

## CONCEPT OF STATE SOVEREIGNTY: MODERN ATTITUDES

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For decades, international law and public law aspects of the concept of “sovereignty” were in the center of attention of the representatives of legal science. And today, despite the relative elaboration, there is a need to consider various aspects of the problem of sovereignty, which occur in society and in the state, through a prism of changes and in relation to modern ideas about the political system and the polity. According to the former UN Secretary General Boutros Boutros-Ghali, “the main demand of the day is to rethink the problems of sovereignty<sup>2</sup>.”

The notion of “state sovereignty” is the basic concept of modern international law; “it is unthinkable without international law itself, as such<sup>3</sup>”. New trends in considering the problem of state sovereignty create the necessary prerequisites for understanding the nature and character of modern international law, as well as the content of its basic principles.

Sovereignty is a necessary and inalienable political and legal property of any state, its constant attribute.

B. L. Manelis, a Soviet legal scholar wrote: “[s]overeignty should be considered as a social phenomenon, which is closely connected with the state, its role in international relations and the

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<sup>2</sup> Boutros Boutros-Ghali, *Empowering the United Nations*, Foreign Affairs, vol. 71, Winter 1992/93, pages 89, 98-99. Richard B. Bilder, *Perspectives on Sovereignty in the Current Context: An American Viewpoint*, Canada - United States Law Journal, vol. 20, 1994, page 9.

<sup>3</sup> Levin I.D. *On the Issue of Essence and Significance of Sovereignty*. “Soviet State and Law”, 1949, #6, P. 35. [Левин И.Д. К вопросу о сущности и значении принципа суверенитета. “Советское государство и право”, 1949, № 6, с. 35].

regularities of its development.<sup>4</sup> “Just as the very international law, sovereignty arose with the emergence of states.

However, in the late 40’s of the 20th century individual scientists, in particular I. D. Levin, expressed a later origin of sovereignty, linking it to the period of the collapse of feudalism and the establishment of capitalist production relations<sup>5</sup>. This point of view became dominant in the science of international law and was later recognized as erroneous by the author<sup>6</sup>. Considering the possible occurrence of the phenomenon before the development characterizing its concepts, it would be reasonably safe to say that sovereignty was already inherent in the ancient state.

In the initial period of development of the concept of “sovereignty”, it was linked with the personality of the monarch who was considered as the bearer of the sovereignty. In that period the very same concept of “sovereignty” served as a “political and legal supremacy designation of royal power in the country; that is to say, over all the feudal lords and its outside independence from the Roman church, Holy Roman Emperors and other feudal monarchs.”<sup>7</sup>

In Bodin's opinion, the very founder of the concept, the sovereignty acts as a supreme, absolute and independent of the state’s laws power over his subjects, which is, however, limited by divine and natural law. Sovereignty, as something peculiar to the bearer of the supreme state power, that is to say, the absolute monarchy, endowed them the features of absoluteness, universality, limitlessness and eternity.

It is noteworthy that in the 12th century Armenian famous thinker, social and political figure and lawyer Gosh, emphasizing the

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<sup>4</sup> Manelis B.L. Problems of Sovereignty. Resume of Ph.D. Dissertation, Moscow, 1966, P. 9. [Манелис Б.Л. Проблемы суверенитета. Автореф. дис. док. юрид. наук. М., 1966, с. 9].

<sup>5</sup> Levin I.D. On the Issue of Essence and Significance of Sovereignty. “Soviet State and Law”, 1949, #6, P. 35. [Левин И.Д. К вопросу о сущности и значении принципа суверенитета. “Советское государство и право”, 1949, № 6, с. 148].

<sup>6</sup> Ibid. P. 39.

<sup>7</sup> Levin D.B. History of International Law. Moscow. 1962, P. 33. [Левин Д.Б. История международного права. М., 1962, с. 33].

exclusivity of the royal power in his “Law code” dated 1184, presented his interpretation of the concept of “sovereignty”: “[k]ings are those who sovereignly exercise dominion over their peoples and tribute from other people, or if do not tribute then (at least) are not themselves taxed tribute to others (kings)<sup>8</sup>”. Thus, even at that period a unique approach looms to the concept of sovereignty as the supremacy of imperial power within the state and its independence beyond its boundaries.

