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# THE FUTURE OF STATE SOVEREIGNTY: EMERGING CONCERNS IN THE INTERNET ERA

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Anup Kuruvilla John\*

*"Man should not draw lines on the land. The winds will dim them, the  
snows will cover them, and the rains will wash them away."*

*Cochise<sup>1</sup>*

These words of the nineteenth century Native American leader Cochise, have taken on a new meaning with the advent of the 21<sup>st</sup> century. Spoken in the context of asserting the community based ownership of land in North America by the Native American people as opposed to the concept of private ownership propagated by early European settlers, these words have proven to be strangely prophetic as eventually it was the white man's own technology that would blur those imaginary lines far more effectively than the elements ever could<sup>2</sup>.

The Internet has fundamentally changed the world like no other technology ever has. "With every passing day it becomes more and more certain that the Internet will take its place alongside the other great transformational technologies that first challenged, and then fundamentally changed, the way things are done in the world."<sup>3</sup> E-commerce has become the buzzword in corporate circles. The lure of conducting global operations through a web site has become irresistible. This information explosion has much to do with the burgeoning of the Internet, which has grown exponentially from 1000 host computers in 1984, 5000 in 1986, and 28000 in 1987 to 36.8 million in 1998<sup>4</sup>. This explosion in the popularity of global computer networks

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1. Burk, "Jurisdiction in a world without borders", <http://vjolt.student.virginia.edu> (January 16, 2000).
2. *Ibid.*
3. Louis V. Gerstener, Jr., "Letter of the Chairman and Chief Executive Officer, International Business Machines ("IBM") Inc.", 1998 Annual Report, <http://www.ibm.com/annualreport/1998/letter/ibm98arlsen01.html>, as cited in Aristotle G. Mirzaian, "Y2K . . . Who Cares? We Have Bigger Problems: Choice of Law in Electronic Contracts", <http://www.richmond.edu/jolt/v6i4/article3.html> (January 16, 2000).
4. R.T.Griffiths, "Internet for historians, history of the Internet", <http://www.let.leidenuniv.nl/history/ivh/INTERNET.HTM>, as cited in Rahul Rao, "Sweeping Cobwebs off the Law", Law Relating to Computers, Internet and E-Commerce, 4 (Nandan Kamath, ed., New Delhi: Universal, 2000).

has rendered geographic boundaries increasingly porous and ephemeral, thereby making traditional theories of state sovereignty and jurisdiction increasingly archaic. The prospect of states attempting to regulate this medium in any form raises several interesting questions regarding issues of international sovereignty and jurisdiction. This paper is an attempt to examine these questions with reference to existing theories of sovereignty and international relations.

### **Evolving Notions Of Sovereignty**

As part of the discussion, it is imperative that a distinction be made between the varied understandings of sovereignty according to international law, international relations theory, and the practical realities.

### **Sovereignty in International Law**

International law, traditionally, is based on the concept of the state<sup>5</sup>. The state lies upon the foundation of sovereignty, which expresses internally in the supremacy of the governmental institutions and externally as the supremacy of the state as a legal person<sup>6</sup>. Sovereignty is the supreme authority, which on the international plane, means not legal authority over all other states, but rather legal authority which is not in law dependent on any other earthly authority. Sovereignty in the strict and narrowest sense of the term implies, therefore, independence all around, within and without the borders of the country<sup>7</sup>. 'State', 'nation', and 'country' refer collectively to nation-states recognized as sovereign entities under international law.

The concept of sovereignty was introduced and developed in international law in the context of the power of the ruler of the state over everything within the state. Sovereignty, was in other words, primarily a matter of internal constitutional power and authority, conceived as the highest power within the state with exclusive competence therein<sup>8</sup>. Although states are often referred to as 'sovereign' states, the term is descriptive of their internal constitutional position rather than of their legal status on the international plane. On the

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5. Lauterpacht, *International Law: Collected Papers*, 489 (1975), as cited in. Shaw, *International Law* 452 (Cambridge: Cambridge University Press, 1997).
  6. Draft Declaration on the Rights and Duties of States, 1949, *Yearbook of the ILC*, 1949, p.286, *Lotus case*, 4 ILR, pp.153, 155 *Nicaragua case*, ICJ Reports, 1986, pp.3, 135, and *Legality of the threat or use of nuclear weapons*, 35 ILM, 1996, pp.809, 819-820 all reaffirm this point, as cited in Shaw, *International Law* 150 (Cambridge: Cambridge University Press, 1997).
  7. *Island of Palmas Arbitration* (1928), RIAA 2, pp.829, 838, as cited in Oppenheim, *Oppenheim's International Law* 122 (Jennings ed., London: Longman, 1992).
  8. Oppenheim, *Oppenheim's International Law* 122 (Jennings ed., London: Longman, 1992).

