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THE CONCEPT OF STATE SOVEREIGNTY IN THE CONTEXT OF THE MODERN INTERNATIONAL LAW SYSTEM: THE INFLUENCE OF KELSE N'S THINKING

State sovereignty is one of the most important institutes in the field of state and international (public) law. Often problematic, the concept of state sovereignty is a *conditio sine qua non* for any serious scientific discussion on the role of the state as the primary subject of international law. The aim of this paper is to try to explain the essence and most important determinants of the concept of state sovereignty in relation to the system of international law, primarily through the analysis of the thinking of Hans Kelsen as one of the most credible legal theorists and experts in the field of international law. In this paper, the author problematizes the role of external sovereignty, and especially points to the importance of the principle of sovereign equality of states as one of the key principles on which the modern system of international law is based. In this context, the author also presents and briefly analyzes the fundamental characteristics of the system of international law in the period that began with the end of World War II and the formation of the United Nations in 1945 and continues to this day, with the primary goal of recognizing the most important aspects of the protection of state sovereignty within the framework of the United Nations. As a result of the analysis of Kelsen's thinking and other relevant facts, the author comes to the conclusion that Kelsen's ideas greatly influenced the understanding of the concept of state sovereignty, which over time experienced a significant transformation, especially in the period after the formation of the United Nations until today. In the end, the author concludes that contemporary international relations also significantly influenced the change in the understanding of the concept of state sovereignty in the 21st century.

Keywords: external sovereignty; Hans Kelsen; sovereign equality; state sovereignty; United Nations

1. INTRODUCTION

Throughout history, the concept of state sovereignty[1] has been one of the most controversial issues in legal theory. Bearing in mind the importance of the mentioned concept, especially in the context of the modern international law system[2] and the turbulent relations prevailing in the world, it is necessary to point out the importance of the sovereignty of the state as the primary subject of international law in the period beginning with the end of the Second World War and the establishment of the United Nations (UN) in 1945, and continuing to the present day.

In order to understand the concept of state sovereignty in the correct way, it is necessary to lay a quality foundation in the form of an analysis of Hans Kelsen and his stances and ideas related to this concept. Kelsen is certainly one of the most credible legal theorists and experts in the field of state and public international law, who has studied in detail the very idea of sovereignty and the role of the state *per se*, as well as the characterization of the modern international law system and analysis of its key aspects. Kelsen's thinking is in many ways crucial for understanding the concept of state sovereignty, as well as international law as such, which is the main reason why his views will be presented and analyzed in this paper. In addition, due attention will be paid to the views of certain authors from Bosnia and Herzegovina, who in the past years have been engaged in the study of the theory of the state and law, and in particular the analysis of state sovereignty itself. The main reason for this is the author's desire to present the thoughts of relevant legal theorists from Bosnia and Herzegovina on the concept of state sovereignty, in a way that makes it possible to compare their understanding of the same concept in relation to Kelsen's thinking.

A significant part of the paper will be devoted to the analysis of the legal character of state sovereignty as such, with special reference to the analysis of the external aspect of state sovereignty and its importance in terms of interstate relations. Also, the

[1] As Crawford (2012: 448) states: "The term 'sovereignty' is variously used to describe the legal competence, or to provide a rationale for a particular exercise of this competence. The word itself has a lengthy and troubled history, and is susceptible to multiple meanings and justifications. In its most common modern usage, however, the term is rather descriptive in character, referring in a 'catch-all' sense to the collection of rights held by a state, first in its capacity as the entity entitled to exercise control over its territory and its people. Sovereignty is not to be equated with any specific substantive right, still less is it a precondition to statehood. Thus jurisdiction, including legislative competence over national territory, may be referred to by the terms 'sovereignty' or 'sovereign rights'."

[2] In the context of this paper, it is important to emphasize that the term "modern international law system" will be used in reference to the period from 1945, marked by the end of the Second World War and the establishment of the United Nations, to the present day.

subject of legal analysis and logical reflection will be the principle of sovereign equality of states, as one of the key principles of the modern international law system.

In accordance with the above, the following part of the article will first analyze the fundamental characteristics of the sovereign state as the primary subject of international law, with the primary aim of correctly understanding the concept of state sovereignty through the prism of Kelsen's thinking, as well as to get a better grasp on the contemporary context in which sovereign states act as the most important subjects of international law.

2. THE SOVEREIGN STATE AS THE PRIMARY SUBJECT OF INTERNATIONAL LAW

In the first place, it is necessary to place special emphasis on the role of the sovereign state as the primary subject in the context of the modern international law system, referring to a significant extent (although not exclusively) to the period after the establishment of the United Nations, whose basic principle is the principle of sovereign equality of states. However, before a more detailed analysis of the aforementioned principle, as well as the role of external sovereignty itself, it is necessary to attempt to define the concept of state sovereignty *per se* and explain its fundamental characteristics.

