

## THE PRINCIPLE OF NON-INTERFERENCE IN THE INTERNAL AFFAIRS OF STATES

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**Abstract.** *Centuries-old relations among states have been based upon their sovereignty out of which significant political and legal consequences resulted. The most important consequences are related to designating the sovereignty as independence and supreme power. Hence, there resulted a conclusion that states are free in exercising their power over their respective territories, which must have understood, on the one hand, existence of exclusive internal competence of states and, on the other hand, that other states must not interfere in that. Such understanding is widely accepted in the international customary law and was mostly advocated in the doctrine by the representatives of the natural law school. There were differences among them only in view of the extent of the non-interference principle. Some of them thought that absolutely every interference was forbidden, while the others allowed certain exceptions, thus obliging those who justified all interventions as a form of use of force not forbidden in those times in the international relations*

**Key words:** *fundamental rights and obligations of states, domestic competences of states, principle of non-interference, international organizations*

### I. GENERAL NOTES

It is already for a number of centuries that relations among states have been based upon the principle resulting from the interpretations of the Westphalia Treaty (1648) which, in the doctrine and in practice, particularly under the influence of natural law theory, have been designated as the fundamental rights and obligations of states.<sup>1</sup> Those

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<sup>1</sup> For more details, see B. Janković - Z. Radivojević, *Međunarodno javno pravo*, Beograd 1991, pp. 113-124 and the references therein. See also A. Pillet, *Recherches sur les droits fondamentaux des Etats dans l'ordre des rapports internationaux et sur la solution des conflits qu'ils font naître*, "Revue générale de droit international public", 1898, No.1, pp. 66-89; No.2, pp. 236-264; 1899, No.5, pp. 503-532; Lord W.G.F. Phillimore, *Droits et devoirs fondamentaux des Etats*, "Recueil des Cours de l'Académie de droit international de La Haye", 1923, t.1, pp. 25-71; G.-C. Gidel, *Droits et devoirs des nations. La théorie classique des droits fondamentaux des*

principles have become a basis of the classical international law the basic assumptions of which are seen by some writers to date prior to the Westphalia Treaty<sup>2</sup>. In those times laid not only as a basis of relations among states, but as basic principles of international law as well because they do not only determine the position of one state versus the other state, but also the position of states in the international community, they have, under different names (such as general principles of international law, principles of coexistence, principles of international law on relations among states, and other) survived all changes and social transformations in states and in the international community and remained in effect to the present times. We, in Yugoslavia, take them up again filled with particular pride and sorrow.

We are proud remembering, somewhat with nostalgia, the contributions of our professors and colleagues to their theoretical explanation and improvement, which, particularly under the auspices of the Yugoslav International Law Association and the Institute for International Politics and Economy, lasted for almost a decade and a half within the framework of the worldwide International Law Association and the United Nations. The study of legal coexistence principles in Yugoslavia was initiated by Milan Bartoš<sup>3</sup>, and on the initiative of the Yugoslav International Law Association that question was on the agenda of the International Law Association from 47th to 51st Conference (1956-1964).<sup>4</sup> Proposed by Yugoslavia, the question was initiated in the United Nations which<sup>5</sup> had discussed it until the jubilee XXI Session (1970). Left to us and to the future investigators are written traces in "Annuals of the Institute for International Politics and Economy" and "Yugoslav Review for International Law"<sup>6</sup> as well as in certain magazines, proceedings of papers<sup>7</sup> or books<sup>8</sup>, what would also be a credit to circles where science is by far more developed and the publishing possibilities by far more promising.<sup>9</sup>

Calling to mind that great scientific undertaking, maybe beyond our capabilities, we cannot help feeling sorrow because many of its actors live today, unfortunately, only in our memories. The works of Milan Bartoš, Miloš Radojković, Ljubomir Radovanović, Djura Ninčić and most of the authors of particular studies have become a long time ago

Etats, "Recueil des Cours", 1925, I.10, pp. 537-599.

<sup>2</sup> Of Yugoslav writers, see: M. Bartoš, *Pravni aspekt mirne aktivne koegzistencije država*, "Jugoslovenska revija za međunarodno pravo", 1955, No.3, p. 322; Dj. Ninčić, *Načela koegzistencije i njihova kodifikacija*, Beograd, 1964, p. 9.

<sup>3</sup> M. Bartoš, *Pravni aspekt mirne aktivne koegzistencije država*, "Jugoslovenska revija za međunarodno pravo", 1955, No. 3, pp. 321-329 and later as a separate edition.

<sup>4</sup> Reported by professor Miloš Radojković. The reports were published in "Jugoslovenska revija za međunarodno pravo", 1958, No. 1, pp. 13-29; 1960, No. 2, pp. 205-216; 1962, No. 2, pp. 161-185 and 1964, No. 1, pp. 1-11.

<sup>5</sup> Under the Resolution of the General Assembly No. 1815 (XVII) dated 18 December, 1962.

<sup>6</sup> See particularly "Godišnjak Instituta za međunarodnu politiku i privredu" 1963, 1964 and "Jugoslovenska revija za međunarodno pravo", 1958, 1960, 1962, 1964.

<sup>7</sup> Particularly "Kodifikacija principa miroljubive i aktivne koegzistencije", Beograd, 1969 and "Principles of International Law Concerning Friendly Relations and Cooperation", Belgrade, 1972, both published by the Institute for International Politics and Economy.

<sup>8</sup> Among them in particular Dj. Ninčić, *Problem suverenosti u Povelji i praksi Ujedinjenih nacija*, Beograd, 1967 and Lj. Aćimović, *Problemi bezbednosti i saradnje u Evropi*, Beograd, 1978.

<sup>9</sup> We have to repeat this appraisal rendered at the conference on new tendencies in the development of international law held on 27 February, 1978, which have been omitted in the proceedings of papers published in Belgrade in 1979.

not only our spiritual treasury from which we draw information, but also a source of inspiration in search of new solutions today under considerably unfavourable conditions. Those circumstances force us, in the era of computers, internet and mobile telephones, to go back to the principles formulated centuries ago in, as many used to say, conservative and a long time ago outdated international customary law, against which many states have risen up, which have not participated in its creation. And not only that we refer to the customary law, but we again see the remedial legal grounds of its validity in the theory of natural law. Its founders and followers could not be but that honoured by our generation.

## II. THE SOURCE OF FUNDAMENTAL RIGHTS AND OBLIGATIONS AND DOMESTIC COMPETENCES OF STATES

The sovereignty principle has been underlined among the principles considered by the classical international law as a basis of relations among states. The sovereignty has at the same time been considered as one of the essential or fundamental characteristics of a state. Although it has undergone great changes in view of the contents and scope, it is still one of the principles of international law that has been preserved in the international organizations as well. Some fundamental rights and obligations of states have been derived from the sovereignty, first of all the right of survival or self-preservation. The principle of independence is being derived from that right or is closely related with it. The importance of those principles has increasingly gained in volume with the appearance of new states arising out of one new principle which began to develop from the then existing principles, at first named the principle of nationality and later on the principle of self-determination. The self-determination itself has undergone multiple changes. Accepted first as a political and only later on as a legal principle<sup>10</sup>, independently or with the independence principle, it means the right to one's own organization or self-organization having its own external and internal appearance. The external appearance (independence from other states) means the international right to use all rights on one's own, including the right to organize without foreign interference. The internal appearance (the highest power) means the right to both free choice and to dissolve government. On their part, holders of power in a state are vested with power to determine which values their subjects may, should or must follow.

