States, Fundamental Rights and Duties
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A. Context and Historical Development

1. Concept and Basic Problems

1 Being the most prominent among the different subjects of international law, a State is by definition endowed with the capability of bearing rights and duties under international law. Whilst these may derive from a variety of sources of international law, including treaties and customary international law, the question arises as to the existence of rights and duties inherently linked to the creation and the essence itself of a State and, thus, independent of other sources of legal obligation of a voluntary or customary, particular or general character (General International Law (Principles, Rules, and Standards)). This explains the use of the expression ‘fundamental’ rights and duties of States (in contrast with ‘rights and duties of States’ per se, which would encompass the whole of international law) and justifies the fact that only select material specifically focussing on rights and duties of the proposed fundamental character will be dealt with hereinafter.

2 The recognition of a set of fundamental rights and duties leads to the need to clarify their precise content and exact nature. With regard to the former aspect, two separate themes have traditionally been addressed, namely, on the one hand, the enumeration and identification of such fundamental rights and duties and, on the other hand, the specific implications of each of them in terms of normative impact for the States concerned. As to the nature of fundamental rights and duties, their position within the international legal order appears particularly problematic, with special reference to the circumstance that, according to the theory under consideration, they would constitute the constitutional basis upon which are founded all other international law rules, in turn to be considered of a secondary or accessory character (see also International Legislation).

2. Origin and Evolution of the Debate

(a) Historical Background

3 The theory of fundamental rights and duties originated in the 17th century, with the founding of modern international law, when States unequivocally proclaimed their independence and sovereignty with supreme and unquestionable institutional authority over social phenomena occurring within their jurisdiction while progressively setting up a network of mutual relationships with other States (History of International Law, 1648 to 1815; International Relations, Principal Theories). This historical period is generally thought to begin in 1648, after the Thirty Years War (Westphalia, Peace of (1648)), as States, on the one hand, affirmed their independence from papacy and the empire and, on the other hand, established an exclusive dominion over a specific territorial community, thus determining the obliteration of various centres of feudal and communal power that had taken shape over the previous centuries in a pluralistic fashion (History of International Law, Ancient Times to 1648).

(b) Philosophical Background: Early Teachings and Evolution of the Debate

4 From a political philosophy perspective, the doctrine of natural law proved to be highly influential in contributing to the evolution of the theory of fundamental rights and duties of States (Natural Law and Justice). Because of its character, ius naturale emerged as a possible source for the regulation of inter-State as well as inter-individual relationships. Starting with the 17th century, the view was developed, especially by Hugo Grotius, of a natural legal order applying also to moral persons or collective entities such as States. Among the early supporters of the theory of fundamental rights and duties of States, mention must be made of Christian Wolff, Emerich de Vattel, and Georges Frédéric Martens. In the writings of Wolff, in particular, one may find—arguably for the first time—
the presentation of a complete system of rights and duties of States. De Vattel, considered by some to be the real founder of the theory of fundamental rights and duties of States, elaborates on the Wolffian theory by emphasizing the idea of comparability of States to individuals living in the state of nature as interdependent and yet free subjects. Martens, in turn, builds even further upon the findings of the preceding authors and develops a system based on the right to security and independence, the right to equality, and the right to mutual commerce. Already at this stage, however, the theory of fundamental rights and duties of States appears to have lost some of its original components, especially because Martens abandons, at least in part, a strict natural law approach by inserting in his writings some significant elements of juridical positivism (see also → Legal Positivism).

5 The 18th and 19th centuries witness the contribution of eminent figures such as Henri Grégoire and Jeremy Bentham. With the former’s ‘Déclaration du Droit des Gens’, on the one hand, a catalogue of fundamental rights and duties is set forth which comprises principles such as independence, equality (→ States, Sovereign Equality), sovereignty, jurisdiction (→ Jurisdiction of States), non-intervention (→ Intervention, Prohibition of), self-defence, mutual respect of the rights of all, immunity of ambassadors (→ Immunity, Diplomatic), and pacta sunt servanda. The latter’s most crucial contribution, on the other hand, consists in a draft declaration, mainly of a political nature, based on equality and independence of States. The innovations brought about by these scholars, however, relate to the form rather than to the substance of fundamental rights and duties of States, which they suggest for the first time as a topic suitable for inclusion in a written legal instrument. As a consequence of their contribution, the theory under consideration will then become closely interwoven with the process of → codification and progressive development of international law (see para. 9).

