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Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía,
Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 36, 2020, Especial N°

26

Revista de Ciencias Humanas y Sociales

ISSN 1012-1537/ ISSNe: 2477-9385

Depósito Legal pp 198402ZU45



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Supranationality and international organizations: definition, features, models

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Abstract

The purpose of the article is to investigate the concepts of supranationality as a special phenomenon and category of modern international law, to distinguish its features, models and to analyze the problem of the relation of supranationality with the state sovereignty. It is argued that the ratio of supranationality to the bodies of international organizations and the sovereignty of the Member States in the process of regulating certain spheres of society contributes to the formation of a new perspective. Supranationality is serving as a factor and manifestation of integration and globalization processes, an evolutionary method of finding acceptable forms of deepening state cooperation.

Keywords: International organizations, Supranationality, European Union, Intergovernmental organization, supranational organization.

La supranacionalidad y las organizaciones internacionales: definición, características, modelos

Resumen

El propósito del artículo es investigar los conceptos de supranacionalidad como un fenómeno especial y categoría del derecho internacional moderno, distinguir sus características, modelos y analizar el problema de la relación de la supranacionalidad con la soberanía estatal. Se argumenta que la relación entre la supranacionalidad y los órganos de las organizaciones internacionales y la soberanía de los Estados miembros en el proceso de regulación de ciertas esferas de la sociedad contribuye a la formación de una nueva

perspectiva. La supranacionalidad sirve como factor y manifestación de los procesos de integración y globalización, un método evolutivo para encontrar formas aceptables de profundizar la cooperación estatal.

Palabras clave: Organizaciones internacionales, Supranacionalidad, Unión Europea, Organización intergubernamental, Organización supranacional.

1. INTRODUCTION

Supranationality is an inherent feature of modern international organizations (IOs). Capacity of international organizations to create direct rules both for their member states, institutions or bodies and for individuals and legal entities of the member states is a core specific feature of supranationality as a legal phenomenon.

The principles of supranational regulation, at first glance, contradict the fundamental principles of international law. However, actually there is no conflict if constituent instruments provide for the possibility of withdrawing from an international organization, i.e. the basic principle of free will of the subjects of international law is applied. States, joining a supranational international organization exercise their sovereign rights rather than are deprived of them. Constituent instruments of an international organization do not restrict sovereignty (authority, regime and competence). They, however, impose limits only on one element, i.e. competence. International legal restriction of competence of the state is an established practice and does not violate state integrity and independence.

Availability of a great number of international organizations and the opportunity each state has to initiate an increase in their number enriches the spectrum of strategies and tactics of ensuring state interests through participation in international organizations. Clear understanding of the specificity of an international organization, its opportunities, capacity and regular features of its development, its importance and place in the structure of the foreign policy course is becoming the key task of a state in this field.

Available classifications of international organizations differ by the type of criteria constituting the basis for each of them. Some scholars, for instance, T. Tsygankova and T. Gordeyeva are of the opinion that it would be more expedient to talk not about classification, but rather about typification of international organizations (TSIGANKOVA AND GORDEYEVA, 2001). In their opinion, international organizations can be distinguished by at least three basic criteria: membership of states, geographical coverage, and competence. Besides that, the characteristics can be supplemented with the features of legal status, the nature of their activity, and the period of their functioning and the procedure for entering the organization. The role of an organization and its place in the system of international relations depend on the characteristics (features) of the organization.

Membership of states is recognized as the key criterion in the typification of international organizations: organizations are divided into interstate and non-governmental ones. The following types of

organizations can be distinguished depending on the distribution of powers between the organization and its member states:

- 1) Intergovernmental organizations, performing coordinating functions;
- 2) International organizations performing specific supranational functions;
- 3) Fully supranational organizations.

In the organizations belonging to the first type competences are distributed between them and the state. In the second type of organizations specific issues are within the mandate of the international organization. Such issues include global problems of the modern times, requiring special mechanisms for their regulation. Constituent documents of such organizations determine the competence available for certain fields of activity and restricting the functions of state in them. Members of the organization shall comply with its decision even contrary to their own interests.

