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Principle of the State's Sovereignty and the Phenomenon of Humanitarian Intervention Under Current International Law

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Abstract

The development of the principles of International Law, since the formulation of United Nations Charter in 1945, has taken direction towards intervening in many areas which were considered under the exclusive jurisdiction of the individual States, where many areas of the State's internal jurisdiction became included the matters permitting International Bodies to intervene in the State's internal affairs. Individual states become subject to the application of the principles of International Law. The ratification of many International treaties and the emergence of many International Principles dictated by the interaction and development of International Relations led to creation of new concepts and expressions to keep up with the changes witnessed by Modern International organizations. This was clearly reflected in the principle of equality of sovereignty and the phenomenon of humanitarian Intervention. The Charter, in accordance with this international trend of thought, imposed new conditions allowing for surpassing the principle of supremacy. It is sufficient, in connection to this matter, to make reference to Chapter seven of the Charter, or to the Declarations of Human Rights, which entitles the International Community to intervene in the affairs of any State which violates the stipulations of these conventions in light of commitments made by States to this Charter. This, in turn, affected the principles of current International Law and the internal jurisdiction of the State in content and practice. The right to humanitarian intervention became very evident in recent years following the Cold War. It is established that the United Nations Organization reflects a temporary universal opinion and the first job of which is represented in maintaining international Security and peace, as stipulated in Article One of its Charter, that the respect of human rights and basic liberties and the adherence to the principles of International Law is a basic condition to maintain International Security and peace, with respect to the strong relationship between them. In order to realize the objectives of the United Nations, it was inevitable for the States to work on organizing cases of international security and peace through surrounding their activities with a group of conditions and provisions, like abiding by principles of International Law and the commitment to international standards concerning human rights and one's humanity. States which show no adherence to international legal standards, make surpassing the principle of sovereignty legally and morally justified in order to emphasize International Legitimacy, especially if that implies grave violations of Human Rights and International Commitments. For that, this study researches the concept of National Sovereignty included in Article VII paragraph II of the United Nations Charter and to what extent is it in harmony with principles of current international Law.

Key words: National sovereignty; Humanitarian intervention; International jurisdiction

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INTRODUCTION

The Principle of States' Sovereignty in the General International Law is considered one of the fundamental principles of the International Law. If the concept of sovereignty in the ancient times was clear to, and understood by, Greek and Roman philosophers, it's

nowadays considered among the principles that are vague in light of the development of many principles of the International law, where many rights which were in the past under the ultimate jurisdiction of individual states were made international (Bernhardt, 1989, pp. 379, 399).

The development of many principles of International Law and the globalization of International protection of Human Rights had a clear effect on the concept of National Sovereignty. On the one hand, it steadily removed them from past isolation, where it became inevitable for these states to faces difficult challenges; First, the fact that International circumstances became more compelling for small and medium-size countries to join an International organization which shall foster their rights and preserve their sovereignty; Second, these circumstances which accompanied contemporary International organization made it both obligatory and reasonable for these states to compromise a part of their sovereignty in order to achieve International peace and security (Ghunaimi, 1997, pp. 29-30).

The highest level of Sovereignty is at the State's regime, due to the existence of rights and obligations, which lay the foundation of its political entity and legal life. This represents its sovereignty over its people and land and the way it is internally managed. Shaking traditional principles of International Law, however, which called for absolute sovereignty of individual states since the end of World War II, due to the difficulty in coping with new developments which emerged to the World Order, imposed some flexibility on some ultimate principles which guide and organize the International Community, like the flexibility in the State's right of sovereignty and independence, in order to cope with the phenomenon of humanitarian intervention. The disorders, the many national and International racial and sectarian conflicts, the development of the individual's status in the International Law and making the human rights international have caused the retreat of the principle of State's sovereignty before principles of International Law and the shift of many internal areas of the State's jurisdiction to the realm of International organization, especially after the ratification of many regional and International treaties of human rights. The establishment of the United Nations Organization played an important role in limiting the states' sovereignty in light of limitations drawn in the U.N. Charter; limitations were imposed on these states through commitments made by member States of the United Nations Organization according to articles on order to achieve its objectives. These limitations contributed in making the Charter as a supreme constitutional principle of surpassing and transcending the constitutions of member states.[1] It is established that United Nations Organization reflects a contemporary universal opinion, where the first job of which is to maintain global peace and security, due to tight relationship between them (Muhammad Yousef & Muhammad, 2008, pp. 49-50). In order to achieve the objectives of the United Nations Organization, it was necessary for member states to work on organizing the issues of International peace and security through surrounding its activities with a group of conditions and provisions, like the adherence to principles of International Law and International standards of Human rights (Reisman, 1990, pp. 866-876). States' non-adherence to principles of International Law makes the violation of the principle of sovereignty justifiable legally and ethically in order to confirm International Legitimacy, especially if that implies grievous violations of human rights and International commitments (Hindi, 1984, pp. 100-119). Accordingly, it became apparent that it is necessary to resort to International guarantees as a complement, and not a replacement, for internal measures, in order not to underestimate them; Internal and International protection cooperate and support each other in order to provide International peace and security (Muhammad Yousef & Muhammad, 2008, pp. 5-6). The charter, in conformity with this International trend, has imposed new circumstances allowing for surpassing the principle of sovereignty. Concerning this, it is sufficient to make reference to Article Seven of the Charter which was confirmed by the international Court in its Advisory opinion issued in 1996 where it concluded that it is permissible to resort to force under the ruling of the Human Rights Charter, an example of which is Article 51 which guaranteed the natural right for individuals and groups to legitimately defend themselves.[2]

The ratification of many International treaties and the emergence of many International principles dictated by the interaction and development of International relations have led to the formulation of new concepts and expressions to keep pace with new conditions of modern International organization. This was clearly reflected in the phenomenon of humanitarian intervention and the principle of equal sovereignty, where the right of intervention became a clear aspect of the years following the Cold War, where the invasion of Panama in 1989 was a starter for a new trend in International policy, in addition to what happened in the north of Iraq after the 1991 war, in Somalia, Bosnia and Hercegovina in 1995, in Kosovo in 1999 and Macedonia in 2001 (Isam, 2004, p. 30), in Libya in 2011, and Syria in 2012.

The principle "For Peace", declared by United Nations Secretary General Mr. Boutros Ghali, which was approved in the Security Council meeting on 31 January

[1] See Article (103) of the Articles of Association of the Intervational Court of Justice and Chapters (1) and (2) of the United Nations Charter.
[2] ICJ,Advisory Opinion of Legality of the Threat or Use of Nuclear Weapons 1996, P22K. Retrieved on January 3, 2012 from http://www.icj-cij.org/docket/files/95/7646.pdf.

1992 had a clear role in International relations, which extended the jurisdiction of the United Nations in this area through the Invitation of member states, especially the big members, to play an important role to manifest this principle through, for example, the designation of military units to be ready to intervene under the banner of the United Nations, in which democracy and human rights were considered the only ideological foundation of International relations. The general assembly of the United Nations followed the same course established by the Security Council where it adopted the resolutions dedicating the principle of Humanitarian Intervention through nominating the post of the High Commissioner of Human Rights to receive complaints of individuals and groups about the violation of human rights committed by political regimes, which was opposed by China which considered it a flagrant intervention in the State's supremacy and its internal authority (Al Jasour, 2004, pp. 117-125; Al Rawi Gabir Ibrahim, 2010, pp. 89-94).

The development of the International organization have led to reducing the authority of the principle of State's Sovereignty, since the area in which the international community shall not intervene in internal affairs of the state is dependant in the first place on the extent of its adherence to International standards. Accordingly, the concept of State's Sovereignty is becoming smaller and smaller whenever the arm of the International organization is reaching out for it, where the globalization of idea of human rights and the recognition of the International Legal person of individuals by contemporary International law played an important role in limiting the supremacy or the National State through the International interest in human rights and considering democracy as an International merit for all nations and connected to the support of International peace and security (Ratib, 1998, pp. 17-22; Salahuldeen, 1984, pp. 36-45; Mekhlid, 2009, pp. 273-274).