2.1. Definition and legal characterization of State Sovereignty

The issue of state sovereignty in legal science has always caused divided opinions, especially among legal scholars who have studied the concept and role of the state in the context of the modern system of international law. As stated by one of the most famous legal theorists of the modern era, Hans Kelsen[3], the concept of sovereignty has over time "experienced a change in meaning that has given rise to numerous disputes over its definition" (Kelsen 2003: 1).

[3] „For Kelsen, the normative-legal essence of all great theories of sovereignty since Bartolus was the view of the bearer of sovereignty as an entity occupying the highest place in a given order. Through this attribute, the subject to which sovereignty is accorded is characterized as the ''highest'' or ''uppermost''. This was initially merely a ''visual image'' to illustrate a relationship of supraordination or subordination. However, this relationship could not be inductively determined by way of a casual examination of political power relations. In this way, Kelsen, just like Jellinek, was opposing the definition of sovereignty as a minimum of *de facto* power" – explains Jochen von Bernstorff (2010: 64-65) and also emphasizes that (according to Kelsen) "in a factual sense, every state was politically dependent on other states and therefore not conceivable as the highest, completely unconstrained entity."

> „The concept of ''sovereignty'', whose etymological origin is linked to the Latin word *superanus* (French *souveraineté*; German *souveränität*) and which often translates as the complete, absolute independence of a state on its own territory – the highest authority, is one of the most current concepts that have been discussed in legal and political theory for centuries. However, no matter how much it has been discussed, it is still an insufficiently discussed and elaborated issue, which is sometimes given the prefix controversial by legal and political theorists" – explains Omerdić (2022: 51.)

and concludes that "sovereignty as an expression of the power at the disposal of the state, according to traditional understandings, *represents a characteristic of state authority according to which in each state there must be the highest, indivisible and absolute power that is not subject to anyone's control*" (Ibid.). However, as Omerdić emphasizes, "this concept of sovereignty should be accepted conditionally, because state power is not unlimited" (Ibid.).

The modern system of international law certainly represents a kind of limitation of state sovereignty, which is supported by the following Kelsen's statement:

> "The exclusivity of the state and legal order as an expression of its sovereignty does not only mean that within a reliably demarcated territory only the state that personifies that order ''rules'', but also that only that order is generally assumed to be valid. If one assumes multiple states that are demarcated from each other in a territorial context, then an order that undertakes this mutual demarcation is intellectually necessary, and therefore one must imagine that there is something above the orders of individual states: international law" (2003: 83).

While analyzing the relationship between international and national law, it is important to point out that „Hans Kelsen developed monist principles on the basis of formal methods of analysis dependent on a theory of knowledge. According to Kelsen, monism is scientifically established if international and national law are part of the same system of norms receiving their validity and content by an intellectual operation involving the assumption of a single basic norm (*Grundnorm*)" (Crawford 2012: 49). Therefore, it could be concluded that, according to the previously mentioned Kelsen's position, international and national law „form a single system of norms because they receive their validity from the same source" (Ibid.). That source is, according to Kelsen's thinking at the time, obviously found in the concept of the already mentioned *Grundnorm*.

However, it is necessary to point out that, when it comes to Kelsen's thinking regarding the concept of state sovereignty, there is also a dualistic conception regarding the existence of both international and national law at the same time.

> "The state can only be presupposed to be or not to be sovereign; and this presupposition depends upon our approach to the legal phenomena. If the legal construction – as in this treatise – proceeds from international law as a valid order, which implies the primacy of this law over national law, then the state as a national legal order ''is not'' sovereign in the sense of being the supreme legal authority. Then the state as a national legal order can be sovereign only in the relative sense that no other order but the international legal order is superior to the national legal order, so that the state as the national legal order is subjected directly to the international legal order only. If, to the contrary, the legal construction proceeds from a national legal order, which implies the primacy of national law, then the state as a national legal order ''is'' sovereign in the original absolute sense of the term, being superior to any other legal order, including international law which, by delegation, becomes part of national law." (Kelsen 1966: 583-584).

It is noticeable that Kelsen's theories place a special emphasis on the role of international law in terms of the conceptual determination of state sovereignty. The same also implies that sovereignty can only be attributed to that state, or more precisely to that legal order which as such is not "contained" in any existing order, nor can it be derived from some other order.

However, it is completely clear that in the modern world it is not possible to ignore the fact that the process of globalization (Thomas 2015), as well as serious tendencies towards the increasing supremacy of the international legal order, with the increasingly dominant role of certain regional organizations such as the European Union (Tursić 2021), represent a serious "threat" to the sovereignty of the state as the primary subject of international law.

On the contrary, there are also some authors with an opposing viewpoint like Stephen Krasner (1999), who look at the concept of state sovereignty as an ''organized hypocrisy'' in which states actually strengthen their own sovereignty by sharing their sovereignty and ceding certain sovereign rights (for example, to supranational organizations like the European Union). Equally, Krasner concludes that differences in national power and interests – not the international norms, that are also frequently violated – continue to be the most powerful explanation for the behavior of states in the modern world (Ibid).

