УДК 341.9

© 2015 **N. Kyryliuk**
Yuriy Fedkovych Chernivtsi National University, Chernivtsi

PRACTICAL APPLICATION OF THE PRINCIPLE OF SOVEREIGN EQUALITY OF STATES BY THE NTERNATIONAL ORGANIZATIONS

The practice of international organizations is an important element of the modern International Law. In their decisions their confirmation, consolidation and application of those rules and principles are found that are fundamental to the global community today. Therefore, during the study of the principle of sovereign equality of States it is particularly important to take into consideration the implementation of the principle of sovereign equality of States within the framework of international organizations.

Key words: international organizations, principle, sovereignty, equality, Member States.

Formulation of the problem. As indicated in the doctrine of international law, the principle of sovereign equality of States: "... applies to the status of international intergovernmental organizations, as each of them based on sovereign equality," [12, p. 48]. The key to implementing this principle in the practice of international relations is its consolidation in the constituent acts of international organizations. These documents, which are a special type of international treaties (sui generis), this principle is fixed as one of the basic principles of the international organizations. Despite the fact that international organizations have been actively created and have been functioning since the late nineteenth century. The first facts to secure it in the constituent acts of international organizations are relating specifically to the Second half of the twentieth century.

The degree of scientific development of the problem. The problem of the principle of sovereign equality of international organizations has been studied both in national and foreign literature. In this area we can distinguish scientific achievements such as V.E. Grabar, K. Manukyan, Hobbi Y.S., Baydin Y.V., D.I. Baratashvili, Warbrick C., Kelsen H., Meltzer J., Steinberg R.H and others.

The purpose of the article. To examine and analyze the basic views on the practical implementation of the principle of sovereign equality by the international organizations.

Presentation of the main material. Some scientists, including K.A. Manukyan stated that the principle of sovereign equality of States was the basis of the Charter of the League of Nations and specific provisions of this international legal act were formulated including this principle [13, c. 129]. In particular, to the following provisions of the Charter of the League of Nations, first of all, Art. 3 can be included, which provides that all members of the League of Nations have a voice in decision-making within the organization; Art. 6 which states that all expenditures on the activities of the League of Nations are distributed proportionally between the Member States, etc. [22].

The regulatory fixing of the principle of sovereign equality of States in the Consecutive Act of the international organization for the first time occurred when the United Nations was created and when was the adoption of its Charter. The principle of sovereign equality of States is enshrined in p. 1, Art. 2 of the UN Charter. It stipulates that: "The Organization is based on the principle of sovereign equality of all its members" [20].

Speaking of securing the principle of sovereign equality of the constituent acts of other international organizations, it can be stated that almost all international organizations noted this principle among the basic principles of their activities. For example, in Art. 3 of the Charter of the Organization of African Unity in 1961 it is found that "... Member States solemnly claim and declare their commitment to the following principles: 1. Sovereign equality of all member states ..." [17]. Subsequently, a similar provision was included in Art. 4 of the Constitutive Act of the African Union in 2000 - the organization which replaced the Organization of African Unity [6].

Similar provisions are included to the constituent acts of regional integration associations, particularly in n. 2, Art. 2 ASEAN Charter: "... respect for equality ... ASEAN Member States" [19].

In legal doctrine repeatedly discussed the practical application of this principle in the practice of international organizations [1, p. 62]. However, the researchers emphasized the multidimensional nature of this whole issue. Thus, Soviet lawyer D.I. Baratashvili said: "The application of the principle of sovereign equality of States in international organizations is complex both in theoretical and in practical terms," [1, c. 63]. C. Warbrick provides two ways of implementi-on of this principle by international organizations: the creation of non-discrimination legal obligations of States and to eliminate some aspects of material inequality between states [25, p. 214].

There are different approaches of understanding

what it means to use the principle of sovereign equality of States in the practice of international organizations. One of the most reasonable opinions it seems to be D.I Baratashvili`s thought, who believed: "In relation to the international organizations, the principle of equality means, above all, the equal right of all States, as sovereign and independent subjects of international law to participate in public international organizations" [1, p. 64-65].

