



Challenges of State Sovereignty in the Age of Globalization

Dukagjin LEKA¹

Abstract: State and sovereignty are two words, which in XXI century are the most commonly used, as in internal plan as well as at in the international plan, the latter even more. But, while in the past centuries was talked about sovereignty as something that is strongly and indivisible connected to the state - as a mother with her child, in this century-in globalized world, the state and sovereignty are being used as something that were strongly connected, but today this connection is softened. This is done for many different reasons, because we are living in the time, where state sovereignty is not considered anymore as something absolute and intangible, meanings that no longer exists literally, and this is being proven every day more and more. We have the cases of humanitarian intervention, where the sovereignty of a state is taken temporarily or is violated, then we have the creation of regional and international organizations that every day more and more have gained strength within their organization, as it is the European Union with supranationality powers, then the impact of globalization on softening this absolute sovereignty, etc.. This scientific paper will present to the reader and all other stakeholders, the important elements which argue the falling down of absolute sovereignty of states in XXI century - in the era of globalization.

Keywords: State and sovereignty; globalized world; absolute and intangible; humanitarian intervention; regional and international organizations; supranationality powers

1. Introduction

World Order and politics today are facing a new danger, which was born in the last century and has been developed in the second half of the last century and beginning of the new century and in some terms has achieved to put in question the sovereignty of the nation states. There are various theorists, who point out that there is a constant dependence between countries, which is growing everyday, but also the

¹ Assistant Professor, PhD, Dukagjin Leka, Law Faculty, Vice-Rector for International Relations of the University "Kadri Zeka" Gjilan, Kosovo. Address: Kosovo, Pristina, 10000, Corresponding author: dukagjin.leka@uni-gjilan.net.

interconnectedness between nation-states made the governments to be weaker and less important than they were before. But to what extent this interdependence affects in the nation-state sovereignty will be seen in this paper?

2. State at the Time of Ancient Greece

It is well known that the foundations of political and philosophical thought on the state has been made by Aristotle in ancient times. Aristotle considered the state as a person of great size, and he felt that while justice is a general virtue of the honest person, it also characterizes a good society. The state (according to Aristotle) is a natural institution, because it reflects the structure of human nature. So always according to Aristotle, the origin of the state is a reflection of the economic needs of the person and the state stems on these needs. Aristotle in his book, known as "Politics" said: *"As we see that each state represents a certain community and every community is created for a good reason and because of what people think is good, people do anything, then it is very clear that all communities aim at a good, but what is more powerful than others, and which includes within itself all the others, aim at a good reason, which is higher than all the others. This is called state, respectively, the state community"* (Aristoteli, 2003, p. 5).

The process of states developing (not in the modern sense) has started in ancient Greece. Hellenistic states were created as city-states called *Polis*. The creation of these city-states is mainly as a result of economic and social development - and economic and social stratification of the population, but also under the influence of ancient Eastern Civilization (Ismajli & Sejdiu, 2002, p. 70). However, classical Greece consisted of a number of political and social autonomous entities, known otherwise as *Polis*, significantly independent from the outside world, but in practice affected, to varying degrees, from the pressure of the most powerful Greek countries or ambitions of their non-Greek neighbors (Boucher, 1998, p. 47).

City - Greek states were seeing themselves as part of the same civilization, but some of them had reached different levels in the process of civilization. But, among them were differences, especially in the economic and political system. Between Greek polis occurred frequent wars and conflicts, but were also created various alliances, some of which alliances have largely a temporary nature, while some *Polis* always have managed to preserve their own sovereignty (Ismajli & Sejdiu, 2002, p. 71).

