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Sovereignty and Change in Fundamental Paradigms of it in Modern International Law

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Abstract

The actual concept of international society consists of cooperation. Interaction of people in international society shows that the procedure of states sovereignty limitation, considering the increasing cooperation in the international domain, broadened and in order to pave the way toward the benefit of public it is vulnerable. In fact the limitation of sovereignty of states, rooted in formation of new international law rules which is mostly deliberate. To move from sole existence to organized and public existence, limitation in behavior's freedom is required. In other words states and their leaders accepted that the international and legal cooperation shall help to retrieve their national benefits.

Keywords: *Sovereignty, Multilateralism, Terrorism, Humanitarian Intervention, International law, Human rights*

Introduction: The issue of sovereignty from many years ago was the point of discussion among lawyers. In the study definition of sovereignty, national sovereignty, sovereignty in international domain and the effect of globalization on it will be clarified. Firstly the word 'sovereignty' will be studied then traditional definition of it, both national and international, shall be discussed. Then the procedure of changing the formation of sovereignty will be studied according to the developments of international law. Eventually the destiny of sovereignty in the time being and the forecast for what will happen shall conclude the study. Sovereignty is the exclusive right of state to supervise over a specific territory.¹In 'Dekhoda' dictionary, sovereignty means 'to rule', 'the act of ruler'. National sovereignty in the said dictionary is a right UN recognized for each nation and accordingly nations must decide about their own destiny and no nation has the right to intervene in others destiny. In 'Moien' dictionary sovereignty means 'to rule' 'to predominate' and acts that states do to solve the issues related to the public discipline. National sovereignty definition in the dictionary is the same as the Dekhoda dictionary.

Sovereignty or ruling is the supreme power of state which is law maker and executive of law and there is no power upper than that. The domain of sovereignty of a state includes the domain of executing the power in which, according to international law, state is self-governed and there is no

¹ Giddens, A. (2005). *Sociology*. Tehran: Ney Publication.

supervising power on it. Sovereignty includes these concepts: a) the right to law making and editing according to the legal regime of country, b) the political and ethical power of state, while the legal power is in its domain, c) political and juridical independence of a political society.²

The word Sovereignty comes from 'Superanus' with the meaning 'Superior'. While the word being used instead of 'Government', rooted in Latin word 'Kubernan' with the meaning 'to guide'. The word used by Plato for the manner of designing a governmental regime and in the middle ages transformed to 'Gubernare' with the meaning 'to rule' or 'to guide'. The ultimate power of a political organization is named Sovereignty.³

Sovereignty in the Constitutional law and in the public law domain means the supreme and ultimate power and the competency to decide and the power to gain political energies inside the society, the holder of it shall rule in affairs of society.⁴ In political geography one of the basic concepts in studying government is the concept of sovereignty and the understanding of the government personality is not possible without reorganization of sovereignty.⁵ Some philosophers believe that sovereignty means the exclusive right of government to use legitimate force or power. In fact the understanding refers to the internal affairs of countries which governments according to their authority achieved by means of democratic or other ways apply its legitimate power to people. In the procedure governments do not obey any outer factor or power except for those they accept by their own will.⁶

The internal meaning of sovereignty is more legal, although the concept of external sovereignty is more political. On the other hand about the concept of external sovereignty which interpreted as independence, the point is important to consider that the colonials with assertion to nationalism and national sovereignty of countries formed a false procedure about the independence of countries. About the effect of sovereignty it must be said that the sovereignty has the dual effect. In internal atmosphere is the factor of unity and in the international domain factor of dispersion of international law and its development, appearance of new actors in international domain such as UN, Persons, Transnational organizations and ... convergence, global correlation and global economy are the most important factors each of them in various ways affect the sovereignty.⁷

In the study the effort is to show the procedure of change in shape and concept of sovereignty law and to answer the major question: Whether without change in legal concept of sovereignty it is possible to change the existing international legal regimes and the existing situation in creation of existing paradigms is a result of change in concept of sovereignty? We hope the study shall help in broadening the literature of international law.

Sovereignty in the thick traditional concept: The concept of sovereignty in time of creation has a political essence, later it transformed to a legal notion. The legal interpretation from sovereignty in

² Ashuri, D. (2000). *Political Encyclopedia*. Tehran: Morvarid.

³ Gallaher, C., Dahlman, C. T., Gilmartin, M., Mountz, A., & Shirlow, P. (2009). *Key Concepts in Political Geography*: SAGE Publications.

⁴ Motameni, M. T. (2001). *Constitutional law*. Tehran: Mizan.

⁵ Ashuri, D. (2000). *Political Encyclopedia*. Tehran: Morvarid.

⁶ Kazemi, A. A. (2005). *International Relation in Theory and Practice* (Vol. 4th). Tehran: Ghumes.

