

REFLECTION OF STATES SOVEREIGNTY IN THE FRAMEWORK OF SEVERAL COLLECTIVE SECURITY TREATIES

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Abstract

Each state on the modern political map of the world has its own peculiarities that distinguish them from one another. However, all States have something in common, namely the constitutive elements that characterize not so much a particular State, but the "State" in the general sense, as a political-legal category. One of the fundamental elements of the State is sovereignty.

Thus, sovereignty in its two manifestations: supremacy and independence, represents the freedom of the State to decide exclusively, without any internal or external interference, on the content of all areas of political, economic, social and cultural life, as well as in the field of its international relations. This indicates both establishing and implementing its internal and foreign policy in conformity with its own accord. For this reason, sovereignty represents the superior nature of power to the extent that it does not admit the existence of a supranational authority.

However, the concept of sovereignty is not absolute. If the States considered obtaining a defensive wall against encroachments on their sovereignty in Article 2 (7) of the UN Charter, the interpretation, which was presented by the UN institutions (Security Council, General Assembly), demonstrated that this is not actually the case and that sovereignty is still relative.⁸

Consequently, analyzing some Collective Security Treaties, it can be noticed that States are still not independent in their actions from the moment of joining the Collective Security Organizations. The States abandon their sovereignty in favor of these Organizations, as a result of its membership. Organizations, in turn, impose some restrictions on the actions of their Members, which are obliged to comply with them based on the free consent shown at the conclusion of the Collective Security Treaty.

Keywords: collective security, sovereignty, member state

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1. INTRODUCTION

Sovereignty is one of the state's essential elements, which is still difficult to define. The term itself, as it is known, was coined by the French philosopher and jurist Jean Bodin in the 16th century, who defined sovereignty as the absolute power of the feudal monarch. The Westphalian system of international relations, formulated after the ending of the 30 Years War (1618-1648), established the legal basis of international relations, recognizing the sovereignty of States materialized by supremacy in internal affairs and independence in foreign ones [1].

It is very important to distinguish the notion of domestic sovereignty and sovereignty in international law. In national law, the notion of sovereignty characterizes the decision-making power of the State on its territory, while in international law, sovereignty and independence have the same meaning. The fact that the State is sovereign internationally means that it is independent of other States.

Internationally, States are in a position of equality, therefore, in a horizontal one and not in a hierarchical one, where, by definition, there is no supra-sovereign State authority, and no States exercising sovereignty over other States.

Thus, for the international legal order, sovereignty is a constitutive element of the state, and international personality requires the independence of public power, which confers the quality of a sovereign state. It is considered that sovereignty constitutes that general feature of the state, which represents the supremacy of the state and the independence of the state power in expressing and realizing the will of the governors as a general will, binding for the whole society [2].

In order to strengthen this aspect, there exists the principle of sovereign equality of States among the principles of international law.

This principle, initially, developed as an international legal practice and was later enshrined in the Charter of the United Nations Organization (UN Charter) [3] in Article 2, Final Act of the Conference for Security and Cooperation in

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Europe of August 1, 1975 [4] in Article I, the Charter of Paris for a New Europe of 1990 [5], the Charter of Economic Rights and Duties of States of 12 December 1984 [6], in the statutes of international organizations of the UN system, organizations of a universal and regional nature, as well as in a variety of bilateral agreements and multilateral agreements concluded between the subjects of international law.

Of particular interest is the manifestation of the sovereignty of States when concluding international treaties and especially collective security treaties.

Treaty-making is available to each State that freely expresses its desire to become a part of a treaty. The consent of the parties is an essential element of international treaties that excludes any shortcomings of agreement such as error, complicity, corruption or coercion of the representative of the state [7]. It is the sovereign right of the State to assume rights and obligations by concluding international treaties, by obtaining membership in international organizations. This right also applies to the collective security treaties and, respectively, the membership of the organizations established under them. Collective security, as is well known, is a set of rules of international law that create global or regional international organizations whose statutes define the measures applied by Member States collectively for the entire world or specific region, preventing and eliminating threats to peace and acts of aggression.

Currently, there are two categories of international collective security organizations - universal (United Nations, hereinafter UN) and regional (North Atlantic Treaty Organization, hereinafter NATO, Collective Security Treaty Organization, hereinafter CSTO, etc.), in which the Member States, through their consent, acquire some rights and undertake to comply with the obligations arising from these acts.

2. METHODOLOGY

Pinto and Grawitz define a method as a set of mental operations by which a discipline seeks to attain the truths it pursues, demonstrates, and verifies [8].