The growing number of states and the reinforcement of their leading role in the international arena, as well as the complexity of international life in general, has left a significant imprint on the doctrine of sovereignty, turning it into a complex set of different views, interpretations and approaches to the concept of “sovereignty”, by greatly changing the original “Bodinian” structure of the idea of state sovereignty. The very constant changes happening in socio-political life of individual states as well as in the sphere of international relations, the strengthening of integration processes, leading to blurring of the borders between the actual individual states, to strengthening their interconnectedness, prejudice the need for a new approach to a number of problems associated with the principle of State sovereignty.

There are many definitions of the concepts which are studied in the theoretical works on international law. In Soviet and Russian international legal literature the most frequently cited definition of sovereignty is given by Professor G. Tunkin. He characterizes state sovereignty as “... the inherent supremacy of the State in its territory and independence in international relations.”<sup>9</sup>

Today you can find the statement that such a definition of

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<sup>8</sup> Armenian Judicial Code of Mkhitar Gosh. Translated from Old Armenian by A.A. Papovyan, (B.M. Narutyunyan, editor and introduction), Yerevan, 1954, P. 141. [Армянский Судебник Мхитара Гоша. Пер. с древнеармянского А.А. Паповяна, редакция и вступительная статья Б.М. Арутюняна. Ереван, 1954, с. 141].

<sup>9</sup> Tunkin G.I. Basics of Contemporary International Law. Moscow, 1956, P. 15. [Тункин Г.И. Основы современного международного права. М., 1956, с. 15].

sovereignty became out of date<sup>10</sup> at the end of the 20th century. In our opinion, such a statement does not correspond to the real situation.

The above mentioned definition of state sovereignty has not become out of date, but acquired a number of new features and qualities. This statement is justified both by the current state of international relations, and the changes that have occurred in international law, in particular the unprecedented pace of development of international cooperation in the field of human rights and the development of international mechanisms for the protection of these rights. In the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), it is expressly stated that “[t]he matters relating to human rights, fundamental freedoms, democracy and the supremacy of law are of international nature, as respect for these rights and freedoms constitutes one of the foundations of the international order”. It especially emphasizes that the commitments made by States parties in the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the state.

Another well-known Soviet internationalist lawyer D. B. Levin considered the supremacy of state power and its independence from any other power in international relations<sup>11</sup>.

Definitions of “sovereignty” are also given in the consideration and resolution of specific international disputes, which in its turn proves the importance of this concept for the entire international practice. One common definition of state sovereignty is given by an arbitrator Max Huber in the arbitration judgment of the case Island of Palmas, according to which: “[s]overeignty in the relations between states means independence. Independence in relation to area of the globe is the right to exercise his functions within the state, excluding

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<sup>10</sup> International Law. Tunkin G.I. (editor), Moscow, 1994, P. 87. [Международное право. Под ред. Г.И. Тункина. М., 1994, с. 87].

<sup>11</sup> Levin D.B. Basics Issues of Contemporary International Law. Moscow, 1958, P. 200. [Левин Д.Б. Основные проблемы современного международного права. М., 1958, с. 200].

any other State<sup>12</sup>.” In another case, such as in the dissenting opinion of Judge Alvarez on the Corfu Channel case, sovereignty is defined as a set of rights and attributes possessed by the State in its territory excluding any other State, and also in his relations with other states<sup>13</sup>.

In the latest research on the problem of sovereignty, there are definitions that are different from the well-known and widely accepted formulations of the considered concept. So, professor B. S. Krilov considers sovereignty as the property and the state's ability to independently, without external interference, determine its internal and external policies provided the respect for the civil and human rights, protection of minority rights and respect for international law<sup>14</sup>.

A positive aspect of the definition of “state sovereignty” is the direct reference to the need of respecting the norms of international law by the realization of State's sovereign rights. This fact distinguishes the interpretation of sovereignty from the previously encountered characteristics of the observed concept. Thus, the author notes the actual restrict of the sovereignty by these norms and principles. The correctness of this judgment is also confirmed by the current level of development of international law and international relations. For comparison, we can cite other definitions found in the works of modern scholars of sovereignty. A. S. Feshenko defines sovereignty as the full power of the state in its territory and its independence from other states<sup>15</sup>.