international plane, it assumes the form of 'sovereign equality'. The concept of sovereignty manifests itself in many international conventions. The UN Charter in Article 2(1)<sup>9</sup> is an embodiment of this concept. The *Declaration on Friendly Relations*, 1970 reaffirms the same<sup>10</sup>. The International Court in the *Nicaragua case* noted that the Friendly Relations Declaration set out the principles, which the General Assembly declared to be the "basic principles" of international law<sup>11</sup>. In particular, under international law, sovereign equality includes the following elements:

1. Each state enjoys the rights inherent in full sovereignty;
2. Each state has the duty to respect the personality of other states;
3. The territorial integrity and political independence of the State are inviolable.

Sovereignty is founded upon the fact of territory and therefore without territory a legal person cannot be a state.<sup>12</sup> Legal concepts such as sovereignty and jurisdiction can best be comprehended in relation to territory and thus the principle whereby a state is deemed to exercise exclusive power over its territory can be considered a fundamental axiom of classical international law. Indeed, most nations indeed have developed through a close relationship with the land they inhabited.<sup>13</sup>

### ***Sovereignty under International Relations***

Sovereignty under international relations has traditionally been explained by the twin theories of realism and liberalism.

According to the traditional "Realist" view, which has been dominant in international law since the Treaty of Westphalia in 1648,<sup>14</sup> states are the sovereign actors in the international system, and such states act in a rational manner with the consistent objective of maximizing their power, in effect creating an anarchic situation<sup>15</sup>. The capacity to wield power is in turn defined

9. "The Organisation is based on the principle of sovereign equality of all its members."

10. The *Declaration on Friendly Relations*, 1970 provides: All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding the differences of economic, social, political or other nature. UN GAOR 2625 (XXV) of 24 October, 1970 at 65 *Am.J.Int'l. L* 242 (1971). See also, Articles 2(4) and 2(7) of the UN Charter.

11. *ICJ Reports* 1986, p.14 at p.107.

12. *Supra* note 8, at 563.

13. I Brownlie, *Principles of Public International Law*, 100 (Oxford: Clarendon Press, 1990).

14. Hans J. Morgenthau, *Politics Among Nations- The Struggle for Power and Peace* 294 (New Delhi: Kalyani, 1991).

15. *Ibid* at 5.

and circumscribed most fundamentally by the ability to exercise control over *physical territory*.<sup>16</sup> To realists, territorial boundaries necessarily circumscribe the extent of state power. This notion of territorially defined power is best exemplified by Arnold Wolfers' classic realist image of states as billiard balls: opaque, hard, clearly defined spheres colliding with one another<sup>17</sup>. The circumference of each sphere is defined by territory. Thus the concept of territory is inextricably linked to the realist conception of sovereignty under international relations.

In contrast, the Liberal theory stresses that the primary actors on the international stage are not these "opaque single units" of territorially-bounded states, but rather comprise individuals, groups and other entities, who are players in civil society, both domestic and transnational<sup>18</sup>. The Liberal theorists believe that the state is an *agent* of these players, representing their interests. The state gains legitimacy not through some abstract supreme power, but through its representative capacity<sup>19</sup>. The liberal model thus represents a paradigm shift from territory to the precise representation of social interests as the source of sovereign power.

### *Sovereignty in Practice*

In practice however, the principle of respect for the territorial integrity<sup>20</sup> of states is one of the lynch-pins on which the international system is founded. However, the twentieth century has seen a number of factors, which tend to reduce the territorial exclusivity of the state in international law. Concurrently, with the definite erosion of internal sovereignty, we are witness to a

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16. Michael Mastanduno, "A realist view: three images of the coming international order", *International Order and the Future of World Politics* 21 (T.V.Paul et.al. eds., Cambridge: Cambridge University Press, 1999).

17. David Post, "The "Unsettled Paradox": The Internet, the State, and the Consent of the Governed", 5 *Indiana J. Global Legal Studies* 521 (1998), <http://www.temple.edu/lawschool/dpost/Sov.html> (October 7, 2000).

