International Humanitarian Intervention Between The Hammer Of The Charter And The Anvil Of Sovereignty

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Research Summary:

The international community has adopted a series of legal mechanisms to protect human rights and freedoms from all kinds of threats and attacks, one of which is international humanitarian intervention, which is an exception to the general principle in international law of non-interference in the internal affairs of States and respect for their sovereignty.
This concept has become one of the most contentious issues in the international field, causing contradictions and legal problems in contrast to the principle of non-intervention and sovereignty. They may usually attack the principles embodied in the International Covenants, on the one hand, and on the other hand, protect human rights from threats and violations that may take the notion of sovereignty and the principle of non-intervention as a curtain.
Therefore, we will try in this study to determine the nature of the relationship and the link between the new concepts of the idea of sovereignty and the principle of non-interference and the idea of international humanitarian intervention, and controlling the borders of each, in order to achieve a balance between these concepts.

***Keywords**: international humanitarian intervention, international humanitarian law, sovereignty, international law.*

Introduction:

The principle of national sovereignty is an important term in public international law and political science. If sovereignty was absolute in the past, in the modern Age after World War I and II, sovereignty has become a relatively limited issue.

The goals and objectives of the Organization have been defined Since the establishment of the United Nations Organization - Article 1 of the Charter which was signed on June 26, 1945 ,2 and which are manifested in (maintaining peace and security, improving friendly relations among nations, achieving international cooperation, and considering the Organization as the reference of Coordinating and directing the work of nations.
In order to achieve those supercilious purposes, Article Two of the Charter[1] defines a set of principles that are, in fact, ways and mechanisms to ensure that the United Nations pursues its purposes.

The most important of these principles: (equality in The sovereignty of all members, and the inadmissibility of the United Nations interfering in the deep matters of the internal power of a state, without prejudice to the provisions of intervention under Charter, Chapter VII)[2].
Despite respecting the internal sovereignty of states, international interaction has been established since the Nuremberg Court,[3] an important principle that says the rules of international law are superior to internal (national) law.
International law (whether conventional or customary) has its rules and principles superior to the internal legal rules of states, and even to the constitution itself in those states. Evidence for this is many. International agreements, when issued, contain, for the most part, a provision that obliges states to amend their internal laws following the morals of the signed international agreement.
Moreover, international interaction has produced a new situation, which did not exist before, which is international intervention for humanitarian reasons, which undermines the traditional theory of state sovereignty, especially with regard to the internal appearance of sovereignty. Therefore, we will discuss the concept of sovereignty first (first topic),then we will present the issue of international intervention in general (second topic), then we will discuss the issue of humanitarian intervention (third topic).

Research problem:

The extent of the steadfastness of the external and internal aspects theory of sovereignty in the face of international humanitarian intervention issue. Especially with the increase in the worldwide violations and crimes against humanity.

1 - Article (1) of the Charter of the United Nations: “The purposes of the United Nations are:
1_To maintain international peace and security according to the principles of justice and international law.
2_Develop friendly and respect relations among nations, as well as strengthening public peace.
3_Achieving international cooperation in solving international issues of all life aspects.
4_Making this institution a reference for coordination of nations actions and directing them towards realizing their goals.
2 - Chapter VII, is a legal tabulation of United Nations Charter, extending from Art. (39) to (51.
3 - is the tribunal for the trial of the Second World War criminals.

Research goal:

Finding common ground between the concept of sovereignty and the case of international humanitarian intervention, in a way that achieves the objectives of this intervention, in the narrowest cases of prejudice to the sovereignty of the state.

Research Plan:

- The first topic: State sovereignty
  - Requirement I: Sovereignty definition
  - Requirement II: Sovereignty manifestations
  - Requirement III: the constraints of sovereignty, due sovereignty, and the retained domain of sovereignty
- The second topic: international intervention in general
  - Requirement I: the concept of international intervention
  - Requirement II: forms of intervention
  - Requirement III: the legality of the intervention and its cases
- The third topic: Humanitarian intervention
  - Requirement I: the definition of international humanitarian intervention
  - Requirement II: distinguishing humanitarian intervention from other similar and related concepts
  - Requirement III: the position of jurisprudence on the legal nature of international humanitarian intervention
  - Requirement IV: international humanitarian intervention between sovereignty and the responsibility to protect

The First Topic: The Sovereignty Of The State

A state can only be established by the combination of three elements:[4] The human element, which is the people, the material element, which is the territory, and the organizational element, which is sovereignty. A state should not be made up of one of the aforementioned elements, or only two elements, but the three elements must be present together.

If the condition of the existence of the territory is fulfilled, and the condition of the people (the nation) is fulfilled with it, there must be sovereignty that protects the land, and regulates the relations of the people among each other, through laws and through the organs and institutions that ensure their implementation, and also regulates the relationship between the state and people.

[4] - For expansion: Shukri, Muhammad Aziz: Introduction to Public International Law, Damascus University Publications/ 2004/ p. (69) and beyond. All of international law jurists see that territory concept is a material element for the emergence of the state, is more general, comprehensive and accurate than the concept of land.

Although the League of Arab States had recognized a Palestinian government in the diaspora, it was announced upon the arrival of the Palestine Liberation Organization to the Tunisian capital, after it had left Beirut following the Israeli invasion of the city in 1982. Then the Palestinian National Council on 15 November 1988 by declaring the independence of the State of Palestine on a part of the historical land of Palestine, during the nineteenth session (the Intifada session) in Algeria.

