

SOVEREIGNTY AS A CONSTITUTIVE ELEMENT OF THE STATE AND INTERNATIONAL LAW: CONTEMPORARY CHALLENGES IN LIGHT OF THE U.S. 2026 INTERVENTION IN VENEZUELA

A SOBERANIA COMO ELEMENTO CONSTITUTIVO DO ESTADO E O DIREITO INTERNACIONAL: DESAFIOS CONTEMPORÂNEOS À LUZ DA INTERVENÇÃO DOS EUA NA VENEZUELA EM 2026

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RESUMO

Inúmeras teorias foram desenvolvidas com o propósito de analisar o caráter da relação entre o Direito Internacional e o Direito Interno, bem como de determinar qual destes ordenamentos deveria prevalecer em caso de conflito. A oposição entre as correntes monista e dualista é emblemática. Mas a realidade é que nenhuma das duas correntes reflete adequadamente a atual política dos Estados. As significativas transformações pelas quais o Direito internacional vem passando nas últimas décadas, conduziram a um processo de relativização da soberania. Neste contexto, a intervenção militar na Venezuela e captura do Presidente Nicolás Maduro constitui um exemplo de aplicação seletiva do direito internacional, por Estados hegemônicos, redefinindo a (i)legalidade conforme seus interesses geopolíticos.

Palavras-chave: Direito Internacional; Direito Interno; Soberania Seletiva.

ABSTRACT

Numerous theories have been developed to analyse the relationship between International Law and Domestic Law, as well as to determine which of these legal orders should prevail in the event of conflict. The opposition between monist and dualist approaches is particularly emblematic. However, neither framework adequately reflects contemporary state practice. The significant transformations that International Law has undergone in recent decades have led to a process of relativisation of sovereignty. In this context, the military intervention in Venezuela and the capture of President Nicolás Maduro can be characterized as the selective application of international law by hegemonic states, redefining (il)legality in accordance with their geopolitical interests.

Keywords: International Law; Domestic Law; Selective Sovereignty.

INTRODUÇÃO

The period following the Peace of Westphalia marked a pivotal turning point in the global order, characterized by the rise of sovereign states and the establishment of an international legal framework. Since then, International Law has undergone

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profound transformations, significantly shaping its relationship with the domestic legal systems of states. Understanding how these two spheres of law interact within this evolving context is therefore essential.

In this regard, sovereignty—traditionally conceived internally as the supreme authority of the state within its territory, and externally as the capacity of states to engage with one another as equally sovereign actors—has been subject to reinterpretation. This ongoing process seeks to more accurately capture the increasing interconnection between the domestic and international dimensions of law.

This article argues that contemporary state practice reveals a process of selective relativization of sovereignty, shaped by power asymmetries and geopolitical interests, as exemplified by the 2026 intervention in Venezuela.

1. ON THE ORIGIN OF THE CONCEPT OF SOVEREIGNTY

According to the traditional theory of the State, sovereignty is identified as the third constitutive element of a State (MACHADO, 2004, p. 184). Its concept first emerged in France, intended to justify the supreme authority of the monarch. In other words, the principle of sovereignty is as old as the State itself. It essentially arose to consolidate the existence of states asserting themselves in Europe against the dual authority of the Pope and the Holy Roman Empire (DINH et al., 1999, p. 433).

However, the emergence of the State, as well as the idea of sovereignty, predates the sixteenth century. As Roberto Mattei (2002, p. 7) emphasizes, both already existed in the Middle Ages, “a historical period that not only did not ignore these concepts, but made them the foundations of its own social structure.” Nevertheless, it was in the sixteenth century that the modern concept of sovereignty was formulated, with the rise of the modern State, the phenomenon of the “territorial state,” and the development of a centralized power that exercised legislative and executive authority within the boundaries of a defined territory (VÁZQUEZ, 2003, p. 4).

Thus, although many authors identify Jean Bodin as the first theorist to develop the concept of sovereignty through his work *Les Six Livres de la République*, some argue that Bodin merely systematized an idea of sovereignty that did not differ significantly from that conceived in the medieval period—according to which the

monarch's power stood above positive law but remained subject to natural law. For Bodin, sovereignty consisted of a perpetual and absolute power.

