states to engage in cooperative efforts on an equal footing, preserving their autonomy while pursuing shared goals.¹⁷

Since its establishment, the Westphalian system of international relations has undergone numerous stages of transformation.¹⁸ Similarly, general international law has evolved significantly over the centuries, adapting to the changing dynamics of global interactions. Recently, the undeniable influence of globalisation has further shaped this evolution. What was once perceived as the autonomy and independence of sovereign states from ecclesiastical states has gradually changed into a more complex and nuanced concept of asymmetric interdependence, which has become

11 Stacy, 2003, pp. 2029–2060.

12 Art. 2, para. 1 of the UN Charter: The organisation is based on the principle of the sovereignty equality of all its members.

13 The above also applies to non-members of the United Nations insofar as it is necessary for the maintenance of international peace and security. See Art. 2, para. 6 of the UN Charter: The organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

14 Art. 2, para. 7 of the UN Charter: Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

15 Brownlie, 2003, p. 287.

16 Čepelka and Šturma, 2003, p. 12. Also Podgor, 2004, p. 3.

17 Schreuer, 2002, pp. 163–180.

18 For another understanding of the Westphalian system redefinition see e. g. ȚuȚuianu, 2013, p. 43.

an implied feature of the current coexistence of states.¹⁹ This modern understanding acknowledges that while states remain sovereign, their ability to act independently is limited by other sovereigns and increasingly influenced by global factors such as economic, political, and social considerations. This does not mean that the sovereignty of states has ceased to exist; it has only developed and, consequently, the understanding of this concept has been reshaped and even transformed. This change highlights the interconnectedness of states in which sovereignty coexists with more intense mutual dependence in a globalised world. The consequence of this transformation is not merely a desire, but also a growing necessity for states to cooperate on multiple levels and with varying degrees of intensity. In recent years, the scope and focus of the international arena has shifted significantly.

The classical understanding of international law has been redefined particularly in relation to the emerging concept that the international community is a collective entity and a common good. While states continue to hold their status as the primary actors in international law, particularly in areas such as security, the role of sovereignty has evolved. The era in which sovereignty served as the overarching, unifying principle for governance of the global system has been considered to come to an end.²⁰ Instead, the international order requires more nuanced forms of collaboration and shared governance that reflect the complexities of an interconnected world. States and the international community face challenges that create the conditions for another phase in the evolution of the concept of sovereignty.²¹ Within this framework, sovereignty can be seen as a responsibility and organising principle for the realisation of universal norms and values, such as the protection of fundamental human rights or the safeguarding of peace and security, which are also related to holding perpetrators of the most serious crimes criminally accountable under international law.²²

3. Sovereign Equality as a Set of Both Rights and Responsibilities

In the theory of international law, sovereign equality is based on the idea of legal positivism and the formal equality of states within the international legal system. The normative force of sovereign equality rests on the assertion that all States, as primary subjects of international law, share equal rights and responsibilities.²³

19 Koskeniemi, 2005, pp. 212, 234, 477, 482–483.

20 Clapham, 1999, p. 115.

21 Stacy, 2003, p. 2035.

22 Schrijver, 2000, pp. 95–98.

23 Koskeniemi, 2005, pp. 240, 583.

Within international law, this equality is not simply a political ideal but a legal mandate; States are considered equal in everyday work in the areas of diplomatic negotiations, treaty-making processes, and dispute resolution activities. However, the responsibility of states is usually omitted, and as will be pointed out, *realpolitik* might instead be the focus. Nevertheless, although the principle of sovereign equality of states remains fundamental in international law and is usually emphasised by the rights of a sovereign state, it also entails State responsibility, which ensures that sovereign equality is not abused to avoid accountability. It is a consequence of the fact that sovereign equality is not absolute; it is balanced by the duty of states to uphold international norms and avoid harm to other states.²⁴ In general, state responsibility arises from the dual nature of sovereignty, as it involves both rights and obligations towards each other. It is true that states are equal under international law; however, their sovereignty is particularly constrained by the principle of non-intervention and the prohibition of the use of force, norms that they have adopted themselves.²⁵ The concept of equality in State responsibility is interlinked with the idea that all States, regardless of their size or power, must adhere to international norms and fulfil their obligations. This principle has also been upheld by the International Court of Justice within its case-law, drawing attention to the fact that it counts regardless of the status of states as ‘great powers’ or ‘small states’.²⁶ Some authors have clearly pointed out that sovereign equality does not shield States from responsibility for international wrongdoing, especially when such actions violate human rights or threaten global peace. In contrast, sovereignty is a moral and legal responsibility, rather than a licence for impunity.²⁷

Moreover, international law recognises the collective responsibility of states to address violations of international obligations, as reflected in the UN Charter and subsequently codified specifically in the arts. *Responsibility of States for Internationally Wrongful Acts*.²⁸ The principle of sovereign equality is the basis of this collective action, ensuring that all States have an equal voice in determining their responses to breaches of peace and security.²⁹

In the everyday application of international law, the historical evolution of sovereign equality reveals the tension between formal and practical inequalities in state responsibility. It has already been presented that powerful states often avoid responsibility while as if creating a hierarchical international order that is in the contradiction with the principle of legal equality.³⁰ Nevertheless, the Friendly Rela-

24 Koskenniemi and Kari, 2020, p. 168.

25 Compare Köchler, 2020, pp. 875–885.

26 Greenwood, 2013, pp. 254–255.

27 Roth, 2011, p. 115.

28 International Law Commission, *Draft Arts. on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10 (A/56/10), chp. IV.E.1, November 2001, Arts. 40–41 covering obligations in case of breach of peremptory norms.