In addition, it is often indicated that membership in international organizations negatively affects their political independence and is limiting their sovereignty, which is one of the essential elements of the principle of sovereign equality of States, as it was already stated above.

However, we believe that this is one of the forms of international cooperation of states, which is like other forms and methods is based on their agreement, from this point of view there is no reason to talk about limiting the sovereignty or violation of the principle of sovereign equality of States. As rightly noted by Ukrainian international lawyer Y.S. Hobbi: "... such form of cooperation (membership in international organizations) is the manifestation of the will of a sovereign state" [11, p. 8]. J. Meltzer, considering this issue in the context of the functions of the World Trade Organization indicates that they are legitimate in terms of the legal sovereignty of states, due to the fact that: "... the consent of states is an expression of the sovereignty of the State of Law" [16, p . 697]. According to the opinion of the Y.V. Baydin membership of the states in the international organizations or in the activities of control authorities, which are established within international treaties are "self-limiting practical embodiment of opportunities in the implementation of sovereign rights ..." [2, p. 13].

At the same time, if we have a look on the peculiarities of international organizations and activities, it is often possible to find examples where the member states of international organizations are put in unequal conditions. This is due to various reasons and occurs in different forms, but it brings up a question whether such situation is normal according to the principle of sovereign equality of States?

In science of the international law different positions on this issue can be found. For example, the German scientist M. Herdehen believes that in this case there is a "violation" of the principle and he says that in the case of international organizations we could only talk about "formal understanding of equality" [15, p. 255-266]. At the same time, the analysis of the practice of international organizations, allows us to say that this idea is hasty and not always justified.

R.H Steinberg points out that there are cases where in practice "informal" exceptions to the principle of sovereign equality of States are established. In particular, he points out that stronger states use their position to agree the agenda of the organization and use external leverage to influence the decision-making process to monitor their results. As an example of such "unofficial exceptions", he cites, in particular, the situation with NATO (North Atlantic Treaty Organization) in which senior positions are traditionally occupied by representatives of the most powerful and influential NATO member states [18, p. 333].

Generally, there are two main instances in the practice of international organizations when the principle of sovereign equality of States realizes with some features that seemingly contradict the content of this legal principle. In the first case we are talking about establishing specific conditions of the participation of the individual states in the work of international organizations on a rotary principle according to certain criteria (eg., Geographic). In the second case, we are talking about granting special status to certain States compared to other members of international organizations in connection with their actual position in international relations.

In the first case, we are talking about the the establishment of a priority in participating of the states and their representatives in certain processes within international organizations (eg., Participating in the work of individual organs). This happens because of quite reasonable motives: a large number of members of modern international organizations makes it difficult to ensure the participation of all States in the work of all organizations.

One of the most striking examples of this approach is considered to be the formation of certain structures of the United Nations, in particular - the UN Security Council. As you know, 15 member states are taking part during its work, 5 of which are elected on a rotating basis by the geographical principle: 5 from Asia and Africa, 2 from Latin Europe and other states, even one from Eastern Europe [10]. Another five members are permanent members of the Security Council.

Equal Representation of States in bodies of international organizations is possible in the framework of regional organizations and integration associations with relatively few members. For example, in the case of the European Union, it should be noted that in its key bodies: the European Council, the EU Council and the European Commission equal representation of all member states is ensured [24, p. 34-35]. If the European Court of Human Rights, according to Art. 20 of the European Convention on Human Rights: "The Court shall consist of a number of judges equal to that of the High Contracting Parties" [23, p.270].

Thus, we can say that based on objective factors of effectiveness of the international organizations, to the participation of Member States in the work of some international organizations rotation principle can be applied. At the same time, one can hardly speak of a contradiction of the facts of the principle of sovereign equality of States, especially in this case where any preferences associated with the actual situation of states or other factors are not set.

Many more questions arise in the second case, when individual states are granted a special status as members of an international organization in connection with their actual (political, economic, etc.) position. This problem is not new to the practice of international relations. In the early twentieth century russian international lawyer V.E. Grabar stressed that long-term existence of international organizations is possible only if some deviations from the formal legal equality of States occurs, because otherwise "... great powers have no interest in entering into it" [9, p. 219].

