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Debating Sovereignty: Self-Encounters of the Limitation in the Implementation of International Law

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Abstract
The aim of the paper is at elaborating the status of domestic law within international relations of legal subjects and, at the same time, at elaborating the status of international law in domestic legal acts. The deficit of direct measures for sanctioning non-application of international law was justified by the protection of national states with their highest instrument – their sovereignty. National sovereignty remains a state protector in domestic frames also from eventually influences of foreign states. But, what happens if states search international assistance for solving their contests and then, cannot implement the law because of the lack of instruments for application of decisions of the International Law Court? The contest of solving from the International Court of Law is one of the main points, that guarantees international protection for states as subjects of international law, but, at the other side, there are specific cases of non-application of its decisions. This emphasizes is needed for a re-definition of the relations between domestic and international law. The topic that is citied here is the lawsuit of the Republic of Macedonia against the Republic of Greece submitted to the International Court of justice. What happened in that period, how that agreement is implemented nowadays, what are the relations between Macedonians and Greek people and also the role of impact of sovereignty relations (how it is formed, what are its functions, relations with other laws in general) are all subsequently explained.

Keywords: *sovereignty, state – international relations, domestic law, international law*

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The role and impact of sovereignty in international relations

To start with the history of the notion of sovereignty in international law, it's almost identical to full-scale history of international law itself (Helmut, 2000:501). Sovereignty as a concept has been treated since the establishment of the state, even it in various disciplines as: philosophy, constitutional law, public international law, law history, political system, etc. On the basis of the theory of sovereignty of the people of Jean Jacques Rousseau, people are the bearer of sovereign power; the sovereignty cannot be inherited and is inseparable from the people. This sovereignty was realized through various forms of direct democracy. From this theory, we can conclude that the sovereignty and democracy are two inseparable forms of relationships between subjects of law.

But understanding the concept of sovereignty in national level is easier than international level. Interior hierarchy and international anarchy are two sides of the same coin and they cannot exist without each other. Sovereignty represents the attribute of units, including the hierarchy and anarchy (Lake, 2003: 305). This is not something new, it is clear, but in practice often overlooked. According to the international law, sovereignty was defined as the basis of international status of the country (World Encyclopedia, 2008). "He is also defined as the final authority of a person or institution against which no appeal. In other words sovereignty represents the highest power", authority and jurisdiction over population and its territory and which excludes the possibility of external influence based on restrictions that sets international law. The overlap of the act of state doctrine and the doctrine of sovereign immunity has always created problems of mixed activities of status (Baukas, 2005: 243). Sovereignty ranks among the most confounding concepts in international relations and if often suggests dual meaning. Sovereignty may be used as a synonym for being independent, especially to signify that the government officials in one state are free from the control of government officials in other states. But, sovereignty also suggests the notion that within a specified area the prescription and enforcement of legal rules were vested exclusively in the government officials of the states that claim that territory (Joyner, 2005: 35).

Territorial sovereignty presents us with a paradox. On the one hand, it forms the key constitutive rule in international relations. In strict terms it denotes that the people within recognized territorial borders are masters of their own fate. No higher juridical authority exists above that of the national government. And all states are equal in international law. Sovereignty is this highly desired (Cooley, Spruyt, 2009: 1).Some observers claim that the territorial state is obsolete and in the process of being supplanted by other institutional forms. Others see territorial sovereignty solely as a juridical fiction. Although states are equal from an international legal perspective, they fail to capture the continued relevance of power, domination, and hegemony. One of the major problems of international law is to determine when and how to incorporate new standards of behavior and new realities of life into the already existing framework, so that, on the one hand, the law remains relevant and on the other, the system itself is not too vigorously disrupted (Shaw, 2008: 43).

What do we understand from the definition?

As we can see from the definitions of the term "sovereignty" in the national and international levels, we can see that the sovereignty presents the protecting of the international subject, from possible international impacts and certain international subjects. But from the other side, also we can notice that states cannot survive without having relations of various natures with other international subjects. Respectively, the

world order itself was regulated as a system of independent and equal entities. But, in practice we have numerous clashes between the sovereignty of states, in order to indirectly imposing of decision-making power in international law and politics (Dixon, McCorquodale, Williams, 2010: 110). While the international legal order works in the organization of the international community in accordance with general international interests, national sovereignty can be used to protect the state from the interventions of international law in the national legal system.

