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Koskenniemi on sovereignty and global Governance

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Abstract
Many believe that global governance is a threat to sovereignty. One person whose doctrine has remained influential in this direction is Martti Koskenniemi. This article reflects on his articulation of the said doctrine in his 'What Use for Sovereignty Today?', disagreeing with his belief that global governance erodes sovereignty and arguing that if there is any edge that global governance has over sovereignty, such an edge is driven by sovereign states. Sovereignty, thus, gives global governance life and empowers it. Consequently, global governance should not be seen as a rival to sovereignty. The instrumentalist and the non-instrumentalist views co-exist in international law. The two are complementary because each of them can contribute to the creation of a just world. Thus, a state-centric vision of international law and a global-governance-based vision of international law can both co-exist in international law provided that each has the ultimate goal of bettering the lot of people.

Keywords: Martti Koskenniemi, sovereignty, global governance, globalisation, legal theory

1. Introduction
Many believe that global governance is a threat to sovereignty [1]. One person whose doctrine has remained influential in this direction is Martti Koskenniemi [2]. This article reflects on his articulation of the said doctrine in his 'What Use for Sovereignty Today?' [3], disagreeing with his belief that global governance erodes sovereignty and arguing that if there is any edge that global governance has over sovereignty, such an edge is driven by sovereign states. Sovereignty, thus, gives global governance life and empowers it. Consequently, global governance should not be seen as a rival to sovereignty. The instrumentalist and the non-instrumentalist understanding of international law both co-exist in international law. The two are complementary because each of them can contribute to the creation of a just world. Thus, a state-centric vision of international law and a global-governance-based vision of international law can both co-exist in international law provided that each has the ultimate goal of bettering the lot of people.

This article is important for the following reasons. One, it engages with the thoughts of Koskenniemi whose ideas have remained influential in international legal scholarship and which continue to trigger scholarly debates in the field. This is evident by the description of Koskenniemi as 'a dazzlingly original and highly influential scholar' whose 'prolific output' has remained 'elegant, powerful and insightful' [4]. Two, reflection on global governance is still an expanding field in international law and global governance is increasingly being underpinned by a number of soft law instruments [5] which are capable of transforming into customary international law and treaties. A critical engagement is therefore crucial because the process of global governance is in a way a law-making process. Three, this article is important because it attempts to situate the place of state sovereignty vis-à-vis the increasing activities of non-state actors (which global governance promotes) in international law. Situating such is imperative because the importance of states in international law is still a subsisting phenomenon. After the introduction, section 2 of the article explores and critically evaluates global governance vis-à-vis sovereignty within the context of Koskenniemi's 'What Use for Sovereignty Today'. This is followed by section 3 which demonstrates this writer's belief that, contrary to the position of Koskenniemi, global governance does not erode state sovereignty. Section 4 demonstrates that Koskenniemi inadvertently made a case for global governance as an acceptable expression in international law when he writes in the same 'What Use for Sovereignty Today' about 'alternative preferences' [6] in international law. Section 4 is followed by the conclusion which synthesizes the interesting findings of this article.

2. Koskenniemi's 'What use for sovereignty today' in context
2.1 Global governance and sovereignty
In his article published over two decades ago, Lawrence Frinkelstein wrote that 'Global governance is governing, without sovereign authority, relationships that transcend national frontiers. Global governance is doing internationally what governments do at home [7]. This definition is difficult to sustain. It is not entirely correct to affirm that global governance institutions act or govern without sovereign authority. This is because, as we will see later in section 3 below, most non-state global governance institutions derive their powers from states.

This writer adopts the understanding of global governance offered by Markus Jachtenfuchs and Nico Krisch. Global governance is viewed as an international governance structure where 'formal international institutions, intergovernmental networks, and private authorities operate side by side, sometimes in unison, sometimes in conflict, and all of them have close relations with a variety of domestic political actors'[8].

One may argue that a negative effect of global governance is that it can stifle the principle of subsidiarity. The principle of subsidiary is an expression which modern international discourse borrowed from the social thought of the Catholic Church [9]. The principle refers to allowing decision making

to rest at the local level without much interference from external bodies. Within the European human rights regime, the principle of subsidiarity has won some acceptance; the same however cannot be said in other areas like trade and investment [10]. But as we will see in section 3, it would not be entirely correct to affirm that global governance clips the principle of subsidiarity. This is because the extent that global governance undermines the principle of subsidiarity is determined by states' consent.