⁷ Taqvaei, A. (2008). *Evolution of Sovereignty in Second Half of 20th Century*. Imam Sadegh University, Tehran.

passage of time changed. With a deeper survey the procedures of these changes in relation with formation of state-country is obvious.⁸ By referring to writings remained from ancients it can be conceived that they call the sovereignty as the supreme power of state.⁹

Of course many are doubtful about the existence of the concept of sovereignty before 15th and 16th century. As Vincent told: in the Greek and Middle Ages thoughts there were not sovereignty. Although many of the features of sovereignty in various eras have been discussed and later filled in the sovereignty concept.¹⁰ It can be said that the concept of sovereignty is an abstract concept. Before the renaissance era there was no concept like the existing concept of sovereignty and even state. If we define sovereignty as the supreme reference of law making, the concept exists from long time ago, from the time of existence of political societies and it was used.¹¹

According to Platonic philosophy some evidences can be found which proof the idea. The false republic of Plato is a symbol of a society based on pluralism and suppress of individual freedoms and according to mere relation of ruling and being ruled. Plato believed that the ruler or philosopher has relation with the upper world and rule the people of earth and may be a king pave the way of reaching upper world.¹² Eventually in the ancient law there exists a kind of insight about sovereignty that if it can be analyzed, two dimensions from it shall be seen, firstly 'independence' and secondly 'exclusiveness'; Independence against foreign forces and states and exclusiveness of power in relation with interior groups and individuals.¹³

Sovereignty in middle Ages and Modern Era: In the Middle Ages also the Platonic thoughts were exists. As we know in the period, in the domain of natural science the deserved importance did not observed for experience and just referred to insight understanding, of course the impact of such thinking on political thoughts and following of it, political ruling regimes were too much. While the political rulers asserts on their belief and base the principles and rules according to the idea, it's obvious that ruling in harsh manner and without flexibility, especially against opposition, will exist. Therefore, human in shadow of such an opinionate regime will be the only victim of power and sovereignty of state. The feature is among the obvious features of renaissance era. The thought waned by the start of Westphalia era in Europe.

It can be said that the modern or Westphalia era was the time of appearance of sovereignty concept in the existing one. After the Middle ages in 16th century the concept of sovereignty among political and international theorists spread and soon as a factor of consisting states, found an important situation.¹⁴ Many refer sovereignty to Bodin.¹⁵ For the first time 'Jean Bodin' in his

⁸ Ghazi, A. (1994). *Constitutional law and Political Foundations*. Tehran: Tehran University.

⁹ Karami, J. (1996). *UN Security Council and Humanitarian Intervention*. Tehran: Ministry of Foreign Affairs.

¹⁰ Vincent, A. (1991). *Theories of the State*: Wiley.

¹¹ Sovereignty Intervention and a seen away. (2015). from <http://www.siiionline.org/article/rodolfo.pdf>

¹² Changing definition of sovereignty .,From http://www.unc.edu/depts/diplomat/archives_roll/2001_1012/marks_sovereign/marks_sovereign.htm

¹³ Ghazi, A. (1994). *Constitutional law and Political Foundations*. Tehran: Tehran University.

¹⁴ Sovereignty and Inequality. from <http://www.ejil.org/journal/Vol9/No4/art1.html>

¹⁵ Bigdeli, M. R. Z. (2000). *Public International law*. Tehran: Ganj Danesh Publication.

famous book 'Six Books of Common Wealth' in 1576 explained the idea. Bodin's idea is from those bold symbols which by express of it many of ideas about the issue and other ones raised. According to him, sovereignty is the supreme and ultimate power of state on its citizens and their properties which will not be limited by the written law and is absolute and permanent. Sovereignty has both internal and external face. It means that the superior power on citizens in a territory and freedom from foreign interventions of other states. According to Bodin sovereignty is the absolute and permanent power of government over a society.¹⁶

After Bodin, Grotius, the famous Dutch thinker, and after him British thinkers such as Thomas Hobbes, John Lock and John Austin in description of sovereignty told some ideas. George Wilhelm and German Hegel also developed the concept. Existence of sovereignty concept simultaneous to the concept of state among the political thoughts of then, opened a new era in face of thinkers. Therefore in the era the concept of sovereignty has been used as one of the features and elements of state. The point all of the thinkers were agree about the concept of sovereignty, is the description of sovereignty as a logical and exclusive principle. Thomas Hobbes knows it as Absolute. He in all of the matters, except for the special cases, accepts the right of ruler to take hard on its citizens. According to him social ruling located in the ruler of government. The unlimited will is higher than absolute ruler and alongside it no power is tolerable.¹⁷

By the end of 30 year war and by the signature of Westphalia treaty in 1648 a turning point in development of the legal concept of national sovereignty or power happened. In the treaty members of international society accepted the principle of not intervene in others internal affairs. Recognition among states had some important consequences. Firstly the matter shows the victory of intergovernmental regime over the global, political and military concepts which Roman Catholic Church or Holy Roman Empire were the defenders of it. Secondly the issue empowers independent states to decide which of the political domains are independent and which are dependent, because while a power shall force its own will inside the sovereignty, it was necessary to recognize other independent sovereignties in order to stabilize the foreign sovereignty of it.¹⁸

While sovereignty formed in the political literature, the root for sovereignty was the power in hands of king and ruler, but by the great revolution of France the concept transferred from king to people and its effects turned back to people. In fact it was the people who execute the supreme power, because the power rooted in people and its control is at the hand of people. To this shape of sovereignty in the internal domain which is absolute and there is no limitation for it and immediately after the formation of state sovereignty will exist for it, is told national sovereignty. But in the outer area there are limitations for this sovereignty, because there is some other sovereignty that the government must have relationship with them. Therefore the national sovereignty makes principles of national and governmental independence tangible. Just while a state governs, its people can decide about their own destiny in line with their needs and special benefits. Therefore if they ask the

¹⁶ Sait, E. M. C., Foster, M. B., & Jones, W. T. (1959). *Masters of Political Thought*: G. G. Harrap & Company Limited.

