"S.S.LOTUS" TO *"GAMBIA V. MYANMAR"* Jurisprudence: Incompatibility of Principles of State Sovereignty and Human Rights

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Abstract- Human Security and welfare are the central themes of a State's existence. It is the general rule of international law that States are bound to respect and protect humans and fulfil their human rights commitments and obligations and safeguard the fellow human-beings from abuses and violations. But it is often seen throughout history that State by its power and authority shielded by sovereignty has used it as an arm to suppress its own people. Initially, it was the negation, violation and suppression of civil, political, economic, social and cultural rights which resulted in the various revolutions of the world and the subsequent adoption of the human rights covenants. Whereas, these contemporary forms of State aggressions took an aggravated extent of destruction of indigenous identity, racism, apartheid, ethnic cleansing and genocide described as the crimes against humanity with its power and authority. The catastrophes of the Second World War experienced by the international community gave the understanding of exclusive power of sovereignty attributed to the State. To prevent and to achieve the principle of the "never again clause", the international community acknowledged the fact that conferring human rights issues within the exclusive domain of the State will give the State the uncontrollable power which can be a threat to international peace and security and to entire humanity. To overcome these situations, UN has taken many viable initiatives through the Charter of UN and other international treaties and conventions to protect human rights and to make States responsible and accountable for its violations. But its inherent constraints and practical difficulties undoubtedly created by the besieged State-Centrism upholded by the strong and big powers in international relations weakened the efforts which were even reflected in the history of international legal jurisprudence. Hence, this paper focuses on the judicial elucidations and advancements on the incompatibility between the principles of State Centrism and its sacrosanct obligation of protection of the human rights of its people.

Key Words: **Human Rights, ICJ, International Law, State Sovereignty**

I INTRODUCTION

From its very inception, State Sovereignty and human rights are fundamentally conflicting norms. The principles enunciated by the UDHR emphasising the rights of individuals crumpled against the rights of States based on the Westphalian system.[1] Confusions and conflicts emerged between the ever hailed sovereignty principle of non-intervention and the theories of universal human rights principles. International obligations were thus viewed as a commitment or rather a limitation or restriction on the sovereignties of States. For the reason, differing views, discussions and arguments on the question of predominance of State Sovereignty and necessity of protection of human rights evolved in the records of international law jurisprudence emanating from the famous *"S. S. Lotus"* Case.[2]

II THE LOTUS APPROACH

[1]The Westphalian doctrine was named after the Peace of Westphalia signed in the year 1648, which ended the thirty years war by the major continental European States. This principle simply means that each nation State has sovereignty over its territory and domestic affairs, to the exclusion of all external powers. There should be no interference of domestic affairs from another country and all States are equal in international law. Refer, Valentine Wakoko. "The Concept of State Sovereignty from the 1648 Treaty of Westphalia to the Present Day". Available at http://www.academia.edu

[2] *The Case of the S.S. Lotus (France v. Turkey), Judgement of the Permanent Court of International Justice, 7 September 1927*

The Lotus Approach or Lotus Principle or Lotus Test is considered as the foundation of international law, which provides that unless contravening any explicit prohibitions sovereign States can act according to their wishes. In fact, it is one of the first cases which scrupulously discussed the rights, jurisdiction and independence of States.[3] The Court exclusively laid down the principles that unless an international treaty or customary law permits, a State cannot exercise its jurisdiction outside its territory; so also that a State may exercise its jurisdiction in any matter within its territory even if no specific rules of international law permit it to do so. Hence, this rule gave the interpretation that States enjoy a very wide measure of discretion, which is restricted only by the prohibitive rules of international law. But it was seen that the ICJ interpreted these principles rarely in future cases. The first among these cases is the *Case of Legality of the Threat or Use of Nuclear Weapons*[4]. In this case on the threat and use of Nuclear Weapons, applying the Lotus principle the Court's contention was that the permissive rule allows the States unequivocally the freedom to threaten or use nuclear weapons unless it is prohibited by a treaty or by a customary international law. But at the same time, the Court considered certain cardinal principles of International Humanitarian Law (IHL) to protect the civilian populations and combatants.[5]