The development of international organization of International relations has led to the crystallization of the idea of humanitarian intervention and has made changes to many principles upon which the United Nations Organization was based; it is no more possible for States and their internal political regimes to maintain, in their maltreatment of their subjects, that they are entitled to supremacy or internal jurisdiction (Alwan & Al Mousa, 2008, pp. 22-30). And The International Community pursued International justice and affirmed the conformity between the principle of sovereignty and principles of International Law to achieve the supremacy of "International Legitimacy" upon two foundations: the principles of International Law and the principles of Justice. This might be the basic action which has led the International Community to establish many special courts which later on paved the way to the establishment of the International Criminal Court in Rome in 1998, and seeking to apply the principles of International justice and International liability in order to confirm International legitimacy (Al Far, 1995, pp. 59-82; Hindawi, 1992, pp. 106-11; Dmour, 2004, p. 112). This was clearly reflected in the principle of humanitarian intervention and in the principle of equality of sovereignty through practical application of the United Nations Organization, regional organizations and the practice of individual states, where the right of intervention became one of the clear aspects in recent years. This research is conducted to study the concept of National Sovereignty and the phenomenon of humanitarian intervention under the principles of International Law.

THE CONCEPT OF SOVEREIGNTY IN INTERNATIONAL LAW

Sovereignty is one of the expressions that were known for ancient civilizations, the origin of which is a Latin word which means supreme authority (Al Huwaish, 2005, p. 217). Roman legal philosophers has known the concept of sovereignty, but it used the word freedom to indicate the concept of sovereignty which is used in contemporary International law. Some have identified it as the freedom from the authority of a foreign country, i.e. external free nations are those which are not subject to the will of any nation (Sultan, Ratib & Amir, 1984, p. 97; Muhammad Taha, 1972, pp. 65-66). On the International level, the concept of sovereignty means the capable resolve to refuse the intervention in the affairs of the state by any foreign entity; the state, in practicing its sovereignty, is not subject to any foreign authority of any nature whatsoever, including ethical values, without its consent and out of response to its national interests. With the changes resulting from the shift of sovereignty from the kings to the nations as the source of authorities, the sovereignty was practiced for the sale of the latter, which, in turn, shifted the concept of sovereignty from the negative side represented in the state's rejection to be subject to any foreign authority into the positive side represented in the state's management of its internal and external affairs according to its national interests; even if that would imply compliance with an international authority (Barkin & Cronin, 1994, pp. 107-130). In view of the fact that sovereignty is only a means to organize international relations, and it is not an acquired right to impose the individual will on others, especially that the experience of International relations proved that the state's independence was always contingent to International commitments and subordination with others, where we can make reference to the European experience in the area of human rights upon which European treaties rise above internal legislations and represent in fact a practical experience of losing some of the sovereignty as a result of International commitments in order to achieve justice for nations despite geographical boundaries.

The term sovereign state mans that political entity iv which the governing body has all internal and external aspects of authority, where its authority is paramount (Al Daqqaq, 1986, p. 75).

Since it is free in its actions and not subject to any higher internal or external authority. It practices authority over its lands, subjects and resources, it enjoys independence from any international entity be it a state or an international organization (Ney, 2008, p. 59). This trend was supported by Joseph Ney when he defined sovereignty as the legitimate domination within a certain region, and by necessity, sovereignty is the state's ultimate individual custody within the borders of its region as long as it is legitimate and free of autocracy (Ney, 2008, p. 59).Some found that the state's sovereignty, according to traditional International law, its supreme authority over its region and its inhabitants and its independence of any external authority that might influence it (Ne'mah, 1978, pp. 83-85). Sovereignty was considered one of the basic premises for the positive conventional law, due to its connection with International law and international organization which represents the basis for International relations. Sovereignty, according to (Potter) does not exclude abiding by the law as is, but would exclude abiding by the laws that are formulated by others, i.e. it would not accept to abide by the will of others unless they willingly choose to do so (Potter, 1984, p. 188-192), While others proposed that sovereignty of the state should not be approached as an abstract concept isolated from other principles of International law upon which the United Nations Organization was based; since the concept of sovereignty means first: respecting the decisions of the state within its jurisdiction, and second: acknowledging equality of all states within the scope of International relations (Lykashook, 1989, p. 40-43; Bleshenko, 1982, p. 118-120; Tonken, 1983, p. 46). This, in turn, emphasizes that a given state is free to practice its jurisdiction within its borders in a legitimate manner, provided that the actions of the state are in harmony with international commitments derived from the principles of International law, which reflects the state's internal sovereignty represented it its relations with individuals and the state's external sovereignty represented in its relations with other states an organizations and other legal persons of international law.

The word sovereignty is considered a synonym for independence and the difference between them is subtle. Sovereignty, on the one hand, is a legal idea because it is a quality for states and international law ascribe it to states after realizing certain elements like region, people, organized authority which is capable of controlling the order of things). Independence, on the other hand, is a fait accompli of a state capable of performing the basic activities that are required to maintain the essence of the state comprised of security, order, management and the organization of its affairs according to what it deems appropriate while approving a constitution reflecting the aspirations and orientations of its nation. The positive aspect of independence is represented in the government's freedom on taking its decisions. Accordingly, independence and sovereignty are derived from one thought, whereas independence in action is a natural result of sovereignty of the country and it is one aspect of sovereignty before foreign countries (Ibrhahim, 1997, p. 37-46). So the Sovereignty can be described as an internal or regional, where in this aspect the state has ultimate authority in its region, i.e. it has ultimate jurisdiction in its region. Since sovereignty is one and ultimate, others should respect it. In this aspect, we can say that sovereignty means independence, i.e. the state has the freedom to reinforce its existence and to improve itself materially and non-materially without being subject to the authority of another state and without foreign intervention in its affairs; by that it practices its sovereignty (Huwaish, 2005, pp. 219-275). And the External sovereignty is connected to internal sovereignty in a manner forming the aspects of the state's sovereignty. External sovereignty of the state is manifested in the state's practice of managing its relations with other countries out of its own free will without being subject to a foreign authority, where it trades diplomatic representation with other countries, participates in conferences, holds treaties and joins international or regional organizations based upon its free will which represents its sovereignty and other forms of practicing foreign international activities without the control of any other country (Abbas, 1996, p. 110).Accordingly, member states of the international community are equal in enjoying sovereignty and in equality before the international law in rights and duties resulting from that; while some states enjoy legal sovereignty as a result of recognition of a group of states where they can trade diplomatic representation and become members in international organizations, these countries are not considered sovereign in the political sense (Badawi, 1971, p. 60; Abdul Qadir, 1984, pp. 152-153).

No doubt that the development of International law since the formulation of the U.N. Charterin 1945 was directed towards intervening in a lot of areas which were previously considered under the ultimate jurisdiction of the state, where many of internal areas of jurisdiction of the state became among the questions allowing International bodies to intervene in the internal affairs of the states and to become subject to the application of principles of International law, due to the fact that interests of states became interconnected with the interests of the International community, where it became hard to admit that there is even one question that is ultimately under the jurisdiction without having anything to do with the International relations or members of International community, nor having any effect on International peace and security. This led some to claim that the concept of national sovereignty is on its way to disappear in the

wake of the expansion of principles of International law and the interconnection of International relations between members of the International community. This means that sovereignty is a limited legal idea derived from principles of International law, subject to it and affected by it; that the modern age state is a state of law abiding by International provisions derived from the International law and its commanding rules which represent the vision of the community of states and manifest International Legitimacy (Amir, 1995, p. 68-70; Husain, 1996, p. 39).

In light of the abovementioned, we can say that sovereignty is the state's right to practice and pursuit its will and to impose its authority on residents of a given region in order to organize their affairs and internal and external relations within the limits of legislations which organize the different aspects of life without any external intervention while it is subject, in the same time, to provisions of International law.

