INTERVENTION IN INTERNATIONAL LAW

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TO MY FAMILY AND FRIENDS
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2- Island of Palmas Arbitration, cited in J G. Strake, An Introduction to International Law (4ed 1958) at P.133


6- Trail Smelter Arbitration Case, cited in J G. Strake, An Introduction to International Law (4ed 1958) at P.91

7- Western Sahara Case, cited in Lord Templeman, Public International Law (4ed 1997) at P. 229.
TABLE OF CONVENTIONS AND INTERNATIONAL INSTRUMENTS

2. Declaration on the Granting of Independence to Colonial Countries and People.
5. European Convention for peaceful Settlement of Disputes.
ABBREVIATIONS

Am.J.I.L : American Journal of International Law
ECOMOG : Cease –fire Monitoring Group of Economic Community of
           Western African States
ECOWAS : Economic Community of Western African States
G.A : General Assembly
I.C.J : International Court of Justice
UK : United Kingdom
UN : United Nations
UNSC : United Nations Security Council
USA : United States of America
PREFACE

Since the international community encourages co-existence between different states which form that community, intervention remains one of the main problems challenging the will of international community. Intervention is motivated by the desire to gain some interest for the intervening state. It is a matter of conflict of interest and indeed, the effects of that intervention extend to include wide scope of international relations.

International law deals with intervention through the Charter of the United Nations and Resolutions of the United Nations General Assembly which prohibit intervention in the affairs of other states. However, the principle of non-intervention becomes universal doctrine in international relations.

As a reaction to massive violations of human rights in different parts of the world, there are many voices calling for humanitarian intervention in the territories of those states which commit such acts in order to prevent them. Those who call for humanitarian intervention may prefer to deal with a matter of humanitarian needs emotionally if it is not justified legally. In this context, principle such as sovereignty and political independence may become meaningless, and this means that a state will not be able to control its territory and peoples. All these changes came as a result of the New World Order.

This thesis is divided into four Chapters. Chapter one is about the nature of intervention. Chapter two deals with the relation between intervention and the United Nations Charter. Chapter three discusses
humanitarian intervention, and Chapter four summarizes the previous papers.

**ABSTRACT**

This study is about intervention in international law, more strictly it is about intervention by a state in the affairs of another state, because the act which is exercised for instance, by an international organization such as the United Nations in the affairs of its members is not considered as intervention.

Initially, in Chapter one the study clarifies the nature of intervention, its meaning and different forms such as forcible, economic, diplomatic and intervention by propaganda.

In Chapter two, the study discusses the consequences of intervention under the Charter of the United Nations with focus on the principle of sovereignty of the states which, the Charter is concerned with and considers it as a first organizational principle in international relations, and the importance of sovereignty and limitations put upon it, and then the link between sovereignty generally and intervention. The Chapter also states the principle of non-intervention which is adopted by international community and discusses also prohibition of intervention in the Charter of United Nations and the Resolutions of the United Nations General Assembly.

The term “humanitarian intervention” appeared strongly in recent years as a principle directing the policy of international community. Thus, the study discusses in Chapter three the concept of humanitarian intervention in the affairs of other states to protect human rights, and some related issues
such as protection of nationals, interference in civil war, intervention by invitation and intervention for democracy. The Chapter moreover, shows the attitude of international law, theoretically through provisions of the international agreements and resolutions, and practically according to some judgments of International Court of Justice.

The study ends with conclusions clarifying the consequences of intervention upon the relation between states and upon the international peace and security.
الخلاصة

الدراسة هي ذلك التدخل في دولة بوساطة التدخل خاصية و بصورة الدولي القانون في الفعل الآخرين دولة الدائرة كلاممثل الدوالي تنمٍ يوجد الدوالي إجمالية存在于 الدوالي الزائدة كلاممثل الدوالي تنمٍ يوجد الدوالي إجمالية

إضافة إلى الدراسة تتناول البداية التدخل الطبيعية في classe، معنى، الآخرين الدوالي الفائدة. الدراسة تحدّى البداية الانتقادات، الدوالي الفائدة، القدرة، استخدام طريقة في التدخل مثل الحالة المختلفة والأشكال الأممية الاعلامية الاعتدال.

بذلك، الدائرة الفائدة الدبلوماسي الدخول الاقتصادي، الدخول القوة، الاستخدام طريقة في التدخل مثل، الدائرة الفائدة في الامم،取りاً مع بعض الدوالي ذات الاقتدام، والدوالي ترتكب، الرجوع الدبلوماسي الدخول القوة، بسبب، الدوالي ترتكب، والدوالي أثناء وجعل الدوالي في ومن الأسرة.

رابع: الدائرة الفائدة إنجاز الوضعية الدبلوماسي الدخول الاقتصاد، الدخول القوة، الاستخدام طريقة في التدخل مثل، الدوالي الفائدة في الامم، إيجاد التفاهم، الدوالي ترتكب، والأسرة، وجعل الدوالي أثناء وجعل الدوالي في ومن الأسرة، والدوالي ترتكب، والأسرة، وإيجاد التفاهم، الدوالي ترتكب، والأسرة.
Chapter 1
The Nature of Intervention

1- **Historical Background.**

The terms “intervention” and “non-intervention” have existed since the human beings organized themselves in groups, and agreed to live in communities, which had mutual rights and duties for each member of those communities. Since there were powerful and weak groups inside those communities, there was a desire from the former to control the latter by imposing their own conditions by force or any other similar way. Thus intervention emerged in the relations between different groups as a wrong and negative side of the principle of non-intervention in the affairs of others.

The origin of the term “intervention” in public international law may be traced to the writings of the classical publicists of the modern law of nations. Little, however, is found in the works of Grotius, commonly called the father of international law, and of Vitoria, one of the principal forerunners, relating to the principle of non-intervention. 1

Historically, before the appearance of a state as main actor in international community, intervention occurred in the context of competition between different nations in the Middle Ages, specially between imperial and papal rulers 2. In order to control wide areas and resources of the world at that time, intervention was widely used as

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instrument of foreign policy, particularly in the Roman Empire\(^3\). So, Rome as a republic had a long record of intervention.\(^4\)

After the appearance of state as it is known in international Law with its certain elements, and the international principles which govern the relations between those states, still the competition between states led to intervention.

Many interventions occurred through war or use of force, that is forcible intervention. Many states in different areas of the world, specially in Africa, Asia and Latin America became victims.

Theoretically, and for a long time there were some writers who concerned themselves with the problem of intervention as an act threatening international peace and security. All of them saw it as something wrong and had to be faced.

Vattel, observed that as a consequence of the liberty and independence of nations, each nation has a right to govern itself as it thinks proper, and that no nation has the right to interfere in the internal affairs of another.\(^5\)

The 16\(^{th}\) century’s writers asserted that war could only be just when used as a defense against attack, or for the purpose of righting a great wrong.\(^6\) In other words, intervention will be a right of state in case of self-defence. But they did not go into detail as to what is great wrong.

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\(^3\) Id.
\(^4\) Ann Van Thomas, supra note 1, at 4.
\(^5\) Id.
\(^6\) Tim Hillier, Public International Law, 591(1997).
In spite of those views which contradict intervention, other writers saw that, prior to the 20th century, no prohibition of the use of force existed\(^7\). So states were free to resort to war.

However, there were attempts made by some actors of international community to deal with the matter of intervention as a phenomenon which must be solved. Thus in 19th century the principle of intervention was adopted, as a Pan-European principle, which was expressed by Holly Alliance. It was to be used against revolutionary governments of Europe in defence of legitimate governments and systems\(^8\). This situation was in Europe only. This principle did not apply in dealings with other areas of the world.

Other attempts were the Hague Peace Conferences of 1899 and 1907 which mark the beginning of attempts to restrict the freedom to resort to war\(^9\).

At the same time there were other areas in the world which raised their voices against intervention. Thus under the influence of Latin American states which were threatened by the United States of America, there was a departure from the principle of intervention in favour of non-intervention\(^10\). But the nations of Africa and Asia up to that time were suffering from intervention by superpowers. European states occupied their territories and their struggle was for independence

\(^8\) Edmund Jan, *supra* note 2, at 418.
\(^10\) Edmund Jan, *supra* note 2, at 418.
2- **Definition.**

In spite of wide concern about intervention as an act against the will, sovereignty and independence of a state, there is no satisfactory agreement among jurists, as to the meaning and content of intervention in international law\(^1\). Hence, the different views of writers and jurists are indeed influenced by surrounding factors, historical, political and ideological.

Some writers argue that intervention is a concept of uncertain legal significance. Both the authorities and the practice are in confusion\(^2\). Ponfils, for example says, there are few subjects which have given rise to more controversies than that of the duty of non-intervention. All jurists are agreed upon the seriousness of the act and its consequences. But in their estimates of the juridical issue one can find only trouble and confusion\(^3\).

In spite of those difficulties and confusion, some jurists and writers have attempted to put a definition. L.Oppenheim has defined intervention as “a dictatorial interference by state in the affairs of another state for the purpose of maintaining or altering the actual condition of things”\(^4\). Therefore intervention must neither be confused with good offices, nor with mediation, nor with intercession, nor with co-operation, because none of those imply a dictatorial interference\(^5\).

\(^{13}\) Ann Van Thomas, *supra* note 1 at 67.
\(^{15}\) Id. at 189.
It is obvious that, the dictatorship is a main factor just as a cornerstone, and in the absence of the consent of state it is necessary to describe the act as intervention.

On the other hand, different schools of thought tried to define intervention as a part of their concern and with concentration on its consequences.

The Realist School of thought views the international political struggle for power, and see all interventions as attempts by a state to increase power position in relation to others, or to prevent others from increasing their power position. And this indeed explains why states intervene in others.

The Rational School of thought is less concerned with intervention as a phenomenon related to power struggle, and more concerned to examine in the light of international law morality. So, since intervention contradicts the moral principle, it is prohibited for that.

The Marxist School identifies intervention as an exclusive activity of imperial or neocolonial powers, whose total pattern of relation with other states is considerably interventionary. This definition came in the context of historical struggle between communism and imperialism. It is also very important to know the attitude of Islamic School as a contemporary civilization, and we can note that there are general

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16 Caroline Thomas, New State, Sovereignty and Intervention, 10 (1985).
17 Id.
18 Id.
principles in this school which regulate the relations between states, and respect of others is one of those principles.

The Encyclopedia of the United Nations and International Agreements defines intervention as follows: “it is an international term for various forms of interference by one or several states in the affairs of another in pursuance of their own interest”\(^\text{19}\). However this definition is adopted by contemporary international community, because it comes through the United Nations, and then became a universal measure for acts committed by a state against another one.

Generally, from the principles and sources of the law of nations and evaluating acts and declarations of state\(^\text{20}\), one may say that intervention occurs when a state or group of states interfere in order to impose its will in the internal or external affairs of another sovereign and independent state with which peaceful relations exist and without its consent, for the purpose of maintaining or altering the actual conditions of things.