For what we should wonder?

Today, we must wonder about the (Fassbender, 1998: 19): "fact if the UN Charter should be qualified as something different, something more than an international agreement, in order to find its place in the legal order". It is true that the judgment without the right is unthinkable, but more accurate is that the right was not often accompanied with the implementation of the courts for international relations. For relations in the international scene, where also the "compulsory" competences depend of the willingness of states, the right often exists only by the institutional non-support of commitment. Of course that the most pronounced characteristic of judicial resolution of disputes, is their slide. Respectively, the lack of direct measures for the implementation of international legislation means that, international law many times was applied by national courts and according to this; the national law often can determine the effectiveness of the decisions from the international law and the legitimacy of international activities (Dixon, McCorquodale, Williams, 2010: 110).

Mechanisms that limit the Implementation of International Law

The efforts to address is pressing such as revising climate change and coordinating monetary policy often fall short also approach to international enforcement and demonstrates the advantages also and disadvantages. The issue was associated with the superiority of the two systems, the national and international one, is irrelevant, because there is a lack of certain higher rates or of any order which carries superiority. But, while supporters of globalization (Lozina, 2006: 38), with the process of globalization, as condition of development, "traditionalist" representatives in parallel and convincingly with the first ones, talk about the fact that the state still remains the reference point and a guarantee for the process of regulating the diverse society in the future. In international law dominate two conventional meanings associated with national sovereignty: national sovereignty is a legal principle very important and international law takes into account the requirements of states, including them in the international agreements. The effect of the legal principle of sovereignty has changed since World War II. During the 90s and first half of the century, the national power within a territory was supposed to be "executive and absolute (Goldsmith, 2000: 959).

The system of United Nations has a central position in the international community and international law. While in the international law an efficient is centralized system for the enforcement of international law is missing, the UN provides opportunities for certain centralized activities. Despite the fact of the institutionalized structure, there are limits to the competences of these institutions, which mean that they cannot be considered equivalent effective of national institutions (Dixon, McCorquodale, Williams, 2010: 6). According to Article 92 of the UN Charter, the International Court of Justice was defined as the main organ of the United Nations. But there are also other definitions which define the ICJ as Defender of the legality of the international community as a whole,

within the United Nations and outside it all UN members were obliged to execute the decision of the International Court of Justice meanwhile just to mention that the Court begin working in 1946 but it was established in 1945 and its judicial branch of the United Nations and its stated in the Peace Palace in The Hague Netherlands.

"Namely, even all states who are signatories to its statute or those who have accepted the jurisdiction of the court, are obliged to preliminarily accept the obligation to execute the decisions that impose the court in it" (Article 94 of the UN Charter).When we talk about the mandatory obligation of the parties, for the execution of the decision imposed by the International Court of Justice, we should have into account that, mandatory obligation arises from the expression of the will of the parties at the time of membership to the UN or the acceptance of the competence of the Court, but the Court as a Court has not its direct mechanism for punishing the parties who do not execute its decision. The International Court of Justice has not the direct measures which national courts have. But, yet again, if either party fails to execute the decision of the Court, the other party has the right to send a complaint to the Security Council.

There exist common positions about international law, but there are also important differences, particularly between developed countries and those in transition. Despite not inequitable distribution of power, international laws generally respect the norms (Dixon, McCorquodale, Williams, 2010: 11). Furthermore, "each rule has inherent effect of the power that is independent of the conditions in which the rules were applied or changed from one rule into other" (Franck, 1988: 711). The national law is not and cannot be competitive of the international law at the international level, or otherwise would end up being national and converter in international, which hypothesis is not. Although adhesion to International Organization has considerable "benefits", it also presupposed certain "disadvantages", especially regarding the erosion of the traditional notion of state sovereignty. Although that states transfer to an International Organization is not, strictly speaking a part of their sovereignty but only the exercise of some of their sovereign powers, by accepting the obligations derived from membership States are compelled to render an account of the exercise of their sovereign competences within the limits fixed on the constituent instrument of every International Organization (Martin Martinez, 1996: 8).

The Function of National Low

The national law, by definition, cannot regulate the activity and relations with other countries. It can regulate the activities of its state in a way, which later cannot fulfill its international obligations, but again only on the basis of the definition of national level and without legal effect or further functionality. In general, in the second half of the twentieth century, national systems gradually were opened the door to international values and states are more prepared to adapt international law. Although each state is free to choose its own mechanism for implementation of international rules, even in the surface investigation of national legal systems shows that dominate two basic modes (Cases, 2001: 168-170).

