Review article
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REGIONAL ECONOMIC INTEGRATION AND STATE SOVEREIGNTY

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ABSTRACT

Economic integration, being the all over world process, proved to be especially successful on the regional level. The WTO is giving support to different arrangements of regional economic integration, recognizing the desirability of increasing freedom of trade by the development of various more liberalized frameworks, including customs union and a free-trade area. The experience of already existing economic integrations, especially EU, gives rise for discussion on the changing structure of world community, where states being integrated in supranational organizations are allegedly losing their sovereignty or at least part of it. It is more and more often that international lawyers speak about the concept of state sovereignty as deprived of political background or prefer such wording as "limitation of sovereignty or sovereign rights". Being the central point of the equality of nation's principle, the idea of sovereignty needs a careful treatment to prevent undermining the pillars of international legal order. This article attempts two issues assessment of the traditional concept of state sovereignty, being challenged by supranationalism of regional economic integration.

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1. INTRODUCTION

The concept of sovereignty has been the basics for international law theory and practice and generally recognized as a legal principle and a cornerstone of international relations. It has also been the legal instrument aiming to protect independency of all the states, especially less developed, in the context of their economical non-equality. The key word for sovereignty in international relations has been "independency", the main proofs of it being the lack of the super power and making law by consent. Even the UN Security Council decisions though legally binding for states may not be regarded as rules adopted in a different way, precisely by an organ of international organization. Proceeding from operative international law, these acts have never created new legal rules and therefore shall not be recognized the sources of that law. Due to their sovereignty, the states used to obey the rules, which they agree upon their good will. However, with organizations of economic integration the situation has become different. Their specific objectives and similar interests of state –participants required supranational regulation within integrative framework. By delegation of certain competence to the organ of regional economic organization, the states empower it to take decisions, which need not special consent and confirmation and thus give an impression of super power, neglecting state's personal will. The treaties, providing for such a transfer of state competence give rise to the opinion that state sovereignty is being more and more restricted and the main reason for that seems to be a failure to construe supranationalism entirely in terms of traditional concept of state sovereignty.

2. SOVEREIGNTY AND INDEPENDENCE

Sovereignty as a concept widely known was born with the raising of the international system in the Treaty of Westphalia in 1648. At that time, sovereignty was mainly related to the supremacy of each state's own internal institutions over its domestic affairs. At present some scholars concentrate on questions of jurisdiction in federal states thus substituting the object of discussion[1]. The others stress that the old concept of sovereignty has gradually eroded as states accept more and more limits on their freedom[2]. Still more often the investigators speculate on state sovereignty and independence

[1] Elazar, D. Constitutionalizing Globalization: The Postmodern Revival of Confederal Arrangements, Lanham, MD: Rowman & Littlefield Publishers, Inc., 1998, p. 199.

[2] Giannini, R. The Rule of Law: State Sovereignty vs. International Obligations, Issue Brief for the GA Sixth Committee, Old Dominion University, 2010.

bearing in mind the challenges of globalization[3] or the division of powers in federative states[4].

The most week point in traditional concept of state sovereignty seems to be the way to construe sovereignty in terms of independence. Sovereignty and independence are not full synonyms, because there is no fixed distinction between independence and loss of independence. It is also a matter of degree and opinion. Modern states are engaged in a great number of linkages, making them dependent on the same number of things and circumstances. In this view, the concept of interdependence is mostly worth the attention of the scholars[5]. Following the history of state it is easy to see that there had never been absolute independence in international relations, because each state has been ever limited by the very fact of existence of the other state and with each step of its international behavior it ought to take into consideration the possible counteraction from the part of other states. Being a part of the world of states as a whole, no state may be free of this whole. Moreover, from the philosophical viewpoint, freedom (say independence) is not more than knowledge of what is necessary.

The entire process of international development can be described as ever-growing interdependence. At present, the most important areas of it are as follows: international security (military, nuclear, humanitarian, and ecological), economics, protection of human rights, criminal affairs, information and intellectual property rights, space and high seas etc. Actually, it is difficult to say wherever the states remain internationally independent, that is free to take actions, being no matter of concern for the other states. Therefore, in its international relations a state needs to get into consent with the other states and all of them thus have to limit their aspirations up to mutually acceptable level, what is taking place each time when the international treaty is concluded. Does it mean the limitation of sovereignty? In 1923 in the *Wimbledon* case, the Permanent Court of International Justice said: "The Court declines to see, in the

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[3] Mamadov, U. *States as the main subjects of international law, in Valeev, R. et al. International Law. General Part, Moscow, p. 326-28. [Gosudarstva – osnovnije subjekti mezdunarodnogo prava, Mezdunarodnoje pravo. Obzchaja chast.];* Moiseev, A. *The relation of state sovereignty and supranationalism of international organizations, in Bakhin, S. International relations and law: a look into XXI century, St.Peterburg, 2009, p.182-197 [Sootnoshenije sovereniteta gosudarstv i nadgosudarstvennosti mezdunarodnih organizatsij, Mezdunarodnije otnoshenija i pravo: vzgljad v XXI vek].*

[4] Tyurina (Tiourina), N. *External Economic relations of the Federation: Full-Scale Power of the Center or full-scale Independence of the Regions, in: Choices in Law, Institutions and Policy: a Comparative Approach with focus on the Russian Federation, in Malfliet, K. et al. Garant Publishers, Leuven (Belgium), 1997, p. 211-217.*

[5] Jackson, J. *Sovereignty-Modern: A New approach to an Outdated Concept, 97 American Journal of International Law, 97 (4), 2003, p. 801.*

conclusion of any treaty by which a state undertakes to perform or refrain from performing a peculiar act, an abandonment of its sovereignty… The right of entering into international engagements is an attribute of state sovereignty"[6].

