

Violation of the Principle of Sovereignty that Legitimizes the Actions of the Security Council

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Abstract: *The link between sovereignty and international law found its legal embodiment in the principle of sovereign equality of states. The principle of sovereign equality of states is a complex principle, in two ways: both of its components can be considered independent principles. The combination of these elements gave rise to an international legal phenomenon - the principle of sovereign equality of states. It assumes that any state must fully fulfil its international obligations. Within the framework of this principle of sovereign equality, sovereignty itself has regained its definition in the relations of international law. These relations, as a rule, are established between the subjects of international law, i.e. states, but they can also be between states and organizations or only between intergovernmental organizations. The essence of this principle is the rule, according to which the maintenance of international law and order is possible and can be ensured only with full respect for the legal equality of the participants. This means that each state must respect the sovereignty of the other participants in the system, that is, their right on their own territory to exercise legislative, executive, administrative and judicial power without any interference from other states, as well as to exercise independently external politics.*

Keywords: *violation, principle of sovereignty, security, council.*

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I. Introduction

The main subject of international law is the state. Based on its sovereign power, states create and apply international norms. It is traditionally recognized that the existence of a state requires the combination of three essential elements: territory, population and government. A government cannot claim its employment, arising only from the fact of its formation. Therefore, sovereignty extends over the designated territory through the implementation of a number of powers by international law, conferring international personality on the state that possesses them; competence and personality constituting the attributes of sovereignty.

State sovereignty was defined in the doctrine of international law as "the unique, full and indivisible supremacy of state power within the limits of territorial borders and its independence in relation to any other power, which is expressed in the exclusive and inalienable right of the state to - establish and realize independently its internal and external policy, to exercise its functions, to fulfill its practical measures for the organization of internal social life and external relations based on respect for the sovereignty of other states, principles and norms of international law accepted by his voluntary agreement"[1]. State sovereignty is an exclusively legal notion, regardless of the interpretation of this term. State sovereignty is the legal symbol of the state's personality, its independence and its presence as a political organization of the given society.

The dictionary of public international law defines the fundamental principles of public international law as "rules of maximum generality, tacitly or expressly recognized by all the states of the world as binding on them in the cooperative relations between them". In another interpretation, a fundamental principle of international law means "a normative prescription that is characterized by a high level of abstraction, giving expression to a universally accepted international value and that governs the conduct of the subjects of international law".

UN Charter, art. 2, par. 1, uses the expression "sovereign equality" in the sense that the sovereignty of states, which assumes as intrinsic elements the supremacy of state power in terms of internal relations and its independence in relation to other states, includes the equality of rights of states as a complementary principle.

II. The principle of state sovereignty in international law

The link between sovereignty and international law found its legal embodiment in the principle of sovereign equality of states. The principle of sovereign equality of states is a complex principle, in two ways: both of its components can be considered independent principles. The combination of these elements gave rise to an international legal phenomenon - the principle of sovereign equality of states. It assumes that any state must fully fulfill its international obligations. Within the framework of this principle of sovereign equality, sovereignty itself has regained its definition in the relations of international law. These relations, as a rule, are established between the subjects of international law, i.e. states, but they can also be between states and organizations or only between intergovernmental organizations.

The essence of this principle is the rule, according to which the keeping of international rules and order is possible and can be sustained only with full respect for the legal equality of the parts. Meaning that each state must respect the sovereignty of the other participants in the system, that is, their right on their own territory to exercise legislative, executive, administrative and judicial power without any interference from other states, as well as to exercise independently external politics.

The sovereign equality of states is one of the most important principle in international relationships, which is enshrined by art. 2 of the UN Charter, which highlights: "the Organization is based on the principle of sovereign equality of all its members" [2].

One of the objective of the principle, which is often called the principle of state sovereignty, is to guarantee the equal legal participation in international relations for all countries, regardless of economic, political, social, or other development. Because the states are equal participants in international community, they all have basically the same rights and obligations. This principle is also enshrined as a fundamental right in the charters of international organizations of the UN system, in the constitutive documents (charters) of the several of regional international organizations, in the multilateral and bilateral agreements of states and international organizations, in the legal documents of international organizations.

In contemporary international law, this principle is pointedly in the „*Declaration on the Principles of International Law, in accordance with the Charter of the U.N. since 1970*. Later, this principle was answered in the *Declaration of Principles of the Final Act of the Conference on Security and Cooperation in Europe 1975, the Vienna Conference on Security and Cooperation in Europe 1989, the Charter of Paris for a New Europe in 1990 and a number of other documents*” [3].