According to Roberto Mattei (2002, pp. 47-50), Bodin's main innovation was the recognition of legislative power as the core of sovereign authority and the defense of the indispensability of an absolute and indivisible legislative sovereignty for the sovereign's function, namely, to promote the public good. Until the eighteenth century, monarchs found in this principle—upheld by Bodin, Vattel, and the leading philosophers of the time—the justification for their absolutism (DINH et al., 1999, p. 433).

2. FROM THE EIGHTEENTH CENTURY ONWARD: THE DEMOCRATIC CONCEPTION OF SOVEREIGNTY

Beginning in the eighteenth century, with the publication of *The Social Contract*, Rousseau developed the first democratic conception of sovereignty (VÁZQUEZ, 2003, p. 7). In his work, Rousseau defined sovereignty as the expression of the general will of the people, no longer as an exclusive attribute of the State or the sovereign (MIRANDA, 2004, p. 27). This notion of popular sovereignty, although not immune to criticism, exerted a strong influence on subsequent democratic thought (NÓBREGA, 2002).

With the French Revolution of 1789, the idea emerged that sovereignty did not belong to each individual but rather to the Nation, which became the sole repository of sovereign authority. The attribution of sovereignty to the Nation can be understood as a response to the concerns of publicists of that era, who sought to avoid both the risk of a certain popular despotism—arising from the plenitude of political power granted to the people by Rousseau's theory—and the abuses that could result from the continuation of monarchical power (NÓBREGA, 2002).

In the second half of the nineteenth century, the decline of absolutist monarchies coincided with the rise of classical constitutionalism. At this point, the thesis that sovereignty belonged to the State, now endowed with legal personality, came to be accepted. Traditionally defined as supreme and unlimited power, the concept of sovereignty was consolidated in the nineteenth century by German legal science, which, under Hegel's influence, directly associated sovereignty with the omnipotence of the State (DINH et al., 1999, p. 433). From this association, Jellinek

referred to sovereignty as the “competence of competences,” understanding it as the State’s unlimited and unconditional power to determine its own jurisdiction (*ibid.*, 1999, p. 433).

For Jónatas Machado, sovereignty manifests itself through the exercise of the State’s inherent competences. In this perspective, sovereignty is generally linked to the principle of effectiveness in the exercise of power, as “the quintessential expression of the right to self-organization” (2004, pp. 186-187). This right is exercised primarily through constituent power and is concretized, in practice, through the principles of autonomy, plenitude, and exclusivity of competences (*ibid.*, p. 186).

From a geographical standpoint, Machado argues that sovereignty can be divided into territorial competences of the State—relating to the spatial limits under its authority—and extraterritorial competences, exercised over the high seas, international airspace, outer space, and polar regions, in relation to the environment, resources, and persons. Within extraterritorial competences, personal jurisdiction over nationals residing abroad is also included. Furthermore, one must not overlook the relational competences of sovereign states, which refer to their capacity to engage diplomatically with other states (*ibid.*, p. 187).

3. THE RELATIONAL DIMENSION OF SOVEREIGNTY

Once state sovereignty is recognized in its relational aspect, the concept itself requires reinterpretation. Internally, sovereignty grants the State organic independence from any other entity within its territory. Externally, sovereignty is characterized by the capacity of a State to establish relations with other States “under conditions of equality and symmetry of knowledge” (*ibid.*, p. 186).

Sovereignty and the equality of States, according to Ian Brownlie, “represent the fundamental constitutional doctrine of the law of nations, which governs a community composed primarily of States endowed with a uniform legal personality” (1997, p. 309). For Brownlie, the principal corollaries of sovereignty and equality among States are: *prima facie* exclusive jurisdiction over their territory and the permanent population residing therein; the duty of non-interference in the exclusive jurisdiction of other States; and the subordination of each State to obligations arising from customary international law and treaties concluded with its consent (*ibid.*, p. 309).

Jurisdictional immunity also constitutes one of the corollaries of the sovereign equality of States, as highlighted by Jónatas Machado:

a imunidade soberana dos Estados compreende a imunidade processual, nos termos da qual um Estado, incluindo qualquer das suas unidades constitutivas, órgãos, entidades no exercício de prerrogativas de soberania ou representantes e mesmo vasos de guerra, não pode ser submetido à jurisdição interna de outro Estado (ilegitimidade processual passiva), sem o seu consentimento, devendo os ordenamentos jurídicos internos assegurar a existência de uma exceção processual de incompetência (2004, p. 194).