The automatic incorporation of international rules is always done when the constitution or national laws stipulate that all public administrators, also the citizens and others who live in the territory, were obliged to apply certain existing and future rules of international law. This was the first and the second mechanism is an ad hoc incorporating of legislation of international rules. According to this system, the international rules become applicable in the state legal system, only if the relevant parliamentary services

adopt specific rules for implementation. Is the Court, whose competence is to bring the decisions of disputes that were submitted to her, in accordance with international law? International agreements, general or specific, which create rules that, are expressly accepted by the contracting parties; International custom, as evidence of a general practice and accepted as righteous, general law principles were recognized by civilized nations. The decisions of the courts and the doctrine of eminent authors of international law, as an additional source, which shows the rules of international law (Article 38(1) and 2 of the ICJ Statute).

Article 34 of the ICJ Statute provides that only the states may be contesting parties in disputes submitted to the ICJ. Respectively, the ICJ competence is optional, which stems from the possibility that the states may appear as parties before the ICJ, if they give advance consent for this. Voluntary base of judicial competence of this Court derives from the protection of the principle of sovereignty in the international community.

The states can give their consent openly or secretly (Andeevska, Azizi 2008: 268). The openly consent may come in those cases. Introduction of special rate in the agreement, according to which, all disputes that will arise from that agreement shall be resolved by the ICJ. Through the signing of a special agreement between two or more states, according to which, all disputes of any nature, the parties shall submit them at the ICJ, by signing the compromise for any particular dispute. Article 36 (2) provides that states have the right to declare that they accept ipso facto the obligation, the competence of the Court for all legal disputes, which as subject matter have: the interpretation of an agreements; all issues of international law; the existence of any fact, which if it would be proven, would show breach of any international obligation; the nature or amount of indemnity for breach of any international obligation.

The declaration is a unilateral act, which was submitted to the General Secretary of UN, who with a notice will inform all the members of Statute and the secretary of ICJ. The declaration must define the limits to accept the compulsory competence of the Court. Article 36 of the Statute provides that the optional clause was based on the principle of reciprocity, i.e. competence extends only to the states, who have accepted the clause and only to the extent to which correspond the two statements of recognition of competence. Since was previously noted that clause defines the limits of competence, we can conclude that optional clause may be unconditional or conditional. For example, The Declaration for mandatory recognition of the competence of the United States from August 14, 1946, where was noted that the declaration does not refer to: disputes, which solution is parties believed it to other courts according to existing agreements or agreements signed in the future, disputes which refer to issues that in essence are under the national jurisdiction of USA, or disputes which stem from multilateral agreement, unless the contracting parties are parties to the dispute submitted at the Court or if USA expressly agrees to jurisdiction of the Court (Hambro, 1948: 133-157). There exist the possibility that the competence can be given secretly and this can be achieved with the behavior and the acts of the contesting parties, from whom the Court can conclude for the good intention of the parties (ICJ Reports, 1947: 27). Each party in the beginning of the proceedings has the right to set certain conditions to the Court; each party was entitled by written request to seek the imposition of interim measures. The court has the right to impose interim measures even under its competence, but may impose measures, which the parties have not required. If the request of the party was denied, the party has the right to repeat the request based on other facts. Each decision on interim measures was submitted to the Security Council through the General Secretary of the UN. Each party has the right to submit preliminary

appeals to the Court, with who was rejected or refused the competence or the reason of the lawsuit. In international judiciary, this action is very important, especially in terms of care of not including any state in the session according to the principle forum prorogate, while earlier has not accepted the competence of the Court for the particular issue. By submitting preliminary complaints, was suspended the procedure for "meritum" review of dispute. After the appeal was accepted, the Court sets the deadline for the opposite party to set her observations in writing form and in the end there will be set the oral (verbal) examination only for those complaints.