Organizations performing specific supranational functions include the European Union, the World Trade Organization, the International Monetary Fund, the European Free Trade Organization, and others. Their supranationality includes the field of economic, political, currency and finance issues which, according to the constituent agreement, are within their mandate.

Some elements of supranationality can also be traced in the activities of the UN Security Council. They refer to the exclusive right to pass decisions on compulsory use of armed forces while states do not have this right (the right to self-defense constitutes an exception here). The trends of supranational elements development are now characteristic of many international organizations.

We agree that an organization having supranational authorities remains an interstate organization, and not the global government. Ultimately, supranationality accompanies European integration since its inception, and being confirmed by appropriate political and legal support is seen as a new form of government, having applied value and value. That is why the research is aimed at studying specific features of supranationality and researching supranationality as a legal category, paying attention to different models of supranationality. Particular attention in the article is paid to the definition of the supranational nature of international organizations.

In our opinion, of interest is the classification by the nature of powers, allowing to distinguish between interstate and suprastate, or, rather, supranational organizations. This classification allows to better understand the legal nature of legal acts adopted by the bodies of the international organization as well as their effect on the internal law and order in the member states. In this regard analysis of the element of supranationality in the law of international organizations deserves attention.

2. METHODOLOGY

The article used scientific works, articles, as well as the constituent documents of such organizations as the UN, EU, and EFTA. The functioning of these organizations clearly shows on the one hand the presence of supranational bodies, on the other hand, that successful integration is not necessarily connected to the establishment of supranational bodies.

Methods of research are selected taking into account the specifics of the goals and objectives of this work. In general, a systematic approach based on the combination of the dialectical method of scientific knowledge of international legal phenomena and processes, as well as general scientific and special research methods is used. Thus, the comparative legal method is used by the authors in studying the content and features of supranationality. The historical legal method is employed in the study of supranationality based on the emergence and development of the European Union (for example, the granting of supranational powers to the bodies of the European Community). In turn, the logical legal method allows to determine elements, features and models of supranationality.

3. RESULTS AND DISCUSSION

Supranationality as a legal category constitutes an object of lively discussions. This phenomenon was studied by K. Tillman, E.

Kuntz and others, however, there is no generally accepted theory of supranationality as yet. The absence of unanimous scientific views is caused, on the one hand, by the ambiguity of the interpretations of the term ‘supranationality’ in the few documents where it is used, and, on the other hand, by the difference in methodological approaches used in its study.

Tillman, Kathrine (KATIE) (2015) writes that studying supranational institutions is of particular importance because in recent years they have reached a new level of assertiveness, to the point where they are now performing many of the tasks once directly taken on by states. Examples include the World Trade Organization, the North Atlantic Free Trade Agreement, and the European Union (TILLMAN, 2015).

For the first time the term ‘supranationality’ was mentioned in G. Shaw’s textbook ‘Introduction into the Law of the European Union’, referring to M. Wolf’s paper ‘Global Government’ of 1916, which indicates that existence of supranational organizations does not restrict the priority and principal role of states in the global political system (SHAW, 1996).

Currently the basic scientific approaches have been developed, substantiating supranationality:

— As an ideal system of holding negotiations between nations: negotiations are held within the respective bodies thanks to

which states get control over decision-making processes (F. Sharpf);

— As the system of shifting responsibility and risks from national bodies on supranational bodies (G. Majone, M. McLaren, K.-Ch. Lador);

— As a direction of national policy towards development of an interstate unity, and not as a restriction for a national state (I. Weiler, A. Somek);

— As supremacy over the legal system of the state, which constitutes an exception from the general state of national legal regulation of relations since it constitutes only a means of overcoming crises states are faced with (K. Shmitt, M. Hardt, A. Negri);

— As supranational integration, which, by its nature, is international and within which each state, due to its internal policy, strives to get as many benefits and power as possible (Yu. Tikhomirov, I. Weiler, F. Mayer) (KULEBA, 2011).

The notion of ‘supranationality’ appeared in literature abroad after the establishment of the European Coal and Steel Community (ECSC). The Treaty establishing the ECSC was signed in Paris in 1951. Six developed countries of Western Europe – France, the FRG, Italy, Belgium, the Netherlands, and Luxemburg became its

participants. The ECSC's legal mechanism was built and functioned on the basis of the idea according to which the risk of starting a new war between the countries of Western Europe would be considerably reduced if considerable mandate of managing coal and steel industry was given to the institutes of economic community.