Greek state system was destroyed by the most powerful empires and over time the Greeks were conquered also by the Roman Empire. Also, the Empire was the dominant political organization that appeared in Christian Europe, centuries after the fall of the Roman Empire. Before the appearance of the modern state in the sixteenth and seventeenth centuries, governance has operated through a network of weak institutions, including empires, independent cities, monarchies, churches, etc.. While, historic endpoint in the medieval era and the starting point of modern international system is usually identified with the Thirty Years' War (1618-48) and the Peace of Westphalia, which ended this war (Jackson & Sørensen, 2003, p. 11-16), but according to Bartelson this was a process and not a moment, by noting that the connection of sovereignty and territory arose after the Peace of Westphalia, and to forge this connection "...the concept of state has to be developed in the post-Westphalian world" (Rossi, 2017, p. 17).

3. Peace of Westphalia and the Nation State

Peace of Westphalia confirmed the dissolution of Central Europe and the Holy Roman Empire by equipping Princes and their states with the essential prerogative of sovereignty and especially with the right to declare war or peace (Mayer et al., 2003, p. 190). Peace of Westphalia legitimized a *commonwealth of sovereign states*. Peace of Westphalia has won for *stato* (state) to control internal affairs within assigned territory and being independent from outside. This was the aspiration of the Princes in general and especially for Germans, Protestants and Catholics, in connection with the Holy Roman and Habsburg Empire (Jackson & Sørensen, 2003, p. 17). So, nation-states are early states formed under the Treaty of Westphalia of 1648 (Meidani, 2005, p. 92).

With the development of the countries, also was created the need for their theoretical justification. French philosopher, Jean Bodin defined sovereignty as unfettered and inherent power to draft laws. In England, the conservative lawyer, William Blackstone noted that "*it is and should be in each country a supreme authority, absolute, uncontrolled and irresistible, in which the right of sovereignty is preserved*" (Hague & Harrop, 2001, p. 6). Today, the state is one of the most important actors in international relations. The territorial integrity of the state is controlled by a government and inhabited by a population. A state government does not respond to any higher authority; it exercises sovereignty over its territory (Goldstein, 2003, p. 24).

On the other hand, sovereignty means an exclusive right to exercise a higher authority, in a certain time on a geographic territory or region, as well as on a group of people, who together form one nation or several nations (Meidani, 2005, p. 87). Sovereignty is a legal status and a political concept. In a way, when we say that a state is sovereign, then we make a judgment on the legal status of state in the world, so that it recognizes no higher legal authority. On the other hand, when it is said that the state is sovereign, it means that it possesses certain types of capacities, abilities to act in different ways, in order to perform certain tasks (Brown, 2001, p. 128).

So the concept of the notion of sovereignty is referred to the triple capacity of the state, which are “absolute supremacy on domestic affairs within its territory, the absolute right to govern its people and freedom from any outside interference in the above affairs”, (Wang, 2004, p. 473). In that way, a state is sovereign if it has the ability to make and enforce laws within its territory and can function without any influence from any outside force or support and accepts no higher authority on itself in the world of independent states.

4. State and Sovereignty under Public International Law

Today's legal terminology and vocabulary of policy defines the term “*sovereign*” as “*one who has supremacy or is in the highest grade, or is an authority over others; a superior, a ruler or governor.*” Usually, the term of sovereignty is referred to the idea of something higher, the idea of an independent authority over a territory. If a state is sovereign over a territory, its leader (regardless of what is it, monarchy, government, or president) has unlimited authority over that territory (Hornby, 2000, p. 1236). This principle of sovereignty is seen as complete and unconditional in the international law for centuries – “*States have prohibited any attempt to limit or even to question the absoluteness of their sovereign power.*”

Modern system of international law is the result of major political transformations that marked the transition from the Middle Ages to the modern period of history. It also can be summarized as the transformation of the feudal system in the territorial state (Morgenthau, 1993, p. 253). Public international law regulates relations between subjects of international law and therefore the state is original subject of the international law, because through its legal relations with other states creates the international law (Gruda, 2003, p. 8). The state in international law is defined as an institution created by the group of people for the realization of several goals, among which the most important is the maintenance of law and order within its borders and

the preservation of the independence of its people in relationship with other people (Gruda, 2003, p. 59).