The principle of sovereign equality of states is a synthesis of traditional legal principles - respect for state sovereignty and equality of states. The first social purpose of the principle of sovereign equality is to guarantee the equal participation in international relationship of all countries. Since states are equal members in international community, they all have the same fundamental rights and obligations. The principle of sovereignty is a fundamental one in international law, and its application is mandatory by all states, towards the other subjects of the community.

Sovereignty is an integral property of the state. We must say that, no state, no group of states or an international organization can bind the norms of international law that they have created on other states. The acceptance of a actor of international law in any system of legal relations can only be achieved only by voluntariness.

According to the 1970 Declaration on the Principles of International Law, the specific elements of this principle are:

- a) *"each state enjoys the inherent rights of full sovereignty;*
- b) *each state has the obligation to respect the personality of other states;*
- c) *every state has the right to freely choose and develop its political, social, economic and cultural system"*[4].

In the „Declaration of Principles of the Final Act of the C.S.C.E.”, the countries committed not only to the principle of sovereign equality as provided for in the U.N. Charter and in the „1970 Declaration”, but also to esteem the rights inherent in sovereignty. Thus, in their relationships with each other, the countries should honored differences in historical and socio-political development, a variety of situations and points of view, internal laws and administrative regulations, the right to determine and exercise relationships with other countries at their own discretion and in accordance with international law, the right to membership to international organizations, regardless of whether or not they are participants to bilateral and multilateral treaties, including trade union treaties, as well as the right to neutrality. At the same time, it should be noted that the legal equality of states does not pretend their real uniformity, which is taken in estimation in real international relationships. An example of this difference is the Status of permanent and non-permanent members of the UN Security Council.

We remember that, the states create rules of international law by mutual agreement. No group of countries can enforce on other states the international legal norms it has created [5].

Legal equality of states does not mean their de facto equality. The principle of real inequality and, at the same time, legal equality, manifests itself especially in international conferences and in international

organizations, where every state, regardless of its size and level of progress in all respects, has a vote. The principle of sovereign equality of countries is created to protect the interests of small countries from the dictatorship of developed states. At the same time, this principle plays an important role in protecting the interests of developed states from imposing them on the position of developing states, which have a significant numerical advantage. Currently, the following trend is observed: states transferred some of their powers, which were previously appreciated inalienable attributes of state sovereignty, in favor of international organizations that they create. For example, in a number of international organizations, the founding countries avoid the previously used principle of formal voting equality (one country - one vote) and adopted the so-called weighted voting method, according to which the number of votes per which the state has it depends on its contribution to the organization's budget and other circumstances.

III. Violation of the principle of state sovereignty

Respect for the sovereignty of any state is one of the generally binding, imperative principles of modern international law, which implies the obligation to respect the supreme power of the state over its territory and respect for its political independence. "Consequently, each state has the inalienable right to choose its own political, economic, social and cultural system, without any intervention in any form from another state"[6].

The basic principles of international law, enshrined in the Charter of the United Nations (UN) and set forth in the Declaration on the Principles of International Law of 1970, are, among others, those that guarantee respect for the sovereignty and sovereign equality of states. The sovereign equality of states also means „*that each state must fully and conscientiously fulfill its international obligations and live in peace with other states, without involving itself in the internal or external affairs of another state*”[7].

However, absolute and irresponsible sovereignty contradicts the foundations of international communication, which makes it essentially impossible. Once a state declares absolute sovereignty, it automatically denies the existence of sovereignty to other states. Thus, the absolute sovereignty of a state becomes incompatible with the system of international law. Therefore, they can only secure real sovereignty in accordance with international law. Consequently, state sovereignty is realized within international law. And the way to ensure the rights of the state is that of mutual agreement. The members of the international community agree to respect certain norms regulated by international law and thereby undertake the obligation to respect

them. In case of a crime, an additional liability obligation is issued, by which compensation for the damage caused is ordered.

International practice has known for a long time many cases in which the question of satisfaction was raised as a form of compensation for moral and legal damage. Such cases include insulting state symbols or state officials, violation of diplomatic immunity, etc. Such cases also include violations of sovereignty or territorial integrity, assault on ships or aircraft, ill-treatment or intentional aggression of heads of state or government. Suffice it to say that violating sovereignty or territorial integrity is one of the most serious crimes. All this should be understood in the sense in which we refer to cases where the injury is only moral and legal.