18. Michael W. Doyle, "A liberal view: preserving and expanding the liberal pacific union", *International Order and the Future of World Politics* 46 (T.V.Paul et.al. eds., Cambridge: Cambridge University Press, 1999).

19. *Id.*

20. Territorial sovereignty has a positive and a negative aspect. The positive aspect relates to the exclusivity of the competence of the state regarding its own territory. The negative aspect relates to the obligation to protect the rights of other states. See also, Principle III of the Helsinki Final Act, 14 ILM (1975), p.1292; which states "The participating States regard as inviolable all one another's frontiers as well as the frontiers of all other States in Europe and therefore they will refrain now and in future from assaulting those frontiers. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State."

transposition of this essentially internal concept of sovereignty on to the international plane. Globalization is reshaping the fixed and firm boundary between domestic and international spheres and changing our conceptions of the proper domain of domestic and international law. Along with it, the process of globalization is transforming traditional conceptions of sovereignty. The development of a global economy and the associated reorganization of social power have in fact transformed the territorial model of sovereignty. With technological<sup>21</sup> and economic changes<sup>22</sup> having brought about greater interdependence, the sacrifice of an element of internal sovereignty has been necessitated. Similarly, the rise of transnational concerns such as human rights and self-determination has also impinged upon this exclusivity. This process has been actively furthered by states making express provision for limitations on their national sovereign powers in the interest of international co-operation<sup>23</sup>.

Thus the relationship of states on the international plane today is characterised by their formal equality<sup>24</sup> and independence, and increasingly, by their interdependence.

### Cyberspace: The Definitional Question?

'Cyberspace' can be best described as a multitude of individual, but interconnected, electronic communications networks. The Internet<sup>25</sup> is not a physical object with a tangible existence, but rather is a set of network protocols that has been adopted by a large number of individual networks allowing the transfer of information amongst them<sup>26</sup>. Moreover, the Internet is a medium through which a user in real space in one geographical location can communicate, interact and even transact with a user in real space in another.

21. The emergence of the Internet era poses exactly the same problem.

22. This can be evinced from the formation of the European Economic Community.

23. A.24(1) of the Basic Law of the Federal Republic of Germany; A.92 of the Constitution of Netherlands; A.11 of the Italian Constitution; A.20 of the Danish Constitution, A.93 of the Norwegian Constitution, as cited in *Supra* note 8. Another parallel phenomena is the extensive transfer of sovereign rights, as in the European Union, where the transfer of rights is so extensive as to even affect the continued existence of the state.

24. Though state equality is not always found in international law, as exemplified by the veto power in the Security Council, juridical equality has been established as one of the formal bases of international law.

25. For the purposes of this discussion, the internet and cyberspace are used interchangeably.

26. <http://www.techdictionary.com> (March 31, 2001).

It has no physical existence of its own beyond the servers<sup>27</sup> on which the content resides.

Locations on the Internet are described by domain names but unlike a postal address or a telephone number a domain name does not necessarily reside in a fixed physical location. An important fact to keep in mind is that since the Internet developed from a system of networks which were originally meant to survive every type of catastrophe, data sent over the net follows the packet switching system i.e. a rerouting mechanism which allows data to be sent successfully from the source to its intended destination by seeking out alternative paths to the destination network in case a blockage or disruption is detected<sup>28</sup>.

The Internet also has no governing or controlling body and thus, is designed without a centralized control mechanism. The very fact that it is a collation of decentralized networks makes it impossible for a central mechanism to function and govern the entire system. This has led to questions regarding the viability as well as the ethics of existing states exercising sovereign rights of control over cyberspace and its "denizens"<sup>29</sup>.

### **Impact of the Internet on Sovereignty**

A new line of modern political thought predicts that the rise of cyberspace will soon be responsible for bringing about the *Twilight of the State*, i.e. after half a millennium of dominance of the international political and legal arena, the nation state is relegated to the ash heap of history by the increasing irrelevance of the physical borders and boundaries that simultaneously circumscribe and define its proper sphere of action<sup>30</sup>. The anti-thesis to this view however is that these theories of the imminent death of the state are greatly exaggerated. Individuals and social groups, are subject to a tangible minimum reality of social order, and hence require traditional forms of social and political control, including the entire legal apparatus of sovereign states.<sup>31</sup>

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27. The server is the computer in a client-server architecture. The computer that requests services is called the client. The client may request file transfer, printing, remote login, or other available services. <http://www.techdictionary.com> (March 31, 2001).