THE DEVELOPMENT AND RESTRICTION OF THE CONCEPT OF SOVEREIGNTY UNDER CONTEMPORARY INTERNATIONAL LAW

No doubt that the concept of sovereignty since the emergence of the state has been affected by many factors through stages of states' lives. The concept of sovereignty in its first image started to take shape according to political and social circumstances of states at that time. Legists of old identified the custody of the state within its region as an absolute individual custody, where the state has supreme and ultimate authority not subject to laws. It is the source of authority and law and has an ultimate authority over its subjects and land (Al Qadidi, 1984, p. 15), This reasoning occupied the forefront amongst the ideas held by the positivist school of thought founded by De Martiniz, the German school led by Yalnic, who called for the absolute concept of the state's sovereignty and that it surpasses the law; since the law is only a means to express the branches of government and their will and a product of the state's sovereignty (Sultan, Ratib, & Amir, 1984, p. 715). The idea of absolute sovereignty faced strong criticism by zealous followers of the French socialist school, like (Deji & Heorge Sell), who considered the idea of sovereignty as a conceptual idea which leads to a logical contradiction, not to mention its conflict with the law; the only sovereignty in the organized society is that of the law. Also, it is impossible to imagine the coexistence of two sovereignties in one society, because this would necessarily lead to a clash and a conflict between them. For that, it is inevitable to define the sovereignty of the other, which means undermining the sovereignty of one of them for the sake of the other one, i.e. the sovereignty of the law not the state, which breaches the very concept of sovereignty (Al Qadidi, 1984, p. 154; Al Daqqaq, 1986, p. 76). Relative sovereignty was adopted instead of absolute sovereignty; since the concept of sovereignty is flexible and affected by internal and external factors due to fluctuations in International relations according to the rise and changing of common interests, which makes the concept of sovereignty more flexible and more adaptive to changes which occurred in the international scene, where the idea of state witnessed political, economic and legal transformations which has transformed the state into a group of public facilities the goal of which is achieving the welfare and common good of citizens by subordination to monitoring and accountability through political and military leaders, and it is held accountable for its actions before the law. The transformation in the concept of sovereignty was a result of the change in the concept of the state (Ne'ma, 1978, p. 33). This sound idea of the state and its subordination to the law contradicts the idea of absolute sovereignty. National public authorities practice their jurisdiction according to the constitution of the state, the constitution's general principles and according to the goal behind the existence of the state itself. For that, the legist, Dejay sees that the standard of absolute sovereignty is wrong from the legal perspective for three reasons:

First: the state is not an objective in itself; it is rather a means to achieve an objective which is the welfare of citizens by achieving security, stability and dignified life. For that, we cannot say that the state has absolute power of disposal instead of the fact that it has general jurisdiction in its region and that it is not subject to any other authority. Second: the existence of more than one sovereign state under one legal system, which is the International law, is the result of accepting the traditional theory of sovereignty, which is impossible to accept in the field of International relations; the state has no absolute power of disposal in the field of International relations due to the fact that it is subject to the International law. Third: the theory of sovereignty does not agree with the new development of the contemporary International law, the efforts to subject the states to the authority of international organizations, and the establishment of a social security system and an economic security system.

No doubt that there is an apparent shift in the concepts of state and sovereignty as a result of the interactions and interconnections dictated by the International circumstances. Its is also difficult to agree that the state is a legal person different than the government and officials and totally independent of it. The only manifestation of the state is the government, and the government is a group of people who practice authority and who are held accountable for their actions in case they violate the law. Accordingly, sovereignty is accredited to the law not to the government (Al Shawi, p. 117). States have no existence of their own; they are virtual beings which rulers claim that they exist to protect themselves with their sovereignty from being held accountable for their actions according to the law and the enforcement of

its sovereignty, which led the international community to develop the social security system and hold tight to holding the military and political leaders accountable for their actions by establishing the International criminal court (Corten, 1999), for this reason, believes that the humanitarian intervention surpasses the traditional legal principles, since the International law- in a modern world based upon the ideals of democracy, human rights and the rule of law, which determine offering humanitarian aid to people at risk, undermining the principle of sovereignty- which is based upon the principle of sovereignty has reduced it and limited it to the law of human rights, which endows it with a legal status all over the world (Corten, 1999, p. 57). The changes to International relations on the International level in the last two decades of the last century had fundamental effects on the principles of International law and the aspects of the world order, where the old world order was reliant upon bipolarity represented in the United States of America the leader of the capitalist Western camp and the Soviet Union the leader of the communist camp. The area of the Third World, in the cold war era provided the fields for competition for these two poles. This competition, however, came to an end after the transformations witnessed by countries of Eastern Europe and the Soviet Union in the mid eighties, where the dismantling of the Soviet Union as a super power and the collapse of communist par had led many countries to adopt principles of political pluralism and forms of liberal democracy and free economy on the internal level, and they became open to the Western camp and active in the global economy on the external level (Ibrahim, 1999, p. 190). In addition to that, the end of the old order and the emergence of the new order have had global effects; many countries of the world have adopted democratic systems and human rights in accordance with principles of International law at the expense of internal systems in order to join the new global order and win its acceptance. The United States held more critical and central role (Al Majdoub, 1990, p. 117). Accordingly, the transformation of International relations from isolation to International solidarity has worked towards achieving unity of the world by effect of technological revolutions which reduced the geographical distances and weakened the boundaries between them. This has put a limit to the segmentation of the human race into different scattered nations and has unified it with the banner of human brotherhood which highlighted the idea of universal humanitarian interest and its unity which surpasses states' national interests. All these events which created a new world order have led to the development of some concepts related to the principles of International law and the adherence to the jurisdiction of some International organizations in order to keep up with political, economic and social changes in the International arena by abandoning the concept of states' ultimate sovereignty and following the policy of openness and transferring some of the authorities to International organizations through adherence to some legal principles implied in International treaties to insure International peace and security (Al Shawi, p. 117). Contemporary International law and International order have adopted the principle of the state's relative sovereignty, i.e. considering the concept of the state's sovereignty within the legitimate legal provisions based upon the sovereignty of principles of the International law which comprised the minimum of legal principles, where sovereign states shall tale part in laying International rules, and international rules do recognize the principle of sovereignty as one of the fundamental principles which it relies upon (Alwan A., p. 11). On this basis, Principles of International law left a free zone in where it is permissible for the state to move freely, which is known as (Margin of Estimation) based upon the principle of relative sovereignty, providing that the state is not entitled to compromise certain legal rules which represent the minimum extent of International legal rules. This represents the accord between the National measures and provisions which are located within the space of internal sovereignty and International provisions, on the one hand, and the International legal rules which represent the will of International community and International legitimacy on the other hand through the division of authorities and jurisdictions between states and International monitoring agencies and the assurance of fulfilling the requirements which resulted from International treaties. This would, in turn, achieve integration of internal systems and International treaties, and participate in resolving the contradiction between the universality of human rights and the relative cultural and ideological commitments of states.

