

What is A State?

READING ITEM 2

The State as an Actor of International Cooperation

This reading item is based on the essential content of Chapter 3 [*The State as an Actor of International Cooperation. Globalization and the Changed Role of State in International Relations* written by Zsuzsanna Fejes] of the book *Interstate Relations* (Szeged, 2018), edited by Anikó Szalai, Zsuzsanna Fejes and Márton Sulyok. (Reading Item edited by Márton Sulyok)

INTRODUCTION AND LEARNING OUTCOMES

Politics, political sciences, constitutional law, international law and international relations' theory increasingly focus nowadays on the analysis of the notion of state and, in this context, of statehood. In this, the question of what role and what status does the state have in international relations and in the increasingly globalizing world order is of outstanding importance.

This chapter examines how states become actors of international cooperation, how can the transforming place and role of states be interpreted in the international and global world order and, taking these into account, what characterizes the changed operating mechanisms of nation-states.

Learning outcomes

- 1. Basic understanding of the public law notion of state**
- 2. Knowledge of the core elements of state sovereignty**
- 3. Knowledge of the concept of state as an actor of international relations**

Keywords: *state, sovereignty, authority, territory, nationalism, free movement, Schengen, border control*

Necessary time: 2-3 hours

Recommended Reading

The Oxford Handbook of Comparative Constitutional Law: edited by Michell Rosenfeld - András Sajó, 2012, Oxford University Press, Chapter 9, Constitution, Mark Tushnet, 217-232.

The Oxford Handbook of Comparative Constitutional Law: edited by Michell Rosenfeld - András Sajó, 2012, Oxford University Press, Chapter 12, Conceptions of the State Olivier Beaud 269-282.

1.2. Criteria of the Public Law Notion of a State

The definition of states as actors of international cooperation is crucial, because states can still be considered the most essential foundation stones of the international legal and world order. At the same time, states are extremely complex phenomena subjected to continuous changes throughout history, whose legitimacy, objectives and functions as well as their social cohesive effects changes from age to age. Therefore, many approaches of the phenomenon of the state are known, without any universally acceptable definition used across all disciplines, namely theory of the state, legal sciences, historical sciences, sociology.

The essentials of a modern state and statehood were defined by *Georg Jellinek*, Austrian scholar of state theory, law professor (1851-1911), and an outstanding representative of German 19th-20th century political sciences, within the framework of his concept of the **general theory of the state** (*Allgemeine Staatslehre*). According to this concept “*every long-lasting alliance requires an order, which molds and realizes its will, based on which its boundaries are drawn, and which regulates its members’ situation and their relations with this order.*”¹ Jellinek traces the conditions of statehood back to three general and necessary elements, creating the **normative notion of state**, the ‘three-element doctrine’ (*Drei-Elemente-Lehre*) of the public law definition of statehood. These are:²

The Public Law Definition of Statehood

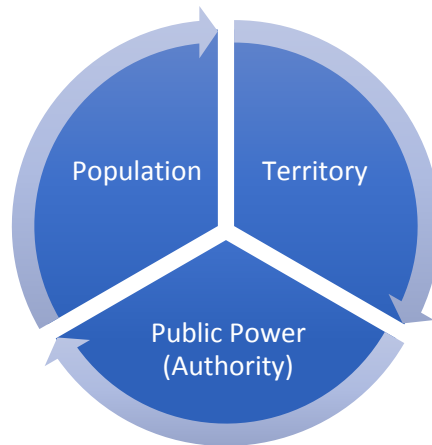
- ***national (state) territory;***
- ***constituent population;***
- ***existence of an original supreme authority exercised over the given territory, and recognized by others.***³

The “Sovereignty Triad”

¹ JELLINEK 2003, 3.

² TAKÁCS 2011, 74.

³ EGEDY 2017, 68.; MINGST 2011, 113.; TAKÁCS 2012, 16.