Either way, the erosion of nation-state[4] sovereignty is a phenomenon that cannot

[4] When it comes to the term "nation-state", it does not (at least in the context of this paper) mean a state of only one ethnic group or nation, or a homogeneous culture – built on a common identity. The aforementioned term is used exclusively as a synonym for an internationally recognized, sovereign state within the system of international law, without any allusion to its ethnic/national character, which is completely irrelevant in this context. In support of the above, regarding the flexible interpretation and parallel use of the terms "people" and "nation", Trnka (2006) cites the following comparison as an example: The Declaration of the Rights of Man and of the

be lightly ignored. However, as Čolić (2020: 143) emphasizes – "it is the burden of contemporary state sovereignty in an order that is significantly internationalized."

In the context of the above, it could be concluded that this is a concept that is subject to flexible legal interpretation, taking into account the fact that social circumstances and international relations significantly influence its content, but that it is equally impossible to ignore the existence of certain elements that, as such, represent essential characteristics of state sovereignty.

For the purpose of further analysis of state sovereignty and its substantive definition, especially in the context of the modern system of international law, it is necessary to take into account two forms of state sovereignty: internal and external (Omerdić 2022).

Since external sovereignty is extremely important for a correct understanding of the concept of state sovereignty as a whole, it will be separately analyzed below, with a brief comparison with the internal aspect of state sovereignty.

2.2. The Role of External Sovereignty in terms of Interstate Relations

In order to better understand the concept of external sovereignty, it is necessary to first point out the definition of internal sovereignty. "Sovereignty in internal relations is understood as the highest authority in a state responsible for the population and territory, capable of creating a legal order and sanctioning non-compliance with prescribed norms of behavior" – states Čolić (2020: 37). "Unlike external sovereignty, internal sovereignty is related to the effectiveness of the state's authority over its entire territory and over the entire population. The primary determinants of internal sovereignty are independence and efficiency in the exercise of power" – explains Omerdić (2022: 52).

Based on the above, it can be clearly seen how the internal aspect of sovereignty manifests itself within state borders. By simply "contrasting" the above fact, it is possible to arrive at a definition of external sovereignty. „External sovereignty refers to the ability of a state to maintain its territorial integrity, to conduct its state policy independently of any other authority, and to independently decide on relations with

Citizen of 1789 stated: *The principle of all sovereignty essentially resides in the nation* (Article 3). Four years later, the Montagnard Constitution explicitly defined the concept of popular sovereignty as follows: *Sovereignty belongs to the people; it is unique and indivisible, unalterable and inalienable* (Article 25).In later French constitutions, including the current Constitution of 1958, both terms are used simultaneously. Thus, Article 3 of the French Constitution stipulates: *National sovereignty belongs to the people, who exercise it through their representatives and by referendum. No part of the people, nor any individual, may appropriate the exercise of sovereignty.*

other subjects of the international legal order. The primary determinants of external sovereignty are: the independence and equality of a state in relation to other states and other subjects of international law" – underlines Omerdić (Ibid.).

However, the question arises as to what is specifically meant by the concept of independence, or the equality of a sovereign state in relation to other subjects of international law?

> "Independence implies the fact that the state regulates its internal and external policy independently, without the interference of other states in its internal and external affairs. Furthermore, independence implies that the state, in the legal sense of the word, is not obliged to obey the commands of other subjects. For example, states independently, without the intervention of other states, make decisions on accession to certain international treaties. Equality as a determinant of external sovereignty implies that all states, regardless of the size of their state territory, and their own economic, military or other power, enjoy sovereign equality. Equal states enjoy equal rights (and duties) that, based on the provisions of international law, belong to them." (Ibid.)

It is important to emphasize that internal and external sovereignty must be analyzed in the context of contemporary relations prevailing in the world.

> "The political, social and economic changes of the modern era related to preserving a state's own sovereignty without jeopardizing the authority of others are a major challenge for states today. The reason for this is situations in which states, due to fulfilling their own goals and interests concerning peace and survival, are prone to activities that may result in deviations from norms in the form of violations of human and civil rights. The state is expected to limit the power of coercion on the one hand, but also to use that same power when protecting human and civil rights and freedoms. On the other hand, the international system has developed an asymmetry of power within which stronger, more powerful, wealthier states can choose norms that better suit their instrumental goals compared to weaker states." (Čolić 2020: 104).

The last statement is a clear illustration of the fact that within the modern system of international law, all states are *de jure* equal and have equal rights – although this is not the case *de facto*, due to their varying degrees of political, economic and military power. Accordingly, diplomatic relations (whether bilateral or multilateral) cannot be viewed as a relationship between equal subjects, but as a rule (to a greater or lesser extent) imply relationships in which one party is *de facto* superior and the other subordinated – even if this is not the case *de jure*.

The previous statements can also be related to Kelsen's thinking regarding the relationship between international law and state sovereignty as such, as well as the role of the principle of sovereign equality of states.