29 Simma et al., 2002, p. 12.

30 Upon tolerated inequalities see e.g. Simpson, 2004, p. 56.

tions Declaration of 1970³¹ reinforced the balance between sovereign equality and responsibility by affirming that States must respect the sovereignty of others while fulfilling their international obligations.³²

However, sovereign equality in international law is conditional on states' adherence to international norms. When States violate these norms, they lose their claims to certain aspects of sovereignty, such as immunity from sanctions or interventions.³³ Furthermore, it is important to emphasise the role of international jurisprudence in holding states accountable for their actions. Sovereign equality ensures that even the most powerful states are subject to the same legal standards as smaller or less-influential states.³⁴ Moreover, as already mentioned, equality without sovereignty is meaningless if States are not held accountable for actions that undermine international legal orders.³⁵

Several examples of the application of international law show how state responsibility strengthens the principles of sovereign equality. For example, in the context of international trade, state responsibility ensures fairness by preventing discriminatory practices, thereby reinforcing sovereign equality in economic relationships.³⁶ State responsibility also plays a role in enforcing international criminal law. It might be assumed that sovereignty is limited by the duty of states to prosecute crimes under international law and cooperate with international tribunals.³⁷ Finally, it has been pointed out that sovereign equality does not exempt states from liability for wrongful acts. Instead, it reinforces the principle that all States are equally subject to international legal mechanisms for dispute resolution.³⁸ Overall, the acknowledgement of State responsibility strengthens the international legal system by promoting accountability and deterring violations of international law. It has been argued that this mechanism creates a balance between political equality and legal hierarchies, ensuring that sovereignty is exercised responsibly.³⁹

31 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations adopted by General Assembly resolution 2625 (XXV) of 24 October 1970.

32 Koskeniemi and Kari, 2020, p. 166.

33 Anand, 1986, p. 44.

34 Köchler, 2020, pp. 875–885; more particularly see Simpson, 2004, p. 43.

35 Hjorth, 2014, pp. 109–124.

36 Petersmann, 2014, p. 214.

37 Cassese, 2002, p. 245.

38 Jennings and Watts, 1992, p. 155.

39 Viola, 2020, p. 163.

4. Legal and/or Functional Sovereign Equality

To discuss this controversy when discussing the equality of states while considering the different features of individual states, one might argue that the principle of sovereign equality is considered the only theory because of the *realpolitik* of international relations.⁴⁰ Powered states, often through their economic, military, or political influence, exercise dominance over weaker states, challenging their understanding of the concept of equal sovereignty. However, these power dynamics only help us understand the relationship between legal equality and the factual position of states in international affairs, realising both the rights and obligations of states as actors at the international level.

Globalisation, regional integration, and the rise of supranational organisations have questioned the concept of sovereignty, challenging the principle of sovereign equality according to law. It has already been presented that international institutions create hierarchies within a system that is based on equality of its members. Furthermore, some scholars have discussed the term ‘outlaw states’ and how great powers impose norms and sanctions that effectively create different standards for different states, thus undermining the universality of sovereign equality.⁴¹ This differentiation is evident in situations where international norms and interventions are selectively enforced and influenced by political and economic interests.⁴² On the other hand, within the development of the international law there have been efforts of a civil society accepted that e. g. an original UN based mechanism of human rights protection system control was improved from a selective approach towards ‘outlaw states’ in front of the Commission of Human Rights to an inclusive approach involving an universal periodical review ensuring that all states and their national human rights protection system are periodically under review in front of the Human Rights Council.⁴³

Moreover, the principle of sovereign equality might be analysed also *vis-à-vis* the principle of non-discrimination in international law and the related tension between equality and sovereignty themselves.⁴⁴ The principle of non-discrimination mandates that no distinction is made between states or individuals on arbitrary grounds for the sphere of this chapter, particularly in matters of international trade, human rights, or, classically, international peace and security. Tension might be detected between sovereign equality and non-discrimination when states claim sovereign prerogatives to adopt policies that differentiate and are based on national interests, potentially conflicting with universal norms that promote equality. For example, in the context of international economic law, preferential trade agreements challenge

40 Köchler, 2020, pp. 875–885; Simpson, 2004, p. 56.

41 Compare e. g. Simpson, 2004, pp. 3–22.

42 Ibid., p. 58.

43 For more information see: United Nations Human Rights Council, no date.

44 For more information see Risvas, 2017, pp. 79–112.

the uniform application of non-discrimination principles while being justified under sovereignty.⁴⁵ The balance between equality and sovereignty requires careful consideration, recognising that equality in international law does not negate state sovereignty but seeks to harmonise it with universal fairness, justice, and equity.⁴⁶ Some scholars, therefore, argue that functional equality – that is, equality within which states have differentiated responsibilities based on capabilities – can reconcile tensions by respecting both principles.⁴⁷ Ultimately, the relationship between sovereign equality and non-discrimination reflects the broader struggle between state-centric sovereignty and the increasing universality of international norms, which requires continuous dialogue and a restless process of legal refinement.⁴⁸

In conclusion, it is also important to point out that while states are expected to respect each other's sovereignty, international norms on, for example, human rights protection or the use of force prohibition sometimes challenge their understanding. Thus, sovereign equality is realised within a framework of interdependence where international norms increasingly influence domestic policies and limit state autonomy.⁴⁹ However, as the Permanent Court of International Justice (PCIJ) pointed out in its decision in the Wimbledon case, state sovereignty includes the capacity to enter international treaties and be bound by them. In this case, it was held that by signing the Treaty of Versailles, Germany voluntarily agreed to certain limitations on the realisation of its sovereignty, including the obligation to allow passage through the Kiel Canal. The PCIJ emphasised that sovereignty does not imply unlimited freedom from international commitments; rather, it includes the power, and especially the authority, to undertake international obligations and respect them.⁵⁰ Moreover, the Wimbledon case illustrates that a state's sovereign decision to adopt an international treaty carries the responsibility to comply with the treaty's terms, even if doing so conflicts with the state's changed interests or policies. The PCIJ ruling demonstrated that sovereignty, while foundational, is not absolute and must coexist with the principles of international law, such as the principle of *pacta sunt servanda*. The Wimbledon case underscores the dual nature of sovereignty: the right to govern independently and the responsibility to stand for international commitments. This highlights the evolving nature of sovereignty in an interconnected world in which states' actions are increasingly governed by international legal frameworks. This case is considered a critical reference point for understanding how international treaties can shape and limit state actions, which is especially important when discussing the

45 Petersmann, 2014, p. 214.

46 Koskeniemi, 2005, p. 258.

47 Fassbender, 2012, para. 63.

48 Besson, 2011, para. 115.

49 Köchler, 2020, pp. 875–885.

50 Permanent Court of International Justice, *Case of the S.S. Wimbledon, United Kingdom and others and Poland (intervening) v. Germany*, Intervention, Judgment, (1923) PCIJ Series A no 1, ICGJ 234 (PCIJ 1923), 28 June 1923, p. 25.

