SOVEREIGNTY AND INTEGRATION IN MODERN ERA. PERSPECTIVES

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Abstract

The term sovereignty conceived for a long period of time the idea of an ultimate and absolute authority in the political arena.

At the end of the XIXth century and at the beginning of the XXth century international law scholars promoted a new concept of sovereignty, for example G. Scelle and subsequently Ch. Rousseau considered that sovereignty represents a sum of abilities which states can delegate in a higher or smaller degree to different international organisations.

Although in essence it has a unitary character, within the content of the concept of sovereignty we can distinguish two component elements: external sovereignty and internal sovereignty. These two concepts realise the junction between municipal law and international law.

From the international law perspective all states are sovereign and enjoy the same juridical capacities and functions. In principle each state can participate within international relations as equal partner, it can conclude treaties based on it's free will, it can exclude any other state from interfering in it's internal affairs, and it can govern the territory and control the boundaries. In fact, if we study carefully the international relations as a whole we will notice that not all states display the same degree of sovereignty. Highly developed states with robust institutions having a dominant position within the international plane are the ones enjoying the absolute behavioral sovereignty.

The end of the XXth century and the beginning of the XXIst century was characterized by a scientifically and technical progress which created a unique informational space, deepen and diversified the international economical relations. These factors allowed the interrelation between states to extend to a global level, which entail us to question in what extent the content of the concept of sovereignty was affected. Can we interpret a treaty which imposes concessions for both parties as a restriction of their

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sovereignty? Or, can we consider that these treaties represent, in fact, a recognition and not a restriction of state sovereignty given that these treaties are voluntary creations.

In conclusion we can assert that the international law legal system is nothing else but a foundation for states behaviour, created by themselves, and that is why there are no reasons to talk about the restriction, the destruction or the absorption of state sovereignty by the international law.

Keywords: *state, sovereignty, internal sovereignty, external sovereignty, independence, equality of states, behavioural sovereignty, interrelation.*

1. Evolution of the sovereignty concept

The concept of sovereignty emerged almost in the same time with the similar idea of private property. Both of them are focusing on the exclusive rights that are concentrated in the hands of a single owner. This was contrary to the medieval system of diffused and multi-layered economic and political rights[1].

Closely related to the idea of sovereignty and less attributable to political thought, over time other ideas were expressed and implemented through concepts such as power and leadership, empire and country, king and government, but they are less accurate and specific, less technical and sophisticated than the idea of sovereignty.

The term sovereignty expressed at origin and for long time afterwards the idea of a final and absolute authority in the political community.

Sovereignty is a fundamental concept, under which people have tried to argue older forms of legitimacy and accountability or on which they have tried to establish new versions of these tools, with the help of which the power becomes authority[2].

The idea of sovereignty first appeared not as a legal but as a political one, which later took the form of a legal concept. The French scholar, Jean Bodin, is considered the founder of the modern theory of sovereignty after expressing it in the sixteenth century. The concept of state sovereignty was known in antiquity and in the Middle Ages in some degree, but namely Jean Bodin was he who introduced in the political theory the link between state and sovereignty[3].

The principle of state sovereignty is given a definitive recognition within the final period of the absolute feudal monarchies. In the Middle Ages, the idea of sovereignty in Europe, and especially in France, begins to develop not only from the political-moral perspective (as in ancient Greece) or as a concept of world domination (as in ancient Rome), but also from the juridical perspective when, in the foreground, appears *the independence* and *supremacy of the state* as classical notions. In the sixteenth century, the concept appeared in France, according to which sovereign are just the high state officials was replaced by the concept of sovereignty of the monarch, to which belonged unlimited

[1] A. Przeworski, M. Wallerstein, *Popular sovereignty, State autonomy and private property*, European Journal of Sociology no. 27, 1986, pp. 215-259.

[2] I. Muraru, E.S. Tănăsescu, *Drept constituțional şi instituții politice*, volumul II, All Beck Publishing House, Bucharest, 2004, p. 62.