As we shall see later, the military intervention in Venezuela carried out by the United States in early January 2026, which culminated in the removal of Head of State Nicolás Maduro, constitutes a concrete example of the violation of the principle of sovereign equality of States and of non-intervention. This precedent raises serious concerns regarding the meaning of sovereignty, as well as the effectiveness of International Law and International Institutions within the contemporary geopolitical context.

4. PUBLIC INTERNATIONAL LAW AND DOMESTIC LAW

Public international law and domestic law generally regulate distinct spheres of relations. Oliveiros Litrento explains that domestic law governs relations based on the sovereignty of States over their subjects, while international law addresses the protection of those same subjects when violations of their fundamental rights occur. He notes, however, that certain matters may simultaneously fall within the scope of both systems, which may consequently lead to conflict between them (1997, p. 46).

According to José Antonio Ridruejo, the importance of the relationship between these two spheres of law—domestic and international—has grown significantly due to the ever-expanding functions of international law (2003, p. 166).

The increasing interdependence of international relations has contributed to the development of a more integrated and cooperative legal system. In this context, international law plays a central role as a framework connecting states, seeking to balance diverse interests and mitigate the tensions inherent in diplomatic relations (Melo, 2012).

This is why several theories have been developed to explain the relationship between domestic and international law. These theories sought to establish the fundamental nature of this relationship and to determine which legal order should prevail in the event of conflict. Among them, the monist and dualist (or pluralist) theories stand out most prominently.

According to the monist theory, international law is directly linked to the domestic legal order of States, since there are relations of interpenetration between the two. This is made possible by the understanding that international law and domestic law belong to a single system founded on the identity of subjects (individuals) and sources of law. While recognizing the possibility of normative conflict between these two legal orders, monism argues that such conflicts can be uniformly resolved through common principles (DINH et al., 1999, p. 96).

In summary, it may be stated that the proponents of the monist theory affirm the essential unity of all legal orders (RIDRUEJO, 2003, p. 168). In other words, they advocate for the unification of domestic and international law into a single legal system, within which incompatible norms cannot exist (MACHADO, 2004, pp. 119ff).

Verdross, together with other jurists, justifies the unity of law on the basis of the singular and absolute reality of the value of justice. As Gerson Bóson explains (2000, p. 139), “the general rule of law is not a hypothesis, but an axiom: the objective presence of universal justice, upon which all legal orders rest.” According to Verdross, it is inadmissible to conceive of two distinct notions of justice—one in the domestic sphere and another in the international sphere (ibid., p. 139).

Nevertheless, it is important to note that the monist theory is subdivided into two strands: one nationalist and the other internationalist. According to the former, in the event of conflict between domestic and international law, domestic law prevails. The opposite is true of the latter, in which primacy is accorded to international law.

The most radical version of the monist theory was presented by Kelsen. For him, the State is nothing more than a process of unification of law, and the conception of the State as a superior entity endowed with will is entirely fictitious. Whereas Jellinek and his followers distinguished between State law and international law—arguing that the former is subordinate to the latter—Kelsen rejected this duality, asserting that “the State is law and nothing else.” In this sense, he defined the State as a system of norms or, more specifically, as a “legal order” (DINH et al., 1999, p. 103).

Kelsen justified the binding force of international law through his normativist theory. According to this theory, there exists a principle known as the “law of normativity,” whereby legal norms form a hierarchical system. Within this hierarchy, “each norm derives its binding force from a superior norm.” This system is organized in the form of a pyramid, at the apex of which lies the fundamental norm (*Grundnorm*) (ibid., 1999, p. 103; Malanczuk, 2000, p. 63; Ridruejo, 2003, pp. 168ff; Boson, 2000, pp. 139ff; Rigaux, 1998, p. 329).