Kumiko Makino has highlighted how national and international institutions, civil society and private actors participate in global HIV/AIDS governance. According to him, this challenges state-centred approaches of traditional international relations theories [11]. Jonathan Kuyper, Bjorn-Ola Linner and Heike Schroeder pinpoint one of the six sections of the preambular text of the 2015 The Paris Agreement (the agreement was adopted on 12 December 2015 at the conference of the parties to the 1992 United Nations Framework Convention on Climate Change 1771 UNTS 107) which is dedicated to stakeholders who are not parties to the agreement. This raises the question of the extent that the participation of non-state actors might constitute 'a threat to national sovereignty' [12]. The trio reasoned that 'It is widely acknowledged that climate governance no longer rests solely with states, if it ever has' [13]. Martti Koskenniemi equally lamented that international legal practitioners have so battered state sovereignty that one would say that the concept has 'lost much of its normative and descriptive meaning'. For this reason, states are today bound by a combined network of formal and informal regimes and rules [14].

The thought of Koskenniemi has remained influential in the community of academic interventions that argue that global governance has eroded state sovereignty. He has been consistent over the years in articulating this view in many of his academic writings. In 'The Politics of International Law – Twenty Years Later' [15], he speaks against the 'manageralists' who have a preference for 'informal regimes'. He opines that globalisation may have shifted political engagement's locus 'from sovereign states' to 'functional regimes [16]. In other work, he refers to the 1997 International Convention on the Non-Navigational Uses of International Watercourses (UN Doc. A/RES/51/229 8 July 1997), an international soft law instrument [17]. He hints that the document gave a non-exhaustive list of factors that should be taken into consideration in determining the right and duties of states regarding a particular river. He also refers to a provision in the document that speaks about contextual agreement or deal-striking, but he adds immediately that the document provides for a role for some 'stakeholder organizations and technical experts' in effecting this contextual agreement. Koskenniemi sees this as a 'transfer of decision making power from... states to stakeholder organizations' like corporations, entities or individuals representing the local population, environmental lobby groups and experts (legal, technical and economic). He sees this arrangement as a modification of the 'terms of political contestation' in the international arena. What he is saying, in other words, is that global governance has modified the traditional terms for contestation in the international arena which is anchored in state sovereignty.

In 'International Law as "Global Governance [18], Koskenniemi further argues that global governance has led to 'fragmentation' and 'deformalization' in international law. According to him, global governance has given rise to 'a plethora of sub-areas or sub disciplines' in international law like trade law, investment law, human rights law, security laws etc. He says that each of these disciplines has its own methodology, practices and institutions which are often difficult to fit together. He likens the scenario to a national multi-party government where different ministries are headed by different parties without a prime minister coordinating the whole, with politics being enacted as 'a struggle for jurisdiction'. Koskenniemi says that this kind of arrangement operates on the principle of 'Tell me which ministry will deal with a problem – and I will tell you how the problem will be dealt with'. According to him, with the above global governance's 'deformalization' regime, effecting treaties or other instruments of governance is made open-ended and couched in programmatic language, thus making the procedural conception of obligations as requiring 'further negotiation between experts whose competence is imagined as relevant to each problem-area'. What Koskenniemi is saying, in other words, is that this new procedural conception of obligations has limited the states' exercise of its full sovereign power of governance. This is because, as Koskenniemi would further opine, states – due to this 'deformalization' and 'fragmentation' – are finding it very difficult to govern their territories according to the preferences of international organizations. The implication is that governance is surrendered to global technical experts [19].

2.2 Global governance and sovereignty in Koskenniem's 'what use for sovereignty today': an evaluative outlook

Koskenniemi's treatment of his conviction that global governance has eroded state sovereignty is very profound in 'What Use for Sovereignty Today?' [20] The work is very significant because Koskenniemi expounds, in a systematic and much more coherent manner, his belief that global governance has decimated state sovereignty.

States are said to be sovereign; and this implies that 'they need not accept any authority from above or from anyone else unless they choose to do so '[21]. Article 2 (7) of the United Nations (UN) Charter [22] precludes interference in the 'domestic jurisdiction' of any state. Thus paragraphs 1 and 7 of the United Nations General Assembly's resolution 50/172 of 1995 [23] affirm the sovereignty of States and the obligation of all countries under the UN Charter to respect the right of states to freely determine not only their political status but also their economic, social, and cultural development.