Sovereignty means existence of internal competence<sup>11</sup> which Charles Rousseau names *compétence discrétionnaire*.<sup>12</sup> In his view, exclusivity of that competence is fully connectable with regulation which determines the way of its performance. The question is not as much who performs the competence but how it is performed.<sup>13</sup> Therefore, exclusive

<sup>10</sup> M. Bartoš, Prerastanje prava na samoopredeljenje iz političkog u pravni princip, "Medjunarodni problemi", 1953, No. 2, pp. 129-141.

<sup>11</sup> Marek Korowicz thinks that internal competence is an internal appearance of sovereignty. M. St. Korowicz, Introduction to International Law, The Hague 1964, p. 157. In an earlier book he says that independence is external feature of a state such as the sovereignty is an internal feature. M. St. Korowicz, La souveraineté des Etats et l'avenir du droit international, Paris 1954, p. 82.

<sup>12</sup> Ch. Rousseau, Droit international public, t. II, Paris 1974, pp. 86-91.

<sup>13</sup> Ch. Rousseau, L'aménagement des compétences en droit international, "Revue générale de droit international public", 1930, pp. 458-459; Droit international public, II, p. 87.

competence may also be "bound".<sup>14</sup> Nikolay Ouchakov bases the internal competence on independence.<sup>15</sup> In Djura Ninčić's view, the origin of internal competence (which he names "domestic competence") denotes an advanced stage in connecting the international community and a developed international law which also assumes existence of "at least one embryonic *international competence, that is, already more determined tendency to start resolving jointly certain categories of questions resolved so far by the states themselves, to transfer at least partially them from the sphere of domestic into the sphere of international law*".<sup>16</sup> According to Ninčić, the birth of the internal competence means getting away from the absolute sovereignty<sup>17</sup> because at the same time it assumes existence of the international competence.<sup>18</sup>

In the primitive society, the problem of internal competence was out of question until there appeared aspirations of certain states to affect regulation of certain questions in other states. It is, therefore, posed in relations among states. Charles Rousseau says that each state has a zone of its own competence beyond which it has to abstain from acting. This is an obligation imposed upon it in performing its competence.<sup>19</sup> It was, according to Ninčić, the delimitation line that no one had to overstep.<sup>20</sup> That is why the traditional international law has defended the competence of states from the growing internationalization of certain questions that, for its part, was a sign of development of that same international law! "Accepting, under the pressure of objective needs of the international development, to exclude certain matters from the domain of its sovereign decision-making, a state has at the same time endeavoured to clearly draw a line across which the aspiration to internationally regulate matters was not, according to its view, to step over; it was by that line that it used to determine the scope of its "domestic" competence".<sup>21</sup> On questions from their competence, states did not want to negotiate or conclude international agreements in order not to vest other states with the right to interfere in those affairs. It is why the question of internal competence is a priority for the majority of states, the legal voids are not recognized, the international competence is not assumed, but must be proved in every case referring to the international legal act.<sup>22</sup>

A large number of international agreements contain obligations of states that their organs should take certain measures in order to achieve objectives laid down under those agreements which, in certain cases, resulted in widening competences of governmental organs. On the other hand, foreign surveillance over carrying out of international obligations was accepted. All that is possible thanks to creating new rules of international law by the explicit will of states which (theoretically) quite freely estimate suitability of changing the one-time rules and, in keeping with their interests, accept the international

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<sup>14</sup> "Annuaire de l'Institut de droit international", 1950, I, pp. 9-10; 1952, I, p. 142.

<sup>15</sup> N. Ouchakov, La compétence interne des Etats et la non-intervention dans le droit international contemporain, "Recueil des Cours", 1974, t. 141, pp. 53-59.

<sup>16</sup> Dj. Ninčić, Problem suverenosti, p. 157.

<sup>17</sup> Ibid. p. 158.

<sup>18</sup> See Note 16.

<sup>19</sup> Ch. Rousseau, Droit international public, Paris 1953, p. 321.

<sup>20</sup> Dj. Ninčić, Problem suverenosti, p. 159.

<sup>21</sup> Ibid. p. 157.

<sup>22</sup> B. Janković – Z. Radivojević, quoted work, p. 120.

agreements. With the growth of international cooperation there is an increasing number of such agreements, so is the number of questions which are no more under the explicit competence of states, while narrowing the scope of that competence meant narrowing the field of sovereign decision-making and the sovereignty itself as well the internal competence of which is an aspect and component part.<sup>23</sup>

With the establishment of international organizations the question of internal competence is no more connected only with concluding international agreements but with the competence of the very organizations as well. While international agreements were in question, the question of internal competence was comprised in the relations among the states. When international organizations acts are in question, the question is raised in the relations among the states and international organizations that are, although under the agreements among the states, vested with certain normative and supervisory competence. The problems arise with the change of the legal technique of creating the international law rules, to put it more precisely with the more frequent replacement of international agreements by the international organizations acts through the frames stipulated under their statutes. As long as the international organization organ acts within the limits of the statute, agreement of states expressed in accepting the statute can be spoken of. However, more frequent reference to the theory of tacit authorizations practically leads to widening the competences of international organizations and making decisions that should be binding for the states and conduct of their organs.<sup>24</sup> Obvious is the gap between the creation of a legal norm and its fulfilment that are not in the province of the same competence. That makes qualitatively different relation that places on the agenda the questions of delimitation of competences between the states and the international organization, that is, the international community represented by that international organization.<sup>25</sup> This is a new challenge for states, but also a stimulus to increase their efforts to maintain that what they consider their internal competence and what they deem to belong them based on the general rules of international law.

### III. THE PROHIBITION OF INTERFERENCE IN INTERNAL AFFAIRS

Acceptance of sovereignty and thereof derived principles as the fundamental rights and obligations of states meant, on the one hand, the right to their performance and on the other hand obligation of their respect by all states, later by the international organizations as well as the new subjects of international law. Therefrom the attitude of Dj. Ninčić that in its development the notion of sovereignty "has been enriched with an unusually significant although negatively formulated principle, the principle of non-intervention, that is, non-interference in internal affairs of states"<sup>26</sup> can only be understood that it is valid only from the moment when the internal competence of states has been clearly derived from

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<sup>23</sup> Dj. Ninčić, *Problem suverenosti*, pp. 158, 159. And B. Janković & Z. Radivojević report on internal competence within discussions on sovereignty. B. Janković – Z. Radivojević, *op. cit.*, pp. 118-120.

<sup>24</sup> For more details see O. Račić, *Medjunarodni sud i ovlašćenja Saveta bezbednosti: od savetodavnog mišljenja o Namibiji do slučaja Lockerbie*, "Anali Pravnog fakulteta u Beogradu", 1997, No. 1-3, pp. 39-68.

<sup>25</sup> Dj. Ninčić, *Problemi suverenosti*, pp. 158-159.

<sup>26</sup> *Ibid.*, p. 15.

the sovereignty. Such connection of law and obligation was that large that understanding on the inadmissibility of intervention in internal affairs of states could be said to be generally accepted in the international customary law and in doctrine, particularly by the most renowned members of the natural law school. There were the differences between them only in respect of the understanding of the non-interference principle scope. Some of them thought that any interference was prohibited, while the others thought that non-interference was a rule that might have some exceptions. Obviously different conduct of states was explained as an exception to the general rule or was "transferred" to the terrain of use of force that for long was deemed to be an expression of the sovereignty of states because there was no differentiation between war and intervention that was often armed.<sup>27</sup> It was already Francisco de Vitoria who thought that there was a right of states to intervene if another state treated the population in its territory in a way contrary to the standards of conduct prescribed by the natural law, which did not know the difference between the socio-political systems. Later on created legal and political system with strong states was fundamentally based upon that with religious differences being legalized.

