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## ESTABLISHMENT OF SOVEREIGNTY AS A LEGAL INSTITUTE

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### ABSTRACT

*This article aims to analyze the concept of sovereignty, its legal nature and its emergence as a legal category. The article is based on the norms of international law and national legislation on the concept of sovereignty. The analysis of the article refers to the scientific work of national and foreign scientists, their theoretical views. A number of proposals and recommendations have been developed based on normative legal acts and theories of scientists. The Westphalian Peace Treaty recognized the sovereignty of states over their territory. It was from this period that a number of thinkers of their time began to lay the scientific foundations for the consolidation of monarchical power and made a great contribution to the establishment of secular power. The content of sovereignty consists of socio-political and legal relations. These relations demonstrate the strong connection and interdependence of sovereignty with politics and law, as their interrelationships constitute the essence of both politics and law. The practice of international recognition (legitimization) of states or governments is evolving as opposed to the content of national state sovereignty. State sovereignty is formed on the basis of the absolute internal political processes of the state and is limited to the territory of the respective state.*

**KEYWORDS:** *Sovereignty, Emergence Sovereignty, Legal Institute, Treaty Of Westphalia, Independence, Country, State, State Power.*

### INTRODUCTION

The emergence of the concept of "sovereignty" has a long historical period and developed under the influence of socio-political factors. Uzbekistan reflected the concept of "sovereignty" in its Constitution based on the experience gained in the history of statehood. The Constitution of the

Republic of Uzbekistan begins with an important rule that declares and legally strengthens "Uzbekistan is a sovereign democratic republic".

"The concept of "sovereignty" in science was formed under the influence of important historical events that took place in the XVII century. In post-medieval Europe, the development of state-building, the relationship between state power and the religious stratum of society, and the Roman Catholic Church changed dramatically and paved the way for the emergence of a national ideology based on national statehood. Such cases could be observed in a number of European countries in the late Middle Ages, including Spain and England"[1, p. 66].

**Main part.**The monarchy was interested in pursuing an independent policy within the limits of its authority and sought to consolidate its throne separately from the Holy Roman Empire. By 1648, restrictions on church authority were legally enforced. Such a document was the Treaty of Westphalia (the Munster and Osnabruck Treaties), the first step towards the recognition of the secular sovereign rights of states. These documents are also regarded as an important agreement that laid the foundation for modern international law, which began to protect the sovereignty of any state, which is a necessary sign. The Westphalian Peace Treaty recognized the sovereignty of states over their territory. It was from this period that a number of thinkers of their time began to lay the scientific foundations for the consolidation of monarchical power and made a great contribution to the establishment of secular power. For example, the Italian philosopher and politician Machiavelli declared that "the interest of the state" (raison d'etat) was the highest political interest, which all other interests should be subordinated to him, but did not make a clear distinction between the ruler and the state. Although Machiavelli did not use the term "sovereignty," he argued that "the ruler is the possessor of supreme and inalienable state power".

The word "sovereignty" is derived from the old French word "soveranité", the root of which is Latin "suprematis" or "suprema potestas", meaning "supreme authority".

J.Boden, who introduced the concept of "sovereignty" to science, described it as "the supreme authority (summa in cives et subditos legibusque soluta potestas) that is above the law and subject to free citizens." That is, it cannot be limited by any higher authority, by any law, for any period of time, and power is inseparable, unchangeable, and indefinite. Such authority is a necessary sign and an essential foundation of any state.

Sovereignty, in the modern sense, is the supreme, absolute, and indefinite power over citizens. Sovereign power, even if power is built on anti-democratic principles, acts on behalf of the people under the constitution and is exercised by public authorities [2].Most states in their constitutions enshrined the sovereignty of the people, which obliges them to ensure the broad citizen participation in the administration of public affairs [3, p. 25].

*The concept of "sovereignty".* "Sovereignty" is a concept specific to the state and arises with it. Sovereignty is a historical phenomenon. "No concept in history has given rise to so many conflicting views as the notion of 'sovereignty' and has confused lawyers and political theorists" [4, p. 35].

The content of sovereignty consists of socio-political and legal relations. These relations demonstrate the strong connection and interdependence of sovereignty with politics and law, as their interrelationships constitute the essence of both politics and law. The fact that both the unity and the contradictions of political and legal relations are grouped in one category forms the

political and legal nature of sovereignty [5, p. 23]. "Society's instinct for self-preservation leads to the emergence of social power as a group of individuals who are interested and in need of each other. As a phenomenon that represents the essence of the perfect order that created ethnopolitogenesis and sociogenesis in the state, state power or sovereignty emerges in the process of historical formation from the beginning of power" [6, p. 18] .

According to V.E.Chirkin, "on behalf of the whole society, only the state authorities have the legal authority to apply legal and in many cases legitimate coercive and punitive measures" [7, p. 107].

