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TRANSFORMATION OF THE PRINCIPLE OF SOVEREIGNTY: THE "EARNED SOVEREIGNTY" APPROACH TO CONFLICT RESOLUTION

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The article is aimed at examining the concept of sovereignty, the changes it has undergone, and the reasons behind these changes. It is mostly focused on the "earned sovereignty" approach exercised by the international community within the process of conflict settlement. The research is conducted using the methods of event analyses and comparative-historical analyses. The article states that the interpretation of sovereignty as an absolute and irrevocable principle has been replaced by sovereignty as responsibility to protect. Further, it argues that though the internal and external forms of sovereignty are closely linked, internal sovereignty is not exclusively directed by external sovereignty, and external sovereignty does not imply full exercise of internal sovereignty.

Keywords: sovereignty, "Responsibility to protect", human rights, United Nations, conflict regulation, peace-building, earned sovereignty approach.

Introduction. Since the late 1950s a pure state-centered approach to territorial governance and authority has been challenged by international organizations, particularly the UN. Its recent missions – currently being qualified as International territorial administration (ITA) – still lack a clear cut legal basis and are mostly regarded as the subject of customary international law. The internationalization of territories began to take shape in 1920s by the Treaty of Versailles based on which the League assumed a direct administration of several territories. Further, it reappeared in the context of decolonization during the cold war. Those missions were mostly designed to facilitate the transition phase of former colonies (Western New Guinea, Namibia, Congo, etc), were exercised with the consent of local authorities and ended with elections expressing the political will of population. Thereby one can agree with Zaum's assertion that during this period the practice of

international organizations reflects a commitment to Westphalian sovereignty, i.e. sovereignty as “monolithic” and “possessed in full or not at all” [25] which found its expression in 1960 General Assembly’s Declaration on the Granting of Independence to Colonial Countries and Peoples [3]. The Declaration was a significant development in the recognition of people’s right to self-determination. It stated that “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. The shift from Westphalian sovereignty to earned sovereignty (further be addressed) – raised a number of questions in international law and international relations with its immediate effects on international peace and security.

The evolution of the concept of sovereignty and its forms. Sovereignty is a concept covering several and even contradictory elements such as territory, population, autonomy, power, control and recognition. It is therefore a controversial concept of international law and international relations both from legal and political perspectives.

As Fassbender notes, the concept of sovereignty has proven to be highly adaptable. According to him, sovereignty is a collective term that indicates the rights and duties a state is accorded by international law at a given time. These sovereign rights and duties constitute state sovereignty [4].

Verzijl defines sovereignty as "the power of the state to act according to its own free will within the limits of the law of nations". His statement merits some general observations that are worth studying in terms of the modern legal perception of sovereignty. First, sovereignty is associated with power which in modern theory mostly refers to the legal competence of state. Second, sovereignty is an attribute of statehood. Third, sovereignty is the power of state to act within the limits of the law of nations, ie. the exercise of sovereignty by a state is subjected to the rules of international law [21].

The 20th century marked the evolution of the concept of sovereignty-shift from its classical interpretation to a more flexible one. Opinions were voiced about the dangers of the traditional interpretation of sovereignty as an absolute and unlimited power to control the territory. It was stated that the Westphalian concept of sovereignty is first of all about protecting nations and their rulers, and not the citizens. Today, sovereignty includes a demand that a state should govern under the rule of law with full respect for human rights [9]. Among the reasons for the revision of the principle of sovereignty, one can

also mention the proliferation of weapons of mass destruction, the genocide, the emergence of failed states, rogue states, etc.