In order to analyze the content of certain Collective Security Treaties in terms of exercising the sovereignty of their members, we will apply the following methods:

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- the analytical method, which allows us to discuss the texts of the analyzed treaties;
- the comparative method, by means of which the Treaties of Collective Security Organizations were analyzed;
- the logical method, indispensable during the study of normative acts and judicial reasoning, as well as in the formulation of conclusions;
- the systematic method, which allows the approach of normative acts as a system that demonstrates external interconnections.

3. RESULTS

The UN Charter refers primarily to the principle of sovereign equality among the principles governing the Organization: "The Organization is based on the principle of sovereign equality of all its Members (Article 2 (1) of the UN Charter)". Regarding the North Atlantic Treaty of April 4, 1949, it is observed that its preamble refers to the objectives and principles of the UN Charter [9]. The Charter of the Collective Security Treaty Organization (hereinafter the CSTO Charter), in the preamble, in a similar way, refers to the generally recognized principles of international law. At the same time, Article 3 of the CSTO Charter, explicitly stipulates the protection of independence on a collective basis, territorial integrity and sovereignty of the Member States [10]. This indicates that all States have the same rights and obligations, regardless of the situations that occur: the right to freely choose the political, economic and social regime, the right to develop its own army, the obligation to respect the sovereignty of other States, the obligation to respect international law, etc.

In order to reflect the sovereignty of the Member States within the UN, NATO and CSTO, we will further analyze what are the stages that must be completed by the States that have the intention to be a part of these collective security treaties and, certainly, what are the rights and obligations arising from the texts of these documents.

3.1. Statement of consent to become a party to the Treaty – the expression of state sovereignty

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At the stage of arrangement or accession to a treaty, sovereignty materializes through the expression by the State of its consent to be a party to the treaty.

In terms of membership in the UN, the UN Charter contains provisions both for the original Members and for the States that wish to become a party to the Treaty.

According to Article 3 of the UN Charter, the original Members of the UN are the States which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, signed the Charter and ratified it in accordance with its internal constitutional procedure.

As for the other States that wish to become a party to the Treaty, Article 4 of the UN Charter stipulates both the requirements and the stages that a candidate State must follow. Thus, according to this article, all other peace-loving States which accept the obligations contained in the UN Charter and, in the judgment of the Organization, are able and willing to carry out them, can become Members of the United Nations. The admission as a member of the UN of any State that meets these conditions will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

It must be mentioned that non-compliance and violation of the principles on which the UN Charter is based, can lead to suspension from the exercise of the rights and privileges of membership or expulsion from the Organization (Article 5, Article 6 of the UN Charter).

With regard to the North Atlantic Treaty, there may be inferred, as in the case of the UN, two distinct situations, the first refers to the original States and the second to the States wishing to become Members.

In context, Article 11 of the Treaty regulates the entry into force of the Treaty having as initial Members only the signatory states that had to submit the documents of ratification of the Treaty to the Government of the United States of America.

Article 10 of the North Atlantic Treaty contains comprehensive provisions that candidate countries must comply with. In this sense, only those states that have been invited by unanimous agreement by the Member States of the

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Organization can become Parties. The precondition imposed by the Treaty lies in the fact that the State must be a geographically European State which wants and agrees to abide by the principles enshrined in the Treaty, which are also similar to the principles of the UN Charter.

From a procedural point of view, States should follow the same procedure as States of origin, in particular the submission of instruments of ratification to the Government of the United States of America.

States have the right to denounce the Treaty within one year of official notification to the Government of the United States of America (Article 13 of the Treaty).

Another pact that will be considered is the Charter of CSTO. This act, in Article 5, expressly provides that the Organization operates on the basis of strict respect for independence, voluntary participation, equality in rights and obligations of Member States, and non-interference in matters within the national jurisdiction of member states. Thus, in order to become a party to this organization, States express their consent to become a party to the Treaty. At the same time, Article 19 of the CSTO Charter provides that any state that supports the purposes and principles of the Charter and agrees to assume the obligations arising from it may become a member. The decision to accept the candidate State is approved by the Council of the Organization, the most important institution within the Organization consisting of the Heads of State or Government of Member States

However, in the situation where the Member State fails to fulfill specified obligations and violates the provisions of the Charter, the Council of the Organization may suspend the right of the State to participate in the activity of the Organization's institutions, where appropriate, the Council may adopt a resolution on exclusion thereof from the Organization. (Article 20 of the OTSC Charter).