Based upon this idea, the new system criticized the idea of sovereignty in its traditional concept since it opens the door before tyranny and International chaos, where it sees that the ones who call for the sovereignty of law and who defend it under the pretense that it represents (sovereignty of states), the states have no existence, they are rather virtual beings which have the support of rulers to protect themselves with its sovereignty according to the law and as an enforcement of its sovereignty. Sovereignty, therefore, is a legal trap improvised to protect criminals who are presidents and rulers of states, in order to find a way out from an impasse when they realized that sovereignty of law implies that every individual, including the rulers, must be subject to the law and must be held liable for all his actions. The international society, however, has improved and became capable of holding those politicians liable, undermining their argument that what they did were acts in the name of sovereignty (Al Shawi, pp. 13-15).This directive was emphasized by the previous Secretary General Mr.Kofi Annan in his speech before the General Assembly when he indicated that sovereignty would not comprise an immunity against the International law and International organizations when it hides legal violations and crimes

against humanity. He considered "Humanitarian intervention is a sensitive issue, fraught with political difficulty and not susceptible to easy answers. But surely no legal principle - not even sovereignty - can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community (Millennium Report of the Secretary-General of UN (54 sessions), 1999). States' adherence to the principles of International law does not imply the absence of, compromising or abandoning their sovereignties. These principles only limit the scope and the practice of sovereignty. The sovereign state is its own master in its actions, but it is not free to commit actions of all kinds, which might lead to any result imaginable, it also cannot practice its authority beyond the limits drawn by the International law. An independent state is not subject to the sovereignty of another state; it is rather subject to the International law, which is an honor that does not lower its status as a state of law, which observes its International commitments and pledges and respects human rights and basic liberties (Ibrahim, 1997, p. 45). Accordingly, National sovereignty of the state has to be understood within the legal provisions stipulated by principles of the International law and not in isolation from the interests of the International community. The U.N. Charter defined the legal scope in which sovereignty appears in the age of International order. The developments witnessed by the International community since the establishment of the United Nations influenced the concept of sovereignty. This, in turn, widened the gap between the concept of sovereignty as stipulated in the U.N. Charter and the International practice under the umbrella of International legitimacy (Thomson, 1995, pp. 213-233).This was later emphasized by the declaration of principles of international law in 1970, which stipulated: "Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among states and the fulfillment in good faith of the obligations assumed by states, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations".

Based upon the idea of correlation between the concept of sovereignty and other rights, some see that the right to sovereignty opposes the right of freedom entitled to the individual in the internal law. As the right to freedom is guaranteed to the individual within the limits of law, the right to sovereignty is guaranteed to the state within the limits of the law as well (Al Ghunaimi, 1971, p. 220). This means that the concept of relative sovereignty in the contemporary International law is a logical concept that is identical with the concept of relative freedom for individuals in the internal systems. As is the individual is bound in using his freedom by the rights of other individuals, the states are also bound in their actions by the rights of other states which it should not violate. The individual in the society cannot enjoy his freedom in the absence of a law which draws the line between his freedom and the freedom of others. It is impossible to imagine states enjoying their freedom in the international community in the absence of compelling international rules and provisions illustrating to each state the boundaries of its sovereignty and guaranteeing the accord between the multiple sovereignties which the society needs (Ibrhahim, 1977, p. 38; Muhammad Sami, 1974, p. 224). Sovereignty means cooperation which is based on equality. The principle of equality is a logical result of the concept of sovereignty; the states are equal before the duties and responsibilities stipulated by the International law. Depriving a member state of the international community of this principle creates a legal void which would lead to the collapse of the whole legal system. This principle was emphasized in the U.N. Charter where paragraph one of article two expressed the principle of equality in sovereignty (Al Daqqaq, 1986, p.78). Accordingly, defining sovereignty is not only derived from the ultimate will of the state; but it is also dictated by the necessities of coexistence between persons of the International community. The necessities of contemporary life compels the state, no matter what independent resources or powerful economies it might have, to practice its sovereignty within the scope of International law and within the limits of their legitimate international pledges and commitments (Ibrhahim, 1977, p. 39; Ali Sadiq, 1965, p. 119; Abdul Qadir, 1984, p. 155). So, the state, through accepting its individual will the international commitments which represent the principles of International law, expresses its sovereignty. Accordingly, state's abiding by the principles of International law, which is a representation of International legitimacy, is not a violation of its sovereignty .This provision imposed on sovereignty is aimed at achieving International stability, security and cooperation on the one hand, and achieving the International common good, on the other hand. The principle of sovereignty was used after Treaty of Westphalia as a tool to achieve the stability of the national state (Al Ghzawi, 2001, p. 155). However, the developments occurred to the International community have limited the capability of the principle of sovereignty as an ultimate concept as a result of experiments of states in order to achieve International peace and stability. Sovereignty as a legal concept cannot reflect the International condition accurately; since it lacks the ultimate meaning as opposed to the relative meaning of events. This led to legal concepts that are separate from, and independent of, the events. So, sovereignty has become under the management of International law in service of its interests. This does not mean, however, a total abandonment of sovereignty of states; it rather became a relative and less comprehensive concept (Al Omari, 1995, p. 155).

Realizing and empowering of the International common interest at the expense of the national good requires the states to abandon some of their sovereignty under the provisions of the International order and the approval of a supreme assembly which has its own will which is independent of the will of states and provided with certain authorities allowing for the protection of the International common good and the execution of it; that is the realization of an interest resulting from melting the internal interests completely. Accordingly, relations between states were characterized by traits that are totally different from what they were in the past. Like abandoning isolation, depending on reciprocal relations, cooperation and solidarity. This has created ethical provisions to organize International relations under the title (the theory of International Common Interest) (Ne'ma, 1978, p. 34-39). In case there is a contradiction between the International legislation and the internal (national) legislation, the internal legislation is abandoned; because any contradiction with the principle of International authority would lead to threatening the foundations of the International order (Ghallab, 1992, p. 55). Following these considerations, sovereignty became limited and no more absolute and that is what is observed in the International relations and what was expressed by the former Secretary General of the United Nations Mr. Kofi Annan when he said: "I recognize both that the principles of sovereignty and non-interference offer vital protection to small and weak states. But to the critics I would pose this question: if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how *should* we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that offend every precept of our common humanity? . So Armed intervention must always remain the option of last resort, but in the face of mass murder it is an option that cannot be" (Millennium Report of The Secretary-General of UN (54 sessions), 1999).

From the abovementioned, it becomes clear that absolute sovereignty violates the essence of the contemporary International law which is seeking to establish International peace and security and that relative sovereignty is the opposite side of equal sovereignty and removing the limits of sovereignty implies that states would rise above the law, while relativity of sovereignty implies that states would rise within the limits of the law. So, the concept of sovereignty remains a flexible concept where it becomes a representation of the sovereignty of the state and not the government, implying that people own sovereignty and is the source of authority and the essence of the state's existence. Here comes the democratic aspect of the concept of national sovereignty which does not justify violating the principles of International law which were originally put forth to provide security for the human being. Based on this, there is no more contradiction between the state's sovereignty and principles of International law, especially that the principle of sovereignty and principles of International law belong to one ethical principle; respecting the principles of International law is a precondition for the respect of sovereignty which is considered an extension for these principles. Accordingly, sovereignty represents the accord between national provisions and procedures which move about within the space of internal sovereignty and international provisions, on the one hand, and International legal principles which represent the will of the International community and International legitimacy, on the other hand, through the distribution of authorities and jurisdictions among member states and International monitoring bodies and through guaranteeing the fulfillment of commitments resulting from International treaties, which would achieve International peace and security and the respect for human rights, and would put the phenomenon of humanitarian intervention under the principles of International law and the Charter of the United Nations.

THE LEGAL DILEMMAS OF NATIONAL SOVEREIGNTY UNDER THE PHENOMENON OF HUMANITARIAN INTERVENTION

The development of the International community has led to more connections between states and to the generalization of Crises and problems. This, in turn, imposed the necessity to generalize provisions of conduct over all fields and, accordingly, to extend the jurisdiction of International Law. Consecutive developments witnessed by the International community represented in the contraction of the scope of states' sovereignty through the retreat of the concept of sovereignty from absolutism to relativism in light of provisions of the new world order and the amendment of principles of International law and contemporary world organization imposed the idea of "global village" which implied the domination of the one pole policy of members of the International community, which, in turn, reinforced superiority global nationalism over national sovereignty (Al Husaini, 1994, p. 117). the comprehensive transitional period witnessed by the International community made the (Intervention) a reasonable idea supported by International agreements, treaties and conventions under the pretences of defending human rights and maintaining International peace and security. This acceptance created a contradiction between the idea of intervention and the idea of states' sovereignty and independence and the principles which would deter their preservation, like the principle of Nonintervention. This contradiction developed a dilemma between the State's right to practice sovereignty in all its aspects and forms, including its preservation, the prevention of any foreign intervention in its internal and external affairs

and the International community's right to intervene in order to protect universal values of the human race and its humanity from any violation (Al Husaini, p. 120). The dilemma is not limited to this contradiction; it rather exceeds it to a deeper extent represented in more interpenetration between the limits of state's internal jurisdiction under the principle of sovereignty and internal legislations and the limits of the jurisdiction of International law, especially after the extension of the International jurisdiction and universality of human rights as an International merit at the expense of international jurisdiction or preserved scope.