The important thing is that all definitions almost contain element of force or coercion or ability of pressure as an instrument to impose the will of the intervening state against the intervened state. So in the absence of this element the act will be mere mediation between states.

\(^{19}\) Edmund Jan, *supra* note 2, at 418.
\(^{20}\) Ann Van Thomas, *supra* note 1, at 71.
3- **Types of Intervention.**

The main viewpoint which dominates international law is that intervention, as dictatorial interference, can be committed only by a state or states against others, and so it cannot be committed by an international organization or other international organs. The writers who adopt this view see that intervention implies in some sense a breach of sovereignty, and this breach of sovereignty cannot be committed by an international organization like “United Nations” since part of sovereignty has already been ceded to that organization. The acts, which are exercised by United Nations through the Security Council or with its authorization against some states, are considered as punitive measures according to the Charter of the United Nations itself.

Intervention has several types according to some classifications: Parry and Grand in the Encyclopedic Dictionary of International Law outline three kinds of intervention. One is internal intervention. An example of this when state A interferes between the disputed sections of state B in favour of either the legitimate government or insurgents. Another type is external intervention. This type occurs when state A decides to interfere in the relations of other states such as when Italy entered the Second World War on the side of Germany against Great Britain. The third type is punitive intervention. This is the case of reprisal short of war for any injury suffered at the hands of another state, for example, a blockade instituted against a state for a gross breach of treaty.

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Some authorities are apparently of belief that intervention is limited to interference in the internal affairs of a state, and that interference in the external affairs does not constitute intervention\textsuperscript{23}. But others like L.Oppenheim say that intervention can take place in the external as well as in the internal affairs of the state\textsuperscript{24}. International law adopted this opinion as a legal principle.

Intervention can also be classified as direct or indirect. The direct form of intervention occurs when a state interferes by its own acts on the affairs of another whether internal or external, and this is obvious in case of forcible or military action, when a state occupies actually the territory of another by its own troops as it happened in Iraq from the United States and United Kingdom in 2003, and the direct intervention obvious also in case of economic action when intervened state commits an economic injury to another, and so on in other forms of intervention.

On the other hand, the notion of “indirect force” refers to the participation of one state in the use of force by another state, for instance, by allowing part of its own territory to be used for violent acts against a third state as well as state’s participation on the use of force by official bands organized in a military manner such as irregular mercenaries or rebels\textsuperscript{25}. So, in the famous case of Nicaragua, the court mentioned that the arming and training of Contras could involve the threat or use of force against Nicaragua, but the mere supply of funds to Contras, while undoubtedly an act of intervention in the internal affairs

\textsuperscript{23} Ann Van Thomas, \emph{supra} note 1 at 69.
\textsuperscript{24} L.Oppenhiem, \emph{supra} note 6, at 189.
\textsuperscript{25} Bruno Simma, \emph{supra} note 4, at 113.
did not itself amount to use of force. And this is an obvious example for indirect aggression or indirect intervention which many states exercise in their relations.

Thirdly intervention can be committed by one state (unilateral intervention) or by several states (collective intervention). Unilateral intervention is undertaken by an individual state to promote its own special interest, whether political, strategic, or whatever. An example of this is Iraq’s intervention in Kuwait in the beginning of 1990.

The collective intervention refers to the participation of any group of countries in an act of intervention, for example, intervention by Germany and Soviet Union in Poland in 1939, and United States of America and Untied Kingdom in Iraq in 2003, and also intervention by Britain, France and Israel in Egypt 1956.

4- **Forms of Intervention.**

(i) **Forcible intervention.**

The element of coercion is particularly obvious in the case of intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another state. And so, military action is the most common form of forcible intervention which challenges the will of international community, and it consists of

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27 Hedly Bull, *supra* note 8, at 158.
28 Id, at 161
29 Tim Hillier, *supra* note, 3, at 609.
attempts or actual occupation of a part or whole of territory of an alien state.\textsuperscript{30}

The definition above means that a great violation of sovereignty, integrity and political independence of state, and these principles have a great respect from the international community, so, the writers asserted that, any coercive incursion of armed troops into a foreign state without its consent impairs that state’s territorial integrity, and any use of force to coerce that state to adopt a particular policy or action must be considered as an impairment of that state’s political independence.\textsuperscript{31}

Historically, even before 1918, the right to use force was considered a matter of sovereign prerogative and the waging of war was recognized as lawful under international law. As one commentator observed, “international law has no alternative, but to accept war independently of the justice of its origin as a relation which the parties to it may set-up if they chose, and to busy itself in regulating the effects of the relation.”\textsuperscript{32}

So, if a state decides, it may resort to war at any time.\textsuperscript{33} Force is thus permitted in the relations between states without any condition, and this quotation describes legal situation at that time.

The situation lately moved towards peaceful co-existence between states. So, international community through the League of Nations and then United Nations Organization prohibited the use of force as an instrument in the international relations.

\textsuperscript{30} Edmund Jan, \textit{supra} note 2, at 418 – 419.
\textsuperscript{31} Louis Henkin, \textit{supra} note 5, at 819.
\textsuperscript{32} Lord Templeman, \textit{Public International Law}, 212 (1997).
\textsuperscript{33} Bruno Simma, \textit{supra} note 4, at 109.
between states. The United Nations through its Security Council put some measures so as to determine if certain acts considered as forcible intervention or not.

The Security Council considered a number of acts as aggression, in the light of relevant circumstances surrounding the action. And these are:-

a) The invasion or attack by the armed forces of state against the territory of another state, or any military occupation.
b) Bombardment by the armed forces of a state against the territory of another state, or the use of any weapons by a state against the territory of another state
c) An attack by armed forces of state on the land, sea or air forces, marine and air fleets of another state, and
d) The sending by, or on behalf of state of armed bands, groups or irregulars.

In spite of wide concern of the use of force in the international relations, and the provisions of international law, resolutions of the United Nations and agreements that prohibit this form of intervention clearly, in spite of all that, still there are some states which challenge the will of international community and intervene by military force in other states to achieve their own interests, specially in recent years, and specifically after the fall of the Soviet Union which was keeping the international balance of power and appearance of the New World Order and the leadership of USA as a main and sole superpower. Many

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34 Lord Templeman, supra note 11, at 215.
states in different areas of the world have become victims of this New World Order.

(ii) **Economic Intervention**

Economic intervention is one of the main forms of intervention, which has great influences up on the will, and sovereignty of the states, especially in recent years, when states, which have strong economic system, use the economy to intervene in the affairs of other states, and this use of economy may be contrary to the principles applied by international community.

International law for the most part acknowledges that each state has a right to decide what economic policy it will follow in its dealings with other states, for the choice of a foreign economic policy which a government feels will best benefit its national economy is a matter ordinarily within the domestic jurisdiction of the state. So the state is free to use its resources and wealth. In this case, if a state interferes to alter the conditions of another state’s economy in the absence of the latter’s consent, then it will be committing an economic intervention.

Economic intervention is defined as “the adoption of measures of economic pressure which isolate the sovereignty of another state, obstruct its economic independence and jeopardize the basis of its economic life.”

These obstruction and jeopardy can take many forms to achieve the results in favour of intervening state indeed. In view of some

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35 Ann Van Thomas, supra note 1, at 409.
36 Caroline Thomas, supra note 7, at 56.
writers, economic intervention appears in three forms: Trade relations, public financial relations or private financial relations. They give such examples as when tariff is established solely for the purpose of damaging the economy of other nations, then the tariff becomes an intervention, and so when embargo is used solely for the purpose of forcing another state to fall in line with course of action, then it becomes intervention.

In addition, the economic intervention may take the forms of boycott, customs, barrier or waging customs war, refusing to implement contractual provisions, economic embargo and economic blockade. Besides that other writers point out that, economic aid became an important means of intervention in the Post-Cold War period.

Another area of economic intervention that has become of major importance, especially in the last past century is the question of capital investment and economic influence as an intervention in the internal affairs of the country.

All these forms contain the basic features of economic intervention which challenges the will of states and cause great injuries for them.

The positive side of this form of intervention is non-economic intervention, and in the state practice some states played a positive role of not interfering economically. On many occasions, for example, in 1936 the European Great Powers departed from the

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37 Ann Van Thomas, supra note 1, at 410.
38 Id.
39 Edward Jan, supra note 2, at 419.
41 Hedly Bull, supra note 8, at 33.
principle by agreeing not to intervene in the Spanish Civil War under any circumstances by certain kinds of trading with the contestants. 42

Theoretically, the provisions of the international law and agreements state the duties and rights of the states towards intervention. The Charter of Economic Rights and Duties of States, Article 1, provides that every state does indeed have the sovereign inalienable right to choose its economic system without outside interference43. The starting point is the resolution 1803 of 1962 on Permanent Sovereignty over Natural Resources, which provides, inter alia, that people and nations have the right to permanent sovereignty over their natural wealth and resources44, and that the right must be exercised in accordance with the well-being of state concerned.

On the other hand, practically the international courts have asserted that no state has a right to intervene economically in another state, even negatively. For example, the Trail Smelter Arbitration Case of 1931 recognized the principle that a state is under a duty to prevent its territory from being a source of economic injury to neighboring territory, e.g. by the escape of noxious fumes45.

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43 Hedly Bull, supra note 8, at 34.
44 Id., at 34.
45 J.G. Strake, supra note 13. at 91.
(iii) **Intervention by Propaganda.**

One of the important forms of intervention which is widespread all over the world as a result of information technology revolution is what is called information intervention, or intervention by propaganda or in other words subversive intervention which some states exercise through great mass-media.

This form is not less than other forms of intervention in influence if it is not the most serious one because; mass media reach not only people’s homes, but also their minds, shaping their thoughts, and sometimes their behavior.\(^{46}\)

Information intervention is very serious in its results upon the states because in the era of globalization, terms like sovereignty, territorial integrity and political independence of the state will become mere academic terms.

Inspite of this, it is difficult to define this form of intervention because propaganda infiltration, and subversion seem to be protected by recognized human rights of freedom of opinion, and freedom of communication across national boundaries.\(^{47}\)

However, some writers consider that propaganda is the most frequently cited tangible aspect of political aggression, and then define it as “the projection of words across national frontiers”.\(^{48}\) So intervention by propaganda can refer to acts for which a government

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intended to forment aggression against state or revolution within state\textsuperscript{49}, and this hostile propaganda attack carried on by one state against another and of such a magnitude as to endanger the security of state against which it is directed can be classified as “political” or ideological aggression\textsuperscript{50}.

Nevertheless, the presently opposing ideologies will doubtless approach each other as communications increase through mass-media trade, literacy, cultural exchange and travel\textsuperscript{51}, and indeed the influence of mass-media is the greatest one in challenging the sovereignty of state.