According to Koskenniemi, sovereignty has been criticized from moral, sociological, and functional dimensions [24]. From a moral perspective, sovereignty emphasizes the selfish interests of a community of states rather than the interests of other players (like individuals); sociologically, sovereignty's obsession on the objectives of the state fails to accommodate the interdependencies of all human beings and the link between all the human persons in the world; from a functional standpoint, sovereignty has failed to respond to issues threatening the world like climate change, terrorism and the inadequate protection of human rights [25].

Koskenniemi believes that based on the above critiques of sovereignty, many international lawyers subscribe to the thinking that sovereignty is principally a functional activity which entails responsibility to the population and not merely something intrinsic; in other words, sovereignty is not sovereignty if it does not serve or deliver certain values to people [26].

For Koskenniemi, the above reasoning is a product of

'reduction to purpose' which postulates that a political authority is judged by the extent of the fulfillment of its purpose, namely the satisfaction of what people want. But there are two difficulties with the reduction to purpose approach. The purpose a government is supposed to serve is disputable; if we say 'security and welfare' is the purpose, there is no consensus on what security actually means as evident in the fight against terrorism, for instance [27]. Koskenniemi further argues that even if the purpose of a particular regime is agreed, the process for arriving at this purpose may be disputable.

The implication of the reduction-to-purpose argument, according to Koskenniemi, is that we have today a world system of management which emphasizes the role of law or governance as the promotion of activities that deliver values to the people and not the protection of the traditional formal sovereignty. This has generated a network of experts and global executives who specialize on and emphasize these values, giving rise to the transfer of power from states to these global experts and executives [28]. This, thus, denies the people the right to organize themselves as a political community and the right to determine how they are to be governed because of the Western origin and base of the language and direction of globalization [29]. Therefore, believes Kosenniemi, globalization trumps the idea of people being responsible for their life; and allowing people to be responsible for their life was what sovereignty was all about when it was invoked in the struggle against colonization and theocratic rule in Europe.

This writer believes that Koskenniemi is correct in affirming that global experts and executives (often affiliated with international governmental organizations, multinational corporations, non-governmental organization, organs of international law etc.) appear to be eroding the power of the state. This can be illustrated with an example. Traditionally a state could go against any entity within its territory based on its sovereignty if the state felt that the entity was operating against its interest, but this is not easily so today in relation to multinational corporations. Under the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States [30], which was drawn under the auspices of the World Bank (a group of global executives and experts!), multinational corporations can affirm and insist that their contracts have been breached by the state. The convention created the Center for the International Regulation of Investment Disputes. This arrangement weakens the ability of the state to act even against multinationals if it is in the interest of the state to do so.

There is also an element of truth in Koskenniemi's belief that globalization denies the people the right to organize themselves as a political community and the right to determine how they are governed due to the western origin and base of the language and direction of globalization [31]. Put simply, Koskenniemi is saying that western-inspired globalization makes it difficult for non-western states to govern its citizens unhindered. This erosion of the power of the state is brought out clearly in the agreements of World Trade Organization (WTO) especially in relation to developing nations. WTO, whose mission is to globalize world trade by the removal of barriers to trade, has been protective of European Union (EU), United States (US), Japan and Canada multinational pharmaceutical corporations as shown in the protection of the trade-related aspect of intellectual property; this has some detrimental effect on developing nations [32]. But the same WTO system appears unconcerned in reversing the reluctance of the EU and the above-mentioned nations to reduce their agricultural subsidies so that developing nations can on the basis of equality in competition access the market of these countries [33].

However, it would be risky to ignore the moral argument invoked against sovereignty which Koskenniemi dismisses. Much of today's contemporary theories in international law follow the non-instrumentalist vision of international law because they believe that states' interest should not be pursued to the detriment of humanity itself [34] and the interest of other players in international law. As Iain Scobbie would point out, 'just as the state is not co-extensive with society, international unsociety, where states dominate, is markedly less representative of humanity [35].' An absolutely formalistic vision of international law would not support giving a role to humanity. It would prefer concentrating every role in the state. Caving in to such a formalistic vision would be a return to an era where a state would, for example, violate human right and invoke the concept of sovereignty in order to preclude criticism of her action. For the sake of human rights, the traditional Grotian model of international law has to give way to the Kantian model in order to guarantee other rights outside the rights of states in the international arena.