The principle of Nonintervention is considered one of the fundamental principles of the International law in order to guarantee the International order and the independence and sovereignty of states; since it is reflecting the principles of sovereignty and equality. State's commitment to respect the rights of each other imposes upon them the duty to not intervene in the internal affairs of other states (Shukri, 1986, p. 141). Article two, paragraph seven, of the U.N. Charter guarantees the principle of nonintervention in the affairs of states that are at the core of internal authority of states. Intervention in the International law means forced military action of one country or more against other countries without their consent or approval and without the approval of the Security Council, in order to prevent or terminate wide violations of human rights. Accordingly, intervention of the International community or any regional or International organization in the affairs of a given state with the permission or authorization of the Security Council or the General Assembly in reference to Article Seven of the U.N. Charter is not considered a violation of the principle of state's sovereignty or an intervention in its internal affairs; it is rather considered an execution of the principles of the International law which represent the International Legitimacy (Fonteyne, 1973-1974, pp. 203-209). Accordingly, the borderline between intervention in the internal affairs and the violation of sovereignty, on the one hand, and the reaction of the International community to apply principles of the International law, on the other hand, is the legal basis to conduct of a group of states as a response to certain internal conditions. Nonintervention means preventing the states from intervening in the affairs of other states by abstention from actions exceeding their mere interest in mediation between two states or more aiming to influence the will and basic freedom of another country in its self determination without a certain legal entrustment (Basel, , 2001, p. 97). United Nations Encyclopedia considered Nonintervention as the basic principle for International peace and security. Dictionary of legal terms defined nonintervention as the action which might imply pressure using force or threat (Bernhardt, 1989, 379-399). Richard Little considered intervention as the response of external political unit to a motive for intervention when the internal conflict in a disintegrating state becomes critical, and that internal conflict is the reason behind the intervention of a third party to shift the course of conflict through external aid for the sake of the internal ally. This implies that disintegration is the most important element in motivating intervention because it reflects social and political incoherence in the state (Richard, 1984, p. 8). Oppenheim sees that intervention is a dictatorial action of a certain state in the affairs of another state for the purpose of maintaining or changing the status quo, the intervention could be based upon a certain right or else; but it is in either case is related to the independence and sovereignty of the state subject to intervention (Oppenheim, 1967, p. 305). Brownlie considers the intervention as the threat to use military force or using it by a given state or by a given fighting society for the purpose of protecting the human rights from actions implying serious violations (Brownile, 1974, p. 217). Some researchers consider humanitarian intervention as legitimate when a certain people is being exposed to genocide or torture at a large scale at the hands of its government; since this exceptional stance is not limited to natters affecting the subjects of this state only, but the effect of which may extend to matters imposing a threat to the lives and rights of other nationalities; since theories of natural law and common human nature generate general ethical duties among which is the humanitarian intervention which becomes obligatory and legitimate (Terry, 2002, pp. 57-70). That is the reason why this humanitarian intervention is not considered a violation of national sovereignty, especially that there is a group of International legal principles strong enough to face everyone whether the matter is related to subjects of the state or to any human being due to the universality of these principles and since they are being considered as (jus congas) where no state can oppose them. This matter does not give any state the right to intervene in the affairs of any other state out of its own free will, as long as there is an international resolution issued to justify the operation of intervention or to give any International or regional organization the right of humanitarian intervention and endows legitimacy to this operation ([62]).

This is what the International Court concluded in its advisory opinion issued in 1971 in the case of Legal Consequences for States of the Continued Presence of South Africa in Namibia, when it emphasized the compelling legal value of the articles of the Charter related to human rights, where it stipulated that "according to U.N. charter the previous custodian pledged to respect the human rights and the basic freedoms without discrimination in the lands of International status. Whereas The Custodian state, instead, sought exceptions and definitions depending primarily on race, color and ethnicity which is considered an outright violation of the purposes and principles of the United Nations"([63]).In view of that, the International court left no room for doubt that the U.N. Charter entrusts to the member states legal

responsibilities in the area of human rights. In reference to Article Two Paragraph Seven of the Charter, humanitarian intervention by the United Nations cannot be denied considering that human rights is one of the matters of internal jurisdiction for the states; since the charter itself viewed the matter of internal jurisdiction as a flexible matter which develops in light of internal and International circumstances. Since matters related to human rights have become nowadays a matter of interest to the International law taking many treaties into consideration to protect human rights. Humanitarian Intervention of the United Nations is excluded from the principle of nonintervention in the internal affairs and from the principle of Internal jurisdiction ([64]).Instead of the fact that the principles of International law gave to each state the freedom to execute its international commitments within the scope of its national sovereignty, the tight and direct connection between the respect of human rights and guaranteeing International peace and security shifted the question of human rights from the scope of internal jurisdiction to the scope of International jurisdiction ([65]).Especially after the time when the state abandoned its job in many areas which led to deterioration of the state's internal and external sovereignty and changed the nature of the relationship between the individual and the state, where the legitimacy and legality of governments and regimes became subject to discussion based on the extent of their commitment to International legal rules and principles, and the extent of the governed satisfaction of the governor([66]).

That is why (Michael Smith) has considered the humanitarian intervention as a legal justification in cases when International peace and security are threatened and the security of civilians is jeopardized and in dire grievous violation of human rights where genocide is committed. Accordingly, this action is not considered a violation of the principle of sovereignty because it represents a direct application of the principles of International law which are meant to provide International stability and security and to protect human rights ([67]).However, it is difficult to support this point of view because intervention by a state or a group of states without an authorization from the United Nations is considered a legal violation of the principle of sovereignty and represents an intervention in the internal affairs where it depends on the perspective of the intervening country. Thus, humanitarian intervention becomes justified if it is identical with the national interests, and it denounces it when it has no interest in it. This would pave the way for international precedents allowing for the use of force and destroy the International legal principles which excluded the use of force or threat to use force. The concept of "humanitarian intervention", accordingly, becomes a cover for an unjustified intervention in the internal affairs of sovereign states, especially when it is related to weak states. This is what the International court of justice emphasized in the case of Nicaragua Versus the United States of America when the court rejected the allegation of the United States that its intervention was in order to compel Nicaragua to execute its internal commitments which it made before the Organization of American States, which it didn't execute, in the area of Human Rights and the establishment of a democratic system, where it considered it as a solely internal question of the people of Nicaragua, and that the United States has no right to intervene because this violates the principle of banning the use of force in International relations, it contradicts the principle of respecting other sovereignty of other states and violates the principle of non-intervention ([68]).

The principle of nonintervention occupied an important status in the Charters of International and regional organizations, where Article Eight of the Charter of the Arab league stipulated that " a member state of the league shall respect the regimes of other member states and consider it as a right of these countries. It shall pledge not to initiate any action aiming to change those regimes" ([69]).Article Seven of the charter's American States stipulated that the sanctity of the unitary soil of a member state should not be trespassed, no country shall be subjected even tem polarity to a military occupation or to any form of oppressive action by another member state no matter what were the reasons or circumstances, except for a group intervention of States of the organization in an internal crisis or a civil war when the state of chaos affects peace and security at the regional or global level ([70]). U.N Charter banned intervention in the affairs of states, where Article Two Paragraph Seven stipulated that :(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). The General assembly of UN in many occasions emphasized the principle of non-intervention in the internal affairs, where it issued many resolutions emphasizing this principle, like the Declaration of the General Assembly number (2131) in 1965, which stipulates that it is impermissible to intervene in the internal affairs of states and emphasized the importance of protecting their independence and sovereignty. The first paragraph of the decoration stated: "No State has the right to intervene, directly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned"([71]). The principle of non-intervention becomes clear through the many resolutions issued by the United Nations which denounce armed or unarmed intervention or any other threat targeting the person of the state or its basic political, economic and cultural elements, like