¹⁷ Sovereignty and Intervention after the Cold War. from <http://globalization.about.com/library/weekly/aa102700a.htm>

¹⁸ Meier, R. (2000). *Modern Approach of Political Geography* (H. D. Mir, Trans.). Tehran: Armed Force Geography Organization.

state to resign from sovereignty is like the case that it ask from people to desist from their freedoms. Also any independent country because of enjoying territorial sovereignty has competencies and authorities to prevent from loss of other countries.¹⁹

In the cold war era two principles of sovereignty and not intervention, both in theory and practice, were observed by states to some extent, which its logical result was the maintenance of independence of countries and on the other side the said principles for states where a powerful halter against commitment to have effective answer over situation of people and the violation of their rights inside the country. The situation did not stay stable and gradually the attention of international society approached toward the human rights and modification of sovereignty.²⁰

The Conceptual Evolution of Sovereignty and the Speed in its Revolution: In modern international law the sovereignty of states recognized. According to the UN charter chapter one, article two the organization and its member, in pursuit of the purposes stated in Article 1, and shall act in accordance with the following principles. 1. The organization is based on the principle of the sovereign equality of all its members.²¹

Juridical decisions and international arbitrations see the principle as a fundamental feature of country. In the second level, sovereignty just accepted in internal affairs (national sovereignty) and not in absolute manner, but according to international law. In other words sovereignty in new concept means the right to decide in all of affairs in frame work of its own borders and without dependence to any internal or foreign power. The only limitation to the power is from the international law. In international domain sovereignty find new concept and its competence. Country in its international relations enjoys powers and authorities which recognized by the international law and it called competence.²²

The practice of sovereignty as a basis for international law shall lead to an important result and that the governments consist of group of members law has been written for them. As a result law of local governments preferred to other things. And also another result is at hand as: international law wants to maintain the situation. In international relations, national sovereignty means independence of states in relation with international foundations.²³

There are two major ideological ideas about the evolution of national sovereignty concept in modern world. 1- Realist point of view and 2- liberalists' view. Realist believes that the principle of sovereignty in international regime will not disappear but the form and kind of it is changing. Some believe that in the globalization era sovereignty has not its absolute concept anymore and is comparative. From among the reasons caused this comparativeness such as: 1- regional cooperation with other governments, 2- global cooperation with other governments, 3- cooperation with formal organizations and international such as United Nations, 4- existence of treaties and pacts, 5-

¹⁹ Taylor, P. J. (1994). *Political Geography: World Economy, Nation-State and Locality* (3rd Edition ed.). London: Harlow Longman.

²⁰ Sadeghi, D. (2013). *International Responsibility to Protect and Sovereignty of States international Relations*.

²¹ United Nations. from <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

²² Bigdeli, M. R. Z. (2000). *Public International law*. Tehran: Ganj Danesh Publication.

²³ Meier, R. (2000). *Modern Approach of Political Geography* (H. D. Mir, Trans.). Tehran: Armed Force Geography Organization.

obedience and acceptance of resolutions. In the existing situation national sovereignty has not lost its meaning but actually states need the recognition and support of international society.²⁴

Sovereignty and Globalization and New Paradigms: Globalization in various fields tarnished the independence and absolute sovereignty of governments. It means that they do not have the previous authorities they had and in some cases they are obliged to walk in line with global procedures. Regardless of said factors, the traditional absolute sovereignty limited because of some other factors such as: 1- regional and global economic organizations, 2- international political organizations, 3- modern intellectual, cultural and social movements which dedicated various dimensions of independence and state sovereignty, of course the intrinsic power of each country play role. While some believe that the sovereignty lost its meaning in the existing era, some others believes that the sovereignty has not terminated, but the new formation, proportionate to post government orientation era has been shaped. These theorists believe assert that the main ideas and practices of sovereignty is the construction of society which has been changed. Some others discuss the sectional sovereignty, a kind government waiver its advantages in some regions. Some discuss the pseudo-sovereignty in which government accepts some legal bindings in global or regional affairs. Therefore the sovereignty of no country is absolute. Because some international recognized rules such as human rights limited sovereignties.²⁵

Shapes of sovereignty as a result of over development of globalization at least are changing and in worst situation are waning. In fact in some discussions, globalization idea must be interpreted according to changing concepts of sovereignty. Accordingly it was told that state regarding its territory, shall play its role as an effective foundation. But the existence or non-existence of sovereignty as a determining factor of state shall not exist anymore.²⁶

