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THE PRINCIPLE OF SOVEREIGNTY AND NON-INTERFERENCE IN INTERNAL AFFAIRS IN THE EVENT OF KOSOVO'S SECESSION FROM YUGOSLAVIA

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Abstract

The sovereignty of the state is not only important for the states, but it is also of considerable importance in international law. The absolute sovereignty of the state would be weakened because the domestic state policies were becoming aggressive against their citizens, but it should be noted that this weakening was also influenced by the development of international law based on universal rights. The concept of absolute sovereignty of the state was already very outdated in international law, and would be replaced by the terms 'limited sovereignty' from universal human rights and freedoms.

Keywords: State sovereignty, limited sovereignty, international law, humanitarian intervention, United Nations, Bill Clinton, collective security.

Introduction

With the development of international law it became increasingly clear that there could be no absolute sovereignty, and that it could intervene against a state, to solve problems that could violate human rights and freedoms, and the security and international peace. In the former Yugoslavia, in 1992-1999, the old concept of international law of non-interference in the internal affairs of a state clashed with the new concept of jus cogens. Indeed, non-interference in the internal affairs of a sovereign state is an important principle and norm of international law, but non-interference does not always bring the latter, as if a state violates the rights of its citizens, or when there is a war that may to escalate, then, intervention becomes mandatory.

Method

This paper is based on historical chronological methods, legal logic and Albanian and foreign historical and legal sources.

Discussion

Subsection 1

The sovereignty of the state according to classical international law

The sovereignty of the state is not only important for the states, but it is also of considerable importance in international law. "Sovereignty is the broadest form of jurisdiction in international law. In general, it marks a complete and undisputed power over the territory and all persons living in it" (Dixon, 2011). Sovereignty is governed by national constitutional and legal acts, such as the Charter of the United Nations and the Helsinki Final Act. It is important to note that Article 2.7 of the Charter of the United Nations stipulates that: "Nothing in this Charter shall authorize the United Nations to intervene in matters of internal jurisdiction" (Nye et al., 2014). According to this article, in terms of a literal and narrow interpretation, it is understood that the state has sovereignty, and neither international organizations, such as in this case the United Nations, can violate it. The International Court of Justice, in the case of *Nicaragua v. The United States of America*, regarding the principle of state sovereignty and non-interference in internal affairs, has stated that: "the principle prohibits all states from intervening directly or indirectly in internal or external of a state" (Weller, 2011).

The Helsinki Final Act of the Conference on Security and Co-operation in Europe, on the inviolability of borders and the territorial integrity of states, states: "The participating States shall respect the territorial integrity of each of the participating States. Consequently, they shall refrain from any action that is inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or unity of any State Party, in particular, from any action... which constitutes a threat or use of force" (Akti, 1991).

With the development of international law it became increasingly clear that there could be no absolute sovereignty, and that it could intervene against a state, to solve problems that could violate human rights and freedoms, and the security and international peace. From the Kosovo war onwards: "sovereignty would not be identified as a collection of the rights of a state,... and instead, it would be strongly linked to the rights of the people of a state. "His exercise by the government could be conditioned by the way the government fulfills its obligations to those who are governed" (Weller, 2011).

Subsection 2

Sovereignty, the evolution of international law, and the case of Kosovo

With the development of international law, but also with the increase of crises and the need to resolve them, there has been a theoretical and practical clash between human rights, humanitarian crises and the sovereignty and integrity of sovereign states. In the former Yugoslavia, in 1992-1999, the old concept of international law for non-interference in the internal affairs of a state clashed with the new concept of *jus cogens* (principle and law inviolable and with *erga omnes* effect) that you had bring about the development of international law.

Should the international community intervene to change the situation in Kosovo, or would it call it internal affairs? "In the classical international system, this would be very unbelievable, because the issue of the internal organization of the state was treated as part of the *domaine réservé* supported by the doctrine of non-interference" (Weller, 2011).

Henry Kissinger supports the doctrine of humanitarian intervention because: "it was inevitable a reaction of the nations of the Atlantic to the brutality of the war in the Balkans and that, when there are such serious crimes, their perpetrators should not escape justice, to the doctrine of sovereignty or the sacred nature of national borders " (Kissinger, 2003).

It should be noted that non-interference "in the internal affairs of sovereign states constitutes a basic norm of international law... -because- it affects both order and justice... At the same time, non-interference damages justice..." (Nye *et al.*, 2014).