Requirement II: Sovereignty definition

I: Legal Definition

Dr. Muhammad Aziz Shukri defines sovereignty as: **((the state of the government in the state being the supreme authority and independent of any other earthly authority, whether in its actions inside or outside the state, without any restriction on this authority, O God, except what is dictated by international law)).**

With all the humility and impartiality of the researcher, we can notice on the definition of Dr. Shukri,[5] that he summarized the concept of sovereignty in the presence of a government, with the great difference in the concept of government between different countries according to their different constitutions, or the different nature of their political and social components. In Great Britain, the monarchy, the government takes a larger, stronger and more prominent role than the third world governments, whose role is mostly limited to the service and living affairs of citizens, without being a decision maker or a strategic player in the field of international politics. On the other hand, we can find countries like the Vatican, without a government, but derive their organization and sovereignty from His Holiness the Pope and from the teachings of the Bible, the Apostles and the early church fathers, without having a constitution or a law that defines the form of government and the form of sovereignty.

Therefore, we suggest the following definition of sovereignty: ((It is the organizational element on which the concept of the state is based, in addition to the components of the region and the people, and it is the supreme authority that does not have authority within the boundaries of a specific region, and over a specific human group, from which the legislative, executive and judicial powers emanate. It is the natural result to apply two principles: first of which is the peoples' right of self-determination, the second principle is non-interference in other states affairs of, and from here it becomes the effective guarantor of these two principles))

Second: International Law Definition:

It is the governing body's full right and authority, without the interference of external agencies. In political theory, sovereignty is considered as a basic term which is used to define supreme authority over certain political entities.[6]

In public international law, its concept to the state's exercise of power , legal right, ability and real sovereignty to do so. This can become messy, especially when people generally expect law and utility to be higher and within the same organization, that expectation is gone.

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[5] - Shoukry / previous reference / p. (84) - His Excellency believes in the same reference, p. (83): ((that the governing bodies take different political forms (monarchies or republics), and may follow different systems of government. The traditional international law was not concerned with the form There are traditional democracies, popular democracies, monarchies, and individual or minority governments. However, the overwhelming majority believes With the principle of the right of peoples to self-determination, which raises urgently the question of the legitimacy of rule in a state, and consequently the availability of one of the elements of the entity of that state, if it does not comply with the will of the majority of the population).

[6] - Al-Smadi, Lina/ an article entitled "The Sovereignty of States in International Law" published on the (e-Arabic) website/ visit (14/2/2022) at the link :https://elarabi.com/

Third: Sovereignty Contemporary Concept:

The state sovereignty is a concept that is basic regarding contemporary legal systems. The second article of United Nations Charter declares that the international organization is based on sovereignty principle among all members, and that the United Nations is not to interfere in the deep matters of the state internal authority.

Sovereignty still represents a major rule of the rules governing international relations, although contemporary economic and political blocs have required, considering the state's party interests, that each state concedes part of its sovereignty for the benefit of an international organization that embodies an economic and political bloc. The government of the French Republic, for example, has transferred the competence to issue money to the European Union, in order to achieve full economic and monetary unity among the countries entering this union. The French Constitutional Council has authorized this, on the basis that such behavior does not affect the essential conditions for the exercise of national sovereignty.[7]

The second requirement: appearances of sovereignty

After talking about the concept of sovereignty, sovereignty aspects are:[8]

First, the external appearance:

The external aspect of sovereignty is manifested in managing relations with other countries based on their internal laws in managing its foreign affairs and relations with other countries, freedom in contracts signature, the right to declare war or neutrality.

Foreign sovereignty is synonymous with political independence, and therefore sovereign States are not subject to any foreign State.

Thus, external sovereignty results in the principle of the state's right to independence and equality, which is the basis of international law in its current situation.

Second: the internal appearance:

The internal manifestation of sovereignty is manifested in the extension of the authority of the state and its organs over all subjects through the institutions and laws in force within the territory of the state, and the application of these laws on all subjects.

Which means the freedom of the state to dispose of its internal affairs, through the organization of its government, its institutions and public utilities, and by imposing its authority on all that is in its territory of people or things, without the state right or another body to exercise its powers over the territory of this state.

[7] - Noah, Muhannad/ Arabic Encyclopedia website/ article (Sovereignty)/ visit (15/2/2022)/ at the link: http://arab-ency.com.sy/ency/details/4511

[8] - Smadi / previous reference - and also: Shukri / previous reference / pg (86 + 87).

The third requirement: the constraints of sovereignty, due sovereignty, and the retained domain of sovereignty

First: Restrictions on Sovereignty:

Sovereignty is not absolute, but must be restricted. Several theories have emerged in order to clarify the basis on which the restriction of state sovereignty is based:

1) The theory of natural law (Théorie du droit naturel): This theory is summarized in the fact that the sovereignty of the state is restricted by natural law rules that preceded the emergence of the state, and depend on the idea of absolute justice, and revealed by the human mind.

2) The theory of individual rights (Théorie des droits individuals): This theory is that the individuals rights precede the state establishment, and that the state exists only in order to protect these rights and prevent conflict between them, and therefore the state is obligated to respect those natural rights when exercise of its sovereignty.

3) The theory of self-determination of sovereignty (Théorie de l'auto-limitation): The content of this theory is that the law is made by the state, but it adheres to it and to its limits, because the law must be binding on the state and individuals alike, and thus the state determines its powers by its own will, It is in their interest to do so, in order to avoid the chaos that might arise from the release of their powers.

4) Social Solidarity Theory: It was accompanied by the French Dean (Duguit), who saw that the inevitable social life necessarily requires the existence of rulesof behavior (règlesde conduit) that members of the group must follow in their dealings, and they obligate individuals and the ruling authority alike.