Declaration number (2625) on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (24 October 1970) ([72]).And the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, issued in the resolution of the General Assembly number (36/103) on the 9 December 1981, where this declaration included details of the principle of nonintervention through the identification of the rights and independence of sovereign states, their freedom to choose their political and social systems, their right to possess information freely([73]). The second part of the duties of states was identified in the abstention from all kinds of intervene, which threaten their previous rights. Following the same trend, the General Assembly issued its resolution number (45/100) of 1990 concerning securing humanitarian assistance to victims of natural disasters and similar emergency situations([74]).When the same subject was discussed by the General Assembly, its resolution number (46/143) of 1991 was emphasizing the same result of the two previous resolutions and called for respecting sovereignty and soil and national unity of states offered the aid, which shall be supplied upon the approval of the concerned state and initially on the basis of a request submitted by that state ([75]).States have recognized the right to provide humanitarian aid and relief in times of armed conflict according to Geneva convention of 1949 which was then ratified by 168 states. The First common article of the four conventions compels the member states to respect and to force the respect for these conventions. Article three common of all four conventions stipulates: An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict. And also articles (9), (9), (9) and (10) of the four conventions stipulate that: "The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief". Accordingly, this implies that states have recognized the right of some general and private bodies and International organizations to initiate providing aid and relief . This means that a given state cannot refuse the right to initiate providing humanitarian aid and relief, if legally approved by states, on the basis that it represents an intervention in its internal affairs; since by virtue of recognizing the right of intervention the state has already expressed its sovereignty.

The International judiciary has already dealt with the question of intervention in the internal affairs where International Court of Justice has dealt with tow cases including an argument concerning the principle of nonintervention in the internal affairs of other states. The first of which is the Corfu Channel Case between Britain and Albania, in which the International Court of Justice issued its resolution on the ninth of April in 1949 that Britain's individual right of intervention, which was practiced without the consent of the International organization, is a prohibited and an illegitimate means, and that no matter what the extent of the shortcomings of the International law, this intervention, which only represents an aspect of power politics which were practiced grievously in the past, cannot occupy any status in the International Law ([76]).The second case is the intervention of the United States in Nicaragua to compel it to execute its internal commitments made before the Organization of American States in which the International Court of Justice didn't consider the allegations of the United States. It condemned the United States for providing militant activities with arms and for supporting semi-militant activities directed against Nicaragua; since, by doing so, it violated the principle of respecting sovereignty and non-intervention. Accordingly, the court ruled on June 27th of 1986 that interventions is prohibited when targeting matters concerning which a decision could be taken freely by virtue of the principle of state's sovereignty, like choosing one's political and economic systems ([77]).Accordingly, we find that International Court of Justice, from a universal aspect, has emphasized, on the one hand, the Principles of International Law concerning Human Rights concerning as was the case with South Africa, whereas, on the other hand, it emphasized that intervention in the internal affairs of a given state by any other state is not justified no matter what motives behind it could be, as long as the act of intervention is lacking the legal coverage which represents the International will as was the case with Corfu Channel. The U.N. International Law Committee considered the intervention of a given state in the internal affairs of another state through measures of economic or political pressures in order to influence its decisions or to get benefits of any kind from it an International crime, which was stipulated in Article (2/9) of its resolution about crimes peace and security of humanity.

Instead of the fact that the principle of non-intervention is considered a cornerstone in International relations, and since it is a basic condition to achieve International peace and the solid content of sovereignty by adopting the most profitable means to ensure the freedom of states, to prohibit the resort to forced measures against any regime and to secure the protection of small states against expansionist policies of greater states ([78]),International agreement, however permitted intervention in exceptional cases which has legal merit. The History of International relations indicates that cases

of intervention outnumber cases of nonintervention. Due to the reduction of the concept of absolute sovereignty into the relative sovereignty due to the fact that they were no more able to maintain International peace and security under the developments witnessed by the International conditions which led to a new world order aiming to spread principles of freedom and equality and to achieve comprehensive peace, International treaties approved the right of intervention undermining the state's sovereignty if that was in order to protect human rights inside that state, or to put a limit to gross violations of human rights and basic freedoms. ([79])

The principle of the integration and indivisibility of human rights connects human rights with a group of International principles that cannot be abandoned at the internal level, and subjects them to international provisions and conditions which cannot be discontinued or limited at any time or space. ([80])

Since human rights are included within "human considerations", and honoring them and abiding by them is not derived from International treaties, but rather from their nature as general principles of humanitarian International law, where the inclusion of them in International treaties is only a mere declaration and codification of them, contemporary International law, however, recognized the presence of a group of International legal principles which are considered (Jus Cogens) representing the minimum extet of human rights ([81]).Accordingly, it is not permissible in any case to violate them, since they are part of the International general order, where the violation of which could be considered a legal and ethical justification for humanitarian intervention, since they might threaten International peace and security. Based upon this idea, The International Parliamentary Conference emphasized the duty to intervene through international cooperation in its term held in Chili through its resolution issued on 13 October 1991. Paragraph 6 stipulated that the convention emphasizes that nonintervention in the affairs that are basically within the jurisdiction of states must not hinder the United Nations from taking measures to secure respecting basic principles of human rights ([82]).

Contemporary International law is going through a transitional period under the International variables, and based upon a modernized law we can interpret intervention as a "right" and, rather, as a "duty" ([83]).Accordingly, the undertaking of the International community, represented in the U. N. to face grievous violations through what has been known as (the right of intervention) is considered a new field of International law, which was identified according to standards laid by U.N. Charter in order to achieve security for the International community. If the principle of sovereignty implies that the connections between the state and its subjects are not included within International relations, the approval of the presence of International principles concerning the human being and human rights implies spontaneously that one area of absolute sovereignty of state has now become subject to International law's organization and protection. Since the relation between sovereignty and the principle of nonintervention is inevitable, in case that intervention was deemed legitimate, there would be no room left to discuss the principle of nonintervention. Relative sovereignty also has added some flexibility to the interpretation of the principle of nonintervention; it is no more a shield against intervention, but rather a sword for intervention under the new world order ([84]). We can say that under International developments the concept of sovereignty has retreated from its absolute formula to its relative formula, where it became a means rather than an end, to work for the achievement of internal and international common good and the supreme goal of which is the human being. Sovereignty is no more considered a justification to violate basic human rights, especially that states in their practices of aspects of their sovereignty are committed to international law and to commitments implied therein imposing upon them showing respect to human rights and dignity. Experiences of the United Nations and the development of International protection have proven that the principle of nonintervention of the United Nations has retreated before the intervention of individual or collective states in the internal affairs of other states under the pretense of human rights. That is emphasized in the Security Council Resolution number (688/1991) concerning the Iraqi invasion of Kuwait. The resolution was not calling for surpassing the principle of nonintervention only; it rather called for the right of intervention. This resolution constituted the starting point to gain momentum in proposing the principle of intervention as an alternative to the principle of nonintervention ([85]).Considering that states and organizations are entitled to intervene if the actions of a given state include assaults or grievous violations of human rights, undermining the nationality of the human being or the legal system governing him. Accordingly, human rights should not clash with the principle of sovereignty and nonintervention; since the principle of sovereignty cannot be applied unless the intervener is a foreigner and taking this action without a due permission from the International community ([86]).

Upon the abovementioned, we can say that the trend of International policy is intervention as a legal basis for it, and as a right revived within the framework of the new world order. The U.N. Charter burdens the member states with legal duties in the area of human rights, especially that the Security Council, as the body responsible for maintaining International peace and security, has emphasized in many of its resolutions the tight relationship between human rights and the support of International peace and security ([87]).In reference to article (2/7) of the Charter, humanitarian intervention by the United Nations cannot be rejected based on the

assumption that human rights are under the internal jurisdiction of states. The Charter itself has viewed the question of internal jurisdiction as a flexible and developing in light of the development of internal and international circumstances. Since questions, related to human rights are winning the interest of International law nowadays taking into consideration the many international treaties to protect human rights, human intervention by the United Nations is excluded from the principle of nonintervention in the internal affairs and from the principle of internal jurisdiction.