28. Henry Perritt, "Cyberspace and State Sovereignty", <http://www.kentlaw.edu/perritt/professorperritt/jilspub.html> (October 7, 2000).

29. Philip Giordano, "Invoking Law as a basis for identity in cyberspace", [http://stlr.stanford.edu/STLR/Articles/98\\_STLR\\_1/](http://stlr.stanford.edu/STLR/Articles/98_STLR_1/) (October 7, 2000).

30. *Supra* note 17.

31. *Supra* note 17.

The Internet poses innumerable challenges to the traditional conceptions of sovereignty primarily because of the unique nature of the medium. The Internet is a revolutionary and powerful technology that is substantially different from pre-existing modes of communication. The telephone and telegraph, while being instruments of communication are essentially different in the sense that communication over these mediums are essentially related to a physical territory i.e. the means of communication are such as to be easily identified and controlled by the governing authority within a state. On the other hand the Internet has no such geographical limitations. A user cannot usually differentiate between the location of a server situated next door and one on another continent for the simple reason that data flow is not really affected by this difference in geographical locations. Nor are the domain names always indicative of the location of a server or computer in terms of real-space. Moreover, the very fact that telephone and telegraph technologies rely on physical circuits that are very easily controlled on national borders, whereas the internet relies on the system of packet switching which would automatically treat any attempted regulation of data flow at national borders as a blockage and would reroute the flow of data the destination *via* a different set of network resources, implies that control of the information flow over the internet is vastly more difficult than control or regulation of communications over a telephone or telegraph line<sup>32</sup>. Apart from this there are phenomenally high barriers to entry and regulatory frameworks regarding telephone networks, which protect monopolies, resulting in prices remaining prohibitively high<sup>33</sup>. Recent trends with regard to liberalization of trade have eased some of these limitations, but problems still exist<sup>34</sup>. On the other hand, the Internet has extremely low barriers of entry. The Internet thus combines both the one-to-one characteristics of telephone and telegraph and the one-to-many characteristics of television and radio and thus is both a conversational and a mass medium. Furthermore, it has its own culture, which is distinct from traditional, geographic and political institutions. Telephony, radio or television had never ever been capable of exerting such an influence. Hence it is a way of connecting and organizing human activity, which emphasizes decentralization, specialization and global cooperation. It facilitates newer and newer market and political institutions, legal institutions etc, in virtual space, all of which are beyond the geographic jurisdictional controls of sovereign states.

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32. "Developments in the Law: The Law of Cyberspace", [http://www.harvardlawreview.org/issues/112/7\\_1577.htm](http://www.harvardlawreview.org/issues/112/7_1577.htm) (October 7, 2000).

33. *Supra* note 28.

34. *Supra* note 28.



Owing to these characteristics of the Internet which make it difficult for a state to regulate flow of information through cyberspace there are several arguments which are raised to explain how it is gradually eroding the sovereign authority of the state. Firstly, the nature of the medium makes it extremely hard to control data flow at national borders and therefore the traditional role of the state as a censor is undermined. A classic example of this is the censorship policies adopted by the Peoples Republic of China when access to the Internet was initially becoming popular. At first there was an attempt to discourage the use of the internet entirely and later on to prohibit through the state run Internet Service Provider, all access to sites containing material considered unsuitable by the government including anti-communist literature and pornography. However it quickly became obvious that such policies were not practically enforceable because such information could easily be accessed by persons who requested such material delivered to them via email from any one of hundreds of anonymous File Transfer Protocol<sup>35</sup> services all over the world. The fact that such data was sent by email ensured that short of checking every persons email content (clearly an impossible task) there was no effective way to check such information exchange and people could quite easily access prohibited material without actually ever visiting actual sites. As a result China was no longer able to control the literature, information and data which is available to its citizens and this has often led to the Internet being described as a subversive's or an anarchist's paradise. For example a person reasonably proficient with the use of the Internet can gain access to the Terrorist Handbook<sup>36</sup>. As a result of this lack of control over information flow the state is gradually losing its role as protector of moral and civil values in society. Moreover, cyberspace differs from everyday world in the sense that the coercive force on which the state relies for asserting its sovereignty, cannot be projected across a network, unlike in a regulated medium like television.

