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## **The Concept of Sovereignty, Movement in Development, and Legal Postmodernity<sup>12</sup>**

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### **Abstract**

*International lawyers have always considered sovereignty as one of the fundamental principles. Although sovereignty was diverted from its primarily considered concept of absolute, it has been inviolable. In parallel to occurring changes in sovereignty, other principles derived from or related to it such as the principle of non-intervention, non-use of force, territorial integrity and right of self-determination were also transformed. Despite all changes, the principle of sovereignty along with other accepted rules was categorized in the traditional framework of international laws. Changes in recent decades appeared after the end of the Cold War, especially after the terrorist events on September 11, led to fundamental change in some of these principles and collapsing the traditional framework of international laws. A new legal order of international law is getting formed that can be interpreted as Postmodern Law.*

**Key Words:** *International law, sovereignty, legitimacy, self-determination, the principle of territorial integrity, human rights, responsibility for support, terrorism.*

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**Introduction:** Evidence from public opinion demonstrates that occurrence of many incidents and events around the world every day cause a lot of confusion and questions in the mind. Students of laws and international relations have been exposed to such a situation more than the other groups. There are significant differences, both in form and content of international law principles used in public international laws books and real situations in international relations and interactions. A reader can easily distinguish the distinct disciplines and even contradictory between the written laws and current reality. The structure of traditional international laws is based on the government and sovereignty which are inviolable from internal and external assaults. However, the issue of power played role in international relations and caused distinction among governments, in international laws the governments had same situations. According to this principle, intervention in matters which are constitutionally related to the domestic jurisdiction of the governments was considered reprehensible and use of force against them was also prohibited. Internal issues such as legitimacy or political credibility was concerned domestic issues with no international description. There was no rule in traditional international law that gives an international status to an individual. National

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security and national interests were inclusive and defined as authorities of the governments. On the other hand, with relying on the dignity of government, country, territory and territorial integrity of governments were inviolable and sacred and this belief had powerful influence on all the fundamental principles of the traditional structure of international law. Even self-determination, as one of the fundamental principles in setting law relations, passing the time, promotion of knowledge in society, technology development and achieving bitter and sweet experiences over the years and especially in the last century, caused widespread changes in the form and content of the fundamental principles of international law. Some parts have been redefined or redesigned. Some others have found different concepts or have been narrowed. Anyway, the traditional frameworks of international law have been changed and the relationships between members of the international community have been formed in a new style. In this regard, one question comes to mind whether the fundamental frameworks in traditional international law have been changed or the principles have been adjusted to the new international social life in form without changing the content. This paper has been set to define the traditional frameworks of international law in three sections and then discuss different perspectives on the issue. First the issue of sovereignty, then legitimacy, credibility and changes of governments will be discussed. This article will also review the principles of territorial integrity and self-determination as well as the concepts and controversies arising in the relation of these two principles. After exploring the traditional framework of international law and the effective elements on subsequent developments such as limited sovereignty and exterior legitimacy the paper will discuss the issues such as human rights, humanitarian law, humanitarian interventions, responsibility for supporting terrorism and developments after the Cold War, especially after the September 11 attacks and the impact of such developments for the traditional structures of international law. Since having a brief review of these elements without paying attention to the recent developments in the international scene, particularly in the Middle East and North Africa, is not possible, the occurred developments have been also studied. At the final section of the paper, entitled conclusion, the offered hypothesis will be assessed. This paper aims to help the reader understand the discussed issues based on realities. We hope that publication of this article pave the road for promotion of public international law.

**2. Sovereignty, Traditional Foundations and Modern International Law:** Since time out of mind, when relations between governments were regulated and defined exclusively based on power and within boundaries, the structure of international law was sketched under the influence of time. The international law was then founded on sovereignty and government was recognized as the only authority with exclusive right of sovereignty on its own territory and nationals, and it defined its interactions with other governments only based on treaties.<sup>1</sup> Governments enjoyed the option to choose – as if they were buyers – laws complying with their interests in the markets of law and politics. Sometimes, by exercising this method, they threatened international peace and security, which are the essence and foundation of international law.<sup>2</sup> Although from the very beginning of human life, the issue of sovereignty has been in bold relief, it first emerged in the literature of international law in the 16<sup>th</sup> and 17<sup>th</sup> centuries (Peace of Westphalia). After the signature of the

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<sup>1</sup> - Baqerpour Ardakani, Abbas, Resolution 1696 of UN Security Council on the nuclear program of the Islamic Republic of Iran, *Iranian Yearly of International Law and Comparative Law*, Issue No. 2, 2006, p. 149

