
КОНСТИТУЦИЈАЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО

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International legal aspects of the sovereignty of states in the context of globalization

This article deals with the theme of the sovereignty of States, which requires constant attention of researchers. This need is particularly felt in modern world of increasing interdependence of the international community. The ratio of globalization and sovereignty belongs to one of the fundamental problems of modern international relations. Intense globalization and active processes of integration, accompanied by the laying on of the states of their traditional functions and powers to international organizations in order to successfully address regional and universal problems become apparent trend of the international community.

Key words: the sovereignty of States, globalization, international legal personality, the European Union.

The theme of the sovereignty of States requires constant attention of researchers. This need is particularly felt in today's world of increasing interdependence of the international community. Intense globalization and active integration processes, accompanied by the laying on of the states of their traditional functions and powers to international organizations in order to successfully address regional and universal problems become apparent trend of the international community. The ratio of globalization and sovereignty belongs to one of the fundamental problems of modern international relations. Development of supranationalism in international organizations is controversial among international lawyers not only on the nature of the phenomenon, but also the legitimacy of its existence from the point of view of state sovereignty and modern international law.

Globalization has become one of the of the most urgent issues of the modern world, which is being actively discussed in all countries at different levels. At the heart of globalization as an objective process are the historical background and the results of scientific and technical progress, in particular the development of communication and telecommunication technologies. Initially, globalization was seen only as an economic phenomenon, but it is now recognized that globalization has had a profound impact on other areas of international cooperation: environmental, social, political, and includes legal and cultural aspects that affect the full realization of the rights to the questions human. Globalization highlights the growing interdependence of all states, when the events in the state of one part of the world have consequences for individuals residing in states other regions.

Increasingly, there are points of view, according to which the basic concept of modern international law — sovereignty lost its importance and role in the international community, and that is amplified in the context of globalization quality supranationalism within the international organizations threaten the independence and autonomy of the states. Created the mistaken impression that because of globalization the problems of humanity can not be solved within the traditional system of international law, despite its potential inherent in the UN Charter, which provides the sovereign equality of states, general security, protection of economic interests of states and cultural diversity.

Sovereignty as a historical category arose at a certain stage of human development as the legal quality of the state. When changing historical conditions of the category of «sovereignty» changeModern

international law reflects the existence of the meaning of sovereignty in the international arena of independent and legally equal to the primary subjects of international law. Sovereign equality of States, as enshrined in international law, it is the legal equality of states, providing the same amount of rights, opportunities and responsibilities for all independent subjects of international law. In this context, sovereignty is represented not only as an imperative principle of international law, but also as a characteristic feature of the modern international community, a priority condition for the existence of international law in its current form.

Statements like the «equality of States, proclaimed by international law, is largely a formality», identifies the wrong approach to the principle of the sovereign equality of States, due to the fact that in any other way, except legal, the state is not equal. Imperative principle of the sovereign equality of States not only guarantees the supremacy of the sovereign state over its territory and non-interference in domestic affairs from the outside, but also provides the legal equality of states in modern international law. Neither the economic strength nor the political weight, geographical scope, geostrategic location, nor any other power of the state are not directly related to the concept of sovereignty. State sovereignty does not affect the actual balance of forces in the international community, and reflects, above all, legal equality of power independent states.

According to modern approaches, we should recognize that a sovereign state is a political organization with a presence in three elements: a set of people, forming the people; state government, which is subject to this people, as well as the separate territory with a population of people, and within which extends the power of independence and autonomy. In Section 2, Article 2 of the Constitution of the Republic of Kazakhstan provides: «The sovereignty of the Republic extends throughout its territory. The state ensures the integrity, inviolability and inalienability of its territory» [1]. Thus, the existence of sovereignty legally enshrined in the constitutional laws of the state, but is rooted in public opinion, which is the original and the necessary political force. The main characteristics of political sovereignty, in particular: a) the right of each state to elect political form; b) the right to publish laws and internal management; c) the right to enter into relations with other states.

It is a conscious voluntary will of the people regarding the disappearance or appearance of single people in the state as a whole social body exercising rule over a certain territory, we associate the possibility of extinction or appearance of sovereignty as the quality of the state in modern international law. Thus, the appearance and disappearance of sovereignty is primarily associated with historical and political processes in the nation, as well as subsequent international legal recognition of a state by the international community.