3.2. The materialization of sovereignty reflected by the rights of states within collective security treaties

3.2.1 United Nations (UN)

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The Member States enjoy the right to freely choose and manage their domestic and foreign policies, or Article 2(7) of the UN Charter provides guarantees to Member States regarding the observance of the principle of non-intervention in the internal affairs of States. Consequently, in accordance with the provisions of this Article, no rule of the Charter authorizes the United Nations to interfere in matters which are essentially within the domestic competence of the State and does not oblige its members to submit these matters to a resolution based on the provisions of the Charter of the United Nations. Concomitantly, the provisions of this paragraph stipulate for a derogation in the case of the application of coercive measures provided for in Chapter 7 of the UN Charter.

It is thus deduced that when there is a threat to the peace, a breach of the peace or an act of aggression, the common interest of the international community prevails over sovereignty based on the unilateral interest of the state, the last being put on the back burner.

The other right of Member States derives from the content of Article 18(1) of the Charter of the United Nations, according to which each member of the General Assembly has one vote. However, taking into account the authority of the General Assembly, its decisions are of a recommendatory nature, and where the Security Council exercises the functions conferred upon it by the Charter in respect of a dispute or situation, The General Assembly shall not make any recommendation on this dispute or situation unless the Security Council so requests (Article 12(1), of the Charter of the United Nations). As a result, therefore in some situations this right to vote may be limited or, as the case may be, suspended by the General Assembly, upon the recommendation of the Security Council (Article 5 of the UN Charter).

In line with Article 31 of the UN Charter, any Member of the United Nations that is not a member of the Security Council may participate, without the right to vote, in the discussion of any matter referred to the Security Council, whenever it considers that the interests of that Member are particularly affected. Moreover, under article 35 (1), even non-United Nations Member States have this right under the condition that they undertook in advance to settle the dispute peacefully.

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Another right conferred on States is contained in Article 50 of the UN Charter. According to this article, any state, regardless of whether it is a UN member or not, which is experiencing special economic difficulties in implementing, preventive or enforcement measures against a State, has the right to consult the Security Council to resolve these difficulties. From the content of this article, nevertheless, it does not indicate what specific actions should be taken, both within the framework of the United Nations and by the requesting State, to smooth out the effects that led to the emergence of the problem.

Article 2(1) of the UN Charter Member States are obliged to resolve all disputes by peaceful means, however, in the event of an armed attack against a member of the United Nations, the UN Charter grants the right of States to individual or collective self-defense, until the Security Council takes the necessary measures to maintain international peace and security.

3.2.2. North Atlantic Treaty Organization (NATO)

The North Atlantic Treaty does not provide as many rights granted to Member States as it appears in the UN Charter. However, from the content of Article 3 of the Treaty, it can be concluded that Member States have the right to develop their individual and collective capacities to counter an armed attack. The content of this article can be correlated with Article 5 which provides for the right of Member States to individual or collective self-defense in the event of an armed attack. These rights appear to be similar, however the provisions are different and cover different situations.

3.2.3. Collective Security Treaty Organization (CSTO)

Speaking of rights arising from the content of the OTSC Charter, the first issue to be examined will be the provisions of Article 12 which provides for the voting right of the Member States within the Organization's institutions. At the same time, if the Council of the Organization decides to adopt a limited act, other States have the right to oppose this decision. Moreover, if a Member State did not vote for the adoption of a Council's decision in a limited format, it is not responsible for the effects of this act.

In comparison with the treaties discussed above, it is the right of the Member States within the Organization to deploy foreign military contingents on its

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territory after consultation with other Members of the Organization (Article 7 of the CSTO Charter).

3.3. The exercise of sovereignty through the acceptance of obligations by Member States within collective security treaties

3.3.1. United Nations (UN)

Referring to the obligations that Member States have within the UN, we cannot overlook the provisions of Article 1 of the UN Charter, which, enumerating the purposes of the UN, establishes a model and a mandatory margin of action for Member States, or the Organization itself is made up of States. Thus, the Member States, in their actions, are obliged to maintain international peace and security by taking effective collective measures to prevent and remove threats against the peace and to repress any acts of aggression or other violations of the peace and to carry out, by peaceful means and in accordance with the principles of justice and international law, settling or resolving disputes or situations of an international nature that could lead to a breach of the peace. [12] Moreover, in accordance with the provisions of Article 33 (1) of the UN Charter, the parties to any dispute the prolongation of which could endanger the maintenance of international peace and security must seek to resolve it, first of all, through negotiations, investigation, mediation, conciliation, arbitration, by judicial means, recourse with the help of regional organizations or agreements or by other peaceful means of their choice. At the same time, States undertake to develop friendly relations between nations, based on respecting the principle of equal rights of peoples and their right to self-determination, and to take any other suitable measures for the consolidation of world peace, as well as to achieve international cooperation in solving international problems with an economic, social, cultural or humanitarian character, promoting and encouraging respect for human rights and fundamental freedoms for all, regardless of race, sex, language or religion.