<sup>2</sup> - Zamani, Qasem, *International Law, Torn Between Intention and Law*, Islamic Azad University, Tabriz Branch, Tabriz, 2010, p. 17

Peace of Westphalia in 1648, the trend which had started in the 14<sup>th</sup> century<sup>1</sup> was completed and government was defined as a legal element in the international system.<sup>2</sup> Jean Bodin was the first author to speak about this issue in 1576 in his book “Les Six Livres de la République” (The Six Books of the Republic).<sup>3</sup> He believed that sovereignty is in the nature of government and it needs to be absolute, which means that it has to accept its obligations independently, be capable of drafting laws without consent of people and face no restrictions by previously-adopted laws. Moreover, sovereignty must be perpetual and not short-lived.<sup>4</sup> During the period of Enlightenment, Thomas Hobbes developed in 1651 the idea of social conventions based on Bodin’s definition of sovereignty and the circumstances of the Peace of Westphalia and concluded that living in a social community without cooperation between all members is impossible and he presented a new definition of sovereignty. This attitude quickly won over supporters of Bodin’s theory.<sup>5</sup> Hobbes, who was an advocate of the theory of sovereignty, went beyond Bodin’s theory. He maintained that nobody and nothing could restrict governors because they enjoy absolute authority, have the final say on state affairs and nobody is entitled to object to them. Bodin and Hobbes both view sovereignty as absolute authority, but it does not seem logic when one takes into account the political conditions and dictates of the time. With the occurrence of some developments in the international community, the theory of equality of governments was pushed further to bold relief. Emer de Vattel believed that governments, like individuals, live freely in natural and independent circumstances and they are equal.<sup>6</sup> Another theory having emerged throughout the formation of international law is the principle of balance of powers. This idea was instrumental in the formation of international politics in the 19<sup>th</sup> century. Based on this principle, European countries proceeded with cooperation within the framework of L’union sacrée (French for Sacred Union), Council of European Leadership, Alliance of Five and European Reconciliation. However, divisions and individualistic behavior of some powerful governments revived the principle of balance of powers. After that, the principle of non-interference and the principle of nationality put an end to respectively exclusive competence of other governments and unity and independence. But in certain cases, that encouraged invasion of other countries under the influence of extremist policies by some governments.

In recent years, like many other basic issues of international law, sovereignty has been a point of debate and its meaning and nature have significantly changed. For this reason, many jurists and politicians believe that these concepts have largely changed in form and content. Some researchers like Victor Taylor<sup>7</sup>, Jarvis<sup>1</sup>, William Bertens<sup>2</sup> and George Ritzer<sup>3</sup> put post-modernism and post-

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<sup>1</sup> - International Court of Justice (I.C.J), Advisory Opinion of 11 April 1949, in I.C.J Reports, 1949, at 174 ff.

<sup>2</sup> - On the Consubstantiality between International Law and State, see R.Romana, *Lordinamento giuridico*, Pisa, Tip. Ed. Mariotti, 1928, at 44-46.

<sup>3</sup> - C.E. Merriam ‘History of the Theory of Sovereignty Since Rousseau ‘Lawbook Exchange ‘ ‘ 1999,p.367.

<sup>4</sup> - J. Bodin ‘Les six Livres de la Republique ‘C. Le Juge ‘ ‘1577,p. 405.

<sup>5</sup> - T. Hobbes ‘Leviathan, 1651 ‘Scolar P. ‘ ‘1969,p. 165.

<sup>6</sup> - Forouei-Nia, Hossein, Internationalization of Human Rights and Metamorphosis in the Concept of Sovereignty in the Age of Globalization, *Quarterly of Islamic Human Rights Studies*, Year 1, No. 1, 2012, p. 8

<sup>7</sup> - V.E. Taylor and C.E. Winqvist ‘Encyclopaedia of Postmodernism ‘Taylor & Francis ‘ ‘2002, p.296.

sovereignty on equal footing. Some like Martin Griffiths imagine a global political system in which governments, if any of them exists, follow the global community and they are no longer independent and individual actors.<sup>4</sup> L.W. Pauly and W.D. Coleman advocate this view.<sup>5</sup> Other researchers like Beate Jahne<sup>6</sup>, Eric Heinze<sup>7</sup>, Louis Lugo<sup>8</sup>, Ned Dobos<sup>9</sup> and James Kassner<sup>10</sup> favor switch from sovereignty to moral procedures in international politics and highlight a philanthropic atmosphere.