IV. Security Council

Composition. The UN Security Council was established on October 24, 1945, with headquarters in New York, whose emblem we can see on thread 4, and is made up of 15 UN member states. The five powers - Russia, the US, the UK, China and France - are permanent members of the Council. The General Assembly elects 10 other states as non-permanent members of the Council for a two-year term. Currently they are: „Belgium (2020), Vietnam (2021), Germany (2020), Dominican Republic (2020), Indonesia (2020), Niger (2021), Saint Vincent and the Grenadines (2021), Tunisia (2021), Estonia (2021), South Africa (2020)”[8]. In the election of the non-permanent members of the Council, the main responsibility is the maintenance of peace and security. All UN member states agree to abide by and implement the decisions of the Security Council.

The Security Council is authorized to consider any dispute or situation to determine whether the continuation of such dispute or situation may threaten the maintenance of international peace and, if necessary, to recommend to the parties the procedure, methods or conditions of settlement. The Security Council also determines the existence of any threat to the peace, „*of any violation or act of aggression and makes recommendations or decides what measures should be taken to maintain or restore international peace and security*”. Previously, he has the possibility to ask the subjects to take some temporary actions in order to be able to prevent the situation from worsening (Articles 39 and 40 of the UN Charter). In addition, he is authorized to decide what measures unrelated to the use of armed forces should be applied, including the total or partial suspension of all sea, rail, , air, postal, telegraph, radio and other means of communication, and the separation diplomatic and economic relations. In practice, the activities of the Security Council regarding the maintenance of peace and security consist

in determining certain sanctions against violating states (including military operations against them); the introduction of peacekeeping units in conflict zones; the organization of post-conflict settlement, including the introduction of international administration in the conflict zone.

The UN Charter gives the Security Council the prerogative to declare an action a threat to international peace and security or an act of aggression. Thus, the Council must make a recommendation or decide on the measures to be taken in order to restore international peace. The Security Council either adopts resolutions binding on states (Article 25) or issues non-binding recommendations. Depending on the seriousness of the circumstances, the Council can adopt, in a first stage, some measures of a provisional nature to prevent the worsening of the situation. It can invite the parties to carry out negotiations, mediation, „*conciliation, investigation, arbitration, judicially, or other peaceful means*”[9]. The Council can make an inquiry into an international dispute, which would be able to determine some international divergences.

When these temporary measures are not fulfilled or are not according to the expected result, the Council has the power to take some measures without the use of armed force, against the state that is guilty of a breach of the peace or an aggressive violence against another state. These measures provided for by the UN Charter include: „*the complete or partial interruption of economic relations, and of rail, sea, air, postal, telegraphic, radio and other means of communication, as well as the severance of diplomatic relations*”[10]. Thus, the Security Council plays a major and decisive role in UN peacekeeping. Only this UN body is authorized to take action and, if necessary, use force to maintain international peace. As a rule, when a threat to the peace arises, the Council first tries to reach an agreement and resolve the situation peacefully. He can himself formulate the principles of a peaceful settlement and recommend them to the conflicting parties. Carrying out mediation functions, he can send a mission, appoint a special representative or invite the UN Secretary-General to mediate. If the dispute turns into hostilities, the Council shall, in the first instance, seek to put an end to them as soon as possible, and to this end may issue instructions or an order for a cease-fire and the establishment of a cease-fire, which may prevent the escalation of the conflict. At the same time, „*The Council may also send military observers or UN peacekeeping forces*”[11], to ease tensions, separate opposing forces, as well as create a calm environment in which to seek peaceful solutions.

V. Conclusions

Respect for the sovereignty of any state is one of the generally mandatory, imperative principles of modern international law, which implies the obligation to respect the supreme power of the state over its territory (territorial supremacy) and its political independence. Thus, we can say, that the violation of sovereignty or territorial integrity it is one of the most serious crimes because it involves the invasion of a state into the internal affairs of another state. The basic principles of international law, enshrined in the Charter of the United Nations and set forth in the Declaration on the Principles of International Law of 1970, are, among others, those that guarantee respect for the sovereignty and sovereign equality of states. And in case of non-compliance with international principles, the Security Council is authorized to consider any dispute or situation to determine whether their continuation may threaten the maintenance of international peace and security and, if necessary, recommend to the parties the procedure, methods or conditions of solution. Currently, the monopoly on the use of armed force at the international level belongs to the Security Council.

Violation of state sovereignty is an acute problem at the international level, which concerns the international community since ancient times. We mention the fact that respecting the sovereignty of states, which is one of the fundamental principles of the UN, plays an important role in the cooperation of states, guaranteeing, at the same time, equal sovereign rights to all states. States have equal rights in solving international problems related to their legitimate interest.

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