The nature of the state sovereignty

In order to complete this analysis, it is necessary to examine the history and the evolution of concept – sovereignty. Hence I will firstly define notion of " sovereignty" and its origins. In the latter part I will present how sovereignty has changed over period of time, particularly after the Cold War. In the final part I will provide conclusion summoning if the change of sovereignty nature has been positive or negative.

Sovereignty is relatively recent innovation in international relations. It was first developed in Europe, at the peace of Westphalia in 1648. Treaty of Westphalia has been the outcome of around 8 decades of wars fought in name of religions. The result of Westphalian Treaty was establishment of new international law system which was going to be applied to the modern states. The underpinning of this system is the sovereign character of the state and the prevention against external interference in internal affairs by other states. Sovereignty is one among the inherent and essential elements of a state, which defines its supreme power and its own independence. [1]Sovereignty has two dimension and these are: authority of internal government and territory. Leader of the government has an ultimate and legitimate right to exercise power within the borders of that particular state and suppose to be obeyed by its citizens.[2]Noteworthy, the core elements of state sovereignty have been established in 1933 Montevideo convention on the Rights and Duties of States. They include three main requirements: a permanent populations, defined territory and body of power – functioning government.[3]

Thomas Hobbes, John Locke and Jean – Jacques Rousseau were most important members of the social contract school. They shared the same idea

about the concept of sovereignty. They believed that whatever are origins of sovereignty, it all comes down to contractual agreement between the members. However, their theories differed significantly in other respects.[4]

State sovereignty has for the past several hundred years, been a defining principle of a relations between states and in a way a foundation of worlds order. This concept is one of the most important principles of United Nation Charter and it is still important component of the maintenance of peace in the world and defence of weak states against the powerful ones. At the same time, however the concept has never been unchallengeable as such, either in law or practice as the formal definition may suggest. According to former secretary – General Boutros Boutros – Ghali; " The time of absolute sovereignty …has passed; its theory was never matched by reality."[5]

Knowing that the international rules of the notion of sovereignty set out in the Treat of Westphalia have been modified over the years, most recently and significantly by the Charter of the United Nations they remained merely intact until June 1990, this was when UN Security Council approved Resolution 1244. According to that resolution the attacks in Kosovo were justified. The post-Cold War world has segued into what might now be called post-Westphalian world. Resolution 1244 is the momentum of a series of acts of decisions and actions which, taken together, change the legal and theoretical structure of international relations. This means that the first principle of the nation sovereignty is the power that the nation holds as a State – those in power are in charge.[6]

In practice international legal sovereignty and Westphalian sovereignty are the key manifestations of sovereignty. In particular cases, for example; Somalia or Andorra, these attributes camouflage glaring failings in other areas ostensibly central to sovereignty.

The " humanitarian intervention" in Kosovo and the invocation of " self-Defence" as a rationale for the intervention in Afghanistan are examples of rights reserved for powerful states which are not intended for use by the majority of states.[7]

As Krasner summarizes"…the principles associated with both Westphalian and international legal sovereignty have always been violated".[8]

After the end of Cold War, the sovereignty of each nation involved in the war has changed significantly and quite diminished. Meanwhile the Cold War is the longest war that took place between 1940-1980 involving United Union of soviet socialist and America and it was merely a war of rights and beliefs. The changes to the notion of Sovereignty changed and the changes were influenced by the development that happened after the Cold War.[9]

Pragmatically, concept of sovereignty has often been challenged and violated by the " powerful" states. In current globalizing world, it is recognised that cultural, environmental and economic influences neither respect borders, nor require an entry visa. The concept of state sovereignty is well stretched in political and legal discourses. Furthermore, states borders have diminished significantly as a result of contemporary international relations arena. Current international disorder and suffering are the main causes of technology and communication fast development. Consequently,

perspectives on the range and role of state sovereignty have, especially over the past ten years, evolved very quickly.

Today, sovereignty confronts the challenge of globalism. It is commonly held that the conditions which support globalism, such as technological advances, the communications revolution, and advances in business organization do not necessarily promote sovereignty. Furthermore political activism, terrorism, and organized crime conspire to undermine territorial boundaries and permit the exchange of science, culture, political economy, and the growth of beneficent and malevolent global civil society.

However according to Anthony Coughlan's effects of globalization o the concept of the sovereignty of Sate is often taken out of context or exaggerated. In his view States have always been interdependent to some extent. In his opinion there was more to globalisation in the late 19th Century, such as free movement of labour, trade and capital, although the volumes involved were smaller than today. In that time most states were economically more powerful due to international businesses. In Coughlan's view Modern States do more for their citizens and are expected by them to do more and impinge more intimately on peoples' lives than at any time in history.[10]

Sovereignty may undeniably be strengthened as it changes to meet new needs and opportunities. In other ways, sovereignty may be limited in its capacity to deny international responsibilities and domestic obligations. An analysis of the world social process will give a way to a vast number of participants and institutions that comprise the global society. Among these

are State sovereigns, international and regional organizations, political parties, business groups, pressure groups, NGO's, and individuals in various roles relevant to social relations within and across State and national lines. [11]

It should be added that there are many other complex outcomes of this process, which include, for example, the constitutional architecture of the European Union, the African Union, the Organization of American States, and even the framework of military alliances under the changing character of NATO. These regional organizations carry the attributes of authority and control and, in turn, reconfigure the framework of decision-making competences that are exclusive to the sovereign State, those which are sometimes shared concurrently with the nation-State, and those which are to be exercised in complex patterns of sequential authority. This makes the interplay between the constitutional architecture of the various forms of political and legal association under current world order conditions, a complex and technical, but vitally important matter.

Among the important outcomes of the world community process is the relatively specialized process of effective power, which involves connecting linkages between interactions and inters determination operating in micro social institutions, large-scale social formations such as the State, even larger aggregates of States, and a still larger and complex world process of effective power. It is perhaps a paradox that sovereign independence is now often accompanied by sovereign membership in various regional associations and international organizations, which juridical limits sovereignty. For example, membership in the United Nations conditions

sovereignty; in other words, sovereignty cannot trump the obligations and international responsibilities of the UN. Even more prominent are State claims to associate with supranational regional compacts and, in so doing, abandon some autonomy in exchange for the benefits of membership. Examples of this include the European Union, the African Union, and the Organization of American States.

The current crisis of terrorism and world order will tell as much about the changes that international law might secure for the practice of international relations based on the authority of the UN Charter. One trend however, is clear. Sovereignty as State absolutism is no longer a tenable precept in international law and international relations. Sovereignty based on the authority of people's expectations is a vital and critical element in promoting international peace and security, enhancing human rights and is a basic element in the foundations and possibilities of good governance as well as transparent and responsible authority. To conclude this does not mean the demise of sovereignty but it means change.