Humanitarian intervention and human rights issues are becoming further known as an international strategic criterion. Even some researchers like Milton Michael Carrow have raised the idea of emergence of a global insight system in which the ruling government follows world civil ethics which restricts their rule. In this regard, human social norms overcome different forms of sovereignty.<sup>11</sup> J.L. <sup>12</sup>, Robert Jackson<sup>13</sup> and Gerald Gaus<sup>14</sup> think of alternative methods. One of these methods is international federation in which the economy weakens the dominant power of governments and gives rise to a world based on the internationally-recognized rights of human beings. Another image painted of post-sovereignty world is the image of a political organization like what has existed in Christianity practiced in the West in the Middle Ages. The image of a new Middle Age in which world politics emerges out of combination of national and extra-national worlds. Social forces infiltrate territory and they are likely to destroy it.<sup>15</sup> Some other researchers hold a more legal view of sovereignty. R. P. Anand defines sovereignty as the high authority of a

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<sup>1</sup> - D.S.L. Jarvis 'International Relations and the Challenge of Postmodernism: Defending the Discipline 'University of South Carolina Press ' ,2000, p.242.

<sup>2</sup> - J.W. Bertens, H. Bertens and D. Fokkema 'International Postmodernism: Theory and Literary Practice 'John Benjamins Publishing Company ' ,1997,p.72.

<sup>3</sup> G. Ritzer and Z. Atalay 'Readings in Globalization: Key Concepts and Major Debates 'Wiley ' , 2010,p.229.

<sup>4</sup> M. Griffiths 'Encyclopedia of International Relations and Global Politics 'Taylor & Francis ' , 2013,p.591.

<sup>5</sup> L.W. Pauly and W.D. Coleman 'Global Ordering: Institutions and Autonomy in a Changing World 'UBC Press ' ,2009,p.216.

<sup>6</sup> - B. Jahn 'Liberal Internationalism: Theory, History, Practice 'Palgrave Macmillan ' , 2013,p.142.

<sup>7</sup> - E. Heinze 'Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention 'State University of New York Press ' ,2009,p.92.

<sup>8</sup> - L.E. Lugo 'Sovereignty at the Crossroads?: Morality and International Politics in the Post-Cold War Era 'Rowman & Littlefield ' ,1996,p.56.

<sup>9</sup> - N. Dobos 'Insurrection and Intervention: The Two Faces of Sovereignty 'Cambridge University Press ' ,2011,p.226.

<sup>10</sup> - J.J. Kassner 'Rwanda and the Moral Obligation of Humanitarian Intervention 'Edinburgh University Press ' ,2012,p.193.

<sup>11</sup> - M.M. Carrow, R.P. Churchill and J.J. Cordes 'Democracy, Social Values, and Public Policy ' Praeger ' ,1998,p.65.

<sup>12</sup> J.L. Cohen 'Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism 'Cambridge University Press ' ,2012,p.107.

<sup>13</sup> R. Jackson 'Sovereignty: The Evolution of an Idea 'Wiley ' ,2007,p.145.

<sup>14</sup> - G.F. Gaus and C. Kukathas 'Handbook of Political Theory 'SAGE Publications ' ,2004,p.292.

<sup>15</sup> - -Jack Son Robert 'Sovereignty at the Millennium 'Political Studies 'XL VII ,1999,P.427.

government within its boundaries, but within the framework of binding international norms and conventions.<sup>1</sup> But nobody has ever ruled out the possibility of emergence of widespread changes in this concept.

Jurists and politicians in the 20<sup>th</sup> century are largely divided on the notion of sovereignty. This difference is rooted in at least three centuries ago. The oldest theory on sovereignty considered it to be absolute and described relations between government and territory as interpersonal relations. In other words, the territorial sovereignty of the government enjoyed the properties of international law and was a self-proclaimed legally-based exclusive authority repelling extra-territorial elements. Hobbes is among advocates of this theory. Therefore, international law does not distinguish empire from dominion. In 1959, George Sperduti defended this theory, defining sovereignty as the absolute right of government on territory (including repulsion of foreign elements) and recognized it as a general rule in every territory.<sup>2</sup> This absolute right authorizes its holders to exercise exclusive sovereignty – sometimes completely and sometimes with restrictions – over the benefits of territory. Before anyone else, Hugo Grotius pointed to relations between empire and ownership.<sup>3</sup> This idea has been advocated for a long time in doctrines and judicial procedures. This viewpoint provides the reader with a chance to find a reasonable description of the judicial nature of the government's measures in its own territory. Under such circumstances, one can imagine a group of precepts similar to laws governing capital. To that effect, some jurists like Edward Merriam<sup>4</sup>, Martin Plot<sup>5</sup> and Raia Prokhovnik<sup>6</sup> refer to a precept based on which sovereignty is described as internal or external independence.