The Court's interpretation of sovereignty as a two-sided phenomenon seems sufficient enough to explain the balance between the individual interests of a state and its international obligations for the better of a number of states, including itself. To make this viewpoint still more convincing it may be worth mentioning that all the states participating in one and same treaty are equally bound by the provisions of this treaty, while the restriction means that someone gets less than the other (others). Reciprocal obligations, though being hard, make up a guaranty against non-desirable behavior of the counterparty. Besides, "it is up to the states to decide how they implement such obligations"[7]. In addition, the last but not the least is the object of restriction, which cannot be the right for choice, for defense or taking decisions.

3. SOVEREIGNTY AND SUPRANATIONALISM

Being conscious of their interdependence the states seek for the framework to balance the relations by specific regulation. Nowadays it is traced in international organizations of economic integration (IOEI). They rapidly grow in number and diversity. Inside this group, we can distinguish different sub-types differing by the degree of integrity and their status (position) in international relations. IOEI does not differ from international organization of the traditional type by its origin, general structure and permanent membership. However, alongside with these common characteristics they have specific aims and they act in international relations, typical for states, as a single unity. Thus, in 1971 Belgium, the Netherlands and Luxemburg as economic and custom union and therefore as a single party got into trade agreement and agreement on trade and payments with the Soviet Union. Later the same parties concluded a Bilateral Investment Treaty. In the Preamble to these agreements it was said that the governments of three countries (Belgium, the Netherlands and Luxemburg) act as a single party according to the Treaty of 1958.

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6 Wimbeldon case, *in Permanent Court of International Justice, Series A, no. 1,25.*

7 Jääskinen, N. *Constitutions in the European Union – Some Questions of Conflict and Convergence. European Journal of Law and Economics, May, 2011, p. 211.* Sharing generally the opinion of N. Jääskinen, it is necessary to mention that Marracesh Agreement requires quite definite implementation of the provisions of all obligatory multilateral agreements. In Art.XYI it states that Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

European Union is represented in international relations as a single unit, being a party to agreements with a number of states and a member of WTO. MERRCOSUR is also one of numerous examples in this area. According to art. 34 of Auro Preto Protocol, which is a constitutive treaty for this custom union, MERRCOSUR possesses of personality in international law. Realizing its international legal capacity MERCOSUR has got into several bilateral agreements with the states of Latin America, Egypt, and India. In 1995 the agreement on cooperation was signed between MERCOSUR and European Union.

Some of the universal agreements (Custom convention on international transportation of goods, 1950; Agreement on importation of educational, scientific and cultural materials 1950 and others) pay special attention to cooperation with IOEI providing for the statements allowing the custom and economic unions to become a party to these agreements. To realize these provisions and to succeed in achievement of their integration purposes the IOEI need special state-like institutions, known as supranational organs.

Considering the supernationalism of IOEI, it is necessary to stress that the legal background of this phenomenon is the international treaty, by which the states agree to empower one of its organs to take decisions obligatory for all the members of this organization. The origin of supranationalism gives the reason to characterize it as derivative from sovereign wills brought into consent and therefore the restriction of sovereignty is the wrong wording for this case. Either is a self-restriction of sovereignty, because supranationalism appears to be the way for beneficial domestic developments and strengthening the international position of a state as a sovereign. It is also necessary to point out that by submitting itself to limitations or partial transfers of law-making powers to extrinsic organs, the states preserve their power to revoke these restrictions and thus continue to be sovereign[8].

For legal purposes supranationalism is the term to describe international organization pointing out special competence of its main organs and the legal power of the acts, adopted by these organs. In other words, it is the legal quality of international organization inherent to the IOEI. Nevertheless, juridical features of supranationalism may affect the whole system of international law. Namely they are:

- the right of international organization to decide on the domestic issues
- the power to create: a) rules binding for the member-states; b) mechanisms of control and enforcement

[8] See Jääskinen, N. *Op.cit., p. 211;* Tyurina, N. *International Trade as a factor of International Public Law Development, Kazan, 2009, p. 159.*

– the power to grant rights and impose obligations on natural and legal persons of the member-states.

Due to the above-mentioned features, supranationalism provides for varying the relations a) between the subjects of international law b) between international organizations and subjects of national law (state organs, natural and legal persons).

4. CONCLUSION

Supranationalism of IOEI proves to be the result of direct consent, expressly revealed by the member-states, getting into agreement about cooperation in such an institution and therefore it does not contradict the main ideas of sovereignty. State sovereignty has not exhausted itself as an inherent attribute of a state or the concept of international law. The ideas of "equality of nations", i.e. *par in parem non habet imperium*, 'sovereign immunity" as the legal contents of state sovereignty remain fundamental for international law system and the attempts to deny them may result in a threat for international legal order. However, interpretation of sovereignty exclusively in the notions of Westphalia proves to be misleading taking into consideration the current developments in globalizing world. The key issue to understanding the model of sovereign behavior is the right for a choice within the limits of previous decisions taken by the same actor, within the limits of a free space, not injuring the rights of other states recognized by international law and generally recognized principles and norms.

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