All of these theories have met with violent criticism, and perhaps the political and legal reality reveals that the best restrictions on the sovereignty of the state, those restrictions that derive from the constitutional organization of the state, are from the text on the principle of separation of powers, and finding a specific way to amend the constitution, which prevents the arbitrariness of the authority.

Second: Sovereignty due:

It means that a human group, living on a specific territory, deserves to have self-determination right and the state establishment by having all the characteristics that qualify it to be an independent country.[9]

This concept appeared with the system of trusteeship that came in the United Nations Charter, where a group of regions, countries and colonies under the United Nations control, to get their independence when their sovereignty is complete.

During the Kosovo crisis, especially related to the right to self-determination concept, from which sovereignty came. The question arose: Is self-determination is a right of a territory in a state or a right of the residents of the state, and in the case of Kosovo, it is a right of the

[9] - Mahmoud, Hadhoud/ Criticism of the Sovereignty and Governance Controversy/ Article published on the Jumhuriya website/ visit (18/2/2022)/ at the link: https://www.aljumhuriya.net/ar/content

Kosovars(people of Albanianorigin) and should this right be implemented or rely on the concept of due sovereignty?

The issue of the independence of Kosovo, which is one of the territories of the Federal State of Yugoslavia, is an application of the concept of monitoring by the United Nations, but outside a trusteeship system. Where the administration of the region declared its independence and began its efforts to obtain recognition as a sovereign state, according to the principle of due sovereignty.

Some legal advisers had said that Kosovo deserves independence,[10] because the region has been under international control since1999, and a monitoring group was added to it by the European Union in 2008, and it was exercising a kind of sovereign powers, which makes it amenable to being a state independent. In 2012, the monitoring group formed by the countries supporting the independence of the region announced that Kosovo had become a fully sovereign state.

Second: The Retained Domain of Sovereignty:

If the source of sovereignty is the people or the nation, the domain retained is the domain of exercise of sovereignty, which is defined in one of two forms:

1) Either the agreement to waive it, when the state enters the field of its mutual relations with other countries (collective and bilateral treaties, the development of the global economic system and the change of the international players who control it).
2) Or by virtue of the universal human rights system, which achieves the interests of individuals by declaring a legal system that preserves their common values in times of peace and war, including the people who constitute the sovereign state.

In fact, the concept of limiting sovereignty did not appear at the internal level until after the concept of tyranny was crystallized through fascism and Nazism, where it was necessary to limit the domination of regimes that did not respect the system of basic rights of individuals. German constitutional law sees that sovereignty is the competence of competence, that is, it is the one who decides who is entitled to exercise a certain matter.

The second topic: international intervention in general

There is no doubt that the issue of international intervention constitutes a loophole in the concept of the state's internal national sovereignty over its people and territory, and even in the appearance of sovereignty.

[10] - Among them: the United Nations envoy to Kosovo, Mr. (Martti Ahtari)/ in his report which was submitted by Secretary-General (Kofi Annan) to the Security Council in March 2007/ Source: (United Nations website)/ visit (20/2/2022/) at the link : https://news.un.org/ar/story/2007/03/65322

Requirement I: international intervention concept

First: Definition of International Intervention:

International intervention[11] means the interference of a state in another state's affairs. One of international law senior scholars, the German jurist Strobe, defined interference:((A state exposes the affairs of another state without this objection having a legal basis, with the aim of obligating the intervening state to follow what it dictates - regarding the its own affairs - the state or the intervening countries)).[12]

Dr. Al-Ghunaimi defines it from the Egyptian jurisprudence as: ((A state exposes the affairs of another state, in an authoritarian manner, with the intention of maintaining the current matters of things or changing them. Such interference may take place rightly, or without right, but -in all cases-it affects the external independence Or the territorial sovereignty of the state concerned, and therefore it is of great importance to the international situation of the state)).[13]

Based on the above-mentioned definitions, it seems that most jurists are unanimously agreed that the state intervention in the affairs of another state, but it also includes international law figures such as international and regional organizations and people.

Second: a historical overview:

The issue of international intervention in general is not a new phenomenon in the field of international relations. International intervention operations emerged at the end of the seventeenth century, as Russia, Denmark and Britain intervened to protect the Orthodox subjects in Bologna, and demanded its King **Stanislaw August II**, the Catholic who was persecuting his Orthodox subjects. And Protestants, to desist from persecution, and this was through a letter sent by the Tsar of Russia, Catherine II, to the King of Bologna in September 1766AD.

This incident was followed by several interventions, including the interventions of Tsarist Russia in the affairs of the Ottoman Empire and the right of Tsarist Russia to protect its subjects in the Crimea, and its obtaining the Kinarji Treaty, which provides for the right to protect the latter for the Orthodox, and the same applies to France, which obtained a treaty (1604 AD), which states that The right to protect France for Catholics.

Requirement II: forms of intervention

Jurists divide intervention into multiple forms, as Dr. Al-Ghunaimi believes that interference has an external, internal, punitive and economic form:

The external form is the state intervention in the another state's relations, such as Italy's

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[11] - Musa Suleiman Musa/ international intervention, its forms and the extent of its legality/ article on the internet/ website of the reference for informatics/ visit (13/2/2022) at the link: https://almerja.net/reading.php?idm=83819

[12] - Referred to the definition in: Abu Heif, Ali Sadiq / Public International Law / Edition 9 / Mansha'at al-Maaref Alexandria 1971 / p. (216 + 217).

[13] - Al-Ghunaimi, Muhammad Talaat / Al-Wajeez in the Law of Peace / Mansha'at Al-Maaref in Alexandria / No date / p. (311).

intervention in World War II on the side of Germany against Britain.