Taking into account the strengthening of integration processes

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<sup>12</sup> Island of Palmas case (U.S. v. Netherlands), Reports of International Arbitral Awards, vol. 2, 1928, pages 821, 838. Richard B. Bilder, Perspectives on Sovereignty in the Current Context: An American Viewpoint, Canada - United States Law Journal, vol. 20, 1994, page 10.

<sup>13</sup> Corfu Channel case (U.K. v. Albania), I.C.J. Reports, 1949, pages 39, 43. Richard B. Bilder, Perspectives on Sovereignty in the Current Context: An American Viewpoint, Canada - United States Law Journal, vol. 20, 1994, page 10.

<sup>14</sup> Problems of Sovereignty in Russian Federation. Moscow, 1994, P. 4. [Проблемы суверенитета в Российской Федерации. М., 1994, с. 4 (предисловие Б.С. Крылова)].

<sup>15</sup> Feshenko A.S. Problems of Supranationality in the Functioning of International Organizations and International Law. Ph.D. Dissertation. Moscow, 1988, P. 40. [Фещенко А.С. Проблемы наднациональности в деятельности международных организаций и международное право. Дис. канд. юрид. наук. М., 1988, с. 40].

in interstate relations, the growing interconnectedness of states, as well as the steady increase in the number of problems the solution of which requires the joint efforts of the entire world community, some scientists either directly call for the denial of the term “sovereignty”, arguing that “it is time ... to consider, analyze, re-understand and re-comprehend the concept (of sovereignty - K.G.) and deprive it from normative content, reframe, even reformulate it and gradually remove the term from the language of international relations, in particular the legal terminology<sup>16</sup>” or speak about the incompatibility with the notion of “sovereignty” with the position of states in the international arena, where there is no subordination of one state to another, where the relationship between the states are built on the principles of equality and independence, noting that the term “sovereign state” is more characteristic for their domestic constitutional provisions than their legal status in the international arena<sup>17</sup>.

There are also attempts to find a replacement of the term “sovereignty”, justifying it as follows: “[w]hen the internationalist lawyers say that the state is sovereign, all that they really have in mind is that it is independent, that it is to say; it does not depend on any other state. ... It would be much better if the word “sovereignty” was replaced by the word “independence”. ... In the western world they no longer pray for the sovereignty as before”<sup>18</sup>.

Such views on sovereignty, its nature and content which are appearing in the works of foreign authors, in our opinion, cannot be considered correct. Different views, denying the sovereignty, do not coincide with the real state of things. Sovereignty is the cornerstone

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<sup>16</sup> L. Henkin, *The Mythology of Sovereignty*, in *Essays in Honour of Wang Tieya*, (R. St. J. Macdonald, ed.), Dordrecht – Boston – London, 1993, page 352.

<sup>17</sup> Oppenheim’s *International Law*, (Sir R. Jennings & Sir A. Watts, eds.), 9<sup>th</sup> ed., vol.1, Harlow, 1992, page 125.

<sup>18</sup> Akehurst M. A. *Modern Introduction to International Law*. 6<sup>th</sup> ed., London and New York, 1996, page 16. Dutch scholar G. Schermers calls sovereignty “fiction” and argues that states are not different only in their size and power, but also in terms of real sovereignty, which they have (Schermers G. *International Institutional Law*. L., 1980, page 776).

of modern international law, the same attribute and decisive indication of its major subjects — states. Relationships between states are built on the basis of the principle of sovereignty, it underlies the whole system of international organizations.

Having the property of sovereignty, the states, on the basis of equality and on conditions of mutual independence, are involved in various international legal relations, realizing their basic rights and duties. International law itself, as a set of interrelated legal norms, is the result of an agreement between sovereign states. Respect for the sovereignty is an essential imperative of international relations, the basic premise of mutually beneficial and successful intergovernmental cooperation as reflected in many international documents.

The above mentioned controversy of foreign internationalist lawyers concerning the need for the term “sovereignty” has no basis in reality: a waiver of that term may make suspicious the use of the term “state”. In our opinion, the proposal to replace the term “sovereignty” with the term “independence” is also wrong.