Krasner identifies four ways regarding the use of sovereignty, namely international legal sovereignty, Westphalian sovereignty, domestic sovereignty and interdependence sovereignty. International legal sovereignty refers to the practices associated with mutual recognition, usually between territorial entities that have formal juridical independence. Westphalian sovereignty refers to political organization based on the exclusion of external actors from authority structures within a given territory. Domestic sovereignty refers to the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity. Interdependence sovereignty refers to the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants or capital across the borders of their state [10]. Meanwhile it should be noted that a state may have one kind of sovereignty but not the other. Moreover, they can even be mutually exclusive. For example, the Westphalian sovereignty can be undermined if the state enters into an agreement that recognizes external authority structures, as the case with the members of the European Union. A state can have international legal sovereignty, but have controversial domestic sovereignty. It can be the result of the established structure of authority. For instance, in case of Bosnia and Herzegovina the Office of the High Representative is functioning along with state structures, which is an ad hoc international institution responsible for overseeing the implementation of civilian component of the Peace Agreement ending the war in Bosnia [13]. Controversial domestic sovereignty may also result from the internal inability to effectively control the state. This is mostly the case with newly-recognized states with no past experience of self-government, in particular during the first years of independence (Kosovo, East-Timor, etc).

The international-legal sovereignty is also referred to as external sovereignty, while the Westphalian sovereignty-as an internal sovereignty. Some authors refer to these two types as negative and positive forms of sovereignty[11; 15]. The first is understood as freedom from external interference, while positive or empirical sovereignty is related to the effective solution of state issues, as well as the ability to make impartial decisions on a number of political, legal, and socio-economic issues, or, in other words, “genuine self-governance”.

Although it may seem that internal sovereignty is a prerequisite for external sovereignty, but under the changing reality, the opposite tendency is observed. If the above definition of internal sovereignty is taken into account, some territories will not be granted external sovereignty (recognition) and vice versa. A striking example of this is the Republic of Kosovo. Despite declaration of independence in 2008 and a long-term involvement of international actors in the process of state-building, the country has several features of a failed state: it does not exercise full control over the whole territory, has weak economy and high unemployment rate. There is a high level of corruption and institutional weakness in justice and law sector, as well as slow progress towards participation in international organizations [2; 23]. In contrast to this, the Republic of Artsakh, being deprived of external sovereignty, exercises full internal sovereignty in the sense defined above. Moreover, the analysis of Freedom House's reports on unrecognized states confirms Tansy's assertion that the success of the democratization process is also not entirely conditioned by the recognition [5; 17].

Thus, it can be stated that internal sovereignty is not exclusively directed by external sovereignty. In the same way, external sovereignty does not imply full internal sovereignty, in particular when the population suffers as a result of internal wars, rebellion, pressure or state failure, and the state authorities are unwilling or unable to stop or prevent it. The basis of this statement has been strengthened by the report of the International Commission on intervention and state sovereignty, entitled "Responsibility to Protect".

Responsibility to Protect. With the ending of the cold war the engagement of international actors in war-torn societies took an unprecedented form up to the assumption of all-inclusive (legislative, executive, judicial) mandates. Outside decolonization practices the internationalization of territories particularly their legitimacy has been largely criticized for in some conflict settings they lacked the consent of host territory having been simply imposed on local authorities. Moreover, given the application of this mechanism with respect to both recognized states and newly recognized states post-independence period the concept has largely altered the overall meaning of state sovereignty and non-interference principle in domestic matters.

It should be noted that the UN Charter does not clearly define the matters or situations that are exclusively within the domestic jurisdiction of states. Meanwhile, the study of external intervention practices shows that the

UN is guided by the opinion of the International Court of Justice stating that the scope of domestic issues is relative, and it depends on the developments in international law [1]. To put it another way, there are no problems that are exclusively domestic in their nature. The issues that are subject of state regulation by the international law may become the subject of international regulation in the course of time due the emergence of new norms of international customary law or the process of drafting new agreements.