The information intervention or intervention by propaganda is imposed by a certain state against the will of another one, because the latter is unable to protect its territory, or cannot totally control what population hear or watch even if they desire to do so\textsuperscript{52}. For example, the People’s Republic of China can broadcast radio programmes inciting Thai tribesmen to rebel against their government, and the latter can do nothing to stop this. Clearly, information intervention will be feasible and effective against small scale actors with limited range of media activities than against more technologically developed groups with access to multiple media outlets\textsuperscript{53}, and therefore in practice of states. Most of the states which interfere through information and mass-media have a great ability to do so. It is almost a technological struggle between developed and developing countries.

\textsuperscript{49} Quincy, supra note 15, at 531.
\textsuperscript{50} Louis Henkin, supra note 5, at 903.
\textsuperscript{51} Quincy, supra note 15, at 526.
\textsuperscript{52} Caroline Thomas, supra note, 7, at 5.
\textsuperscript{53} Jamie, supra note 14, at 19.
Subversive intervention is very serious. Even some states justify military intervention because of it. For example, in 1958 the United States of America intervened with armed forces in Lebanon on the request of the latter because it was a victim of subversive intervention from the Untied Arab Republic\textsuperscript{54}. The American president and high officials have characterized subversive intervention by certain states as the greatest menace to international peace and security in the world.

It has been generally affirmed and recognized by the United Nations that governments are under an obligation not to engage in propaganda, official utterance or legislative action with the intent or likelihood of inciting sedition or revolt against the governments of other states.\textsuperscript{55}

(iv) **Diplomatic Intervention.**

The word diplomacy is defined as the art of making policy of government, whatever it may be understood\textsuperscript{56}. The diplomacy may also mean the art of etiquette in the relations of states, and the use of civilized methods in resolving problems which occur between different countries.

On the other hand, inspite of the definition of intervention as a dictatorial interference by a state in the affairs of another, and whereas the diplomacy is the art of making policy there is a link between the

\textsuperscript{54} Quincy, supra note 15, at 524.
\textsuperscript{55} Id., at 523.
\textsuperscript{56} Ann Van, supra note 1, at 400.
two things, diplomacy and intervention, and that is through what is called “diplomatic intervention”.

So, a diplomatic intervention can be defined as the use of diplomacy by a state or group of states to interfere in the affairs of another state not only by peaceful mediation in order to resolve problems, but sometimes through pressures and coercive measures.

The diplomatic intervention may take the form of direct diplomatic channels or diplomatic conspiracy to exert pressure by group of states\(^{57}\). And indeed this is the most effective form because of great influences upon the victim state.

Another form of diplomatic intervention is that which Brownlie notes by saying that: the more general diplomatic understanding of the term is to describe “diplomatic intervention” on behalf of non-nationals or on behalf of nationals in matters, which are in law within the domestic jurisdiction of states of their residence or sojourn\(^{58}\).

Diplomatic intervention in this sense is found historically in different theories and in state’s practice, but it has increased recently when international community prohibited obviously the use of force and intervention in the affairs of another state. Besides that, states have traditionally utilized coercive measures short of war in attempting to prevail in dispute with other states, but the severance of diplomatic relations is not of such measures\(^{59}\), because the

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\(^{57}\) Edmund Jan, supra note 2, at 419.

\(^{58}\) Bruno Simma, supra note 4, at 27.

\(^{59}\) Louis Henkin, supra note 5, at 870.
maintenance of such relations is not required by international law. Hence, states are free to do so.

Practically, we note that the United States of America when it appeared as a leader of the new world order after the fall of Soviet Union, its record of intervention became the longest one, and it had pursued long-term strategic diplomatic intervention in the middle East, basically in the conflict between Israel and Palestine besides its diplomatic interventions in the area of Arabian Gulf, and in many areas in the world.

Also, there were many diplomatic interventions from other developed countries especially European states in their former colonial territories in Africa, Asia and Latin America and these are justified on grounds of solving the rooted problems, or to assist those developing countries generally. Indeed interventions by these ways is contrary to international law.

5- **Conclusion.**

I started this chapter with the term “intervention”, its origin in international law which is traced to the writings of the classical writers, and its appearance in the context of competition between different nations in the Middle Ages.

Intervention occurs when a state or group of states interferes in order to impose its will in the internal or external affairs of another sovereign and independent state and without the latter’s consent, for the purpose of maintaining or altering the actual conditions of things.
Intervention can be only by a state against another, and the acts exercised by the Untied Nations are not considered as intervention but as punitive measures.

Intervention can be by force “forcible intervention” such as when intervening state occupied actually through its troops the territory of another one. Also intervention can be by economic pressures, and this appeared strongly in resent years through the Cold-War. Besides, there is information intervention which exercised by super power as a result of information technology revolution. However, we noted that international law does not permit such forms of intervention in the relation between states.
Chapter 2

United Nations Charter and Intervention

1- The Concept of Sovereignty.

Historically, and in the view of some writers of international law, the term “sovereignty” was introduced in the political science by Bodin in his celebrated work “De la republique” which appeared in 157760. Other writers have linked the appearance of sovereignty and the appearance of state as international entity. They argue that sovereignty is usually linked to the disintegration of feudalism at Medieval Civitas Maxima and the birth of modern nation state61.

The concept of sovereign states, autonomous and independent, is often mentioned in the context of the alleged birth of the modern international system of Westphalia in 164862. So, Westphalia signaled the formal acceptance of the ideas of the sovereign authority of the state as a person of international law.

Since the term sovereignty appeared, the jurists had tried to define it, but they do not agree because there are different circumstances which surround the term in all its stages. However, the learned Max Huber, Arbitrator in Island of Palmas Arbitration in these terms, described traditional sovereignty: “Sovereignty in the relation between states signifies independence. Independence in regard to a

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60 L. Oppenheim, International Law, III (2ed. 1912).
portion of the globe is the right to exercise therein to the exclusion to any other state, the function of state 63.

On the other hand, Bodin gave quite a new meaning to the old conception. Being under the influence and in favour of the policy of centralization initiated by Louis. X1 of France 1461-1483, the founder of French absolutism, he defined sovereignty as “the absolute power within a state” 64. Oppenhiem, defined sovereignty as “supreme authority, an authority which is independent of any other earthly country” 65. Other writers like Ropert Jackson went on to adopt the definition of Hisly, when he defined sovereignty as “an idea that there is no final and absolute political authority in the political community, and no final and absolute authority exist elsewhere” 66.

The above definitions have concentrated on the supremacy and finality of sovereignty as an authority within state, but this in fact is not true, because it is not absolute.

However, the substance of the concept of sovereignty has undergone changes at different times, and will undergo further changes in the future. These changes have affected all the basic elements of sovereignty. Their meanings, their scope and their mutual relationship 67. So, the revolutionary changes in the eighteenth and early nineteenth century gave a new concept of sovereignty, or rather gave a new content to the concept which had already emerged. Within the domestic field, sovereignty was transferred from the ruler to the

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64 L. Oppenheim, supra note 1, at 111.
65 Id., at 109.
67 Djura, supra note 2, at 1.
people, the so-called “popular sovereignty”. Internationally, there was independence and equality of states\textsuperscript{68}. This is what has been adopted by contemporary international community.

From what is mentioned above, sovereignty strictly speaking, is a legal institution that authenticates a political order based on independent states whose governments are the principal authorities both domestically and internationally\textsuperscript{69}. Thus, it is not merely a technical term used to denote the formal criteria for membership of the international system, like political concept. It is essentially contested because it confers power on some people and removes it from others.

2- Importance of Sovereignty.

The most fundamental idea is that, international society, for some countries, now has been founded on the principle of sovereignty. In other words the state is supposed to be the master of what goes on inside its territory\textsuperscript{70}, and therefore, the state acts only according to its own will, domestically in its territory and people, and internationally in its relations with other states. So, in these relations sovereignty is a mark of political independence of state\textsuperscript{71}. Besides that, sovereignty gives a state the right to engage in international activities and international organizations in company with other sovereign states.

The importance of sovereignty increased gradually with the development of the international community. So, the principle

\textsuperscript{68} Id, at 4.
\textsuperscript{69} Ropert Jackson, supra note 5 at, 10.
\textsuperscript{70} Hedly Bull, Intervention In World Politics, 11 (1984).
\textsuperscript{71} Ropert Jackson, supra note 5, at 3.
currently plays the role of a necessary shield behind which a state can
shelter in the knowledge that more intense international relations will
not effect their most vital domestic interest\textsuperscript{72}.

Brownlie argues that territorial integrity and political
independence “as basic elements of sovereignty, constitute some total
legal rights for a state, and thus all forces are prohibited unless
specially allowed by the United Nations Charter\textsuperscript{73}, as an international
regulation which binds all member states.

As A.P.d’Entrves puts it, the importance of the doctrine of
sovereignty can hardly be overrated. It was a formidable tool in the
hands of lawyers and politicians, and a decisive factor in making of
modern Europe\textsuperscript{74}. Indeed, it became the basic factor of making of
modern international community under the control of United Nations
Organization.

For that, the Untied Nations concerns for the principle of
sovereignty led it to put the respect of sovereign equality of its
members as the first organizational principle of the Charter, which
provides in Article 2 (1): “The Organization is based on the principle
of the sovereign equality of all its members”. Thus, it is apparent that
respect of sovereignty is one of the main goals of the United Nations,
and in this respect the law of international society organized in the
United Nations does not differ from the international customary law.
In both, the rules of international law covering principle of

\textsuperscript{74} Ropert Jackson, \textit{supra note} 5, at 9.
sovereignty form the starting point. And for that, sovereignty characterizes the state as an actor in the international community.

Thus, the role of sovereignty and sovereign states is usually regarded as the most important of all roles that any one could perform on the world stage. Sovereign states are the leading actors of world politics, and sovereignty is considered as one of foremost institutions of our world. It has given political life distinctive constitutional shape which defines the modern era and sets it apart from previous years.

3- **Limitations on Sovereignty.**

Since a state is one of many other states which form the international community, and it acquires sovereignty as supreme authority within its territory, it will be logical to say that sovereignty must not be absolute, because any of those states has its own interests which differ from others, and then the interest of the international community which indeed requires some balance between these contradicted interests. For that reason some restrictions on the freedom of states must be put. So, some jurists argue that, states are sovereign and free to legislate in their own territory, but as they are members of the international community, they are bound to observe certain laws or suffer the consequences, because the membership in this system requires mutual rights and duties.

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77 Ann Van Thomas, *Non-Intervention*, 100 (1956).
However, and according to Pufendorf, sovereignty is supreme power in a state, but not absolute power, and sovereignty may be constitutionally restricted\textsuperscript{78}.

At the present time, there is hardly a state in the interest of the international community which has not accepted restrictions on its liberty of action\textsuperscript{79}. Therefore some international duties and obligations must be respected by states as they are members of the United Nations Organization. Examples of corrective duties and obligations binding states are:

a) The duty not to perform acts of sovereignty on the territory of another state.

b) The duty to prevent agents and subjects from committing acts constituting a violation of another state’s independence or territorial supremacy.

c) The duty not to intervene in the affairs of another state. So, the absolute sovereignty of state indeed violates the international law and international peace and security for which the United Nations Organization had been founded to keep.