The fallacy of this proposal lies in the fact that the above mentioned concepts are not equivalent. The concept of “sovereignty” in its content is wider than the notion of independence, which is only one of the legal attributes of state sovereignty. As for the fact of limitation of state sovereignty under international law noted above, it cannot be regarded as a waiver of sovereignty, as its “extinction,” the decline, with far-reaching conclusions about the reduction of the role of states in the international arena. The limitation of state sovereignty, as noted in the literature, occurs as a result of the development of international law and international organizations, which, in their turn, is the cause of the development of states<sup>19</sup> cooperation.

In theoretical works on international law and to this day the question of limiting state sovereignty under international law remains quite controversial. On this issue, there are two main doctrinal points

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<sup>19</sup> International Law. (Tunkin G.I., ed.), Moscow, 1994, P. 87. [Международное право. Под ред. Г.И.Тункина. М., 1994, с. 87].

of view. The supporters of one of them (D. Levin, A. N. Talalayev, Yu. M. Kolosov, H. M. Velyaminov and others) believe that international law, any international agreement limits the sovereignty of the state. Professor A. N. Talalayev notes in this regard that “[a]ny agreement is some limitation of the sovereignty of states, but this does not contradict the essence of the agreement, if only based on the principles of voluntariness, reciprocity and *sovereign equality* (emphasized by us - K. G.) and does not go beyond certain limits behind which begins the violation of sovereignty<sup>20</sup>.” Even you can find a statement which tells that states’ voluntary limitation of their sovereignty is one of its manifestations<sup>21</sup>.

The supporters of another point of view (V. A. Vasilenko, I. I. Lukashuk, V. S. Shevtsov) deny the possibility of limiting state sovereignty under international law, international-legal norms.

Their arguments are based on the fact that international law protects and guarantees the sovereignty of states, bringing some order into the system of international relations. “By regulating the relations between equal sovereign states, international law does not limit their sovereignty, but coordinates and organizes interstate relations, establishing a balance between the interests of individual states and the whole international community<sup>22</sup>.”

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<sup>20</sup> Talalaev A.N. Legal Nature of International Treaty. Moscow, 1963, P. 67; See also Levin D.B. Basics Issues of Contemporary International Law. Moscow, 1958, P. 207; Velyaminov G.M. Legal Status of the Subjects of Russian Federation and Problems of Recognition. Moscow Journal of International Law, 1995, #2, P. 9. [Талалаев А.Н. Юридическая природа международного договора. М., 1963, с. 67. См. также: Левин Д.Б. Основные проблемы современного международного права. М., 1958, с. 207; Вельяминов Г.М. Правовой статус субъектов Российской Федерации и проблемы признания. “Московский журнал международного права”, 1995, № 2, с. 9].

<sup>21</sup> Kolosov Yu. Sovereignty. “International Life”, 1976, #6, P. 160. [Колосов Ю. Суверенитет. “Международная жизнь”, 1976, № 7, с. 160].

<sup>22</sup> Vasilenko V.A. Basics of Theory of International Law. Kiev, 1988, P. 154. See also Lukashuk I.I. International Law. General Part. Moscow, 1996, pp. 265-266; Shevtsov V.S. State Sovereignty (Issues of Theory), Moscow, 1979, pp. 46-47. [Василенко В.А. Основы теории международного права. Киев, 1988, с. 154. См. также: Лукашук И.И. Международное право. Общая часть. М., 1996, с. 265-266; Шевцов В.С. Государственный суверенитет (вопросы теории). М., 1979, с. 46-47].

Taking into account the peculiarities of the current stage of development of international cooperation and the increasing role of international law as a regulator of this cooperation, we should recognize as correct the first point of view. It would be desirable to immediately mention that its supporters in their statements, of course, do not deny the regulatory function and universal nature of international law, but the recognition of their ability to limit the sovereignty by international law: international agreements are not withdrawals from the principle of sovereignty.

On the contrary, the main focus of their arguments is the fact that the mere possession of the sovereignty of the state makes it possible to participate in international agreements (and only with the consent of the state) and, as a consequence, it is possible to limit state sovereignty in a certain field of interstate cooperation, especially that in this case there is a limitation of the sovereignty of all parties of the agreement. The state which concludes an international agreement, exercises its sovereign rights and at the same time limits its sovereignty by taking on certain obligations. Actually, the sovereignty of the state in the field of international cooperation, regulated by an international agreement, manifests to a lesser extent than if the state did not conclude the agreement or did not participate in it.