The right of international organizations to interfere in domestic matters for protective ends was addressed in the report (2001) of the International Commission on intervention and State Sovereignty (ICISS) entitled "The Responsibility to Protect [14]". The report was mainly the address of the international community's "response" to four cases, namely Rwanda, Srebrenica (Bosnia), Kosovo and Somalia. It put forward the need of sovereignty reconsideration – transition from sovereignty as control to sovereignty as responsibility. The latter implies that the local authorities have the duty of protecting the safety and lives of citizens and to promote their welfare. They are responsible to the citizens internally and externally to international community through the UN. Thus, in instances where the state does not have the capacity or power to meet the principle of "responsibility to protect" international actors may interfere in domestic issues. The report interprets in a broad manner the cases in which this need may arise "where a population is suffering serious harm as a result of internal war, insurgence, repression or state failure, and the state in question is either unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect". Moreover, post-conflict reconstruction is being regarded as an immediate corollary of the responsibility to protect: "The responsibility to protect implies the responsibility not just to prevent and react, but to follow through and rebuild…there should be a genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development…" The principle went so far as to be included in the Outcome document of the high-level meeting of the General Assembly and was later explicitly referred to in the UN SC resolution 1674 in connection with the prevention of armed conflicts and their recurrence [20]. "Responsibility to protect" principle rejects the notion of sovereignty as an absolute one and regards it as an attribute to be earned. This approach to sovereignty is not new. Even in his famous work ''Leviathan'', Hobbes asserted

that if state could no longer perform the function it was given power to do, then it does not qualify as sovereign and is not owed obedience'' [6].

"Earned Sovereignty" approach to peace-building and conflict regulation. *The earned sovereignty* phenomenon has recently been used by scholars to describe an entity that needs to meet a range of criteria to ''prove'' its status (in case of recognized states) or to claim for a status (in case of non-recognized states) under international supervision. The idea of earned sovereignty approach to conflict regulation is explicitly aimed at preventing the possible risks of destabilization related to immediate independence through gradual transfer of territorial authority and access to independence. Three different scenarios have been identified in ''earned sovereignty'' approach: a scenario in which the territory exercises increasing authority over a specified period of time before final status determination (*phased sovereignty*), a scenario in which the territorial unit is subjected to specific preconditions, set of standards before it may acquire a particular status (*conditional sovereignty*), a scenario in which a sovereign territorial entity is limited to this or that extent in the exercise of sovereign authority and functions such as continued administrative or military presence (*constrained sovereignty*) [24]. The analysis of external administration following one of the models presented above demonstrates their specificities and the possible risks each of them could entail.

Phased sovereignty provides for the measured transfer of governmental functions and the overall territorial authority from international administrators to the sub-state entity. The mandate of such missions generally contains a specified period of time indentifying the end of administration and territory's final status determination. In case of East Timor and Western Sahara the path to final status was linked to a gradual transfer of territorial authority from ruling entity (UNTAET in East Timor, MINURSO in Western Sahara) to people seeking to self-determination. The contexts ITA is established in were practically the same- former colonies which following the withdrawal of colonizing powers were occupied and annexed by the neighboring countries. But the overall outcomes *in their formal sense* are different. The UN SC resolution 1272 (1999) envisaged administration for an initial period of two years prior to devolution of full powers to local authorities [19], while in Western Sahara the Settlement Plan provided for a transitional period of five years under the supervision of MINURSO for the preparation of a referendum determining the final status of territory: independence or integration with Morocco [18]. The missions were probably among the most complicated ones

for the international community was faced with the absence of any self-government practice. However the major challenge still leaving the question of Western Sahara open is the absence of clear cut "international vision" of territory's final status. In case of East Timor the metropolitan under international pressure had to accept the results of the referendum and the phases of administration were focused on governance issues and local capacity building rather than sovereignty issues, i.e. establishment of democratic institutions, fully-functioning political and legal system, economic recovery, restoration of public services and what is more transformation of social consciousness within over two years. Although the international presence in East Timor triggered the emergence of a new state, it did not in itself reduce the potential risk of destabilization. 2006 crisis of the East Timorese armed forces resulting in a resurgence of military clashes and resignation of several members of government (Prime Minister, Minister of Defense, Minister of Interior) proved the demerits phased sovereignty could entail if the priorities of mission are not logically set up [12].