THE OVERLAP BETWEEN INTERNAL JURISDICTION AND INTERNATIONAL JURISDICTION UNDER CONTEMPORARY INTERNATIONAL LAW.

The content of the principle of sovereignty changes according to the changes in International relations, which, in turn, change according to the escalated common needs. This is reflected in the trend of development of International order from the point of chaos to the stage of having a grip of all International authorities. Accordingly, the transformation of International relations from the condition of isolation to the condition of International solidarity worked for the realization of the unity of the world and weakened the national borders between states. This has put an end to the segmentation of the humanity into scattered nations and united them under the banner of human brotherhood which brought into view the idea of global humanitarian interest which rises above national interests of individual states. Upon this appears the humanitarian aspect of the International community when they subject their relationships to a group of principles and International institutions in order to achieve the International common good. This, by necessity, determined the transformation of the traditional role of the state represented in expensive maintenance of security into the new job represented in the idea of a guardian state that is based upon achieving the common good for its citizens and for all humanity, by effect of the spread of ideas of equality, justice and welfare, which went beyond national borders to the international scope, where those values were deemed necessary to achieve International peace and security ([88]) .On the other hand, the nature of International community has created the concept of preserved scope for states in which aspects of International life come together under the direct governance of International law, which draws clear lines for the jurisdictions of the International organization, which are only entitled to authorities that were entrusted to them by their constitutions. Internal jurisdiction of the states constituted a scope in which they practice their intervention. This implies that the principle of nonintervention is focused mainly on the internal jurisdiction, which is considered an inherent aspect of it, and which existent is contingent to it. Based upon internal jurisdiction the occurrence or nonoccurrence of banned intervention is determined ([89]).

The idea of internal jurisdiction of the state as a concept is not new in the International law. International judiciary used the phrase of preserved scope in many occasions, where the League of Nations used the phrase (domestic jurisdiction) which then moved to the United Nations, where the General Assembly in its resolutions used the phrase (internal affairs) to indicate internal jurisdiction. Instead of the different phrases used for internal jurisdiction of the state, they have one meaning; it implies that it is necessary to leave a certain extent of activities to the state over which it practices its sovereignty (Ghanim, 1967, p. 129). International Law Institute has identified the preserved scope as "the scope related to activities where the jurisdiction of the state over which is bound by the International law, and the dimensions of which are dependant upon the International law and do differ in light of its development" ([91]). This implies that the matter of internal jurisdiction is flexible and that the dimensions of which are dependant in the first place upon principles of International law, which represent the legal framework of International jurisdiction. Whenever the extent of International order becomes larger, matters of international jurisdiction expand according to international commitments following International legal principles, and accordingly the extent of internal jurisdiction becomes lesser and lesser. The state when laying its internal law, it is engaged with practicing its sovereignty within the scope of its internal jurisdiction which is entrusted to it by virtue of principles of international law.

The expansion of the influence of International law has led to the retreat of the concept of ultimate sovereignty and has paved the way before the expansion of the rule of International law to include International relations. This has created a harmony between interests of states, on the one hand, and the rule of International law, on the other hand. That, in turn, created the need to conciliate the needs of the state's sovereignty and the needs of organizing the International community (Al Huwaish, 2005, p. 430).

States, upon their commitment to many international treaties, are forced to surrender a part of their sovereignty and, accordingly, to surrender some jurisdictions which have been within the" preserved scope" for the sake of International institutions or organizations. This compromise does not decrease the sovereignty of the state as much as it is a representative of the core of sovereignty. The mere state's acceptance of International committees is an expression of its sovereignty, not a decrement of it (Thomson, 1995, pp. 213-215). Instead of the intermingling between the idea of internal jurisdiction and the states' rights of sovereignty, the idea of internal jurisdiction started gradually to separate until it appeared distinctively and individually in International treaties

([94]). In other words, the limitation and restriction of sovereignty by effect of the development of International relations and principles of contemporary International law have affected the internal jurisdiction of states in content and application. Internal jurisdiction is an expression of the state's sovereignty, or, at least, a symbol of the state. It is shrinking since it is an unstable domain changing at a small scale contingent to the degree of development of International relations and International law. The areas affected by this development shift them from the state's internal jurisdiction into the jurisdiction of International legal principles ([95]).

The ratification of the principle of functional jurisdiction and the principle of limiting the practice of freedom within the law and the emergence of the idea of International common good have led to a complicated overlap between the interests of individual states and the interests of the International community. It is now difficult to find a single question that is considered in the core of the internal jurisdiction of the national state that does not touch upon foreign policy and is not worth the interest and care of international community ([96]).Escalated insistence from International organizations, especially the Security Council, to connect cases of intervention to the necessities of supporting International peace and security has made the relationship between the preserved scope of the state's sovereignty and the International scope suffer a severe crisis represented in cases of International Intervention in order to become a developing facet to achieve International legitimacy. This has led some to say that the overlap between the internal and the International jurisdictions is affected by the action of the state and the reaction of the International community; that there is no more ultimate and lasting separation between the Internal affairs and the external affairs, on the one hand, and the local jurisdiction and the International jurisdiction, on the other hand. It is only a matter of relative disagreement which can be attested in the International law when it is affected at a certain moment of time. Accordingly, what used to be a forbidden intervention in the internal affairs has become allowed according to principles of International legal principles (Thomson, 1995, pp. 219-220).

International judiciary has managed to determine its position concerning the question of internal jurisdiction, through the advisory opinions of the International Court of Justice, where it was deemed as a relative question contingent to the development of the International law and its principles. In case the state's freedom was limited, in its treatment of a given question, by the effect of its commitments either to general International law or treaties, the question is no longer considered within the scope of its internal jurisdiction (Salih, 1977, pp. 160). Instead of the fact that the provision of internal jurisdiction is the warrantor of the validity of the principle of non-intervention, due to its connection with the sovereignty of the state, and where it applies to all International organizations, since it is based upon the principle of martial International law and the consensual basis for all of these organizations, International practices have developed another concept that was capable of maneuvering around the provision of internal jurisdiction, which is the principle of (International Concern) created by the United Nations Organization to absolve itself of the provision forced by article (2/7) of the Charter. Practices of the United Nations have emphasized, when it is treating a given question in which reference is made to article (2/7), that the United Nations is not concerned whether its course of action constitutes an intervention as much as it is concerned with the fact whether that question lies within the state's internal jurisdiction or not. Instead of the fact that the United Nations Organization agrees that cases do lie within the internal jurisdiction of respective states, it approached them through the allegation of International Concern (Al Huwaish, 2005, pp. 445-446).

From the above-mentioned, it becomes clear that there are two interconnected principal standards relied upon by International advisory opinions in defining the internal jurisdiction, which are (Basel, 2001, pp. 110-111):

1) The standard of International Commitment: that is, the state's commitment upon a multilateral or a bilateral treaty removes the issues listed in the treaty from the area of ultimate internal jurisdiction. That is emphasized in Article (27) of Vienna Convention on the Law of Treaties, which stipulates that: "A party may not invoke its internal laws as justification for its failure to perform a treaty."

2) The standard of basic rights which should not be violated, like the right of life, execution without a trial, torture, bondage, genocide, and discrimination based on race, religion or belief. These rights are considered International commitments that are outside the internal authority of states. Article (2/7) does not prohibit the United Nations from reaching resolutions concerning questions that are within the scope of internal authority of member states, provided that the resolution does not constitute an intervention; but rather tackles International commitments of concerned states. It is, accordingly, is not related to their internal authority. Then, the prohibition included in Article (2/7) only applies to resolutions of the United Nations which constitute an explicit intervention, on the one hand, or relate to a matter within the scope of internal authority, on the other hand. Intervention implied in Article (2/7) is not realized unless the resolution concerning an internal question is addressing a certain state or certain states. The United Nations, as an International organization, is not entitled to intervene unless the Security Council resolves to take measures of repression according to Chapter seven of the Charter as the first body responsible for maintaining International peace and security. The Security Council does not abide by the provision stipulated in article (2/7) when it takes action in conflicts, even if that affects the internal

authority of the state, through reference to the last clause of article (2/7) (Salih, 1977, pp. 127-140).