With regard to the international law principle of self-determination of the peoples, it should be recognized that the Kazakh concept of international law based on the fact that the key to self-determination — is to ensure conditions for the free disposal of their own destiny, development of the people in any form chosen by the people themselves. If territorial self-determination of the people associated with international contradictions and conflicts, rather than voluntary peaceful expression of the will of all the people of the state, the achievement of political independence is contrary to international law [2; 59].

People are the source of state sovereignty, and its carrier — a state in the sense of an organized social body led by sovereign, independent, independent public authority endowed with the people who are legally recognized as legitimate by the international community. The State implements state laws protecting the national interests of the people as a whole, both within the national territory and outside.

The rights inherent in the sovereignty of the state, or state laws are a set of powers of the government. State laws are established by virtue of the existence of state sovereignty, and not vice versa. Number of civil rights indefinitely and any of their implementation either directly through the public authorities and international organizations is a confirmation of independence, autonomy and sovereignty of the state.

Sovereignty is not predetermined by the existence of certain public rights does not depend on the functions carried out by a public authority, but depends on the freedom of states to impose on yourself or give up some or other authority. Sovereignty as the quality of the state is related to the question of the existence of the state — the presence of his legal status, and the state of law — to the question of the extent of its capacity, arising in connection with the presence of sovereignty. In the framework of modern international law cannot be by acting on the competence of a sovereign state cause the disappearance of the primary subject of international law without his voluntary consent.

Rights of the state are realized by public authorities. Sovereign state authority is the supreme authority and sovereignty in force dominates within the boundaries of the state on the basis of its own national law. The attribution of the sovereignty rights of state power leads to a confusion of these two different concepts.

In contrast to the sovereignty of the state power is relative and has limits their activities, not only due to the centralized domestic law and the national constitution, but also decentralized international law.

There is no doubt that any country has universal jurisdiction, in its sole discretion determines objects of reference, and performs a self-defined scope of functions. Some states extend their jurisdiction, while others constrict it, but all States to implement the various scope of authority, which may or may not be the same in different countries. Even being about the same level of sovereign states can very significantly differ in terms of the powers and objects of reference. The fact of national sovereignty does not depend on the quality or quantity of functions implemented by the state.

State sovereignty as a political and legal quality of the state does not depend on the nature of compliance with the state authorities of international law, its national legislation, as well as the established domestic political regime. Of course, avoiding legal violations, the government threatens the legitimacy of its existence, it has established political regime. Due to violations of international law or human rights the state can get into the category of «rogue state» in relation to the international community, but the enforced state sovereignty under contemporary international law is inadmissible.

An important property of state sovereignty is its inalienable. About any division of sovereignty out of the question. Any division of sovereignty, of course, only leads to its destruction and disappearance of the primary subject of international law.

The state, as a sovereign right to independently and freely decide their own destiny, until rejection of sovereignty. Voluntarily falling under the authority of another State, the transfer of sovereignty of one State to another does not occur. Since the merger combines the state loses its sovereignty, is deprived of it. Along with the fact that the loss of state independence sovereignty disappears completely as a property of the state, not shown, is assigned, and the like, that is not alienated. Therefore, there is no sovereignty divided, fragmented, reduced, limited, relative, etc.

It is recognized that the participation of States in multilateral cooperation and international organizations through the implementation of any volume and quality of its rights inherent in state sovereignty is not restricted, and the realization of sovereignty, even if we are talking about the rights that the state is traditionally considered to be the domestic jurisdiction. The growing interdependence of states at the present stage of development of the international community only confirms this understanding of sovereignty.

Sovereign states pursuing their national interests, voluntarily agree to implement and limit their rights inherent in state sovereignty, by means of international treaties. Any international treaty carries as the realization of the rights of the state and limit the rights of its member states. Only the state itself the right to decide what issues the domestic jurisdiction and to what extent it makes the subject of an international treaty. Any attempt to impose selection criteria such domestic issues as the time and would be a violation of sovereignty and interference in the internal affairs of the state [3; 22].

In this context, the most interesting practice in the development of the integration of the European Union. State, its generators, transfer a part of its sovereign rights to supranational governments. Before it came to economic issues now — monetary, in the long term — issues of foreign policy and defense. We draw your attention to the following. Supranational governing bodies act strictly with the mandate within the limits specified by national states. Further, they implement a common interest in these areas agreed upon democratically. There are appropriate procedures and mechanisms. Thereby consolidating national interests in the European Union as a result of sometimes very difficult to find a compromise between nation states.

