SOVEREIGNTY, A SWINGING CONCEPT BETWEEN INTERNATIONAL LAW AND POLITICAL REALITY

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ABSTRACT

The State, as the fundamental unit of the international system, appeals to ultimate power and authority in order to control its own domestic affairs and claims equality as a legal basis regarding its relation with other legal political units. But the existence of the sovereign state in the current international context, where the multiple interdependencies generate divergence and cooperation in the same, is subject to permanent challenges. And the issue is not easy approachable in theory, nor in practice. Like other concepts, as security or democracy, the concept of sovereignty needs to be updated according to the new rules revealed by the process of globalization, rules that are defined not by the equal states, but by the powerful ones.

KEYWORDS: international law, international relations, recognition, sovereignty.

1. Introduction

As an independent entity, the State is defined by reference to three elements: a fixed territory on which the state exercises its functions; a permanent population, located within the national boundaries; and a government through which the state puts into practice its sovereign power with the ultimate scope of regulating people's living on its national territory. But according to the Montevideo Convention (1933), which had put the state in relation to the international law, besides these three elements there is a fourth one needed to be taken into consideration – that is the *"capacity to enter into relations with the other states"* (The Montevideo Convention, article 1). Thus, the statehood issue is closely connected with the idea of recognition meaning that, in order to become integrated at the international level as a legal standing entity characterized by rights and obligations, a state should be granted by the international community with its confidence that the factual criteria of statehood have been fulfilled indeed.

2. Methodology

The paper aims to address the issue of state sovereignty in the field of international relations, where states, although theoretically equal among themselves, are hierarchically ranked according to their national performances which are eventually converted into power at the international level. It is analyzed, based on exploring the existing literature in the area of interest and with the help of direct observation, how the independent and sovereign states are able to integrate themselves into the international political context. In this respect, it was necessary to have the concept of sovereignty clarified, taking into consideration the transformations and challenges of the international security environment at the beginning of the 21st century.

3. The Concept of Sovereignty and Its Historical Roots

Sovereignty is the attribute of the state that allows it to independently establish its form of government, the relationship between the executive branch and the legislative one, the social order and the legal system which are considered to be the most appropriate to support the political survival and the economic development. This internal sovereignty is doubled by an external one that allows each state to manifest itself as independent actor having the same range of rights like any other state, no matter how large or small, powerful or weak it is.

But Stephen David Krasner, an international relations professor at Stanford University, sovereignty has not two, but four meanings or attributes (Krasner, 1999, pp. 11-25):

● Domestic sovereignty as the ability of a state to maintain the monopoly of the use of violence within its territory: *"Domestic sovereignty, the organization and effectiveness of political authority is the single most important question for political analysis".* The key element is **authority**;

● Interdependence sovereignty as the capacity of a government to control the intra-borders movements of any kind. This attribute is somehow related with the previous one – we are dealing not only with what is happening on the national territory, but also with the state's incapacity of disciplining all those issues that have emerged from the process of globalization: *"atmospheric pollution, terrorism, the drug trade, currency crises, and AIDs"* (and, of course, the examples might continue). The key element is **control**;

● International legal sovereignty which is brought into discussion when the status of a political entity in the international system is established. Thereby a few questions arise:

"Is a state recognized by other states? Is it accepted as a juridical equal? Are its representatives entitled to diplomatic immunity? Can it be a member of international organizations? Can its representatives enter into agreements with other entities?". The key element is **recognition**;

● and Westphalian sovereignty which *"is based on two principles: territoriality and the exclusion of external actors from domestic authority structures"* due to the idea that according to the *Peace of Westphalia* the domestic political authorities are the only entitled to rule on a specific territory. In other words, this type of sovereignty is violated when a foreign entity tries to determine or influence the existing domestic authority, no matter if through intervention or invitation. The key element is **nonintervention** but the concept has nothing to do with the *Peace of Westphalia* (Emmerich de Vattel (1714-1767), a Swiss Jurist, is considered to be the first who defined the principle of nonintervention, in *Droit des gens ou principes de la loi naturelle,* 1758). *"Nevertheless, the common terminology is used here because the Westphalian model has so much entered into common usage, even if it is historically inaccurate".*

Traditionally when the problem of sovereignty is approached, academics usually explain it by bringing into attention the *Peace of Westphalia* (in 1648) which is considered to be the starting point of the modern state existence or as Henry Kissinger said *"the path breaker of a new concept of international order that has spread around the world"* (Kissinger, 2015, pp. 23-24). Based on two treaties signed in Münster (between the Holy Roman Emperor and France, along with their respective allies) and Osnabrück (between the Holy Roman Empire and Sweden, along with their respective allies), the *Peace of*

Westphalia recognized the right of each signatory part to decide in connection with its own domestic structure and to act freely from any religious intervention.

While some revisionist scholars attacked the two documents, considering them being almost identical and dealing in fact with the Holy Roman Empire internal affairs (Osiander, 2001) and not providing the solid elements of the "principle" of sovereignty, the *Peace of Westphalia* is considered to be the turning point in the history nations being the beginning of the modern international system.