The idea of Internal Authority has to take a flexible nature which shall change according to the development of International events, since it differs from one state to another according to whether there are treaties which tackle an internal issue turning it into an international one. Contracting states cannot challenge that condition claiming that it is not under the jurisdiction of the International organization (Sultan, Ratib & Amir, 1984, p. 733). Therefore, article (7/2) should not be interpreted literally, or to consider its stipulation as dead since it has been violated all the time; since its interpretation is contingent to other articles of the Charter on the basis that no part of the treaty shall be interpreted in isolation from other parts of the treaty. Accordingly, we must not assume that member states intended to underestimate or annul their contracts through breaching the political objectives of the treaty, including human rights. If article (7/2) was not clarified by, and according to, some standards to determine whether the matter in question is within the scope of the State's internal authority or not, the political branches of the United Nations, however, do determine their jurisdiction and do settle questions of legal merit which are presented before them. The General Assembly, however, considers the question of jurisdiction as an important one, which must be settled through the majority of two thirds of the votes. But Security Council considers these questions as objective ones, which are subject to Veto. At the same time it decided the provision of internal jurisdiction, the charter gave wide jurisdictions to the United Nations over many subjects which used to be internal; since the local management alone is no more helpful under the International development. Among those subjects are those related to immigration, human rights, basic human freedoms, economic matters, like money and customs? The Charter, however, was limited to affirm International cooperation in these matters, to which it didn't establish any definite commitments. This results in the abstention of branches of United Nations from intervening unless in case it is agreed by states through establishing principles of mutual consent recognized in International legislation (Sultan, Ratib & Amir, 1984, p. 734; Ne'ma, 1987, p. 553).

One of the questions representing the center of this study is the question of human rights and basic freedoms, which took an International character, which is hard to violate. Accordingly, it is no more an internal affair, which states do violate under the pretense of their sovereignty. There are two principles which work together when viewing these rights within the framework of international community. They are the individual good on the one hand and the security of the social order on the other hand. Neither of which can be achieved at the expense of the other (Al Sheikh, 1978, p. 266).

The acceptance of the presence of these rights at the International level implies that one area of internal jurisdiction has become subject to the intervention of International law, by way of organization and care, the matter which states find difficult to accept; since it touches on their sovereignty rights, among which is the principle of nonintervention in their internal affairs; especially that it is considered one of the fundamentals of International law. The United Nations, through supervision of the activities of member states in areas of human rights in cases when International peace and security are threatened has shown that the question of human rights is no longer within internal jurisdiction of states. The idea of human rights is derived from the unity of humanity, which are blind to borders when violated, and require an International reaction to preserve it, since they are deeply rooted and recognized legally. Accordingly, human rights are considered one of the norms of (Ius Cogans) of International law, which cannot be violated nor changed without subsequent principles of International law (Al Daqqaq, 1984, pp. 92-93; Muhammad, pp. 102-103). This was emphasized in Article (53) of Vienna Convention on the Law of Treaties where it stipulated that: "a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general International law". General Declaration of Human Rights, issued in 1948, was considered a formal interpretation of the provisions of human rights which were stipulated in the U.N. Charter (Al Husaini, 1994, pp. 123-124)[3]. This opened the door widely to ratify many International and regional agreements and treaties concerning human rights. Accordingly, such a declaration is an essential part of the common language of the human race. Human rights were no more considered within the core internal authority preventing states and International organizations from monitoring them. Human rights are considered one of the International commitments, and International monitoring is one of the commitments of states to apply International agreements and treaties. So, Internal authority cannot prevent states from intervention under the pretense of nonintervention, or the allegation these actions are within the International jurisdiction of the state and are considered an expression of its sovereignty (Al Husaini, 1994, pp. 123-124).

From the above mentioned it becomes clear that human rights, according to International legal principles, has become an International question and a common human heritage after it was an individual question only

[3] Adopted by the U.N. General Assembly in recommendation number 217 (d3) in 1948, the Universal Declaration of Human Rights, which is comprised of a preamble and 30 Articles, in which ratified equal and inalienable rights for all members of the n=human family to whom it constituted the basis for freedom, justice and peace.

taken care of by internal legislations of states, due to its tight connection with the International interests. Many cases, accordingly, have been transferred from the scope of internal jurisdiction into the International jurisdiction in order to achieve International peace and security. A sovereign state, in conformity with an International treaty or agreement in which it was a party, must execute its commitments by which it is forced to abandon some of its sovereignty and some of its internal authority, which, in turn, has a reversed effect on the sovereignty of the state, which started to decline before International legal principles, which are becoming a constituent of the rights of the human community. This resulted in the supremacy of humanity over sovereignty.

CONCLUSION

No doubt that the development of the International law, since the formulation of the Charter of the United Nations in 1945, has proceeded to intervene in many areas which were considered absolute jurisdiction of the state, where many internal jurisdictions of states were implied within the matters allowing International bodies to intervene in the internal affairs of states, and became subject to the application of principles of International Law. Interests of states became interlaced and interconnected with the interests of international community. It has become difficult to admit of the presence of a single question that is considered within the ultimate jurisdiction of the state that does not contact with International relations or members of the International community or does not affect International peace and security. This clearly revealed the fact that the principle of the state's sovereignty should be understood within the limits of the principles of International law. This implies that sovereignty is a limited legal idea which is derived from principles of International law, subject to it and affected by it. This also means that modern age state is a state of law abiding by international provisions derived from the International law and its norms of (Is Covens), which represent the vision the International community and manifest International legitimacy. The development of the International order of International relations has led to the crystallization of the phenomenon of humanitarian intervention and has changed the concept of many principles upon which the United Nations Organization was founded. States and political regimes could no longer use sovereignty or internal jurisdiction as an excuse in case they treat their subjects in an ill manner. It seems that International policy is following the trend of intervention as a legal principle within the framework of the New World Order. The United Nations Charter Holds assigns member states the legal responsibility in the area of human rights and persons of International law, especially that the security council as the as the body responsible for maintaining International peace and security, has emphasized in many of its resolutions the tight relationship between human rights and the support of International peace and security. In reference to article (2/7) of the Charter, humanitarian intervention by the United Nations cannot be rejected based on the assumption that human rights are under the internal jurisdiction of states. The Charter itself has viewed the question of internal jurisdiction as a flexible and developing in light of the development of internal and international circumstances. Since questions, related to human rights are winning the interest of International law nowadays taking into consideration the many international treaties to protect human rights, human intervention by the United Nations is excluded from the principle of nonintervention in the internal affairs and from the principle of internal jurisdiction. In this respect, it would suffice our purposes to make reference to Chapter Seven of the Charter, or to make reference to Treaties of human rights which entitle the International community the right to intervene in the affairs of any state which violates the provisions of these treaties.

The Principle of nonintervention also was influenced by the expression which emerged concerning sovereignty. Relative sovereignty is the most adaptive and the most suitable to the rapid International developments, where the retreat of the concept of sovereignty from being ultimate into being relative has led to the retreat of internal jurisdiction of states and many jurisdictions of states over their lands became bound by principles of International law. Some cases, which were considered within the preserved jurisdiction, were shifted into International jurisdiction. Principles of International law have left a free zone to the states in which they can move freely, which is known as the "Margin of Estimation" in reference to the principle of relative sovereignty, in which the state has no right to abandon some International legal principles which represent the minimum extent of International legal principles. This represents the accordance between national measures and procedures, which are active within the scope of internal sovereignty on the one hand, and International legal principles, which represent the will of the International community and International legitimacy on the other hand. This would achieve accord and integration between internal regimes and International treaties, and would contribute in resolving the conflict between the universality of human rights and International commitments and cultural and ideological relativity.

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