UN Charter and the functioning of the UN as a key actor in the context of universal international relations as an international intergovernmental organisation.

5. Legal and Practical Equality in the UN Charter and Other Establishing Treaties, Particularly the Treaty on European Union

The UN, established in 1945, enshrines principles of sovereign equality in its foundational documents. Art. 2(1) of the Charter states: 'The Organization is based on the principle of the sovereign equality of all its members'. This provision is fundamental to the UN's purpose of fostering peace and cooperation among states based on mutual respect for sovereignty.⁵¹

However, the structure of the UN Security Council (UNSC), which grants veto power to its five permanent members (P5, namely the United States of America, the United Kingdom of Great Britain and Northern Ireland, France, China, and the Russian Federation), poses a challenge to the practical realisation of sovereign equality. The already indicated veto power of the P5 creates a hierarchy among states, undermining the equality of member states in the decision-making processes.⁵² This structural asymmetry reflects the limitations of sovereign equality within the UN, where political power often overrides legal equality. It might be argued that the UN's operational dynamics reveal a paradox in international law: while the UN Charter advocates equality, institutional design prioritises stability and power balance, thus establishing inequality.⁵³ Such a situation might be understood as the 'moral disagreement' allowed by sovereign equality, where differing national interests and values coexist within a framework that seemingly promotes equality.⁵⁴

The EU, another international organisation, although of a regional character, represents a unique model of sovereignty and equality, since its Member States transfer the realisation of certain aspects of sovereignty for collective governance and integration. The Treaty on the European Union, particularly Arts. 4(2) and 5, emphasises respect for national identity and the equality of Member States within the EU. The principle of equality is inherent in the EU's legal order, which treats each Member State as an equal participant in decision-making processes.⁵⁵

Nevertheless, similar to the UN, there are practical indications that sovereign equality among the EU members must be understood in a complex manner.

51 Schrijver, 2000, p. 70.

52 See e.g. Roth, 2011, p. 77.

53 Koskeniemi, 2005, pp. 167, 188.

54 Roth, 2011, p. 84.

55 Blanke and Mangiameli, 2013, p. 189.

For example, the EU's emphasis on the direct effects and supremacy of EU law can conflict with national sovereignty, challenging the traditional notion of sovereign equality.⁵⁶ The legal doctrine of supremacy establishes that EU law takes precedence over national laws, transferring the sovereignty of Member States in certain policy areas.⁵⁷ While Member States are formally equal within the EU structure, in practice, larger states, such as Germany and France, are often said to have a disproportionate influence over policymaking, reflecting an asymmetry similar to that observed in the UN system (for more information on this topic, see Part 2.).⁵⁸ Moreover, when discussing EU functioning, one must consider the principles of loyal cooperation within Member States and (to) the EU.⁵⁹

The challenge in this area lies in the question of whether consideration is given to equality in the results or to equality as a starting point. Therefore, the principle of equality of sovereign states can be understood in two distinct dimensions: legal equality as a starting point, and practical equality as a result. Legal equality, as already presented, is grounded in foundational international law principles such as those articulated in the UN Charter and establishes all states as equal regardless of size, power, or influence.⁶⁰ This starting point emphasises the formal parity of states within the framework of international law, ensuring equal sovereignty and the capacity to participate in legal and diplomatic processes on an equal footing.⁶¹ This reflects the aspiration that sovereignty confers equal dignity and autonomy on all states.⁶²

By contrast, practical equality addresses how equality is realised within disparities rooted in the economic, political, and military powers of individual states.⁶³ Powerful states often tend to have a disproportionate influence on international institutions such as the UN Security Council, as if undermining the legal equality envisioned at the outset.⁶⁴ This tension between rights emphasised within legal equality and responsibilities not to be forgotten within practical equality might help understand the power dynamics of international relations creating hierarchies.⁶⁵ Furthermore, the reconciliation of these tensions may be considered essential for maintaining the legitimacy of international law.⁶⁶ Legal equality, as a starting point, provides the basis for sovereignty, non-interference, and respect among states, and

56 Casolari, 2017, pp. 83–126.

57 Granat in Schütze, 2018, pp. 273, 287.

58 Giegerich, 2020, pp. 58, 72.

59 For more information see the chapter by David Sehnálek in this publication and also Karpat, 2021, p. 68.

60 As for the GA see e.g. Anand, 1986, p. 99.

61 Greenwood, 2013, p. 254.

62 Koskenniemi, 2005, pp. 224–226, 240.

63 Simpson, 2004, p. 56.

64 Compare similar approach within international investment law and international trade law in Rivas, 2017, p. 80.

65 Compare Blanke and Mangiameli, 2013, p. 191.

66 Anand, 1986, pp. 97–98.

practical equality influences reforms in international systems to regulate the use of power.⁶⁷ To summarise the different approaches to the equality of states within a functioning system of state cooperation and interdependence, while the principle of legal equality preserves formal sovereignty and independence, practical equality challenges states to address inequalities in political impact to consider and support common universal outcomes. Only by balancing the two approaches it is possible to achieve more equitable international system. This balance understands sovereign equality as the cornerstone of the international order, in which weaker states are protected from the dominance of more powerful ones while fostering mutual respect and cooperation.⁶⁸ Practical examples of this balancing are presented in the following subchapters, which point out two main bodies of the UN system: the legal equality of sovereign states within the UN General Assembly and the practical equality of sovereign states in the UN Security Council.

5.1. UN General Assembly: Equal Representation and Voting Rights

The UN General Assembly (GA) is a good example of the operationalisation of sovereign equality of states through its structure and voting system, where each member state is afforded one vote, regardless of population or economic power. This ‘one state, one vote’ system reflects the legal and formal equality of states, as outlined in the UN Charter itself.⁶⁹ Thus, the GA voting framework ensures equal representation, allowing even the smallest states to participate in global decision-making.⁷⁰

The equality principle within the GA was essential during the decolonisation period of the development of international law and the UN itself. Such an institutional approach towards sovereign equality in the form of an egalitarian voting system creates an inclusive space for discussion and provides smaller or less-powerful states with a forum to challenge the dominance of the major powers. This structural respect contrasts strongly with other international organisations, such as the World Bank or the IMF, where voting power is weighted by financial contributions.⁷¹ However, the GA’s principle of equal representation has been criticised. Critics usually argue that the ‘one state, one vote’ system can disproportionately strengthen the influence of microstates, whose populations are significantly smaller than those of major powers since the dynamic of the GA forum may lead to imbalances where the voting power of populous states like India or China is equivalent to that of much smaller nations, such as disappearing Tuvalu.⁷² Despite these challenges, the UN General Assembly remains an important forum for advancing equality. Its resolutions, although not legally binding *per se* often reflect a consensus on key global issues.