Others like Eric Suy, a founder of sovereign competence theory, believes that sovereignty relies on two elements – territorial competence and individual competence.<sup>7</sup> Suy and his advocates have sought to combine sovereignty with competence by connecting competence to the theory of sovereignty-subject. They give the idea of territorial sovereignty of government a special cover of competence in order to make it enter international treaties which guarantee precepts. Paragraph 9 of Article 15 of International Covenant on Civil and Political Rights and Paragraph 7 of Article 2 of UN Charter are cases in point. Some researchers like Roshwald<sup>8</sup>, Simon Rofe, Amelia Hadfield, Andrew Williams<sup>9</sup> and Bruce Clark<sup>1</sup> have highlighted in their works two aspects of sovereignty –

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<sup>1</sup> -R.P.Anand 'Sovereignty of States in a Interdependent World 'collected courses of the Hague Academe of International Law '1986 P.37.

<sup>2</sup> - A. Bernardini 'La questione tedesca nel diritto internazionale 'CEDAM ' '1973,p.254.

<sup>3</sup> - Giovanni Distefano 'Theories on Territorial Sovereignty A Reappraisal 'Journal of Sharia and Law '41 '2009,p.29.

<sup>4</sup> - Merriam 'History of the Theory of Sovereignty Since Rousseau 'Lawbook Exchange ' ' 1999,p.568.

<sup>5</sup> - E. Peruzzotti, M. Plot and A. Arato 'Critical Theory and Democracy: Civil Society, Dictatorship, and Constitutionalism in Andrew Arato's Democratic Theory 'Routledge ' ' 2012,p.102.

<sup>6</sup> - R. Prokhovnik 'Sovereignty: History and Theory 'Imprint Academic ' '2013,p.173.

<sup>7</sup> - E. Suy and K. Wellens 'International Law: Theory and Practice : Essays in Honour of Eric Suy ' Suy 'M. Nijhoff Publishers ' '1998,p.543.

<sup>8</sup> - M. Roshwald 'Liberty: Its Meaning and Scope 'Greenwood Press ' '2000,p.88.

<sup>9</sup> A.J. Williams, A. Hadfield and S. Rofe 'International History and International Relations ' Routledge ' '2012,p.113.

internal sovereignty or liberty and external sovereignty or independence. And some like H. Fenwick and G. Phillipson<sup>2</sup> and Smartt<sup>3</sup> have noted in their works that sovereignty contradicts the new theories of general law. According to these theories, political power is a combination of limited competences determined by competent officials recognized by the Constitution. Another theory is the theory of dominance which implies control over everything and exercise of sovereignty by the government over territory. The requirement for such dominance is control over territory. Jurists like Edward Merriam<sup>4</sup>, Mohamed Bedjaoui<sup>5</sup>, J. Thomson<sup>6</sup>, A. Stewart<sup>7</sup> and Stephan Hill<sup>8</sup> have elucidated this theory which seeks to display physical sovereignty with focus on dominance. None of these theories have been in full compliance with circumstantial realities. It is clear that modern international law has recognized the sovereignty of countries and sovereignty is recognized only at national level, but not absolutely and unconditionally. National sovereignty follows international law. In a new definition, sovereignty means the right for making decisions and freedom of action in all affairs, but within the framework of boundaries and independence of domestic or foreign power. Only international law constrains such sovereignty. At international level, sovereignty incorporates a new concept – competence. In its international relations, the country enjoys authority and legal power recognized by international law.<sup>9</sup> Of course, the daily growing significance of human rights has weakened and restricted the concept of absolute authority and geographical demarcations by referring to the principle of human dignity and requiring governments to respect these rights. If we assume that national sovereignty is in contrast with international support for people's rights in the name of human rights, humanitarian rights, collective rights or even human security, two schools of thought will emerge and contradictory strategies will be brought up. Some jurists like Roberson<sup>10</sup>, Turner<sup>11</sup>, Patrick Hayden<sup>12</sup> and John Kittrich<sup>13</sup> have presented a new definition of nationalism and

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<sup>1</sup> B.A. Clark 'Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-government in Canada 'McGill-Queen's University Press ' ,1992,p.145.