The Treaty establishing the ECSC described in detail the authorities for regulating the fields it embraced. It combined two opposite approaches to their regulation. On the one hand, the provisions enshrined in the Treaty establishing the ECSC allowed to control the prices of coal and steel articles, the level of state assistance provided to these industries, the measures aimed to boost investment, the level of production, transportation tariffs, discrimination and restrictive trade practice, the structure of production, etc. on a centralized basis. On the other hand, provisions of the Treaty presupposed establishment of the free trade area for coal and steel, with a highly limited intervention of state structures of members into the functioning of the organization (KANG'ETHE, 2015).

The term 'supranational' was legally fixed in the Treaty of Paris: 'The members of the High Authority shall, in the general interest of the Community, be completely independent in the performance of their duties. Thus, the Treaty establishing the ECSC understood independence of the members of the High Authority from instructions or influence of Member States by supranationality. Along with that, the Treaty did not contain any legal definition of the notion. Somewhat later, after amendments to the Treaty establishing the ECSC

came into effect in 1967, Art. 9 was cancelled, and as the result the term ‘supranational’ was withdrawn from the law of European communities (Treaty establishing the European Coal and Steel Community, 1951).

But as Rainer Arnold (2016) thinks that the primacy of EU law is the most important expression of supranationality (ARNOLD, 2016). We agree that EU law is supreme and has direct effect on the laws of the Member States. Modern integration processes and the development of the EU have contributed to the emergence of the term supranationalization. Thus, FABBRINI UWE and SERGIO PUETTER (2016) say that more integration is achieved without significant further supranationalisation (Fabbrini and Puetter, 2016).

Moreover, the interesting thoughts of such scientists as LINUS PEITZ, KRISTOF DHONT, BEN SEYD (2018) who write that supranationalism predicts attitudes towards the EU over and above established factors such as national identity and immigrant threat. Their study thus shows the existence of supranational attitudes among individuals and the relevance of such attitudes to people’s opinions about international organizations like the EU (PEITZ ET AL., 2018). Thus, there is no common understanding of the term ‘supranationality’ among scientists either.

In order to effectively study supranational institutions and analyze state decisions with respect to membership, it is vital to have an understanding of their development. The most developed

supranational institution is the European Union. Tracing the history of this institution will show the development of its supranational character. The European Union of today looks quite different than the institution did at its inception. The development of the European Union has come in several phases of membership and power expansions and alterations.

A brief overview of the institutional development of the institution is crucial because it will trace the emergence of the supranational nature of the institution (TILLMAN, 2015).

M. Biriukov points out that supranationality characterizes the quality of international organizations, caused by their goals, functions and authorities handed over to them by their member states. And the key features of supranationality for the European Union are the following:

- Certain independence of the organization or its bodies from member states;
- Availability of the authorities to pass decisions by a majority vote;
- Binding effect of those decisions;
- Autonomy of the organization's power;

- Direct effect of decisions for individuals and legal entities of member states;
- Absence of the right to withdraw from a supranational organization;
- Deprivation of the right to its dissolution (BIRIUKOV, 1981).

It seems that enactment of the Treaty of Lisbon establishing the European Union, that presupposes the right to withdraw from the European Union, makes us reconsider the importance of such criterion as absence of the right to withdraw from a supranational organization for defining supranationality. In the light of EU practice, supranationality is a particular form and method of organizing cooperation between Member States, which, on a voluntary basis and on a contractual basis, transfer part of their sovereign rights to an integration association, giving it competence to exercise and adopt binding competences within that competence essential decisions not only for the Member States but also in individual cases for the natural and legal persons under their jurisdiction.

P. Hay believes that autonomous nature of an international organization is the key criterion for defining supranationality. He considered that for the European Economic Community the independence of the EU Commission constitutes the key

characteristics of the supranational nature of the community (ERNE, 2019).

E. Shybayeva is of the opinion that the issue of supranationality of an international organization is the issue of the correlation between the sovereignty of member states and the authorities of the intraorganizational mechanism created by them. The state's joining an international organization stands for voluntary transfer of its sovereign rights to this organization (SHYBAYEVA, 1992).

