

Chapter 2 Responses to World Order

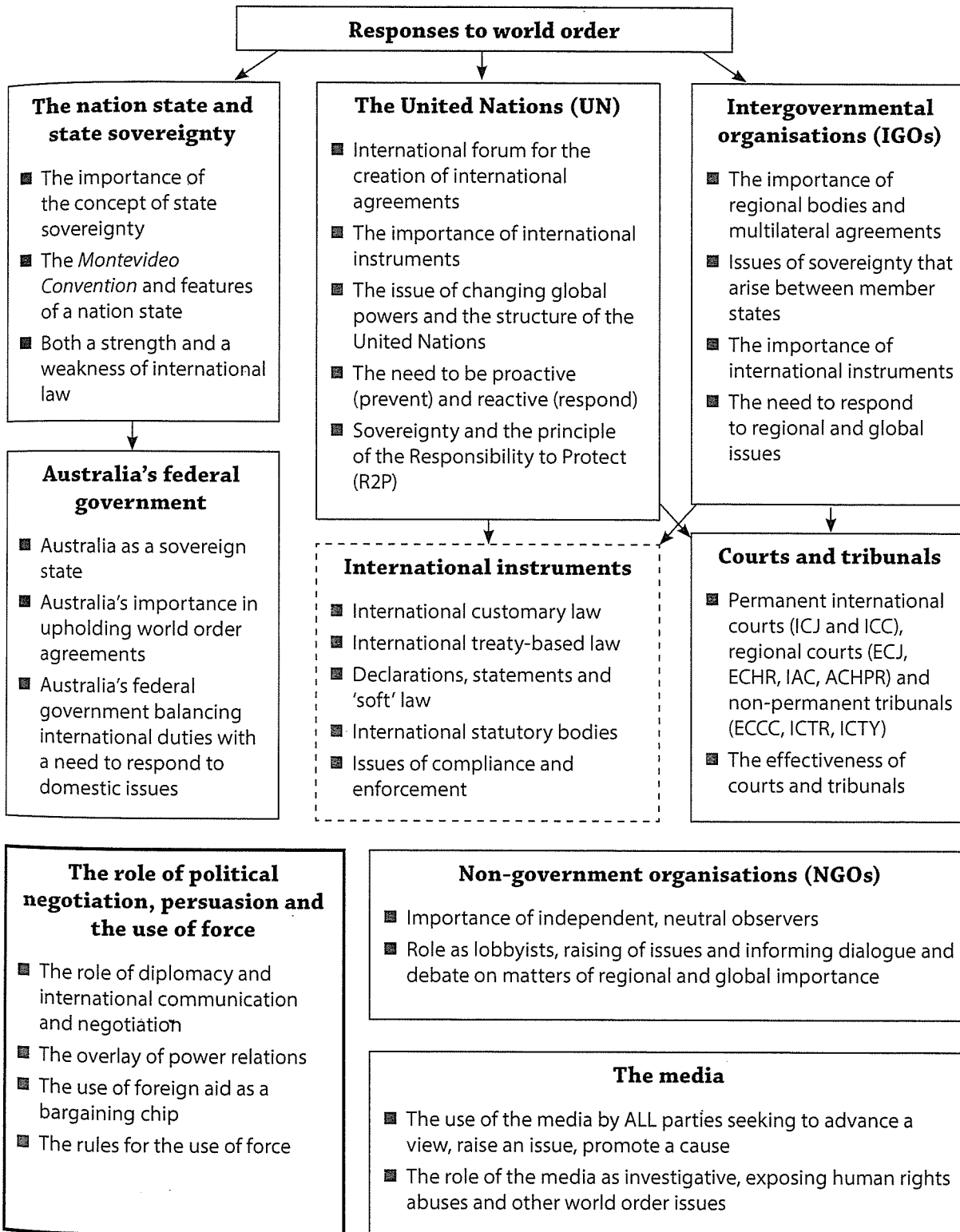


Figure 3 An overview of the responses to world order

Introduction

There are several responses to the need for world order. These include understanding the important roles of each of the following:

- The nation State and State sovereignty
- The United Nations (UN)
- International instruments
- Courts and tribunals
- Intergovernmental organisations (IGOs)
- Non-government organisations (NGOs)
- Australia's federal government
- The media
- The role of political negotiation, persuasion and the use of force

A close analysis of the list above shall reveal that most important in international relations is the notion of, and importance of, the nation State. Nation States align their interests when they discuss international matters and matters of global importance as takes place in forums in the United Nations (UN). From international discussions come international agreements and non-binding instruments. Some of these agreements are called treaties, covenants, conventions, protocols, optional protocols – all called 'hard law' as these are binding on nation states that choose to ratify them. Non-binding instruments may be called declarations or statements and are termed 'soft law'.