<sup>2</sup> -H. Fenwick and G. Phillipson 'Text, Cases and Materials on Public Law and Human Rights ' Taylor & Francis ' ,2013,p.144.

<sup>3</sup> - U. Smartt 'Optimize Public Law 'Taylor & Francis ' ,2014,p.47.

<sup>4</sup> - Merriam 'History of the Theory of Sovereignty Since Rousseau 'Lawbook Exchange ' , 1999,p.423.

<sup>5</sup> - M. Bedjaoui 'International Law: Achievements and Prospects 'UNESCO ' ,1991,p.210.

<sup>6</sup> - J.E. Thomson 'Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe 'Princeton University Press ' ,1996,p.69.

<sup>7</sup> - A. Stewart 'Theories of Power and Domination: The Politics of Empowerment in Late Modernity 'SAGE Publications ' ,2001,p.18.

<sup>8</sup> - B.S. Turner, N. Abercrombie and S. Hill 'Dominant Ideologies (RLE Social Theory) 'Taylor & Francis ' ,2014,p.74.

<sup>9</sup> - Ziaei Bigdeli, Mohammad-Reza, International Law, Ganj Danesh Edition, Tehran, 2010, p. 188

<sup>10</sup> - B.A. Roberson 'International Society and the Development of International Relations Theory ' Bloomsbury Academic ' ,2002,p.173.

<sup>11</sup> - E.F. Isin and B.S. Turner 'Handbook of Citizenship Studies 'SAGE Publications ' , 2002,p.279.

<sup>12</sup> - P. Hayden 'Political Evil in a Global Age: Hannah Arendt and International Theory 'Taylor & Francis ' ,2009,p.61.

<sup>13</sup> - J. Kittrich 'The Right of Individual Self-Defense in Public International Law 'Logos Verlag Berlin ' ,2008,p.63.

extra-nationalism as they make a distinction between them and sovereignty. Extra-national mechanisms of human rights have substituted the simple idea of international support for human rights, national sovereignty has become an obstacle to the implementation of human rights regulations, the traditional nature of the government has changed and both have turned into a side factor in international law and even dropped to lower levels. Against such a standpoint, a group of jurists like P. Sevastik<sup>1</sup>, H. Bauer<sup>2</sup>, R. Jackson<sup>3</sup>, R. Dickinson<sup>4</sup> and J. Shadian<sup>5</sup> have developed a pragmatic idea. They have expressed unwillingness for international support of human rights and are even negative towards it. From this standpoint, sovereign states are considered as the main and the most fundamental constituent of international order. Not only does sovereignty define international regulations for supporting human rights, but it clarifies whether or not it should be implemented. These views have both been criticized and consequently a new concept is born out of sovereignty in modern international law, totally in opposition to the traditional structure of international law. The new concept considers sovereignty as a necessary element in international order. The UN Charter as an internationally recognized treaty is focused upon. J.E. Trent<sup>6</sup>, D. Delaet<sup>7</sup>, J. Cohen<sup>8</sup> and J. Steinbruner<sup>9</sup> have studied these subjects in details, linked it to international politics and law and billed it as effective depending on the stability of governments.<sup>10</sup> This idea is manifested in the UN Charter. Paragraphs 1, 4 and 7 of Article 2 of the charter openly call for respecting territorial integrity as the base of international relations.<sup>1</sup> There are some exceptions in Chapter VII of the charter, but does consider none of them as violation of the principle of sovereignty of governments. In intergovernmental relations, sovereignty is primarily considered to be absolute and power is the only element restricting sovereignty in appearance, but with the turn of time, restrictions have been created for absolute and unlimited sovereignty due to requirements of international life, combination of international law with non-legal elements, the governments' signature of treaties and their involvement in multilateralism as well as resort to force. Proponents of this idea cite post-WWII developments and the ensuing establishment of UN and emergence of restrictions on national

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<sup>1</sup> - P. Sevastik 'Aspects of Sovereignty: Sino-Swedish Reflections 'Brill ' ,2013,p.33.

<sup>48</sup> - H. Bauer and E. Brighi 'Pragmatism in International Relations 'Taylor & Francis ' ,2009,p.65.

<sup>49</sup> - Jackson 'Sovereignty: The Evolution of an Idea 'Wiley ' ,2007,p.137.

<sup>50</sup> - R. Dickinson 'Examining Critical Perspectives on Human Rights 'Cambridge University Press ' ,2012,p.219.