Territorial closing, needed to great states to maintain the balance, to those small and medium to strengthen their independence and to fairly suppress pressure of the great powers, resulted in creation of awareness on fundamental rights and duties of states with far-reaching political and legal consequences. Territorial organization of life and power led to creating very wide internal competence which, as a consequence of independence, became exclusive.<sup>28</sup> All those who were outside the state not only that they declared themselves indifferent to everything happening in it, but neither legally had to be interested in that any more. Thus, the classical international law became completely indifferent both to democratic and to authoritarian regimes. However, those rules were valid only in relations among the so-called "civilized" states. Consequently, different relations towards the states that did not belong to that circle were enabled. They were not accorded any internal competence and every actions towards them were allowed, including armed interventions that were justified making reference to the humanity principle.<sup>29</sup>

Humanitarian interventions rarely occurred in the relations among "civilized" states,

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<sup>27</sup> There is that interference also today, not only in the political practice, but, unfortunately, in the literature as well. Since use of force is prohibited, the expression "intervention" in this paper signifies a means for interference in internal affairs of states also when both expressions are used together.

<sup>28</sup> M. Bartoš, *Međunarodno javno pravo*, I, Beograd, 1954, pp. 274-275.

<sup>29</sup> Consequently the term "humanitarian intervention". For practice, see G. Geršić, *Ustanci i intervencije po današnjem međunarodnom pravu*, "Otađzbina" Book III, 1875, pp. 146-155, 329-335, 489-495; Anonymous, *Intervention in international law referring to Turkey*, "Delo", Book II, 1904, Book 30, pp. 62-77, 172-189, 365-380; Book 31, pp. 49-59, 202-218, 386-394, Book 32, pp. 120, 126, 231-243; E.C. Stowell, *La théorie et la pratique de l'intervention*, "Recueil des Cours", 1932, t. 40, pp. 87-151; A. da Veiga Simoes, *Crise et intervention*, "Recueil des Cours", 1934, t. 50, pp. 749-841; E. Aroneanu, *La guerre internationale d'intervention pour cause d'humanité*, "Revue internationale de droit pénal", 1948, No. 2, pp. 173-244; L. Garcia-Arias, *La intervencion internacional por causa de humanidad*, "Problèmes fondamentaux du droit international. Festschrift für Jean Spiropoulos", Bonn 1957, pp. 163-71; J.E.S. Fawcett, *Intervention in International Law*, "Recueil des Cours", 1961, v. 103, pp.343-423; J. Charpentier, *Les effets du consentement sur l'intervention*, "Mélanges Sfériadès", t. II, Athènes 1961, pp. 489-499; S. Milenković, *Humanitarna intervencija i današnje međunarodno pravo*, "Zbornik radova Pravno-ekonomskog fakulteta u Nišu", 1966, pp. 181-201; E. Perez, *La protection d'humanité en droit international*, "Revue belge de droit international", 1962, No. 2.

but every state was deemed to have the right to interfere in every internal conflict if it deemed that one party to the conflict wants to disturb "legitimacy". Thus, the intervention became a means to prevent social changes which otherwise could occur thanks to the general rules on the internal competence and non-intervention. Having in mind the practice Wheaton has come to a conclusion that there is no rule on permission and nonpermission of intervention,<sup>30</sup> which practically means negation of law and reducing all relations to force. However, persistently looking for an excuse for violation of international law proves that there existed awareness on the prohibition of interference in internal affairs of states which very often had a form of accusation for nonrespect for international obligations and led to disputes among states. It is, therefore, important that Emer de Vattel has permitted good favours only.<sup>31</sup> Many renowned writers from the 18th and 19th centuries had deemed that interference in internal affairs was forbidden,<sup>32</sup> but there were also those who approved intervention in internal affairs. On their part, the states have opposed that in different ways.

#### IV. THE ACTS OF STATES

Non-interference in internal affairs is indirectly expressed under the 1791 Constitution of France where it is set forth that the French people would never use force against the freedom of other peoples.<sup>33</sup> Much more determined in that sense is the Constitution of 1793 which says that the French people do not interfere in the administration of other peoples and that it does not allow other people to interfere in their administration (Article 119).<sup>34</sup> That is a worked out and to France applied idea from paragraph 7 of the draft Declaration on International Law made up by abbot Grégoire, on an order by Convent, which reads only as follows: "People have no right to interfere in administration of other peoples".<sup>35</sup> Otherwise, a number of paragraphs in the draft deals with the states' internal competence. The paragraph stipulating that peoples are mutually independent and that sovereignty is inalienable (paragraph 2) makes a starting basis. Each people have the right to organize and change the forms of their rule (paragraph 6). Each people are the master in their territory (paragraph 10). Each people have the right to forbid foreigners to access their territory and to expel them when their security requires it (paragraph 12). Foreigners shall be subjected to the laws of the state they are in and shall be punished according to them (paragraph 13).<sup>36</sup>

Reacting to the interventions of European states, the American president James Monroe in his address to the Congress (1823) pointed out that every attempt of European

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<sup>30</sup> Wheaton, *Eléments du droit international*, I, p. 81.

<sup>31</sup> E. de Vattel, *Le droit des gens ou principes de la loi naturelle appliqués à la conduite et aux affaires des Nations et des Souverains*, t. I, Washington 1916, livre II, 54, p. 297. That attitude was accepted in this country by G. Geršić, *op. cit.*, p. 331.

<sup>32</sup> Some of them are quoted by Л. Камаровский, *Начало невмешательства*, Москва, 1874, pp. 12-99.

<sup>33</sup> Quotation after A. Thiers, *Historie de la Révolution française*, quinzisième édition, t. IV, Paris 1851, p. 385.

<sup>34</sup> *Ibid.*, p. 401

<sup>35</sup> Quoted after M. Bartoš, *Medjunarodno javno pravo*, I, p. 468.

<sup>36</sup> *Ibid.*, pp. 468-469.

states to widen their system to whatever part of the American hemisphere should be deemed a danger to the peace and safety and that in return he would not interfere in the internal affairs of whatever state.<sup>37</sup> Thus, two major principles of politics have been proclaimed: non-intervention and isolationism. Such politics has also been accepted by the states of Latin America.<sup>38</sup> However, neither in practice of the American states (nor European as well) there existed no term "internal competence" nor it was clear what it was comprised of, the less who was responsible for decision-making on the subject matter. It was only clear that the states did not want to conclude international agreements on certain questions in order not to give somebody a pretext for or even the right to interfere in that. The United States of America has, for example, under the federal clause, protected herself from the responsibility of nonfulfillment of the agreement if it was within the authority of her states or did not accept to be the subject of international arbitration in case of dispute. The American Senate adopted (1911) reservations to the American-French agreements on arbitration under which the USA was freed from obligations to subject to arbitration the disputes which referred to the licenses for immigration, supposed agreement of the American states and other questions "exclusively concerned with the policy of the American government". Other states used to wrap many everyday questions in the then usual formulae such as "life's interests", "dignity", "honour of state", "sovereignty", "independence", which otherwise served for quite different matters on which the states did not want to bargain or to accept trials and which were concerned with the completeness or survival of the state because of which the war was waged.<sup>39</sup> It is obvious that the questions that are really within the exclusive competence of states (what is happening in the states) and which are concerned with the states themselves (being posed in international relations) were mixed up.

The practice of excluding internal questions was also continued after World War I. Relying upon the League of Nations Pact the states excluded the competence of the Permanent Court of International Justice in statements delivered based on Articles 36, paragraph 2 of the Statute of the Court.<sup>40</sup> On that occasion they used the formulation of the internal competence used in Article 15, paragraph 8 of the League of Nations Pact ("the questions the international law leaves to the exclusive competence" of states). Such practice was also continued after World War II the formulation being that used in Article 2, paragraph 7 of the UN Charter ("the questions which in their essence belong to the internal competence of states").<sup>41</sup>

<sup>37</sup> Quoted after Ch. Tower, The origin, meaning and international force of the Monroe doctrine, "American Journal of International Law", 1920, Nos. 1-2, p. 16. See also a. Uloa, La doctrina di Monroe, Lima 1924; C. Barcia Trelles, Doctrina di Monroe, Madrid 1931.