On the other hand, and in the practices of states, it is a prerequisite to recognize that the various states which constitute the world community are not equal inspite of what is mentioned in the United Nations Charter about the equal sovereignty of states, because in the view of some modern writers, the superpower is “more equal”, than others and should be seen not as “adjacent” to them, but as

\textsuperscript{78} Cited in L. Oppenheim, supra note 1, at 112.
\textsuperscript{79} J.G. strake, supra note 4, at 83.
“encompassing” them all. This topic describes the current situation upon international relations especially when those superpowers try to control the world according to the factor of power, militarily, economically, culturally and technologically. This is the situation all over the world. Recently for example, during the Cold-War the sovereignty of many states was propped-up by aid and the support of vying superpowers. Small and weak states became victims of superpowers, and then lost their sovereignty through many causes, some times civil war, war on terrorism which became strong cause to violate sovereignty, and some times without even obvious causes. Besides, the great influence of modern technology upon sovereignty of states, which have no access to it, enables a superpower to intervene for instance through mass media and indeed against the will of the target state, and through spy planes and satellites, which openly monitor the skies of supposedly sovereign states. So, talking about absolute sovereignty becomes meaningless, at least practically, and according to cases above mentioned.

From these views of international law writers, and practices of states, it is obviously apparent that sovereignty of states is not absolute but many restrictions have been put upon it, some of them in the interest of the international community, and against a state, and others in the interest of superpowers themselves which gained it according to their power and influence.

82 Mohamed Sid-Ahmed, supra note 11/21.
4- **Sovereignty and Intervention.**

The relevant question for the international lawyers is at what point the manifold forms and degrees of intervention may be said to amount to an act of unlawful interference with the sovereignty of another state. In other words, what type of intervention may violate the sovereignty of state and what are the links between sovereignty and intervention? In fact, sovereignty includes the following sweeping powers and rights:

- The power to wield authority over all the individuals living in the territory.
- The power to freely use and dispose of the territory under the state jurisdiction and perform all activities.
- The right that no other state intrudes in state territory.

These powers and rights must be exercised only by the state and through its organs without any interference by others. So, in this case the acts of others indeed violate sovereignty.

However, the matter of sovereignty is not mere formal recognition of independent statehood, but rather the power which it confers on the rules of state through its denial of the right of other states and external agencies to “interfere” in their own exercise of domestic powers.

Practically, interdependence between the concept of intervention and sovereignty was emphasized by the International

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84 Antonio Cassese, *supra note* 6, at 89.
85 Ropert Jackson, *supra note* 5 at 103.
Court of Justice in connection with the intervention of certain units of British Navy in Corfu Channel Case. The Judgment of the International Court amounts to an outspoken restriction of sovereignty of state as traditionally interpreted and implying the right of intervention\textsuperscript{86}. Obviously, at the same time it affirms the right of sovereign state to immunity from intervention on the part of other states\textsuperscript{87}.

On the other hand, intervention transfers sovereignty from intervened state to intervening one specially intervention through occupation, and this has happened in different areas of the world for example, when European countries colonized some states in Africa, Latin America and Asia, the sovereignty was transferred from those occupied countries to the colonizing countries. So, the most noteworthy instances of the widespread transfers of sovereignty are those in which imperial states gave up sovereign title over what had been their colonial territories\textsuperscript{88}. In the modern era, the sovereignty of Iraq had been transferred from the government of Sadam to the civil governor of American administration, when the United States of America intervened in Iraq and removed the regime there.

5- **The Principle of Non-intervention.**

Historically, the principle of non-intervention in the affairs of other states belonged to old pattern of the world community. Indeed, it constitutes one of the most significant tenets of the Groton Model\textsuperscript{89}.

\textsuperscript{86} Djura Nincic, \textit{supra} note 2, at 69.
\textsuperscript{87} Id., at 69.
\textsuperscript{88} Robert Jackson, \textit{supra} note 5, at 28.
\textsuperscript{89} Antonio Cassese, \textit{supra} note 7, at 98.
Then it was adopted by international community in the different stages of its development, and lately it became respected doctrine in the relations between states.

Non-intervention means that the states are free in their conduct within their territories. In the practices of states, the International Court of Justice explicitly defined the principle in Nicaragua Case (Nicaragua V. U.S.A) “Merits” 1986 when it said, “The legal equality and independence of sovereign states confers upon each state the right to conduct its internal affairs free from the interference of other states, subject only to the rules of international law”90. This is known as the doctrine of non-intervention.

It is also of critical importance in any determination of the precise legal status of non-intervention to assess the impact of the pronouncement made by International Court of Justice itself in the same case. The court stated that “the principle of non-intervention forbids all states or group of states to intervene directly or indirectly in the internal or external affairs of other states”91.

The principle of non-intervention thus acquired the fundamental values of a solid and indispensable “bridge” between the traditional sovereignty oriented structure of the international community and the new attitude of the state based on intense social intercourse and closer co-operation92. This appeared practically in the structure of the United Nations, which has adopted the principle of

90 Cited in Lord Templemen, Public International Law, 211 (4ed. 1997).
92 Antonio Cassese, supra note 7, at 99.
non-intervention as a main doctrine, and then prohibits intervention specially through use of force as a main form of intervention.

The United Nations has extended the doctrine of non-intervention to all states and made it a universal norm for the first time in history, and it allowed the use of force only in case of self-defense or collective security measures under Chapter VII of the United Nations Charter\textsuperscript{93}. Thus every intervention involving use of force outside these permitted exceptions has not been accepted as an exception to the rule of non-intervention.

However, non-intervention is laid down as constitutional principle of the Charter of the world community. It is one of the principles described in Article .2 of the Charter as a fundamental rule\textsuperscript{94}. For example, the Charter prohibits the United Nations Organization itself from intervening in any member state and this according to Article. 2 (7) which states 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”. So, since the United Nations prevents itself from intervening in the affairs of other states, no state has the right to do so.


Besides that, several declarations, treaties and agreements include the principle of non-intervention. One of them is the United Nations Declaration on the Granting of Independence to Colonial Countries and People. Paragraph 7: states “All states shall observe faithfully and strictly... the present declaration on the basis of equality, non-interference in the affairs of all states, and the respect for the sovereign rights of all people and their territorial integrity”\textsuperscript{95}.

Other regional agreements include the principle of non-intervention and prohibited it ... for example, the Bogotá Charter provides in Article 15: “No state has the right to intervene in the internal or external affairs of another”. Similarly Warsaw Pact Treaty, Principle. vi of Helsinki Final Act states that” The contracting parties declare that, they will act in spirit of friendship and co-operation to promote further development and strengthening of economic and cultural ties among them, in accordance with the respect for each other’s independence, sovereignty and non-intervention in each other’s domestic affairs”. Another regional example is the European Convention for the Peaceful Settlement of Disputes. It states in Article 27 that “The participating states will refrain from any intervention, direct or indirect, individual or collective, internal or external falling within the domestic jurisdiction of another participating state, regardless of their mutual relations”\textsuperscript{96}.

Thus, the international community through its different organizations, and regional ones have overcome the difficulties and

\textsuperscript{95} cited in Caroline Thomas, supra note 3, at 57-58.
\textsuperscript{96} Bruno Simma, supra note 15, at 143.
make non-intervention universal and legal principle binding all states and must be respected.

6- **Prohibition of Intervention in the UN Charter.**

A change in the attitude of international law towards intervention through use of force began with the advent of the League of Nations 1919-1939. Although the Covenant of the League of Nations did not specifically prohibit the use of force, it did restrict its use by placing a duty on states to try to reach peaceful settlement first\(^{97}\). As a matter of fact, before this Covenant, the states were free to resort to war, or to use force against each other, and to intervene in any manner in any other state without any restrictions. The state practice was dominated by use of force.

A big change happened in international law when the United Nations adopted the principle of prohibition of the use of force or forcible intervention, and that is contained in Article 2 (4) of the Unified Nations Charter which states: “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations”. So, Article 2(4) constitutes the basis of any discussion of the problem of intervention through use of force. Its significance has been emphasized by authors who labeled it. “The cornerstone of peace in the Charter, the heart of the United Nations Charter, or the basic rule of contemporary international law”\(^{98}\).

\(^{97}\) Tim Hillier, *supra* note 8, at 591.

\(^{98}\) Bruno Simma, *supra* note 15, at 111.
The contents of this Article are very important, because the Article states in very obvious terms the prohibition of the use of force in the international relations. This means that no state has a right to intervene forcibly in another state or in any manner contradict the purposes of the United Nations.

However, Article 2(4) remains the most explicit Charter rule against intervention through armed forces indirect and direct, and it is pertinent to consider such action as falling within the scope of the prohibition.\(^99\)

On the other hand, the prohibition which is contained in Article 2 (4) is not absolute, but there were some exceptions put by jurists and by the Charter of the United Nations. Ann Van Thomas says that Lawrence, Holland and Oppenheim are examples of publicists recognizing broad exceptions to non-intervention and stating that intervention in these exceptional cases becomes legal right, or at least justifiable.\(^100\) Indeed, they mean the case of self-defense, which means the right of any state to protect itself from foreign interference or aggression, and this is decisive right in the legal thought. Some of those writers go furthermore to include other exceptions like changing regimes of states. For Kant, for instance intervention is justified where there is a chance that it would lead to the fall of despotic regime and the establishment of a republic.\(^101\) He may mean that any state has the right to intervene in another state so as to remove the governor of the


\(^{100}\) Ann Van Thomas, *supra* note 10, at 75.

\(^{101}\) Caroline Thomas, *supra* note 3, at 14.
latter who does not agree with its policy. Indeed if the international community adopted such exception, it will be big problem, specially to those small and weak states

Other writers take contrary view, holding that intervention is never legal right, but that it is political fact. This opinion is adopted by many jurists who argue that there is no such right in international law.

However, the situation in the United Nations Charter may be the same as that of the writers who adopted exceptions. Although Article 2 (4) of the United Nations Charter prohibits intervention through the use of force, the prohibition has to be read in the light of Article 51 which states that: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against member of United Nations, until the Security Council has taken measures necessary to maintain international peace and security”. Thus, the Charter gives permission to a state to intervene forcibly in another state if the latter had been attacked, or used force against the former, and this exception can be exercised by one state or group of states i.e. collective self-defense. But his right is abused in practice of states. Some states use it against small states without any legal and real justification.

Nevertheless, some conditions in exercising the right to self-defense must be considered. The attack must be immediate and the reaction must be equivalent to the action not exceeding it.

102 Ann Van Thomas, supra note10, at 76.
However, this exception is logical for states which become victims, because mechanisms of the international community are unable, and cannot deal perfectly with matters of armed attack and aggression against states. So, it would be better to those attacked to defend themselves.