As for the internal form of intervention, it is focused on what is happening within the state, and is represented by the intervention of a state in favor of one of the parties conflicting within the state, as in the case of revolution or civil wars.[14]

The punitive form is represented by the state of repression imposed by the state because of the harm that the intervening state has inflicted on the intervening state. Kalhsr peaceful on the shores of the state.

As for Dr. Ali Sadiq Abu Heif, he divides the intervention into political, military, individual, collective, and explicit and direct:

A- Political interference and military intervention: It is that interference that takes place officially and publicly, or informally and without publicity, and the intervention is at a written or verbal request from the intervening state, which may turn into military intervention, or the threat of it if the intervening state does not respond in It is ordered by the intervening state's requests[15]

B - Individual or collective intervention: The intervention may be by one state or it may be collective, and collective intervention has effects less light and sharp than individual intervention as it does not come as a guarantee of the interest of a state in itself. Article (14) and Article (36) of the Charter of the United Nations states that the General Assembly or the Security Council may recommend each of them to take whatever measures it deems appropriate to settle any situation that harms public welfare or disturbs the friendly relations among nations.

C- Explicit or tacit interference: Often a state interferes in the affairs of another state, and in order for it to be unique in the political and strategic gains and gains, it makes its intervention hidden, and the hidden interference often results in bad and harmful effects because it takes place without the permission or knowledge of the intervening state authorities. , in contrast to overt and overt interference.

Requirement III: the legality of the intervention and its cases The origin of intervention is that it is not permissible, and this is confirmed by the charters and resolutions of international organizations in order to preserve the state’s rights that require states to abide by those rights, and the majority of jurisprudence also condemns and prohibits intervention, except that a small group of them permitted intervention if the state has an interest in it, including the German Kampetz and Bator French.

Despite the originality of the inadmissibility of intervention, there are exceptions to that principle that permit some cases of intervention, including:

[14] 19- An example of this is when the American forces tried to intervene alongside the Lebanese right-wing parties, in the face of the leftist parties supporting the Palestine Liberation Organization, and the Marines landed on the shores of Beirut, which resulted in an incident known as the bombing of the Marines building in Beirut in 1983.

[15] - Perhaps there are many examples of this, such as the Russian military intervention in the Georgian crisis in 2008, and in Ukraine (Crimea) in 2014, and the tripartite military aggression against Egypt in 1956 following the Egyptian government’s refusal to reverse the decision to nationalize the Suez Canal.

First: Intervening in Defense of State Rights:

The state's exercise of its rights, especially sovereignty, is not exempt from every restriction. Every right is accompanied by an obligation, and the state's exercise of its rights is accompanied by obligations, which it must respect, and among its obligations is not to harm others, and the abuse of its rights may cause harm to another state, and then that state has the right to intervene. If peaceful means in their various forms are not feasible in this, the Frenchman Fauci has identified some cases in which intervention is permissible, namely:

A - Increased armaments by a country of aggression tendency.

B- state's conspiracy of igniting a revolution or overthrowing another state the regime.

C - The outbreak of a revolution in a country, and it is feared that it may affect the neighboring countries safety.

D – Stating of a state public intention to extend its influence over another state.

The interference of a state in another state's affairs in defense of its rights raises before us the problem of abuse of the right. Technical and industrial developments in a country, its needs for various resources, and the freedom of the state to exploit its natural resources, that exploitation takes different forms with the development of technology and the needs of the state, such as the exploitation of international rivers, or what is sometimes called cross-border waterways, which pass through the regions of more than one country. The state's needs for drinking water, irrigation and energy production, with the availability of modern technology in optimizing the use of river water, often affects the rights of the lower state that shares it in the river if the higher state abuses its right and leads to a decrease in the river level in a way that affects the economy of the lower state In irrigation, industry and energy production.[16] A severe crisis has occurred between Syria and Iraq regarding the level of the Euphrates River since the seventies of the last century during the construction of Syria to dam the revolution (Tabqa) on the Euphrates River, as well as between Turkey and Syria, since the eighties, as a result of Turkey's tendency to invest heavily in its water resources by constructing dams, including Ataturk dam on the Euphrates River, and withholding water from the countries located at the bottom of the river, the dispute over the river level quickly turned into a political crisis in which the issue of the Turkish Kurdistan Workers Party was introduced, and the crisis worsened until it reached Turkey's mobilization of its military forces on the Syrian border to put pressure on it, which The leader of the Kurdistan Workers' Party (PKK) was forced to leave Syria, and as a result he was arrested in the Kenyan capital, Nairobi, in February 1999.[17]

The abuse of the common right by one state may turn into pressure on the other state to come or refrain from action to achieve the abusive state interests in the use of its right. However, the

[16] - Until the date of writing this research (20/2/2022), the water crisis between Egypt and Ethiopia remained stuck without any signs of a solution, and soon Ethiopia might start the third filling of the Renaissance Dam lake, which will affect the level of the Nile for decades to come, threatening the Egyptian people thirsty Opponents of the Egyptian government accuse that the Egyptian president caused a human catastrophe when he signed the Declaration of Principles agreement between Egypt, Ethiopia and Sudan in 2015, which encouraged Ethiopia to move forward with the construction of the Renaissance Dam on the Blue Nile branch.

[17] - Radwan, Samar/ The War of Dams in the Middle East/ an article published on the SITA Center website/ visit (20/2/2022) at the link:in 1956 following the Egyptian government's refusal to reverse the decision to nationalize the Suez Canal.

abuse of the right is not considered interference by the abusive state in the use of its right. Rather, it constitutes a justification for a legitimate intervention by the state that infringes its rights if it has exhausted peaceful means to resolve the dispute arising due to the infringement of state rights, resulting from the abuse of a state in using its right that harms the other country.