Thereafter, in the *South West Africa Case*[6], the World Court considered the litigation relating to the continuance of the mandate system for South West Africa and the question of interest of the State in issues of humanitarian concerns.[7] This case is significant for the dissenting opinion of Judge Kotaro Tanaka[8] which

[3]The S.S. Lotus, a French steamship and Turkish Ship collided on the high seas in 1926. As a result the Turkish national died. Thereafter, the Turkish ship reached Turkish port. Turkish Government arrested French nationals and officers and started criminal proceeding against them on charges of manslaughter. At trial, the French argued that the Turkish court does not have jurisdiction, but the court convicted the French officers sentencing them to imprisonment. The French government protested the arrest and the conviction and requested that the case be transferred to a French court. Later, Turkey and France referred the dispute on the jurisdiction to the PCIJ. Refer, Hugh Handeyside. (2007). The Lotus Principle in ICJ Jurisprudence:Was the Ship Ever Afloat?. Michigan Journal of International law. Vol. No.29.Issue No.1.Pp. 71-94.

[4]*Case Concerning the Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of the International Court of Justice, 8 July 1996*

[5]The first principle laid down by the Court states that "States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets". The second principle enumerates that "it is prohibited to cause unnecessary suffering to combatants: it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering". Nuclear Weapons Case, Page Number 97, Paragraph 75.

[6] *Case Concerning South-West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Judgement of the International Court of Justice, 18 July 1966.*

[7] Summary of the Case: In 1960, former States Members of the League Ethiopia and Liberia instituted separate proceedings against South Africa in a case concerning the continued existence of the League Mandate for South West Africa. It dealt with the duties and performance of South Africa as mandatory Power. The Court was requested to make declarations to the effect that South West Africa remained a territory under a Mandate and that South Africa has violated its obligations under that Mandate. Therefore, the mandatory authority was subjected to the supervision of the U N. Thereafter, the Court made an order admitting Ethiopia and Liberia to be in the same interest and joining the proceedings. Analysing the Case, South Africa filed four preliminary objections to the jurisdiction of the Court. Further in its judgement in December 1962, the Court upheld its jurisdiction and denied all other arguments. Later in 1966, the Court gave second phase of judgement. The decision was taken with equal votes, so a casting vote of the President was required to take the decision. As a result, the Court founded out that Ethiopia and Liberia does not have established any legal right or interest appertaining to them in the subjectmatter of their claims. Accordingly, the Court decided to reject those claims.

[8]Judge Kotaro Tanaka is a Japanese Jurist, Professor of Law and served as the Minister of Education of Japan. He was appointed as the jurist of ICJ in 1961 regarding South-West African Cases and added two joint declarations, two separate opinions and two dissenting opinions. He was credited for his dissenting opinion in the South-West Africa Case in which he advocated for the international legal norms for the prohibition of South African practice of Apartheid. He summarised in this case that the UN member states had

was considered as the best elucidation of the concept of equality, human rights and humanitarian concerns in the existing literature. Analyzing the legal interests of the States, the learned Judge considered the humanitarian concerns as a matter of interests for the States and its obligations. The Judge further substantiated that the general principles of law should not be restricted to certain fundamental principles of law such as the limitation of State sovereignty, third-party judgment, limitation of the right of self-defense, pacta sunt servanda, respect for acquired rights, liability for unlawful harm to one's neighbour, the principle of good faith, etc and should rather be considered as the general theory of law.[9]

Later in the *Palestinian Case*[10], the ICJ in its Advisory Opinion of the Israeli- Palestine conflict on the Construction of a Wall in the Occupied Palestinian Territory[11] underlined the international obligations and commitments of States towards the Charter provisions and IHL rules. So also the Court found this case an opportunity to determine the essence of right to self-determination in the life of the Palestinian people and undeniably declared the principle of self-determination to the status of erga omnes. On similar lines, in the *Kosovo Case*[12] which experienced a prolonged and capacious fight for human rights and self-determination, the ICJ interpreting Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States 1970 reiterated the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State. More precisely, the Court gave the opinion that the scope of the principle of territorial integrity is confined to the sphere of relations between States. Hence in the light of the Lotus Principle, the Court clarified that under international law there is no prohibitive rule against the issuance of unilateral declaration of independence and hence the declaration of independence in respect of Kosovo did not violated international law. To the contrary in this case, the Lotus approach was taken as a positive test in a different or changed rationale of State- Centrism. In brief, this case gave a new turn establishing the fact though absolute State-centrism was the earlier driving force behind this Principle, a new and extended version of it will include recognition of declaration of independence and self-determination of States and its people, which were once under domination and suppression. It evidenced a shift in the State-centric approach to a State-protective rationale embodying human rights principles. But this contention was criticised as being detrimental to the sovereignty of a State. But the legal scholars of today