In this case, seems to be clear: who, what, why and for what is transferred sovereignty. However, it should be noted that there is no rejection of national interests. Their implementation is passed-controlled body, besides itself and the nation-state and its representatives are involved in this process. Ignoring the nation-state, its sovereignty and interests include this false path leading to conflicts. The state as a representative of the company, its implementer of sovereign power for a long time will be the main representative and in international relations, to participate in the formulation of their regulators at the bilateral, regional and global levels. The world community does not yet have a long time and will not have the tools for regulation at the national level of political democracy, economic and financial systems, ensuring social and civil rights [4; 114].

Thus, no international obligations do not detract from the universal capacity of the state. Restricting the freedom of action of the State arising from its obligations under international law, is not a limitation of state sovereignty, and restricting the legal capacity of the state, ie, Restrictions on the exercise of certain rights.

Within the state of human caused, first of all, the mutual interest of the state to respect the sovereignty and rights of other States.

In modern international law, sovereignty is a quality category, which is absolute. State sovereignty has no boundaries and is a unified will of the people — it's either there or it is not. There are no boundaries of sovereignty, it is whole, does not affect the actual balance of forces in the international community, ensure the independence and autonomy of states regardless of the nature of their relationship, and the volume of a particular type of exercise state power functions.

The sovereignty of the state to provide at each time freely to take him to exercise the necessary powers, or abandon their implementation in accordance with international law, including the ability to abandon the previously accepted international obligations. Needless to international law is based on the absolute nature of sovereignty, which guarantees the independence and autonomy of states regardless of the nature of their relationship and the amount of exercise the powers.

The absolute nature of the concept of sovereignty and the personality of the State does not mean the absolute capacity of the state in international activities. Under the conditions of the existence of interdependence unlimited capacity of the impossible — Capacity of States relative. In pursuit of its national interests, the state usually most interested to limit their state laws to achieve the goals of multilateral cooperation within the international community.

By entering into numerous international treaties on bilateral and regional and universal levels, the state does not diminish and implements its national sovereignty. Moreover, states include in their legislation relating to the laying of public law at the international organizations that have the right to make their own decisions with regard to the state, regardless of his or her consent. We are talking about the specific powers of the domestic jurisdiction of states that have traditionally belonged to the important aspects of state sovereignty — the economy, defense, and other rights of citizens. And that the modern state is subjected to international regulation at the multilateral level.

Authority of any state is wider than the powers of all international organizations combined. Limit the sovereignty of the state within the framework of an international organization is not possible without violating international law, or changes in the actual international legal status of an international organization. The presence of sovereignty is a sign that distinguishes the state from other subjects of international law.

As we know, the sovereignty of a federal state is possible only in the absence of sovereignty in federal subjects, even if they actually retain the status of states. Sovereignty precludes the existence of two levels of sovereign authorities within a single system of government that would have the supremacy and independence. In a federal state can only be a sovereign federation. There are territorial entities within federations, which in structure, function, the presence of its constitution, the supreme authorities, administration and the courts, the territorial limits and other state attributes, etc. legally represent the state, but are not sovereign states.

The basis of a federal state is an international treaty that at the time the new state becomes an act of domestic usually determines the distribution of powers between the federal center and the subjects of the federation. In a federation, the relationship between the subjects regulated by the federal constitution and national laws, ie, norms of domestic rather than international law. The Federation shall have the rule over the entire territory comprising its territorial entities, and has the status of a sovereign state.

Unlike the federal state confederation, with the international legal point of view, is the international legal association of states, preserving the sovereignty, which is based on an international treaty. Activities of the Confederation is a matter of international legal relations. Treaty establishing the confederation is part of international law. Member States to impose certain confederation voluntarily serve on central authorities confederation, including the ability to enter into international agreements on a range of issues, but at the same time continue to hold themselves delegated functions as a full-fledged state. International standing and international legal Confederation limited its Member States, its power is not sovereign.

The Confederation is not a state. Traditional Confederation, as a rule, does not have its own territory, a single legislative and judicial bodies, and state jurisdictions. Confederation of limited powers under international treaties and mainly directed towards common objectives of the Member States of the Confederacy, mainly to ensure collective internal and external security of each Member State. Confederation bodies exercise delegated powers, within certain limits, usually only in respect of the Member States themselves, rather than their citizens. Each Member State confederation itself provides a legal connection between the Confederation as a whole and the citizens of the Member States [5; 165].