Sovereignty and Multilateralism, a Necessity or Threatening Factor: Multilateralism in Webster means 'having many sides' and 'involving or participated in by more than two nations or parties'. In international relation multilateralism consists of some countries working on an issue. Multilateralism defined by Kahler as: the international management of all and its concept completely opposite to bilateralism in which all believe that is a way for bullying of powerful states on weak ones.²⁷ In 1990 Keohane defined multilateralism as: practice and cooperation in politics of states in groups with three or more members.²⁸

In fact categorization among four concepts of multilateralism is possible. The first form that locates in political dialogue, use multilateralism as goal and mean. The second concept directly refers to the United Nations system, third concept is in the survey agenda of multilateralism, the fourth meaning raise by Ruggie, multilateralism has an organizational form which coordinate the

²⁴ Mortazavi, A. (2010). *Globalization of Law and National Sovereignty*. Tehran: Payan Publication.

²⁵ Ashuri, D. (2000). *Political Encyclopedia*. Tehran: Morvarid.

²⁶ Clark, I. (1999). *Globalization and International Relations Theory*: Oxford University Press.

²⁷ Zartman, I. W., & Touval, S. (2010). *International Cooperation: The Extents and Limits of Multilateralism*: Cambridge University Press.

²⁸ Press-Barnathan, G. (2004). *Organizing the World: The United States and Regional Cooperation in Asia and Europe*: Taylor & Francis.

relation of three or more states according to developed behavior principles, Principles which decide the proper domain for bodies of acts.²⁹

Despite the various differences in definition of multilateralism, many of writers see it as a specific foundation of discipline and cooperation among states in international relation. For instance Robert Cohen sees multilateralism as practice of national policies in a group of states.³⁰ But in another definition Ruggie believes that the superficial definition does not cover the quality dimension of multilateralism, because in the quality dimension more assertion is on public principle of it. Ruggie by studying the set of examples of multilateralism which were accepted by all resulted came to conclusion that the common point of multilateral arrangements is the existence of sets of rules arrange the relations among groups of three or more countries according to public behavior principles. These principles decide the necessary behavior symbols to reach a specific goal but the determining point is that the principles which are the practical dimensions of these principles are governing all of states attending the multilateral arrangements. This conclusion guide Ruggie to two claims. First, in multilateral arrangement states behave as the appointed goal reachable only by act of public. Because of that the claimed aim is indivisible. Second, usually multilateral arrangements following the goal according to scattered reciprocity. It means that gained benefits from following the aimed goal will not gained immediately but in period of time from active cooperation of all of parties in a same time.³¹

United Nations in the field of Arms control and disarmament chose multilateralism. The charter of United Nations in 1945 seeks for a legal regime to ensure that the inconsiderable amount of countries incomes and economic sources of countries in conflict pay for producing weapons. If multilateral values and foundations want to be stable must be according to the contemporary principles of legitimacy and ability to face contemporary challenges in effective way.³²

Victor Cha in a survey show that the great and small powers in which situations prefer multilateralism and bilateralism. He believes small powers which seeking control over their goals, in any case, whether the goal states be among the great powers or small powers, seek multilateralism. On the other hand great powers if want to have power over small powers prefer bilateralism and in face of great powers prefer multilateralism.³³

Eventually by studying the existing situation the conclusion achieved that the approach to multilateralism is developing in the international society and middle and small powers see the multilateralism proper to play their role in international society and achieve their goals. On the other hand great powers in face of small powers prefer to use bi and unilateral acts but arising of various powers in world and some bitter events for great powers, such as 9/11 show to them that the cooperation of other countries shall help them to achieve their goals. As Victor Cha told, the great

²⁹ Vahabpour, P. (2006). The Role of European Union from view Point of Constructivism. *Public Law Survey*, 1(7), 125-148.

³⁰ Cohen, B. J. (2014). *Advanced Introduction to International Political Economy*: E. Elgar.

³¹ Ruggie, J. G. (1992). Multilateralism: the anatomy of an institution. *International Organization*, 46(03), 561-598. doi: doi:10.1017/S0020818300027831

³² Newman, E. (2007). *A Crisis of Global Institutions?: Multilateralism and International Security*: Taylor & Francis.

³³ Cha, V. D. (2010). Powerplay Origins of the U.S. Alliance System in Asia. *International Security*, 34, 158-196.

powers in face of great powers prefer to use multilateralism to create equality. The role of United Nations is tangible in development of multilateralism in the domain of international society. Eventually it can be said that multilateralism not only creates interference in the sovereignty of countries but also make it logical. In other words, for great powers prevent from infiltration and force. Not only multilateralism is a threatening factor for sovereignty but also it is a necessary factor for today world.