the legal obligation to respect human rights and fundamental freedoms.

[9]Refer, *Dissenting Opinion of Judge Kotaro Tanaka in the Case Concerning South-West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Judgement of the International Court of Justice, 18 July 1966, Page Number 295.*

[10] *Case Concerning the Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of the International Court of Justice, 9 July 2004.*

[11]Towards the end of the First World War, under the Mandate system of the League Palestine was entrusted to Great Britain. In 1947, Britain announced it"s unilateral withdrawal from all the territories. In the mean time, through a Resolution, General Assembly recommended for a partition of the territories of Jewish and Arab State. While the Arabs opposed Resolution, Israel proclaimed its independence as a State in 1948. This led to the armed conflict between Israel and Arab States. As a result of this, the plan of partition was not brought into effect. In 1949 through a series of UN mediations, a Green Line was fixed between Israel and Jordan. Consequently, in 1967 there was an outbreak of war between the States. Israel occupied all the territories which were a part of British Mandate. Thereafter, the Security Council unanimously adopted a resolution confirming the illegality of occupation. Later in June 2002, Israeli authorities began constructing a wall which was called by Israel a security fence and Palestinians, an apartheid wall. A restrictive system of permits and passages were made which solely applied to the Palestinians. Israel justified construction of the barrier/wall by declaring that since it has to ensure the security of Israelis, it has the right and the duty to protect the security of its citizens and to defend its territory. Based on these facts, the General Assembly, by a resolution decided, in accordance with the Charter of the UN requested the ICJ to urgently render an advisory opinion.

[12] *Case Concerning Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion of the International Court of Justice, 22 July 2010.*

also favoured the idea that international law is not limited to State-constraints and it is beyond that, highlighting and stressing the importance of individuals and peoples independent actors in the international legal system. Hence, it was acknowledged that the norm of right to self-determination can be considered as a substitute to concept of State sovereignty in the application of the Lotus Principle.

III ICJ INTERCESSION IN GENOCIDE CASES

The Convention on the Prevention and Punishment of the Crime of Genocide (hereafter referred to as the "Genocide Convention" or "CPPCG") drafted in 1948 was a revolutionary step in international law which warranted State responsibility on the States for the violation of its obligations to prevent and punish genocide. But it lacked in its precision of wordings with reference to the submission clause. The Convention raised the question of application of submissions clause only to a State's obligation to prevent and punish genocide committed by others and to the application of State's obligation to avoid committing genocide to itself.[13] Even after several deliberations till 1993 the issue was not settled. Then in the *Bosnia and Herzegovina Case*[14] wherein Bosnia sued Yugoslavia in the World Court accusing Yugoslavia of failing to prevent, punish and perpetrating genocide, the ICJ concluded that the Genocide Convention gave the ICJ authority over a suit charging a State's perpetration of genocide.[15] Even after this revolutionary movement, main challenge under this Convention was the non-existence of an international forum to entertain penal prosecution against alleged individual liability for the commission of genocide. As precedence, certain national courts have already applied Genocide Convention in some earlier cases, but have elaborated only limited parameters of Genocide.[16] In this juncture, doubts and questions aroused as to the extent and scope of jurisdiction of ICJ in deciding and implementing its orders in cases of genocide in establishing State responsibility. In addition, the extent of the power of the Security Council under the Charter of the UN to act in compliance with an order of the ICJ was also raised in this context.[17] In the Bosnia Case, Bosnia initially approached the jurisdiction of ICJ in preventing Yugoslavia from committing genocide of Bosnian Muslims and gained an interim order in this respect. Since Yugoslavia continued with their genocide crimes against Bosnians negating the interim order, Bosnia again approached ICJ for another interim order preventing genocide in Bosnia by Yugoslavia. The order was granted but again went in vain. These circumstances again questioned the importance and effectiveness of the interim order granted by ICJ.

