Sovereignty in International Law

Jana MAFTEI[1]

Abstract: We aimed at highlighting in this paper, after analyzing the transformations that took place in the international society, the importance of a particularly sensitive and current topic for public international law, namely the sovereignty. A political and legal concept at the same time, the state sovereignty remains permanently into the attention of researchers in an attempt to determine its role in international relations governed by the international law. The concept of sovereignty is complex, it can be analyzed in terms of the national law, but as a member of international society, a State participates in international relations on the basis of sovereign equality principle, which causes another meaning of sovereignty, which completes the one specific to the internal life. We have analyzed the evolution of the concept of sovereignty and we have identified the causes that led to changes in its characteristics, in order to predict the tendencies in its development. We have highlighted the aspects of the exercise of sovereignty as a result of limiting the powers of state in the favor of international bodies. In preparing this article we have used as research methods the analysis of the problems generated by mentioned subject with reference to the doctrinal views expressed in specialized papers, documentary research, and interpretation of legal norms in the field.

Keywords: sovereign state; independency; international law; globalization, BioPower

1. Introductory Remarks

The concept of sovereignty is complex: in terms of internal law, the state appears as a sovereign power, as political organization of society, undermining different bodies (authorities) with specific legislative, executive, jurisdictional powers; within the international society in each country it participates in the international relations on the basis of sovereign equality, which causes another meaning of sovereignty, which complements the one specific to the internal life.

[1] Associate Professor, PhD, "Danubius" University of Galati, Faculty of Law, Romania, Address: 3 Galati Blvd, Galati, Romania, tel: +40372 361 102, fax: +40372 361 290. Corresponding author: janamaftei@univ-danubius.ro.

For the international legal order, the sovereignty is a constituent element of state and the international personality requires that the public power is independent, which grants the quality of sovereign state. Sovereignty is generally considered, that general feature of the state, which represents the state supremacy and independence of state power in expressing and achieving the governors' will as general will, compulsory for the whole society. (Anghel, 2002, p. 107)

In 1928, the arbitrator Max Huber[1] said in the Palmas Island Deal (USA vs. Netherlands): "*Sovereignty in the relations between States signifies independence; Independence 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. The development of the national organization of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations."*[2]

State Sovereignty is the quality of state power "*to be supreme in relation to any other existing social power within its territorial limits and independence compared to the power of any state or international body, the quality being expressed in the State's right to determine freely, without any interference from the outside, the purpose of his activities internally and externally, the fundamental tasks, which it has to fulfill and the necessary means to achieve them, respecting the sovereignty of other states and international law provisions*." (Vrabie, 1995, p. 69)

Sovereignty can be seen from the international and domestic point of view, in political and legal terms (Hauriou & Gicquel, 1980, p. 132), aiming at explaining the need to limit state sovereignty or limitation of powers, in favor of international bodies (Puşcă, 1999, p. 161).

In the State's definition formulated by Max Weber, it includes three conventional elements: territory, people and soveregnity, considering that the abstract term of soveregnity presupposes the state's monopoly to use force. (Newton & van Deth, 2010, p. 22)

[1] Max Huber, a prominent figure in the international circles, has played a leading role in organizing the international justice (Thürer, 2007)

[2] Case concerning sovereignty Palmas Island in the *Palmas Island Deal*, April 4, 1928, RSA, vol. II, p. 838. http://legal.un.org/riaa/cases/vol_II/829-871.pdf.

Carl Schmitt explains the essence of sovereignty in the following terms: the sovereign produces and guarantees the situation as a whole. It has a monopoly on the latest decisions. Herein it lies the essence of sovereignty that must be correctly legally defined, not as monopoly of coercion or to lead, but the monopoly to decide. (Schmitt, 1985, p. 5 et seq.)

In terms of international relations it requires the existence of competing sovereignty, which results in "*legal equality of sovereignty*" as the saying "some freedoms stop where the freedom of others begins" (Jean-Paul Sartre, apud Chilea, 2007, p. 79); every state has the same sovereign power in international relations management.