Also, the human rights movement of today is partly a product of effort by non-state players which Koskenniemi-labelled 'global experts and executives'. An impetus to today's human right movement is the UN Charter. An important goal of the UN as indicated in article 1 of the said Charter [36] is the promotion and encouragement of human rights. It was partly lobbying by civil society, especially American non-governmental organizations, (NGOs) that led to the insertion of the human rights goal in the UN charter [37]. One would say, thus, that it was through partnership between the states and non-state actors like civil society organisations that the human rights concern of the UN was born. Far, therefore, from merely eroding into the sphere of sovereignty, the so-called global experts and executives can through collaboration with states be force for good for a better world. Most of the structures of national and international communities (for example, individuals, groups, multinational corporations, media, state-like entities) are so connected across state borders making up what we call 'globalization [38]' from which emerge global experts and executives. This writer will now demonstrate in the next section that global governance and indeed global experts and executives do not erode into state sovereignty. In the midst of the above-highlighted connection across state borders, states remain important and still matter [39]. This non-erosion of state sovereignty by global governance will be demonstrated by appealing to three areas of international law: the relationship between sources of international law and soft law, subjects of international law, and individual criminal responsibility.

3. The non-erosion of state sovereignty by global governance: examples from different areas of international law

3. 1. Sources of international law: soft law's relationship with treaty and customary law

According to article 38 of the Statute of the International Court of Justice (ICJ) [40], the ICJ decides disputes by applying the following: international treaties, international custom, general principles of law which are recognized by

civilized nations, and judicial decisions and teaching of 'most highly qualified publicists' of various nations. The article provides us with the generally recognized formal sources of international law; in practice, however, treaties and international custom are the two most important of these sources [41]. Laws emanating from these formal sources are often referred to as hard law and are always binding. 'Soft law' is often used for instruments used by states and international organizations in their relationship with one another and which do not originate or emanate from the law-making mechanisms of article 38 [42]. Soft laws are not rules like treaties but are rather instruments which, although not binding states the way that treaty provisions do, are normative and indicate behavioral standards [43].

Koskenniemi described the rise in international law of the above-described global experts and executives as the 'managerialist' approach to international affairs; according to him, this approach is functionalist in orientation and prefers informal regimes [44]. In other words, the approach is founded on soft law.

One may argue that soft law has the potentiality of becoming hard law by transmuting into a treaty and when this happens, it becomes binding on the state. The transmutation seems like a 'triumph' of the global executives. A good example of this is reflected in the process that gave birth to the International Convention on the Elimination of all Forms of Racial Discrimination [45]. The convention actually drew from the United Nations Declaration on the Elimination of all forms of Racial Discrimination [46], a soft law instrument. But such a transformation from soft law to hard law was only possible because it was so desired by states. States made the convention. Thus, the transformation of soft law to treaty is possible only if states so desire.

Also, during the Earth Summit in Rio de Janiero in 1992, state-participants emphasised the importance of sustainable development. The civil society requested for information on compliance levels with and the impact on policy makers of the concept of sustainable development which is enshrined in the 1992 United Nation's Rio Declaration on Environment and Development [47]. This gave birth to the World Bank Environmental Regulations and Standards which has led to the creation of an Inspection Panel, monitoring compliance and allowing citizens who are affected by a World Bank-funded project to not only complain but also to request the panel to independently investigate and verify compliance with Rio 92-inspired standards [48]. This is a challenge to states' legal monopolistic control of the international affairs and mechanisms of accountability [49].

Although the World Bank standards and the activities of the Inspection Panel appear to lend credence to the position of Koskenniemi that globalization has given rise to the transfer of power from states to global experts and executives, a closer investigation shows that the power of states remains intact. This is because the standards with which the Inspection Panel investigates states are standards set by states themselves (like those set in the 1992 Earth Summit). Thus, there is no case of transfer of state power to global experts and executives.