67 Koskenniemi and Kari, 2020, pp. 167, 180.

68 Roth, 2011, p. 53.

69 Art. 18(1) of the UN Charter: Each member of the General Assembly shall have one vote.

70 Anand, 1986, p. 99.

71 Petersmann, 2014, p. 279.

72 Viola, 2020, p. 163.

5.2. *UN Security Council: Power Asymmetries and the Veto System*

In contrast to the UN General Assembly's egalitarian structure, the UN Security Council (UNSC) reveals significant power asymmetries, particularly through the veto power held by its five permanent members. While the UNSC was designed to ensure effective decision making in maintaining international peace and security, its structure challenges the principle of sovereign equality. It is usually criticised that the veto system institutionalises inequality by granting disproportionate power to P5 or even non-consensual legislative power.⁷³

The veto system enables any permanent member to block substantive resolutions, even if they would otherwise receive widespread support from other UNSC members. This has led to accusations of 'Great Power privilege', meaning that the P5 use their status to protect national interests rather than to uphold collective security.⁷⁴ This could reflect the inherent contradictions between legal equality and geopolitical realities, as smaller states often emphasise that their concerns are put aside compared to the priorities of P5.⁷⁵ This perspective has led to efforts to reform the SC's structure, including calls for expanding permanent membership or limiting veto use, while pointing out the tension between sovereign equality and power asymmetry. Despite widespread support for SC reform, no real change has been realised. This has partially been caused by the fact that for the UN Charter to be amended, the approval of all permanent members of the UN Security Council is required.⁷⁶

The UN Security Council's dual role as guarantor of peace and arbiter of power politics reflects the broader challenge of balancing sovereign equality with effective universal cooperation among states. As has been argued, the veto system might be understood as undermining the equality of sovereign states; nevertheless, it also ensures that decisions with major global consequences are not made without the consent of the most powerful states. To summarise, the SC's structure is a perfect example of the tension between equality and hierarchy within the international legal order. To understand both the workability and necessity of such an approach to sovereign equality, it is important to understand the background of the process that led to its creation.

5.3. *Understanding the Reasoning Behind the Establishment of Two Main UN Bodies*

The previous subchapter demonstrated that, while the UN Charter emphasises the sovereign equality of UN member states as one of its fundamental principles,

73 Greenwood, 2013, p. 261.

74 To examine original intent, see e.g. Koskeniemi and Kari, 2020, p. 176.

75 Roth, 2011, pp. 53, 61.

76 See Art. 108 of the UN Charter.

its implementation within the UN General Assembly and the UN Security Council reveals both successes and limitations.

To enable a fuller understanding of international law and its application, it is important to understand why the two main UN bodies were designed such that the UN Charter regulates their establishment and functioning.

The establishment of the UN General Assembly on the principle of 'one state, one vote' and the UN Security Council based on a dual structure of permanent members with veto power and non-permanent members reflects a pragmatic compromise between the sovereign equality from the legal perspective and the sovereign equality in result that considers similarly the realities of international power hierarchies that include also responsibilities of individual actors and that were more obvious after the World War II (WWII).

Having experienced the failure of the League of Nations, states that were creating the international community of that era knew that another system with stronger key actor competencies had to be established. This was especially true in relation to world powers, without which the system protecting international peace and security would not have been workable. To get the most relevant actors 'into the club', veto was considered as an option. On the other hand, it was necessary to include all states, even those only probable or planned to be formed, so that the emerging international community could be created by as many states as possible, since only in such a case could a universal legal framework be created. This makes even the Westphalian system of sovereign equality which has been confirmed and is central to the international legal order, which ensures universal representation through the inclusive participation of all states in decision-making processes.⁷⁷ By granting equal voting rights, the GA promotes legitimacy and inclusivity in the universal system, adhering to the principle of non-discrimination in international law. This represents the egalitarian ideals of international societies.⁷⁸ Without the 'one state, one vote' principle in GA, smaller states would lack meaningful participation in global governance, leading to potential marginalisation.⁷⁹ The GA, with its equal voting system, plays a crucial role in respecting international norms such as human rights standards, which reflect the collective will of the international community. Although non-binding, GA resolutions present important moral and political weights and reinforce the principle of legal equality among states.⁸⁰

In contrast, the UNSC is based on power asymmetry. The veto power of its five permanent members reflects the geopolitical realities of 1945 when the UN was established. The UNSC was planned to stand for stability and enforcement, ensuring that the major powers, as permanent members, have their word in maintained international peace and security. Without veto power, the P5 is likely to resist collective

⁷⁷ Azud, 2008, p. 183.

⁷⁸ Koskenniemi, 2005, p. 237.

⁷⁹ Anand, 1986, p. 99.

⁸⁰ Wolfrum, 2012, para. 3.

enforcement.⁸¹ They would probably have resisted becoming members of the organisation. Currently, power asymmetry is discussed further because the position of the permanent member has changed. WWII winning powers (especially the UK and France) have already lost their strong position as world powers compared to the postwar situation; for example, the UK has no longer been considered a world power since it has lost its colonial hegemony, and all its colonies have gained the independent status of a state sovereign. However, historical justifications are still important because they explain the veto power acknowledgement of the historical role of the P5 in shaping the post-World War II order by ensuring its continued participation in multilateral decision-making processes.⁸²

Overall, it is fair to submit that the chosen ways to set up a new, more effective system of institutionalised cooperation among states have included a combination of the egalitarian GA with the hierarchical SC. Such a combination reflects a practical compromise between idealism and realism in international law; it balances the legal requirements of equality, especially the rights of actors, and greater responsibilities in the case of bigger powers. As it has been pointed out, such dual structure considers both sovereignty and cooperation among unequal states.⁸³ The balance between the egalitarian ideals in the GA and power realities in the SC ensures both inclusivity and effectiveness in global governance, promoting stability while accommodating the complexities of international politics.