Indeed, non-interference in the internal affairs of a sovereign state is an important principle and norm of international law, but non-interference does not always bring the latter, as if a state violates the rights of its citizens, or when there is a war that may to escalate, then, intervention becomes mandatory. The sovereignty of states "may be subject to certain restrictions, such as those concerning guarantees of human rights" (Dixon, 2011). According to Martin Dixon, "the reconstruction of international law as a system based not so much on state sovereignty as on individual freedom du" (Dixon, 2011) had to be done. Michael Walzer points out that exception to intervention can be made to prevent a war, or when intervention is needed to balance a previous intervention, to save people from a massacre, or to help separatist movements that have shown representative character (Walzer, 2006).

The absolute sovereignty of the state would be weakened because the domestic state policies were becoming aggressive against their citizens, but it should be noted that this weakening was also influenced by the development of international law based

on universal rights. The concept of absolute sovereignty of the state was already very outdated in international law, and would be replaced by the terms 'limited sovereignty' from universal human rights and freedoms.

The states themselves are independent and have sovereignty. Through their power and sovereignty they exercise, unfettered by anyone, have agreed to behave in accordance with international norms, during their actions both national and international. So "legal rules... do not derive from any power outside these states..." (Vukadinović, 2006).

It is worth noting that international law is increasingly relying on *jus cogens*. "On the whole, the norms of *jus cogens* are more likely to include those norms which are based on 'morality' or 'natural law' than the traditional 'positivist' norms, which derive from state practice" (Dixon, 2011).

State sovereignty was no longer seen as just a set of rights for the state, which could neither be taken away nor limited. International law, but also state policies, would see state sovereignty more and more as the responsibility of the state for its citizens, to ensure freedom, security and well-being, without harming their citizens with state actions or inactions. The conception of state sovereignty as responsibility "is increasingly recognized in state policy, and has a triple meaning. First, it means that state authorities are responsible for the functions of protecting the safety and life of citizens and promoting their well-being. Second, it suggests that national political authorities are accountable to citizens at the domestic level and to the international community.... Third, it implies that state agents are responsible for their actions and... inactions" (Smith et al., 2012).

Regarding sovereignty and non-interference in internal affairs, there are different legal theories (the theory of realists, cosmopolitans, and idealists), which present different views. The theory of realists recognizes that the sovereignty of a state can be interfered with and violated when it is in the service of international security and peace. "According to realists, the key values of international politics are order and peace... intervention can be justified when necessary to maintain the balance of power and order..." (Nye *et al.*, 2014).

Cosmopolitans present their theory, based on certain values that should not be violated by state sovereignty, and otherwise, international intervention against a country could be done when justice, democracy, freedoms and human rights and good were violated. General. Cosmopolitans value justice. "Therefore, intervention can be justified if it promotes individual justice and human rights; therefore, any intervention that is on the side of the 'good' is allowed... the cosmopolitans demanded humanitarian intervention, and in Kosovo (1999) to stop the 'ethnic cleansing' caused by the Serbian government of Slobodan Milosevic..." (Nye et al., 2014).

Idealists justified international interference in the internal affairs of a state when its citizens are endangered by their state. According to idealists: "... the state has the right to invoke the principle of non-interference in its internal affairs, only if it is able to realize a minimum protection of its citizens" (Kıçmari, 2013).

With the development of international law, especially after the Cold War, ensuring the sovereignty and integrity of a state could no longer be supported and justified by violence. The state could not hold a territory or citizens under the influence of violence, arguing that it was exercising state sovereignty. State sovereignty and international order had to act according to the accepted norms of international law. "The politics of force in today's world should not take precedence over international norms" (Rothgeb et al., 1993). "Likewise, from the moment the aggressive force became illegal, it became impossible for a state to gain control of a territory through occupation" (Dixon, 2011).

The practice of world crises has shown that without the action of international law, nothing can be resolved. It is very clear that "the world, after the Cold War, given the ethnic and national conflicts, first in the Balkans and then in other countries, is a reality that will need the growing commitment of the international community" (Vukadinović, 2006). International crises not only required international intervention, but would also highlight the new functioning of international institutions.