International agreements are the basis of international understanding and help nations to work within a framework of accepted rules and pre-defined ways of relating. In the event that a nation acts outside of the norms and expectations articulated by the international instruments then courts and tribunals can assist to resolve any disputes that may result.

Arguably, stronger than the UN are intergovernmental organisations. Intergovernmental organisations generally bring together nations that are geographically proximate and therefore significant in terms of their understanding of the relevant factors affecting nations within the region. Such factors include culture, history, legal systems and political systems, any relationship between religion and the State and so forth.

Non-government organisations (NGOs) can also be persuasive in assisting nations to create important agreements or to act in the interests of human rights. These non-aligned bodies use the media, as do all the other international bodies, in order to promote their interests.

Australia is a sovereign State and is free to participate in international agreements to the extent it sees fit. However, certain obligations do arise with respect to being a member of the international community and respecting international processes. Thus, even though it is a sovereign State it is strongly expected to behave in ways that are consistent with that of a responsible member of the international community.

Adherence to the UN Charter and the spirit of the *UN Declaration on Human Rights* is expected of all UN member States.

2.1.1 The nation state and state sovereignty

State sovereignty (the sovereign nation State) is the foundation of contemporary international relations, but also remains the greatest challenge for international law and the creation of international agreements. International benchmarks (laws) can be set and may even influence domestic legislation, but ultimately people live in nation states and these States decide to what extent they recognise human rights. When addressing the effectiveness of legal measures (especially international measures) in addressing human rights issues, the role of State sovereignty should not be underestimated.

State sovereignty

The term 'sovereignty' refers to the supremacy and independence of authority or rule. The 'State' refers to an individual nation or country. Therefore 'State sovereignty' is the notion that each individual nation State (country) has the right to independently govern their affairs. That is, governance free from, and without the interference of, external States or bodies. In this way, the philosophy of state sovereignty espouses that a nation is answerable to no higher authority than itself. Note that in international law the terms 'State' and 'nation' are interchangeable. Thus the United Nations is a forum for nations or a collection of nation States.

The birth of the 'Nation-State'

State sovereignty arose largely due to the ideologies of 17th Century English philosopher Thomas Hobbes. In his social and political critique '*Leviathan*', Hobbes argued that a country could only function successfully under the rule of a strong and absolute leader. He stated that this leader's governance must be enforced (and obeyed) without question in order to rule effectively. Much of Hobbes thinking was shaped by his social and political surroundings, such as the religious civil war experienced by England in the 1640's and subsequently, the ineffective rule of his leaders.

The Treaty of Westphalia

The 1648 *Treaty of Westphalia* (the agreement which ended the Thirty Years War in Europe) saw the creation of a 'nation' (the people) - 'State' (system for governing those people). By virtue of this treaty Europe was divided into a society of nation states. Each country consisted of a government (State) that ruled over the people (nation). Hence, the notion of a 'nation state' was created and a recognised authoritative rule was born.

In 1760 Swiss philosopher Emerich de Vattel published '*Droit des Gens*' which introduced the concept of equality between nations. He argued that no matter how large or small nations were in comparison, all had equal international standing. This thinking is still applied today and can be seen in the UN General Assembly. In this forum, nations large and small have an equal vote.

Democracy and the nation State

The notion of the 'supreme authority to rule' of the nation State was further developed in the 18th Century. Following the American and French revolutions, the capacity for governing the State was taken away from those in power and returned to the people. Instead of a king (France), or colonial body (America) governing the State, the people represented themselves.

Hence the popular saying: "government of the people, by the people, for the people". Also known as "popular sovereignty", this notion details that citizens should have supreme rule over their country. This authoritative rule is created by a representative parliament. Through representing the people, elected governments inherit the right to sovereignty of rule. This is the fundamental principle on which democracies are based.

World In Wonder 5

A nation in which government is (truly) representative...?

In nations where the State is representative of the people (that is, democracies) the State is said to have government which is reflective of the peoples' wishes. In this type of nation State human rights are generally best upheld.

Is this true...?