Nevertheless, although the SC structure and voting system were originally designed to prevent gridlock since veto power was meant to ensure that powerful states could not bypass their national interests because it included the prevention of conflicts among major powers, the situation after the Russian invasion of Ukraine has not proved the efficacy of such prevention. Similarly, even though non-permanent SC members were planned not only to ensure that smaller states participate in decision-making, but also to mitigate some of the concentration of power in P5, such an idea has not helped ensure respect and primary responsibility for the system of international law and security from all permanent SC members.⁸⁴ Overall, the system that was established to prevent armed conflict among states and thus ensure that powerful states act within an institutional framework⁸⁵ has not prevented unilateral actions that have led to international anarchy because of the flagrant violation of fundamental UN Charter principles.

The SC's hierarchical structure was designed to preserve international order and to enforce binding resolutions under Chapter VII of the UN Charter what underscores

81 Zimmermann, 2012, paras. 13–48.

82 Ibid.

83 Köchler, 2013, pp. 427–444.

84 See Art. 24(1) of the UN Charter: In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

85 Schrijver, 2000, p. 74.

its unique role in addressing threats to international peace and security,⁸⁶ on the other hand, the GA's egalitarian approach helps to ensure that all states, including weaker ones, can contribute to shaping international law. This arrangement reflects constitutional pluralism, in which different principles, namely sovereign equality and power-based hierarchy, coexist within a single institutional framework to address the diverse needs of the international community.⁸⁷

Although an SC's permanent membership is often considered to perpetuate inequality, the system is widely seen as a necessary compromise to secure the co-operation of major powers. Nevertheless, while the UN's dual structure remains a compromise, ongoing calls for SC reform reflect the evolving nature of power dynamics and the enduring tension between equality and hierarchy in international law.⁸⁸ It has been discussed for more than 20 years that there have been new world powers coming to the international forum asking for acknowledgement of their role in shaping the universal order.⁸⁹ Proposals for reform often highlight the need to balance efficiency and representativeness because an excessively large SC can hinder its ability to respond quickly to crises.⁹⁰ Nevertheless, expanding the SC's membership, particularly by including rising powers such as India, Brazil, Germany, and Japan (G4 nations), is frequently proposed to enhance its legitimacy and better represent the global population.⁹¹ On the other hand, according to academia, regional representation, such as granting permanent seats to the African Union or other regional entities, could improve inclusivity and reduce feelings of marginalisation among member states.⁹² While looking for another solution to the crisis, limiting or abolishing veto power has also been proposed to improve the legitimacy of the UNSC, although this is strongly opposed by P5, who sees veto as essential to maintain its influence. Since non-refusal by the P5 is inevitable to make any reform effective, other possibilities have been analysed, such as revision of the SC's working methods or increase of non-permanent membership, which have been considered to represent a more feasible path forward, given the lack of consensus on more substantive changes limiting the sovereignty of the P5.⁹³ Finally, a rotating presidency and improved communication with the GA have been proposed, allowing respect for the sovereignty of the P5 without any change except the procedural one.⁹⁴

86 Brierly, 1963, pp. 110–117.

87 Jaklic, 2014, pp. 13–30, 122, 135.

88 For more information upon UN reform see Simma, 2012, pp. 28–70.

89 Ibid.

90 König, 2007, pp. 89–91, 99.

91 Similarly is the position of E10 presented, see e.g. Evans, 2021, p. 218.

92 Mahbubani, 2013, pp. 4–5.

93 Simma, 2012, p. 55.

94 ACT Group, 2015.

5.4. Application and Challenges of Sovereign Equality Principle in UN Operations

Having looked into the theoretical background of the principle of sovereign equality and the legal framework of sovereign equality within the UN, this concept should also be analysed within its application in UN operations.

It is not only the UN Charter itself; the principle of sovereign equality has also been replicated in the Friendly Relations Declaration, which prohibits coercion from undermining the sovereign equality of states and their choices of political, social, economic, and cultural systems.⁹⁵ Moreover, it has also been confirmed by the ICJ in its Advisory Opinion on Kosovo, which emphasised that state sovereignty must be respected in UN operations, even in cases of humanitarian intervention, depending on the interim measures adopted by the UNSC in that particular case.⁹⁶

The principle of sovereign equality is often challenged by P5 veto powers, which allow these states to override collective decisions.⁹⁷ There have been other cases in which the principle of sovereign equality has been pointed out, recalling Art. 1 of the UN Charter, which mandates that the UN maintain international peace without violating state sovereignty.⁹⁸ The UN Mission in the Democratic Republic of the Congo (MONUC) faced resistance from the Congolese government regarding troop deployment, recalling sovereignty concerns.⁹⁹ In Somalia (UNOSOM II, 1993-1995), UN operations were perceived as infringing national sovereignty, leading to local opposition.¹⁰⁰ The UN Mission in Sudan (UNMIS) struggled with the limitations imposed by the Sudanese government, which resisted the peacekeeper movements (helping aid) as violations of sovereignty.¹⁰¹

Even at the level of perception of the UNSC resolutions by the UNSC members, there have been challenges in implementing sovereign equality when adopting them. The Bosnia and Herzegovina conflict (UNPROFOR, 1992–1995) highlighted disparities in sovereign equality, as some UNSC members favoured intervention, while others opposed it.¹⁰² UN-led intervention in Haiti (MINUSTAH, 2004–2017) was criticised for prioritising the interests of powerful states over Haitian sovereignty.¹⁰³ Furthermore, Libyan intervention (2011, UNSCR 1973) was contested as a violation of Libya's sovereignty, despite being framed under the new concept of that