<sup>38</sup> For more details see S. Planas-Suarez, L'extension de la doctrine de Monroe en Amérique du Sud, "Recueil des Cours", 1924, t.5, pp. 267-365.

<sup>39</sup> B. Janković – Z. Radivojević, op. cit., p.119; Dj. Ninčić, Problem suverenosti, pp. 160-162, who earlier said that the life's interest, honour and dignity had served as an excuse for waging wars. Ibid., p. 68.

<sup>40</sup> Such statements are those of France, Yugoslavia, Albania, Rumania, Poland, Argentina, Brazil, Iraq and Egypt. For more details see H. Lauterpacht, La théorie des différences non justiciables en droit international, "Recueil des Cours", 1930, t. 34, pp. 493-654.

<sup>41</sup> For example, see statements of Canada (1929, 1985), New Zealand (1940), South African Union (1940, 1955), USA (1946), Mexico (1947), France (1947, 1959, 1966), Pakistan (1948, 1960), Liberia (1952), Australia (1954), Israel (1956), India (1956, 1959, 1974), Cambodia (1957), Sudan (1958), Great Britain



The general attitude of states towards settlement of disputes on questions from their competence has fully become apparent in the League of Nations Pact. In statutes and acts of other international organizations that attitude has obtained the form of a principle of non-intervention (non-interference) in internal affairs either by the international organization or in relations among the states.

#### V. THE STATUTES OF INTERNATIONAL ORGANIZATIONS

The most narrow understanding of internal competence, built based upon the practice of certain states is set forth in Article 15, paragraph 8 of the League of Nations Pact dedicated to settlement of disputes among states, which stipulates as follows:

"If a party to a dispute points out and the Council accepts that the subject of a dispute is a question left by the international law to the exclusive competence of that party, the Council shall ascertain that in the report, but shall not recommend any solution"<sup>42</sup>

The text is attributed to the American president Wilson to whom former president Taft (author of the Agreement with France in 1911), in his letter dated 18 March, 1919, expressed his conviction that the opponents to the League of Nations in the Senate will be disarmed if the Pact provides for that recommendations on the settlement of disputes will not be made if, on the grounds of international law, a moot question is proved to fall within the internal competence of a party to the dispute.<sup>43</sup> Laurence Preuss, an American writer, says that such view was not characteristic only of the USA but of all states in the Commission for the League of Nations.<sup>44</sup>

The Geneva Protocol on Peaceful Settlement of Disputes (1924) also contains provisions on the internal competence (Articles 5, 10). If an objection to the internal competence is pointed out during the procedure for settlement of a dispute, the arbiters will, through the Council of the League of Nations ask for and advisory opinion of the Permanent Court of International Justice to be binding upon them, which will be mentioned in the judgement. This is a supplement to the Pact as a consequence of establishing the Permanent Court of International Justice. While, according to the Pact, the matter shall be

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(1958, 1963), Kenya (1965), Gambia (1966), Malawi (1966), Malta (1966), Mauritius (1968), Swaziland (1969), Botswana (1970), Philippines (1980), Senegal (1985), Honduras (1986), Cyprus (1988), Poland (1990), Hungary (1992) and Madagascar (1992). CJI Annuaire 1964-1965, pp. 44-67; 1992-1993, pp. 79-117. Yugoslavia also excluded (1999) disputes from her internal competence from the competence of the International Court of Justice.

<sup>42</sup> For more details see J. Ray, *Commentaire du Pacte de la Société des Nations selon la politique et la jurisprudence des organes de la Société*, Paris 1930, pp. 490-498. For generation of this paragraph and the American concern particularly with the immigration of Japanese, the commentator particularly points to the work of David Hunter Miller, *The Drafting of the Covenant*, New York/London 1928, v. I, pp. 276, 293, 298. In 1919 Miller was a legal adviser to the American delegation at the Peace Conference.

<sup>43</sup> In 1920 Lodge emphasized that the USA retains the right to decide which questions fall within their competence and such questions, including immigration, work, cabotage, customs, trade, prevention of slave trade, opium and other dangerous drugs and all other domestic questions, can in no way, under the agreement, be subjected to arbitration, consideration by the Council or the Assembly of the League of Nations or any of their agencies or to the recommendation of any foreign power. Quoted after Dj. Niničić, *Problem suverenosti*, p. 162 and note 9.

<sup>44</sup> L. Preuss, Article 2, paragraph 7 of the Charter of the United Nations and matters of domestic jurisdiction, "Recueil des Cours", 1949, V.74, p. 560.

completed by ascertaining that one question is within the internal competence, the Protocol goes further and prescribes and when the Court or the Council find out that the question is under the exclusive competence of the state, that will not prevent the Assembly or the Council to discuss the matter pursuant to article 11 of the Pact (enforcement of collective measures). Didn't that stir up the editors of the Charter in San Francisco to provide such provision? According to the Protocol, a state which does not obey the court or arbitration decision on the question of internal competence will be deemed an aggressor (Article 10).

The Pact of the League of Nations has introduced into the international law the notion of internal competence which lived in the mind and practice of states. According to the opinion of Marek Korowicz, it was understood as an equivalent for typical reservations in agreements on arbitration and as a synonym for sovereignty of state.<sup>45</sup> That inspired George Scelle, in keeping with his views, to severely criticize introduction of the expression which is "quite strange to the classical international law"<sup>46</sup> and that competence both in international and internal relations is in question.<sup>47</sup> However, the Pact did not prohibit interference (or intervention) in internal affairs of states, but some theoreticians thought that it was tacitly contained in the provisions of the Pact on limiting the rights to wage a war, pacific settlement of disputes and internal competence. Connection with the armed interventions was obvious.

More complete that the Pact of the League of Nations is the Convention on Rights and Duties (1933) into Article 8 of which the states of the Latin America, faced with the interventions of the USA, have written:

"No state shall have the right to interfere in internal and external questions of other states".

Short and sweet. Nobody has better conceded George Scelle's point. It was proved by the Additional Protocol on Non-interventions (1936). Similarly, the Declaration on American Principles (1936) says that intervention of a state in internal or external affairs of another state is inadmissible.

Discussions on these questions show that the main point was increasingly moving towards the prohibition of interference in internal affairs, while the very existence of the internal competence (under that name) commenced to be supposed as indisputable. The increased concern of states to maintain internal competences is, according to Djura Ninčić, reaction to spreading of international competence.<sup>48</sup> Therefore, more than ever before, it appears first and last as a problem of delimitation of competences of the international organization and its members,<sup>49</sup> so that Ninčić embraces the opinion of Berezovsky that the relation between the states and the international organizations is being set in that way.<sup>50</sup>

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<sup>45</sup> M. Korowicz, *La souveraineté des Etats et l'avenir du droit international*, p. 59.

<sup>46</sup> G. Scelle, *Critique du soi-disant domaine de compétence exclusive*, "Revue de droit international et de législation comparée", 1933, No. 3. p. 366.

<sup>47</sup> *Ibid.*, p. 367.

<sup>48</sup> Dj. Ninčić, *Problem suverenosti*, p. 173.

<sup>49</sup> *Ibid.*, p. 174.

<sup>50</sup> At the same place.