In addition, one may reason that soft law has also the potentiality of giving rise to customary international law which is binding on states – in which case there is a 'triumph' of global executives and experts. Article 38 of the Statutes of the ICJ [50] defines customary law as 'evidence of a general practice accepted by law'. A good example of how soft law can lead to the emergence of customary international law is when it (soft law) brings about widespread and consistent practice or/and is indicative of *opinio juris*. This is shown in the 1986 Nicaragua case where the ICJ reasoned that the description of acts that constitute armed attack in the United Nations General Assembly (UNGA) resolution 3314 [51] 'may be taken to reflect customary international law' [52]. Thus for the ICJ, an UNGA resolution can be an evidence of the existence of a customary law. Again, one sees here that the 'emergence' of customary international law from a soft law instrument is not possible without the state. The general practise that article 38 speaks about is the practise of states. It is the state that accepts the general practise as law (*opinion juris*). Also, the above-mentioned UNGA resolution 3314 is essentially an act of states.

3.2. Subjects of international law

One of the effects of the Treaty of Westphalia (1648) was the doing away with papal and imperial power. State sovereignty is believed to have emerged in the modern era from the treaty. Koskenniemi believes that the emergence of global experts and executives undermines the Westphalia concept of sovereignty because there are now non-state subjects – like individuals and groups – competing for space with states in the international arena [53]. Traditionally, the main subjects of international law are states; the only exceptions are the Holy See and the Maltese Order [54]. The Vatican is a state whereas the Holy See is not, but the latter remains a subject of international law.

Based on the above traditional belief, Koskenniemi in 'What Use for Sovereignty Today' would give the impression that the presence of other figures in the international law is a recent phenomenon that erodes the concept of state sovereignty. But such an impression is not correct. An event in the history of international law shows that the presence of other actors was compatible with the concept of sovereignty. In 1532, Francisco de Vittoria held the belief that the indigenous people of South America had some right to protection in international law [55]. Thus, right from the 16th century the international status of individuals and groups (groups are in fact collections of individuals) as players in the international arena together with states is not in doubt.

It is however important to point out that the recognition of non-state actors in international law is a product of sovereignty. It is the states that accord recognition to non-state actors as demonstrated by Declaration on the Rights of the Indigenous People [56]. This declaration is highly significant because its emergence was outside the exclusive control of states. In its drafting process, the indigenous people were acting 'on almost equal terms to State representatives'[57] and this was considered as 'revolutionary in the UN system' [58]. But this equality of the indigenous people with states during the formulation of the declaration and the recognition of the rights of the indigenous people in the declaration were possible because states allowed them. It is therefore not an encroachment into sovereignty if some non-state actors are recognised in international law since such recognition derives from states.

In addition, the active role of individuals in the global arena helps in bringing to fruition the desires or intentions of states. A Swiss writer, Emeric de Vattel, 'was the first (arguably) to have written a comprehensive manual on international law, to be used by the chancelleries of the world [59]. Other individual writers on international law have influenced the following: the characterisation of gender-based persecutions

as crimes against humanity, 'the drafting of the Siracusa Principles on derogations and the Limburg principles on economic, social and cultural rights', and the decisions of some international bodies [60]. Vattel and some of these other individual writers would obviously fall within the bracket of Koskenniemi's global executives and experts. But as jurists, these individuals help in bringing to fruition the intention of states. Thus, they could not have posed a challenge to states themselves. They and their writings are recognised in international law because states so recognize them. Article 38 (d) of ICJ Statute authorises the ICJ to employ 'the teachings of the most highly qualified publicists of the various nations' as subsidiary means for determining the rules of international law. The above-highlighted input from 'highly qualified publicists of the various nations', who fall within the class of the so-called global experts and executives, shows that their rise in the international arena does not eat into the power of the states because they are accommodated in the Statutes of the ICJ, an instrument emanating from states.

3.3 Individual criminal responsibility

The International Criminal Court (ICC) was established in 1998 by the Rome Statute [61]. The emergence of this court is viewed as part of the global governance structure [62]. Articles 5, 12 and 13 of the statute show that the ICC has jurisdiction over international crimes of genocide, war crimes, crimes against humanity and aggression committed by any citizen of a country that is a party to the statute or committed on the territory of the state parties to the Rome statute. This is clearly a shift of authority from states to an international institution, the ICC [63]. Traditionally in international law, individual criminal responsibility was usually considered a domestic affair of states. There was nothing like individual criminal responsibility for international crimes. With the coming into force of the Rome Statute, one may argue that the ICC as a transnational institution (and not the states) appears to control the activity of the global community [64] in relation to certain crimes. Also, non-governmental organisations (NGOs) were active in the formation of the ICC. The establishment of the ICC via the Rome Statue was a product of an interaction between states and other numerous non-state actors: a coalition of NGOs (Coalition for the International Criminal Court (CICC)) and individual leaders.