<sup>51</sup> -J. Shadian and University Of Delaware 'Reconceptualizing Sovereignty Through Indigenous Autonomy: A Case Study of Arctic Governance and the Inuit Circumpolar Conference ' University of Delaware ' ,2006,p.104.

<sup>6</sup> - J.E. Trent and M. Rahman 'Modernizing the United Nations System: Civil Society's Role in Moving from International Relations to Global Governance 'Barbara Budrich ' ,2007,p.143.

<sup>7</sup> - D. Delaet 'The Global Struggle for Human Rights 'Cengage Learning ' ,2014,p.80.

<sup>8</sup> - Cohen 'Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism 'Cambridge University Press ' ,2012,p.187

<sup>9</sup> -J.D. Steinbruner 'Principles of Global Security 'Brookings Institution Press ' ,2001,p.195.

<sup>10</sup> Abbasi Ashlaqi, Majid, Humanitarian Interventions and National Sovereignty, Ettelaat Newspaper, Nos 175-176, 2002, p. 90

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sovereignty to justify their attitude. The illegitimacy of use of force against invaders, respect of human rights and modification of the principle of non-interference are examples of factors affecting the meaning of sovereignty. Before the UN Charter, the International Covenant on Civil and Political Rights had recognized the sovereignty of governments, but the charter underlines the sovereignty of governments and their non-interference in each other's affairs as two basic principles in Article 2 of the charter. This new concept needs to be scrutinized. Although the charter necessitates equality of sovereignty between governments, it is actually referring to the external dimension of sovereignty and not its internal aspect. From an internal aspect, extra-territorial sovereignty and inside developments bring liabilities. In fact, by bridging sovereignty and legitimacy and changing the meaning of legitimacy which will be later discussed, the immunity of governments and politicians become a serious challenge as if a new form of sovereignty were put on display.

In the next sections, the hidden aspects of this issue and the structural developments of traditional international law are laid bare. The issues which were previously resolved by countries within the framework of their internal law are currently subject to international regulations. The trend of international developments in international law presents new interpretations of sovereignty. The definition of absolute sovereignty has quickly changed. One parameter involved in this change was the Cold War. The years before and after the Cold War era have both affected the meaning of sovereignty, but in different ways. The UN charter has put limitations to the sovereignty of its member states. Throughout the Cold War, the UN Security Council, as the body tasked with safeguarding peace and security, could not take action due to the balance of power at that time. That is why it offered a limited description of international peace and security. By that time, the governments refused to accept the UN bodies' interference with their affairs based on their own interpretations of the UN charter. But after the end of the Cold War and the collapse of bipolar system, new issues emerged in the world, countries became mutually dependent, human rights were pushed to bold relief, the world economy experienced downturn and new international players shot to prominence. The principle of non-interference was modified.<sup>1</sup>

The principle of sovereignty, equality and political independence of governments was redefined throughout the definition of new legal statuses and obligations were imposed upon governments to steer clear of interference in others' affairs.<sup>2</sup> Under such circumstances, the concept of international security and the process of development of international law further changed the meaning of sovereignty. Recent international developments, which had started following the collapse of Communism, gave rise to new conditions in which the Western world became the sole player in the world politics. The information revolution, the collapse of information and economic boundaries<sup>3</sup> and subsequently, the international community witnessed new needs like protection of the environment, full disarmament, reinforcing peacekeeping forces, UN monitoring of elections to examine political legitimacy and humanitarian interference. Therefore, new parameters affecting

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<sup>1</sup> The principle of non-interference in the internal affairs of other countries is one of the most evident results of sovereignty of states. This principle is one of the fundamentals of international law which is based on sovereignty, equality and political independence of governments. This principle obliges governments to refrain from meddling with each other's affairs. There is no clear definition of interference in any legal document and no boundaries have been defined for it.

<sup>2</sup> Eslami, Mohsen, A Prelude to Concept of Sovereignty, Ettelaat Newspaper, No 22491, May 27, 2002, p. 6

<sup>3</sup> - Luard Evan 'International Society 'Macmillian 'London '1990 p.273.

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sovereignty took shape.<sup>1</sup> International organizations play an influential and significant role. They are supposed to institutionalize international relations. The obvious quantitative and qualitative growth of these organizations (both state-run and private) in the present century has gradually challenged the centralization of authority and is ratcheting up pressure on its pivotal position in international relations. The process of legitimate transmission of power from government-nation to international organizations is indicative of a gradual development in the structure of international relations. This development stems on the one hand from the growing power of international organizations against governments and on the other is influenced by new theoretical views and international norms which regard sovereignty beyond the competency of governments. The idea of global sovereignty is an alternative for government-nations ruling system.