In the realm of domestic law, the Constitution is considered the fundamental norm, followed in descending order by ordinary law, regulations, and individual decisions. In the realm of international law, the binding force of conventional law—comprising general or particular conventions, bilateral or multilateral—is grounded in the principle of *pacta sunt servanda*. In other words, since this principle belongs to the sphere of customary international law, it may be understood that, in terms of the hierarchy of international norms, Kelsen regarded conventional law as occupying a lower position than customary law (Dinh et al., 1999, p. 103).

As Jónatas Machado observes, “[t]he emphasis seems to lie on ensuring trust, security, predictability, stability, and regularity in interstate legal relations, rather than on subordinating States to a predetermined common value” (2004, p. 121).

In summary, according to Paul Sieghart’s interpretation, the monist theory rests on the assumption that there is only one legal system, in which international law and domestic law represent nothing more than different aspects of the same order. The unity of this system is justified by the understanding that both regulate relations among individuals (with States, in monist doctrine, being regarded as collectives of individuals), are binding, and constitute a singular manifestation of the concept of law. However, international law is considered superior to domestic law (1985, p. 40). For monists, international law represents the highest norm within the hierarchy of the entire system. According to this doctrine, jurisdiction in the domestic sphere is merely delegated to States, which cannot evade compliance with international law at the internal level. Thus, any conflict between international and domestic law is deemed a failure on the part of the State, which cannot exempt itself from bearing responsibility (ibid., 1985, p. 40).

The dualist theory, in turn, was developed in Germany by Triepel. It was later adopted by Oppenheim in England and by Anzilotti in Italy, and subsequently gained numerous adherents (Bóson, 2000, pp. 135ff).

According to this theory, international law and domestic law are regarded as two equally valid but distinct, independent, and separate legal systems (ibid., pp. 135ff; Teboul, 1999, p. 700; Ridruejo, 2003, p. 168). From an extreme perspective, some claim that “they are two legal orders indifferent to one another.” Jónatas Machado adds that the fundamental premises of this theory are of a “positivist and statist” nature (2004, p. 121). According to him, international law, under the dualist view, arises from the will of States—a conception incompatible with attempts to justify the existence of norms originating without State consent (ibid., p. 121).

For dualists such as Triepel, the essential difference between international and domestic law lies in the fact that they regulate different objects. In this sense, while international law governs relations among sovereign States, domestic law applies within a State, regulating relations among citizens and between citizens and the executive authority (Brownlie, 1997, p. 44; Machado, 2004, pp. 121-122; Teboul, 1999, p. 700).

On this point, Paul Sieghart asserts that international law in national courts is considered inferior and weaker than domestic law. He emphasizes that international law may only become part of domestic law if the latter chooses to incorporate it (1985, p. 40). In other words, under the dualist theory, international norms are deemed inferior to a State’s domestic legal order and remain irrelevant unless formally received into it (Ridruejo, 2003, p. 168).

In reality, neither of these two doctrines adequately reflects the contemporary practice of States. Both have therefore been compelled to restructure themselves in several respects—bringing them closer together—in order to provide a more accurate representation of the current relationship between international and domestic law (Malanczuk, 2000, p. 63). In the same vein, Louis Henkin:

The legal systems of different countries are at different points on a spectrum between pure monism and total dualism. No state is either strictly monist or wholly dualist...Each state has had to give its own answers to several elements in the relationship between international law and domestic law (1995, p. 67).

In practice, the application of the two doctrines is less divergent than it may appear. Even in States that identify themselves as dualist, international law is

regarded as part of domestic law. Likewise, constitutions such as that of France of 1958, often classified as monist, provided for formal procedures to introduce international legal norms into the domestic order (DINH et al., 1999, p. 97). In this regard, Araceli Mangas Martín adds:

The French Constitution of September 28, 1958, in Article 55, states that “Treaties or agreements duly ratified or approved shall, upon their publication, have authority superior to that of laws, provided that each treaty or agreement is applied by the other party.” Except for the final reference to reciprocity, this provision implies that the treaty provision takes precedence over French domestic law and may be applied within the domestic sphere once it has been ratified or approved and subsequently published. Thus, the position of the French legal order is monist, albeit moderate, insofar as it requires publication for treaties to be received into domestic law (our translation). (1999, pp. 196-197).

In light of the foregoing, it becomes evident that there is no single, definitively correct view on this matter. An increasing number of jurists have sought to move beyond the dichotomy between monism and dualism, arguing that neither adequately reflects the practices adopted by institutions and courts, whether international or domestic.