Secondly, with the growth of e-commerce and the growing popularity of credit card transactions over the Internet, transactions are no longer largely limited to the territorial boundaries of a state. The diminishing transacting costs over the Internet greatly promotes the growth of such cyber

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35. File Transfer Protocol or FTP is the Internet standard High-level protocol for transferring files from one machine to another over TCP/IP networks. FTP is normally used to transfer files, programs and webpages from a server onto one's computer. <http://www.techdictionary.com> (March 31, 2001).

36. Terrorists Handbook, as the name suggests signifies a handbook of explosive and weapon related information. A modified version of the same, is obtainable at <http://web.ukonline.co.uk/j.adelman/bb/bbom> (March 31,2001).

transactions<sup>37</sup>. However the implication of this on sovereign authority is that a state is no longer able to keep track of and regulate transactions between individuals within its territory and those without. As previously explained the notion of sovereignty under international law implies total control over territory and individuals within it. If the state is no longer able to keep track of and regulate transactions made by individuals within its territory and those without then it loses one of the traditional roles of state i.e. regulating inter-state trade. This has profound implications on the role of the state relating to taxation, which is considered an essential element of any modern state. For example the local governments in the United States have expressed concern about their loss of control over information and transactions flowing across their borders.<sup>38</sup> Instead only those cross border transactions are subjected to duties which involve the transfer of a physical asset over the borders of the state. To add to it, is the growth of e-cash, which does not rely on the state<sup>39</sup>. Furthermore, the development of such markets leads to new interdependencies, in which the costs of war and social unrest are very high, leading politics to be driven by economics<sup>40</sup>. Moreover it is becoming increasingly more difficult for the state to protect consumers from frauds which are committed on a person over the internet, owing to the difficulty of tracking down the perpetrator of such a fraud as well as the difficulty of bringing him under the jurisdiction of the state concerned, which is another major issue which has arisen with the advent of the internet.

Questions regarding jurisdiction of a state which arise from transactions and communications in cyber-space are perhaps the most complex of all and have the greatest implications on current theories of sovereignty. The traditional understanding of sovereignty and sovereign equality is that each state has total control over matters which occur within its own territory and must respect the sovereignty of other states by not interfering with matters and individuals within the territory of such other states. However since the very nature of the medium is such as to bring together entities from very different geographical locations questions of jurisdiction are usually the first ones which need to be answered when a dispute arises between parties regarding the use of cyber-space. Case law in this matter has mainly arisen in the United States and comprises new ways for a state to regulate transactions and communications

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37. Zekos, "Internet or Electronic Technology: A Threat to State Sovereignty", <http://www.law.warwick.ac.uk/jilt/99-3/zekos.html> (October 7, 2000).

38. David R. Johnson and David G. Post, "Law and Borders: The Rise of Law in Cyberspace", [http://www.cli.org/X0025\\_LBFIN.html](http://www.cli.org/X0025_LBFIN.html) (October 7, 2000).

39. Bill A. Frezza, "The Internet and the End of Monetary Sovereignty," (citation incomplete).

40. *Supra* note 37.

that affect individuals within the state. The first method is that of 'long arm statutes' where legislation specifically confers upon Courts in the United States the jurisdiction to look into a dispute even if one of the parties is beyond the territorial jurisdiction of the Court in question.<sup>41</sup> Another method is the 'minimum contacts test'<sup>42</sup> wherein if a web-site or a cyber-transaction can be connected to the territory within which a Court has jurisdiction by some minimum form of contacts such as a website accessible within that territory or if it affects the interests of individuals within that territory, then the Court can take cognizance of a matter regardless of the fact that the other parties in the dispute are beyond the territorial jurisdiction of the Court.<sup>43</sup> The problem with giving a court jurisdiction over individuals who are beyond its immediate territorial jurisdiction is that it raises a strange conflict of sovereignty in international law. While this approach allows a state to assert its sovereignty over individuals within its territory by protecting their interests and rights, by assuming jurisdiction over persons beyond its territorial boundaries a state violates the principle of sovereign equality according to which a state cannot interfere in another states right to control all matters within its own territorial jurisdiction. Therefore it is obvious that traditional rules of jurisdiction do not really fit the problem of jurisdiction over cyber-space and this lack of international understanding could soon lead to a serious undermining of international cooperation and understanding.