> "Kelsen argued that one could imagine a multitude of equal states only if a higher order normatively guaranteed that equality. Legal equality therefore demanded an equality norm. That norm, however, presupposed a legal order that stood above the states and placed them under obligation. We are dealing here with the notion that two legal subjects can be described as equal only in relation to a higher normative order that subordinated them both. Kelsen made clear that as soon as one spoke at all of the existence of a binding order of international law, it was necessary to carry out the establishment of a hierarchy via the formal concept of sovereignty in favor of the order of international law." (Von Bernstorff 2010: 66).

In the context of the above, the principle of sovereign equality of states will be analyzed in more detail below, as one of the fundamental principles on which the United Nations (UN), but also diplomatic law and international relations itself, are based.

2.3. The Principle of Sovereign Equality of States

Although most of the key principles on which the UN is based can be found in the relevant provisions of the Charter of the United Nations (UN Charter)[5], which is an act of international law that has made the rights and duties of states rules of applicable international law (Softić 2012), it is necessary to highlight the fact that this international treaty is not the only one that regulates the issue of fundamental rights and duties of states.

In this regard, it is necessary to be familiar with the fact that on 24 October 1970, the UN General Assembly adopted by consensus (without a vote) the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*[6] (1970 Declaration).

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[5] See Article 2 of the Charter of the United Nations (1945) (Available at: https://treaties.un.org/doc/publication/ctc/uncharter.pdf, accessed: 10 January, 2025).

[6] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970) (Available at: https://digitallibrary.un.org/record/202170?ln=en&v=pdf, accessed: 14 January, 2025).

> "This declaration represents an authentic interpretation of the UN Charter and sets out and elaborates seven principles that are an expression of the codification and progressive development of international law. These are: the principle of the prohibition of the threat or use of force; the principle of the peaceful settlement of international disputes; the principle of non-intervention; the duty of states to cooperate with each other in accordance with the Charter; the principle of equality and self-determination of peoples; the principle of sovereign equality of states; and the principle of fulfilling accepted international obligations in good faith." (Softić 2012: 58).

In the context of this paper, the principle of sovereign equality[7] of states is of particular importance. This principle implies the legal equality of all states, with regard to their rights and duties (Shaw 2008). States, regardless of their size or power, enjoy an equal legal status. According to Crawford (2012: 447), the "corollaries of the sovereignty and equality of states are: (a) a jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there; (b) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (c) the ultimate dependence upon consent of obligations arising whether from customary law or from treaties". When it comes to the substantive determination of the principle of sovereign equality of states, the 1970 Declaration states the following:

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. In particular, sovereign equality includes the following elements:

a) States are juridically equal;
b) Each State enjoys the rights inherent in full sovereignty;
c) Each State has the duty to respect the personality of other States;
d) The territorial integrity and political independence of the State are inviolable;
e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

[7] On the meaning of the term "sovereign equality", see Kelsen (1944).

International organizations such as the UN, whose activities are based (*inter alia*) on the principle of sovereign equality of states[8], formally offer equal representation and voting rights to all member states, but also the adoption of all important decisions by consensus, or unanimously. However, when it comes to the UN *per se*, it is necessary to emphasize that the principle of sovereign equality of states is significantly undermined by the privileged position of the five permanent members of the Security Council, which, due to their veto rights, have a dominant role in the adoption of legally binding decisions of this body (Núñez 2024).

Also, the principle of "one state, one vote" represented in the UN system, with its foundation in the principle of sovereign equality of states and the principle of non-interference in the internal affairs of other states, is undeniably similar to the system of "one person, one vote" in liberal-democratic political systems (Wolfrum, Röben 2008). At the level of the nation-state, the key mechanism for achieving greater inclusion is the representation of citizens in political decision-making institutions, while at the international level, inclusion is ensured through the principle of sovereign equality of states – which requires the consent, or agreement, of states when it comes to making decisions that create legal obligations for them (Ibid.).

Analyzing the previous activities and practice of the UN as a universal international organization, which has the authority to ensure international peace and security, it is noticeable that since its founding in 1945, the principle of sovereign equality of states (in combination with the protection of human rights and freedoms) has been the key principle for the establishment and functioning of the dualistic system of international law (Besson, Tasioulas 2010).

In accordance with the above, the laying of the foundations of the entire UN system and its further development after 1945 contributed to the creation of an autonomous, global and increasingly integrated international legal order, which to a large extent modified the sovereignty of states as primary subjects of international law (Ibid. 269). Since the 1960s, colonialism has been completely abandoned, aggressive war has become prohibited under the applicable (imperative) norms of international law, and political independence and territorial integrity have become an inalienable right belonging to all states (Ibid.).

In addition to the above, it should be emphasized that the principle of sovereign equality of states, articulated through the relevant provisions of the UN Charter and elaborated in detail within the above-mentioned 1970 Declaration, although it repre-

[8] The principle of sovereign equality of states finds its foundation in natural law theories, whose ideas are later adopted by legal positivists (Simmons, Steinberg 2007).

sents a universal principle – it is still not possible to completely separate it from the internal aspect of state sovereignty (Ibid. 272-273). In other words, the principle of sovereign equality of states still contains and clearly expresses the right of a state to its own autonomy and self-determination in international relations, which is also expressed through the previously mentioned principles of non-intervention, domestic jurisdiction, the right to self-determination, as well as the right to self-defence (Ibid.).