Humanitarian Intervention and Passage from the Traditional Sovereignty: In era before 19th century no document condemned war, intervention in internal affairs of governments carried out by various names. In traditional international law, the sovereignty doctrine and doctrine of non-intervention in internal affairs of other states which deeply rooted in custom based behaviors, was a big obstacle in way of humanitarian intervention. But the necessity to maintain the independence of each country and non-intervention in internal affairs, recognized by the United Nations, made problem in assuring the observe of individual rights whom possibly suppressed by government. On the other side brutalities some states did on their citizens or some unjust laws decided against the fundamental rights of citizens, is an issue the conscious of international society shall not be silent on them.

From issues which affect evolution of the principle of sovereignty and modification of the non-intervention principle in interior affairs of states is the human rights and its internationalization. Cassese the famous Italian lawyer, knows the principle of respecting human rights as a feature of new era in international society. In his idea, the principle is in competition, if not opposition, of traditional principles of respecting absolute equality of countries and prevents from intervention in others internal affairs.³⁴ Because of that the humanitarian intervention gained more important place in the contemporary era. Shinji Kobayashi, the professor of Nihon University, described the hypothesis of humanitarian intervention as: if a country in form of its sovereignty authorized to rule its territory and people, therefore it's the country duty to guarantee the minimum amount of prosperity for them. Considering the definition, if a country does not want or be unable to protect its people and there exist a situation in which the human rights violates, the government shall not allowed to prevent from others intervention and the international society has the right to intervene.³⁵

Therefore many theorist such as Michael Futcher, the French professor of geopolitics, believe that the sovereignty is not absolute and tells: sovereignty is not the dam for indolence of criminal regimes to hide behind it... states have the sovereignty to be able to create public discipline and maintain the peaceful relations.³⁶

Today with evolution of international society and appearance of new notions and values in shadow of humanitarian ideas, neither shall not rely on absoluteness of national sovereignties, nor is the border of countries assumed as iron walls. Regarding that it is now told that the sovereignty as a superpower has lost its traditional meaning.³⁷

³⁴ State Sovereignty in the 21st Century; Concept, Relevance and Limits. (2001). *New Delhi: Institute for Defense Studies and Analyses.*

³⁵ State Sovereignty in the 21st Century; Concept, Relevance and Limits. (2001). *New Delhi: Institute for Defense Studies and Analyses.*

³⁶ Molaei, Y. (2003). Independence, Democracy and Human Rights. *Naameh, 28.*

³⁷ Zanganeh, H. (2005). *Sovereignty and Humanitarian Intervention.* Tehran: Thoghts Club.

After the September 11 terrorist incidents, political interest in this area was affected by other factors. The Issue of global action against terrorism and weapons of mass destruction was included in the factors of it. Although these issues are different in the form and idea; but the condition was changed in a manner, that several of the basic principles of international law such as right of defense, sovereignty and non-intervention were challenged in the internal affairs. Military action taken in Iraq Afghanistan and like that, in this period suggests a broad and deep change in this area. Actions carried out in Liberia in 1990, North Iraq) in 1991 (Haiti) in 1999 (Sierra Leone) in 1997 had been discussed in a group and the actions taken in East Timor, 1999 (1994) have been criticized and challenged by the politicians and juristic in the other group. Although the issue of Somalia (1913) Rwanda and Bosnia in 1995 by (UN, and Kosovo) in 1999 by NATO, members of the UN Security Council clearly in the form of different packages, have justified some measures and rejected some of them without the Security Council authorization. Of course, it has always been the subject of public opinion against the crimes and gross violations of human rights, what should we do? Of course, the view that challenges the sovereignty and territorial integrity of States suggests the inability of UN Charter in an effective game of controlling the crisis. In response to the question of whether the responsibility look of protection can complete and fix the defects of Charter, a comprehensive answer cannot be presented for it. The Idea and theory of responsibility to protect, has challenged the sovereignty, above all, and made its concept different in modern Lexicography. Elegantly, in the past decade, the term intervention changed to protect and a bit isolated from the literature of humanitarian intervention. At present, the meaning that is understood by humanitarian intervention is deeper than that was discussed in 2001. With all these developments, the focusing was on issues such as responsibility to protect widespread killing, systematic women rape, famine and children for many years. Westphalian concept of sovereignty was attributed in their decision-making authority of the government in connection with the People and resources within the country.³⁸

Before 9/11, the reaction against terrorist attacks was justified in the form of self-defense and the right of legitimate defense. The actions taken by America in justifying the military attacks can be referred in relation to Libya (1986) for the pretext of terrorist attacks to the night club of Berlin, aggression against Iraq (1993) as a pretext of attacking the then president Bush of that country, aggression against Afghanistan and Sudan as a pretext of detonating the embassies of this country in Kenya and Tanzania (1998).³⁹ In these events, the America had established its national security strategy, based on the criterion of unilateral actions. Such an approach had been criticized by many juristic; some interpreted it differently and broadly as a right of legitimate defense.⁴⁰

One of the developments in the last decade was the change in the principle of non-intervention and its change to the doctrine of 'contingent sovereignty'. In this evolution, the rights of sovereignty and the immunity of governments was not absolute and also depends on the trend of supervision on basic obligations of them.⁴¹ Such a doctrine in sovereignty, after few years, changed to a part of defense strategy of America. In the strategy of 2005, it has been stipulated that this principle that the regimes can take action against their citizens, neighbors or the rest members of international