2. The Emergence and Evolution of the Sovereignty Concept

It is considered that the first known definition of sovereignty appears in Justinian's Digest in the following wording: "Liberi populus externus is qui nullius alterius populi potestatis est subiectus."[1] (Alexe, 2009, p. 152)

In the Romanian specialized literature the emergence sovereignty is put into the equation along with the emergence of states. Grigore Geamănu, for example, stated that sovereignty appears as an institution "from the moment the states begin to exist" (1967, p. 39). Another author considers similarly that "*sovereignty appeared with state power, as a feature, under the conditions of the decomposition of gentile society and the creation of the state.*" (Moca, 1983, p. 123) And in the foreign literature authors considered in the same sense, stating that *the issue of sovereignty occurred when there were at least two states near one another, in an attempt to maintain independently of one another.*" (Korowicz, 1961, p. 43)

However, there are authors who believe that we can speak of sovereignty, broadly in terms of ancient Greek ancient state or the Roman State, considering that the name of the concept[2] appeared only later on. (Aurescu, 2003, pp. 15-17)

P. Negulescu stated that the concept of sovereignty appears in the 15th century for designating the position of the king in the feudal hierarchy and it comes from Vulgar Latin, the preposition *super* (above), from which arose the adjective *superanus* and the noun *supremitas*, which means the situation a man who, in terms

[1] It is free in the outside that people which is not submitted to the power of another people.
[2] E. N. von Kleffens states that this word is first mentioned in a map dated around 1000 (von Kleffens 1953, p. 9).

of hierarchy, has no one above him, he is not subordinated to anyone. (Negulescu 1927, p. 95)

In the Middle Ages the concept of sovereignty will record important developments. Jean Bodin, in his *Les six livres de la Republique (1576)/Six books on the Republic (1576)* defines sovereignty as *summa potetas*, which recognizes no other higher authority. In the conception of Bodin, sovereignty is absolute, perpetual, indivisible, inalienable and imprescriptible (Alexe, 2009, pp. 152-153). Jean Bodin believes that "*sovereignty is the absolute and perpetual power of a Republic, which the Latins call majestatem/Majesty [...] Sovereignty is not limited, nor in power, nor in content, nor in time.*" (Jacobsen, 2000, pp. 179 -181)

The beginning of the modern era marks a change of system, after the peace treaties of Westphalia, ending the War of 30 years (1618-1648), in order to ensure the lasting peace in Europe, it is established that the main international actor is the State-nation, endowed with absolute sovereignty. This element will allow common approaches both from the representatives of jus-naturalism (especially Hugo Grotius) and of positivist doctrine in an attempt to clarify important notions in defining the concept of sovereignty relative to the principle of sovereign equality, an equal right recognized to all these international actors, for the non-interference in the internal policies of other states, for the territorial independence of states.

In the paper Der Kampf ums Recht (The struggle of Law), Jhering shows explicitly the right as political force (Jhering 1991, p. 2), the object of struggle for collective interests and for power, the state is simply limited of only its will. (Alexe, 2009, p. 153) Any sovereignty is offensive, according to a Romanian author (Năstasie, 2012, p. 49).

The doctrine of the social contract and sovereignty of the people has been the basis of the first bourgeois constitutional acts. The end of the 18th century brought new developments in the concepts related to sovereignty. State sovereignty turns into national sovereignty, the attributes of sovereignty are transferred from the monarch to the nation and the people. The expression of this trend is illustrated eloquently by the American States Declaration of Independence (1776) and the Declaration of the Rights of Man and Citizen, and the constitutions of France during the revolution (1991-1793) (Miga-Beșteliu, 1998, p. 85). Article 3 of the Declaration of the Rights of Man and Citizen expresses the idea of national sovereignty for the first time: "*The source of all sovereignty resides essentially in the nation. Nobody, no individual can exercice authority that does not explicity proceed from it"*. The

National sovereignty principle was taken by the French Constitution of 1791 stated in article 1 that sovereignty is indivisible, inalienable and impresciptible. Sovereignity belongs to the nation; no group of people, no any individual may assume the exercice of the sovereignty.

The 20th century will mark the evolution of the concept of sovereignty, the transition from classical senses considered more lenient interpretations, more flexible, with emphasis given by the interstate cooperation, of respecting the international obligations assumed by the States as international actors. In the first half of the 20th century, many authors already were talking about relative sovereignty of the state. Pasquale Fiore shows that a state can operate without the interference of other countries, but within the limits set by international law. Furthermore, Jean Delvaux stated in 1935, that maintaining the principle of sovereignty is incompatible with the international law; on the contrary, with the limits set by international law, the sovereignty does no longer mean arbitrary power and without reservations (Aurescu, 2003, p. 60).

In the period after the World War it considerably develops negative conceptions of sovereignty, the motivation being that sovereignty in the classical sense made possible the abuse of power and the war. Some authors go so far as to challenge the legal personality of the state and therefore also its ability to have rights and obligations (Leon Duguit, Gaston Jeze and others).