So, if the state is the most important international actor then, obviously, sovereignty, as a concept but also as a matter of putting into practice the national interest in the international context, has a key role in understanding the theory of international relations and also in explaining the international affairs. But what is, in fact, sovereignty? It is the state's full right to enforce the ultimate power and authority within the boundaries of its national territory and to act as an independent entity on the international stage, according to its national interest.

4. Adapting the Concept of Sovereignty to Nowadays Political Reality

The above mentioned definition should be considered in general terms.

The contemporary international system is subject to the most various transformations due to the process of globalization which implies integration and interdependence. It means that even the State, which continues to be the building block of the world order, has been in the last decades the target of multiple challenges. In this context, some concepts used to explain the political community must be enriched with attributes derived from reality.

4.1. Sovereignty and Domestic Affairs

The state indeed is responsible for what is happening on its national territory but this does not mean that it can do what it wishes or what it considers being proper for ensuring a specific government and way of governing, although history is full with of examples, including after the Second World War which should have remained a warning signal to the consciousness of humanity. In this respect, a reasonable question arises: is, for example, mass murder an internal issue? Three million people were killed in Cambodia (1975-1979) under the Pol Pot regime, and other 800.00 were massacred in Rwanda in 1994.

Anyway, it seems that today the internal sovereignty is under the pressure generated by the globalization process, being forced to adapt itself at a new reality – the national economies are dominated by private enterprises and are being influenced by transnational trends and phenomena; the civil society organizations have a great desire and willingness to get access at the decision making process; the international human rights law is spread all over the world; the communication and transportation advances are evident and available for more and more people; the state itself not only that has become more and more resourceless, being forced to cooperate with private entities, but through legal mechanisms part of its sovereign rights can be transferred to a supranational organization (like the European Union). This means that the internal sovereignty is less exclusive and no longer unlimited. Decisions are still the result of the political authority but the number and type of actors involved in the policy process have expanded.

4.2. Sovereignty and International Relations

Two aspects are brought into discussion here in connection with the

external sovereignty; state recognition and state power. The issue concerning the relationship between sovereignty and international relations is not only complex, but also debatable. The picture can be extended by analyzing problems like contemporary international law, international democracy, human rights, intervention, foreign aid, international organization, and globalization.

If the internal sovereignty is based on the state's authority, the external one implies equality among states, at least from the international law perspective and from the theory of international relations. In this case, the dimension of territory or the GDP *per capita* have no relevance. Dealing with equality in a legal manner means dealing with a certain status that arises from the same rights. In this respect, very suggestive is what Kenneth Waltz wrote in one of his books: between sovereign states *"none is entitled to command; none is required to obey"* (Waltz, 2006, p.130). But the fact that they are equal does not mean that they are entitled to act according to their own desires, nor that they can resort to any means them like in order to fulfil their national interest.

Sovereignty characterizes a political entity that has achieved statehood which in its turn is connected with the issue of recognition.

There are two competing theories applied on this matter: if for the "declarative" theory the supreme element to statehood is a government than can effectively rule the indigenous population located on a bordered territory, for the "constitutive" approach the cardinal element is the legal status of the government or state translated in terms of being accepted by the others. Therefore, a subject of international law, recognition is also a political act done by states individually according to their interest. Bearing great responsibility (for the international stability) and generating important consequences (for the international system), recognition:

- Is *"the determination of the nature and the extent of the relations between states"* (Brown, 1950);
- *"Provides pivotal legitimacy from the top-down, cementing a nascent State's claim to sovereign authority in the outside world"* (Coggins, 2006);
- *"Is an act that confers a status ... a (new) state is not born, but chosen as a subject of international law"* (Krasner, 1999).

It can be said that recognition is the entrance gate for a new state to the international system. Sovereignty provides state the freedom of action, including to its "greatest" extent – that is to make war.

Sovereignty is based on power but it does not exclude the lack of power. When the raw power does not exist its place is taken by an ally or other institutional arrangements meant to guarantee if not a comfortable position at the international level, somewhat a peaceful and tranquil existence. For a developed country, external sovereignty is a certainty and is measurable through the results obtained in projecting the national interest. Wealthy and powerful states frequently influence or even dominate weak and poor states. One of the most common examples is the relationship established between a former colonial power and its former colony which is now an independent country. The tools are not only economic, but military too, like in 1979 when the Soviets invaded Afghanistan or in 1990 when Iraq violated the sovereignty of Kuwait by occupying it.

And even under such circumstances, being not so well developed and lacking the instruments for a proper action at the international level, sovereignty remains attractive, desirable and offering.

5. Conclusions

As a concept that seems to resonate mainly with the international law, sovereignty cannot be excluded from the international relations. Being a feature of the

modern state, it will continue to be subject of debates and analysis as long as the state will rock the international system. One should never forget that the state *"has a keen instinct for survival and has so far adapted to new challenges"* (Krasner, 2009).

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