³⁸ Reinold, T. (2012). *sovereignty and responsibility to Protect* london Routledge

³⁹ Reinold, T. (2012). *sovereignty and responsibility to Protect* london Routledge

⁴⁰ Murray, A. H. a. R. (2013). *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*: Palgrave Macmillan

⁴¹ Bellamy, A. J. (2009). *Responsibility to Protect*: Wiley.

community under the cover of their supporting sovereignty, is fully rejected. This view motivated the intervention during Clinton's period in Kosovo in 1999 in Afghanistan (2001) and intervention in Iraq (2003).⁴²

Therefore, the study of those years suggests that if the relation of sovereignty to be reviewed as the responsibilities and America's foreign policy, it is clear that such a doctrine is an important obstacle for the creation of a global consensus, on the responsibility to protect. In the later years though the United States made endeavor that by pursuing war on terrorism and especially aggression against Iraq, take justification, but it did not sound easy that it could be considered in the format of responsibility for protection.⁴³

War against Iraq that was started under the pretext of fighting terrorism and violence by the United States of America affected the principle dialogues of this perspective. The targeted use of Security Council to justify the decision of Bush and Biller, to enter the Iraq war (2003), took place without the authorization of the Security Council, took the international rules to be a serious challenge.⁴⁴

The result of such action was that following the formation of new government, always the Iraq and its people were under the threat of organized terrorist attacks and put them at the threshold of an all-out civil war. All studies suggest that the hostility and conflict happened in Iraq, and the so called victory in the Iraq war has led to the passage from Canadian Commission Report (2001). America's recent actions, especially following the so-called Arabic spring, resulting in unwillingness of most proponents of responsibility theory to protect in the corridors of the UN. America's fear of military action in the world caused flare-ups of Iraq crisis and spin on the concept of responsibility to protect.⁴⁵

Formation of ISIS: The Islamic State of Iraq and the Levant, alternatively translated as Islamic State of Iraq and Syria or Islamic State of Iraq and al-Sham, is a Salafi jihadist militant group that follows an Islamic fundamentalist, Wahhabi doctrine of Sunni Islam. As of December 2015, the group has control over vast landlocked territory in Iraq and Syria, with a population estimate ranging between 2.8 million and 8 million people and where it enforces its interpretation of sharia law. ISIL affiliates control small areas of Libya, Nigeria and Afghanistan and operate in other parts of the world, including North Africa and South Asia.

Military intervention against ISIS: In response to rapid territorial gains made by the Islamic State of Iraq and the Levant (ISIL, ISIS, IS, or Daesh, calling itself the Islamic State) militants during the first half of 2014, and internationally condemned brutality, reported human rights abuses and the fear of further spillovers of the Syrian Civil War, many states began to intervene against ISIL in

⁴² G. Duncan, O. L., G. Ramsay and A.M.S. Watson (2013). *State Terrorism and Human Rights: International Responses since the End of the Cold War*: Taylor & Francis

⁴³ . Combating terrorism status of DOD efforts to protect its forces overseas: report to congressional requesters DIANE Publishing.

⁴⁴ Cunliffe, P. (2011). *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*: Taylor & Francis.

⁴⁵ Sartipi, H. (2015). The Concept of Sovereignty, Movement in Development, and Legal Postmodernity. *International Journal of Humanities and Social Science Studies*, 2(1).

Syria and Iraq. Late, there were also minor interventions by some states against ISIL-affiliated groups in Nigeria and Libya.

Legal basis of attacking ISIS: Until the end of 1990s the international society was not open armed to unilateral acts of countries against terrorism and the act was criticized by the other countries. After 9/11 fight against terrorism by countries became justifiable even in the soil of other countries. States and some of university professors believe that the right to defend self against a non-governmental factor must be at hand in special circumstances. According to them, the main cause of neglecting a country territory is fighting against terrorism while the host country unable or unwilling to fight against terrorism.⁴⁶

Legal basis for UK military action in Syria: The House of Commons is likely to debate a Government motion on using military force against ISIS/Daesh in Syria, possibly in early December 2015. The Government's November 2015 response to the Foreign Affairs Committee report on extending British military action to Syria says that the main legal basis for UK military action in Syria is collective self-defense of Iraq, with the individual self-defense of the UK and collective self-defense of other states (but not Security Council authorization) as additional legal bases. Self-defense is one of the three main exceptions to the UN Charter's prohibition on the use of force, the others being Security Council authorization and consent/invitation.