The case of Kosovo and in some respect Bosnia and Herzegovina are classical examples of conditional sovereignty. The conditional sovereignty approach to conflict resolution implies that a territory under question should meet a set of standards that are provided either explicitly or implicitly, vary depending on the characteristics of the conflict and generally include benchmarks such as protecting human rights, halting terrorism, developing democratic institutions, instituting the rule of law and promoting regional stability [24]. "Standards before status" approach suggested by the Special Representative of the Secretary-General (SRSG) provided that prior to status determination the territory must meet a set of standards. The benchmarks were set to address a range of issues raised by both the Venice Commission and the Parliamentary Assembly of the Council of Europe. This included among others inability of internally displaced persons predominantly Serbs and members of other minority communities to return to their homes, a general lack of security in the province, particularly for members of minority communities, a consequential lack of freedom of movement, inadequacy of judicial proceedings connected with the existence of parallel court system operating in the Northern part of Kosovo, etc [16]. What initially destructed the meaning of setting forth benchmark approach for Kosovo is that local political institutions were expected to meet standards that were not under their control but under that of UNMIK and of Serbia. The dismantling of

parallel structures financed by Belgrade did not fall to the responsibility of local Kosovo actors, but to Serbia. A lack of 'progress in resolving practical issues of mutual concern' in the dialogue with Belgrade should not be held against the Provisional Institutions of self-government established by UNMIK. Likewise, the privatization and liquidation of socially-owned enterprises remained a 'reserved competence' of UNMIK. The same was true for the justice system, which was under the authority of UNMIK's Justice and Police component pillar [8]. The use of this approach temporarily blocked the already launched process of transferring the power to locally elected leaders. Hence, a question arises of whether this process is conditional sovereignty or as Visoka and Bolton [22] argue merely "delaying tactic". Moreover, the strife for formal sovereignty caused the eruption of ethnic violence against non-Albanian communities in March 2004 pointing to the inadequate agenda suggested by international actors. Conditionality should be applied only after a full devolution of powers takes place. It should serve as a final determinant of territory's self-government and self-organizing capacity.

Constrained sovereignty involves the imposition of continued limitations on the sovereign authority and functions of the new state. It may be demonstrated by continuing international civilian and/or military presence, and limits on the right of the state to undertake territorial association with other states. Constrained sovereignty approach to conflict resolution is usually applied either in newly-born states or failed ones. The major concern of establishing international presence in these countries is the prevention of destabilization risk which may take a regional and even international dimension. Williams and Pecci identify two contexts of destabilization risks: when a state even after a long period of institution building remains still incapable of exercising effective authority and when the new state's existence in and of itself creates a destabilizing political dynamics [24]. The UN SC is mostly authorized to constrain the sovereign's powers with its approval (the Dayton agreement in Bosnia, the Paris agreement in Cambodia), while in some settings this function may be performed by a single state (the United States in Afghanistan) or a coalition of states (CPA in Iraq) in the name of fighting against transnational terrorism.

The continuing nature of international presence-the shift from phased to constrained sovereignty- following the recognition of sovereign status implicitly points to the failure of the overall mission. The cases of East Timor and South Sudan are illustrative in this respect. Although the international

administration of East Timor (UNTAET) has been established for a two-year period it was further replaced by several additional UN missions with the last one as a response to the outbreak of a large-scale violence. The same is true for South Sudan in 2011 when the declaration of independence was followed by a civil war. The dangers of a continuing nature of international supervision are a subject of a separate study, but the most vivid of them particularly with regard to newly recognized states is the so-called "dependence from external assistance [7]" and an easy way to be labeled as failed or fragile states.

Conclusion.

Thus, the following points can be registered:

- There are no issues that are exclusively domestic in their nature. Those that are subject of state regulation by the international law may become the subject of international regulation in the course of time due the emergence of new norms of international customary law or the process of drafting new agreements.
- The interpretation of sovereignty as an absolute and irrevocable principle has been replaced by sovereignty as responsibility to protect. In case of its failure by state authorities, the international community has the right to assume this responsibility.
- Although the internal and external forms of sovereignty are closely linked, effective governance is not driven solely by international recognition, and international recognition, in its turn, does not necessarily imply effective exercise of internal sovereignty.
- In case of self-determination conflicts, the conditional sovereignty or, in general, the policy of conditionality, most often used by the international community, can not ensure security but to undermine it, in case the fulfillment of the criteria introduced is not linked to a clear political status and there are no preliminary objective conditions for the implementation of those criteria.
- The continuing nature of international presence-the shift from phased to constrained sovereignty-implicitly points to the failure of the international missions. It can provoke the so-called "dependence from external assistance" in newly recognized states and result in labeling them as failed or fragile states.