Second: Intervention to protect state nationals' rights and interests:

Countries have their own right to protect their nationals in other countries, and they are guaranteed to do so if their internal law obliges them to do so ,
which is the case for most countries - but intervention of the state to protect the interests and rights of its nationals is not absolute from any restriction, and given that states have legal systems, it is not permissible to intervene unless Those legal systems were insufficient to protect the nationals of other countries, their security and interests, in the event that the rights of foreigners were violated and their security was not maintained like the rest of the citizens, or they were exposed to illegal attacks, then the countries had the right to intervene to protect the rights, interests and security of their nationals.

Third: Collective Intervention according to United Nations Charter:

Dr. Al-Ghunaimi sees the legality of collective intervention based on United Nations Charter, Chapter VII, which permits intervention if the concerned state - interfering in its affairs - undertakes some actions that threaten international peace and security, or if the concerned state commits aggression against another state.

There are many cases of collective intervention, the latest of which was the international intervention - the coalition forces - in Iraq with its military forces. The collective intervention that takes place after the international organization decision - the United Nations - is permissible because it is based on international legitimacy, but some cases of collective intervention lack that legitimacy from the international organization until after a while, then the intervening countries obtain a legitimate cover for their intervention from that organization, which indicates that The United Nations itself is often subject to the fait accompli of powerful states.[18]

Fourth: Intervention at the request of:

The jurist Kondyk authorizes intervention if it is on request, that is, without any pressure, and the request must come according to his opinion from the actual government. The French jurist Charles Schumann believes that recognizing the existing governments' right to obtain foreign military aid is incompatible with the principle of non-interference, because international legitimacy does not always remain on the side of the existing governments. foreign countries.[19]

[18] - Bokra, Idris/ The principle of non-interference in contemporary international law/ Referred to in: Musa, Suleiman Musa/ International intervention, its forms and the extent of its legality/ Article on the Internet/ Informatics reference website/ visit (13/2/2022)/ at the link:

https://almerja.net/reading.php?idm=83819

[19] - Sobhi, Muhammad Amin / research entitled: The principle of the inadmissibility of interference in the affairs of states within the framework of international humanitarian law / research published on the website of the Arab Democratic Center / visit (19/2/2022) at the link: https://democraticac.de/?p=38854

Fifth: Intervention vs Intervention:

If a state interferes in the affairs of another state, a distinction must be made between the case of whether the intervention is legitimate or illegitimate. A third state may not interfere if the first intervention is legitimate, and it is permissible to intervene if there is damage to the interests of the intervening state, or damage to the public interest. for the group of states. An example of this is the intervention of Britain in 1826 in the affairs of Portugal to prevent the intervention of Spain. Likewise, Britain and France intervened in 1854 to prevent interference of Russia's in Turkey's affairs.

Sixth: Intervention to protect human rights and achieve humanitarian protection:

Some scholars and commentators believe that it is permissible to intervene in defense of humanity in cases of persecution that affect the rights of minorities in a country, and that the attack on their lives, freedoms and rights is a violation of international law rules and humanity principles. On the other hand, there are those who believe that this form of intervention is not based on a legal basis. However, it is permissible to intervene for humanitarian protection.

The third topic: international humanitarian intervention

By the end of Second World War and the United Nations establishment, the international community knew a series of developments in the foundations and concepts on which international relations are based, especially with the tasks and responsibilities development entrusted to the United Nations, as its interest in protecting basic rights and freedoms that are subjected to flagrant and massive violations has increased, and this has led to the concept of international humanitarian intervention spread.

Requirement I: the definition of international humanitarian intervention

The idea of protecting human beings from scourges, pests and inhumane acts has been present in all peoples since ancient times. The idea of humanitarian intervention stemmed from the traditional stage, which considered that the state is the only person in international law, to the contemporary stage, which considers that the persons of international law are limited international organizations.

International legal scholars have put forward their definitions of humanitarian intervention. as follows:

• **Las Oppenheim** defines this intervention as: ((intervention that uses force in the name of humanity to stop the practice of persecuting its citizens and perpetrating brutal and cruel acts against them that shake the conscience of humanity, which justifies the legal intervention to stop those acts)).

• **Thomas Frank** also introduces his definition: ((A state or group of states threat of use of armed force with the knowledge of an international body in order to protect human rights from flagrant violations practiced by a state against its citizens shockingly denies their rights humanity)).

•**The United Nations Joint Inspection Unit** adopted the concept of international humanitarian intervention as follows: to provide humanitarian assistance to natural and man-made disasters victims, including complex emergencies, on a short-term and long-term basis.[20]

•Some Arab researchers defined it as: ((It is the threat of the use of force or the actual use of force by a state or group of states against the will of the government of the targeted countries in order to put an end to the gross and systematic violations of human rights, provided that this is done with the authorization of the Council Security and that it have a clear exit strategy and that it does not lead to a threat to the unity and territorial integrity of the target country)).[21]

The second requirement: distinguishing humanitarian intervention from other similar and related concepts:

1) Peacekeeping missions:

It is an international mechanism established with the approval of the conflict parties including international military or civilian personnel under the command of the United Nations with the aim of helping these conflicting parties to live in peace.

Hence, it is clear that humanitarian intervention differs from peacekeeping missions in that it is against the will of the targeted state. In order for it to be legitimate, the decision to authorize it must be admitted by the Security Council only in relation to Chapter VII of the Charter.