6 In the 20th century the debate on fundamental rights and duties continues and a greater variety of positions emerges. Proposals for declarations of rights and duties of States are tabled by jurists such as Albert de Lapradelle, Victor M Maurtua, and Alejandro Alvarez. In addition, various international organizations and bodies become increasingly involved in the debate and provide the forum for the discussion of projects and draft texts. In 1919, for example, the American Institute of International Law adopted a ‘Declaration of Rights and Duties of Nations’ consisting of six articles and mentioning self-preservation, independence, equality, and jurisdiction as well as the principle of the correlative character of rights and duties. Again in 1919 the → Institut de Droit international invites de Lapradelle to prepare a draft declaration of rights and duties of nations, which was discussed in Rome in 1921 and at The Hague in 1925 but never adopted. Finally, a work by Alvarez entitled ‘Exposé de motifs et projet de déclaration sur les données fondamentales et les grands principes du droit international de l’avenir’, including chapters on ‘Rights of States, Their Limitations’ and ‘Duties of States, Groups of States and Continents’—, after having been submitted since 1931 to a number of European and American academic circles, was subsequently amended and developed into a declaration adopted in 1936 by the 39th session of the → International Law Association (ILA).

7 Several authors, however, oppose the concept of ‘basic’ or ‘fundamental’ rights and duties altogether. The Italian jurist Anzilotti, for example, writing in 1906, firmly criticizes the influence of a naturalist approach to international law, with particular reference to the alleged existence of a set of fundamental rights of States and what he considers to be a subjective selection of criteria and rules operated by individual authors. Hans Kelsen, in turn, expressly rejects ‘the theory that there are “fundamental” rights and duties under general international law in the sense that the principles establishing these rights and duties have a greater obligatory force than others’ and states that such a theory has no basis in positive international law (266–7). Crucially, positions such as the ones that have just been referred to, do not question the content or the importance of those rights and
duties as constituent elements of the international legal order, but, rather, deny the correctness of a theoretical construction based upon their qualification as a source of legal rights and obligations for States distinct from—and possibly of a higher ranking than—‘ordinary’ customary or conventional rules.

8 More recently, a critical approach to international law in general and, in particular, to standard academic justifications of State rights has been taken by authors such as David Kennedy and Martti Koskenniemi. The latter, in particular, in the context of his analysis of international law as an attempt to deprive international relations of their political component has in particular opposed standard doctrinal justifications of State rights, based on factual statehood or legislative enactments, since neither ‘facts’ nor ‘rules’ may be considered self-evident or objective.

3. Efforts towards the Codification of Rights and Duties of States

(a) The Montevideo Convention, the Organization of American States, and the Organization of African Unity

9 With regard to the development of written legal instruments dealing with fundamental rights and duties of States, several significant results were achieved during the 20th century. The Montevideo Convention of 1933 constituted one of the first examples of insertion of ‘rights and duties’ of States in a multilateral legally binding instrument. Whilst no express recognition was given on that occasion of their ‘fundamental’ character, rights recognized by the Montevideo Convention included the right to political existence, independence, self-preservation, jurisdiction, and equality. As to the duties, mention was made, inter alia, of non-intervention, respect for other States’ rights and the pacific settlement of disputes.

10 The Charter of the → Organization of American States (OAS) (‘OAS Charter’), adopted in 1948, contained a full Chapter devoted to ‘Fundamental Rights and Duties of States’. It was by all means an original solution, to be partially explained by the political peculiarities that characterized the American Continent at that time. Sometimes considered a ‘political manifesto’ rather than a document of a strict juridical nature, the Charter, in its current version as last amended by the Protocol of Managua in 1993, contains, in Chapter IV (Arts 10–23), several provisions of general importance, such as the one according to which every American State has the duty to respect the rights enjoyed by other American States in accordance with international law (Art. 11); and the one according to which fundamental rights of States may not be impaired in any manner whatsoever (Art. 12).