On the other hand, it is very important to show whether the prohibition of forcible intervention contained in Article 2 (4) covers the other forms of intervention or not. Against the background of the experience with the Covenant of the League of Nations and the Kellogg-Brained Pact, the intention was not to limit the prohibition of the threat or use of force to forcible action falling within technical definition of war. Consequently, armed attack and all other forms of intervention or attempted threat against the personality of the state, or against the political, economic and cultural elements are in violation of international law. And indeed Article 2 (4) prohibits the use of force in any manner inconsistent with the purposes of the United Nations.

For example, during the drafting of Article 2 (4), Brazil proposed including prohibition against the use of economic pressure against state. The proposal was rejected. Also the developing countries and formerly the Eastern Bloc countries have repeatedly claimed that the prohibition of the use of force also comprises other forms of force for instance, political and in particular economic

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103 George Schwarzenberger, supra note 9 at 217.
104 Hedly Bull, supra note 6, at 37.
105 Louis Henkin, supra note 16, at 892.
coercion\(^{106}\). But it is not clear whether economic coercion was included within the term “force”, or whether “force” was broad enough to cover it without specific mention.

However, Article 2(4) of the United Nations Charter is capable of wider and narrower interpretations. In the light of the preparatory material a wider rather than narrower interpretation of the scope of prohibition appears more appropriate\(^{107}\). The governments in the United Nations have from time to time sought to give the prohibition in Article 2 (4) the wider meaning particularly to include economic measures that were said to be coercive\(^{108}\).

Another issue about prohibition of the use of force in international relations is that, Article 2 (4) of the Charter prohibits the use of force in international relations and not in domestic situations\(^{109}\). So the use of force slowly within a state is not covered. That means the provisions of Article 2 (4) of the United Nations Charter do not prevent insurgents from starting war, nor the government concerned from using armed force against them. There is no rule against rebellion in international law.

7- **Prohibition of Intervention in the UN Resolutions.**

Although no provision in the Charter of the United Nations prohibits the forms of intervention except forcible intervention clearly, the United Nations dealt with the problem through some resolutions adopted by the United Nations General Assembly. Those

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\(^{106}\)Bruno Simma, *supra* note 15 at 211.


\(^{108}\)Louis Henkin, *supra* note 16, at 890

resolutions declared the prohibition of economic, political, diplomatic intervention and in any form inconsistent with the Charter of the United Nations. The resolutions furthermore, impose several duties and obligations upon states.

So, on December 21. 1965 the United Nations General Assembly Resolution 2131 adopted an appeal to all states to respect unconditionally the United Nations Declaration on Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty\textsuperscript{110}. The Declaration provides:

1- No state has the right to intervene directly or indirectly for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention as well as other forms of interference or attempted threat against the personality of the state or against its political economic and cultural elements is condemned.

2- No state may use or encourage the use of economic, political, or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights to secure from it the advantage of any kind. Also, no state shall organize, assist, forment, finance, incite or tolerate subversive, terrorist or armed activities directed to violent overthrow of the regime of another state, or interfere in civil strife in another state.

\textsuperscript{110} Tim Hillier, \textit{supra} note 8, at 606.
3- The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

4- The strict observance of these obligations is an essential condition to ensure that the nations live together in peace with another, since the practice of any form of intervention not only violates the spirit and letter of the Charter but also leads to the creation of situations, which threaten international peace and security.

5- Every state has an inalienable right to choose its political, economic, social and cultural systems without interference in any form by another state.

6- All states shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressures, and with absolute respect for human rights and fundamental freedoms. Consequently, all states shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

7- For the purpose of this Declaration, the term “state” covers both individual state and group of states.

These are important provisions relating to the prohibition of intervention contained in this Declaration.

This Declaration provides for the immediate cessation of intervention in any form whatever, in the domestic or external affairs
of state, and to condemn all forms of intervention in the domestic or external relations of states as basic source of danger to the cause of world peace.\footnote{Edmund Jan Osmanczyk, \textit{Encyclopedia of the United Nations and International Agreements}, 419 (1985).}

Another resolution is the General Assembly Resolution 2625 (xxv) on the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States, 1970. It identifies the following duties:

\begin{enumerate}
    \item Every state has duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any state or in other manner inconsistent with the purposes of the United Nations.
    \item A war of aggression constitutes crime against the peace for which there is responsibility under international law.
    \item Every state has a duty to refrain from the threat or use of force to violate the existing international boundaries of any other state or as a means of solving international disputes including territorial dispute and problem concerning the frontiers of state.
    \item States have a duty to refrain form acts of reprisal involving use of force.
    \item Every state has a duty to refrain form organizing or encouraging the organization of irregular forces, or armed bands, including mercenaries for incursion into the territory of another state.
    \item Every state has a duty to refrain form organizing instigating, assisting or participating in acts of civil strife or terrorist acts in
\end{enumerate}
another state, or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve threat or use of force.

The Declaration explicitly stipulates that, by virtue of the principle of equal rights and self-determination of people enshrined in the Charter, all people have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter112. This may mean that intervention in this case will be legitimate, but indeed the target is not the national state, as it is known; the target state is the colonial one, and at the present time all states are national states.

Also, there is the General Assembly Resolution 36/103 on the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States 1981. Generally, we can note that this Declaration contains some new principles, which prohibit many forms of intervention, namely:

- The sovereign and inalienable right of state freely to determine its own political, economic, cultural and social system without outside intervention.

- The right of states and peoples to have free access to information and to develop fully without interference with their system of information and mass media.

112 Lord Templeman, supra note 14, at 218.
- The duty of states to refrain in their international relations from the use of force to disrupt the political, social or economic order of other states, to overthrow or change the political system of another state, or its government.

- The duty of state to refrain from concluding agreement with other states designed to intervene or interfere in the internal or external affairs of a third state.

- The duty of states to abstain form any defamatory campaign, vilification or hostile propaganda for the purpose of intervening or interfering in the internal affairs of other states.

- The duty of state to refrain form the exploitation of human rights issues as a means of interference in the internal affairs of states.

- The duty of state to refrain form organizing training, financing and arming political and ethnic groups in another state for the purpose of creating subversion, disorder or unrest in other countries.

- The duty of state to refrain from any economic, political or military activity in the territory of another state without its consent.

8- **Prohibition of Intervention in States Practices.**

    The International Court of Justice plays important role in interpreting the provisions of international law. Therefore, in the matter of prohibition of intervention, there were some judgments of the court, which became international judicial precedents.
One of them is Nicaragua Case 1984. In this case Nicaragua argued that the United States of America was in breach of international law by providing armed support for Contras\textsuperscript{113}, and intervening in the territory of Nicaragua. The International Court of Justice discussed the principle of non-intervention in the internal affairs of another state, and found that customary international law forbids all states or group of states from intervening directly or indirectly in the internal or external affairs of another state\textsuperscript{114}. The Court went on to say that no such general right of intervention in support of opposition within another state exists in international law. Furthermore, the Court indicated provisional measures namely that “The Untied States of America should immediately cease and refrain from any action restricting, blocking or endangering access to or from Nicaragua ports, and in particular the laying of mines”\textsuperscript{115}.

Another case is Corfu Channel Case. 1949 when the United Kingdom sought to argue that its mine-sweeping operation in Albanian territorial water was not unlawful since it did not threaten the territorial integrity or political independence of Albania. But the argument was rejected by the International Court of Justice\textsuperscript{116}, which declared that a state cannot permit its territory to be used as a base for attacks on another state\textsuperscript{117}.

\textsuperscript{113} Tim Hillier, supra note 8 at 608.
\textsuperscript{114} Id., at 609.
\textsuperscript{115} Cited in Louis Henkin, supra note 16, at 893.
\textsuperscript{116} Tim Hillier, supra note 8, at 608.
\textsuperscript{117} Lord Templeman, supra note 14, at 220.
On the other hand, some states exploit the exception of self-defense practically as justification to intervene in other states, and in most cases the justifications were not legal enough.

The Court of Justice has famous judgment which known as Caroline doctrine in Caroline Case, when the court stated that “The customary right of self-defense presupposes three main conditions: Firstly, there must be a delict by another state. Secondly, there must be failure or inability on the part of another state to prevent the delict or infringement. Thirdly, action taken in self-defense must be strictly confined to the object of stopping or preventing the delict”\textsuperscript{118}. So, in the absence of these conditions the act will be aggression it self, not right to self-defense which is stated in the Charter of the United Nations.

In the same context, the right of people to self-determination and to choose their political, economic and cultural systems, inspite of being a purpose of the United Nations, does not justify a state to intervene in another state in order to help the peoples of the latter. However, while there is a little doubt that this right exists, there is considerable confusion as to its scope. The concept of “people” is generally considered to be confined to populations that are the subject of colonial domination. This limitation is derived from the decision of the International Court of Justice in the Western Sahara Case. 1975, where the Court stated that the principle must be considered in the context of decolonization.

\textsuperscript{118}Cited in - E.Y. Benneh, \textit{supra} note 15 at 142.
process\textsuperscript{119}. Thus the right to self-determination does not mean the right of any group of people to choose their system within the territory of an independent state.

9- **Conclusion.**

I started this chapter with the term “sovereignty”, its first appearance and definition as a supreme authority in the state, and changing of the concept according to the development of international community. Then the importance of sovereignty to the state and to the international community as one of the foremost institutions of the world cannot be doubted.

There are some limitations upon sovereignty. It is not an absolute principle. Some restrictions must be put in the interest of international community. Also intervention has impact on the principle of sovereignty.

So, since the intervention violates sovereignty of the state, and sovereignty is one of the main goals of the United Nations, the international law clearly prohibits intervention specially forcible intervention, and this according to Article 2 (4) of the United Nations Charter. In addition, the international law through a number of resolutions of the United Nations prohibits all other forms of intervention such as economic intervention, or intervention by propaganda.

\textsuperscript{119} Cited in Lord Templemean, \textit{supra} note 14, at 229.
In addition to that, the International Court of Justice prohibits intervention by any means through its advisory opinions in many cases.
Chapter 3

Humanitarian Intervention

8- The Concept of Humanitarian Intervention

Humanitarian intervention is one of the concepts, which attracts the concern of many writers and jurists in international law. The legal debate is about its consequences especially in modern times and after the emergence of the United Nations.

The early discussion of the concept can be traced to sixteenth and seventeenth century’s classical writers on international law, particularly in their discussions on just war, Vitoria, Gentili, Suarez, Vattel and Grotins are well-known names in this tradition. However, other writers argued that the concept of humanitarian intervention has distinct flavour of the nineteenth century, which was relatively a century of tolerance and progress. And thus, when twentieth century came the term humanitarian intervention was one of main principles which directed the policy of the international community.