Regardless of that the United States has, in the draft which was a basis for discussions on the founding Conference of the United Nations in San Francisco, not addressing in details the problem on internal competence and not making efforts to establish its precise scope, as commented by an American writer,<sup>51</sup> nearly literally taken over Article 15, paragraph 8 of the Pact of the League of Nations and put it in the provisions on settlement of disputes as well. That goes without saying, because the international organizations (as well as the states) in most cases and almost exclusively could or had a pretext to intervene if a dispute arose. The difference was that it was not stipulated whether and which organ of the United Nations would come out for that as in the League of Nations, probably because neither the provisions on the competence of the General Assembly were not clearly defined, which Preuss deems a disadvantage.<sup>52</sup> At that time, interventions in certain cases were still considered appropriate, but not normative competence of international organizations.

The proposed text from Dumberton Oaks underwent a strongly worded criticism, while Bolivia and Norway requested it to be omitted. Other states have demanded to be clearly prescribed who is to determine what falls within the internal competence of states (Brazil, Czechoslovakia, Ecuador, Mexico, Peru, Turkey and Venezuela). Finally, a text in many things different, but again proposed by the four great powers (USA, Great Britain, USSR and China) was adopted as the last paragraph (7) in Article 2 in which the principles of the United Nations were set forth.

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII".<sup>53</sup>

The meaning of the provision was more essentially changed than the proposed text itself. The expression "intervention" was for the first time used in the Charter. Non-intervention in internal affairs was transferred from the international relations to the relation between the United Nations and the states and from settlement of disputes it was expanded to the intervention of all organs of the United Nations, practically of the General Assembly (according to all provisions of the Charter and according to Article 10 which also underwent changes) and the Economic and Social Council. The change was indispensable because the United Nations gained some normative authorizations and its activity was not exhausted in settlement of disputes<sup>54</sup>, but extends to preventive actions and elimination of causes as well, especially in the economic and social fields. That caused some concern that the international organization would commence imposing economic or social policy or to directly intervene in the economic and social life of a state, not only to regu-

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<sup>51</sup> L. Preuss, *op. cit.*, p.571.

<sup>52</sup> *Ibid.*, p. 571.

<sup>53</sup> For history of generation of the provision, see P. Bertoud, *La compétence nationale des Etats et l'Organisation des Nations Unies*, "Annuaire suisse de droit international", IV, 1947, pp. 17-104; N. Ouchakov, *op. cit.*, pp. 34-59.

<sup>54</sup> Dj. Ninčić, *Problem suverenosti*, pp. 177-178.

late relations among states, but within the states themselves.<sup>55</sup> That is why the convokers of the Conference have proposed that the provision on non-interference of the Organization would be transferred among the general principles, so that the prohibition of intervention refers to all aspects of activities of the United Nations.<sup>56</sup> Thus, after Hans Kelsen, two different rules have been introduced: the first prohibits intervention of the Organization in internal affairs of states, while the second one frees states from the obligation to bring those questions for settlement according to the Charter; the first limits the competence of the Organization, the second limits obligations of states.<sup>57</sup> Proposed by Australia, a supplement on authorizations of the United Nations from Chapter VII, probably to follow the example of the Protocol of Geneva of 1942, was introduced.

Neither the Pact nor the Charter have expressly prohibited intervention of states, probably because both acts have had, first of all, the relations between the organization and the states in view, but not that much the mutual relations of states. However, both as regards the Pact and the Charter, an intervention of states is deemed tacitly and indirectly prohibited under the rules on the prohibition to use force or threat against the political independence of states or in any other way not joinable with the purposes of the United Nations.<sup>58</sup> Thus, an armed intervention is, first of all, prohibited. Added to this is intervention that is not joinable with the principles of the sovereign equality of states and self-determination of peoples.<sup>59</sup> In contrast to such views, Ouchakov underlines that interventions of states is also prohibited under the Charter. He draws that conclusion from the fact that Article 2 of the Charter stipulates that "The Organization and its Members... shall act in accordance with... Principles". It means that no difference is made between the Organization and the Members and that all have the same obligations. Also, it would be illogical that the Organization should be obliged to refrain from something, while its Members would be free to do that. The obligation of the Organization is even greater for its Members. The general principle of international law is binding for all states and all international organizations,<sup>60</sup> while the expression "non-intervention" refers to all measures of states and Organization that disable states to freely regulate affairs that are in their essence within the internal competence of the state.<sup>61</sup> For Ninčić, such reasoning is not well enough convincing having in mind the specific character of interventions of the United Nations, but intervention of states is unjoinable with the principle of sovereign equality of states.<sup>62</sup> Without going into details regarding each opinion, one must emphasise that Article 2 of the Charter neither imposes equal obligations to all nor its provisions equally re-

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<sup>55</sup> This is proved by a report of the American delegation at the Conference in San Francisco to the president of the USA that expressly says that the Organization "will encroach on the domestic competence of member states by imposing certain philosophy of relations between the government and individuals". Quoted after Dj. Ninčić, *Problem suverenosti*, p. 178.

<sup>56</sup> Dj. Ninčić, *Problem suverenosti*, p. 178. For explanation, see pp. 178-180- For short history and comments, see L.M. Goodrich - E. Hambro, *Commentaire de la Charte des Nations Unies*, Neuchâtel 1948, pp. 135-141.

<sup>57</sup> H Kelsen, *The Law of the United Nations*, London 1951, pp. 769-770.

<sup>58</sup> Thus, H. Kelsen, *op. cit.*, p. 770.

<sup>59</sup> Thus, Dj. Ninčić, *Problem suverenosti*, pp. 83-84, 188.

<sup>60</sup> N. Ouchakov, *op. cit.*, p. 37.

<sup>61</sup> *Ibid.*, p. 37.

<sup>62</sup> Dj. Ninčić, *Problem suverenosti*, pp. 83-84.

fer to the Organization and member states. It is well enough to cast a cursory glance and to see that the principles of the sovereign equality, pacific settlement of disputes and conscientious fulfilment of international obligations refer exclusively to states as well as the prohibition to use force or threat. In return, an intervention is prohibited only to the United Nations. Explicit prohibition of intervention is considerably more worked out in the resulting documents.

The Convention on establishment of the United Nations Educational, Scientific, and Cultural Organization (1945) in its Article 1 contains a provision on non-intervention, which reads as follows:

"3. That the member states of this Organization should be provided with independence, integrity and fruitful diversity of their cultures and their educational systems, the Organization is prohibited to intervene in whatever matter which in its essence falls within their internal competence."

The meaning of the provision is as in the UN Charter the impact of which is obvious. Not only that the formula on questions which in their essence fall within the internal competence of states was taken over, but the unambiguous prohibition of intervention of the Organization only in internal but not in the external affairs of a state. After the UN Charter has been adopted, the scope of the protected internal competence seemed to be wider than that according to the Pact of the League of Nations which mentioned "exclusive internal competence", although no record of what meant expressions "exclusive", and "in essence" could be found anywhere. Expansion of the activities of the United Nations and of other international organizations caused the internal competence of states to grow narrower and the Institute for International Law took (1954) the existence of international obligations as a measure.<sup>63</sup>

The statutes of the international regional organizations also differently regulate the question of internal competence and non-intervention. The greatest number of provisions is contained in the Charter of the Organization of American States (1948). Among the principles "again confirmed" by the American states is the principle according to which the international order is "to the greatest extent" based upon the respect for individuals, sovereignty and independence of states (Article 4, paragraph b). Contained in the Charter is a section dedicated to the fundamental rights and duties of states (Article 6, paragraph 16). There is a particular article dedicated to non-intervention (Article 15) which reads as follows:

"No state or group of states shall have the right to directly or indirectly, for whatever reason, intervene in internal or external affairs of other state. The former principle excludes the use of not only the armed force but also any other form of interference or aspiration to attack the personality of a state and political, economic and cultural elements being the component parts of it."<sup>64</sup>

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<sup>63</sup> According to Dj. Ninčić there occurred interweaving of narrowing of internal competence in one field and its expanding in other fields. Dj. Ninčić, *Problem suverenosti*, p. 208. Unfortunately he does not provide examples for any of them. We do not know whether he thought of new competences of states we have named derived later on. M. Milojveić, *Izvedena nadležnost država*, "Anali Pravnog fakulteta u Beogradu", 1966, No. 4, pp. 309-324.