This situation, at first glance, is in direct contradiction with the principle of sovereign equality of States, which stipulates that all states are endowed with the same rights and obligations, regardless of their actual situation. However, the British international lawyer George Brierly, pointed out that the derogation from the principle of unanimity, which is one of the foundations of sovereign equality is necessary in the light of the effectiveness of international institutions, especially if it is assumed that they must have the ability to take action against specific States [3, p. 84].

Most of these cases occur in the case of executive functioning of international organizations. As pointed by K. Warbrick it is caused by the place of the authorities of this type in national institutional mechanisms of international organizations: "As a general rule plenary (representative) wider authority has jurisdiction, but narrower authority to make decisions, while specialized (executive) authority has narrowed competence but stronger authority to make decisions "[25, p. 215].

In our opinion, the most obvious such situations are in the case of permanent members of the UN Security Council.

One of the controversial issues regarding to the implementation of this principle in the framework of the United Nations, is compliance with this principle mechanism of functioning of the UN Security Council. As you know, in p. 1, Art. 23 UN Charter stipulates that the Council includes five permanent Security Council member states (China, the United Kingdom of Great Britain and Northern Ireland, Russian Federation, United States, France). Each of these states, according to p. 3. Art. 27, has a veto on any decision that is taken by that authority.

At first glance, this status violates the principle of sovereign equality of States. In particular, K.T. Gaubatz argues that developers of the Charter by giving veto power of the five permanent members of the Security Council established an important exception to the principle of sovereign equality of States [8]. K. Warbrick while considering the gains of the permanent Security Council members pointed out that: "In the end, the permanent members are protected against any adverse decisions, while other members have to obey the decisions against which they act" [25, c. 211].

This question becomes extremely actual in the context of a possible reform of the institutional mechanism of the UN, including the Security Council. In particular, as noted by B. Fassbender, today among the majority of UN member states the dominant opinion is that the veto of the five permanent members of the UN Security Council violates the principles of sovereign equality and democracy [7, c. 263-264]. The scientist points out that there are two key positions to address this issue: first, which is more radical and advocates the complete abolition of this law. Proponents of the second, call not to give this right to new permanent members of the Security Council, if such appear in its composition [7, p. 263-264].

The relationship between the special status of permanent members of the UN Security Council is discussed both in science and international law. If we analyze the main approaches to this issue, then we can say that most scientists defend expediency and admissibility of the quo status.

For example, a prominent theorist of internatio-nal law H. Kelzen considered "according to the general international law, all UN member states have equal opportunities to acquire rights and duties; This equality means equality not so much, as the ability to acquire equal rights and duties "[14, p. 207-209]. In turn, the French scientists J. Combacau and S. Sur emphasized that such special privileges of permanent membership of the UN Security Council "freely given" to them by those states that have ratified the UN Charter. From their point of view it is the sovereign equality of States allows them to accede to international treaties that may impose on the parties different amounts of rights and obligations [5, p. 236]. According to the opinion of P.F. Brugierre: "Equality of the parties in the agreement does not entail or exclude the benefits which are arising from it and are provided to the participant of the treaty" [4, p. 14]. J. Blackman believed that the principle of sovereign equality of states is not the norm of jus cogens, from which exceptions are not allowed. [21, p. 88-89].

In turn, Warbrick indicates that the special

position of the permanent members of the UN Security Council is because of the political and functional reasons. He notes that the system of collective security which was established within the United Nations, would not be possible without the influence and resources of these five states, and the veto was just the "political" price for their participation in it. However, according to scientist`s thought, it is considered to be as one of their sovereign rights and is used to protect their own interests [25, p.211].

Conclusions. In our view, consolidation in the Charter of the United Nations special status of certain states in the UN Security Council (permanent membership,veto, etc.) really was caused by the actual balance of forces in the world, formed after World War II and later the Cold War. At the same time, it seems that is superfluous to state that the purpose of granting them such special status was formally to consolidate their real status.