11 As to the specific rights that are mentioned therein, Art. 10 OAS Charter refers to the right to equality and affirms that States are equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. Significantly, the circumstance is stressed that the rights of each State exist regardless of its power to actually ensure their exercise but rather, ‘upon the mere fact of its existence as a person under international law’. The OAS Charter also provides, in its Art. 13, for a State’s right to defend its integrity and independence, to provide for its preservation and prosperity and, consequently, to organize itself as it sees fit. The exercise of these rights, according to the same provision, is limited only by the exercise of the rights of other States in accordance with international law. Moreover, pursuant to Art. 15 OAS Charter, the right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State. Additional rights dealt with in the OAS Charter are that to exercise jurisdiction over all inhabitants, whether nationals or → aliens, within the limits of one State’s national territory (Art. 16) and to develop cultural, political, and economic life freely and naturally, subject to the safeguard of rights of individuals and the principles of ‘universal morality’ (Art. 17). Art. 19 asserts the duty not to intervene in a foreign State’s affairs by the use of armed force or any
other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements, whilst Art. 20 forbids the use of coercive measures of an economic or political character as a means to force the sovereign will of another State. The OAS Charter, finally, embodies the right to territorial inviolability by preventing military occupation or any other direct or indirect measure of force taken by another State (Art. 21). The use of force in international relations among American States is also prohibited, with the sole exception of self-defence and other measures for the maintenance of peace and security adopted in accordance with existing international treaties (Arts 22 and 23) (see also → Use of Force, Prohibition of; → Use of Force, Prohibition of Threat; → Aggression).

12 In the same vein, in 1963, the Charter of the Organization of African Unity (‘OAU Charter’) was also adopted, comprising two articles especially devoted to ‘rights and duties of Member States’ and setting out, in particular, the principle of equal rights and duties of Member States (Art. V) and a pledge to observe the principles enumerated in Art. III of the Charter, including those relating to sovereignty, non-interference, and peaceful settlement of disputes (Art. VI). It has to be noted, however, that the 2000 Constitutive Act of the → African Union (AU), which has abrogated and replaced the OAU Charter from 2001, does not contain any provision expressly devoted to rights and duties of Member States. In fact, only a declaration along the lines of Art. III of the OAU Charter is maintained, stating that the Union ‘shall function in accordance with’ a number of ‘principles’, some of which, in any event, are nonetheless explicitly drafted in terms of ‘rights’ (eg Art. 4 principle (j) Constitutive Act of the African Union, which refers to the right of Member States to request intervention from the Union in order to restore peace and security).

(b) The Work of the International Law Commission

13 In 1949, as a part of the report covering the work of its first session, the → International Law Commission (ILC), submitted to the General Assembly (→ United Nations, General Assembly) the text of a ‘Draft Declaration on Rights and Duties of States’ (→ Declaration). It comprised 14 articles detailing four rights (independence, jurisdiction, equality, and self-defence) and ten duties (not to menace international peace and order; to peacefully settle disputes with other States (→ Peaceful Settlement of International Disputes), to refrain from resorting to war as an instrument of national policy, to refrain from giving assistance to any State action in violation of the duty not to resort to war; to carry out international obligations in good faith (→ Good Faith [Bona fide]), and to conduct relations with other States in accordance with international law and with the principle that sovereignty of each State is subject to the supremacy of international law.

14 The General Assembly commended the work undertaken by the ILC and expressed the view that the Draft Declaration did indeed mark a significant contribution towards the progressive development and the codification of international law. Nonetheless, because of the insufficient interest attracted by it, the Draft Declaration was at a first stage postponed, later abandoned, and never adopted by the General Assembly. As observed by several commentators, States appeared not particularly keen on the topic and provided very little feedback on the work of the ILC. In addition, no State has, since 1949, ever requested the issue to be taken up again within the United Nations. Whilst this does not mean, of course, that individual elements of the Draft Declaration cannot be said to correspond to actual international law obligations of a customary nature, it is nonetheless clear that there is no general international agreement as to the need to resort to an international law instrument detailing the basic rights and duties of States.
(c) The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States

15 Many of the rights and duties contained in the Draft Declaration were later reaffirmed in the context of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (UNGA Res 2625 [XXV]; see Friendly Relations Declaration [1970]), unanimously adopted by the General Assembly on 24 October 1970. It has to be noted, at the outset, that the Declaration (and particularly its general part) is drafted in terms of ‘principles’ rather than ‘rights and duties’ and that it makes explicit and extensive reference to the provisions of the → United Nations Charter (‘UN Charter’) and to the rights and duties of Member States that are established thereby.