Serbia wanted to keep the Kosovo crisis as an internal matter, and Kosovo Albanians seeking "recognition of independence in the name of the right to self-determination, Serbs opposed the equally valid principle of inviolability of borders" (Gentilini, 2015). "Developments in Rwanda, Bosnia and Herzegovina and Kosovo reawakened the debate on the right to humanitarian intervention. Exactly NATO intervention in Kosovo proves that the principle of non-interference in the internal affairs of a state is no longer valid" (Kıçmari, 2013). What had happened in practice, where human rights and freedoms were massively violated, no longer justified Serbia, to call Kosovo still an internal matter, so this would affect the international community, and mainly NATO, to intervene in Kosovo. Among the people of Kosovo, their belief was strengthened that only some kind of international intervention could solve their situation (Clark, 2000). "For many, including the Clinton administration, Milosevic's claims to independence weighed less than the international community's right to stop the extermination and expulsion of an entire segment of its population" (Talbot et al., 2014). Although changes had taken place and international institutions had been reformed, they still showed problems in resolving international crises. Problems were noticed in the United Nations as some of its permanent members through veto had brought its blockade. "Within the United Nations itself, calls for the lifting of the 'veto' and / or the increase in the number of permanent members of the Security Council are becoming stronger and more persistent" (Dixon, 2011).

Should morality, and rights, be violated continuously and beyond legal-human limits, should the North Atlantic Treaty Organization intervene, or should the sovereignty of a state be violated? In this case, the notion of 'responsibility for protection' applies. In the case of Kosovo, a commission was formed with ten experts from all over the world to review the contradiction between humanitarian intervention and state sovereignty...Experts used the notion of 'protection' instead of the notion of 'humanitarian intervention'. They came to the conclusion that in extreme cases the protection of human life and dignity should be more important than state sovereignty (Kıçmari, 2013).

The Report of the International Commission on State Intervention and Sovereignty clearly explains what we mean by state sovereignty. 'State sovereignty implies responsibility; and the main responsibility for the protection of the people lies with the state'. Practically: 'when a population suffers serious damage as a result of civil war, rebellion, repression or state failure - and the state in question lacks the will or ability to stop it, the principle of non-interference gives way to international responsibility to protect' (International, 2001). So if the state fails to protect its citizens, and even commits crimes against them, then the international community has the right to act on the grounds of defense. It should be noted that: "...The principle of Responsibility to Protect came mainly as a reaction to previous failures (Nye et al., 2014).

At the end of the twentieth century, and the beginning of the twenty-first century, a state could not be justified which under the pretext of defending sovereignty and territorial integrity, violating human rights, committing crimes against humanity, and attacking its civilian population. In a 2000 report, UN Secretary-General Kofi Annan stated that "no legal principle - not even sovereignty - can justify crimes against humanity" and that the Security Council had a "moral obligation" to act on behalf of the international community ' to stop them (Annan, 2000). According to him,... collective security can no longer be limited in its narrow sense as the absence of armed conflict, between states or within states themselves. "Major human rights abuses, mass displacement of civilian populations, represent a direct threat to human security,..." (Armstrong et al., 2009).

The question is whether Serbia has lost its sovereignty and territorial integrity in Kosovo and does it have moral and legal rights in Kosovo? With the Technical-Military Agreement signed by the Yugoslav and Serbian military representatives (Marjanovi and Stevanovi), the transfer of sovereignty and territory of Kosovo to the international community took place. So Serbia has accepted it with its free will to cede the territory of Kosovo to international administration.

A state can have sovereignty over a territory only when it has not lost effective control over that territory. The state must demonstrate that it controls this territory, ensures order, human rights, and acts in accordance with international law.

The decision of July 22, 2010 - of the International Court of Justice brought "the correct application of the right of peoples to self-determination, finding the right balance between the principle of not violating the territorial integrity of the state and that of self-determination until secession" (Krisafi, 2014). "Serbia could benefit from international norms on preserving the integrity of states only if it respected in Kosovo towards Albanians the principles of equality and internal self-determination" (Agani, 1994). The right to self-determination belongs to the Albanian people in Kosovo because: "self-determination is a natural and historical right of every people ... on the ethnic, historical and political basis, a right that belongs to the Albanians of Kosovo, whether national right', whether as the right of a people living in an 'individualized territory' " (Stavileci, 2013).

Conclusion

State sovereignty was no longer seen as just a set of rights for the state, which could neither be taken away nor limited. International law, but also state policies, would see state sovereignty more and more as the responsibility of the state for its citizens, to ensure freedom, security and well-being, without harming their citizens with state actions or inactions. Regarding sovereignty and non-interference in internal affairs, there are different legal theories.

With the development of international law, especially after the Cold War, ensuring the sovereignty and integrity of a state could no longer be supported and justified by violence. The state could not hold a territory or citizens under the influence of violence, arguing that it was exercising state sovereignty. State sovereignty and international order had to act according to the accepted norms of international law. Serbia wanted to keep the Kosovo crisis as an internal matter. At the end of the twentieth century, and the beginning of the twenty-first century, a state could not be justified which under the pretext of defending sovereignty and territorial integrity, violating human rights, committing crimes against humanity, and attacking its civilian population.

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