1.2.1. State Territory

National (state) territory is the conceptual element of the state which encapsulates the three-dimensional space – mainland within borders defined and recognized in international treaties, the water area within the borders, the column of air above them and the conical part extending towards the center of the Earth beneath the surface – **where the state's authority (territorial sovereignty) prevails.**⁴ This means that the national territory, is not the property of the state in civil law sense, but its empire (*imperium*), i.e. the state exercises territorial authority over the population of its territory.⁵ The territorial sovereignty of the state means the total and exclusive authority which prevails over everything and everybody within the national territory, excluding all other powers, under which the state is entitled to create and enforce the effective legal order.⁶

However, these principles do not prevail in their entirety and in an unrestricted fashion. There are international limits independent from the state's will (international neighboring rights, international easements, international public interest), but also voluntary commitments of states (voluntary decision, acts of accession to other alliances, bi- or multilateral treaties of states) might fall into this category, as well as the establishment of diplomatic missions, and other principles of international customary law. Exceptionally, however, the sharing or joint exercise of territorial sovereignty may also occur (in cases of condominium, common property, or in areas under international administration).⁷

National territory is not exclusively the spatial dimension of state power, but it is also **the subject of state power** as in states can freely dispose of their own territory, determine the internal division of national territory by law (an internal state affair), determines the rules of residence, entry and exit in and from its territory, decide on the system of protection and administration of state borders.⁸ The majority of the territorial bodies of the state organization and public administration operating in territorial units of the state (of various shape and size) is a general practice, based on which we can talk about unitary, regional,

⁴ NAGY 1999, 136., 139.; SCHANDA 2015, 105-106.

⁵ TAKÁCS 2012, 59.

⁶ Ibid. 62.

⁷ H. SZILÁGYI – PAKSY – TAKÁCS 2006, 68-70.; 72-74.; NAGY 1999, 156-162.; TAKÁCS 2012, 63-65.

⁸ SCHANDA 2015, 108.

decentralized, and federal states. Pursuant to legal regulation, the different territorial units receive a public-law status as public-law entities subject to public power. As such they are defined as subjects of legal regulation and are protected by law.⁹

The national territory is surrounded by **borders** that separate the national territories of states and national territories from areas not subject to state sovereignty. The border-line can be defined geographically as a two-dimensional area surrounding the national territory and internally (downwards) it extends to the center of the Earth. In the airspace, however, it extends up to a certain altitude, between aerospace and outer space. While the altitude associated with the beginning of aerospace is unclear, it is crucial from the aspect of the exercise of territorial sovereignty. In international relations, the definition of the so-called Kármán-line (named after Hungarian-born physicist, Tódor Kármán) is mostly accepted meaning an altitude where airplanes moved by the air's force of buoyancy are still able to fly.¹⁰ The concrete determination of borders always takes place by an international legal act, through the agreement of the states involved. The distinction between the terms 'frontier' and 'boundary' might be of interest. While frontiers as civilization borders basically play a role in division, i.e. delimiting a homogenous cultural civilization unit or realm from another culture (such as the *limes* in the Roman Empire); boundaries indicate border-lines that separate but at the same time connect, i.e., create a unified world system, which became widespread and dominant in interstate relations with the formation of modern states.¹¹