95 UNGA Res. 2625 (XXV), 1970, p. 121 of the resolutions adopted on the reports of the Sixth Committee.

96 International Court of Justice, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 22 July 2010, pp. 44–45.

97 Kuziemko and Werker, 2006, p. 907.

98 Art. 2(1) of the UN Charter: The Organization is based on the principle of the sovereign equality of all its Members.

99 Bellamy and Williams, 2013, p. 134.

100 Durch, 1996, p. 204.

101 Seybolt, 2007, p. 97.

102 Gow, 1997, p. 67.

103 Dupuy, 2014; see the chapter Haiti before and after the Earthquake.

time, namely the Responsibility to Protect.¹⁰⁴ From another perspective, the 2003 Iraq invasion was conducted without explicit UN Security Council authorisation,¹⁰⁵ especially when considering Art. 2, para. 7 of the UN Charter.¹⁰⁶ Finally, the Syrian conflict (post-2011) exposed the limits of sovereign equality as the UNSC remained deadlocked due to Russian and Chinese vetoes.¹⁰⁷

Humanitarian interventions can even cause problems. The Rwandan Genocide (1994) exposed UN failures to intervene due to sovereignty concerns as the Security Council hesitated to act.¹⁰⁸ On the other hand, the Yemeni conflict in the post-2015 era illustrates how UN resolutions can favour some states over others, affecting sovereign equality.¹⁰⁹ Finally, regarding the call for humanitarian intervention, the UN's role in Myanmar's 2017 Rohingya crisis was limited due to Myanmar's insistence on sovereignty.¹¹⁰

To summarise this set of examples, if sovereign equality is analysed, factual sovereignty and sovereignty as a result are applied more effectively than legal sovereign equality. Nevertheless, there are even examples that point out the application of sovereign equality of an individual state as less than disrespect for the common good of respecting the fundamental rules agreed upon after WWII.

5.5. Different Approach to the Same Challenge of the Act of Aggression as a Consequence of Different Position of Sovereign States Within the UN System

Even before the invasion of Ukraine by the Russian armed forces in February 2022, there were some examples presenting a different approach to the violation of the fundamental principles of the UN Charter. To include annexation attempts after 2022, all scenarios point out distinct yet comparable instances of breach of *ius cogens*, prohibiting the use of force against the territorial integrity and political independence of a sovereign state.¹¹¹ Each case involves complex geopolitical motivations, international legal considerations, and varied global responses to draw attention to basic factual and legal backgrounds.

On 2 August 1990 under President Saddam Hussein, Iraq invaded Kuwait, citing historical territorial claims and economic disputes, particularly regarding oil

104 Bellamy, 2014, pp. 187–204.

105 Malone, 2006, pp. 185–221.

106 Art. 2(7) of the UN Charter: Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

107 Morris, 2013, p. 1274.

108 United Nations Peacekeeping, no date.

109 2216 (2015) For more information, including SC member statement see United Nations, 2015.

110 Southwick, 2018, p. 134.

111 Art. 2(4) of the UN Charter: All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

production and pricing. Iraq accused Kuwait of exceeding its oil production quotas, lowering prices and harming the economy.¹¹² This invasion led to Iraq's declaration of Kuwait as the 19th province.¹¹³ The international community, led by the UN, condemned the act that finally resulted in UNSC Resolution 678, which authorised the use of force under Chapter VII of the UN Charter if Iraq did not withdraw by 15 January 1991.¹¹⁴ The subsequent Gulf War, initiated by a U.S.-led coalition, expelled Iraqi forces from Kuwait and restored Kuwait's sovereignty.

In February 2014, following a political upheaval in Ukraine, Russian troops without insignia occupied Crimea.¹¹⁵ A controversial referendum was held in March 2014 with official results indicating overwhelming support for joining Russia.¹¹⁶ Russia swiftly annexed Crimea, considering the referendum a legitimate expression of self-determination. However, the international community has largely viewed annexation as a violation of international law, particularly the principle of territorial integrity based on Art. 2(4) of the UN Charter.¹¹⁷

Following the annexation of Crimea, pro-Russian separatists in Eastern Ukraine declared their independence, leading to ongoing conflict.¹¹⁸ In 2022, Russia launched a full-scale invasion of Ukraine, presenting security concerns, and protecting the Russian-speaking population.¹¹⁹ The action has been widely condemned by the international community as aggressive.¹²⁰

Each annexation involves the forceful acquisition of territory; however, international responses and legal justifications in the submitted cases differ. Iraq's annexation of Kuwait was met with prompt military involvement under UN authorisation, emphasising the global community's commitment to uphold international law and sovereignty. In contrast, Russia's annexation of Crimea, though widely condemned, did not result in intervention with the use of force, but rather highlighted challenges in enforcing international norms against powerful states and manifested that sovereign equality of states means equality before law, not equality as a result. The ongoing conflict in Ukraine further complicates the international response as it involves broader geopolitical tensions and the complexities of international law, particularly Russia's membership in the UNSC with veto power.

From the perspective of the sovereign equality of states in international law, the annexations of Kuwait, Crimea, and parts of Ukraine violate the fundamental principles of the UN Charter, since sovereign equality ensures that all states, regardless of

112 ADST, no date.

113 Office of the Historian, no date.

114 S/RES/678 adopted on 29 November 1990.

115 BBC News, 2015.

116 The Guardian, 2014.

117 Ibid.

118 For more information see Britannica, 2024.

119 Claimed in the speech of Vladimir Putin, see: United Nations Security Council, 2022.

120 UNGA resolution ES-11/1 from 2 March 2022, more information. See: United Nations, 2022.

size or power, have equal rights to territorial integrity and political independence.¹²¹ Iraq's invasion of Kuwait was a clear disregard of this principle, as it attempted to erase Kuwait's sovereignty by force. Similarly, Russia's annexation of Crimea and its actions in Ukraine violated Ukraine's right to political independence and territorial integrity, despite Russian claims to protect ethnic Russians.¹²² The UN's response to Kuwait's annexation was immediate and forceful, demonstrating a strong commitment to respect the prohibition of force. However, the response to Russia's actions has been less direct, relying on sanctions and diplomatic pressure rather than military intervention because of the incapability of the UNSC to adopt a legally binding resolution that requires Russia to end its legally wrongful acts because of its veto power. This discrepancy suggests that geopolitical considerations and the relative power of the aggressor state often influence the enforcement of sovereign equality. Nevertheless, one has to emphasise that, originally, it was rather a case of disrespect for adopted commitments, a violation of the basic principle *pacta sunt servanda*, and not a violation of the principle of sovereign equality. All the states concerned have become UN member states by freely adopting the UN Charter, respecting the whole design of this international organisation, which is considered to be a manifestation of sovereign equality. While Iraq faced military expulsion, Russia retained control over Crimea, exposing the limitations of international law when powerful States were involved. Nevertheless, it is primarily the act of aggression, which is a violation of the fundamental principles of the UN Charter, and not the missing adoption of a resolution by the main UN body primarily responsible for the maintenance of international peace. The ongoing war in Ukraine proves that Russia continues to challenge Ukraine's sovereignty first, and the agreed legal framework containing the principle of sovereign equality is its second aim. This is not to deny that the selected cases illustrate the fragile nature of sovereign equality in practice, since enforcement mechanisms depend on global political will and power dynamics that might change over time. In contrast, because of the current situation, critics have become stronger than the existing structure of the UN, especially the veto power held by the P5, which might lead to paralysis in decision-making, as seen in conflicts where P5 interests are involved. For instance, the inability to pass resolutions due to vetoes demoralises the UN's capacity to maintain international peace and security, which is its primary responsibility, according to the UN Charter. Despite these initiatives, substantial reforms have been elusive.