[3] N. K. Ersum, *State Sovereignty*, Oxford, Palgrave Macmillan, 2006, p. 42.

power in the state, him being the only representative on the international scene. From that time the international law holds the principle *par in parem non habet imperium, non habet iurisdictionem*.

An important contribution to the development of the concept of sovereignty was made by the Dutch jurist Hugo Grotius (1583-1645). He not only founded the idea of sovereignty, but also made a distinction between state sovereignty and the sovereignty of the monarch. In his famous work *De jure belli ac pacis* (1625), *Grotius*, after reviewing the national rules and international law, concluded on the need to differentiate between *bearer of the power* and *state* and of the state as subject of power and sovereignty[4].

Characteristic of international law at the time was the presence of the religious element, which excluded from the scope of international law governing relations with non-Christian peoples and states. Subjects of international law were considered only Christian states, although there were diplomatic relations with non-Christian countries.

Subsequent to the peace treaties of Westphalia following the development of trade and the industrial revolution, the attributes of sovereignty is transferred from the monarch to the people. These new guidelines were reflected in the Declaration of Independence of the American Revolution (1776) and then the Declaration of the Rights of Man and Citizen of 1789 the French National Assembly.

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2. The sovereignty concept from a philosophical perspective

From a philosophical perspective sovereignty was regarded, in Hegel's[5] view, as an absolute power subject to no jurisdiction. From this perspective it results that, in the field of international relations, the right of the "strong" was dominant.

At the end of the nineteenth century and the beginning of the twentieth century international law scholars promoted a new concept of sovereignty, for example Scelle and subsequently Ch G. Rousseau, regarded sovereignty as a sum of powers that states may delegate to a greater or lesser degree to different international bodies.

Although in its essence is a unitary concept, the content of the concept of sovereignty has two components: external sovereignty and internal sovereignty. These two notions are a junction between domestic law and international law.

External sovereignty means absolute independence of the state and was expressed as a principle, for the first time, in 1576 by Juan Boden in the paper "About the Republic". According to this view, the state is freed from all subordination to any external power of it. Boden shows that sovereignty is absolute, perpetual and individual.

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[4] J.– E. Nijman, *The Concept of International Legal Personality: An Inquiry Into the History and Theory of International Law*, Cambridge University Press, 2008, p. 45.

[5] G. Sperduti, *Le principe de souvereignte et le probleme des rapports entre le droit international et le droit interne,* Recueils de Cours, Academie de droit internationale, Hague, vol. 153, 1976, pp. 369-371.

Internal sovereignty is the right of the state to organize public powers, namely: the right to legislate, to do justice and police, exclusively, without any interference in all areas of political, economic, social and cultural rights.[6]

This aspect of the concept of sovereignty has its origins in the development of the state and local communities, moment when it became inevitable for a subordination relationship to be established between them so that not to come to a division of the state.

In other words, it is the supremacy of the state embodied in the right of the state to adopt legal rules binding for all its citizens and ensure their implementation. Being one of the features of state, sovereignty emerged along with the state, and throughout history has evolved, changing its content in relation to the social, economic and political evolution of the states.[7]

Sovereignty as independence of the state within the sphere of its international relations primarily involves carrying out its foreign and domestic policy according to its own will. Independence, as an element of sovereignty, represents in the same time a component of the state as a subject of international law, understood as the capacity to enter into relations with other subjects of international law. Lack of independence calls into question the very existence of the state as a subject of international law.[8]

Independence can be considered a criterion of sovereignty.[9] This allows us to say that a region, a province, even a federate state, or in other words, in a more general manner, all administrative and territorial regions are not the beholders of sovereignty. All these authorities are in a dependency relation with the central authorities regarding the management of international relations. This ratio was applied in the colonial era and protectorates or colonies.

3. The acknowledgement of the principle of sovereign equality

An important role in the birth of international law, in general, and its principles, in particular, had, as already mentioned, the Peace Treaty of Westphalia concluded in 1648, which ended the Thirty Years War in Europe. The importance of this Treaty for the international law is that, for the first time an international legal document recognized the equality of states as a principle of international law and for the first time in history the independent states of Europe have joined in an international community.