Finally, it is necessary to emphasize that the principle of sovereign equality of states, at least when it comes to contemporary international relations (Besson 2011; Ip 2010; Jackson 2003), can be fully respected only when states as primary subjects of international law do not act unilaterally[9], but rather act through existing internationally recognized decision-making mechanisms. The suppression of unilateralism in international relations represents one of the solutions for further strengthening the principle of sovereign equality of states, as well as respecting the principle of non-intervention and non-interference (Aloupi 2015) in the internal affairs of other states – except in situations where that action is permitted by applicable norms of international law.

3. FUNDAMENTAL CHARACTERISTICS OF THE MODERN INTERNATIONAL LAW SYSTEM

At the very beginning, it is crucial to emphasize the fact that most legal theorists (including previously mentioned Hans Kelsen) divide all law into two categories - national and international law. National law, as such, regulates relations between domestic legal subjects, while international law regulates the legal relations between the subjects of international law (Softić 2012). In addition to the mentioned division, which seems basic, it is necessary to point out an additional division of international law. Namely, international law is also divided into two parts - private international law (*conflict of laws*) and public international law (a name that, over time, became synonymous with *international law*) (Shaw 2008). Since private international law is not the subject of this paper, the focus will be solely on (public) international law.

Underlining the role of the state as the primary subject of international law, Kelsen (1966) states that „International Law or the Law of Nations is the name of a body of rules which – according to the usual definition – regulate the conduct of the states in their intercourse with one another."

[9] A **unilateral act** of a state exists when its action is contrary to the formal, institutional way of making decisions in international law (Hakimi 2014).

Even though international law primarily regulates relations between states (in all their forms), it also regulates the activities of numerous international organizations (Shaw 2008). It is worth noting that international law is primarily based on international treaties, which create a legal obligation for signatory parties, as well as on international customary rules - which essentially represent the practice of states, recognized by a large part of the international community, thus acquiring the character of legal obligation (Ibid.).

When it comes to the functioning of the modern international law system, it is important to emphasize that international law exists in the real world, in which conflicting interests rule, and that international law as such includes a wide range of actors – from states, through international organizations, to numerous companies, but also to individuals themselves (Ibid.). Therefore, international law as such must respond to the demands and needs of all these subjects. In addition, international law can hardly be separated from politics. Although they are not identical scientific disciplines, international law and politics nevertheless interact on several different levels (Ibid). Precisely because of their mutual intertwining, as well as their vital role in the creation of international relations, it is necessary to find a way for mutual coexistence.[10]

Certain authors, such as Andrew T. Guzman (2008), in their desire to present the way international law works in the modern world, emphasize the existence of an inseparable link between international law on the one hand, and international relations and cooperation on the other. In the 21st century, especially if we take into account the phenomenon of globalization and constant global rivalry, there is a very narrow circle of states[11] that can be said to be fully sovereign.

When it comes to the relationship between national and international law, it is necessary to point out some of the most important differences between national and international law, primarily based on Kelsen's thinking:

[10] In this context, Samantha Besson and John Tasioulas (2010) refer to Kant's (quite radical) thoughts on the nature of international law, while analyzing the arguments of this famous philosopher and legal theorist, stating that for Kant there is only one way for states to get closer to the so-called *perpetual peace*, which is to renounce their savage (lawless) freedom, adapt to the cogent norms of international law and thus form an (always growing) "state of nations" (*civitas gentium*), which would eventually encompass all the nations of the earth.

[11] Montevideo Convention on the Rights and Duties of States (1933) (Available at: https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20165/v165.pdf, accessed: 10 January, 2025) in Article 1 sets out the criteria for statehood: *The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.* This Convention, at the time it was adopted, primarily determined the requirements of customary international law for the recognition of the existence of a state.

> "The most important difference between international and national law consists in the fact that the former is a relatively decentralized, the latter a relatively centralized coercive order. This difference manifests itself in the methods by which the norms of the two orders are created and applied. Custom and treaties, the main ''sources" of international law, are decentralized methods of creating law; the main source of national law, legislation, is a centralized method. In contradistinction to national law, which confers upon tribunals the competence to apply the law and upon special organs the exclusive power to use force in executing the sanctions, there are under general international law no special organs for the application of the law and especially no central agencies for the execution of the sanctions. These functions are left to the states, the subjects of international law." (1966: 552)

Furthermore, it should be emphasized that today, as a rule, international law has primacy over national law, which implies the fact that no country can refer to its national regulations to justify failure to fulfill its own international obligations (Shaw 2008). Therefore, all states are obliged to act in accordance with international law and to fulfill their obligations in good faith, because in case of violation of international legal norms, the question of their responsibility under international law may arise. At the same time, it is completely irrelevant whether the violation of applicable international legal norms occurred as a result of the actions of the legislative, executive or judicial bodies of the state government (Ibid.).