Currently there exists not a single intergovernmental organization in the world, that could be characterized as an absolutely supranational organization. Due to this E. Shybayeva points out: 'it would be right to tell that in the constituent acts of international organizations the trends for their getting some elements of supranationality are laid down' (SHYBAYEVA, 1986).

We agree with E. Shybayeva, since the need to provide certain elements of supranationality to international organizations is conditioned by the need to ensure the unity of obligatory behavior of states in order to successfully solve global problems of humanity. M. Korolev acknowledges only the 'possibility of existence of functional supranationality that is a way of joint regulation of a certain field of activity in the states concluding the respective agreement for this purpose'. He also points out that 'in the pure, essential state supranationality is not possible at all, since until the states within the supranational establishment preserve their sovereignty they can

terminate their membership in it at any time, and sovereign states cannot be deprived of this right' (KOROLEV, 1997).

We agree that introduction of specific supranational elements into the structure of one or another international organization does not necessarily lead to the restriction of the sovereignty of the member states of those organizations, ensuring a certain improvement of the efficiency of the organization's functioning.

A clearer interpretation of the notion of supranationality in foreign law literature has been provided by G. Shermers and E. Kuntz, who write about transfer of sovereign authorities to an international organization by member states and granting the respective competence for their exercising to it (TALALAEV, 1989). In the opinion of G. Shermers and E. Kuntz, some international organizations of the UN system belong to such organizations: The International Civil Aviation Organization, the International Meteorological Organization, the Universal Postal Union, and others.

S. Mykhailova is of the opinion that supranationality is less characteristic of international organizations and more characteristic of confederations (MYKHAILOVA, 2006). L. Hrytsaienko considers that it would be more expedient to talk about availability of a supranational element in intergovernmental organizations, but not about supranationality of the very intergovernmental organizations. And in case with the European Union supranationality lies in the refusal of the member states from a part of their sovereign rights in some domains in

favour of the institutes of that integration union. Respectively, supranational level of power is higher than national, a supranational union does not depend on member states, and its expression of will has a direct effect on their territories (Hrytsaienko, 2010).

MICHAEL R. LUCAS (1999) uses the terms supranational organization, Supranational Organizations (SNOs), and supranationalism to refer to all organizations, institutions and political and social processes involving more than a single state or at least two non-state actors from different nation-states. Supranational will thus encompass formal organizations, institutions, and political and legal agreements related to transnational interaction. These range from the cross-border movements of people, commodities, and information (and the agreements and political frameworks that legitimize and regulate these) to more structured, formalized inter-state activity organized and supervised by multilateral institutions and organizations (LUCAS, 1999).

French lawyers P. Reter and I. Kombako consider that the key element of supranationality is the way to pass decisions directly by the bodies of international organizations. They claim that adoption of decisions by a majority vote allows to speak about the supranational nature of the international body (SMIRNOVA, 2005).

4. CONCLUSION

Supranationality, on the one hand, is considered to be a principle of international law, while on the other - a legal phenomenon.

We assume that the most important features of supranationality are, first of all, transfer of a part of authorities by the state to the organization; secondly, the right of the organization to intervene into the matters that are within the internal state competence; third, the right of the organization to create norms of direct effect not just for the member states and the bodies of the organization, but for individuals and legal entities of the member states.

Supranationality is not relevant exclusively to the European Union. This element is typical for other international organizations as well. Only by interpreting provisions of the constituent instrument of an organization can we determine its supranational nature.

Transfer of its authorities (rights) by the state to an international organization is the key question in the theory of supranationality. The answer to it depends not just on what philosophy the researcher or another subject of interpretation adheres to.

In our opinion, three important points characterizing the scope of possible authorities of a body in supranational international organizations should be pointed out in this definition:

- The possibility to have supranational authorities;

- Purposeful nature of regulation of the relations of member states by an international body;

-Priority nature of the international body's competence;

-The ability to adopt binding acts

Of course, not every integration association has the full range of distinctive features of supranationality, as the same integration association at different stages of development may have different volumes.

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Revista de Ciencias Humanas y Sociales

Año 36, Especial N° 26 (2020)

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.

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