Thus, Fitzmaurice rejects the premise that international law and domestic law share a common field of application. He contends that the two legal systems operate in distinct spheres, each supreme within its own domain.

Consequently, according to him, there can be no true normative conflict between them. However, Fitzmaurice acknowledges the possibility of a conflict of “obligations,” arising from a State’s inability to act domestically in the manner required by international law. He cautions, however, that such incapacity does not render domestic law invalid; rather, it entails the international responsibility of the State (Brownlie, 1997, p. 46).

The current trend is that international law increasingly regulates aspects traditionally associated with domestic law, underscoring the need to establish greater normative coherence between the domestic and international orders (Machado, 2004, pp. 122-123). In the same vein, Louis Henkin emphasizes:

“Increasingly, in fact, states have found it desirable, if not indispensable, to incorporate their international obligations into their domestic law. Increasingly, international agreements—most notably human rights agreements—have created express obligations on state parties to modify their internal law” (1995, p. 64).

In this context, it is important to note the existence of a significant principle of international law according to which a State may not invoke the provisions of its domestic law as justification for failing to comply with its international obligations. Recognition of this principle is essential, since we frequently encounter situations in which treaties or other international norms impose upon States the obligation not to apply certain provisions of their domestic legal orders (Malanczuk, 2000, p. 64).

Moreover, this principle is reinforced by Article 27 of the Vienna Convention on the Law of Treaties, which provides: “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. On this point, we agree with Mattias Kumm, who clearly explains:

States do enjoy considerable discretion to determine *how* to internally organize their institutions so as *to ensure compliance*. International law does not generally require, for example, that domestic courts must have jurisdiction to enforce international law. But if a provision of international law prescribes a certain behavior, no feature of the domestic legal system can be invoked as a justification for non-compliance. Democratic discontent with specific rules of international law or more pressing domestic priorities are not valid justifications for non-compliance under international law (2004, pp. 910-911).

States are expected to fulfill their respective international obligations in good faith. However, each State retains the freedom to choose the most appropriate means of compliance within its domestic legal order, since international law allows the internal jurisdiction of each State to select the method most convenient to achieve this result (incorporation, reception, transformation, or adoption). In other words, States have autonomy to determine the legal status their international obligations will assume domestically. This explains why the internalization of international law takes place so differently from one State to another.

From a perspective of approximation between the international order and domestic legal systems, it can be observed that international law, in the exercise of its functions, does not entirely disregard domestic legal systems (MALANCZUK, 2000, p. 64).

Thus, it is not uncommon for a tribunal, when resolving a dispute under international law, to be compelled to examine the domestic law of one or several States. For instance, an international tribunal may need to analyze domestic law concerning expropriation, fishing limits, nationality, or the protection and welfare of

minors, in order to determine whether, in concrete terms, a treaty or customary international law has been violated.

Moreover, it may be noted that a significant number of treaties contain provisions that explicitly refer to domestic law or that “employ concepts which, by inference, must be understood in the context of a specific national legal system” (Brownlie, 1997, pp. 47ff).

5. THE RELATIVIZATION OF SOVEREIGNTY IN INTERNATIONAL LAW IN THE CONTEXT OF THE INTERVENTION IN VENEZUELA AND THE DEPOSITION OF NICOLÁS MADURO

In the early hours of January 3, 2026, the United States government carried out a complex military operation in Venezuela that resulted in the capture of Venezuelan President Nicolás Maduro and his wife, Cilia Flores, in Caracas.

The operation was highly planned. According to General Dan Caine, it had been in preparation for months, confirming that the U.S. President had long intended to invade Venezuela and forcibly remove its Head of State. Maduro and his wife were taken to New York, where they remain in custody awaiting Trial before the court.

Although the action was legally authorized under the domestic legal framework of the United States, it has been globally condemned as a serious violation of international Law and of Venezuela’s sovereignty. To remove an individual from another country, a process of extradition, a formal surrender, or international authorization would have been required.