16 As far as the individual principles are concerned, these include in particular: a) the principle that States 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; b) the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; c) the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; d) the duty of States to co-operate with one another in accordance with the Charter; e) the principle of equal rights and self-determination of peoples; f) the principle of sovereign equality of States; and g) the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

17 As noted by José M Ruda in 1987, due to its compromising nature, its recommendatory character, and its very broad and sometimes contradictory content, the contribution of the Friendly Relations Declaration to the issue of fundamental rights and duties of States is relatively modest. Some important aspects touched upon by the Declaration were, however, later taken up by the Final Act of the Helsinki Conference on Security and Co-operation in Europe (Conference on Security and Co-operation in Europe, ‘Final Act’ [done 1 August 1975] (1975) 14 ILM 1292) (→ Helsinki Final Act (1975)). Self-determination, for example, was on that occasion spelled out very clearly as a principle involving a right ‘of all people to establish with total freedom—when and how they so desire—their political system without outside interference and to pursue according to their own wishes their political, economic, social and cultural development’. Subsequent international practice has further clarified, on the one hand, that the creation of a sovereign State must constitute an actual exercise of → self-determination of peoples and, on the other hand, that the → territorial integrity and political independence of a sovereign State must be protected subject to the existence of a government representing all the people of the territory regardless of race, creed, or colour (eg United Nations General Assembly Resolution 46/7 of 11 October on the conditions of democracy and human rights in Haiti). More generally, the Helsinki Final Act has set out its own ‘Declaration on Principles Guiding Relations between Participating States’ codifying and recognizing the fundamental importance in this respect of the following principles: sovereign equality; respect for the rights inherent in sovereignty; refrain from the threat or use of force; inviolability of frontiers; territorial integrity of State; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion, or belief (→ Religion or Belief, Freedom of, International Protection); equal rights and self-determination of peoples; co-operation among States; fulfilment in good faith of obligations under international law.

B. Notion
1. Enumeration of Fundamental Rights and Duties of States

(a) Independence

18 Among the supporters of the theory of fundamental rights and duties of States, there is also no agreement as to their exact number and precise identification. As seen in Section A, doctrinal works and codification efforts have in fact often taken different approaches in this respect. In addition, the perception as to which rights and duties are in fact ‘fundamental’ has changed over the years. It is, nonetheless, generally accepted that the common core of fundamental rights and duties of States may be represented by the right to independence, sovereignty, equality, and self-preservation.

19 The notion of independence was scrutinized as early as 1931 in the context of the advisory opinion dealing with the customs system established at that time between Germany and Austria (→ Customs Regime between Germany and Austria [Advisory Opinion]). The view was taken by the → Permanent Court of International Justice (PCIJ) that an entity that cannot fulfil the test of legal independence shall not be considered as having an international legal status altogether, let alone external sovereignty or independence.

20 Several international judicial decisions have tackled the issue of independence. These include, for example, the PCIJ’s judgment in the Lotus Case (The ‘Lotus’ [France v Turkey] PCIJ Series A No 10; → Lotus, The) and the judgement rendered by the → International Court of Justice (ICJ) in the → Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v United States of America) (Merits) ([1986] ICJ Rep 14). What emerges from such authoritative precedents is that, in the absence of a legal norm prohibiting a particular conduct, the right to independence implies the possibility for States to behave freely as members of the → international community. To put it differently, one State’s right to independence finds its only limit in international norms of customary or voluntary character. Since the world community has not developed as a hierarchic structure, the subjection of States to international law has also to be looked at with particular attention: States, in fact, have a duty to abide by those norms to whose formation they have contributed by concluding (and subsequently ratifying) an international agreement, or which have spontaneously emerged as customary rules.