Montevideo's Convention of 1933 considers the capacity to enter into relations with other states as one of the four main elements of the state. The three other elements are: a permanent population, a certain territory and the government (Hague & Harrop, 2001, p. 7). Marek states that “...a state would cease to exist if for instance the whole of its population were to perish or emigrate, or if its territory were to disappear...” (Wong, 2012, p. 2). Sovereignty, beside legal, has also political meaning, which is mostly referring to “...the nature of state sovereignty and the controls developed and administered by a government or governmental entity”, by even adding also some elements of legality like the “...sovereign defines the property rights, determines who owns property entitlements, decides how to protect such entitlements and ultimately enforce its decision by force” (Smith, 2016, p. 1-2). On the other hand, sovereignty under international law includes political and legal aspects, and is defined as the right that every state, independently define or change its political or economic order in the basis of its own will and without external interference, to sign international agreements and to exercise highest power over a territory and jurisdiction over its people (Gruda, 2003, p. 93). So, sovereignty is referred to the final source of authority in society. And, this sovereignty under normal conditions need to exist in each state, because to enter a state as party in international relations, it must possess full sovereignty (Puto, 2004, p. 108).

5. State and non-State actors

In the late twentieth century and in the beginning of twenty first century, the state is faced with various challenges, for which the state is trying to find answers and to be adapted to more and more interconnected and interdependent world. This process, known as Globalization “...undoubtedly contributes to the change and reduction of the scope of state sovereign powers”, by calling these challenges as threats to state sovereignty, by bringing a list of threats like: global financial flows, multinational cooperations, global media empires, internet, etc. (Grinin, 2012, p. 1). Today, all countries of the world are involved, or are members of various international organizations. These international organizations are usually established by an agreement (treaty) and operate with the consent of the member states. International organizations consist of those known as universal organizations as it is the United Nations, regional organizations as it is European Union and international institutions

that implement a single function as IAAE or WTO (Hague & Harrop, 2001, pp. 47-8).

Companies and multinational corporations are companies that rely on a country, while do their activities and have branches in multiple countries (Goldstein, 2003, p. 397). Multinational corporations have a major impact on the development of global economic interdependence. Faced with this challenge as well, democratic or authoritarian states have had to adapt their governmental, monetary and fiscal policies with efforts to attract foreign investment. For example, the provision of safe environment that is friendly to business is a challenge for lot of states, including here also Kosovo.¹ Multinational companies usually require lower taxes, the opportunity to remove the profits outside the states, where they are functioning, weak or flexible workers unions, a skilled workforce with relevant knowledge in technology and stable political and social environment... If a state fails to ensure these conditions, then it risks of losing jobs and increase of unemployment and risk the access to new technology (Hague & Harrop, 2001, p. 57).

States and their sovereignty also is “*affected*” by non-governmental organizations. These organizations deals with global issues, such as protection of human rights, the environment or provide assistance on a global scale, as does the Red Cross. Despite their positive role, some countries feel that these organizations overcome their responsibilities and in some cases, when it happens that countries are totalitarian or authoritarian, the activity of these organizations is restricted or completely blocked. Such is the case of the adoption of a law by the Russian Duma few years ago, which law is limiting the activities of NGOs such as *Amnesty International* and *Human Rights Watch* to report on human rights in the Russian Federation.²

It is also necessary to be noted that the institutionalization of human rights in the international system is a relatively new concept. So it was not until the end of World War II, when the challenge of human rights against state sovereignty begins to emerge again. It was said above that the simplest definition of sovereignty was to give to the states the right to non-interference in the internal affairs of other states. But, the idea of universal human rights and the protection of an individual person

¹ Kosovo has lost its way to make a friendly environment and legal basis to attract the foreign investments. This is because of so many reasons, but some of them is lack of legal basis, non function of rule of law and high level of corruption and organized crime.