Furthermore, with the proliferation of Internet technologies, society, politics, economic and military activities are becoming increasingly dependent on networking. Consequently, web security becomes an important element of state security. Despite the fact that cyberspace is by nature entirely different from territory in the conventional sense and despite the fact that it does not have clearly defined borders, any online network is still open to the danger of infiltration by parties with interests which are opposed to those of the state.

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41. *Telco Communications v. An-Apple-A-Day*, 977 F. Supp. 404 (E. D. Va. 1997); as cited in J.T. Westermier, "Personal Jurisdiction: Today's Hot Issue in E-Commerce", <http://www.law.warwick.ac.uk/jilt/98-3/westermeier.html> (October 30, 2000). The district court determined that defendant's Web page along with the other contacts with Virginia was enough to exercise personal jurisdiction. Here the defendants allegedly posted defamatory press releases regarding plaintiffs on a passive Internet site. The tortious injury was done in Virginia and personal jurisdiction was exercisable under Virginia's long arm statute.

42. *Compuserve v. Patterson*, 89 F.3d 1257 (6th Cir. 1996), as cited in *Supra* note 1.

43. 74 F.3d 701(6<sup>th</sup> Cir.), as cited in. Wilkse, "International Jurisdiction in Cyberspace: Which States May Regulate the Internet", <http://www.law.indiana.edu/fclj/pubs/v50/no1/> (October 12, 2000) See also *Playboy Enterprises v. Chuckleberry Publishing Inc*, 939 F. Supp. 1032 (S.D.N.Y. 1996), as cited in Wilkse, "International Jurisdiction in Cyberspace: Which States May Regulate the Internet", <http://www.law.indiana.edu/fclj/pubs/v50/no1/> (October 12, 2000).

This leads to the possibility of cyber-warfare directed at networks in enemy states and by its very nature such cyber-warfare would be secret as well as dangerous. Such cyber-attacks could cripple the economy or the defense mechanisms of a state with a single blow and hence they pose an immediate threat to the sovereignty of states.<sup>44</sup>

The emergence of the Internet also spells a newer and more active role for international institutions and non-state actors.<sup>45</sup> Until now, international relations were governed more or less by the Realist theory wherein states were the major players in international relations and all actions taking place in the international arena of necessity had to be supported by a sovereign state. However with the growth of the Internet and the increase of meaningful information flows over it, especially in terms of newsgroups and discussion groups, individuals now have access to information previously only available with the consent or approval of the states. Simultaneously, individuals and other non-state actors have a platform to voice their opinions and dissent on matters which are political in nature and which have a bearing on international relations. The vast reach of the Internet ensures that such opinions and dissent is widely available and publicized and this works as a tool in building public opinion, which in today's world of globalization and participative democracies, is difficult if not outright impossible to ignore. In particular, the Internet enhances possibilities for mobilizing mass political support for economic sanctions and military intervention, a sine qua non for any practicable collective security mechanism.<sup>46</sup> Hence it can be said that the rise of cyberspace also leads to a gradual rise in the prominence of non-state actors in international relations, thereby eroding the traditional role of the state in international law.

However while it may be hard for a state to exercise control over flow of information over its borders via the Internet, this task is merely expensive and time consuming and is not technically impossible. An example of this is the new software being designed to the specifications of the United States Government wherein access to certain sites and information is blocked off at the level of the Internet Service Provider itself. However there are problems with such territorial based control over the Internet too.

Firstly as is being experienced with the software filters provided at the national level, the technology is still at a transitional level and therefore is

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44. "No National Borders on the Internet: No Way", [http://www.sinopolis.com/ts\\_990918.htm](http://www.sinopolis.com/ts_990918.htm) (October 7, 2000).

45. *Supra* note 28.

46. *Supra* note 28.

notoriously unreliable and at times access to some perfectly innocuous sites is filtered out due to glitches in existing technologies<sup>47</sup>.

Secondly if a state prohibits certain transactions or communications within its territory, the source of such transactions can easily be relocated outside the territory of a state. In such a case even if a state attempts to assume jurisdiction over persons not within its territory, it is powerless to enforce any sanctions against such bodies unless the bodies either re-enter the territory of such a state or unless property owned by such a body is located within the territory of the state. Furthermore unilateral regulation of the Internet and communication over it could lead to overlapping and inconsistent regulation of same transaction by different states<sup>48</sup>.