<sup>64</sup> Quoted after "Revue générale de droit international", 1948, Nos. 1-2, p. 318.

Added to this should be that the American Agreement on Pacific Settlement of Disputes (1948) excludes settlement of disputes according to the proceedings it provides for if they refer to the questions which are under the exclusive competence of states.

The Charter of the Organization of the African Unity (1963) proclaims "non-intervention in internal affairs of states" (Article 3, paragraph 2) as a principle of the Organization. Much more specific is the Pact of the Arab League (1945) under which each state undertakes to respect political regime in other member states "considering it the internal matter of each state". It undertakes to refrain from any action the purpose of which might be a change of that regime (Article 8).<sup>65</sup> According to the opinion of Ouchakov respect for political regime makes the essence of the non-intervention principle.<sup>66</sup> There is no provision as that in the UN Charter, but from the obligation of respecting political regime Petar Mangovski concludes that the Pact of the Arab League is based upon the principle of "non-interference of the League in internal affairs of its members".<sup>67</sup> This reasoning contrasts with that of Ouchakov who from the United Nations' prohibition of intervention concludes the same prohibition for the states. Mangovski does it vice versa and from the obligations of the states concludes the obligation for the Organization. Common in both cases is that obligation is deemed to exist both for international organizations and for states also when the obligation is explicitly prescribed for one of them only. No doubt that, particularly from the classical international law point of view, more important for the states is the prohibition of interventions of states because their mutual relations still have the edge on their relations with the international organizations. The obligations of states are unambiguously proved in declarations adopted within the United Nations and the Conference on Security and Cooperation in Europe.

## VI. THE INTERNATIONAL DECLARATIONS

Declarations adopted at the beginning of and in middle 70s represent the first successful attempts to explain at least some fundamental rights and duties of states in one international document since attempts lasting several decades to make the rules of the international customary law in that field get more modern expression in the written form have not born fruits yet. Since the League of Nations failed to do that, some states proposed at the Conference in San Francisco the declaration on rights and duties of states to be incorporated in the Charter. Whereas this suggestion was not accepted, such draft declaration was proposed by Panama at the First Session of the United Nations General Assembly, but that question<sup>68</sup> was forwarded to the Commission for International Law which made up a draft Declaration on the Rights and Duties of States and submitted it to the General Assembly. Yugoslavia has also for her part submitted a draft declaration that had been cleared up at the conference for international law held in 1951 in Belgrade.

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<sup>65</sup> Quoted after P. Reuter – A. Gross, *Traité et documents diplomatique*, Paris 1963, p. 422; P. Mangovski, *Arapska liga*, Beograd 1974, p. 62.

<sup>66</sup> N. Ouchakov, *op. cit.*, p. 62.

<sup>67</sup> P. Mangovski, *op. cit.*, p. 55.

<sup>68</sup> By the General Assembly Resolutions No. 38 (I) dated 11 December, 1946 and 175 (II) and 178 (II) dated 21 November, 1947.

The first three articles (out of 14 in total) in the draft made up by the Commission for International Law deal with independence, that is, internal competence of states:

"Article 1 Each state shall have the right to independence and, therefore, the right to freely, without any pressure by any other state, perform its legal competences understanding here the choice and form of its rule.

Article 2 Each state shall have the right to rights to perform its jurisdiction in its territory as well as upon all persons and things existing there, with the limitation regarding the immunities consecrated by the international law.

Article 3 The duty of each state shall be to refrain from whatever interference in internal or external affairs of some other state."<sup>69</sup>

The Yugoslav draft contains four articles (out of 24 in total) referring to the internal competence of states:

"Article 3 Each state shall be obliged to respect rights of people of each other state to determine the form of its governmental and social structure and to perform its sovereign power without any economic, political or military pressure or interference of other states or international organizations, other than cases provided for in Chapter VII of the UN Charter.

...

Article 5 Each state shall have the right to perform its jurisdiction in its territory and upon all persons and things existing in that territory observing the rules on immunities recognized by the international law.

...

Article 7 Each state shall have the right, in a diplomatic way, moderately and courteously, to intervene with other state in favour of its nationals... In case of failure of such carried out diplomatic step the intervening state shall be obliged to refrain from any threat or pressure and may resort only to the procedure of pacific settlement of disputes.

Article 8 Each state shall be obliged to refrain from all forms of intervention or interfering in internal or external affairs of any other state."<sup>70</sup>

The work, which has by a tacit agreement of great powers been frozen in the United Nations, was continued within the Association for International Law to be brought back to the United Nations<sup>71</sup>, although it was formally initiated by the non-aligned countries. In one of the first papers dedicated to the principles of coexistence, Miloš Radojković has, among 15 principles, inserted, under item 7, the principle of mutual non-interference in internal affairs.<sup>72</sup> It was a report submitted to the Fiftieth Conference of the Association for International Law (Brussels, 1962). Another report (made up after the objections to the previous report) contained, among 16 principles the titles of which were harmonized with the Charter, under item 9, the principle of non-intervention in internal affairs of states.<sup>73</sup>

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<sup>69</sup> Quoted after M. Bartoš, *Medjunarodno javno pravo*, I, p. 465.

<sup>70</sup> *Ibid.*, pp. 466-467.

<sup>71</sup> See notes 4 and 5.

<sup>72</sup> M. Radojković, *La codification des principes de la coexistence pacifique*, "Jugoslovenska revija za medjunarodno pravo", 1962, No. 2, pp. 177-179; ILA Report of the Fiftieth Conference, Brussels 1962, pp. 310-339.

<sup>73</sup> M. Radojković, *Les principes ou règles juridiques de la coexistence pacifique devant l' International Law Association*, "Jugoslovenska revija za medjunarodno pravo", 1964, No. 1, pp. 7-8; ILA, Report of the Fifty-first Conference, Tokyo 1964, pp. 816-817.

In the meantime, the work in the United Nations was commenced on formulating seven principle of international law from the UN Charter. In Yugoslavia, the study of the principles of non-interference was entrusted to our good and dear colleague Tomislav Mitrović, who published a number of papers on the subject matter that should be carefully read.<sup>74</sup>

During the making of the declaration animated discussions were held on the principle of non-interference, among other reasons because of the very notion of interference not determined. The advocates of the narrowest view have reduced it to the armed intervention, which would mean that the principle of non-interference would become unnecessary because the principle of prohibition of employment of force should have also been formulated. That is why the UN General Assembly has adopted<sup>75</sup> the Declaration of the United Nations on Inadmissibility of Interference in Internal Affairs of States and on Protection of Independence and Sovereignty. The Declaration was adopted as a compromise between the Soviet proposal and a series of proposals that followed.<sup>76</sup> Finally, the General Assembly has adopted the proposal of 57 states.<sup>77</sup>

After a lengthy introduction, containing rather superfluous things from other fields (such as mention of threat to the peace, war, rights of man and aggression), but more detailed citing of documents as well in which a mention of the principle of non-intervention is made, the Declaration contains 8 points out of which 6 are of essential importance. Contained in the first point is the principle that no state shall be entitled to, directly or indirectly, for whatever reason, intervene in internal and external affairs of any other state. Prohibited are "armed intervention and all other forms of interference or attempts to endanger the persons of a state and its political, economic and cultural grounds". As for its contents, it is followed by (in the Declaration only the fifth) the point that ascertains that each state has inalienable rights to choose its political, economic, social and cultural structure without any interference by another state. Point 2 contains two conceptually different parts. The first part says that no state must employ economic, political or any other measures or encourage their usage in order to force another state to submit itself to it in performing its sovereign rights or to provide any benefit for itself, while set forth in the second part is that no state shall organize, support, encourage, induce or tolerate subversive, terrorist or armed activities directed towards violent overthrowing the regime of an-