2) Humanitarian relief operation:

Professor Maurice Turelli defines it as: ((health, food and aid services provided from abroad to the victims of international or internal conflict)). These organizations must obtain approval from the state in which they are interfering, but the state is also not free to refuse or approve this request, as the states that are included in the Geneva Conventions of 1949 must agree, because these agreements provide for the right to provide humanitarian relief, and therefore it is necessary to The right of these organizations to intervene in humanitarian cases that require it, even if the state does not recognize the existence of such cases in them, and since this relief requires the approval of the state, then it is of course different from the concept of international humanitarian intervention that takes place regardless of the will of the target state.

3) Rescue missions to protect nationals of the state abroad:

It means using military force by a certain country to save its citizens in another country from an actual or imminent danger threatening their lives. there is a fundamental difference between rescue missions and international humanitarian intervention, which is that humanitarian intervention is carried out with the aim of protecting the nationals of another country from a threat to their lives inside their country, not to protect the nationals of the state itself or the

[20] - Al-Hassan, Hussein Abdullah: Humanitarian intervention in international humanitarian law/published on the civil dialogue website / visit (19/2/2022) at the link: https://www.ahewar.org/debat/show.art.asp?aid=719407

[21] - Al-Arabi, Prestige/ The Principle of International Humanitarian Intervention within the Framework of International Responsibility/ PhD Thesis/ Oran University/ Algeria/ Faculty of Law and Political Science, 2013, p. 16 - Referred to in: Legal research prepared by a group of researchers (Aya Abdel Rahman Musa and others)/ Supervised by: a. Dr.. Muhammad Nour Al-Basrati/ entitled: The Impact of International Humanitarian Intervention on the National Sovereignty of the State/ on the website of the Arab Democratic Center/ visit (14/2/2022) at the link: https://democraticac.de/?p=68383#_ftnref20

intervening state in that targeted state.

4) Intervention to facilitate the right to self-determination:

The armed intervention by a state on behalf of the self-determination movement within the targeted state. The difference between this type of intervention and international humanitarian intervention lies in the following:

• The aim of this intervention is to enable a particular group to achieve independence from the targeted state, while the humanitarian intervention only seeks to protect human rights within the target state.

• Humanitarian intervention requires massive and systematic violations existence of human rights in the targeted country as a precondition for the use of force against it, while intervention to facilitate the right to self-determination does not require such a precondition.

Requirement III: the position of jurisprudence on the legal nature of international humanitarian intervention:

Humanitarian intervention has raised many theoretical and practical problems in the field of international studies, both political and legal, as it relates to the most important pillars and pillars of the international system and its protection from chaos, which is mainly represented in non-interference principle in the internal affairs of states, which is one of the pillars of defeating state sovereignty. However, on the other hand, we find that the principle of humanitarian intervention has a background in international legislation. In this regard, theoretical and legal positions were divided, between a direction in favor and another that rejected the principle of humanitarian intervention. The following is a presentation of the content of the two directions and the most important arguments and justifications upon which each of the two positions was based:

First: the supporting direction:

Liberals are considered among the most prominent defenders of the right and legitimacy of humanitarian intervention, to protect human rights from oppression and deprivation practiced by the state or certain groups against others. And democracy, as well as the central role of ethics in shaping world politics). Whereas the proponents of liberalism see in their interpretation of the motives and legitimacy of humanitarian intervention, that states, international organizations and others are moving with moral humanitarian motives, to limit violations of the rights and freedoms of individuals, meaning that the behavior of states can be rationalized through values and morals.

This supportive trend is divided into two positions:

1) The first position (allowing humanitarian intervention within the United Nations framework): It calls for narrowing the scope of humanitarian intervention, to be limited only to collective action within the United Nations framework. If the national authority does not respect the rights of its citizens, the international community may take appropriate measures, subject to obtaining authorization from the Security Council.

In fact, this is obvious in the action of Kofi Annan, the former Secretary-General of the United Nations, in the General Assembly session, especially after September 1999, to study the mechanisms of authorizing intervention, and called on the countries that strongly oppose this

meaning (China, Algeria, India), to present A response to what its position would have been, if the international community had found a mechanism to intervene in the Great Lakes region in 1994 to stop the genocide. Also, Chapter VII of the Charter itself gave the Security Council the power to take punitive measures, if it deems that a situation constitutes a threat to international peace and security.

2) The second position: Supporters of humanism (authorization of intervention outside international legitimacy): It is led by the pioneers of humanism in international law, such as (Oppenheim and Lauterpacht), who call for the authorization of any collective action, even outside the international umbrella, to stop the brutal acts of persecution, which perpetrated against individuals and groups.

The case of Kosovo has proven the difficulty of embodying such a perception, which adheres to the international reference. In the summer and autumn of 1998, the (Chinese-Russian) veto prevented the Security Council from passing a resolution authorizing international intervention in Kosovo, which prompted NATO countries to launch a campaign of aerial bombardment for 78 years. One day against Belgrade, to force it to stop the Serbian abuses against the Kosovar Albanians. However, intervention in this way can find support in a new conception of the UN Charter, which Hindell calls the reference to Chapter V and VI of the Charter, which is based on authorizing intervention for humanitarian purposes without the need to obtain the consent of the government of the country concerned, and justifies his opinion and position by trying to avoid a repetition of the Rwanda disaster.

Second: The opposite trend:

We can distinguish here also between two situations:

1) The legal position: This trend stems from its opposition to intervention, based on legal criteria contained in the Charter of the United Nations. It calls for the rejection of humanitarian intervention, claiming that it affects the territorial integrity and independence of the state.