On the other hand, many jurists and writers in different stages attempted to define the term humanitarian intervention. One of those attempts is that the doctrine of humanitarian intervention involves the protection of certain basic rights and freedoms. It may thus be defined

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121 Ann Van Thomas, Non-Intervention, 373 (1956).
as the right of one state to exercise control over the acts of another state, when such acts are contrary to the laws of humanity.\textsuperscript{122}

Another attempt states that, humanitarian intervention is action across recognizable territorial boundaries ostensibly aimed at alleviating grave human needs, such as starvation, disease, atrocity or gross persecution, widespread dissipation, or the imminent danger of these or other threats.\textsuperscript{123} This definition does not mention details about the nature of the action and by whom. However, another attempt tries to go deeply. Adam Ropert defined humanitarian intervention as “military intervention in a state without its approval of its authorities, and with the purpose of preventing widespread of suffering or death among the inhabitants”\textsuperscript{124}.

For Tonny Berm Knudsen, humanitarian intervention is dictatorial or coercive interference in the sphere of jurisdiction of a sovereign state motivated or legitimated by humanitarian concerns.\textsuperscript{125} These definitions mention the main elements of concept, forcible action, without the consent of the state and the prevention of suffering of peoples.

In that context, Bruno Simma argues that humanitarian intervention may be considered as the use of armed forces by a state.”

\textsuperscript{124} Saban Kardas, \textit{supra} note 1
\textsuperscript{125} Id.
or states” to protect citizens of the target state from large scale human rights violation there\textsuperscript{126}.

Although the definitions above agree on the main elements, any one may go in another way in details. Professor Brownlie highlights the controversy surrounding this alleged right by saying “The doctrine was inherently vague and its protagonist, gave it a variety of forms. Some writes restrict it to action to free a nation oppressed by another. Some consider its object as putting an end to crimes and slaughter. Some refer to “tyranny”, or other extreme cruelty, to religious persecution, and lastly some confused the issue by considering as lawful intervention in cases of feeble government or “misrule” leading to anarchy\textsuperscript{127}.

On the other hand, many jurists maintain that intervention is likewise admissible or even has basis of right when exercised in the interest of humanity for the purpose of stopping religions persecution and endless cruelties in time of peace and war\textsuperscript{128}. Thus Oppenhiem adopted the doctrine of humanitarian intervention, but he stipulated that it is exercised in the form of collective intervention of the power\textsuperscript{129}.

However, some criteria for humanitarian intervention try to link the theory and practice of the doctrine. The United Kingdom continues to lead the role in the development of the doctrine, thus the

\textsuperscript{128} L. Oppenheim, \textit{International Law}, 194 (2ed. 1912).
\textsuperscript{129} Simon Duke, \textit{supra} note 5, at 33.
Foreign Secretary set out a framework to guide intervention in response to massive violations of humanitarian law and crimes against humanity. The framework was built on six principles:-

a) an intervention is an admission of failure of prevention.

b) Armed forces should only be used as last resort.

c) The immediate responsibility for halting violence rests with the state in which it occurs.

d) There is no practical alternative to use of force to save lives.

e) Any use of force should be proportional to achieving the humanitarian purposes and carried out in accordance with international law.

f) Any use of force should be collective; no individual country can reserve to itself the right to act on behalf of international community.\(^\text{130}\).

9- **Intervention and Human Rights.**

There is wide concern on human rights from the international community as a whole; even some actors in international community consider it as a matter not within internal jurisdiction of states. For that they argue humanitarian intervention is one of the important instruments for protection of human rights in different states. In this context, Ian Brownli defines humanitarian intervention functionally as the threat or use of armed force by state, belligerent country or an international organization with the object of protecting human rights.\(^\text{131}\). So, the writer who adopt, this view considers humanitarian


\(^\text{131}\) Cited in Simon Duke, supra note 5, at 27.
intervention as a reaction to violations against citizens of the target state.

Humanitarian aspects have indeed played some role in post-Second World War interventions, because human rights violations were really massive and were committed against the most basic of human rights, the right to life\textsuperscript{132}. Genocide is one of the main international crimes which is exercised by regimes or some groups in a state against others. Thus humanitarian intervention in the view of some writers is justified in preventing such acts either by the government or forces opposed to the government\textsuperscript{133}.

This may be theoretically accepted, but indeed the problem will be in the practice of international community, because genocide is a matter sometimes real and sometimes mere allegations.

In contemporary state practice, a number of situations have arisen in which states might have successfully claimed that their actions were based on humanitarian considerations including the action of India in 1971 to prevent widespread abuses of human rights by Pakistan forces in Bangladesh, and the intervention in 1979 by Vietnam in Cambodia to prevent the commission of atrocities by Khemer Rouge\textsuperscript{134}. In those cases intervening states justified their actions by humanitarian needs, and indeed they adopted the view that intervention to save millions or even thousands of lives threatened by their own oppressive government seem to be morally, if not legally,

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\textsuperscript{132} Rain Mulerson, Human Rights and Diplomacy, 151 (1997).
\textsuperscript{133} Lord Templeman, Public International Law, 218 (4ed. 1997).
\textsuperscript{134} Id., at 218.
\end{flushright}
even more justifiable than intervention to rescue a few of one’s own nationals abroad.\textsuperscript{135}

On the other hand there is wide debate about the matter of human rights whether it is solely within the domestic jurisdiction of the state, or not. The views of writers go in different ways, and so the practices of states.

However, in 1923 the Permanent Court of International Justice on its advisory opinion on National Decrees in Tunis and Morocco had emphasized that, the question of whether a matter of “human rights” was solely within the jurisdiction of state was essentially alternative question, depending on the development of international relations.\textsuperscript{136} This view opens the door to include many expectations in the future.

So, the development of international relations after the Second World War, for example, has led to an emergence of substantial bodies of international human rights norms, and the matter moved gradually to the international concern. Contemporary international law on human rights imposes upon any state the obligation to respect the fundamental human rights of its own nationals and foreigners residing or passing through its territory as well as stateless persons.\textsuperscript{137} Moreover, and in the context of the development of international relations and international law, the Vienna World Conference on

\textsuperscript{135} Rain Mulerson, supra note 9, at 158.
\textsuperscript{136} Id., at 153.
\textsuperscript{137} Antonio Cassese, International Law, 97 (2001).
Human Rights 1993 declared that the promotion of human rights is a legitimate concern of international community\textsuperscript{138}.

One of the main justifications for the internationalization of human rights is to keep international peace and security, and in the view of some writers it is perfectly reasonable to argue that gross, persistence and unchecked violations of human rights may eventually become threat to international peace and security as has been the case in Iraq or Somalia\textsuperscript{139}. For that reason human rights have shifted to be a matter of legitimate international concern\textsuperscript{140}.

On the other hand, and inspite of the international concern for human rights, one of the underlining reasons for the lack of consensus on legality of humanitarian intervention is lack of common understanding of human rights, and even more exclusively fundamental freedoms\textsuperscript{141}, because the international community is founded on different nations and states with different races, religions and traditions, and so, it is impossible to agree on the same criteria and measures in the matter of human rights. For example, several Asian and Islamic countries challenged that universality of human rights in the preparatory conference to 1993 Vienna Conference on Human Rights charging that, human rights more often reflect western ethical and moral standards\textsuperscript{142}.

10- \textbf{Intervention for Protection of Nationals.}

\begin{itemize}
  \item \textsuperscript{138} Rein Mulerson, \textit{supra} note 9, at 154.
  \item \textsuperscript{139} Simon Duke, \textit{supra} note 5, at 35.
  \item \textsuperscript{140} Hedly Bull, \textit{Intervention in World Politics}, 34 (1984).
  \item \textsuperscript{141} Simon Duke, \textit{supra} note 5, at 25.
  \item \textsuperscript{142} Id., at 26.
\end{itemize}
Another topic related to humanitarian intervention in the view of many writers of international law is the protection of nationals abroad who are believed to be in danger. Historically, the majority of writers of the nineteenth century, for example, admitted the existence of this right as a form of humanitarian intervention. And this view is supported in different stages of the development of the international community.

Umpire Huber, one of those who supported the existence of the right to protect nationals abroad, and as Rapporteur of the Commission in Spanish Zones of Morocco Claim (1925) stated that “it cannot be denied that at certain points the interest of a state in exercising protection over its nationals and their property can take precedence over territorial sovereignty despite the absence of any conventional provisions. This right of intervention has been claimed by all states.”

In the period of the United Nations, the existence of this right has continuously been asserted by a number of states including United Kingdom, United States, France and Belgium. There is even the tendency for this alleged right to be extended to afford protection also for those linked to a state by colour or race.

However, on several occasions, since the Second World War, states have used armed force without the consent of the territorial state to protect their nationals and property in danger in a foreign

143 E.Y Bennah, supra note 6, at 150.
144 Lord Templeman, supra note 10, at 217.
145 E.Y. Bennah, supra note 6, at 144.
One of the earliest examples is the Anglo–French invasion of Egypt in 1956, when United Kingdom argued that the invasion of Suez Canal was legitimate as a means of protecting nationals and property in a foreign state, which are threatened.

The justification for British intervention was made in terms of self-defense under customary international law and not on the basis of a right exempt from Article 2(4) of the United Nations Charter. This is a view some academic writers such as Bowett and Waldock would support. However, this contention was rejected by the majority of the international community. This means that the intervention of United Kingdom and France in Egypt was illegal according to international law.

Other examples in state practice can be given. In 1960 Belgian paratroopers landed in the Congo, purportedly to protect foreign nationals on the ground that the legitimate government of Congo was no longer capable of affording protection. Indeed the act is illegal too.

In 1976, Israeli forces landed at Entebbe airport in Uganda to free 96 Israelis who had been taken hostage when the aircraft in which they were flying had been hijacked. The United Nations Security Council discussed the Israeli action. The UNSC failed to adopt a
resolution either expressing support for, or condemning the Israel action\textsuperscript{151}.

There were different opinions about whether intervention in those cases is lawful or not. The argument in favour of the lawfulness of such rescue operations is manifold. Some authors maintain that the use of force, usually on a comparatively small scale does not infringe Article 2(4), since the territorial integrity and political independence of the state concerned are not affected\textsuperscript{152}. Others claim that there is a case of conflicting obligations, which is supported to justify the use of force through a weighting of protected interests. One of the writers who adopts this view is Viscount Kilmuir, but he laid down three conditions for the use of such protective action to be legitimate:-

- The nationals must be in imminent danger of injury.
- There must be a failure or inability on the part of the territorial sovereign to protect the nationals in question.
- The measures taken must be strictly limited to the object of protecting the nationals against injury.

On the other hand, the majority of the writers on international law argue that international law does not permit such acts because the exceptions in the Charter of the United Nations are clear enough to exclude this right. Moreover, the international community has shown its displeasure of this form of intervention which violates the principles of international law.

\textbf{11- Interference in Civil War.}

\textsuperscript{151} E Y. Benneh, \textit{supra} note at 164
Interference in civil war within a state is one of the problems that are facing the world, because many thousands of people are killed or become victims of it. Many states all over the world are suffering from civil wars, which are supported by other states with some interests in it.