Depending on their political goals and the two major totalitarian systems of the 20th century, nationalism, socialism and communism had specific approach on sovereignty. (Alexe, 2009, p. 154)

We see that over time, the sovereignty was seen as incompatible with the international law, finding fundamental contradictions between his absolute character-building and the need of establishing the international legality. After 1945, with the adoption of relevant documents in this matter underlying the international legal order, it seems that they managed to reconcile the state sovereignty and ensuring the international legality. (Alexe, 2009, p. 154) The collaboration between states is achieved according to principles where respecting the sovereignty occupies an important place (Vrabie, 1995, p. 72). This principle is established among several international documents with universal value:

- the UNO Declaration on the principles of international law concerning the friendly and cooperation relations between the States, Session XXV, 1970;
- the CSCE Final Act of Helsinki, 1975;

- Charter of the United Nations.

The United Nations Declaration of 1970, for example, stated that the main constitutive elements of sovereignty are the following: all states are equal in legal terms; each State enjoys the inherent rights in full sovereignty; every state has the right to freely choose and develop its political, social, economic and cultural system; every state has an obligation to respect the personality of other states; territorial integrity and political independence of the State are inviolable; each is required to discharge in full and in good faith its international obligations and to live in peace with others.

The principle of sovereign equality is present as the basis for cooperation of UN member states, under article 2, paragraph 1 of the Charter.

According to the Declaration of Helsinki, all states have the same rights and international obligations.

We note that by virtue of its sovereignty, the state has not only rights but also duties under the international law, which limits the potential for abuse of power, both internally and in international relations.

Under the sovereignty, any state benefits from: the right to international personality (the quality of a subject of international law); the right of the State of being respected the territorial integrity and the right to self-defense; the state's right to freely determine its political and social system, and to use its natural riches, to establish its system of economic, cultural and legislation; the state's right to freely conduct its relations with other states; State's right to participate in international conferences, to international organizations and international treaties; the state's active and passive right of legation.[1]

Correspondingly, there are the following obligations: to respect the sovereignty of other states; to respect the international personality of other states; to fulfill in good faith its international obligations.

[1] P. Negulescu stated that the sovereign state has the following prerogatives: the right of legislative initiative, the right to police, the right to establish taxes, the right to distribute justice, the right to expropriation for public utility, the right to compel citizens to military service, the right to coin money, the right to take property without the owner and, finally, the right of authentication (Negulescu, 1927, p. 116).

3. Sovereignty in Contemporary International Law

Strengthening the contemporary international law rests on a few fundamental concepts, one of which is undoubtedly the national sovereignty. Mazilu appreciated that, in the contemporary international law, "*the political and legal basis of the international personality of the state is its sovereignty. It belongs to all states, regardless of size, power, stage of development (...). The most important feature of the state power is the sovereignty, which requires supremacy internally and independence externally*." (Mazilu, 2001, p. 130)

But the challenges posed by globalization phenomenon create challenges in terms of the viability of states as political-legal entities, but also as the stability of the international legal order, which was based on the national sovereignty of states.

The emergence of international organizations as actors in international relations governed by international law and the exercise of sovereignty by States within international organizations gives us a new dimension to this concept, outlined by the competition between nation-state and organizational entities. Even if, for example, article 2 § 1 of the UN Charter states that the organization is founded on the principle of sovereign equality of Member States, and in the preamble of the North Atlantic Treaty there are also mentioned the objectives and principles of the United Nations Charter, therefore implicitly the principle of sovereign equality, by expressing the agreement to be part of these organizations through numerous treaties and conventions concluded later, the Member delegate, in fact, part of the competences towards organization, which represents a restriction, even if it is deliberate of the attributes of the sovereignty. Profound debates generated by the European construction, the recent changes relative to the sovereignty from the European integration perspective revealed the existence of a process of reconsideration of the sovereignty of the Member States, in terms of transfer of sovereignty to the European Union, but also to local communities. (Antonescu, 2009, p. 640) From this perspective it becomes even more obvious the difference in opinions of the authors who consider the sovereignty as a sum of powers (G. Scelle, Ch, Rousseau) and those considering that sovereignty cannot be shared (von Kleffens), which urge us to reflection. The European Union is an international organization in the classic sense of the concept, or as stated by Sabine Saurugger "*Europe is neither state, nor international organization, nor an empire*." (Saurugger, 2009, pp. 319-320) Anghel appreciated that the originality of this organization consists of substantial elements of suprastatal, where state sovereignty

is "*burdened with commitments and impaired*" compared to the situation of their membership to other organizations, this suprastatal being acquired through the transfer of sovereignty from the Member States having as effect "*a clear limitation of sovereignty of the Member States*" (Anghel, 2010, p. 2 et seq.). Referring to Romania's condition of membership of these organizations, Malița firmly said that "Romania has ceded its sovereignty." (Malița, 2014)

Sovereign state crisis and the devaluation of national borders is revealed also by the fighting against some phenomena such as terrorism, which transcends state borders; the actions against terrorist groups exclude the unilateral action of states, the dimension of the phenomenon requiring a comprehensive approach, joint action within international cooperation and in the limits of international regulations.