21 In this connection, the concept of independence is, on the one hand, unrelated to (and in any event does not contradict) the idea that a State is in any case subject to international law and the international legal order. On the other hand, the legal independence of a State (in the sense that has just been recalled) does not exclude the simultaneous presence of economic or political dependence. However, such independence and, even more so, the qualification as a ‘State’ of a particular entity must be assessed empirically on the basis of the relevant factual situation and not only pursuant to declarations of a merely political nature, a consideration that casts some doubts over recent developments such as the proclamation of the Declaration of Independence of Kosovo of 17 February 2008 and the subsequent → recognition of → Kosovo by a number of States.

(b) Sovereignty

22 Sovereignty is closely related to independence. As a matter of fact, the two concepts have sometimes been interpreted as different sides of the same attribute. This is reflected, inter alia, by the usual qualification of independence as ‘external sovereignty’ of States. As an attribute of the State, sovereignty is generally thought to require the presence of a community, consisting of a territory and a population governed by an organized political authority.
According to long-standing international law practice, ‘[s]overeignty in the relations between States signifies independence’ and ‘[i]ndependence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State’ (Island of Palmas Case [Netherlands v United States of America] 838) (→ Palmas Island Arbitration).

Among the implications of the right to sovereignty, is therefore the corresponding prohibition to intervened in matters within the domestic jurisdiction of other States. This principle has been incorporated in the Friendly Relations Declaration (see para. 15), according to which no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State, with particular reference to armed intervention and all other forms of interference or attempted threats against the personality of the State, the use or the encouragement of economic, political, or any other type of measure to coerce another State in order to obtain the subordination of the exercise of its sovereign rights, and to secure from it any kinds of advantages (see also → Economic Coercion).

(c) Equality

According to the right to equality (or equal treatment), all States occupy the same position within the international community, have the same legal capacity, and bear equal rights and duties regardless of their size or power. The right has been enshrined, inter alia, in the Friendly Relations Declaration (see para. 15), the 1963 OAU Charter and the 2000 Constitutive Act of the Organization of African Unity (see para. 12). The rule according to which par in parem non habet imperium, ie no State can legitimately claim jurisdiction over another State, is generally considered to constitute one specific application of the principle at issue. Pursuant to such a rule, in fact, in particular, States are granted a significant degree of immunity from the jurisdiction of foreign courts on the basis of the idea that a State—at least as far as its acta iure imperii are concerned—cannot be legitimately judged by one of its peers (→ State Immunity).

The right to equal treatment is also present in the law of international organizations (→ International Organizations or Institutions, Internal Law and Rules; → International Organizations or Institutions, Membership). Within the United Nations system, for example, all States are entitled to one vote (→ International Organizations or Institutions, Voting Rules and Procedures). There are, however, significant exceptions since, for example, only five States have the right to permanently sit as members of the Security Council as well as the power to veto its decisions of a non-procedural character (→ United Nations, Security Council). Even more evident derogations exist in international financial organizations, where the principle ‘one State, one vote’ is abandoned, as a general rule, in favour of a voting system which is based on the contributing capacity of every single State (see, for example, the law and practice relating to the organizations established on the occasion of the → Bretton Woods Conference [1944] and, in particular, the → International Bank for Reconstruction and Development (IBRD), and the → International Monetary Fund (IMF)). A further departure from the principle characterizes the Council of the European Community (‘EC’), whereby participating States, pursuant to the rule currently embodied in Art. 205 para. 2 EC Treaty (Treaty establishing the European Community [consolidated text] [2002] C325/33) are accorded a number of votes that reflects their respective economic and demographic weight (→ European [Economic] Community).

More generally, the idea of State equality does not reflect the immense differences that actually exist among members of the international community. This has an important impact, inter alia, in terms of capacity of influencing the evolution of customary
international law, since the greater variety of interests and activities that characterizes 'major' States renders them particularly influential in this specific respect.

(d) Self-Preservation

28 There is widespread consent that the right of every State to self-preservation and the corresponding duty not to prejudice the preservation of other States is to be included among the ‘basic’ or ‘fundamental’ rights. Such a right, according to early commentators, developed as a right to preserve, maintain, and protect a State’s independence, sovereignty, and equality. It is for this reason that some authors regard it as a mere corollary of the preceding rights. Others, on the contrary, see it as the only truly fundamental right of States. The existence of a ‘fundamental right to survival’ has been confirmed by the ICJ in a recent advisory opinion relating to the legality of the threat or use of nuclear weapons, which recognized the fundamental right of every State to survival as a basis for admitting its right to resort to self-defence (Legality of the Threat or Use of Nuclear Weapons [Advisory Opinion] [1996] ICJ Rep 226) (→ Nuclear Weapons Advisory Opinions).