The international responsibility of states, as one of the fundamental principles of international law, is closely related to the principle of sovereign equality of states. Namely, when one state commits an internationally wrongful act against another state, the existence of international responsibility for the said act is established – which simultaneously creates an obligation to compensate the caused damage to another subject of international law (Ibid.). Equally, it is necessary to emphasize that the modern system of international law does not make a distinction between contractual and criminal responsibility, and that accordingly, the violation of a certain international obligation (regardless of its nature) as a rule constitutes international responsibility on the part of the perpetrator state (Ibid).[12] The essence of the mentioned responsibility rests on several key points: the existence of a specific international obligation between certain states, the existence of an action that violated the obligation and which as such can be charged to the responsible state, and the occurrence of loss or damage as a result of the wrongful action (Ibid.).[13]

[12] See also Omerović (2011).

[13] See also Omerović (2021).

Finally, when it comes to the modern international law system, it could be stated that its main goal is the preservation of international peace and security, with the aim of balanced and sustainable development of the entire international community, as well as the protection of basic values – such as state sovereignty and territorial integrity. In this context, without intending to identify the entire system of international law exclusively with one international organization, the role of the United Nations is crucial, as will be explained further on.

4. THE ROLE AND SIGNIFICANCE OF THE UNITED NATIONS (UN)

Since the League of Nations failed to ensure international peace and security and prevent a new world war, although this was the main goal set when it was formed, a new universal international organization was created with essentially the same, but to a certain extent expanded, goals and tasks (Softić 2012). The new international organization (Čehulić-Vukadinović 2016) was founded under the symbolic name "United Nations'' (UN).

The Charter of the United Nations[14] (UN Charter), which represents a multilateral international agreement (Softić 2012), was signed on June 26, 1945, in San Francisco, and entered into force on October 24, 1945, upon its ratification by all five permanent members of the future Security Council. When it comes to the very structure of the UN Charter (Simma 2002), it is worth emphasizing that it consists of a preamble and a total of 111 articles, which are grouped into 19 chapters. The basic goals of the UN are defined by Article 1 of the UN Charter, as follows:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

[14] Charter of the United Nations (1945) (Available at: https://treaties.un.org/doc/publication/ctc/uncharter.pdf, accessed: 10 January, 2025).

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

In addition to the objectives listed above, Article 2 of the UN Charter establishes the fundamental principles on which this international organization is based. Among them, the following certainly stand out in terms of their importance: the principle of sovereign equality of UN member states, conscientious fulfillment of obligations undertaken in accordance with the UN Charter, peaceful settlement of international disputes, refraining from the threat or use of force against the sovereignty, territorial integrity and political independence of any state, and providing assistance to the organization when taking collective measures in accordance with the UN Charter.

The UN Charter establishes six principal organs of the UN, which include the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the UN Secretariat.

In the context of this paper, the importance of the **Security Council**, as a kind of executive-political body with limited membership, which functions as such in continuity, is particularly emphasized. In accordance with Article 24 of the UN Charter, this body is entrusted with the primary responsibility for the maintenance of international peace and security, which is closely related to the protection of the sovereignty and territorial integrity of existing states.

The Security Council consists of a total of fifteen member states, including five permanent members: the United States of America, the Russian Federation, the United Kingdom, the French Republic, and the People's Republic of China.[15] The above-mentioned states, as permanent members of the Security Council, have the right of veto. In accordance with the provisions of Article 27 of the UN Charter, the Security Council makes decisions on all matters (except those of a procedural nature) by an affirmative vote of at least nine member states, including the votes of all permanent members of the Security Council. A negative vote by any permanent member is sufficient to prevent the adoption of any Security Council resolution[16], although it is necessary to emphasize that the abstention or absence of a representative of any of

[15] See Article 23 of the UN Charter.

[16] UN Security Council resolutions, unlike UN General Assembly resolutions, are legally binding acts.

the five permanent members of this body does not imply the use of a veto and does not stop the adoption of a decision by the Security Council, if there is the required majority consisting of at least nine member states.

This very concept of voting in the Security Council undoubtedly represents a violation of the principle of sovereign equality (Degan 2002) of UN member states, since the vote of the five permanent members of this body is obviously worth more than the vote of all other member states, which are also considered sovereign.

Furthermore, as Shaw (2008) states, the failure of the Security Council in its primary duty (maintaining international peace and security, but consequently also the protection of state sovereignty and territorial integrity) has produced a number of consequences. Among them, the redefinition of the role of the UN General Assembly stands out, which in such circumstances (primarily on the initiative of representatives of the United States) decided to take on the so-called *residual responsibility* for the preservation of international peace and security, effectively ''appropriating'' this authority (which, according to Article 24 of the UN Charter, belongs primarily to the Security Council) in several crisis situations, among which the Korean War stands out in particular.[17]

When it comes to the **General Assembly**, it is important to emphasize right at the beginning that it is a representative body, specifically the plenary body of the UN, which consists of representatives of all UN member states – where each member has only one vote[18] (which has equal value, unlike a vote in the Security Council). The voting system in the General Assembly directly strengthens the concept of state sovereignty and the principle of sovereign equality (Degan 2002), in such a way that all UN member states have equal voting rights in this body.