We believe that first of all, this was done to prevent the blocking of functioning of the United Nations because of disagreement of individual states with the decisions of the majority. In this case, the possibility of avoiding a situation is quaranteed when in the UN Security Council a majority will be formed which will make uniform decisions; prevent situations where the UN would be seen as an organization that acts in the interest of individual states; and elicit maximum compromise when making decisions, etc. From this perspective, the idea of K.A. Manukyan about the risks that would bore the abolition of the veto permanent members of the UN Security Council seems to be quite reasonable.

At the same time, the idea that a special position of the permanent members of the Security Council contradicts the principle of sovereign equality of States seems not reasonable enough. In this case, it is not about securing the status of "great powers" and the recognition of their political and other influence, but about granting them special status in the framework of the UN Security Council. Their special status does not apply to all other areas of international life and they are legally equal with all other UN member states.

So, often in the practice of international organizations there are cases that are granting privileged position to the individual Member States, due to their special role in the activities of international organizations. In the determination of the ratio of such facts with the principle of sovereign equality of States, we should primarily think what is the purpose of granting such status. In case if it is caused due to the effective functioning of international organizations and is taking part due to the concent of other Member States then the following facts are compatible with the principle of sovereign equality of States.

Used literature:

1. Baratashvili D.I. The principle of sovereign equality of states in International Law / D.I. Baratashvili; Ed.: N.A. Ushakov - M.: Science, 1978. – 118 P.
2. Baydin Y. State sovereignty and its limits in terms of European integration (the theory): Abstract. Thesis. For obtaining sciences. Degree candidate. Legal. Sciences: 12.00.01 "Theory of state and law; history of political and legal studies "/ YV Baydin. - Kharkiv, 2012. – 20 P.
3. Brierly J.L. The Covenant and the Charter / J.L. Brierly // British Yearbook of International Law. - 1946 - 23 - Pp. 83-94.
4. Brugierre P.F. Droit de veto: la regle de l'unanimite des membres permanents au Conseil de Securite / P.F. Brugierre. Preface by G. Scelle. - Paris: A. Pedone, 1952. - - xvi, 267 P.
5. Combacau J. Droit international public / J. Combacau, S. Sur. - Paris: Montchrestien, 1995 - XXV, 830 P.
6. Constitutive Act of the African Union of November 7, 2000 // The African Union Commission. - [Electronic source]. Cit. 05.03.2013. Retrieved from - http://www.au.int/en/sites/default/files/Constitutive_Act_en_0.htm.
7. Fassbender B. UN Security Council Reform and the Right of Veto: A Constitutional Perspective / B. Fassbender. - The Hague: Kluwer Law International, 1998 - xii, 421 P.
8. Gaubatz K.-T. Democratic States and the Sovereign Equality Norm / K.-T. Gaubatz // [Electronic source]. Cit. 03/25/2013. Retrieved from - http://kktg.net/kurt/publications/pubs/Sovereign%20Equality.pdf
9. Grabar V.E. Beginning equality of states in modern International Law / V.E. Grabar // Proceedings of the Ministry of Foreign Affairs. - 1912. - №1. - Pp. 195-238.
10. The resolution of UN General Assembly №1995 (XVIII) from 12.17.1963. / The resolution of UN General Assembly. - [Electronic resource]. Op. 09.05.2012. Access - http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/1991(XVIII)&Lang=R
11. International legal regulation of relations with the EU Member States (modification issues of state sovereignty in terms of European integration): Abstract. Thesis. Candidate. Legal. Sciences: 12.00.11 / Y.S. Hobbi; Institute of Legislation of the Verkhovna Rada of Ukraine. - K., 2011. – 20 P.

12. International Law Course: Basic Principles of International Law. In seven volumes. T. 2 / Ihnatenko G.V. Kartashkin V.A., Klimenko B.N., Lukashuk II.; Ed .: Lukashuk II - M .: Science, 1989. – 239 P.