The Statute of the International Court of Justice provides the possibility of intervention of third countries in the procedure, even it was based on two criteria (Degan, 1984: 17-37). If a State considers that there is interest of the legal nature of dispute, has the right to submit an application for intervention to the Court.In the request, the state should emphasize that what is the interest of the legal nature, which is in question, the exact intention of the intervention and any basis of competence of the Court which exists between the applicant and the parties in dispute. In case of interpretation of the agreement, which agreement except the contesting parties was also signed by other states, thus each one of them has the right to intervene. Rules of Court this application recognizes as "statement" which should contain its specifics, under which the state was considered as a contracting party, the rules of the agreement, which considers that should be interpreted and the clarifying of the interpretation that state gives importance to those norms. If the declaration was accepted for intervention in the proceedings, the party submitted all the documents of the procedure in the writing stage and will specify a deadline within which it will have to submit its gaze for the dispute. The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which was based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter (Article 95 of the UN Charter). All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment. Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future (Article 95 of the UN Charter)."The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities".

Concrete case – the lawsuit of Republic of Macedonia against the Republic of Greece

The Republic of Macedonia in 2011, after a series of insults that were made in Euro-Atlantic integration, was submitted a lawsuit against the Republic of Greece to the

Court in The Hague. The subject of the lawsuit was a violation of the Interim Agreement of 1995, with which to Macedonia was set obstacle is receiving the invitation to join NATO at the Bucharest Summit, and also an obstacle to EU membership. Aim for NATO membership, to the Republic of Macedonia was confirmed on 23.12.1993, when the Parliament of Macedonia took the decision to join the North-Atlantic – NATO. With the lawsuit, Macedonia was required from International Court of Justice to order Greece to respect the obligations arising from the Interim Agreement, which has binding legal force, which in other words means a real appreciation of the Euro-Atlantic processes, not on political grounds. Here I emphasize that Macedonia submitted lawsuit only for breach of Interim Agreement, which both parties have signed it on September 12th, 1993 and which was created the legal basis for the normalization of relations between the two countries, but not also for the solution of international disputes through ICJ.

Minister of Foreign Affairs of the Republic of Macedonia, Antonio Milososki, on March 21st, 2011 in his presentation before the ICJ has stated reasons of the lawsuit and among other he emphasized: "we have initiated this dispute in order to ensure that the opponent part should fulfill one among the key obligations under the Interim Agreement of 1995 – nothing more and nothing less." For instance, from the declaration of the minister we can see that the lawsuit was referred only to the breach of the Integration Agreements. Does the Republic of Macedonia have the right to submit the dispute to ICJ for solution of the international dispute? From the above we can conclude that as a party to the ICJ may be states, who were signed the Statute of the Court. With the Greece statement was accepted the compulsory jurisdiction of the Court to resolve the disputed legal - international issues in accordance with Article 36 (2) of the Statute of the Court. In a statement we can see that there are two reserves, one ration personae, and the other rations materiel: the first condition excludes from the competence of the Court disputes which eventually will be created with the states, who have not given the statement that will substantially resemble with the one of Greece (principle of reciprocity) and the second condition excludes from the real competence of the Court "disputes that were related to military actions. Due to the reason of national defense" (Petrusevska, 2003: 15).

From the stocks mentioned can be seen that Greece has not put reserves in relation to dispute resolution Greek – Macedonian, since none of the two stocks does not include her. But here it should be noted that Macedonia has not expressed her consent to accept the competence of the court, the lack of which is a legal relevant fact and barrier to the initiation of proceedings to the International Court of Justice, i.e. it violates the principle of reciprocity which was set as reserved by Greece in the statement.

International Court of Justice now has initiated the procedure for non-compliance of the Integration Agreement by Greece. Macedonia and Greece are legally bound to respect the agreement as it is, to fulfill the agreement in good faith (Petrusevska, 2003: 17). The obligation to respect the agreement has not been completed, since there the conditions that provide it, are not completed. In accordance with Article 23 (2) completion of a liability to the Agreement can be applied only with the fulfillment of the following conditions: the agreement remains in effect until it won't be changed by definitive agreement. Contracting parties after seven years can be withdrawn from the Integration Agreement by written notice, while it gets its effect 12 months after the acceptance of the other party.