Finally in case a state decides eventually to unilaterally regulate the Internet and access to it, such regulation could often lead to a spillover effect wherein states which had no desire to have a change in the existing status quo are affected by such regulation. An example of this spillover effect occurred when Germany objected to certain newsgroups on the Internet containing literature propagating pro-Nazi sentiments that were accessible through the Internet in Germany. As a result of this objection the service providers were forced to remove that particular newsgroup from the Internet. The result of this was that this particular newsgroup was henceforth no longer accessible on the Internet in any of the 147 countries where it was previously accessible. Such spillover effects have a serious impact on the concept of sovereign equality because access to certain information on the Internet in one state becomes impossible due to the actions or demands of another state<sup>49</sup>.

## Conclusion

The above discussion has looked at the various perceived "threats" to traditional notions of sovereignty. Each of the above arguments show that the role of the nation state in certain areas traditionally perceived as being essential to the concept of sovereignty has been considerably diminished. However, this is not sufficient to affirm the proposition that the sovereignty of states itself has been diminished. The state still performs several functions which are essentially sovereign in nature, and the nature of these functions has not changed despite the advent and growth of the internet. The state is still

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47. Jack L. Goldsmith, "The Internet and the Abiding Significance of territorial sovereignty", <http://www.law.indiana.edu/glsj/vol5/no2/6gold.html> (October 7, 2000).

48. *Ibid.*

49. *Ibid.*

responsible for certain basic minimum requirements of civilised society, such as legislation, enforcement of the Rule of Law, national defence etc. Therefore, the traditional notion of sovereign power cannot really be said to have been subverted. On the other hand, the role of the state has definitely been diminished in some areas and relating to certain aspects. There has been a consistent growth in the participation by non-state actors at the international level. At the same time, the state is no longer the ultimate guardian of ethical and moral values of civil society. It is no longer in a position to decide what information is suitable for the general public, and what is not. As a result, individuals are now faced with a much wider variety of informed choices for every action of theirs. Yet, this does not necessarily imply that individuals are endowed with untrammelled freedom regarding their interactions and transactions in cyberspace. While it would be prohibitively expensive as well as excessively cumbersome for a state to monitor all activity in cyberspace that is linked to individuals within its territory, there is an alternative solution to the problem. The solution to the problem can be found in a theory propounded by Foucault where he challenged traditional notions of sovereignty and stated that control could be exercised over individuals by a combination of the processes of "surveillance" and "discipline."<sup>50</sup> Foucault argued that, rather than emphasizing upon the sovereign, law and punishment as means to deter individuals from committing unlawful acts, the state should focus on a series of subtler, private, informal and material forms of coercion organised around the concepts of "discipline" and "surveillance." The paradigm for this idea of surveillance can be described as a prison constructed in the shape of a wheel around the hub of an observing warden, who at any moment might have the prisoner under observation through a closed circuit TV.<sup>51</sup> Unsure of when authority might in fact be watching, the prisoner would strive always to conform his behaviour to the required standards. Such a system could involve a scenario where the state could impose random checks to ensure that individuals are obeying the state injunctions as to behaviour in cyberspace, with punishments suited to the violation being doled out to offenders. The possibility that a communication or transaction may be subject to random policing by the state should be sufficient to deter most individuals from disobeying laws laid down by the state.

Regarding the argument that sovereign power of the state has been eroded, it is submitted that it is merely the realist conception of state and its

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50. James Boyle, "Foucault in Cyberspace: Surveillance, Sovereignty and Hard-Wired Censors", <http://www.wcl.american.edu/pub/faculty/boyle/foucault.htm> (October 7, 2000).

51. *Ibid.*

attendant notions of sovereignty that have eroded by the advent of the Internet. In fact, the impact of the Internet on sovereignty has been to bring about a paradigm shift from the realist to the liberalist notion of sovereignty in international relations. There has been a definite change in the focus of international relations, with states no longer being the only players in the international arena. People have started recognizing and identifying common concerns beyond national boundaries, and non-state actors are growing in prominence as representatives of these transnational concerns. However, this is not to undermine the continued role of the state in international relations. While it is too early to draw any specific inferences on the demise of the nation state, it is clear the Internet has necessitated a marked change in the traditional notions of sovereignty, with non-state actors having found a definite place in the international scene. At the same time it is submitted that the role of the state in international relations is still fairly important as a sovereign body, which seeks to protect the interests of itself and individuals linked to it by bonds of territoriality or nationality.