Although equality of states was recognized by the Treaty of Westphalia, from 1648, this principle was applied only in the relations between the Great Powers, which can be noticed, especially in relation to the diplomatic relations between states. Great Powers privileges, could be observed, especially in external relations: only great monarchs enjoyed the right to appoint senior diplomatic representatives (ambassadors), the right to royal ceremonial etc. The small and medium states did not enjoy such rights, and failure to follow these ceremonial rules often caused tensions between states.[10]

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[6] D. Popescu, *Drept Internaţional Public*, „Titu Maiorescu" University Publishing House, 2005, p. 55.

[7] N. Q. Dinh, *Droit International Public*, 8e edition, LGDJ, Paris, 2002, p. 466.

[8] M. Dixon, R. McCorquodale, *Cases & Materials on International Law*, 4th edition, Oxford University Press, 2003, p. 133.

[9] M.– N. Shaw, *International Law*, 5th edition, Cambridge University Press, 2003, p. 189.

[10] I.- M. Anghel, *Drept diplomatic şi consular*, Lumina Lex Publishing House, Bucharest, 1996, p. 45.

4. Recognition of the principle of sovereign equality of States within the international plane

A stage with a significant importance in encoding the principle of sovereign equality is the adoption in 1945 of the UN Charter.

The principle of sovereign equality of the states is enshrined in art. 2 of the UN Charter, which stipulates that "the United Nations is based on the sovereign equality of all its members". According to the principle of sovereign equality of the states, in the sense of the Conference from San Francisco, *de jure* equality of the states does not depend on *de facto* power, size of territory, population or socioeconomic factors or policies.

Being sovereign, states are equal and independent members of the international community. States, as subjects of international law with equal rights, possess the same rights and obligations under international law and are bound by international law equally.

As part of the principle of sovereign equality of states, sovereignty has succeeded, after long efforts of the international community, to remove certain forms of state dependency, such as vassalage, protectorate or others and to establish relations between states based on independence and equality.

Thus, sovereignty is the basis of sovereign equality of states. In turn, respect for the sovereign equality of states contributes to the recognition and establishment of state sovereignty in international law.

5. Political and sociological meanings of the sovereignty concept

As established so far, from the perspective of international law all states are sovereign and enjoy equal rights. In this way, at least at a declarative level, any state may participate in the plane of international affairs on an equal footing, conclude treaties on the basis of freely given consent, exclude other states from intervening in its internal affairs, govern the state territory and control the borders.[11] However if we carefully study the behavior of states in international relations we can observe that, in reality, not all states demonstrate the same degree of sovereignty.

In practice, countries with strong domestic institutions, developed and with a dominant position, are those who enjoy absolute sovereignty behavior, and in this regard, some states are "more sovereign than others". This is because not all states are able to exercise all their rights as derived from the concept of sovereignty, like Stephen Krasner and Robert Jackson, had suggested.[12]

Although normally, states have the right to manage internal affairs and control the borders, many have little or no capacity to do this. After achieving independence, countries like Congo and North Vietnam had almost no administrative institutions by the means of which the state could govern. In the last decade Burundi, Colombia, Venezuela,

[11] N.- Q. Dinh, *Droit International Public*, 8e edition, LGDJ, Paris, 2002, p. 472.

[12] R.- H. Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World*, Cambridge University Press, Cambridge, 1993, pp. 22-23.

Haiti, Liberia, Peru, Rwanda, Uganda and several other countries have lost significant parts of the territory in the hands of rebels or armed gangs.[13]

The degree of behavioral sovereignty can vary depending on the capacity of states to exercise the international dimensions of their legal personality. For example, some sub-Saharan African countries have not been able to participate fully in the international system due to the financial and technocratic inability. In addition, at the beginning of the twentieth century, some protectorate territories were forced to cede control of the external relations in favor of their colonial patrons.