Article 18 of the UN Charter also provides that decisions of the General Assembly shall be adopted by a simple majority, with the exception that decisions on ''important matters'' (such as recommendations in the context of the maintenance of international peace and security, the election of non-permanent members of the Security Council, the election of members of the Economic and Social Council, the suspension of the rights and privileges of membership, exclusion from UN membership, budgetary matters, and amendments to the UN Charter) must be adopted by a two-thirds majority of the member states present and voting.

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17 See UN General Assembly Resolution 377 (1950) (Available at: https://www.un.org/en/sc/repertoire/otherdocs/GAres377A(v).pdf, accessed: 10 January, 2025).

18 See Article 18 of the UN Charter.

What is particularly important to emphasize is the fact that resolutions adopted by the General Assembly are not legally binding, unlike the previously mentioned Security Council resolutions, but as such have the character of legally non-binding recommendations. However, UN General Assembly resolutions can become legally binding if they reflect customary international law, or if as such they represent an important indicator of the practice of a particular state (or group of states) that leads to the creation of a new customary international rule (Shaw 2008).

Of utmost importance for a better understanding of the research topic is the role of the **Secretary-General**, as the person who heads the Secretariat, one of the six principal organs of the UN. Namely, apart from various administrative functions (which are not of crucial importance for this paper), the essence of the role of the UN Secretary-General is reflected in his authority, the basis of which is found in Article 99 of the UN Charter. Accordingly, the Secretary-General has the authority to draw the attention of the Security Council to any issue or situation that could potentially threaten international peace and security, and which also represents an attack on the sovereignty and territorial integrity of existing states.

In practice, the powers of the Secretary-General have over time expanded even beyond the existing provisions contained in the UN Charter (Ibid.). Thus, the Secretary-General has an important role in providing so-called *good offices* for the purpose of mediation in resolving an international dispute or some other crisis situation (Ibid), whereby the Secretary-General as a potential mediator is not strictly bound by the norms of international law (Ibid.). In essence, the Secretary-General has a significant amount of discretion when making decisions within his or her jurisdiction, which cannot be lightly ignored. Therefore, the profile of the person, as well as their knowledge of the geopolitical situation and international relations prevailing in the world at a given moment, is of crucial importance for the successful performance of this function.

Finally, it is worth noting that the entire system for maintaining international peace and security, as well as protecting the sovereignty and territorial integrity of existing states as primary subjects of international law, has not proven to be completely successful in strategic terms. This is supported by the fact that the UN, as a universal international organization, played an almost insignificant role in stopping some of the major international conflicts, as well as solving numerous crisis situations in the period after the Second World War – „regardless of whether it was the Cuban crisis of 1962 or the Vietnam War, or the armed interventions of the USSR in Czechoslovakia or Afghanistan, or the civil wars in Nigeria and Angola“ (Ibid. 1233-1234).

The collective security system was, at least at the very beginning, presented as universal in its application, and as such implied that the entire international community would protect the state whose (sovereign) rights were violated in a given situation, and at the same time punish the perpetrator of an internationally wrongful act, but it would later turn out that the established system did not meet the expectations.

5. CONCLUSION

After presenting all scientifically relevant facts, with special emphasis on the analysis of Kelsen's thinking regarding the concept of state sovereignty, it is possible to conclude that Kelsen's ideas have greatly influenced the understanding of the concept of state sovereignty.

The above conclusion can be drawn based on the understanding of the concept of state sovereignty through the prism of Kelsen's thinking, as well as the analysis of the fundamental characteristics of the modern international law system, referring specifically to the period beginning with the end of the Second World War and the establishment of the United Nations (UN) in 1945, and continuing to the present day. The UN system[19], taking into account certain shortcomings that are identified and presented as such in the main part of the paper, was only partially successful in its primary mission of preserving international peace and security, while at the same time protecting the sovereignty and territorial integrity of existing states in accordance with the UN Charter.

Furthermore, by analyzing the concept and legal character of state sovereignty, it is possible to conclude that sovereignty itself – which (according to traditional understandings presented by Omerdić) implies the highest and indivisible, although by no means absolute and unlimited authority over a certain territory - represents a necessary prerequisite for a state to operate at full capacity on the international stage, especially in interaction with other states and international organizations. In doing so, we should bear in mind that the very concept of sovereignty in the modern sense of the word has undoubtedly taken on a new "postmodern" dimension (Čolić 2020), as well as that certain characteristics of state sovereignty – which, for example, can

[19] „The UN has become universal in terms of membership and has so many functions (or its functions are so broadly defined) that the very notion of the UN's function has become meaningless: a bit like asking about the function of Canada. In a sense, the UN simply has no other function than simply to exist and in doing so offering a platform for debate and discussion as well as, sometimes, a platform for galvanizing political action in the Security Council." (Klabbers 2015: 343).

be linked to the 19th century and the first half of the 20th century – are certainly not applicable to the global relations prevailing in the 21st century.