Civil war exists when two opposing parties within a state have recourse to arms for obtaining power in the state, or when a portion of the population of a state takes up arms against the legitimate government. Writers are concerned on the matter of civil war and they go deep to put details for the concept. Some of them argue that civil war can be analyzed in terms of three different types of violent conflict:

- Conflict, which involves the direct and massive use of military force by political entity across its frontier.
- Conflict which involves substantial military participation by one or more foreign nations in internal struggle for control.
- An internal struggle for control of national society.

Traditionally, intervention by foreign powers in civil wars and other domestic strifes was regarded as special form of foreign intervention, subject to limitation imposed by traditional law of intervention generally. Since the period of classical international law the principle has been concretely enshrined in few specific customary rules. The first one is the rule prohibiting a state from interfering in the internal organization of a foreign state.

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153 Ann Van Thomas, supra note 2, at 215.
155 Id., at 145.
Another customary rule has more specific purport, in that it deals with civil strife, it stipulates that whenever a civil war breaks out in a foreign country, states are duty-bound to refrain from assisting insurgents unless they qualify for the status of national liberation movements.\textsuperscript{156}

However, before the United Nations Charter, intervention in civil war was for international law, a particularly troublesome form of intervention\textsuperscript{157}, because it may change the facts that govern the relations within a state, between different parties and groups, and that of the state with other states.

Theoretically, there is extensive debate among different schools of thought and even different jurists and writers on international law in the matter of assistance by third states. Some writers argue what is probably still prevailing view that the incumbent government but not insurgents has the right to ask for assistance from foreign governments, at least as long as insurgents are not recognized as “belligerents”\textsuperscript{158}. But some authors argue that in accordance with state practice third states may upon request intervene on either side of civil war\textsuperscript{159}.

The communist states adopted the view that they will support insurgent movements or incumbent government according to their

\textsuperscript{156} Antonio Cassese, supra note 11, at 98.
\textsuperscript{157} Louis Henkin, supra note 15, at 145.
\textsuperscript{159} Bruno Simma, supra note 14, at 117.
ideology. Indeed, by such sense other ideologies may have a right to interfere in a civil war to support those who adopted their ideas.

In this context, the traditional view which is adopted by many writers such as Oppenheim is as follows, “a foreign state commits an international delinquency by assisting insurgents inspite of being at peace with legitimate government”.

To avoid the consequences of the traditional doctrine, many authors take the view that public international law prohibits the providing of support to either side in a civil war. This view reflects the desire of the international community to live in peace and security.

In stating the nature of these prohibited assistances, or the nature of those assistances, the Institute “De Droit International” in its resolution on non-intervention, has designated the following acts as impermissible when done to support either party in civil war:-

(a) sending armed forces or military volunteers, instructors or technicians to any party to civil war or allowing them to be sent or to set out.

(b) drawing up or training regular or irregular forces with a view to supporting any party to civil war or following them to be drawn up or trained.

(c) supplying weapons or other war materials to any party to civil war, or allowing them to be supplied.

\footnote{Richard A. Falk, supra note 16, at 156.}
\footnote{Id., at, 156.}
\footnote{Bruno Simma, supra note 14, at 116.}
(d) making their territories to be available to any party to a civil war, or allowing them to be used by any such party.

 Practically, and inspite of the prevention put by the international community and international law, many states intervene in civil wars directly or indirectly. So, the issue is of importance since after the conclusion of Second World War, the majority of conflicts have been in essence civil wars\textsuperscript{163}. Then intervention in those conflicts has been by superpowers, and in their interests. For example the United States of America had intervened in many different areas of the world in civil wars, and in April 1996 it sent its Marines to Liberia, where the law and order had completely broken down and the peace keeping efforts of, “ECOMOG” have failed to prevent the resumption of fighting between the warring factions\textsuperscript{164}. The act indeed was condemned by the international community as a clear breach of international law, and so, there is no justification for intervention by a state in another in time of civil war.

\textbf{12- Intervention By Invitation.}

The legal debate still continues on the matter of intervention, by invitation, that when a certain state invites another state to intervene in its territory may be as humanitarian intervention. This practice has a long history in international relations.

In the traditional international law it was quite clear that the principle \textit{volunti non fit injura} applied to the effect that a state was

\footnotesize{\textsuperscript{163} M. N Shaw, \textit{International Law}, 721 (3ed. 1991). \hfill \textsuperscript{164} Rein Mulerson, \textit{supra} note 9, at 162.}
free to allow another to use force in any form in its own territory. So, if a state consents to an interference within its protected sphere of interest prior or simultaneous with the act of interference, the act can be said to be legitimate by principles of traditional international law. In view of some writers, the consenting state exercises its sovereign right in doing so and the consent on the other hand grants the right to the intervening state.

However, most of the writers argue that the basic principle of the right of government to invite third states to use force, and the absence of any such right for an opposition may be accepted in theory, but its application in particular has not been simple, because some problems will arise when certain government invites another to protect itself from other groups of citizens who may have a right to participate in power.

May be the matter is different if the invitation is to assist a certain state by another in the context of self-defense. In the view of some writers, there seem little doubt from state practice and interpreting Article 51 of the United Nations Charter, that international law permits state to use armed forces to assist another state to assert its right to self-defense if an express request is made. This must be on the understanding that the right of self-defense can be only against a third state according to certain conditions, and not within the state and against the citizens.

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165 Tim Hillier, supra note 13, at 606.
166 Ann Van Thomas, supra note 2, at 91.
167 Christian Gray, supra note 8, at 57.
168 Tim Hillier, supra note 13, at 606.
On the other hand, one type of intervention by consent has been much disputed, that is when a treaty authorizes intervention in internal affairs of another state in order to maintain a particular dynasty or particular form of government\textsuperscript{169}. In view of jurists, if a state which is restricted by an international treaty in its external independence, or its territorial supremacy does not comply with the restriction concerned, the other party or parties have a right to intervene\textsuperscript{170}. Other writers add that in order for consent to be recognized as a valid basis for legality of intervention, the consent must be legal. To be legal it must be granted by the legal representatives of the state\textsuperscript{171}. But at the same time the majority of the writers maintain that a treaty purporting to authorize such right is itself illegitimate, since its object would violate principles of international law generally accepted by civilized nations. International law recognized the independence of state, and such a treaty would reduce that independence or sovereignty\textsuperscript{172}. They argue that the state has no right to agree to allow another state to intervene in its territory.

However, there are many examples in state practice which intervening states justify their intervention by invitation or treaty. Thus, the United States of America in 1906 exercised intervention in Cuba in conformity with Article 3 of the Treaty of Havana of 1903 which stipulates that, the government of Cuba consents that the United States of America may exercise the right to intervene for the

\footnotesize{\textsuperscript{169} Ann Van, supra note 2, at 91. \\
\textsuperscript{170} L. Oppenheim, supra note 7, at 190. \\
\textsuperscript{171} Ann Van, supra note 2, at 93. \\
\textsuperscript{172} Id., at 91-92.}
preservation of Cuban independence, the protection of life, property and individuals\textsuperscript{173}. In the summer of 1958 the United States also intervened with armed forces in Lebanon at request of the government of that state\textsuperscript{174}. In 1964 the United States and Belgian forces went into Congo at the request of President Tshombe, after seizure of Stanleyville by rebel forces. They reported to the Security Council that they had been invited by the government, and were also acting to protect United States nationals. Twenty-two states called for the meeting of the Security Council and condemned the intervention. They said that the intervention was a dangerous precedent which might threaten the independence of African states\textsuperscript{175}.

Thus from the point view of writers and states practice it appears that a state may request other states to assist in case of self-defense according to international law not to assist or to intervene in internal conflicts.

13- **Intervention for Democracy.**

Intervention to change a regime of another state in favour of democratic system has increased in recent years as an ideological intervention specially after the fall of the Soviet Union and the appearance of the United States of American as the sole superpower which adopts ideas of democracy. The end of the Cold War and the collapse of communist governments in Eastern Europe brought the assertion that there was now a right of people to democratic

\textsuperscript{173} L Oppenheim, \textit{supra} note, at 191.

\textsuperscript{174} Quincy Wright, \textit{Subversive Intervention}, 524, The Ame JIL (1960).

\textsuperscript{175} Christian Gray, \textit{supra} note 8, at 63.
governance, and perhaps even a right of third state to use force to help people to assert that right.\textsuperscript{176}

Historically, the doctrine of the right of people to establish any form of government they desired made a great stride about the time of French Revolution.\textsuperscript{177} Some authors to defeat what they consider illegitimate regimes in many states support this view. The problem of legitimacy of political regimes has a long history itself. A certain regime imposed upon the people without their consent may be illegitimate generally. However, the idea of legitimacy was embodied in the Holly Alliance of 1815, which all the monarchs of continental Europe eventually joined. The parties to that Alliance resolved not to allow revolutions nor even liberal reforms initiated by the government within continental monarchy. They appropriated the right to intervene in the internal affairs of independent states in cases where they considered the established regime to be a threat to peace in Europe.\textsuperscript{178}

The intervention here was not in favour of democracy but to protect the regimes already found. The Holly Alliance intervened unhesitatingly where revolutionary domestic movements in some states threatened the existing monarchical systems.\textsuperscript{179} But even monarchical systems in the view of most of the writers are illegitimate systems, because of the absence of people consent. This consent may be express by election.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{176} Id., at 42.
\item \textsuperscript{177} Ann Van Thomas, supra note 2, at 359.
\item \textsuperscript{178} Lori Fisler Damrosch, Law and Force in the New International Order, 143 (1991).
\item \textsuperscript{179} Ann Van Thomas, supra note, at 215.
\end{itemize}
\end{footnotesize}
The most important criterion for legitimacy of political regime internally is a freely elected government responsive to the will of the people, but internationally the criterion is that a policy that poses a threat to world peace should not be inherent to the regime\textsuperscript{180}. May be these are main features of the legitimacy of regime in the view of writers who call for democracy.

In state practice, most of interventions for democracy were by the United States against some military regimes generally. For example, United States interventions in the Dominican Republic 1965, Grenada 1980, Panama 1989 and lately Iraq in 2004. In all those cases the United States thinks that it has a right to change the regimes of those states and to act on behalf of their people, and indeed, this is happening without the consent of states and without the approval of the international community.

One of the grounds given for the United States intervention in Panama in December 1989 was the restoration of democracy, but a part of the problem is the definition of democracy\textsuperscript{181}. Inspite of the definition that which refers to the right of people to govern themselves, but there is no right for the United States to intervene on behalf of peoples of Panama against their government. Such proposition is not acceptable in international law of today in the light of clear provisions of the United Nations Charter. There is no exception in the Charter permitting intervention for democracy or any other ideology.