Furthermore, even if states have the right to exclude any interference in their internal affairs, in reality few can afford it. IMF usually imposes conditions for loans or other financial aids. These conditions imply the possible unwanted internal policies and institutional reforms that the beneficiary state must accept, for the necessary assistance to be provided and survive financially.[14] Similarly, countries that wish to join the European Union must adopt the European acquis. To enjoy the benefits of membership and avoid the costs of exclusion, they enforce the policy and reforms promoted in Brussels.[15]

In a community of sovereign states with varying degrees of behavioral sovereignty, the components of the legal sovereignty - free consent, sovereign equality, the right to participate in international relations, the right to claim non-interference in internal affairs and the right to govern borders and internal affairs - are very important. Legal sovereignty provides the basis for working relations between states, situated at different levels of institutional development and political power.[16] Doing the global development of all countries is permitted and increased behavioral sovereignty and general welfare are achieved.

In the same time, sovereignty as a legal term legitimizes the international political order and offers the possibility to all States to contribute to international law, for peaceful and general security welfare.

6. State sovereignty in contemporary international law

Within the doctrine of international law, sovereignty and international responsibility are considered interdependent concepts. But the state's obligation to respect international law cannot be interpreted as limiting the sovereign rights of states. However, some authors support the theory that sovereignty is limited by positive law, including international law, general legal principles like for example human rights and the sovereignty of other states.

In support of this idea we believe that an incorrect interpretation was given to the role and relationship between sovereignty and international order. In relation to both of the terms there is an equal interest that the subjects of international law ensure the compliance with their provisions. We can say, then, that far to be an obstacle to the

[13] I. Brownlie, *Principles of Public International Law*, 4th edition, Oxford University Press, 1990, p. 73.

[14] J. Stiglitz, *Globalization and Its Discontents*, New-York, 2002, pp. 77-79.

[15] M. Jorna, *The Accession Negotiations with Austria, Sweden, Finland, and Norway: A Guided Tour, European Law Review*, 1995, pp. 131-158. (describing the subjects and processes of accession negotiations with those countries)

[16] *The Blackwell Encyclopaedia of Political Thought*, Publisher Wiley-Blackwell, 1991, p. 494.

creation and development of international law, sovereignty is the main element of international law and was originally imposed by the necessity of peaceful coexistence between states.

International society in the contemporary era far exceeded the organization of peaceful coexistence between states, reaching the stage of cooperation, initially in limited areas but expanding its scope. And in this respect the sovereignty of each state has a very important role as it provides the independence of the state regardless of socio-economic or political development.

The internationalization of the entire activity does not require the state to reduce its role. Based on its sovereignty the state ensures order in its territory, and in cooperation with other countries – within the international relations. As a result the state's role in directing social processes is not reduced but increases considerably.

The end of the twentieth century and the beginning of the twenty first century was characterized by scientific and technical progress, which led to the creation of a single information space, the deepening and diversification of international economic relations, the emergence of new technologies in industry and medicine. These factors have made the interdependence of states to expand globally. Studying the problem of widening the scope of contemporary international law, it should be mentioned that recently there is a custom to regulate domestic relations following the rules of international law. In some states certain categories of rules of international law were declared as part of the national system and in case of conflict, international treaties take precedence over the rules laid down in national legislation.

Despite regional conflicts contemporary world brings many examples showing that mankind is moving towards an interdependent international community. In recent years there is a tendency to reduce the possibilities of national governments to solve problems within its borders in favor of international judicial courts. Integration processes taking place today in the political, economic, informational, spiritual, life require close a cooperation between political systems. The necessity and possibility of integrating states and peoples, the unification of efforts by all states, is imposed, today, by the increasing threat regarding the energy security, terrorism, ecology, demography and space exploration.

Given the degree of interdependence of the relations between states, one cannot consider state sovereignty as absolute. But we can interpret an treaty concluded between states, which includes mutual concessions, as a limitation of sovereignty, and given that these creations are voluntary, they are nothing but a reaffirmation of sovereignty and not limitation of it.

Therefore if the states do not consider their sovereignty as absolute in relation to certain actions within its territory, they receive the right to influence the same problems at a global level. That is why international treaties concerning the regulation of relations that belong to the area of municipal law should be seen not as measures to limit its sovereignty, but as a means of coordination agreements of will between various states.