According to this, the Agreement did not lose its legal action; respectively the legal obligation to respect both parties, because the dispute was not resolved at all, still there wasn't any agreement which will find the solution. About the lawsuit now is more

clearly that it is referred only to violations of the Integration, but it is important to note that the international Greek – Macedonian dispute cannot be submitted to the ICJ. Now although we have a decision of the International Court of Justice who is in favor of Macedonia, but do we have fulfillment of that decision in reality or not, remain very questionable. The questioning issue lies in the fact that the right of veto was not used directly, but practically we have indirect threat of using that one. According to the current logic and practice, the legal disputes were solved through international judicial institutions, while the politic disputes are solved through diplomatic or politic means. Now we already have concluded that the international judicial institutions are the International Court of Justice and Arbitration. In general, all the advantages of the institution of arbitration and arbitrarily resolution of disputes were also applied to the arbitrary resolution of the bilateral dispute between Macedonia and Greece. First we should note that the bilateral dispute can be solved through arbitration, i.e. The dispute is arbitrary, if the parties voluntarily agree to submit the dispute to arbitration. I.e. from a legal aspect there is no obstacle to solve the dispute through arbitration, but the necessary condition to initiate arbitration proceedings, is the arbitration agreement between Greece and Macedonia. In view of the deadlines for dispute resolution, here the mediation and also offer a large number of sessions and training, meetings and both methods are flexible as they were appointed by agreement of the parties and eventually to disagreements regarding the duration and deadlines, the decisions can be made by arbitrators.

The principle of confidentiality also was based on the procedure of arbitration, so that the parties should also at the mediation enjoy the confidence in the work of this institution and composition of arbitrators. The principle of privacy is fully guaranteed in the arbitration process, and it was guaranteed even in cases of expertise, which is one of the main advantages of arbitration. And completely at the end, the economic aspect of the two methods is acceptable to the parties, where for the arbitrary resolution of the dispute, the parties agree on their spending on their arbitration agreement.

From this perspective for bilateral dispute there is no obstacle to resolve the dispute through arbitration, and also the advantages that offer this method are in no case less relevant to the legal dispute. Although according to the logic of separation of judicial and political disputes, and according to the practice now in place, although exceptions are far more numerous, legal disputes should be submitted to the international judicial institutions, and in the Greek – Macedonian, the situation is completely the opposite. Above we have defined the dispute as legal – political, Macedonia since 2003 until today has chosen political approach to resolve the dispute – the mediation. In other words, even though the application of the results of both types of techniques based on the will of the parties, nevertheless the result of judicial instruments is yet again seen as more influential in the national system, with the fact that the decisions of the ICJ or arbitration have legal basis of the inseparable interaction of national and international law regardless the highest protection through the institute.

Conclusions

The International Law related to the domestic the Former Yugoslav Republic of Macedonia continues to sufficiently fulfill the political criteria. Following substantial reforms in 2009 further progress has been made although at an uneven pace. Overall, the governing coalition is stable and there is cooperation between political forces. Some progress has been achieved as regards the reform of the parliament, the police, the judiciary, public administration and respect for and protection of minorities. The Ohrid

Framework Agreement remains an essential element for democracy and rule of law in the country. There has been some progress on implementing the law on languages, on decentralization and equitable representation. Continuous efforts, through dialogue, were needed to fulfill the objectives of the agreement and ensure its full implementation. There has been further progress in the reform of the parliament. Amendments to the rules of procedure were adopted which safeguard the rights of the opposition. However, dialogue on inter-ethnic relations was hampered by the failure of the relevant parliamentary committee to meet regularly. The partners in the government coalition are maintaining constructive cooperation. They were committed to reforms to prepare the country for accession to the European Union, but more dialogue is required on issues concerning inter-ethnic relations. Additional efforts are necessary to take forward the decentralization process in line with the Ohrid Framework Agreement. The government's cooperation with the National Council for European Integration needs to be developed further.

There was some progress as regards the functioning of public administration. The Law on public servants was adopted. The Law on internal affairs regarding reform of the police entered into force and most implementing legislation has been adopted but what is more significant further efforts were needed to ensure the transparency, professionalism and independence of the civil service. There has been undue political interference in recruitments and promotions at all levels in the public administration. There was limited progress on judicial reform. The efficiency of courts was strengthened through improved budgetary management. Meanwhile there are still concerns about the independence and impartiality of the judiciary: no further progress was made in ensuring that existing legal provisions were implemented in practice. The aim of domestic and international system of law is the same – guarantying the national and international law and the most important is: states sovereignty restricts the application of international law. This is evident in situations of implementation of foreign court's decisions; normative competence of the state reflects the state's capacity for defining national legal frames and the mandatory jurisdiction reflects the capacity of international subject to form direct obligations and dependence from the normative jurisdiction; further survey of the relations among the concept of sovereignty, world political power and world public order.

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