The reality of the modern world community shows that the absolute sovereignty does not have and can not have any state. The situation in the world leads to more convergence, in different countries, their close relationship. This requires considerable coordination will and actions of states, mutual compromises when it comes to compromise what — that the interests of creating opportunities for mutual survival under the threat of total destruction of a nuclear or environmental catastrophe. But if we are talking about a single state, even arranged as a federal, then another government but nationwide, is unlikely to be fully independent.

The growth of interdependence among nations leads to the fact that they are increasingly turning to voluntary laying of traditional governmental functions to international organizations. Despite the expansion of the collective interests of the States and the international community in the context of globalization, allowing certain voluntary restrictions of the functions of sovereign states in order to achieve the public interest, the modern international legal order does not give grounds for approval of the possibility of a limitation of sovereignty.

As a result of globalization and supranational aspects of the activities of international organizations in the role of the changes. There is a certain imbalance between the political, economic and legal understanding of sovereignty in sectors affected by globalization. States as the primary subjects of international law to make decisions based on the need to take into account not only the domestic political and legal aspects and the constraints imposed by the desire to preserve its legitimacy, but also international realities are increasingly integrated international community. States that are not able to adapt their national policies to multilateral requirements of the modern world, will not be able to deal effectively with the requirements of global integration and increasing their impact on domestic policies.

Globalization should be seen as an objective inevitable phenomenon that has positive aspects and opportunities. Due to the influence of globalization greatly reduced the cost of moving information, people, goods and capital across the globe — global communications have become faster and cheaper. High-tech industries have proven to be the most rapidly growing sectors of the world economy, and the success of economic development is increasingly dependent on the ability of States to participate and compete in them. In parallel with globalization continue to develop technological progress and economic integration in the world who are pushing the state to adopt uniform global standards and behavior [6; 12].

We must recognize that in today's globalized state does not lose its sovereign status, its role and importance of not weakening. The state's role becomes more important from the point of view of control government resources allocated in an efficient private sector and non-governmental organizations. Globalization leads to an increase in the participation of individuals in areas traditionally belonging only to the sphere of public administration, and, accordingly, the development of private international law. Functions of the state are concentrated mainly on the creation of a stable political climate, consistent and fair legal framework conducive to a market economy, as well as the rationalization of public functions. Another important element of the control and influence of state power in the international arena is getting involved in the development of the key strategic areas of cooperation of the international community; and international regulation, including regulation, and regulation is not associated with the creation of international law.

A solid foundation of multilateral governance capable of providing basic interests of the states in the context of globalization is a comprehensive system of the United Nations. The objective process of globalization is driven by the existence of modern international law and states as the primary subjects of international law. Globalization does not lead to a limitation of state sovereignty. With globalization, the state performance in the international and domestic spheres are increasingly carried out under the influence of international legal factors and contributes to the emergence and development of international institutional structures, policies which is influenced by the balance of forces of the States Parties.

The position of the states as the main subjects of international law is not changed due to globalization, it is inseparable from notions such as independence and autonomy, as well as human rights, human values and progress toward social goals. Objective character of globalization makes meaningless arguments on the fact that its development and impact on sovereign states could be in a different form. States are usually interested in adapting their national interests to the interests of the international community.

The main features of globalization is that this is an objective process, firstly, associated with complex processes, which resulted in the national activities of the state are increasingly being carried out under the influence of international factors, and secondly, gives rise to international institutional structures, policy which is influenced by the balance of forces of member-States.

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The process of globalization contributes to the development of the legal quality of supranationalism in the activities of international organizations in connection with the search for the most effective international legal solutions to public problems by means of a multilateral mechanism, given the fact that between the Member States, except legal, there is objective inequality. At the same time, supranational in international organizations is due to the principle of sovereign equality of States. International organization cannot create rights inherent in sovereignty, because the nature of its power and authority of the state are different [7; 327].

Supranational international organizations to identify intra-organizational structure within an international organization by, for example, broad powers or implied powers and implemented at the stage of the aims and objectives set out in its memorandum of association. Supranational applicable to the rule of law, the creation of which is under the authority of an international organization necessary to achieve its statutory goals and objectives.