In this regard, (Brunley Lane) sees the absence of any support, whether in the Charter of the United Nations, or in the principles that govern relations between states, provides a legitimate cover for humanitarian intervention.

2) The Realist School: The realists respond to the first trend, which is to criticize the idea of humanitarian intervention from an angle that raises several questions: (Can human rights and moral values be relied upon to explain the movements of active international units? Within another country that has interests to protect the rights of a particular minority? Is this framework suitable for explaining the behavior of states)?

Hence, it seems clear the shortcomings of this perspective in the analysis due to the irrational dimension it contains. Realists believe that the goal must be equal with the cost. Neither human rights nor moral values are the drivers of states' behavior, but rather the logic of interest is appropriate to explain them. For this reason, the issue of human rights for realists is considered one of the sources of chaos in international relations, and the first threat to international security, and is considered a serious challenge to international legitimacy and the sovereignty of weak states, as states often hide their expansionist and strategic goals behind the justification of humanitarian intervention[22]. The case of Iraq is a good example.

[22] - Qahtan Hussein / International humanitarian intervention and its impact on the principle of state

Requirement IV: International humanitarian intervention between sovereignty and the responsibility to protect:

First: The responsibility to protect and the principle of sovereignty:

Sovereignty is an integral part of the state in its traditional concept, it benefits a political reality obviously in the state's ability to unilaterally issue decisions within its borders, and not to comply with any external authority, which provides stability in international relations.

In 2005, the United Nations General Assembly accepted the principle of (responsibility to protect), against the backdrop of genocide against humanity committed in Rwanda, the former Yugoslavia, and others. It imposed the question of the right to intervene for the sake of peoples in the future. From this standpoint, the idea of the responsibility to protect arose, as a new approach to protect civilians, inside and outside state.

In 2009, the Secretary-General of the United Nations (Ban Ki-moon) presented a report in which he clarified the responsibility to protect as a principle by giving it a full description according to three pillars or principles of principle:[23]

• **The first rule:** Every country must bear the permanent responsibility to protect its people, whether they are citizens or immigrants, from genocide, ethnic cleansing, and crimes against humanity.

• **The second rule:** The international community bears the responsibility to assist states in fulfilling their duties contained in the first rule.

• **The third rule:** If case of state clear failing in protecting its people, the international community bears the responsibility for immediate and decisive action, under the umbrella of Chapter VI, VII and VIII of the Charter of the United Nations.

The adoption and affirmation of the principle of the responsibility to protect changed many concepts, including the concept of sovereignty. Sovereignty was directly confronted with human rights.

Second: The future of sovereignty in light of the growing international humanitarian intervention:

Some researchers believe that international humanitarian intervention today does not affect the traditional concept of sovereignty, nor the laws builtontopof thisconcept, nor the political borders. Because humanitarian intervention has the character of supremacy, which gains its legitimacy from the development of the current international system, which has resulted in a lack of legitimacy for national sovereignty. Thus, the idea of sovereignty is not free of ambiguity, and there is also a gulf between positions and the law, as what was a violation of

sovereignty / legal research published in: Journal of the College of Basic Education for Human and Educational Sciences / University of Babylon / Issue (32) / April 2017 / p. (296) / The research is available in (pdf) / on the link: https://www.iasj.net/iasj/pdf/

[23] - Bouras, Abdel Qader/ International Humanitarian Intervention and the Decline of the Principle of National Sovereignty/ New University House/ Egypt 2009/ p.(194)/ Referred to in: Galal, Yasmina/ Legitimizing International Humanitarian Intervention between Sovereignty and the Responsibility to Protect/ Research published on the Arab Democratic Center website/ Visit(19/2/2022/) at the link:https://democraticac.de

sovereignty yesterday, is no longer so today, add to this the behavior of major countries and international reactions towards sovereignty.

Conclusion:

Francis Fukuyama says in his book (State Building): ((Dictatorship rulers and violators of human rights, cannot hide behind sovereignty to protect themselves while committing crimes against humanity. In such cases, external powers do not have the right, but rather the duty to intervene in the name of human rights, legitimacy and democracy)).[24]

The idea of humanitarian intervention is a relatively old idea at the level of international relations, but it emerged significantly and more clearly, after the dissolution of the Soviet Union, and the emergence of the new international system led by the United States of America, where it adopted an active role in arranging international relations through the settlement of conflicts that arose due to the disintegration of The socialist bloc, which was mostly conflicts based on racial and ethnic motives and reasons, which created a justification for intervention under the pretext of protecting human rights, protecting minorities and the right of peoples to self-determination, which in turn formed a unipolar international system. All of these developments required a development in the principles of international law, and this development can only be achieved by abandoning the principle of the absolute sovereignty of states, and by substituting models for flexible or relative sovereignty to justify intervention operations.

Results:

1) The traditional concept of sovereignty has been changed to a more flexible and more restrictive concept, to the extent that international intervention, or international humanitarian intervention is a fait accompli, and if it occurs, it will not affect sovereignty. As long as the interfering state is the one who violated the Charter of Nations, which necessitated international intervention to enforce the Charter principles.

2) Despite the loftyness of the Nations Charter, the practical reality has produced certain cases for us, in which international or humanitarian intervention took place outside the umbrella of the Charter. As happened in Iraq, and as is happening today in Syria, where American forces, as well as Turkish forces, entered and occupied areas of Syrian geography, sometimes on the pretext of fighting terrorism, and sometimes on the pretext of creating buffer zones.