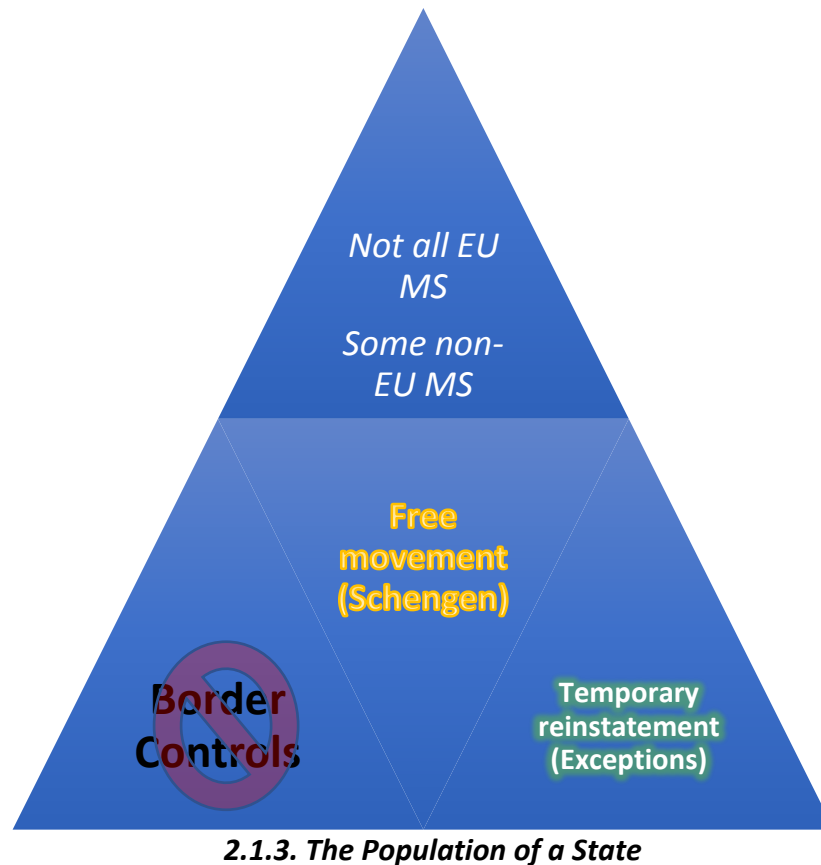
Sidebar: The Schengen Borders

The **Schengen Agreement** constitutes the foundation of the Schengen area and cooperation. It was signed on 14 June 1985, **originally by France, Germany, Belgium, Luxembourg and the Netherlands** with the aim of ***abolishing border controls*** at internal borders, thus achieving the free movement of people. Hungary joined the Schengen Agreement on 21 December 2007. However, **not all EU MS** are part of this area, while it has such members who are **not EU MS (Iceland, Liechtenstein, Norway and Switzerland)**. *Schengen rules allow states, in justified cases and for a limited time only, to temporarily reinstate border controls upon prior notification to the European Commission.*

⁹ PÁLNÉ KOVÁCS 2008, 60-85.

¹⁰ NAGY 1999, 151-152., 206-207.

¹¹ TAKÁCS 2012, 76.; See also: RECHNITZER 1999



The second most important criterion of the modern state concept is **population**. Population encompasses the **subjects of state power**, the citizens. Their relationship with the state understood as personal ties and the extent of the state's personal sovereignty is based on citizenship.¹² As a consequence of these mutual rights and obligations, a legally regulated, special citizenship is created between the state and the individual. The population is tied to the state through **citizenship**, which – as a legal category – comprises those natural persons who have the right to participate in political decision-making based on the principle of popular sovereignty.¹³

The **personal sovereignty of state**, in its entirety, only prevails within its own territory, as on foreign soil it is limited by the territorial sovereignty of the other state. Nonetheless, it extends to aliens and stateless persons staying within the state's territory. However, there are exceptions to the totality and exclusivity of the state's personal sovereignty, because certain individuals or groups, under international treaties, can be excluded from the personal sovereignty of state (e.g. in the case of diplomatic immunity and of foreign allied soldiers).¹⁴

The concept of **nation**, which we also know to have several meanings based on different approaches, is closely related to the notions of state and of population. Historically, the concepts of state and of nation have not coincided for a long time, since states have been established without national frames, and while states have an unquestionable role in the

¹² PETRÉTEI 2009, 2011. 249-251.

¹³ Ibid. 252.

¹⁴ SCHANDA 2015, 115., TAKÁCS 2012, 90-91.

creation of nations, nations were not always shaped neither did they survive within the frameworks of statehood.¹⁵

<i>The Coincidence of the Phenomena of State and Nation based on the Idea of the Nation-state (based on based on Mingst 2011, 114-115.)</i>	
<i>Relationship of state and nation</i>	<i>Example</i>
<i>State and the nation overlap</i>	Denmark, Italy
<i>Nationalities that live within the borders of several states</i>	Kurds in Iraq, Iran, Turkey, Syria
<i>States that have more nationalities within their borders</i>	India, Russia, Republic of South Africa, Canada
<i>Nationalities that do not have their own state</i>	Basks, Catalans in Spain, Sami people in Finland, French in Canada
<i>More nationalities vindicate the same territory</i>	opposition between Israeli Jews and Palestinian Arabs
<i>A nationality is divided between two states (due to specific historical conditions) where both constitute a majority</i>	North-Korea and South-Korea, or formerly FRG and GDR

With respect to the **emergence of nations**, Gergely Egedy distinguishes between two theories: ‘perennial’ and ‘modern’ theories.¹⁶ According to the perennial approach, nations existed from the beginning, in Antiquity and in the Middle Ages as well, while the modernist perception links the emergence of nations to the appearance of modernization, urbanization and industrialization, connected to the process when nations took over the legitimizing role of religion. With this, during the 19th century, the notion of nation was intertwined with the notion of modern civil states and with national sovereignty, under which the public authority embodied by the will of the nation will result in state sovereignty.