Before proceeding to the analysis of certain features of the state sovereignty, it seems necessary to generally present some individual points of view on the issue of sovereignty implements existing in the science of law. According to some scholars<sup>23</sup>, sovereignty belongs to the government, as a defining element of the notion of state. Others believe that sovereignty does not belong to the government, but to the state itself, as a political organization of the society. One of the proponents of this point of view, professor N. A. Ushakov, justifying his point of view, states that “[i]t particularly manifests in international relations and international law, which considers a

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<sup>23</sup> See for example Manelis B.L. Problems of Sovereignty. Resume of Ph.D. Dissertation, Moscow, 1966, P. 14. [Манелис Б.Л. Проблемы суверенитета. Автореф. дис. ... док. юрид. наук. М., 1966, с. 14].

subject of not the state power, but the state as a whole<sup>24</sup>.”

Finally, the literature has put forward a point of view according to which sovereignty belongs both to the government and the state<sup>25</sup>.

Not stopping at each of the above mentioned points of view one by one, we will only note that professor N. A. Ushakov's justification that sovereignty belongs to the state as a whole, seems the most appropriate and convincing for us. Of course, one cannot deny that the state power is an essential element for the concept of “the state”, and that the state sovereignty is manifested in the activities of public authorities.

However, this does not mean that the concepts of “the state” and “state power” are identical. In our opinion, only such approach to the question of the bearer of state sovereignty makes it possible to correctly elucidate the essence of contemporary international law, as well as certain elements of his system. The properties that characterize the legal nature of state sovereignty are territorial sovereignty (supremacy of the state on its territory) and independence (independence of the state in international relations). Supremacy of the state and its independence are structural properties of state sovereignty, determining its nature and content.

The essence of territorial supremacy is that “the state exercises the highest, supreme authority over all persons and their associates, located in the national territory<sup>26</sup>.” Figuratively speaking, the state is

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<sup>24</sup> Ushakov N.A. *Sovereignty in Contemporary International Law*. Moscow, 1963, P. 17, also see Chernichenko S.V. *State as Personality, Subject of International Law and bearer of Sovereignty*. Russian Yearbook of International Law, 1993-1994, pp. 24-25; *Problems of Sovereignty of Russian Federation*. Moscow, 1994, pp.16-20. [Ушаков Н.А. Суверенитет в современном международном праве. М., 1963, с. 17. См. также: Черниченко С.В. Государство как личность, субъект международного права и носитель суверенитета. “Российский ежегодник международного права”, 1993-1994, с. 24-25; Проблемы суверенитета в Российской Федерации. М., 1994, с. 16-20].

<sup>25</sup> Shevtsov V.S. *State Sovereignty (Issues of Theory)*. Moscow, 1979, P.7. [Шевцов В.С. Государственный суверенитет (вопросы теории). М., 1979, с. 7].

<sup>26</sup> Ushakov N.A. *Sovereignty and its Implications in National and International Law*. Moscow Journal of International Law, 1994, #2, P. 6. [Ушаков Н.А. Суверенитет и его воплощение во внутригосударственном и международном праве. “Московский журнал международного права”, 1994, № 2, с. 6].

the “host” on its territory. Being an inherent feature of state sovereignty, territorial supremacy means the subordination of all individuals and organizations located within the boundaries of the state to the supreme government. At the same time, the supremacy in its territory is manifested in the autonomous and independent exercise of its internal functions, which is particularly reflected in the choice of the main directions of economic and social policy, as well as in determining the scope of authority and the main activities of public authorities, in establishing the rights and duties of the members of society.

“As a result of its internal independence and territorial supremacy, the state may adopt any constitution that will be pleasing to him for organizing its management, as it believes that it is necessary to pass such laws, which are desirable, to organize its armed forces on land and at sea, build and demolish any military facilities, to conduct any trade policy that he wishes, and so on, of course, with the requirements of respecting the demands of customary international law or international treaties which are obligatory for him<sup>27</sup>.”

The implementation of the supreme power over all persons and organizations located on the territory of the state is an essential evidence of the sovereignty of the state within its borders. Thus, the possibility of the simultaneous existence of the state sovereign authority on the state's territory along with the supreme power is being limited.