Sovereignty is not only a special feature of state power, but also an important feature of the state. One of the most important constitutional principles of state power in Uzbekistan is the principle of state sovereignty.

A sovereign state will have its own independent and supreme state power in its domestic and foreign policy activities. Therefore, "when we talk about sovereignty and connect it with state power, we see state power only in one sense – as the supreme power" [8, p. 163].

L.Oppenheim had a similar view, describing sovereignty as "the complete independence of the state within and outside the country".

The main feature of a sovereign state power is its complete independence in domestic and foreign policy. The independence of a state power is reflected in the direct, indirect relations of that state with other states. Sovereignty is a common and integral feature of any independent state, which means that it has full rights and is not dependent on another state in internal and external affairs. A sovereign state decides its internal and external affairs as it wishes, without violating the rights of other states, as well as the principles and norms of international law.

The internal and external functions of the state are realized through the activities of the authorities. The nineteenth-century French jurist A. Esmen writes: "State sovereignty has two aspects: internal sovereignty or the right to rule over all citizens of a nation and even all persons living in a national territory (migrants temporarily residing in a state territory) and protection of territorial integrity and non-interference in the internal affairs of the state by external forces" [9, p. 160-167].

The sovereignty of state power within a country is closely linked to its independence outside it. State sovereignty states that it is also independent in international relations, in which case the state emerges as a full-fledged subject of international law. Uzbekistan's foreign policy is based on the sovereign equality of states and other universally recognized rules and norms of international law, as enshrined in its Constitution. The principle of sovereign equality of states is enshrined in the UN Charter as one of the recognized principles of international law.

Today, the principle of state sovereignty is the most important issue of international cooperation. The relations of all countries on earth are based on the principle of sovereign equality. As Yu.A. Tikhomirov said: "Sovereignty is an important criterion for sustainable demarcation and mutually beneficial cooperation" [10, p. 5]. In 1913, there were 57 states on Earth. So far, their number has exceeded two hundred. In other words, in the second half of the twentieth century, the number of states on the planet tripled. This factor itself, in our time, socio-political development is inextricably linked with the right of peoples to self-determination, the attainment

of state independence and the use of state-legal form of public life. The right of nations to self-determination, that is, the right to self-determination without the interference of foreign states, is the basis of state sovereignty. However, the word is not in the numerical figures, moreover, the number of states is likely to increase significantly in the future. It is also important that the range of functions performed by states has expanded, the role of law in all spheres of public life, including economic life, has increased. Consequently, there is a growing emphasis on the role of sovereignty as a necessary feature of state power. This process takes different forms and leads to different consequences in different countries. But everywhere the problem of sovereignty is at the heart of the social and political system of this society.

The above views on the role of sovereignty in the domestic law of states also apply to the role and place of sovereignty in international law. Sovereignty plays an important role in a legally recognized system of international relations and interaction. State sovereignty and international law are closely intertwined, because, firstly, the basis of the international community is sovereign states, and secondly, the international order itself is based on the agreement of states. Of course, it is impossible to ignore the global and regional international organizations that play an important role in the development of international law, but they are also the result of the coordinated activities of sovereign states or a group of states. Historical developments in the second half of the twentieth century have shown that the scientific (doctrinal) critique of state sovereignty is not appropriate for the transition to a "world community above states".

**Results and discussions.** The views of a number of Uzbek scholars on the theory of sovereignty are also noteworthy: "It is sovereignty that is the primary condition and sign of independence of a particular state" [11, p. 15]. As Academician Sh.Z. Urazaev noted: "Sovereignty is a necessary factor for the state to pursue an independent and effective policy. The participation of society and the state in economic, political, ideological and other global processes, at the same time, implies the strengthening of state sovereignty, its effective reflection in the activities of state institutions [12, p. 102]. B.L. Manelis recognizes that "State sovereignty is a principle that represents all aspects of the existing state" [13, p. 54-55]. According to Professor H.T. Odilkoriev, "the sovereignty of the people plays a central role in the combination of the peculiarities of each type of sovereignty. Sovereignty implies the supremacy and unity of power, and its documents and decisions are binding on all authorities, citizens and all individuals on the territory of the state in general (except, of course, those with diplomatic immunity) [14, p. 47]. According to Professor Z.M. Islamov, "Sovereignty is the supremacy of public and political power in a subordinate territory and its independence from the authorities that rule outside this territory" [15, p. 15].

Statehood and state sovereignty are the determining factors in the formation of the principles of foreign political ideology. The realization of their national interests by a nation without a state and sovereignty recognized by the international community will be limited. In this sense, we consider it necessary to emphasize that national interests have taken precedence in the principles of foreign policy of our state, created with the participation of the First President of the Republic of Uzbekistan.