13. K. Manukyan The principleof equality of states in International Law / K.A. Manukyan; Ed.: Yesayan A.A. - Yerevan: Publishing House of Yerevan. University Press, 1975. – 201 P.

14. Kelsen H. The Principle of Sovereign Equality of States as a Basis for International Organization / H. Kelsen // Yale Law Journal. - 1944. - Issue 2, Vol. 53. - Pp. 207-209.

15. M. Herdehen international law. Per. from German. / M. Herdehen. - K. "KIS", 2011. - 516 P.

16. Meltzer J. State sovereignhty and the legitimacy of WTO / J. Meltzer // The University of Pennsylvania Journal of International Law. – 2005. – Vol. 26, Iss. 4. – P. 693-733.

17. Organisation of African Unity Charter of May 1963 // The African Union Commission. – [Electronic source]. Cit. 05.03.2013. Retrieved from - http://www.au.int/en/sites/default/files/OAU_Charter_1963.pdf.

18. Steinberg R.H. Who is sovereign? / R.H. Steinberg // Stanford Journal of International Law. – 2004. – Vol. 40. – P. 333.

19. The ASEAN Charter of 8 August 1967// The Organization of American States. – [Electronic source]. Cit. 05.03.2013. Retrieved from - http://www.asean.org/images/2012/publications/ASEAN-Charter.pdf

20. The Charter of the League of Nations / Collection of existing treaties, agreements and conventions concluded with foreign states: Existing treaties, agreements and conventions entered into force after 1 January 1933. Vol. 8 / Comp. Brown and Ed.: VO, AV Sabanin - M.: Publishing House. People's Commissariat, 1935. - P. 35-49.

21. The Charter of the United Nations: A Commentar 2d edition / Edt. By Bruno Simma, H. Mosler, A. Paulus, E. Chaitidou. - Oxford: Oxford University Press, 2002. – lxiv, 1405 P.

22. The Covenant of the League of Nations (Including Amendments adopted to December, 1924) // [Electronic source]. Cit. 26.03.2013. Retrieved from - http://avalon.law.yale.edu/ 20th_century/leagcov.asp.

23. The European Convention on Human Rights from 04.11.1950. / Council of Europe. - Official Journal of Ukraine of 04.16.1998 - 1998., Number 13, / № 32 of 23.08.2006, p. 270.

24. The European Union: politics, economics, law / N. Antoniuk, MN Mykievych, N. Romanyuk, N. Pereyma; Lviv., nat. University of Iv. Frank. - Lviv, 2005. - 532 P.

25. Warbrick C. The principle of sovereign equality / C. Warbrick // The United Nations and the Principles of International Law: Essays in memory of Michael Akehurst / Lowe W., Warbrick C. (edt.). – London-New York : Routledge, 1994. – Pp. 204-229.

Стаття надійшла до редколегії 18 вересня 2015 року.
Рекомендована до опублікування у "Віснику" членом редколегії С.Г. Меленком.

Н. Кирилюк

Практичне застосування принципу суверенної рівності держав міжнародними організаціями

Анотація

Практика міжнародних організацій є важливим елементом системи сучасного міжнародного права. В їх рішеннях часто знаходять своє підтвердження, закріплення та застосування ті норми та принципи, які мають фундаментальне значення для світового співтовариства в наш час. Саме тому, в рамках дослідження принципу суверенної рівності держав особливо важливо розглянути питання реалізації принципу суверенної рівності держав в рамках практичної діяльності міжнародних організацій.

Ключові слова: міжнародні організації, принцип, суверенітет, рівність, держави-члени.

Н. Кирилюк

Практическое применение принципа суверенного равенства государств международными организациями

Аннотация

Практика международных организаций является важным элементом системы современного международного права. В их решениях часто находят свое подтверждение, закрепления и применения те нормы и принципы, которые имеют фундаментальное значение для мирового сообщества в наше время. Именно поэтому, в рамках исследования принципа суверенного равенства государств особенно важно рассмотреть вопросы реализации принципа суверенного равенства государств в рамках деятельности международных организаций.

Ключевые слова: международные организации, принцип, суверенитет, равенство, государства-члены.