<sup>74</sup> T. Mitrović, Načelo neintervencije, "Godišnjak Instituta za međunarodnu politiku i privredu" 1963, pp. 711-725. In the abridged and actualized form T. Mitrović, The Principle of Non-Intervention in Contemporary International Law, "Jugoslovenska revija za međunarodno pravo", 1966, No. 1, pp. 29-42 and in details T. Mitrović, Nemešanje u unutrašnje poslove država, "Kodifikacija principa miroljubive i aktive koegzistencije", pp. 199-257. After the Declaration has been adopted at the UN General Assembly T. Mitrović, Non-Intervention in the Internal Affairs of States, "Principles of International Law Concerning Friendly Relations and Cooperation", pp. 219-275. In addition, the articles have been published T. Mitrović, Načelo neintervencije i suverenost država po Povelji UN, "Jugoslovenska revija za međunarodno pravo", 1969, No. 3, pp. 395-409; M. Šahović, La no intervención como principio del derecho internacional y las relaciones internacional, "Jugoslovenska revija za međunarodno pravo", 1968, Nos. 1-2, pp. 11-19.

<sup>75</sup> Under the Resolution No. 2131 (XX) dated 21 December, 1965.

<sup>76</sup> Among them the proposal of 18 states of Latin America and a draft of 26 states of Africa, Asia and Yugoslavia as a joint proposal of 46 states.

<sup>77</sup> For short history, see N. Ouchakov, op. cit., pp. 65-68. In this paper will be quoted after the text published in the proceedings of papers "Ujedinjene nacije i savremeni svet", Beograd 1970, pp. 308-310.



other state or interfering in civil conflict in another state. Point 3 does not deal with relations among states, but emphasises that employment of force to deprive peoples of their national identity is also a violation of the principle of non-intervention. In connection with this is a general paragraph from point 6 on the obligation of respecting the rights of peoples to self-determination and independence with the needless, but in that time usual conclusion on the *obligation of states to contribute to "complete removal of racial discrimination and colonialism in all their forms and manifestations"*! And point 4 is mostly a political attitude that strict respect for these obligations is an essential condition to provide peoples to live together in peace because employment of whatever form of intervention not only represents violation of the spirit and letter of the UN Charter, but also leads to creating situations that endanger peace and security. It obvious that, thus worded, its place is at the end of a certain general document on peace and security which by far exceeds the frames of the principle of non-intervention. That was proved by the discussions on the Special Committee on the Principles of International Law, on friendly relations and cooperation of states in keeping with the UN Charter.<sup>78</sup>

The Declaration was adopted after the first session of the Special Committee and has greatly served in the further work on formulating this principle.<sup>79</sup> Without going into the contents of the Declaration<sup>80</sup> it is well enough to see what has been entered into the Declaration of the United Nations on the principles of international law on friendly relations and cooperation of states in keeping with the UN Charter that has been adopted by the General Assembly by acclamation<sup>81</sup> on 24 October, 1970. Entered without changes into the Introduction was point 4 of the Declaration<sup>82</sup> and the others in an improved version. Point 6 on the right for self-determination and independence was not entered, not because it did not deal with the relations among states, but because the principle of equality and self-determination was included in the Declaration (1970). It seems to be of utmost importance that the principle of non-intervention of states has found its place among the principles of international law,<sup>83</sup> regardless of the legal value of the Declaration itself. This all the better because interference in internal affairs is, as commented by Ljubivoje Aćimović, characteristic only for the system of international relations featured by the power as a dominating factor, so that to that extent the sovereignty of others is respected.<sup>84</sup>

Having that in mind, it goes without saying that great attention has been paid to the principle of non-intervention at the Conference on Security and Cooperation in Europe. All the states participating in the Conference came out for prohibition of intervention, but many of them had special interests. That is why there were several proposals, as was the

<sup>78</sup> T. Mitrović, *Nemešanje u unutrašnje poslove država*, pp. 242-257.

<sup>79</sup> For more details, see T. Mitrović, *Nemešanje u unutrašnje stvari država*, particularly pp. 207-210, 212-214, 242-246 and in articles by M. Šahović and O. Račić on the work of the Special Committee.

<sup>80</sup> For more details, see T. Mitrović, *Nemešanje u unutrašnje stvari država*, pp. 242-246, 251-257; N. Ouchakov, *op. cit.*, pp. 69-74.

<sup>81</sup> Under Resolution No. 2625 (XXV).

<sup>82</sup> "Because it does not contain any precise rule" as commented by N. Ouchakov, *op. cit.*, p. 79.

<sup>83</sup> In that sense also N. Ouchakov, *op. cit.*, p. 80

<sup>84</sup> Lj. Aćimović, *op. cit.*, p. 238.

case in the United Nations.<sup>85</sup> The proposals of France and Yugoslavia were the grounds for further work.<sup>86</sup>

The principle of non-intervention in internal affairs in the Declaration on principles on mutual relations of the participating states, which is undoubtedly of the utmost importance in the Final act of the Conference, signed in Helsinki on 1 August, 1975, is placed 6<sup>th</sup> among ten principles. The text itself is very short, but set forth in four paragraphs are all essential elements of former declarations. Stipulated under paragraph 1 is that all states will refrain from any direct or indirect, individual and/or collective intervention in internal or external affairs which fall within the national competence of the other participating state, regardless of their mutual relations. Paragraph 2 contains obligation of refraining from any form of armed intervention or threat by intervention, while paragraph 3 contains the obligation of refraining from any act of military, political, economic and other compulsion in order to subordinate performance of rights typical of the sovereignty of some other state to one's own interests and thus provide whatever benefit. Finally, set forth in paragraph 4 is the obligation of states of refraining from direct or indirect supporting terrorist, subversive and other activities directed to the forced overthrowing of the regime of other participating state.<sup>87</sup> The obligation of refraining from economic compulsion for the purpose of subordinating performance of rights characteristic of the sovereignty of another state to one's own interests and thus provide certain benefits has been repeated in the document bearing on the accomplishment of certain principles.<sup>88</sup>

The obligation of strictly respecting all principles was repeated at the meeting of the representatives of states signatories of the Final Act in Madrid (1980-1983) and Vienna (1986-1989) and at the Paris Conference of the chiefs of governments and states (1990).<sup>89</sup> Particularly confirmed at the meeting in Vienna was the obligation of respecting the rights of each state to freely choose and develop its own political, social, economic and cultural system as well as the right of each state to decide on its laws, regulations, practice and policy. In return, the states shall undertake to provide their harmonizing with their international obligations and provisions of the Declaration on the fundamental and other obligations within the Conference on the Security and Cooperation in Europe.<sup>90</sup> After all, under the principle of conscientious fulfilment of international obligations, the states have accepted the obligations in keeping with the UN Charter and in that way the principles of non-intervention from the UN Declaration (1970) as well. Thus, the relativity of both the internal competence itself and the prohibition of intervention are in the best way and most fully shown.

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<sup>85</sup> For more details on the attitudes of states see Lj. Aćimović, *op. cit.*, pp. 239-240.

<sup>86</sup> There was also the Soviet proposal, but it was short and contained only the obligations of non-interference in internal affairs of other states and respect for their political, economic and cultural grounds.