In this way, the supremacy of the state appears in the absolute power of the state on its territory<sup>28</sup>. In this connection, the position of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations from October 24, 1970, should be

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<sup>27</sup> Oppenheim's International Law, (Sir R. Jennings & Sir A. Watts, eds.), 9<sup>th</sup> ed., vol. 1, Harlow, 1992, page 384.

<sup>28</sup> Ushakov N.A. Sovereignty in Contemporary International Law. Moscow, 1963, P. 17. [Ушаков Н.А. Суверенитет в современном международном праве. М., 1963, с. 17].

highlighted, according to which: “[e]ach State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by any whatsoever other state.

In addition to the above mentioned, the territorial supremacy of the state is reflected in the subjects of the state power which has the exclusive right to use means of overbearing coercion in necessary cases, as well as the priority of the state, issue generally binding rules of conduct, the realization of which is provided also through measures of overbearing coercion. Professor I. Levin wrote: “So, the concentration of all power in the hands of the state, the monopolization of the overbearing coercion in the hands of the state is an important feature of sovereignty. This does not mean that the state only forces by overbearing methods; but it means that only the state compels by overbearing methods<sup>29</sup>.” The supremacy of the state is expressed in the fact that any exceptions of the territorial supremacy are possible only with the consent of the state.

The territorial sovereignty of the state is also reflected in the fact that lawmaking activities undertaken through the relevant authorities are centralized in his hands. Exclusive prerogative of the state is entitled to lay down legal norms, expressing the interests (will) of all the members of society to protect them and enforce their requirements. The state also sets the order of publication, modification and cancellation of the law. And in this sense, as indicated in the literature, it is above the law.

In the literature on international law there are points which indicate the inextricable link of territorial supremacy with two such properties of the government, as are its unity and legal limitlessness.

The first of these properties of the state is its unity which is reflected in the organization and exercise of state power through a single system and its organs on the basis of law, which together constitute the highest state authority. The unified system of legislative, executive and judicial powers and the set of laws established by the state and determining the competence of these

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<sup>29</sup> Levin I.D. Sovereignty. Moscow, 1948, P. 103. [Левин И. Д. Суверенитет. М., 1948, с. 103].

authorities, the scope of their authority, are the essential and necessary conditions for ensuring the unity of the government. The unity of state authorities thus assumes its organization and internal consistency, which is expressed in the coordinated implementation of the various branches of their powers.

On the whole, the unity of state power legally expresses that: “a) the aggregate competence of those bodies covers all the authority necessary to carry out the functions of the state, and b) various bodies belonging to this system, cannot be prescribed simultaneously by the same subjects in the same circumstances by mutually exclusive rules of conduct”<sup>30</sup>. Legal unboundedness of state’s power is primarily expressed in its sovereignty and in lack of control, which implies a situation in which state power is exercised in the absence of other (alternative) supreme power able to influence him and predetermine his activities. N. A. Ushakov writes: “Legal unboundedness of state’s power only means that there is no supreme power over him to which he is obliged to follow.”<sup>31</sup>

As it is noted above, only the state has the right to set mandatory rules of conduct and ensure the smooth implementation of them which actually means unboundedness of state power by the law. But in any case, the unboundedness of state’s power does not mean the state’s permissiveness. The proof is the activity of the entire system of state bodies and of each body separately, which is done (or at least should be) under their authority, in accordance with legal regulations, and which ultimately aims at ensuring the public interest. Furthermore, the right itself, created by the state, expresses the interests of the society, its common will. Consequently, the “the legal unboundedness of the state does not mean independence from the real conditions society’s<sup>32</sup> life.” The fact, that in the process of

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<sup>30</sup> Ibid. P. 64.

<sup>31</sup> Ushakov N.A. Sovereignty and its Implications in National and International Law. Moscow Journal of International Law, 1994, #2, P. 8. [Ушаков Н.А. Суверенитет и его воплощение во внутригосударственном и международном праве. “Московский журнал международного права”, 1994, № 2, с. 8].

<sup>32</sup> Ushakov N.A. Sovereignty in Contemporary International Law. Moscow, 1963, P. 22. [Ушаков Н.А. Суверенитет в современном международном праве. М., 1963, с. 22].

exercising the state power the interests of other states, as well as other subjects of international law should be considered, should be added to the aforementioned.