² Briefing on shrinking space for civil society in Russia, presented at the carnegie center on february 23, 2016, by experts from human rights watch and eu-russia civil society forum, <https://www.hrw.org/news/2017/02/24/briefing-shrinking-space-civil-society-russia>, last seen on 27 February 2017, at 21:49 hrs.

within a state would later appear in international law to come into direct conflict with this very simple definition, explained above – definition of sovereignty. As such, the obligations towards the international law of human rights protection can also be seen as they “*reduce or diminish the state sovereignty*” (Ayoob, 2002, p. 93).

A clear tension is seen in most of the time between International Human Rights Law and International Law in general. Human rights could potentially be seen as a very big rival to the sovereignty of the state, but in practice, the concept of sovereignty is very well designed, stored and protected within the international system, in order to be seriously challenged. For that reason, it can be said clearly that Stephen D. Krasner has not given the correct explanation with his assertion that “*human rights are an area in which issues of conventional notions of sovereignty are compromised*” (Krasner, 1999, p. 20). But states still retain final authority - sovereignty over human rights within their jurisdiction. The state authority for implementation and then to monitor the implementation of human rights has not been lost or transferred to any other internal actor nor international one. In fact, “*By creating and adopting restrictions on human rights, within their sovereignty, states in fact explain, define and incorporate these rights, by making these human rights convenient to be used within the state and in that way affirming the authority of the state, as the main source from which derives these rights*” (Koskenniemi, 1991, p. 406).

6. Other Transnational Issues

In the XXI century, the state is being challenged by the processes of integration and globalization. International integration has to do with the process by which supranational institutions begin to replace national ones, i.e., the step by step transfer of the state sovereignty to the global or regional organizations (Goldstein, 2003, p. 414).

Example of such integration may be the European Union member countries, which decided jointly to reduce their national sovereignty in order to strengthen their international influence, the influence that non of the EU country, can achieve separately (Leka, 2012, p. 268). So, in the European Union, 27 of its members (UK is not counted) renounce a part of its national sovereignty, and ceded it to the creation of supranational organization - the creation of the EU. And thus was created, for the first time in legal history a “*supranational sovereignty*”, which is binding for its member states, and thus enabling EU to independently exercise public power towards its member states (Zahiti, 2000, p. 35).

In other words, the founding treaties of the EU, as the main legal sources of EU are directly applicable in the territory of member state without any additional administrative measures. Those legal sources become part of national law of the member countries with the fact of signing and ratification of the treaty by the national parliaments of the member countries (Reka & Sela, 2011, pp. 26-28). Thus, the European Union Law emerges as an exception to the classical doctrine of state sovereignty, thus creating a precedent of supranational sovereignty, where decisions on specific matters of joint interest can be achieved democratically at European level. And this represents supranationality in European Law, a term which distinguishes the EU from other international organizations (Bashkurti, 2006, p. 185). Supranationality represents a phenomenon, where an international authority can impose its will on sovereign and independent states. So, in simple words, with this notion is recognized the right of an international organization that independently from the will of the member states in certain areas and on the respective powers to make binding legal norms for its member states (Zahiti, 2000, p. 38). In one word, today the supranationality in the European Union is one of the main challenges of the absolute sovereignty.

7. Globalization and its Impact on State and Sovereignty

As it is understood above in this paper that state sovereignty was affected and challenged by human rights, multinational corporations, non-governmental organizations, supranationality, etc., but it is necessary to be said that also the globalization has its importance role in relation to the state and sovereignty. Before beginning to discuss the role of globalization in all this process, I would like to use the opportunity to give a definition of globalization – how it is understood this process today. Among the many definitions that are made, Martin Wolf defines globalization as *“a journey, but to an unreachable destination, which is the globalized world. A globalized economy, in which neither distance nor national borders impede economic transactions. A world, where the cost of transport and communications are zero and the barriers created by different national jurisdictions are missing”* (Wolf, 2001, p. 178).