Characteristics of State sovereignty

State sovereignty is an extremely important legal principle and it is the basis of international relations. State sovereignty has several important dimensions:

- A national government has complete control regarding the governance of the state and its people
- All nations have equal legal standing
- A nation is its own highest authority
- No country may impose their laws or values upon another sovereign nation
- No country may invade another

The principle of State sovereignty is simultaneously the greatest strength and weakness of international law. The current internationally accepted definition of the nation state comes from the *Montevideo Convention on the Rights and Duties of States*. This Convention brought the USA and nineteen Central and South American nations together to form a treaty about the rights and duties of the nation. In so doing, a nation or 'statehood' had to be defined. The Convention has sixteen articles.

World in Order 5

The Montevideo Convention on the Rights and Duties of States

This treaty was signed at the International Conference of American States in Montevideo, Uruguay on December 26, 1933. It entered into force on December 26, 1934. The treaty discusses the definition and rights of statehood.

ARTICLE 1

The State as a person of international law should possess the following qualifications:

- a. a permanent population
- b. a defined territory
- c. government, and
- d. capacity to enter into relations with the other States.

Source: <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>

The UN Charter and state sovereignty

Article 2 of the UN Charter details specific rights of nation States as can be seen in the Extract below. Clauses 1, 4 and 7 make specific reference to the notion of sovereignty, territorial integrity and jurisdiction.

ARTICLE 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Source: <http://www.un.org/en/documents/charter/chapter1.shtml>

The roles of national governments in being the vehicle to implement world order

The strength of state sovereignty is that it is a celebration of diversity. It acknowledges that each nation state has a unique history, culture and social code of conduct. Thus each State will have a unique legal system and expectations of its citizens. It is imperative that such diversity and heritage is recognised and maintained. Therefore, because all nations are different, State sovereignty guarantees that a nation state is answerable to no higher authority than itself. Furthermore, it recognises that no nation's values are greater than another's. State sovereignty prevents one nation from imposing its laws and values upon another.

The roles of national governments in being an obstacle to accepting world order agreements

However, whilst state sovereignty is a strength it is also simultaneously a weakness of international law and acts as an obstacle to the implementation of world order agreements.

A requirement of any law is that it can be enforced by an overriding authority. There is no binding or 'overriding authority' that exists within international law. Overriding authority is not vested in the United Nations; they have only *moral* authority. Therefore international law cannot be imposed upon any nation State because the nation is its own highest authority. Nations are only bound by international law when they *agree* to be bound. For example, the UN *cannot* force a State to recognise the *Universal Declaration of Human Rights*.

So whilst independence to govern is protected by state sovereignty, this creates problems for the enforcement of international law. Nations justify non-ratification or the non-adherence to world order agreements by claiming that they have:

- State sovereignty
- The claim of superior understanding of their own domestic circumstances

Conditions when sovereignty is under question

Whilst sovereignty and territorial integrity are the basis of the nation state and underpin international law, there are very specific circumstances when sovereignty may be under question.

In essence this international legal principle may be articulated as: a nation state should look after its own people. This is a duty and prime responsibility of the nation state (national government). Sometimes there are situations where a national government is unable or unwilling to carry out its responsibility to the people of the state. If this failure results in a very grave breach of human rights then the international community, through Chapter VII of the UN Charter may have a duty to intervene, despite sovereignty. Under such circumstances there are a series of threshold tests that must be passed before the international community can intervene. This is discussed more in Chapter 3 under the principle of the 'Responsibility to Protect' (R2P).

Review Activities – The nation State and State sovereignty

1. Explain what is meant by State sovereignty.
2. When did the nation State formally become a feature of international relations?
3. Outline the importance of the *Treaty of Westphalia*.
4. Define the term 'democracy'.
5. Explain whether representative government is more or less likely to uphold basic human rights.
6. List five (5) characteristics of State sovereignty.
7. What FOUR (4) factors does the *Montevideo Convention on the Rights and Duties of States* define a nation?
8. Discuss how the UN Charter affirms the notion of State sovereignty with reference to the Charter.
9. Describe how national governments are the vehicle to implementing world order.
10. Describe how national governments can be an obstacle to implementing world order.

Thinking Skills Activity

The Montevideo Convention and features of the nation state (statehood)

1. A permanent population

Discuss this aspect with reference to migration, immigration and urbanisation.

2. A defined territory

Discuss this aspect with reference to borders and movements for self-determination.

3. Government

Argue whether representative government is the form of government that defines nation statehood, or whether any form of government, including brutal military regimes also qualify.

4. Capacity to enter into international relations

Propose and justify the importance of this as an aspect of statehood.