ԻՆՔՆԻՇԽԱՆՈՒԹՅԱՆ ՍԿԶԲՈՒՆՔԻ ՏՐԱՆՍՖՈՐՄԱՑԻԱՆ. «ՎԱՍՏԱԿԱԾ ԻՆՔՆԻՇԽԱՆՈՒԹՅԱՆ» ՄՈՏԵՑՄԱՆ ԿԻՐԱՌՈՒՄԸ ՀԱԿԱՄԱՐՏՈՒԹՅՈՒՆՆԵՐԻ ԿԱՐԳԱՎՈՐՄԱՆ ԳՈՐԾԸՆԹԱՑՈՒՄ

Կիրակոսյան Մ. Ա.

Հոդվածի նպատակն է բացահայտել ինքնիշխանության բովանդակության մեջ արձանագրված փոփոխությունները, ինչպես նաև այդ փոփոխությունների հիմքում ընկած պատճառները: Հոդվածն առավելապես կենտրոնացած է հակամարտությունների կարգավորման գործընթացում միջազգային համայնքի կողմից առավել հաճախ կիրառվող «վաստակած ինքնիշխանության» մոտեցման ուսումնասիրության վրա: Հետազոտության իրականացման ժամանակ կիրառվել են իրադարձությունների վերլուծության և պատմահամեմատական վերլուծության մեթոդները: Հետազոտության արդյունքում եզրակացվել է, որ ինքնիշխանության՝ որպես բացարձակ ու անբեկանելի սկզբունքի, մեկնաբանությունն իր տեղը զիջել է ինքնիշխանության՝ որպես պաշտպանելու պատասխանատվության ընկալմանը: Ապացուցվել է, որ թեև ներքին և արտաքին ինքնիշխանությունները սերտորեն կապված են, այդուհանդերձ ներքին ինքնիշխանությունը բացառապես չի ուղղորդվում արտաքին ինքնիշխանությամբ, իսկ արտաքին ինքնիշխանությունն անպայմանորեն չի ենթադրում ներքին ինքնիշխանության լիարժեք գործարկում:

Բանալի բառեր. ինքնիշխանություն, «Պաշտպանելու պատասխանատվություն», մարդու իրավունքներ, ՄԱԿ, հակամարտությունների կարգավորում, խաղաղության հաստատում, «վաստակած ինքնիշխանություն»:

ТРАНСФОРМАЦИЯ ПРИНЦИПА СУВЕРЕНИТЕТА: ИСПОЛЬЗОВАНИЕ ПОДХОДА «ЗАСЛУЖЕННОГО СУВЕРЕНИТЕТА» В РАЗРЕШЕНИИ КОНФЛИКТОВ

Киракосян М. А.

В статье рассматриваются изменения, которым подверглось само понятие суверенитета, а также причины этих изменений. Основное внимание уделяется подходу «заслуженного суверенитета», применяемому международным сообществом в процессе урегулирования

конфликтов. В ходе исследования использовались методы ивент анализа и сравнительноисторического анализа. Сделан вывод о том, что интерпретация суверенитета как абсолютного и неопровержимого принципа уступила свое место восприятию суверенитета как «обязанность защищать». Утверждается, что хотя внутренние и внешние формы суверенитета тесно связаны, внутренний суверенитет не руководствуется исключительно внешним суверенитетом, а внешний суверенитет не подразумевает полного функционирования внутреннего суверенитета.

Ключевые слова: суверенитет, «обязанность защищать», права человека, ООН, урегулирование конфликтов, поддержание мира, “заслуженный суверенитет”.

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