In the contemporary era, due to the existence of the European Union and the conditions imposed to the states who aspire to accede, the question was raised whether states that will endeavor to meet all the conditions of accession will still retain their sovereignty? The question of sovereignty is valid also for the Member States. Did they

reduced or not their sovereignty by being part of the EU? Integration implies, today, a waiver of certain attributes of sovereignty.

As laid down in the founding treaties, with all the modifications brought by the treaties from Maastricht, Amsterdam and Nice, and as they had developed so far in the relations between Member States, founding, or accepted subsequently, the political sovereignty did not suffer, for states that have not agreed with some common measures have reserved the right to regulate certain situations differently. For example, if all other EU countries have accepted the so-called Schengen visa, Britain adopted and maintained a proper visa.

It is rather a dilution of the borders with regard to the economic side of collaboration between states, free movement of persons, labor law, the common concern for environmental protection, etc. All strictly on reciprocal basis, without taking into consideration the dilution of political borders, which among other consequences, certainly would primarily affect sovereignty.[17]

In conclusion we can say that international law system is nothing but a foundation for the behavior of states created by themselves, so there is no reason to talk about limiting, destroying or absorbing state sovereignty by international law.

References

1. Abrams, R.- H., *Walkig the beach to the core of sovereignty: The History Basis for the Public Trust Doctrine Applied in Glass&Goeckel*, Hein Online 40 J.L. Reform vol. 861, 2006-2007.
2. Andrew, N., *Sovereignty, Exception and Norm, Journal of Law and Society*, vol. 34, no. 1, March 2007.
3. Anghel, I.- M. *Drept diplomatic şi consular*, Lumina Lex Publishing House, Bucharest, 1996.
4. Anghel, I.- M., *Subiectele de Drept Internațional*, Lumina Lex Publishing House, Bucharest, 1998.
5. Bernhardt, P. J.- A., *Sovereignty in Antartica*, Hein Online, I.L.J., 1974- 1975.
6. Bishop, W.- W., *General Course of Public International Law*, Haga Recueils de Cours, vol. 115, 1965.
7. Boltineanu, A., Năstase, A., Aurescu, B., *Drept internațional contemporan*, All Beck Publishing House, Bucharest, 2000.
8. Brownlie, I., *Principles of Public International Law*, 4th edition, Oxford University Press, 1990.

[17] We live today in a global neighborhood, which is still a global community. In the present context the term "globalization" refers to those processes that tend to create and consolidate a unified economic world, a unique organic and complex communications network covering the whole world, even if it not reaches all of his "corners". "From Our Global Neighbourhood, The Report of the Commission on Global Govemance, 1995, quoted by William Twining, Globalisation & the Legal Theory, Butterworths, London, 2000, p. 3 in the same work, see the effects on and as reflected in the trends of globalization made the world.

9. Cassesse, A., *Modern Constitutions and Internationl Law*, Haga Recueils de Cours, vol. 192, 1985.

10. Crawford, J., *Creation of States in International Law*, Claredon Press, Oxford, 2006.

11. Dean, N.- R., *The Vertical Limit of State Sovereignty*, Hein Online 72, J.A.L.&Com. 65, 2007.

12. Diaconu, I., *Tratat de Drept Internațional Public*, vol. I, II, III, Lumina Lex Publishing House, Bucharest, 2002.

13. Dixon, M., McCorquodale, R., *Cases & Materials on International Law*, 4th edition, Oxford University Press, 2003.

14. Dupuy, P.- M., *Droit International Public*, Dalloz Publishing House, 2000.

15. *Encyclopaedia of Public International Law*, vol 4, Max Plancke Institute for Comparative Pub.

16. Ersum, N. K. *State Sovereignty*, Oxford, Palgrave Macmillan, 2006.

17. Gey, S.- G., *The Myth of State Sovereignty*, Hein Online 63 Ohio St. L. J. 1601, 2002.

18. Giulio, I., *Sovereignty, Legal Pluralism and Fundamental Rights*, Kluwer Law International, vol. 10, no. 1, 2004.

19. Helle, M., *State Sovereignty and Intervention*, Routledge Taylor&Francis Group, 2006.

20. Hideaki, S., *Re-examining Sovereignty from Classical Theory to Global Age*, Palgrave Macmillan, 2007.

21. Ian, B., *Principles of Public International Law*, Oxford University Press, 1998.

22. Jackson, R.- H., *Quasi-States: Sovereignty, International Relations, and the Third World*, Cambridge University Press, Cambridge, 1993.