Another feature that characterizes the nature of state sovereignty is the independence of the state in international relations. As rightly pointed out in the legal literature, both the above mentioned features are closely interrelated and interdependent, and the absence of one makes impossible the existence of another, thereby depriving the state from sovereignty. Considering this circumstance, we should approach the issue of the concept of “state independence”.

In the most general form of independence of the state can be represented as its ability to freely and independently determine the extent and form of its participation in international relations. Independence in the international arena is primarily expressed in the state's ability to manage its external affairs, independently and, at its own discretion, determine its foreign policy.

From the standpoint of international law, the independence in the international arena is materializing in the form of free implementation of the international legal personality by the state itself. An important prerequisite for understanding the essence of state's independence is also the fact that “international relations are characterized by the lack of power standing above states, mandating them their behavior in international relations, and the mutual independence of states”.<sup>33</sup>

Nevertheless, independence in international relations cannot be interpreted as an absolute freedom (or even arbitrary). The status of the subjects of international law not only empowers the state certain rights but also imposes certain obligations. Every State is obliged to regulate its foreign policy with the generally recognized principles and norms of international law. In connection with above mentioned the idea, expressed by a famous Austrian expert on international law

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<sup>33</sup> Ushakov N.A. Sovereignty and its Implications in National and International Law. Moscow Journal of International Law, 1994, #2, P 9. [Ушаков Н.А. Суверенитет и его воплощение во внутригосударственном и международном праве. “Московский журнал международного права”, 1994, № 2, с. 9].

A. Ferdross, should be recognized, according to which: “[t]his independence does not mean, however, dependence from international law, but only the will of the independence of other states. It is an ability to solve all the cases *on their own* without *obeying* the instructions of another state”<sup>34</sup>.

The system of universally recognized principles and norms of international law restricts to some extent the independence of states in the field of international cooperation. At the same time, these norms and principles provide and guarantee the independence and sovereignty of states both in international relations and in domestic sphere. The activity of states in the international arena must be subordinated to the general international law and order and to the requirements of international legality. It should compulsorily be carried out on the basis of international law and by taking into account the interests of other states.

Giving his own definition of state sovereignty, a prominent Russian scholar-internationalist F. F. Martens clearly notices the difference of sovereignty’s extent in the area of “internal control” and “international relations.” He writes: “[i]n the sovereignty or in the supremacy the independence of the state both in the area of internal control and in international relations is expressed.

"In the sphere of international relations, sovereignty does not have the same extent as it has in state’s government. The difference is immediately detected as soon as the state enters into relations with other nations and wishes to make obligations with them and use the international law: then by the power of things it is forced to make concessions, to respect the legitimate rights and interests of other nations, to abandon its unconditional implementation of its supremacy”<sup>35</sup>.

Thus, the independence of the state in international relations is

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<sup>34</sup> Ferdross A. International Law. Moscow, 1959, P. 120. [Фердросс А. Международное право. М., 1959, с. 120].

<sup>35</sup> Martens F.F. Contemporary International Law of Civilized Nations. Part 1., Moscow, 1996, P. 196. [Мартенс Ф.Ф. Современное международное право цивилизованных народов. Т.1. М., 1996, с. 196].

limited only by the existence of other sovereign states, and the presence of international law which is established in the form of principles and rules defining boundaries of independence in the international arena. All this provides the legal equality of state-parties of international communication. This circumstance, as a fundamental element of international cooperation, has been fixed in such important international documents as the UN Charter, the Declaration on Principles of International Law (1970) and the Final Act of the Conference on Security and Cooperation in Europe (1975), the provisions of which determine the overall direction of state's foreign policy's activities.

In the Declaration on Principles of International Law it reads as follows: “[a]ll States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding the economic, social, political or other nature of differences. “State sovereignty and legal equality suppose essential balance and harmony of interstate relations. In this sense, it is legitimate the quote of Judge Anzilotti from his individual opinion on the case of the Austro-German Customs Union, where he states that “...the independence, is nothing more than the normal status of states...”<sup>36</sup>

Consideration of various definitions of “state sovereignty” and legal analysis of its individual features lead us to emphasize inner and outer sides in the very notion of “sovereignty”. The emphasizing of inner and outer sides is objectively conditioned by the nature of state sovereignty.