The requirement for a consensus among member states, particularly P5, poses a significant barrier to change. While improvements have been made in areas such as management efficiency and development coordination, core structural reforms, especially those concerning the Security Council's composition and veto power, have remained hindered.

121 Art. 2(1) in conjunction with Art. 2(4) of the UN Charter.

122 E.g. for claimed right to self-defence, basic preconditions were not met since there was no armed attack on Russia and the condition of proportionality was not fulfilled either.

Moreover, it is not only SC composition and voting rights that are often considered in the institutionalisation of inequality. It has already been pointed out that the IMF allocates voting power based on financial contributions, granting wealthier countries greater sway over their policies. As previously observed,

Sovereign equality starts with rules on lawmaking, law application, and immunity, but we cannot truly understand its contours or justice without examining the arenas where claims about the equality of states most often arise, namely international organisations.¹²³

It is important, then, why they have actually been established and, when accepting their irreplaceable role in the system of international law, how their role and function could be improved and achieved more efficiently.

6. International Organisations and Their Member States as Complementing Sovereign Actors

As for the establishment of international institutions, sovereign equality has been instrumental since its aim usually seeks equal representation and participation opportunities for all member states to achieve an agreed goal. For instance, even the ‘Pact for the Future’, adopted by the UN General Assembly in September 2024, reflects a collective commitment to address global challenges through inclusive multilateralism. This pact underscores the importance of equal participation in decision-making processes when dealing with issues such as security and human rights. To strengthen the application of sovereign equality in addressing global challenges, several attitudes should be considered, including adopting differentiated approaches that respect the diverse circumstances of states within the global community.

International organisations possess legal personalities that are distinct from those of their member states, granting them rights and responsibilities under international law.¹²⁴ In general, this separate existence allows them, apart from other, to enter into agreements, to acquire and manage assets independently, and especially to initiate legal proceedings to defend their interests. As the ICJ affirmed in the *Reparations for Injuries* case, they hold distinct legal personality: ... the United Nations ‘was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality’.¹²⁵

¹²³ Ratner, 2015, p. 220.

¹²⁴ Valuch, Rišová and Seman, 2011, p. 8.

¹²⁵ International Court of Justice, 1949, p. 179.

Together with distinct legal personalities, the capacity of international organisations to bear responsibility for their actions has been confirmed. This means they can be held accountable for breaches of international obligations attributable to them. This has been elaborated upon in the Draft Arts. on the Responsibility of International Organisations adopted by the International Law Commission, which outlines the principles governing such responsibility.¹²⁶

Comparably to the Arts. on the Responsibility of States for Internationally Wrongful Acts, they state that an international organisation is responsible for its internationally wrongful acts, which consist of conduct attributable to the organisation that constitutes a breach of international obligation.¹²⁷ However, challenges arise in attributing conduct and determining accountability, especially when actions involve both the organisation and its member states. The complexity of these relationships requires a clear framework for defining responsibilities and ensuring compliance with international law.

International law provides a structured system for states to engage with each other, offering mechanisms to resolve disputes, establish norms, and promote collective interests. However, the effectiveness of international law can be challenged by issues such as non-compliance and especially different interpretation among states or between states and international organisations.¹²⁸

This special feature of international law that lies in the application challenges of international legal norms by actors that have adopted them is multiplied within international organisations that have been established to make international cooperation more effective: to manage issues that transcend national borders and require coordinated action, and to provide platforms for dialogue, standard-setting, and implementation of collective decisions or even dispute resolution.¹²⁹

States usually establish international organisations through international treaties, which serve as foundational legal instruments defining the organisation's purposes, structures, and functions. These treaties are binding agreements that outline the rights and obligations of both the international organisation and its member states. The principle of *pacta sunt servanda*, enshrined in Art. 26 of the Vienna Convention on the Law of Treaties, mandates that every treaty in force is binding upon the parties and must be performed in good faith.¹³⁰ This principle ensures that both the international organisation and its member states are obliged to adhere to the terms of the establishing treaty. This means that the international organisation is bound to perform its functions in good faith, adhering to the terms used to establish the treaty. Any action taken by the international organisation must be within the scope of its mandate, as defined by the treaty. Similarly, member states are obligated to

126 International Law Commission, 2011, Part II.

127 Ibid., Art. 4.

128 Evans, 2006, pp. 553–555.

129 Valuch, Rišová and Seman, 2011, p. 10.

130 Vienna Convention on the Law of Treaties, 1969, Art. 26.

respect the autonomy of the international organisation and refrain from actions that would undermine its independent functioning.

Nevertheless, upon establishment, international organisations are endowed with a distinct legal personality, granting them rights and responsibilities separate from those of their member states. Moreover, although there is no application of the principle of *Kompetenz-Kompetenz* (or *compétence de la compétence*), which refers to a judicial body's authority to determine the scope of its own competence, for international organisations, one has to consider the attribution of powers conferred to them by an establishing treaty.¹³¹ In the context of international organisations, these powers might be considered implied, i.e. they do not have to be specified expressly.¹³²

However, while international organisations possess a degree of independence, they must operate within the confines of the authority granted by their treaties. Member States, as the 'parents' of the international organisation, retain certain controls to ensure that the organisation does not exceed its mandate. This balance is crucial for maintaining the trust and cooperation of member states, ensuring that the international organisation's actions occur even in the collective interests of its members.