(e) Other Proposed Fundamental Rights and Duties of States

29 Over the years, several other rights, and corresponding duties, have been considered of a ‘fundamental’ nature in addition to the ones referred to above. These include, for example, the right to come into existence, the right to mutual commerce, the right to establish relationship with other States, the right to → peaceful coexistence, and the right to security.

2. Common Features of Fundamental Rights and Duties

30 Fundamental rights and duties are thought to belong to the original legal status of States. Thus, they are in principle objective and independent of any expression of willingness. Being inherently linked to the existence of States as legal persons, they have been viewed in the past by some authors as being inalienable and absolute in nature. An alternative and more careful approach, however, has also been proposed according to which, whilst the originality of such rights and duties cannot be denied, the possibility of their subsequent modification or withdrawal is indeed admitted.

31 Whilst there is no clear view as to the exact enumeration of fundamental rights and duties, they would indeed appear to share some common features. Their content, first of all, is of a framework nature, to be completed and integrated on a case-by-case basis by legal rules specific to individual sectors. In addition, instead of definite questions and problems, such rights and duties usually relate to basic or general aspects of international law. Third, and finally, they aim at governing the friendly and peaceful coexistence as well as building the basis for achieving more sophisticated forms of co-operation among States (see also → Co-operation, International Law of).

32 The fact remains that, because of their unique content, some of the rights and duties under discussion have been inserted by several authors in a peculiar sub-category of customary law, that of international law ‘principles’, for the purpose of highlighting the fact that, whilst having the same normative strength of ‘ordinary’ customary law rules, they represent the core of the regulatory structure of the international community. Without giving to the expression a hierarchic meaning—and by making it very clear that the same does not relate to the wholly different concept of → general principles of law—it may be argued that this is because such ‘principles’, for the reasons that have been given so far, do in fact represent a sort of ‘flexible constitution’ of the international legal system. In addition, insofar as they are covered by the list of principles included in Art. 2 UN Charter, such rights and duties will prevail, pursuant to Art. 103 UN Charter, over any contrasting
obligation taken by a Member State of the → United Nations (UN) by way of an international accord.

C. General Evaluation

33 A major change of perspective with regard to the theory of fundamental rights and duties of States has been brought about as a consequence of the profound modifications that have been witnessed by the philosophical and social scenarios in the course of the last four centuries. As explained above, the theory under consideration originated in a context characterized by a pressing need, on the one hand, to protect States from external interferences and, on the other hand, to uphold the supreme power of States over other pre-existing—and potentially competing—social groups. It is therefore not surprising that a number of appropriate dogmatic tools were soon developed with a view to vesting States with the legal status and the specific authority necessary in order to preserve their characters and to ensure their mutual coexistence.

34 Given such a setting, the question remains open as to whether the concept of fundamental rights and duties is not merely of historical interest, considering the existence of severe restrictions on State sovereignty, the phenomenon of failed States (→ Failing States), the duty to co-operate with other States, the trend to grant recognition only to States that fulfil certain requirements, and other principal features of contemporary international law.

35 More generally, the process of → globalization which is currently under way has the potential of determining the establishment of a renewed international legal order, based on the emergence of additional subjects and actors, an expansion of the role of substantive international law and the establishment of innovative accountability mechanisms at the international level. For a number of reasons, globalization and its consequential effects, is bound to further adjust the doctrine of fundamental rights and duties of States as it was originally envisaged.

36 Notwithstanding the declining fate of the theory of fundamental rights and duties of States, it cannot be denied that international law rules such as the ones relating to independence, sovereignty, and equality of States still occupy a central role in the international legal order. This, however, cannot be justified on the basis of their hierarchical position, but, rather, has to be explained because of the peculiar content of the rights and duties under consideration. Such rights and duties, in fact, continue to be crucial to the functioning of the international legal order as they provide a set of basic obligations which support the peaceful coexistence of independent and sovereign States.

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