There is no UN Security Council resolution clearly authorizing the use of force in Syria. UN Security Council Resolution 2249 (2015) on ISIS/Daesh in Syria and Iraq, whilst using some language familiar from other resolutions on the use of force, seems intended to have more political than legal impact. It is a significant display of unanimity that had previously been notably lacking; but its careful wording implicitly supports states' existing military actions against specific terrorist groups in those countries without either explicitly accepting or rejecting the various justifications or clearly providing a new stand-alone legal basis or authorization for those actions:

- It determines that ISIS/Daesh is 'a global and unprecedented threat to international peace and security', and
- calls for (not authorizes) 'all necessary measures' (code for using force) in compliance with international law to 'redouble and coordinate' existing efforts against ISIS/Daesh, Al-Nusrah Front (ANF), Al-Qaeda and other designated terrorist groups in Syria and Iraq, and 'to eradicate the safe haven they have established' in Iraq and Syria. This means that the UK and other states will continue relying on the varying legal bases they have been using up until now. Iraq's request to the UN for military help in combating ISIS/Daesh both in its territory and in Syria has been cited by the UK and other states to justify military action as collective self-defense.

International law allows states to use force in other states as individual or collective self-defense against an actual or imminent armed attack, as long as the force to be used is necessary and proportionate to the threat faced. However, when the armed attack comes from a 'non-state actor' such as ISIS/Daesh, based in a state that is 'unwilling or unable' to prevent the attack, the international law is not entirely clear. UNSCR 2249 could impliedly support the view that using military force in self-defense against such attacks can be lawful, and it has even been read as suggesting that in this particular situation states do not need to show that an armed attack is

⁴⁶ Bethlehem, D. (2012). *Principles Relevant to the Scope of a State's Right of Self-defense against an Imminent or Actual Armed Attack by Non-State Actors*.

happening or imminent. Humanitarian intervention has not yet emerged as a fully-recognized exception in its own right to the prohibition on using force.⁴⁷

Legal justification of attacking to ISIS by France and USA: The military attack against ISIS in Iraq carried out just by the prior request of the country for military help. An independent state basically allowed asking from foreign troops to operate in its territory.⁴⁸

Therefore any military operation including airstrike in the sky of Iraq is legitimate. Despite the Military operation in Syria carried out without the request of that country but in absence of straight consent of country, they will act as self-defense. Self-defense expressed the self-defense and the US and France on behalf of Iraq attends the intervention.⁴⁹ The US for the military intervention in Syria used the principle of not willing or inability fight terrorism.⁵⁰

If the principle be accepted, military intervention in a country even its territorial integrity being neglected is recognized.⁵¹

Expectance of sovereignty concept evolution in future :One of the most issues to consider and will affect the major concepts of international law especially sovereignty, is the issue of globalization. In situation of globalization, open society, open technology, creation and institutionalization of international regimes will be simplified. These factors have the role of being tools in way of forcing the creation of open society and development of human rights and democracy and establishment of grounds to face and resist of people against non-democratic regimes.⁵² In fact globalization in the contemporary world means development and deepening the transnational relations.⁵³ These procedures in countries which have weak or unsuccessful state, act as supporter or developer organization. These foundations not only for the organization but also for the sake of ideas and aims of own, affect the states sovereignty. Such foundations with new tasks defined, are carrying out some activities of government, like multinational companies.⁵⁴ Effects of globalization on state are the most serious discuss in the field. As Robert Gilpin, the famous theorist, told: the idea that country-nation has been weakened by transnational forces of globalization, exists so much in discussions of international regime and international economy. According to many of writings, international organizations and other non-governmental players will arise instead of country-nation which is the main factor in international relationship. Some believe that by globalization of economy national economies shall not exist anymore and national economy policies

⁴⁷ . from <http://www.voltairenet.org/article189449.html>

⁴⁸ from <http://www.ejiltalk.org/the-airstrikes-against-islamic-state-in-iraq-and-the-alleged-prohibition-on-military-assistance-to-governments-in-civil-wars/>

⁴⁹ United Nations. (2015). Letters from the Permanent Representative of France to the United Nations addressed to the Secretary -General and the President of the Security Council

⁵⁰ United Nations. (2014). Letter from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General.

⁵¹ . from http://europeanstudentthinktank.com/2015/11/29/france-fighting-isis-a-legitimate-use-of-force-under-international-law/#_ednref11

⁵² Zahrani, M. J. Z. a. M. (2006). *Modern International Procedures*. Tehran: International Political Studies Office.

⁵³ O.Q.Han, R. (2008). Global Ruling and Democratic Responsibility. *International Organizations*, 3.

⁵⁴ Love, M. C. (2003). *Beyond Soveringty: Issues for a Global Adenada* (2nd ed.).

have lost its competency. Despite these ideas Giplin believes that these hypotheses are not correct and country-nation will play the major role in international and national domain.⁵⁵ Of course states still are the most powerful players in globe policy, but it's oversimplification to see the states as the mere players of international politics.⁵⁶

Although in the existing situation the concept of sovereignty has not turned to a useless thing, but the forces of sovereignty have been raised and the sovereignty of state with new forms of political power and power centers accompanied. Tools and ways of ruling have been changed and will change and countries must create and develop new ways for ruling and maintaining Sovereignty. In the world order, undoubtedly, the political atmosphere and society still shapes by means of sovereignty of state, but not exclusively. In the world moving toward globalization domain of organizing and ruling, the domain, area of networks, orbits and power relation develops and acts of players in a continent shall lead to a deep consequence for nations, families and individuals in other anti-rents. Appearance and level of communicational, informational technologies have raised the human relations all over to world and the procedure is continuing with great speed.