\textsuperscript{180} Lori Fisler, \textit{supra} note 19, at 144.
\textsuperscript{181} M.N. Shaw, \textit{supra} note 17, at 723.
In addition, in its advisory opinion, the International Court of Justice appears to have rejected the doctrine in the Nicaragua Case. 1986 when it said that. “The Court could not contemplate the creation of new rule upping up a right of intervention by one state against another on the ground that the latter had opted for some particular ideology or political system”\textsuperscript{182}.

In spite of the clearness of the opinions of International Court of Justice and the provisions of the Charter of the United Nations that prevent what they called intervention for democracy, the United States enacted in 1998 the Iraq liberation Act, 1998 which provides that “it should be the policy of the United States to remove the regime headed by Saddam Hussein from power in Iraq, and to create a democratic government to replace that regime”\textsuperscript{183}. The United States removed the regime of Saddam actually in 2004 with the participation of the United Kingdom, in spite of the attitude of the latter which was expressed by saying “it would not be right for the British government to play a part in attempts to overthrow the Iraq regime”\textsuperscript{184}. However, the practice of the United States does not change the provisions of international law, which prohibit this sort of intervention.

\textbf{14-} The UNs Attitude Towards Humanitarian Intervention.

\textsuperscript{182} cited in E Y. Benneh, supra note 6, at 15.
\textsuperscript{183} Christian Gray, supra note 8, at 76.
\textsuperscript{184} Id., at 77.
Although the general right of humanitarian intervention has been recognized since the end of the nineteenth century, in view of some writers, there is a little consensus on the legal foundation of the humanitarian intervention\textsuperscript{185}. The debate divided writers and jurists into two groups. The first argues that humanitarian intervention is legal or even justifiable. The other opinion is against the legality of humanitarian intervention and argues that there is no such a right in international law.

One of supporters of the first opinion, Sir Hersch Lauterpacht, stated: “there is substantial body of opinion and practice in support of the view that, when a state renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental rights and to shock the conscience of mankind, intervention in the interests of humanity is legally permissible”\textsuperscript{186}.

On the other hand, there are probably more international lawyers who adopt the other opinion and believe that international law does not recognize any right to intervene by force on humanitarian grounds\textsuperscript{187}.

In the period of the United Nations Charter, the debate still arises and a number of states including United Kingdom, France, United States and Belgium have continuously asserted the existence of the right of humanitarian intervention\textsuperscript{188}. However, the question is:

\textsuperscript{185}Simon Duke, \textit{supra} note 5, at 30.
\textsuperscript{186}Cited in Rein Mulerson, \textit{supra} note, 9, at 149.
\textsuperscript{187}Id., at 150.
\textsuperscript{188}E Y. Benneh, \textit{supra} note 6, at 144.
does the Charter of the United Nations or specifically Article 2(4) of the Charter allow the humanitarian intervention?

The writers who support the view that the Charter allows such right, argue that the Charter speaks on the one hand of restricting unilateral force as an instrument of national policy, and on the other hand, of urging action for the protection of human rights\textsuperscript{189}.

The other writers argue that the Charter of the United Nations does not allow the use of force except in case of self-defense or collective measures under the supervision of Security Council, and indeed no right on humanitarian ground can be found in the Charter. Article 2(4) is very clear in its meaning.

Practically, and in many cases, the attitude of the United Nations and its organs was very clear. It refused the justification of some states to intervene in others. Thus, when Great Britain and France did jointly intervene in Suez Canal in 1956 under claim of threat to their vital interests, the preponderant reaction of the rest of the world was to condemn this action as \textit{inter-alia} a breach of the United Nations Charter\textsuperscript{190}.

In addition, in 1964, the United States intervened in the Democratic Republic of Congo. The action was described by United States Department of State as “humanitarian intervention” to protect the right of legation, and to save the lives of non-nationals. The Security Council subsequently met and passed resolution 6129 which

\textsuperscript{189} Kofi Kufour, supra note 3, at 540.
\textsuperscript{190} J G Strake, \textit{An Introduction to International Law}, 88 (4ed. 1958).
affirmed the sovereignty and territorial integrity of Congo, and requested all states to refrain from intervening in the domestic affairs of Congo\textsuperscript{191}. This was a clear violation of the Charter.

Another example can be given. In 1983, following a coup in Grenada, the United States also intervened in that state to protect its nationals who were believed to be at risk. The invasion was also carried out to restore democracy. Nevertheless, on 2 November 1983, the United Nations General Assembly voted 108 to nine to condemn the action as a violation of international law\textsuperscript{192}.

On the other hand, since the end of Cold War, there arguably has been progress in state practice through the United Nations, and in attitudes towards adjustment of the balance between human needs and state sovereignty\textsuperscript{193}. Even many writers on international law think that concepts such as sovereignty of the states, territorial integrity and political independence must be redefined according to the big mutations which happened in the sphere of international relations after the end of the Cold-War.

As a matter of fact, in some cases the Security Council defined gross violations of human rights and civil conflicts as “threat to international peace and security” and then decided to impose economic sanctions or authorized the use of force\textsuperscript{194}. These measures were taken according to Chapter VII of the United Nations Charter.

\textsuperscript{191} Bruno Simma, \textsuperscript{supra} note 14, at 31.
\textsuperscript{192} Tim Hillier, \textsuperscript{supra} note 13, at 610.
\textsuperscript{193} Jarrod Wiener, \textsuperscript{supra} note 4, at 195.
\textsuperscript{194} Saban Kardas, \textsuperscript{supra} note 1.
The justification here is the threatening of international peace and security for which the United Nations was found to protect. According to the practice, the Security Council authorized use of force in many occasions.

All the justifications which have been asserted that the humanitarian intervention is a legal action are not enough to legitimize the action unless the Charter is amended to allow such action clearly. Thus, there is not conclusive state practice or opinion juris that would lead to an amendment of the United Nations Charter.

**Conclusion**

Humanitarian intervention is one of the important concepts which attracts the concern of many jurists and writers of international law, and that by the legal debate about it and its legality, specially in the modern era and after the emergence of the United Nations. It has historical roots in the traditional sense according to some writings. Intervention can be defined as the use of armed forces by a state or group of states to protect citizens of the target state from a large scale human rights violation there.

The development of international relations after the Second World War has led to the emergence of substantial body of international human rights norms, and the matter shifted gradually from being solely within the domestic jurisdiction to international concern. So, the contemporary international law on human rights imposes upon any state the obligation to respect the fundamental human rights of its own nationals.
In state practice, there are several examples of intervention for human rights, protection of nationals, interference in civil war and intervention to restore or protect democracy. There is no consensus on the legality of such acts, and the international law does not permit intervention by any means in the affairs of another state according to Article 2(4) of the United Nations Charter, and the resolutions of United Nations General Assembly.
Chapter 4

Conclusion

Historically, intervention occurred in the context of competition between different states in order to control wide areas and resources in the world by force. Prior to the 20th century no prohibition of the use of force existed. So, states were free to resort to war. Lately some attempts had been made to limit the use of force.

The important thing in the definition of intervention is that intervention must be a dictatorial act. It almost contains element of force or coercion and ability of pressure as an instrument to impose the will of intervening state against the victim state.

Intervention can be committed only by a state against another state, and therefore the acts which are exercised by the United Nations or any other regional organization are not considered as intervention, but as punitive measures or sanctions according to the Charter of the United Nations.

Practically, intervention has many forms. One of them is forcible intervention in which the element of force is very clear. This form may be directly through actual occupation or indirectly by assistance. Also, there is economic intervention, which means “the adoption of measures of economic pressures which isolates the sovereignty of another state, obstructs its economic independence, and jeopardizes basis of its economic life”. Another form is intervention by propaganda or information intervention.

which states exercise through their great mass-media, and it comes as a result of information technology revolution in recent years. Moreover, there is diplomatic intervention which refers to the use of diplomacy by states to intervene in other’s affairs through diplomatic pressures. All of those forms violate the sovereignty of the state when they are exercised without its consent.

In the Second Chapter, there is a link between intervention and the sovereignty of the state, since the intervention violates that sovereignty, either completely or partially. Sovereignty is a legal institution that authenticates a political order based on independent states whose governments are the principal authorities both domestically or internationally.

The importance of sovereignty increased gradually with the development of international community. It is considered as a decisive factor in making of modern international community, and for that the United Nations concerns for it by putting the respect of sovereign equality of its members as the first organizational principle of the Charter in article 2 (1).

Sovereignty in fact is not absolute authority, but some limitations are put upon it, because a state is one of many states which constitute the international community, and this system requires mutual rights and duties. The absolute sovereignty violates this system, and international peace and security.

In order to protect this sovereignty, international law, adopts the principle of non- intervention, which means that, no state has a right to intervene in internal or external affairs of another one. This principle
adopted by many international and regional declarations and resolutions, and it becomes a universal and legal principle binding on all states and must be respected.

A big change happened in international law towards the prohibition of intervention, when the Charter of the United Nations provided for this in Article 2 (4). This Article is considered as the heart of the Charter. However, this prohibition has exceptions such as the right to self-defense in article 51, or collective measures in Chapter VII of the Charter.

In spite of the fact that the Charter of the United Nations does not provide for prohibition of the other form of intervention such as economic, diplomatic and political, some resolutions of the United Nations General Assembly prohibit clearly any form of intervention in the affairs of other states. Those resolutions furthermore, impose several duties and obligations upon states.

The International Court of Justice also through some judgments such as in Corfu Channel Case, Caroline Case, Nicaragua and Western Sahara Cases, prohibits intervention.

According to the third Chapter, humanitarian intervention appears as an important principle which directs the international policy and international relations recently. It attracts the concern of international law writers who link it to the matter of human rights because humanitarian aspects have played some role in post Second World War interventions. Human rights violations were really massive and were committed against the most basic of human rights, the right to life.
Until the Second World War, human rights were considered as matters within the domestic jurisdiction of the state. After that time they became matters of international concern according to the development of international relations. The contemporary international law imposes upon any state an obligation to respect human rights.

Another form relating to humanitarian intervention is the protection of nationals. This is not permitted in international law. Also there is interference in civil wars from which many states are suffering. It exists when two opposing parties within a state have recourse to arms for obtaining power in the state, or a party against the government. The international law considers the civil war as a domestic affairs unless it threatens the international peace and security. For that reason, it prevents any state from intervening in civil war or supporting any party in such a state.

Moreover, there is intervention to change illegitimate regimes, or despotic ones in favour of a democracy. This theory was particularly adopted by the United States after the appearance of the New World Order. In fact, there are no clear criteria for the legitimacy of regimes, and international law does not allow this practice.

Generally, there is no consensus on the legal foundation of humanitarian intervention among jurists and writers, and the international law at least up to now prohibits intervention by a state or group of states in the affairs of other states whatever justifications. So, any use of force or any intervention, by any means, in the affairs of another state violates the international law, and violates the Charter of the United Nations.
Bibliography

Books


**Articles**