Quality supranationalism usually manifested in the activities of international organizations in the founding documents which set broad competence to achieve the goals and objectives of the organization. It is the sovereign government of the Member States, establish an international organization, determines what the goals and objectives of the international organization to delegate and what is its powers vest, as well as clips in its legislation, the possibility of laying a state of an international organization.

The emergence and development of the European Union is an example of a successful attempt to save influence on the universal level of the same region in the context of globalization. According to the degree of integration of the EU closer to a confederal form of legal devices regional association. The development of the European Union is on the way to increase the number of powers of the central bodies of European integration in the areas of foreign policy and economy, as well as elements of supranationalism. Recognizing the known features of the rights of European integration, we should agree that it is based on international public law and is part of [8; 39].

Summarizing the above, we can draw the following conclusions. During the creation of the existing multilateral system of the United Nations, whose charter is the basis of modern international law, development planning as individual states and the international community are based on a completely different date ideas. Modern technical possibilities of the globalizing world at the time were simply unthinkable. Despite this, the existing international legal order continues to maintain inherent in the postwar period principles related primarily to the equality of States in the international community and mutual respect for state sovereignty. State sovereignty as a legal as an independent state continues to be a necessary condition for multilateral cooperation among states.

The current crisis of international law is manifested mainly in its inability to effectively regulate the modern international relations, that is, the inability to subdue their members a unified global legal order. The main reason for this crisis — the contradiction between globalization and the absolutism of the conciliation nature of international law. Category of state sovereignty in the form in which it existed a hundred years ago, may not correspond to the nature of current international relations, the main feature of which is the interdependence of nations. Therefore, it is important to see in existing international law is gradually emerging trends that suggest the birth of a radically new international legal system.

The nature of international law is transformed, as in modern reality it is meant to subjugate national sovereignty to the common good. The main feature is a fundamentally new patterns of international law, the nature of which conciliation is increasingly giving way imperative. Existing international law, in respect of enforcement is obviously out of date and does not allow the international community to take effective and mandatory measures to ensure compliance.

The state of contemporary international relations, the main feature of which — globalization and the associated growth of interdependence among nations, requires strengthening the mandatory principles of the law. This in turn implies the recognition of naturally occurring conventional imperative principles, the revision of the hierarchy of sources of international law in favor of the resolutions of international organizations and the judiciary, an effective system of collective sanctions and collective coercion. Most importantly, the

necessary preconditions for this are already contained in the practice and theory of international law. It is noteworthy that the greatest willingness to sacrifice their sovereignty in favor of common values show today and the most developed democracies, demonstrating thus there is not weakness, but strength.

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Е.Қ.Көбеев, М.Ю.Әбдіқімова

Жаһандану жағдайындағы мемлекеттердің егемендігінің халықаралық-құқықтық аспектілері

Мақала әрдайым ғалымдардың назарын талап етуші мемлекеттердің егемендік тақырыбына арналған. Авторлар әсіресе ол барлық халықаралық қауымдастықтағы өзара тәуелділіктің арту жағдайларының қазіргі қажеттілігін тілге тиек етеді. Мемлекеттің жаһандануы мен егемендігінің арақатынасы қазіргі халықаралық қатынастардың өзекті мәселелерінің біріне жатады. Әмбебап және аймақтық міндеттерді сәтті шешу мақсатымен халықаралық ұйымдарға мемлекеттердің өзінің дәстүрлі қызметтері мен құзыреттерін жүктеумен қоса жүретін қарқынды жаһандану және белсенді интеграциялық үрдісі халықаралық қауымдастықтың дамуының айқын беталысы болып табылады.

Е.К.Кубеев, М.Ю.Абдақимова

Международно-правовые аспекты суверенитета государств в условиях глобализации

Статья посвящена теме суверенитета государств, которая требует постоянного внимания исследователей. Особенно эта необходимость ощущается в современном мире в условиях возрастающей взаимозависимости всего международного сообщества. Подчеркнуто, что соотношение глобализации и суверенитета государства относится к одной из кардинальных проблем современных международных отношений. Авторы доказывают, что интенсивная глобализация и активные интеграционные процессы, сопровождающиеся возложением государствами своих традиционных функций и полномочий на международные организации с целью успешного решения региональных и универсальных задач, становятся тенденцией развития международного сообщества.

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