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[13]Refer, John Quigley. (2007). International Court of Justice as a Forum for Genocide Cases. Western Reserve Journal Of International Law, Vol. No. 40, Issue No.1, pp.243-263.

[14] Refer, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina. v. Yugoslavia. (Serbia. & Montenegro.)), Preliminary Objections, International Court of Justice, July 11 1996, Page Numbers 595, 623.

[15] In 1990‟s, the Socialist Federal Republic of Yugoslavia (SFRY) began to disintegrate due to pressures of nationalism, structural problems and economic collapse. Croatia, Slovenia, Macedonia and Bosnia Herzegovina declared their independence and became members of the UN. The SFRY was renamed as Federal Republic of Yugoslavia (FRY) and consisted of Serbia and Montenegro. The Bosnian War started in 1995 and was characterized as the first national and international conflict which took place in Yugoslavia. Thereafter, Bosnia filed an application against Yugoslavia in1993, to stop ethnic cleansing in Bosnia. This was one of the first cases where a State sought judicial injunction against ongoing, widespread atrocities being committed against a civilian population or Genocide.

[16] Refer, Case of the Attorney-General of the Government of Israel v. Adolf Eichmann, Israel, District Court of Jerusalem, Criminal Case No.40/61, 12 December 1961.

[17]Refer, the Charter of the UN under Chapter XIV, titled as „International Court of Justice‟, Article 94 states that: "Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party. 2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgement".

Again the extent of jurisdiction of ICJ was also raised in deciding genocide in Bosnia Case when the Court faced the difficulty in attributing atrocities and crimes committed in Bosnia to genocide. As a result, proving responsibility for genocide on Yugoslavia was kept in abeyance. In these circumstances, to prove atrocities in Bosnia to genocide, Bosnia submitted media reports before the ICJ in line with the *Tehran Hostages Case*[18] and *Nicaragua Case*,[19]wherein the media reports were submitted in support of allegations. In this respect, Judges Mohammed Shahabudeen and Judge Christopher Gregory Weeramantry accepted these evidences and made it permissible for the acceptance of any source of information amounting to Genocide.

Another significant question which was raised in this case regarding the efficacy of the genocide cases was whether the interim orders passed by the ICJ served the purpose. It is known that the Genocide Convention was invoked to prosecute individuals for the crime of genocide and not to bring suits against the State. But at the same time, the court declared that what was happening in Bosnia is "ethnic cleansing" and alleged the Bosnian Serb militia responsible for the same. Here, the courts contention to prosecute the individuals than the State was highly criticised and questioned on the basis of the argument that there can be situations in which genocide can be committed by individual State officials without the knowledge that genocide being committed. Likewise, genocide can also be committed by State-perpetration and hence in such cases implementing and committing genocide by such officials or commanders can be without genocidal intent.

With respect to the issue of State perpetration of genocide, it is observed that in legal perspective Genocide can be categorised only with respect to State-wise complaints than individual criminal prosecution. In particular, before an international forum an individual can be charged under the category of crimes against humanity and in wartime under war crimes. And if the prosecution is in a national court he can be charged with crimes like murder or under some other acts. But under international law, a State can be sued and be prosecuted for genocide in ICJ only on the basis of jurisdiction. A clear meaning of this indicates that in cases of perpetration of genocide by States, one State can sue another State only if Genocide Convention obligates States not to commit genocide. This clarifies that the Genocide Convention was essentially and primarily designed as an instrument directed towards the punishment of persons committing genocide or genocidal acts. It also prevents the commission of such crimes by individuals and retains that status. The determination of the international community to bring individual perpetrators of genocidal acts to justice, irrespective of their ethnicity or the position they occupy points to the most appropriate course of action. Therefore, the ICJ is not the proper venue for the adjudication of the complaints. This was confirmed in the 1996 Bosnia Herzegovina judgment.[20]

But the judgment in 2007 finally did not accepted the responsibility of Yugoslavia under the Genocide Convention. Disappointed by the decision given by the ICJ, in their dissenting opinions Judges Owada, Shi, Koroma, Tomka, and Skotnikovin stressed and stated that only the States which perpetrates genocide itself violates Genocide Convention.