In the process of the emergence of nations, two fundamentally different interpretations of the concept have formulated in the literature: the notions of the so-called civic (political) nation and of the so-called ethnic (cultural) nation.¹⁷ The concept of **civic nation** has become determinative in Western Europe, where belonging to a common state is the key of the nation-concept, according to which the nation is the equivalent of constituent population. This means everyone who are the citizens of a given state, live within the same territory, under the same law, regardless of which national, ethnic community they belong to.¹⁸ Since constituent population, together with territory and the power organization of the state are dominant elements of the modern state concept, it includes – as a legal category – the totality of citizens of the given state. In contrast, the concept of **ethnic nation** in a narrower sense encompasses that part of the citizens of the nation-state who are members of a national-ethnic group of common origins, culture, and language. However, the notion is

¹⁵ EGRESI – PONGRÁCZ – SZIGETI – TAKÁCS 2016, 178.

¹⁶ EGEDY 2017, 73.

¹⁷ SMITH 1995, 9.; PÁKOZDI - SÜLYÖK 2011, 118-130.

¹⁸ EGEDY 2017, 73.

broader than the civic nation in the sense that it also incorporates those into the nation who live in other countries, are the citizens of other states, but based on their language, culture, and origins they belong to the nation.¹⁹

The coincidence of the phenomena of state and nation, the nation-state itself, is based on the 'expectation' of the nation to govern itself within the state framework established by the nation, which essentially creates the basis of national self-determination. In other words, this means the right of peoples with a common national identity to decide under what conditions and how they want to live.²⁰ Since the emergence of the modern international system is closely intertwined with the birth of nations, thus the principle of national self-determination appeared as the most fundamental legitimacy doctrine of the international system.²¹ The emergence of **nationalism** – a complex concept itself – can be linked to this process. Nationalism can refer to the general process of nation-building, to the national sentiment or to the sense of national belonging; to the acquisition or preservation of national status, or in a broader sense to the national ideology that emphasizes national identity.²² Ernst Gellner interprets nationalism as a political principle in which the political and the national dimensions overlap.²³

Nationalism as a Political Doctrine

The ideology of nationalism can be divided into 'basic' and 'secondary' components. The basic doctrine includes the following principles (SMITH 1995, 10):

- the world is constituted by nations (each of specific character)
- the source of all political power is the nation
- loyalty to the nation is above all other loyalties
- real freedom can only be achieved through identification with a nation
- the peace and freedom of the world is based on the freedom and security of all nations
- nations can only be "free" in their own sovereign states

1.3. Sovereignty and State Authority

¹⁹ PETRÉTEI 2009, 2011, 186-187. For more details on how states deal with national-ethnic groups of common origins as part of their nation concepts and kin-state policies, see: SULYOK 2013, 231-239.

²⁰ MINGST 2011, 115.

²¹ EGEDY 2017, 74-75.

²² SMITH 1995, 9.

²³ GELLNER 2009 Cited by EGEDY 2017, 76.

One of the most important elements of the public law concept of the state, the “key word” of the exercise of state power is the sovereignty. Sovereignty means a truly and effectively exclusively exercised state authority over a given territory and population which is recognized by others. Sovereignty is a necessary feature of states (alongside territory and population), that is, only such entities can be considered states which are sovereign.²⁴ Accordingly, state power can be labelled totally sovereign if the state possesses stronger, determinative and decisive, non-derivative and original power over its territory and its population and if this force of state power is expressed in the monopoly of legitimate physical violence and in the primacy of legislation.²⁵

In public law literature, sovereignty is discussed in two ways. **Internal sovereignty** relates to intrastate relations and determines who is the sovereign in the state decision-making system, who has supreme authority, who is the ultimate holder of power. In other words, internal sovereignty means the supreme power, the ultimate holder of power in the state decision-making mechanism, and the rules (constitution, laws) adopted thereby regarding the population of the state.²⁶ In international relations’ theory, the concept of the sovereign state is crucial as sovereignty is the most important criterion of modern statehood. Regardless of who the bearer of sovereignty is, the state is considered sovereign in interstate relations. We speak about **external sovereignty** when the state has its own statehood, independence, it is not subordinated to other states or other actors of interstate relations, so its decisions are made without external influence or control. Therefore, the international recognition of new state polities is especially significant for this reason, namely that from the moment of recognition, the country in question gains independence in international life, thus ‘taking possession’ of the external aspect of sovereignty. The question is, of course, whether the new state commands the necessary ability to exercise this authority within its own territory.