However, not minding the emergence of the ICC as a global governance institution, the influence of the NGOs in its formation and the evolution of individual criminal responsibility towards the international community (and not the states) for international crimes, the role of states is not diminished in international law. Firstly, the Rome Statute came into being because it was signed and ratified by state parties. Secondly, article 17 of the Statute enshrines complementarity that provides that ICC can exercise jurisdiction on any of the core crimes of genocide, crimes against humanity, war crimes and aggression only if a state is unwilling or unable to genuinely prosecute any case bordering on any of those core crimes. In other words, the ICC exercises jurisdiction only if a state is unwilling to prosecute. Thirdly, as shown in article 3 of the Rome Statute, a document called The Elements of Crimes, is an important reference text for the ICC's interpretation and understanding of the core crimes of genocide, war crimes and crimes against humanity. This document, which defines the correct interpretation of the provisions of Rome Statute, is produced by the Assembly of State Parties to the ICC Statute. Since the document is produced by states, the enduring importance of states in international law is thus highlighted.

3. 4 Conclusion

The above shows that giving a role to the so-called global executives and experts in international arena is a product of 'consent' from states. Global executive and experts exercise their role based on the extent of power granted to them by states. Such a role, therefore, does not in any way undermine state sovereignty.

The job of international law is to accommodate all partners in the international sphere. None should see the existence of the other as a threat to its own existence. This accords with the supreme document of the United Nations, the UN Charter, a document emanating from states themselves. The document envisages the existence of other international players apart from states. The preamble begins with 'We the peoples'. In the speech that he delivered following the award of the 2001 Nobel Peace Prize, Kofi Annan said, 'What is not always recognized is that "we the peoples" [in the UN Charter] are made up of individuals whose claims to the most fundamental rights have too often been sacrificed in the supposed interests of the state or the nations [65]. 'We the peoples', therefore, legitimises the belief that states are not the absolute masters in the international law. Sovereignty should be interpreted in such a way that it would be elastic enough to accommodate other players in the international field.

4. 'Alternative preferences' and international law

To further his critique of the involvement of global experts and executives in international law, Koskenniemi reasons that in international law, there are no 'ready-made answers' for tackling problems about the best way to govern the world. He believes that international law could rather be used 'as a vocabulary for articulating alternative preferences and for carrying out (strategic) manoeuvres in order to limit the powers of global executive classes and expert groups' [66]. In this criticism, Koskenniemi is inadvertently making a case for global governance as an acceptable expression in international law when he talks about international law as a possible vocabulary for expressing 'alternative preferences'. Positions that favour active role for global experts and executives in international law could be examples of those 'alternative preferences'.

Employing international law as vocabulary for verbalising 'alternative preferences' will inevitably lead to a different understanding of what international law is or its objective. Article 1 of the UN Charter says that the purpose of the United Nations is the attainment of common ends like international peace and security, international cooperation etc. This is an abstract purpose – how how to achieve such 'peace' or 'security' inevitably leads to disagreement [67]. This disagreement paints the picture of the nature of international law. Answer to the question of what any of these values like 'peace' and 'security' means and how they are to be achieved is dependent on one's circumstance. What law is and what should be its content – whether at the domestic or international level – is linked to socio-political context [68]. Thus, 'International law does not exist in an intellectual vacuum' [69].

A theory provides one with the intellectual platform for understanding the world and organizing received data about the world or some other aspect of human activity [70]. A person's socio-political context informs his/her choice of

legal theory and each legal theory has its own aims and concerns [71]. Thus, there are the traditional theories like natural law theory, which is founded on an appeal to something considered higher than positive law (religious doctrine, reason or morality, for example) [72], and legal positivism which maintains that only rules emanating from state consent are law (like those recognized in article 38 of the ICJ statute) and is thus unwilling to accept as normative some soft law instruments like UNGA resolutions [73].

Critical legal scholars insist that law is full of contradictions and in some cases indeterminate and therefore law could not be said to be objective, principled, neutral or rational [74]. A strand of critical legal scholars known as New Approaches to International Law (NAIL) points out the biases in international law [75]. NAIL does this by ideologically critiquing the content and structure of international law from the standpoint of identity politics like race, Third World Approaches of International Law (TWAIL) and gender [76].