23. Jorna, M., *The Accession Negotiations with Austria, Sweden, Finland, and Norway: A Guided Tour, European Law Review*, 1995.

24. Kekkonen, I., *Finlanda – o politică de neutralitate*, Political Publishing House, Bucharest, 1971.

25. Kelsen, H., *General Theory of Law and State*, Cambridge, 1951.

26. Kelsen, H., *Peace trough Law*, London, 1954.

27. Kelsen, H., *Theorie du droit international public*, Recueil des cours, 1952.

28. Krasner, S.- D., *Soverignty: Organized Hypocrisy*, Mallgrave Publishing House, 1999.

29. Macfarlane, J., *Sovereignty and Standby: The 1964 Conference on UN Peacekeeping Forces*, International Peacekeeping, 2007.

30. Maurice, F., *Souveranite des Etats et Cooperation pour le Developpement*, AFDI, 1973.

31. Miga-Beşteliu, R., *Drept internațional. Introducere în dreptul internațional public*, All Educational Publishing House, Bucharest, 1998.

32. Muraru I., Tănăsescu, E.- S., *Drept constituțional şi instituții politice*, volumul II, All Beck Publishing House, Bucharest, 2004.

33. Muraru, I., Tănăsescu, E.- S., *Drept constituțional şi instituții politice*, ediția a XII-a, All Beck Publishing House, Bucharest, 2006.

34. N. Q. Dinh, *Droit International Public*, 8e edition, LGDJ, Paris, 2002.

35. Năstase, A., Aurescu, B., Gâlea, I., *Drept Internațional Contemporan – Texte Esențiale*, Universul Juridic Publishing House, Bucharest, 2007.

36. Năstase, A., Aurescu, B., Jura, C., *Drept Internațional Public*, C.H. Beck Publishing House, Bucharest, 2006.

37. Niciu, M., *Culegere de documente de drept internațional public*, vol. I & II, Lumina Lex Publishing House, Bucharest, 1997.

38. Niciu, M., *Drept internațional public*, Servo-Sat Publishing House, Arad, 1998.

39. Nijman, J.– E., *The Concept of International Legal Personality: An Inquiry Into the History and Theory of International Law*, Cambridge University Press, 2008.

40. Popescu, D., *Drept Internațional Public*, „Titu Maiorescu" University Publishing House, 2005.

41. Popescu, D., Năstase, A., *Drept internațional public*, Şansa Publishing House, Bucharest, 1997.

42. Popescu, D., Năstase, A., *Sistemul principiilor dreptului internațional*, Bucharest, 1996.

43. Popescu, M.- I. ,*Drept Internațional Public*, Artprint Publishing House, Bucharest, 2001.

44. Przeworski, A., Wallerstein, M., *Popular sovereignty, State autonomy and private property*, European Journal of Sociology no. 27, 1986.

45. Rebreanu, V., *Constanțele Statului*, Argonaut Publishing House, 2004.

46. Schwarzenberger, G., *The Fundamentul Principles of International Law*, Haga Recueils de Cours, vol. 087, 1955.

47. Shaw, M.– N., *International Law*, 5th edition, Cambridge University Press, 2003.

48. Sperduti, G., *Le principe de souvereignte et le prbleme des rapports entre le droit international et le droit interne*, Haga Recueils de Cours, vol. 153, 1976.

49. Steinberg, R.- H., *Who is Sovereign*, Standford Journal of International Law, 2004.

50. Stiglitz, J., *Globalization and Its Discontents*, New-York, 2002.

51. *The Blackwell Encyclopaedia of Political Thought*, Publisher Wiley-Blackwell, 1991.

52. Waibel, M., *Opening Pandora's Box: Sovereign Bonds in International Arbitration*, Hein Online 40 J. Int'l L. vol. 711, 2007.