The intervention in Venezuela and the capture of Nicolás Maduro transgressed fundamental principles of sovereignty established in the Charter of the United Nations, creating a dangerous precedent for future unilateral actions by hegemonic States pursuing their own interests. According to Enodien (2026, p. 145):

The U.S. military intervention in Venezuela has been widely condemned as a breach of international law and Venezuelan sovereignty because it involved the use of force without United Nations Security Council authorisation or a clear self-defence justification under the UN Charter, thereby violating the core prohibition on the use of force in international relations. Such actions set a harmful precedent by implying that powerful states can act without legal restraint, weakening global respect for sovereign equality and legal norms. (Enodien, 2026 p.145)

Such conduct appears incompatible with Article 2(4) of the United Nations Charter, which enshrines the prohibition on the use of force, and cannot be

convincingly justified under Article 51 concerning self-defence. In this regard, Milanovic (2026) observes that the U.S. operation cannot be framed as an act of legitimate self-defence and raises serious concerns regarding the expansion of coercive practices contributing to the erosion of the international legal order.

However, this is not the first time the United States has engaged in acts of interference in Latin America or undertaken military actions in another State with the aim of imposing regime change and directing its political transition.

The United States has asserted that it will remain in Venezuela until the consolidation of an adequate transition, arguing that this is necessary to prevent the possibility of a leader assuming power without regard for the best interests of the Venezuelan people. Nevertheless, the duration of the transition, its structural milestones, and its ultimate outcome remain uncertain (Sabatini; Lutsevych, 2026).

Meanwhile, Vice President Delcy Rodríguez has assumed de facto leadership of the government, with American support, despite having officially demanded the release of Nicolás Maduro in a formal statement (Tadeu, 2026).

In a statement issued on January 4, 2026, endorsed by 26 of the 27 European countries (Hungary abstained), the European Union's High Representative for Foreign Affairs emphasized that, above all circumstances, international Law and the Charter of the United Nations must be respected. She stressed that the member States of the Security Council bear a particular responsibility to defend these principles, which constitute the pillars of international security, and added that the will of the Venezuelan people must be respected as the only means of restoring democracy in the country and resolving the current crisis (European Union, 2026).

According to Maria Tadeu, this statement was the closest the European Union came to adopting a joint position on the matter. Reactions to the deposition of Nicolás Maduro divided European States. In Spain, Pedro Sánchez strongly rejected the American intervention, considering it a violation of international law. In Germany, Friedrich Merz adopted a more cautious stance, calling for a careful legal analysis. In France, Emmanuel Macron focused on the democratic transition. In Italy, Giorgia Meloni supported the American narrative, defending the operation as a legitimate response to combat drug trafficking (Tadeu, 2026).

The Venezuelan case makes explicit how the conduct of hegemonic states may violate the principle of non-intervention and the formal prohibition on the use of

force, through arguments that presuppose a selective interpretation of these principles according to their respective interests, compromising not only the exercise of sovereignty by the affected states, but also the credibility of the international order.

FINAL CONSIDERATIONS

The analysis of monist and dualist theories, as well as the contemporary practice of States, reveals that neither framework alone can satisfactorily explain the relationship between international law and domestic law. In reality, States adopt hybrid solutions, at times recognizing the primacy of international norms, while at other times conditioning their application on specific domestic procedures.

The principle that a State cannot invoke its domestic law to justify non-compliance with international obligations remains a cornerstone of the global legal order, reinforced by the Vienna Convention on the Law of Treaties. Nevertheless, the autonomy of States in determining how to internalize such obligations explains the diversity of legal practices.

The United States' intervention in Venezuela in 2026, culminating in the capture of Nicolás Maduro, highlights the tension between State sovereignty and the normative force of international law. The episode generated widespread international condemnation and exposed the risks of unilateral actions that relativize fundamental principles of the United Nations Charter. Divergent reactions among European and Latin American countries further demonstrate that sovereignty remains a sensitive and contested issue in international politics.

The Venezuelan case allows us to observe the absence of neutrality in the application of international law, highlighting the asymmetrical influence of power and geopolitical interests. This compromises the legitimacy of international law and the protection of its institutions as regulators of the global order.

Thus, it can be concluded that the pursuit of greater normative coherence between domestic and international law is indispensable for dealing with political crises and preserving the legitimacy of the global order, avoiding precedents that undermine the pillars of international security and cooperation.

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