The consensus of jurists on objective developments in international relations is indicative of restrictions in the sovereignty of governments due to the necessity for cooperation at international level. This trend has been growing and that is why transition to collective interests is inevitable. Restricted sovereignty is the natural and immediate result of formation of a new order in international law. Accepting any international regulation necessarily restricts the sovereignty of governments.<sup>2</sup>

In order to move from individualism to collective and organized life, restrictions in individual freedom in favor of existence and life become inevitable. Therefore, nobody can deny the necessity of restrictions on sovereignty in international law. What is important to be focused upon is the extent of restrictions or identifying boundaries of sovereignty in a disunited world bracing for globalization.

The international law has restricted governments, but due to its structure – which has been developed by sovereign governments – it is largely dependent on the survival of governments. That is why international law is based on defending restricted governments. Although international law is totally independent from international players, it is based on governments and it recognizes the legitimacy and legality of governments except for certain cases of restrictions of freedom by some governments. CT Tams<sup>3</sup> and T.E. Aalberts<sup>4</sup> and many other jurists refer to the International Court of Justice's verdict in the Lotus case as proof.

**3- Legitimacy, legal and instrumental attitudes for transit to the Post-sovereignty period:** This can be said the legitimacy is a justification of sovereignty, means it is a right to command and submission. The power gets legitimacy when command and submission are considered concurrently with right and truth. Such a matter is the requirement of power continuity, because power itself guarantees the inequality and among the human inequalities, no one equal to the inequality, resulting from power and sovereignty, does not need justification. Legitimacy is a response to this question that why some people from human beings have the right of rule and others have the duty to submission. In other words, the Right to Rule is for rulers and accepting it by the people, is the very legitimacy that leads to the political stability of a society. Legitimacy is essentially a political

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<sup>1</sup> - M. Y. Saeed, Change in UN Definition of Sovereignty, Office of Political and International Studies, Tehran, 1994, p. 217

<sup>2</sup> - Kazemi, Ali-Asghar, Theory of Convergence in International Relations, Qumes, Tehran, 1991, pps. 120-121

<sup>3</sup> - C.J. Tams and M. Fitzmaurice 'Legacies of the Permanent Court of International Justice ' BRILL ' ,2013,p.320.

<sup>4</sup> - T.E. Aalberts 'Constructing Sovereignty between Politics and Law 'Taylor & Francis ' , 2012,p.14.

subject. Therefore, it has always been under discussion in political literature of past period. The significance of this discussion is in that the legitimacy along with human right has been used as a tool to redefine some of the structural elements in the traditional international law, such as sovereignty. In fact, the legitimacy has also changed to holding the description and legal title and the sovereignty has been transformed too, by changing the concept, and its development arena. In other words, only then the indication of elements such as human right can be comprehended and the sovereignty changes correctly are comprehended when the role of people in their political life could be perceived in correct way. The base of legitimacy discussion, understanding and power perception as well as creating acceptance to implement it on citizens is by the rulers.<sup>1</sup> The being legitimation of a political system, means that system is expressive of public Will, and has the ability of creating and maintaining this faith that the existing political foundations are the most appropriate foundations for society. In this way, the power and the legitimacy, both, get close relation with the concept of commitment and bounding to submission and power, become the guarantee for legitimacy assumption. Mathieu Dugan describes the meaning of legitimacy as saying: legitimacy is the belief of this matter that in power rule on any supposed country is materialized to issue the command and order and citizens are bound to surrender to it. The legitimacy concept can be assessed by scaling i.e. measuring the public confidence and faith to existing organizations, trust in leaders, and the support rate for regimes. If people trust in that the foundations of a given society is appropriate and justified, then can be concluded that the mentioned organizations are legitimate. This can be expressed in this way that legitimacy in principle returns back to the two way relationship among people and authority/rule; in addition, it is an intellectual matter; therefore, in different societies gets sense in different dimensions and distinct levels and objective and specified forms cannot be considered for it. The legitimacy is investigable from different directions and dimensions. Therefore, Joseph Raz, a contemporary juristic, believes that the capability and the power of rulers in a political system, is a philosophical, ethical, political and legal subject; since as per it, some rulers or some persons make decisions for all other people and the people submission that are placed under their commands and decisions. Carl Schmitt<sup>2</sup> by referring to the hand writings of David Dyzenhaus believes that this is the roots finding of ability and the power of rulers that pull us towards the legality and the legitimacy of political system and sovereignty.<sup>3</sup> Different interpretations and definitions have been expressed of Legitimacy.