State sovereignty is an issue that has become highly questionable under the age of globalization and also it is the subject of this paper. Sovereignty is also defined as a situation, where a country is an autonomous and independent entity, which has the complete freedom to make its own decisions in all aspects of governance. While,

Heywood determines globalization on the other hand as “*As a show of a complex and weak side, which means that our lives are shaped more by events that happens around us and the decisions that were taken, in a quite large distance from us*” (Heywood, 2007, p. 20). The main feature of globalization is, therefore, that the geographical distance is always decreasing in its importance and territorial boundaries, such as those between nation-states are becoming more and more less important.

On the other hand, globalization today implies two different phenomena. First, it suggests that the chains of political activities, economic and social ones are expanding in the global range and secondly, globalization suggests that there has been an intensification of levels of interaction and communications to and within states and societies (Held, 2002, p. 340). To this should be added also the issue of human rights and humanitarian intervention. Development of norms related to the protection of human rights and humanitarian law are viewed as a limitation of sovereignty, because they challenge the principle of non-intervention, i.e., the principle that states have the right to govern their citizens freely from foreign intervention (Jackson & Georg Sørensen, 2003, p. 281).

While, another thought has a realist, Steven D. Krasner, who in a way accepts and agrees with the collapse of the autonomy of the states, but he denies the impact of globalization on the nation-states, which possibly could lead to the death of state sovereignty. He argues that “*Those who proclaim the sovereignty as dead issue, they read wrongly the history, so I can say clearly that they do not understand it. But, they forget that the nation state has a keen instinct for survival and so far it was suited in many new challenges, and I can easily say it will suit also to the challenge of globalization*” (Krasner, 2001, p. 123).

8. Conclusion

From all that was discussed previously, it can be easily concluded that a state may be sovereign or not and there is nothing else in between, because sovereignty is defined as the absolute lead as well as the right of a state to govern in a certain situation. Although states are not actually forced to modify their behavior in front of international society or in front of other states, this in the majority of cases is in their interest to do so. Part of sovereignty is also the ability of a state to resolve its internal problems independently and by itself, but we see more and more in today’s world that the problems and threats are increasingly globalized, then it is almost impossible

for a state to act alone and independently, especially this feature is unique to the weak and small states, which are characterized also by a fragile democracy.

Also by taking into consideration the increasing interdependence among countries, the creation of transnational institutions, multinational and other organizations as well as issues of integration, such as the European ones, then the development and modification of international law, which is under constant review, can be concluded that there is a falling process on how we perceive today the sovereignty of states. Nation-states are also under constant threat from the high rate of crime, particularly terrorist attacks of XXI century. And from the moment, when the nation states cannot guarantee the safety of their citizens, then they also cannot act independently to resolve their internal problems, and therefore I can say freely that in these cases there is a lack of sovereignty of these countries. So, in other words, globalization will gradually lead to the softening of the nation-state and the overthrow of absolute views on state sovereignty.

While regarding human rights, in conclusion I can say that the sovereignty of states is no longer a simple right to exercise power in a defined territory, as was shown in the Peace of Westphalia. It is redefined and redesigned as a more complex task to exercise power in an acceptable manner to the majority. International law, although significantly is concentrated to the state, has become more open or softer about the cross-border interventions, in order to protect human rights. Implementation of Human Rights lies ultimately within the meaning of sovereign states themselves. Although not directly challenged the basic concept of state sovereignty, human rights obviously have challenged the state's ability to operate within its borders without being asked for more clarifications. Human rights continue to grow in importance and this can not be left out of the question to ask how liberal ideas continue to spread throughout the developing world and can rightly conclude that human rights will continue to challenge the sovereignty of states in a more direct way in the future.

However, despite major technological changes and the level of interdependence, state and sovereignty have survived and has been transformed. Also, issues not previously considered as belonging to the state and sovereignty have become part of national issues. In international relations, the state remains the main actor, despite the appearance of other actors and influential ones. Whether the nation state will be disappeared to be replaced by a *world state*, or whether the state will continuously remain the most developed political form of human societies will be depended on the overall human development and whether it will be maintained the strongest concept of sovereignty as a principle of non-intervention in the internal affairs of

others, it will be depended on whether sovereign states want to really create a world of peace, welfare and with prosperity for all.

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