In short, sovereignty is an institution consisting of a system of political and legal relations characterized by territorial integrity, full independence of the state in external and internal affairs, and the authority of the state and government, ensuring self-government.

The doctrine of sovereignty is directly related to the nature of state power and the basic forms of its exercise. In the eighteenth and nineteenth centuries, the term "semi-sovereign" was applied to countries in the form of a protectorate state that depended on other states. L. Oppenheim acknowledges that today, in addition to full sovereignty, there are also "semi-sovereign" states. In doing so, he draws attention to the relativity of the concept of "sovereignty". Today, the concept of limited sovereignty and many related concepts have changed the nature of sovereignty for some time. While sovereignty, expressed only by the concept of "de jure", means that it is limited, de facto sovereignty means the real exercise of power in the respective territory. Sovereignty can also be divided into types such as territorial Souveränität (relative to the legally acquired territory) and Gebietshoheit (de facto occupation of the territory) [16].

Only the power of the ruling state, which holds power in its entirety, is a basic condition for the state to have true sovereignty. Such signs are embodied in the Constitution of the Republic of Uzbekistan. State sovereignty means the priority and independence of state power. These are reflected in the domestic and foreign policies of state activity in appropriate forms.

The centralization of power itself presupposes the existence of a single subject of power. No two sovereign powers can function in the same state at the same time, side by side with each other. State power must be self-expressive, have specially organized bodies and apparatus to carry out its activities. The state is the only organization that establishes law and order in society and ensures their implementation in appropriate forms. Therefore, the state uses various forms of involving citizens in public decision-making to ensure democratic governance [17, p. 41].

According to the French scientist B. Badi, "the state has the most powerful capabilities that can be used in the security process. The main subject of security should be the state" [18]. Indeed, human society has not yet created a better structure than the state in ensuring its own security.

The rise of terrorism in the world, its development from the local to the international level, the practice of branding an entire state or government as a "terrorist state" in recent years, accusing some nation-states of supporting, financing and committing acts of terrorism by the international community is taking root. It is interference in the internal affairs of nation-states and direct interference in the sovereignty of states through the imperative norms and mechanisms of international law. The slogan of the struggle for peace in international law serves as a factor in limiting and violating the sovereignty of the state.

According to V.Y. Lyubashits, "only sovereignty is the basis for mutual cooperation, interstate tolerance, domestic political stability, as well as the provision and protection of legal, cultural and ethnic interests" [19, p. 264].

## CONCLUSION

In recent years, there have been changes in the institution of recognition, which has become a tradition in the international arena. The practice of international recognition (legitimization) of states or governments is evolving as opposed to the content of national state sovereignty. State sovereignty is formed on the basis of the absolute internal political processes of the state and is limited to the territory of the respective state. We think that showing the influence of external factors and forces on it contradicts the essence of "sovereignty".

Another threat to the sovereignty of nation-states is the intensification of the activities of non-governmental non-profit, trade, human rights, transnational, irregular military, and other borderless social and humanitarian organizations. These international organizations do not belong to any state and their activities are not based on a clear border across the region. It is no coincidence that K.Schmitt did not emphasize the following: "The era of statehood has come to an end. So there is no need to talk about it much anymore. The model of political solidarity, as a monopoly on political decision-making, an example of the European way of life and Western civilization, has now been overthrown" [20, p. 30].

Based on the above, it can be said that the following processes and factors affect and threaten the sovereignty of the state in our time:

*first*, the processes of globalization entering a new stage;

*secondly*, the practice of recognition by the international community (the state, the government and the peoples and nations fighting for freedom) is becoming a priority form (legitimacy), contrary to the unity and sovereignty of state power;

*thirdly*, the forms of self-awareness in the national statehood are in crisis with the introduction of new forms of mass power;

*fourth*, non-governmental non-profit organizations are gaining full legal capacity as political actors on an international scale.

Summarizing the above, it can be concluded that the concept of "sovereignty" is not an institution of one discipline, but a category of "Theory of State and Law", "Constitutional Law", "International Law" and "Political Science". "Theory of State and Law" studies the essence and legal nature of sovereignty, "Constitutional Law" studies sovereignty as an integral institution of the nation-state, and "International Law" as an important principle of interstate relations. In "Political Science", sovereignty is used as a means of ensuring the balance of political processes.

Although it has not been long since science introduced sovereignty into scientific circulation, it is possible to focus on a relatively three-stage developmental period, depending on the purpose of its application. First, the period of sovereignty of the monarch (XVI-XVII centuries), second, the period of the emergence of people's sovereignty (XVIII-XX centuries), third, the period of influence of modern international law on sovereignty (second half of the XX century). Today, the role of sovereignty in the "information age" is becoming increasingly important.

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