<sup>87</sup> Quoted after "Dokumenti KEBS", Beograd 1995, p. 13.

<sup>88</sup> *Ibid.*, p. 17.

<sup>89</sup> *Ibid.*, pp. 77, 78, 80, 81, 102, 104, 111, 145, 147, 155.

<sup>90</sup> *Ibid.*, p. 104.

## VII. THE NON-INTERFERENCE PRINCIPLE RELATIVITY

Although the rules on non-intervention have become the cogent rules of the international law, yet the very essence of the non-intervention principle has remained relative not only because of the revitalization of the principle over the last half of this century. It is not that legal norms are in question and their compulsoriness, but the relativity of the fundamental concepts those norms refer to.

In spite of all endeavours made so far, we have not had a fully precise concept of internal competence yet, without which one cannot know what it includes or that which is called internal things or internal affairs in everyday life. It was way back at the beginning of this century in our legal theory that Slobodan Jovanović wrote about permanent changeableness of boundaries and contents of the state competence: "the state performs today affairs it did not use to do earlier and does not perform affairs it used to perform earlier; the boundary and contents of its competence cannot once for all be established based on the concept of sovereignty."<sup>91</sup> On its part, the Permanent Court of International Justice, in the well known advisory opinion on the French decrees in Tunisia and Morocco, of 7 February, 1923, took a stand that the questions what is exclusive competence is relative and that it depended upon the development of international relations<sup>92</sup> and "that in event it will be necessary to have recourse to international law".<sup>93</sup> Now, the Conference on Security and Cooperation in Europe says in essence the same because it confirms competence to the states only to the boundary where their international obligations begin. The boundary between the autonomy of states and the competences of the international community seems to lie there. But, who is to decide on that?

Nothing is more clear when prohibition of intervention is in question in the otherwise insufficiently determined field of internal affairs of states because one does not precisely know what intervention is. Declarations have mentioned some most difficult forms of interventions. Even in the Codex on crimes against the peace and security of the mankind intervention is stipulated as a criminal act (Article 17). While paragraph 1 in principle provides for responsibility of everyone who orders or commits intervention in internal or external affairs of a state, it is paragraph 2 that stipulates that intervention stimulates (armed) subversive or terrorist activities or organizes, supports and finances such activities by means of which free performance of the sovereign rights is (seriously) offended!<sup>94</sup> As if terrorists mostly endanger the sovereign rights!

With the increased number of papers the activity of international organs increases resulting in forms of intervention, both as general and individual acts. Intervention of the United Nations in internal affairs of states is prohibited under the Charter, but there remained unclear the concept what intervention is because differently understood, on one side, are its authorizations and the nature of its acts on the other side. An attempt to clear up that has been done under the resolution of the Institute for International Law (1989):

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<sup>91</sup> S. Jovanović, *Osnovi pravne teorije o državi*, Beograd 1914, p. 101.

<sup>92</sup> Décret de nationalité promulgués en Tunisie et au Maroc, avis consultatif, 1923, C.P.J.I. séries B, No. 4, p. 24.

<sup>93</sup> *Ibid.*, p. 28.

<sup>94</sup> Assemblée générale, Documents officiels: quarante-sixième session. Supplément No. 10 (A/46/10), Rapport de la Commission du droit international sur le travaux de sa quarant-troisième session, 29 avril – 19 juillet 1991, p. 267.

"Protection of the rights of man and the principle of non-intervention in internal affairs of states" according to which diplomatic, economic and other measures allowed under the international law are not considered intervention without employment of force (Article 2, paragraph 2 and Article 3) and humanitarian aid (Article 5) as an "answer to extraordinary hard violations of ... rights, particularly those massive and systematic as well as those afflicting rights that can be derogated under no conditions" (Article 2, paragraph 3).<sup>95</sup> This mess deserves special attention particularly because "interest to maintain the peace and friendly relations among the sovereign states" (Introduction) which alludes to the application of measures from Chapter VII when internal competence cannot be referred to. Also, emphasis that measures mentioned in the resolution are not considered "unlawful interventions" (Article 2, paragraph 2) means that there are also "lawful interventions". That Article 4 is not in question pursuant to which measures should be "in proportion with the severity of violation committed", limited to the state committing the violation and that they do not affect "standards of living of the population in question". As if threatening with sanctions or modern reprisals. After all, emphasis (in Article 5, paragraph 1) that offer of humanitarian aid should not assume "the form of threat by armed intervention" speaks well enough. Instead, other documents are trying to list at least the hardest acts of states that mean "interference in the province of sovereign decision-making of other state",<sup>96</sup> that is, "forcible inducement of somebody to do something against and besides his will".<sup>97</sup> Therefore, it is a capital mistake that intervention is most frequently identified with an armed intervention, subversion, terrorism and other spectacular forms that excite the highest attention of the public. Not underestimating their danger, many significantly more subtle forms of foreign interference without employment of force should not be disregarded by means of which sovereignty of states is disturbed almost every day in contrast of, for example, intrusion of terrorists that does not impact the policy and practice of a state.

Both unknown things have sometimes happened in practice. There occurred a great conceptual and theoretical mess in the case of South Africa when it was not clear whether the discussion and resolution of the General Assembly were based upon the understanding that human rights were no more under the exclusive competence of states or that it was considered that it was not intervention.<sup>98</sup> This shows that concepts otherwise mutually connected must be differentiated such as is the case with concepts of internal competence and intervention. Both of them are spoken about from time to time, so that the thing gets complicated instead of being cleared up. If those concepts are separated, it seems more important for states to protect themselves against external intervention than to try to prove their internal competence. Particularly if narrowing of internal competence is a consequence of unavailability of ever-narrower integration and ever-greater authorizations of international organizations, although it is "still hard to believe in disappearance of this important legal and political instrument from the organized international community."<sup>99</sup> The principle of prohibition of interference (intervention) in internal affairs stands for or

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<sup>95</sup> Quoted after "Zbornik Pravnog fakulteta u Zagrebu", Supplement to No. 5-6, 1989, pp. 678-688.

<sup>96</sup> Dj. Ninčić, Problem suverenosti, pp. 82-83.

<sup>97</sup> Lj. Aćimović, op. cit., p.236.

<sup>98</sup> Dj. Ninčić, Problem suverenosti, p. 192.

<sup>99</sup> B. Janković – Z. Radivojević, op. cit., p.p. 181-182.

should stand for the most reliable legal protection of the minimum of particularity indispensable to states to survive as subjects of international law.

## NAČELO NEMEŠANJA U UNUTRAŠNJE POSLOVE DRŽAVA

**Miomir Milojević**

*Odnosi između država se već više stoleća zasnivaju na njihovoj suverenosti iz čega su proistekle značajne političke i pravne posledice. Najvažnije posledice su vezane za označavanje suverenosti kao nezavisnosti i najviše vlasti. Iz toga je proistekao zaključak da su države slobodne u vršenju svoje vlasti na svojim teritorijama što je moralo da podrazumeva, s jedne strane, postojanje isključive unutrašnje nadležnosti država i, s druge strane, da druge države ne smeju u to da se mešaju. Takvo shvatanje je opšte prihvaćeno u međunarodnom običajnom pravu, a u doktrini su ga najviše zastupali predstavnici prirodnopravne škole. Razlike među njima su postojale samo u pogledu domašaja načela nemešanja. Jedni su smatrali da je apsolutno zabranjeno svako mešanje, dok su drugi dopuštali izvesne izuzetke idući tako u susret onima koji su opravdavali sve intervencije kao jedan oblik upotrebe sile koja u to vreme nije bila zabranjena u međunarodnim odnosima*

Ključne reči: *osnovna prava i obaveze država, domaća nadležnost država, princip nemešanja, međunarodne organizacije*