Recommendations:

Countries often hide their expansionist and strategic goals behind the rationale for humanitarian intervention. Therefore: We call for thinking of alternative mechanisms, when the Security Council is unable to take appropriate measures due to the veto, and not direct intervention under the umbrella of Chapter VII.

[24] - Fukuyama, Francis/ State Building/ p. (172)/ Referred to in: Ben Marar/ Jamal/ Humanitarian Intervention and the Problem of Sovereignty/ Legal Research Published in the Journal: (RouteEducational & Social Science Journal 337 Volume 7 (1), January 2020)/ at Link: http://www.ressjournal.com/Makaleler

- References –

First, the books:

1- Shukri, Muhammad Aziz/ Introduction to Public International Law/ Damascus University Publications/ 2005.

2- Abu Heif, Ali Sadiq / Public International Law / Edition 9 / Mansha'at al-Maarif Alexandria 1971

3- Al-Ghunaimi, Mohamed Talaat/ Al-Wajeez in the Peace Law/ Knowledge Foundation in Alexandria/ undated/

4- Shehab, Mofeed, and others / Studies in International Humanitarian Law, Arab Future House, Cairo, 2000.

5- Muhammad Khalil Morsi/ The Use of Force in Contemporary International Law/ Wael Publishing House/ Amman/ 2009/ First Edition.

6- Muhammad Bu Sultan/ Principles of Public International Law/ University Press/ 2005/ first edition.

7- Bouras, Abdel Qader/ International Humanitarian Intervention and the Decline of the Principle of National Sovereignty/ New University House/ Egypt/ 2009.

8- Al-Hadidi, Talaat Jiyad Legji / Principles of public international lawin light of international changes (globalization) / book available for reading only without downloading / at the link : https://books.google.com/books?

Second: Legal Texts and International Agreements:

2- United Nations/ Charter website link: https://news.un.org/ar/story/2009/07/107792

Third: PhD theses:

1-Al-Arabi, Wahiba/The Principle of InternationalHumanitarianIntervention within the Framework of International Responsibility/ Ph.D. Thesis/ Oran University/ Algeria/ Faculty of Law and Political Science/ 2013.

2- Al-Azzawi, Anas Akram/ International Humanitarian Intervention between the Charter of the United Nations and Practical Application / PhD thesis submitted to the College of Political Science / University of Baghdad / 2005.

Fourth: Scientific journals and research:

1- Taher, Qahtan Hussein / International humanitarian intervention and its impact on the principle of state sovereignty / legal research published in: Journal of the College of Basic Education for Human and Educational Sciences / University of Babylon / Issue (32) / April 2017 / The research is available in (pdf) format / at the link:
https://www.iasj.net/iasj/pdf/d0dd3c4f304d52dd

2- Al-Issa, Talal Yassin/ Sovereignty between its traditional and contemporary concept/legalresearchpublishedinDamascusUniversityJournalofEconomic and Legal Sciences/ Volume (26), Issue (1) for 2010/ Available (pdf) at the link: http://www.parliament.gov.sy/SD08/msf/1435496126_.pdf

3- Taher, Qahtan Hussein / International humanitarian intervention and its impact on the principle of state sovereignty / legal research published in: Journalof the College of Basic Educationfor HumanandEducationalSciences
/ University of Babylon / Issue (32) / April 2017 / The research is available in (pdf) / at the link:

https://www.iasj.net/iasj/pdf/d0dd3c4f304d52dd

Fifth: Legal articles and research published on Internet blogs:

1- Al-Smadi, Lina/ an article titled Sovereignty of States in International Law/ published on the (e-Arabi) website/ visit (14/2/2022) at the link: https://elarabi.com/

2- Noah, Muhannad/ Arabic Encyclopedia website/ article (Sovereignty)/ visit (15/2/2022) at the link:
http://arab-ency.com.sy/ency/details/4511

3- Mahmoud, Hadhoud/ Criticism of the Sovereignty and Governance Controversy/ Article published on Al-Jumhuriya website/ visit (18/2/2022) at the link: https://www.aljumhuriya.net/ar/content

4- Musa, Suleiman Musa/ international intervention, its forms and extent of its legitimacy/ article on the net/ website of the Informatics Reference website/ visit (13/2/2022/) at the link:
https://almerja.net/reading.php?idm=83819

5- Al-Marashi, Faisal Baraa/ International Humanitarian Intervention/ article published on the political encyclopidia website/ on the internet/ visit (12/2/2022)/ at the link: https://politicalenyclopedia.org/dictionary

6-Kallal, Yasmina/ Legitimizing International Humanitarian Intervention between Sovereignty and the Responsibility to Protect/ Research published on the Arab Democratic Center website/ visit(19/2/2022/) at the link: https://democraticac.de/?p=51365

7- .Sobhi, Muhammad Amin / research entitled: The principle of non-interference in the affairs of states within the framework of international humanitarian law / research published on the website of the Arab Democratic Center / visit (19/2/2022) at the link:
https://democraticac.de/?p=38854

8-Al-Hassan, Hussein Abdullah: Humanitarian intervention in international humanitarian law / research published on the civil dialogue website / visit (19/2/2022) at the link: https://www.ahewar.org/debat/show.art.asp

9- Aya Abdel Rahman Musa and others, legal research prepared by a group of researchers entitled: The impact of international humanitarian intervention on the national sovereignty of the state / under the supervision of: a. Dr.. Muhammad Nour Al-Basrati/ on the website of the Arab Democratic Center/ visit.

10- Al-Khouli, Muhammad / Kofi Annan and the call for humanitarian intervention / article published on the website: Al-Bayan / visit (19/2/2022) at the link: https://www.albayan.ae/opinions