The inner side of the state sovereignty is manifested in the sovereignty of the state within the state borders, in the fullness of legislative, executive and judiciary powers. The right which characterizes the inner side of the sovereignty causes the state's ability to exercise discretion in its territory, taking into account the sovereignty of other states. D. I. Baratashvili writes: “[t]he

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<sup>36</sup>Austro-German Customs Union case, Permanent Court of International Justice, Ser. A/B, <sup>1</sup> 41, 1931, page 57. D. Pharand, Perspectives on Sovereignty in the Current Context: A Canadian Viewpoint, Canada - United States Law Journal, vol. 20, 1994, page 21.

jurisdiction of the state applies to both citizens and foreigners of the state, including the right to nationalize foreign property and the elimination of any privileged status of foreigners. ... These rights imply sovereignty over natural resources of the country, the right of eliminating the foreign military bases on their territory and the withdrawal of foreign military forces.”<sup>37</sup>

The outer side of this concept directly covers a range of rights and corresponding responsibilities, the presence of which allows the state to act in the international arena as competent subjects due to their international personality. Having these rights and responsibilities, as well as the ability to implement them in the field of international relations, are the summands of the international legal concept of “states' subjectivity”.

The enumeration of state's rights, including the rights that characterize the outer side of the sovereignty of the state, can often be found in various textbooks and monographs on international law. By the above mentioned “outer” state rights include: the right to peace, the right to international communication and cooperation, the right to equality with other states, the right to exchange diplomatic, consular and other representatives, the right to participate in international conferences, the right to participate in the universal international treaties without any discrimination, the right to participate in the creation and improvement of international law, the right to membership in international organizations, the right to neutrality<sup>38</sup>.

Since all of the above mentioned rights are equally common to all states, regardless of differences in political and economic and military potential, population and territory size and are meaningful

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<sup>37</sup> Baratashvili D.I. Principle of Sovereign Equality of States in International Law. Moscow, 1978, P. 95. [Бараташвили Д.И. Принцип суверенного равенства государств в международном праве. М., 1978, с. 95].

<sup>38</sup> International Law. (Tunkin G.I., ed.), Moscow, 1994, P. 88; Baratashvili D.I. Principle of Sovereign Equality of States in International Law. Moscow, 1978, pp. 95-96; Talalaev A.N. International Treaty Law: General Issues. Moscow, 1980, pp. 104-105, and others. [Международное право. Под ред. Г.И. Тункина. М., 1994, с. 88; Бараташвили Д.И. Принцип суверенного равенства государств в международном праве. М., 1978, с. 95-96; Талалаев А.Н. Право международных договоров. Общие вопросы. М., 1980, с. 104-105 и др].

points of the concept of “state sovereignty”, in literature it is common to call them basic or sovereign rights. At one time, F. F. Martens correctly noted that “[w]ithout these rights, the state is not able to reach a reasonable goal in international life, and without them they are not members of the international communication.”<sup>39</sup>

In the beginning of the paragraph in connection with the above mentioned definitions of state sovereignty and statements of various scientists about the need to substitute the notion of “sovereignty” or abandoning it, we have presented our point of view regarding the nature of sovereignty at the present stage and the place of the principle of state sovereignty in the modern system of international law.

As it can be noticed from above, in our points of view there is no tendency of going to extremes while resolving the question of the relationship between international law and the sovereignty which in the literature was manifested either in the denial of international law or the sovereignty. In our opinion, we have initially proceeded from the only right assumptions about the interdependence of these two concepts.

I. D. Levin stated: “[i]nternational law and sovereignty are not only compatible, but are also a logically necessary correlation as they presuppose each other.”<sup>40</sup>

Only with such understanding of the nature of their relations and taking into account the qualitative changes in the essence and content of state sovereignty, which have occurred recently, its role and place in the world can be properly and objectively assessed today. In conclusion, we will add that to date and in the near future no alternative to state sovereignty is yet visible.

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<sup>39</sup> Martens F.F. Contemporary International Law of Civilized Nations. Part 1., Moscow, 1996, P. 201. [Мартенс Ф.Ф. Современное международное право цивилизованных народов. Т.1. М., 1996, с. 201].

<sup>40</sup> Levin I.D. Sovereignty. Moscow, 1948, P. 112. [Левин И.Д. Суверенитет. М., 1948, с. 112].