*There is no universally binding international legal document clarifying the concept of the state. Even the UN’s universal documents are silent on the attributes of statehood, while one of the conditions for UN-membership is exactly that: the existence of statehood.²⁷ Therefore, in connection with the definition of the notion of the state the 1933 **Montevideo Convention**, under which: “The state as a person of international law should possess the following qualifications: (a) permanent population, (b) a defined territory, (c) government, and (d) capacity to enter into relations with the other states”.²⁸*

1.3.1. The Nature and Sources of State Power

Karen Mingst characterizes the power of states as something with which the state seeks not only to influence others, but is also able to control the consequences of its activities and to

²⁴ TÓTH 2006, 114.

²⁵ SZILÁGYI 2009, 74.

²⁶ TÓTH 2006, 114.

²⁷ NAGY 1999, 98.

²⁸ Article 1, Montevideo Convention, Seventh International Conference of American States. 26 December 1933.

achieve and realize results that would not have occurred on their own. Consequently, power is such a multi-dimensional factor, which is determined – as to the consequences of exercising it – by the **power potential** of the affected interstate actors.

What are the components of a state's power potential?

The extent of state power is primarily illustrated by the ***natural, material and other (non-material) sources of power***. Natural resources of power include the *geographic extent* (size and location) of the given state, its *stock* of natural resources (minerals, crude oil, natural gas), and its population and its characteristics (size, level of education). However, natural resources of power can be converted into material and other (non-material) resources in exercising power. The most important element of material resources of power is *industrial development*, suitable to bridge geographic barriers, but it can also affect the rise in the standard of living of the population, technological development and equipment. The elements of non-material resources of power are *national image*, *social cohesion* (the public support of power) and the *leaders* themselves (the quality of government).²⁹

1.3.2. Exercise of Power – State Functions

*The essence of power, however, also implies not only being possessed by each state and other international actors, but also being exercised, i.e. different techniques are used to transform the power potential described above into real power. These techniques are: **diplomacy, economic pressure, and military power (political instruments)**.*³⁰

The exercise of state power depends significantly on the internal social conditions of the state and on the constantly changing external international environment surrounding it. According to most approaches in relevant literature, the exercise of state power is realized through internal and external functions. Accordingly, the state shall ensure internal self-preservation and societal development as well as its external defense and its balanced relationship with other states.³¹

*The **external function of states** is two-fold: it includes both defending the state against external attacks and the management of international cooperation, within which the state takes care of cooperation with other states and international organizations guided by political and economic considerations.*³²

²⁹ MINGST 2011, 121-126.

³⁰ EGEDY 2017, 107-147.; MINGST 2011, 126.; FLEINER-GERSTER 2003. 447.

³¹ TORMA 2012. 35.

³² Ibid. 35.

Defense tasks against external attacks were later transformed, in parallel to the emergence of modern nation-states, and even the aims of **foreign policy** itself have changed. While formerly the most important foreign policy objective was to maintain independence, modern nation-states strive to create a state of peace and solidarity.³³ As part of foreign policy, the establishment of a peaceful international contact and an active contribution to the operation of institutions governed by international law were formulated as the most important objectives for which **diplomacy** provided the appropriate framework.³⁴ Diplomacy is one of the oldest and most important institutions of interstate relations, which includes all forms of communication between states.³⁵ The essence of traditional diplomacy is that states try to influence the behavior of other actors through negotiations and bargaining processes by either acting or by refraining from certain conduct.³⁶ As part of the transformation of foreign policy objectives, a close international cooperation formulated in the economic sector as well, and the external functions of a state were no longer limited to cooperation with international organizations, and within that to the representation of state sovereignty and self-determination, but also to facilitate the establishment of fairer international relations, to develop a spirit of solidarity, which is a token of the international order.³⁷

Questions for Self-Check
<i>1. Define the concept of the state as the most important actor in international relations.</i>
<i>2. What does the Montevideo Convention say about statehood?</i>
<i>3. What do we mean by personal sovereignty?</i>
<i>4. How does Anthony D. Smith determine the doctrine of nationalism?</i>
<i>5. How can the concept of "external sovereignty" be interpreted?</i>
<i>6. How can a state's (potential and actual) power be measured?</i>

³³ FLEINER-GERSTER 2003, 447.

³⁴ H. SZILÁGYI 2006, 98.

³⁵ EGEDY 2017, 108.

³⁶ MINGST 2011, 126.

³⁷ FLEINER-GERSTER 2003, 449.

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