IV THE CASE OF GAMBIA V. MYANMAR

In 2019, a suit was filed by the Republic of Gambia against the Republic of the Union of Myanmar for the massive human rights violations against Rohingya people breaching the Genocide Convention. Consequently, the ICJ ordered for Provisional Measures against Myanmar pending the Case.[21] To investigate these violations, an 'Independent Fact-

[18]Refer, Case Concerning United States, Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Order, 12 V 81, International Court of Justice, 12 May 1981.

[19]Refer, Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America), Judgement of the International Court of Justice, 27 June 1986.

[20]Refer, Joint Declaration of Judge Shi and Judge Vereshchetin in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Yugoslavia) Preliminary Objections, Judgement of International Court of Justice, 11 July 1996. Available at http://www.un.org/law/icjsum/index (accessed on 11/10/2023).

[21] Refer, Application of the Convention on the Prevention and Punishment of the Crime of Genocide

Finding Mission on Myanmar" (IFFM) mandated by the UN Human Rights Council reported that the clearance operations in Myanmar amounts to "international crimes of genocide, crimes against humanity and war crimes" and therefore the international community through the UN should use all diplomatic, humanitarian and other peaceful means to assist Myanmar in meeting its responsibility to protect its people from these crimes which invokes the specific responsibility and obligations of the State of Myanmar under international law.[22] In September 2019, the Mission submitted its final report in which it concluded that the State of Myanmar has violated its obligations of preventing and committing genocide and that it continues with its genocidal intent, entailing the State accountability in cases of violations of human rights.

One of the significant question that aroused in this case was regarding the locus standi of Gambia in bringing this case against Myanmar before ICJ. In this respect, interpreting Article IX of the Genocide Convention, it was argued that to bring a case under the Convention a State party is not required to have a connection with that particular situation. Any disputes relating to the anticipation, application or fulfilment of the Convention which includes the accountability of a State for committing genocide can be brought within the jurisdiction of the Court. Moreover, it is also noteworthy that the obligations under the Genocide Convention implies and is already recognised as 'erga omnes' obligations under international law. In this respect in its provisional order, the ICJ affirmed that: "all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention".[23] All these contentions acknowledges the locus standi of Gambia to bring a suit against Myanmar for the alleged violations of Rohingya Genocide, even though it has no connection with the issue; presumed to be based on human rights and common brotherhood.

Following the Case, on 23 January 2020 the ICJ issued four provisional measures to be complied by Myanmar which includes "prevention of genocidal acts, ensuring military and police and other forces within its control not be commit genocidal acts, preservation of all evidences of genocidal acts, provide a concise report on compliance with these measures"[24]; and thereby to submit a report in this respect within a specified time. As a response, the State of Myanmar denied all allegations against it under the Genocide Convention and consequently blackout the whole country from the rest of the world. Besides this, the Myanmar government did not take any steps to end the discrimination, atrocities and inhuman violence's against the Rohingya Muslims.

Even after the UN interference, deteriorated situation in Myanmar did not changed. The World Report 2021 reports that in 2020, the Elections in Myanmar continued discriminatory citizenship barring Rohingya candidate and voters, criminal prosecution of government critics, unequal party access to government media and a lack of an independent and transparent election commission and complaints resolution mechanisms.[25] Further, it was reported that approximately 130000 Rohingya's are reported to have been confined to open –air detention camps in Rakhine State as a part of ethnic cleansing since 2012. They are denied the fundamental right to movement, food and medicine, livelihood, education, access to emergency health procedures resulting in increased morbidity and mortality and internment and segregation breaching their right to return home. The government, political parties, military and private

(The Gambia v. Myanmar), Request for the indication of Provisional Measures, International Court of Justice, 23 January 2020.

[22] Refer, UN Human Rights Council. Report of the independent fat-finding mission on Myanmar". Thirty-ninth session,. A/HRC/39/64. adopted on 12 September 2018. Page Number 19. Paragraph 104.