Wha the above goes to show is that international law is structured to accommodate as many mind-sets and worldviews that the human mind can evolve. This, thus, accords legitimacy to the two worldviews that appear to be in contention in Koskeniemmi's 'What Use for Sovereignty Today?': a mind-set that is state centric and another one that is elastic enough to hinge international law not only in state but also in non-state regimes.

One may be quick to add that an international law that is liberal in accommodating any world views gives birth to a multiplicity of legal theories which are sometimes contradictory – like the two in contention in 'What Use for Sovereignty Today?' – and even confusing. International law is not a stranger to contradictions. David Kennedy is prominent in the field of NAIL. He believes that studying international law yields 'illusory [that is, 'deceptive'] benefits because international law is just a mask for political and ethical choices [77]. Yet the feminists, who also fall under the same NAIL umbrella, would not agree that their project yields illusory benefit. The feminists rather believe that their project is geared towards yielding something normative: equality between male and female [78]. Even among feminists themselves, there are discordant tunes. Third world feminists – as exemplified in Kapur – would hold that the feminist discourse's focus on women should not be tied to sex but should be expanded to include other factors in women's lives like religion, race, class and wealth [79]. Thus, there are contradictions and confusion even in the feminists' camp.

We see these confusion and contradiction reflected even in the Third World Approaches to International Law (TWAIL). Common to TWAIL strategy is debunking the 'progress narratives in the discipline' of international law and showing the existence of varied 'forms of hegemonic power within international law' which are 'aimed at subjugating the Third World' [80]. TWAIL shows that European states, since the first contact of colonial power with its subjugated people, have always constructed a 'relationship of domination' [81]. But there is confusion and inconsistency among TWAIL scholars. There is some disagreement with regards to the right TWAI approach: whereas some of the scholars, because of the subjugating power of international law, see international law as essentially fostering injustice, others see it as a product that can be reformed and used for the creation of a fairer international law [82].

This confusion in international law is further reflected in the fact that even international academic lawyers do not know the coverage of international law. As early as in 1999, the American Journal of International Law published a Symposium on approaches in International Law [83]. The publication excluded an approach as popular as TWAIL in its mapping of approaches to the study of international law [84]. Yet, TWAIL is a method in the study of international law in the same way as the feminist approach, for instance [85].

The multiplicity of contradictory and opposed theories and confusion in international law pose a challenge to students of or new comers to international law. The 'mushrooming of theory' makes it difficult for even the most skilled reader to orient herself amongst countless theories and methods [86].

But it is in these contradictions that the understanding of international law evolves. International law, opines David Kennedy, is worth studying because of its contradictions [87]. David Kennedy, as we saw above, speaks about international law as mask for political and ethical theories. Studying the multiplicities and complexities of international law helps one to unmask the often non-expressed political and ethical choices beneath international law. The presence of contradictions and confusion in international law should not be construed as a failure of field. Any intellectual position, worldview or mannerism in international law should be acceptable provided it has the goal of bettering the lot of people. After all, as Jan Klabbers pointed out, 'the challenge for international law... is to make it contribute to a better world [88]. This, according to Hillary Charelesworth, entails refocusing international law 'on issues of structural justice that underpin everyday life' [89]. It is within this context that one views the two contentious worldviews in Koskenniem's 'What Use for Sovereignty Today?'. Reflecting on the merits or demerits of any of those worldviews is healthy to the enterprise of international law. It would help in understanding better what international law is. Also, each of the two worldviews is in practise useful to the cause of international law to the extent that each contributes in furthering a secure and better life for people.

5. Conclusion

Global governance is not a threat to sovereignty. Giving a role to the so-called global executives and experts in international law is a product of consent from states. This is evidenced in different areas of international law and thus the role of those afore-mentioned executives and experts does not undermine state sovereignty.

Also, if, as Koskenniemi opines, international law is 'a vocabulary for articulating alternative preferences' [90], global governance could be one of those preferences. International law is structured to accommodate different worldviews and one of the roles of international law is to resolve contradictions and confusion arising from a multiplicity of theories generated by such a structure. Following the thought of David Kennedy on international law being a mask for ethical and political theories, international law has also the role of unmasking political and ethical choices beneath international law.

Finally, all the 'alternative preferences' in international law (like preference for state-centric worldview or preference for global-governance-based worldview) can be useful and acceptable in international law if they promote the wellbeing of the human person. After all, law has a developmental role [91].

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