In practice, tensions can arise when there are differing interpretations of an international organisation's mandate or when an international organisation's actions are perceived to intrude into the sovereignty of member states. The relationship between states and the international organisations they establish is complex, similar to that of parents guiding a child towards independence. While international organisations are granted a degree of autonomy through legal personality and the principle of *implied powers*, they must operate within the boundaries set by their founding treaties. The principle of *pacta sunt servanda* ensures that both international organisations and member states are bound to perform their obligations in good faith, maintaining a balance between organizational independence and state sovereignty.¹³³ Moreover, sometimes even interests of an international or especially European community as such are submitted.¹³⁴

The fact that it is a rather complicated task indeed is possible to be analysed within the principle of loyalty, enshrined in Art. 4(3) of the Treaty on European Union mandating that 'the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties'.¹³⁵ This principle, also referred to as the duty of sincere cooperation, serves as the cornerstone of the Union's legal framework, ensuring cohesion and effective functioning between EU institutions and Member States. The duty of loyalty obliges Member

131 Weiss, 2009, p. 434.

132 For explicit implied powers see e.g. Blokker, 2008, paras. 20–22.

133 Vienna Convention on the Law of Treaties, 1969, Art. 31.

134 Gadkowski, 2022, p. 111.

135 For more information see Karpat, 2021.

States to take all appropriate measures to ensure the fulfilment of their obligations under EU law and refrain from any action that could jeopardise the attainment of the EU's objectives. This includes both positive obligations, such as implementing EU directives and negative obligations, such as abstaining from measures that conflict with EU law. Moreover, the Court of Justice of the European Union pointed out that this principle also covers inaction, that is, when state authorities should adopt appropriate measures. The Court of Justice of the European Union emphasised that this duty is binding to all authorities of Member States.¹³⁶ Loyalty plays a pivotal role in external relationships. Given the complex distribution of competencies between the EU and its Member States, particularly in areas of shared or mixed competencies, true cooperation is essential. The Court of Justice of the European Union, in its Opinion 1/94 of the WTO Agreement, highlighted that Member States must coordinate their actions within international organisations to uphold the unity of the EU's external representation.¹³⁷ The duty of loyalty also extends to situations where Member States negotiate international agreements: The Court of Justice of the EU held that Sweden breached its duty of sincere cooperation by unilaterally negotiating a bilateral agreement in an area of shared competence without coordinating with EU institutions.¹³⁸ Furthermore, the principle of loyalty requires Member States to interpret and apply national law in a manner consistent with EU law, i.e. also in light of the wording and purpose of EU directives, to achieve the results envisaged by EU law.¹³⁹ However, the application of the loyalty principle is not unidirectional; it imposes obligations on EU institutions. Institutions must respect the competencies of Member States and assist them in fulfilling their obligations. This mutual respect ensures a balance between the autonomy of Member States and their sovereignty, and the effective functioning of the EU. To conclude, the principle of loyalty is very important to the EU's legal order, since it encourages cooperation and coherence between the EU and its Member States; however, it will be analysed in detail in the following chapters.

7. Summary

The origins of sovereign equality can be traced back to the Peace of Westphalia in 1648, which laid the foundation for the classical inter-state system in which all states are sovereign and equal. The UN Charter builds upon this by reinforcing that

¹³⁶ *Commission v. France case*, C-265/95, 1997 E.C.R. I-6959.

¹³⁷ Opinion 1/94, 1994 E.C.R. I-5267.

¹³⁸ *Commission v. Sweden case*, C-246/07, 2010 E.C.R. I-3317.

¹³⁹ *Pupino case* (C-105/03, 2005 E.C.R. I-5285).

all member states should retain independence and equal rights while respecting their collective responsibilities under international law.

It has been emphasised that the principle of sovereign equality represents ‘formal equality’ in law, ensuring that even smaller or less powerful nations have a voice in international governance.¹⁴⁰ Moreover, this principle underlines that sovereignty remains inviolable unless the states themselves agree with specific limitations such as those outlined in the UN Charter.¹⁴¹ Nevertheless, challenges to sovereign equality arise because of power asymmetries within the international system, which offers an understanding of sovereign equality as a result of equality. Similarly to other scenarios of state cooperation within international organisations, it might be criticised that the ‘ideal’ of sovereign equality is limited by the geopolitical realities of international system which often favour dominant states. Despite this, the UN Charter’s reaffirmation of sovereign equality provides a legal basis for addressing inequalities and encouraging cooperation between States, as it does not consider sovereignty and equality as separate concepts, but sovereign equality as a concept integrating not only rights but also responsibilities.¹⁴²

Several UN peacekeeping missions, including those in the Democratic Republic of Congo, Somalia, and Sudan, have demonstrated how sovereignty concerns often complicate international interventions. Furthermore, Security Council dynamics, particularly P5 veto power, frequently undermine the equitable application of sovereign equality, as evidenced by conflicts in Bosnia, Haiti, Libya, and Syria. Cases such as the 2003 Iraq invasion and the 2011 Libyan intervention illustrate how international responses to sovereignty violations are inconsistent and are often shaped by the interests of powerful states rather than by legal principles alone. Finally, humanitarian interventions such as those in Rwanda and Myanmar further expose the delicate balance between respecting state sovereignty and protecting human rights.

The annexation of Kuwait and Crimea, as well as the ongoing war in Ukraine, highlight disparities in international responses, where geopolitical considerations have dictated enforcement rather than legal norms. Ultimately, while sovereign equality is a basic legal principle, its effectiveness in practice might depend on the willingness and capacity of the international community to uphold it, or on the dynamic understanding of the principle.¹⁴³ Undoubtedly, this principle remains indispensable in international law, although its enforcement is frequently subordinated to power dynamics and strategic interests. As a result, strengthening mechanisms to ensure the consistent and impartial application of sovereign equality remains a crucial challenge for the UN and the broader international legal system which is based on the principle *pacta sunt servanda* in the area of the law of international organisations.

140 Koskeniemi and Kari, 2020, p. 168.

141 Fassbender, 2012, para. 63.

142 Ibid., para. 64.

143 Amoroso, 2023, p. 35.

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