[23] Refer, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Request for the indication of Provisional Measures, International Court of Justice, 23 January 2020, Page Number 17, Paragraph 41.

[24] Refer, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Request for the indication of Provisional Measures, International Court of Justice, 23 January 2020, Page Number 6, Paragraph 5

[25] Refer, World Report 2021, titled as "Myanmar Events of 2020", Human Rights Watch. Available at www.hrw.org (accessed on 18/03/2024).

citizens used defamation provisions of Myanmar to censor speech. Moreover, the Myanmar Government used Covid -19 response measures in detention camps to harass and extort Rohingyas. They also denied the UN and other public health agencies to carry out humanitarian assistance in the affected areas.

Compared to the earlier cases of genocide *(Bosnia and Herzegovina v. Serbia* and Croatia v. Serbia), except in the Srebrenica genocide, all other allegations of genocide were not proved before the ICJ. The reason was that to constitute the crime of genocide requires both the elements of genocidal acts and genocidal intent and the evidences should be conclusive and not mere sufficiency of preponderance of evidence. It was found that in the Bosnia v. Serbia Case, even though massive atrocities were committed by Bosnian troops, the evidences relating to ethnic cleansing operations were not proved before the Court. So also the Court was also limited by its jurisdiction to rule and decide only on genocide and not by other violations of human rights under the Convention. Here a positive assertion is that deviating from the earlier cases in the *Gambia v. Myanmar Case,* the ICJ declared in its Provisional Order Rohingya as a "protected group" within the meaning of Article II of the Genocide Convention, affirming the accountability of the State of Myanmar under the Genocide Convention.

Another affirmative implication of the Order was the recognition by the World Court the locus standi of Gambia in the case, though not being specifically affected by it. This acceptance can be considered on the one hand as the moral commitment of the international community towards the humanity or human consciousness or as a respect to the human kind based on the principle of common brotherhood. On the other hand, Gambia"s eligibility can be interpreted as the recognition of the sovereign equality of the States based on the notion that States however large or small or specifically interested or affected can bring effectively a legal action against another State for the protection of people even they are not their own.

V CONCLUSION

In summation, regarding the conflicts between State sovereignty and human rights, the study analyses that the State Sovereignty is not a right to exercise power on a defined territory. It rather redefined and revitalised as a multifaceted duty to exercise power in a satisfactory manner. Since the Second World War, International Law though mainly State centric has become more liberal towards the obligations imposed by principles of protection of human rights and humanitarian law. The academic debates, discussions, juristic writings and opinions on human rights and humanitarian law endorsed by various Conventions and the decisions and determinations of International Courts and Tribunals has raised the notion of human rights to the status of 'jus cogens" and „erga omnes' principles.

In the present times, the ICJ interventions in human rights issues undeniably enhanced human rights and humanitarian concerns. But it was also seen that the World Court equally recognised and considered State interests. The Court always tried to make a balance between both the ideals of State sovereignty and Human Rights. But practically, in most cases ICJ decisions and orders were overwhelmed by StateCentrism. A suitable example is the Gambia v. Myanmar Case, wherein even after interim orders were passed against Myanmar Government to stop atrocities against Rohingya Muslims, it is still continuing. There is one factor found as a relief in this case was the element of humanity or humanism of universal principles of common brotherhood. It was the knowledge and understanding that the issue was brought before the international forum for Rohingya's was Gambia. Gambia, though a separate State went for Rohingya"s who were not their people only for the sake of humanity. This universal consciousness undoubtedly challenges the capability of a State to act without question within its borders.

Finally analysing the whole factors, it is summarised that the principles of human rights are embedded in the very theory of sovereignty itself. Hence, it cannot be seen as a challenge to the very conception of State sovereignty, since it the inherent responsibility of the State itself to protect human rights of its people. This understanding in the present times has aroused the dominant international consciences towards the human rights and rights arising from the principles of sovereignty which are significantly being reshaped. Practically, it is also known that human rights are not legally binding upon States and are considered to be recommendary in nature. For this reason, both politically and legally human rights have limited power and posed only diminutive threat to the long-established Westphalia concept of sovereignty.

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