Currently, the international system of states faces the competition between states and secessionist entities, claiming the right to sovereignty and independence. In such a situation there is state failure holder to exercise authority in the separatist area, which is what is causing its disruption and insecurity. Correspondingly, the secessionist entity will develop and strengthen the national sovereignty as *de facto* state. (Bakelite, Bartmann, & Srebnik, 2004)

Kosovo's unilateral declaration of independence in 2008, from Serbia, was regarded as a violation of state sovereignty of territorial independence. The status recognition of more than 100 states, members of the UN, EU or NATO, was regarded as an encouragement for the secessionist movements. Although Romania has not recognized Kosovo as an independent state, it is important to remember that the European Parliament encourages Romania "*to proceed to the recognition of Kosovo*", stressing that it "*will facilitate the further normalization of the relations between Belgrade and Pristina*". Recently the Prime Minister of Albania, Edi Rama, required Romania the recognition of Kosovo as an independent state, arguing that this problem will ensure the regional security and it will soften some "*frustration tendencies and other neighboring countries.*" (Mihai, 2015)

The effects of this international situation did not fail to appear. Although initially condemned the action of Kosovo, Russia has reconsidered its position and considered Kosovo a precedent in the international law, thus justifying its interventionist policy to protect the rights of the ethnic Russians outside the Russian state and it was involved in the creation of the separatist republics of South Ossetia and Abkhazia. (Summers, 2011, p. 51) The annexation process of Crimea to the Russian Federation, following the referendum of 16 March 2014 has sparked

much controversy and it was considered an illegal annexation. NATO Secretary General ruled unequivocally on the illegitimacy: "*Russia's military aggression in Ukraine is in blatant breach of its international commitments and it is a violation of Ukraine's sovereignty and territorial integrity*" (Rasmussen, 2014). And the European Union has qualified the Russian intervention as illegal and it imposed sanctions to Russia.

The situation created by Russia's expansionist policy, by applying the international sanctions has led to tensioning the geopolitical climate in the area, and the overall political climate. That happened while other countries have agreed to solve territorial disputes through political and diplomatic use or international jurisdiction. "*The Hague process and its result is a model of peaceful settlement of international disputes by peaceful means in the wider Black Sea region and its neighboring. It is an area (...) with no shortage of conflicts and tensions, from the ongoing maritime boundaries in the Caspian Sea, the Adriatic and the Mediterranean, to the frozen conflicts and disputes regarding the international minorities and energy*." (Purcărea, 2014)

A territorial litigation between the Czech Republic and Poland dating from 1950 is about to be solved still peacefully (Day, 2015), the Czech party expressing its intention to relinquish to a part of the territory in the favor of the Polish one, for the purpose of developing good neighborly relations.

This is the way in which the foreign policy of a state is articulated as one of the dimensions in which national sovereignty is best expressed i.e. the foreign policy of a state. (Cioabă, 2004, p. 436)

In a paper published in the early beginning to 21st century, Michael Hardt and Antonio Negri bring into discussion an approach that reveals a new form of sovereignty, which the authors call generically *Empire* (Hardt & Negri, 2000, p. xi) in the context of a new global political order, which is not the result of the interaction between states, but it results within states and even of individuals. Inspired by Michael Foucault, the two authors propose a new concept, "BioPower", the bio-political nature of a new paradigm of power, as a "*form of power that regulates social life from its interior, following it, interpreting it, absorbing it, and rearticulating it."* (Hardt & Negri, 2000, pp. 23-24)

4. Conclusion

It is considered a fundamental element of the existence of the state or the legitimate source of the authority within a state and even a "*modern myth which was often violated in the international practice*" (Nastase & Măties, p. 8), the sovereign equality of states remains the binder that coordinates the other rules and principles of contemporary international law and it "*directs and organizes peace structures as a whole, in the sense of maintaining and developing peaceful relations in the world*" (Mazilu, 2001, p. 185). The concept of sovereignty has developed with states and evolution of international relations and it had to adapt to frequent challenges arising from different levels: sub-national, transnational, supranational and global.

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