One of the important matters is the international organizations issue. These organizations are among the foundations to establish international relations. The raise in quality and quantity of these organizations, whether governmental or non-governmental, in the entire century with help of modern behaves and behaviors symbols, gradually challenged the focus on sovereignty and power of state-nation foundation and suppressed its central position in international relations. The process of legitimate power transfer from nation-state foundation to international organizations caused a gradual evolution in structure of international relations. This evolution from one side is a result of development in power of international organisations against states and on their side affected from new theoretic approaches and international norms, defined the concept of sovereignty over the competence and power of states and according to the idea of global ruling introduced as an alternative to the nation-state regime sovereignty.⁵⁷ International organizations are from mechanisms of establishing international relations. The progress (whether in quantity and quality and governmental or non – governmental) affects the power of states.

Globalization is creating a field to change, informal and formal, the national power and sovereignty. The combination of technology, international foundations, local states and other non-governmental players are weakening the exclusiveness of nation-state power on government and are providing new forms of power. The network cooperation among various groups in the geographical domain of globe in real time is developing. Day by day the daily network cooperation in great distances and national borders are becoming a usual fact for individuals and other various players.

From Among the key specifics of globalization era about sovereignty, the change in models of domination of developed countries over less developed or developing ones has important place. The major model in past was the territorial seizure and colonialism. The more powerful countries to rule on a region, use of benefits and resources, maintain the stability over the international regime,

⁵⁵ Zahrani, M. J. Z. a. M. (2006). *Modern International Procedures*. Tehran: International Political Studies Office.

⁵⁶ O.Q.Han, R. (2008). Global Ruling and Democratic Responsibility. *International Organizations*, 3.

⁵⁷ Eslami, m. (1995). From the Sovereignty of State to Global Sovereignty *Permanent Representation of the Islamic Republic of Iran to the United Nations 1*.

because of the lack of technologies which enable them to rule and govern from abroad or fast campaigning to a country, chose the political and military presence in strategic locations of world. But now a day the control over network technological infrastructures such as internet, telecommunication, international foundations and regimes has transformed to their main ways. The previous forms replaced by invisible governing.⁵⁸

One of the important issues is the accountability of states in national and transnational domain in the new circumstances. The call for accountability states, international and bi-national organizations always will exist. These calls may be aroused from non-governmental players. Therefore the issue shall be called as transnational. The answer to these demands shall increase the legitimacy of foundational processes inside the international society. It can be said that change in concept of sovereignty and evolutions related to it have offspring such as the increase of states accountability in various domains.⁵⁹

Conclusion: The humanitarian intervention relying on human dignity and obliging states to observe them and also the phenomena of globalization changed the concept of power derived from sovereignty and the intrinsic rights of human changed to obligatory norms. Today there is no way to act by the justification of being internal and prevent others from intervention.

The responsibility to protect doctrine developed with humanitarian purpose. According to the idea, the sovereignty self-guarantees the responsibility and therefore the main responsibility of state is to protect people. It's obvious that responsibility to protect by means of military intervention in international society is not limited to protecting human and includes wider domain of responsibility to protect human and fight against crimes against humanity and repair the ruins.

The real nature of international society consisting association and interaction of individuals in international society, show the fact that process of states sovereignty limitation will be increased regarding the developing cooperation in international domain. In fact, limitation of states sovereignty is the natural and direct result of international law principle. To move from isolated existence to public one, limitation in behaviors freedom to benefit of others is inevitable.

Therefore, although the sovereignty of states does not have its absolute meaning but it is a principle in international law yet. What develop the claim are the secondary and contractual commitments along with other general rules and principles.

West, especially after 9/11 changed its approach from unilateralism to multilateralism. The kind of approach leads to the fact that sovereignty lost its absolute meaning and limited inside sovereignty and cooperation with other countries. Alongside of the issue the appearance of humanitarian intervention phenomenon and fight against terrorism especially after 9/11 and raise of ISIS sovereignty observed in its least meaning. Even the great powers by justifying that they are defending their selves, like the case of France, and public defense violate the sovereignty and territorial integrity.

⁵⁸ Sovereignty and Intervention. from <http://www.ahram.org.eg/weekly/2001/537/op3.htm>

⁵⁹ O.Q.Han, R. (2008). Global Ruling and Democratic Responsibility. *International Organizations*, 3.

It must be mentioned that the globalization supported by great powers of world affected the concept of absolute sovereignty. As it was told, the idea of globalization must be understood according changing concept of sovereignty. In other words it must be considered that globalization as a result of change in procedure of sovereignty is happening.

Although the concept of sovereignty still exist in political and legal issues but it is not in its absolute shape any more. Global evolution was slow but now is rapid. Countries shall not stay alone. They are the independent member of the society they obliged to be affected and affect. Ways, skills and new mechanisms penetrated the sovereignty.

At last it must be said that a wide evolution in concept of sovereignty, territory and other issues relating to it is forming and will form, which will affect international relations and international law principles. The struggle exists and will exist inside the international society.

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