In addition to the above, we should not underestimate the role of external sovereignty in maintaining diplomatic relations, especially its main determinants – independence and equality (Omerdić 2022) of the state in relation to all other subjects of international law. Without the existence of the mentioned aspect of state sovereignty, it is clear that a state cannot enjoy sovereignty in the full sense of the word. As important as internal sovereignty is for the efficient and continuous exercise of government functions within a state's territory, external sovereignty is essential for a state's interaction on the international stage.

In relation to the above, it is necessary to emphasize once again the importance of the principle of sovereign equality of states, as one of the key principles of the modern international law system. The principle of sovereign equality of states is undoubtedly of vital importance for the successful exercise of the sovereign rights of all states as primary subjects of international law. The importance of this principle was tirelessly pointed out by one of the greatest legal philosophers and theorists of all time – Hans Kelsen.

Von Bernstorff (2010: 265) points out that „Kelsen's theory of international law was created during and between two world wars and was aimed at securing world peace through a strong world organization with a global monopoly of force controlled by courts." In this regard, it is important to emphasize that (especially during and between two world wars) Kelsen strongly advocated for establishing an international organization based on the principle of "sovereign equality" that could more effectively maintain international peace and security than the League of Nations did (in the period before the Second World War), while he particularly emphasized the importance of establishing an international tribunal that would exercise jurisdiction over all member states of the future organization, which would as such be obliged not to resort to war or retaliation, but to submit all their disputes to this judicial body for resolution, as well as to execute all decisions and orders of the court in good faith (Kelsen 1944).

Although we might recognize the existence of such a body in the form of the International Court of Justice[20] as the most important judicial organ of the United Nations and undoubtedly the key body of this international organization together with the General Assembly and the Security Council (Divac Öberg 2005), it is important to emphasize that this judicial body does not have the ability to enforce its own de-

[20] Statute of the International Court of Justice (1945) (Available at: https://www.icj-cij.org/en/statute, accessed: 16 January, 2025)

cisions. This very characteristic, which can be recognized as such when it comes to national courts, represents a *conditio sine qua non* for the continuous maintenance of international peace and security, as well as the effective protection of the sovereignty and territorial integrity of all states in the world.

Finally, considering all the facts and arguments presented in the paper, it can be concluded that the concept of state sovereignty has undergone a transformation over time and has successfully adapted to the new circumstances brought about by the process of globalization, as well as the increasing "internationalization" of the international legal order. However, regardless of that, the importance of the sovereignty of the state as the primary subject of international law cannot be denied or diminished, because without its main characteristic – which sovereignty by definition certainly is – the state as such could not survive as the most important subject of international law.

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KONCEPT DRŽAVNE SUVERENOSTI U KONTEKSTU MODERNOG SISTEMA MEĐUNARODNOG PRAVA – UTJECAJ KELSENOVOG PROMIŠLJANJA

Sažetak

Državna suverenost predstavlja jedan od najbitnijih instituta u oblasti državnog i međunarodnog (javnog) prava. Često problematiziran, koncept državne suverenosti predstavlja *conditio sine qua non* za svaku ozbiljnu naučnu diskusiju o ulozi države kao primarnog subjekta međunarodnog prava. Cilj ovog rada je pokušati objasniti suštinu i najvažnije odrednice koncepta državne suverenosti u odnosu na sistem međunarodnog prava, prvenstveno kroz analizu promišljanja Hansa Kelsena kao jednog od najkredibilnijih pravnih teoretičara i stručnjaka u oblasti međunarodnog prava. U ovom radu autor problematizira ulogu vanjskog suvereniteta, te posebno ukazuje na značaj principa suverene jednakosti država kao jednog od ključnih principa na kojima je zasnovan moderni sistem međunarodnog prava. U tom kontekstu, autor također predstavlja i u kraćim crtama analizira temeljne karakteristike sistema međunarodnog prava u periodu koji započinje okončanjem Drugog svjetskog rata i formiranjem Ujedinjenih nacija 1945. godine i traje sve do danas, s primarnim ciljem prepoznavanja najvažnijih aspekata zaštite državne suverenosti u okviru Ujedinjenih nacija. Kao rezultat analize Kelsenovog promišljanja i drugih relevantnih činjenica, autor dolazi do zaključka da su Kelsenove ideje u velikoj mjeri uticale na razumijevanje koncepta državne suverenosti, koji je vremenom doživio značajnu transformaciju, a posebno u periodu nakon formiranja Ujedinjenih nacija pa sve do danas. Na koncu, autor zaključuje kako su i savremeni međunarodni odnosi također bitno utjecali na promjenu poimanja koncepta državne suverenosti u 21. stoljeću.

Ključne riječi: vanjski suverenitet; Hans Kelsen; suverena jednakost; državna suverenost; Ujedinjene nacije

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