Another obligation that can be deduced from the preamble and Article 2 of the UN Charter consists in the good faith observance by the Member States of the commitments assumed. In this sense, Member States undertake to resolve their international disputes by peaceful means and to refrain from the threat of force or its use either against the territorial integrity or the political independence of any State.

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However, when the created situation requires the application of certain measures, according to the provisions of Article 2 (5) of the UN Charter, the Member States will give the UN full assistance in any action undertaken by it and will refrain from giving assistance to any State against which the Organization undertakes preventive or coercive action.

This obligation is correlated with the provisions of Article 25 of the UN Charter, according to which, in accordance with the provisions of the UN Charter, Member States are obliged to accept and execute the decisions of the Security Council and in case of necessity, according to Article 43 (1) of the UN Charter, undertakes to make available to the Security Council, at its request and in accordance with a special agreement or agreements, the armed forces, assistance and facilities, including the right of passage, necessary for the maintenance of international peace and security.

To be able to honor the obligations stated in Article 43(1) of the UN Charter, Member States must maintain in good condition national contingents of air forces that can be, if necessary, immediately usable for a combined action of international coercion (Article 45 of the UN Charter).

3.3.2. North Atlantic Treaty Organization (NATO)

Proceeding from the fact that the North Atlantic Treaty is based on the purposes and principles of the UN Charter, certain obligations similar to those imposed on Member States in the United Nations have been included in the text of the Treaty.

Member States have the obligation to resolve any disputes peacefully, as well as to refrain from the threat or use of military force in order to settle these disputes (Article 1 of the Treaty). However, Article 5 of the Treaty establishes the obligation of the Member States to provide the necessary support and take all necessary actions in the event of an armed attack against a Member of the Organization, with the obligation to report immediately to the UN Security Council about the undertaken measures.

At the same time, the Treaty also imposes an obligation on the Member States regarding the conclusion of other treaties that would contravene the provisions and purpose of the North Atlantic Treaty (Article 8 of the Treaty).

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3.3.3. Collective Security Treaty Organization (CSTO)

The obligations of States under the CSTO Charter must be analyzed starting with those mentioned in the preamble. In this vein, the preamble commits Member States to act in accordance with the principles of international law and the obligations resulting from membership in the United Nations.

Meanwhile, the obligations are not limited to those stated in the preamble. Article 2 of the CSTO Charter establishes the obligation of Member States to fulfill all obligations under the Act in order to achieve the objectives listed in Article 3 (strengthening of peace, international and regional security and stability, protection of independence on a collective basis, territorial integrity and sovereignty of the Member States).

With the aim to achieve the above-mentioned goals, Member States are obliged to take the necessary measures to ensure collective security in the event of threats to peace, stability, territorial integrity and sovereignty of the Members.

Additionally, Article 8 of the CSTO Charter defines the obligation of Member States to take the necessary measures to struggle with international terrorism and extremism, illicit trafficking of drugs and psychotropic substances, weapons, etc.

Another obligation, which does not exist within the UN or NATO, consists in the fact that the Member States must coordinate their position at the organizational level, before making their positions on security matters public in the international arena (Article 9 of the CSTO Charter).

4. CONCLUSIONS

It can be observed from the foregoing that a State cannot become a member of a collective security organization unilaterally, by simply expressing its own volition. The admission procedure within these organizations differs from case to case but is ultimately achieved based on an agreement between all interested parties.

When States become Members of specific collective security organizations, they acquire both rights that enable them to exercise their will within those organizations and to fulfill in good faith the obligations set out in the treaties

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of those organizations. If in the case of the rights that the Member States exercise within these organizations, the situation more straightforward, because the Member States are often free to act in one way or another, for instance the right to vote through which the Member State can vote in favor or against a case, then in the context of obligations the circumstances for Member States become more complicated.

At first glance, it gives the impression that when the organizations impose compliance and enforcement obligations on Member States, as appropriate, the latter lose the absolute authority to take decisions in these areas, thereby affecting the sovereignty of the State.

In this standpoint, it is appropriate to mention that in its first decision [11], the Permanent Court of International Justice specified that entering into international engagements is an attribute of State sovereignty, even if the treaty limits its freedom of decision. The Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty.

Therefore, it could be concluded that the State, as a party to a treaty, willingly assumes international commitments, which represent an attribute of its sovereignty.

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