In a comprehensive expression, legitimacy means the oneness and uniqueness of how to achieve power by leaders and rulers of society and the beliefs of majority of the people in a society in a given time and location and the result of this belief is accepting the commanding by leaders and the duty to submission by the society members and citizens.<sup>4</sup> Some have defined the legitimacy as legality or being as per law. Sison used this word to express the legality of power and authority. Later on the word of legitimacy was used for pointing to traditional methods, principle of constitution and conformity with traditions. After that, the element of **satisfaction** was also added to its meaning and satisfaction was termed as the base and the essence of legal rule. During modern era, Max Weber for the first time expressed the concept of legitimacy in a public conceptual form.

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<sup>1</sup> - Daood Firhi, Ghodrat, knowledge and legitimacy in Islam, Nei publication, 2003, Tehran.

<sup>2</sup> - J. Raz 'Authority 'New York University Press '1990,p.3.

<sup>3</sup> - C. Schmitt, J. Seitzer and J.P. McCormick 'Legality and Legitimacy 'Duke University Press '2004,p.111.

<sup>4</sup> - Hassan Khosravi, basic laws, Payam Noor University, 2009, Tehran.

He believed that the legitimacy is based on 'belief'. That calls submission by the people.<sup>1</sup> The power is only effective when it had been legitimate. Max Weber has presented three ideal resources including traditional legitimacy, attractive legitimacy and the intellectual and legal legitimacy for legitimacy. In traditional legitimacy, the belief has been to the sacredness of past traditions and legitimacy in the base of those the society was under their rule since the ancient times. In the attractive legitimacy, the legitimacy has been based on the surrendering to the special and exceptional sacredness and or special personality that was the symbol of bravery and normative pattern in the society. These patterns or models are openly set out by him. People such as Iskander, Julius tsar, Hitler, Gandhi, Jamal Abdolnaser, and Gadhafi can be placed in this category. In intellectual and legal legitimacy, legitimacy of believing in legality of pattern and normative rules has been set for those who have found power under such rules and regulations. As a whole, legitimacy enjoys two basic and axial descriptions; one believing in power and other commitment and undertaking resulting from it. This should be noticed in this regard that first, no political power regardless of legitimacy resources and the type of political regime will not continue and persist without having least belief of power acceptors. Therefore, satisfaction and faith in the credibility of political system is the fundamental element of political legitimacy. Secondly, faith in the credibility of a power is not considered as the legitimacy and rightfulness of it.<sup>2</sup> The today's bureaucratic governments which are based on the rules of legal norms considered as the conspicuous model of such legitimacy.<sup>3</sup> In the ethics philosophy, the word Legitimacy is mostly interpreted in the positive sense of granting situations by the people to the rulers to administer the institutions, offices and performing the necessary measures to administer the government. John Locke, the English theorist believed that political legitimacy results from the open and implicit satisfaction in relation to government.<sup>4</sup> In addition, Locke believed that social and equal contract with aware Submissiveness by society members is not under the rule of an autonomous ruler, but the force that has the duty of imposing the discipline, so it is intellectual it has functioning for society. Based on it the people have right to control the rulers for their actions and deeds for their inserted duties in contract. Therefore, Locke believes that the government takes shape based on the people's trust in it so, when this trust goes weak or removed the government dooms to collapse. In addition the desired government of Locke has a temporary nature and only enjoys the powers that were given to it during its establishment. In view of Locke, the contract that makes people permanent member of civil society and gives legitimacy to government, must be renewed permanently by the future generations.<sup>5</sup> Dolf Stern Berger, German political philosopher has also considered the legitimacy as the base and fundament of state power and by recognizing it performs its duties.<sup>3</sup> Seymour Martin<sup>4</sup>, political sociologist of America, has considered the legitimacy included in the capacity of a political system to develop and maintaining the trust in that political institution as the most appropriate

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<sup>1</sup> - Max Weber 'Essays in sociology translated, edited and with an Introduction by H.H. Gerth and C. Wright Mills, Oxford University Press 'New York '1964,p.215.

<sup>2</sup> - Gholamreza Khosravi, political legitimacy, Baztabe Andisheh, No. 24, Persian date Esfand 2001.

<sup>3</sup> - Robert A Dahl 'Polyarchy: Participation and Opposition 'Yale University Press 'New Haven (Connecticut) and London '1971,pp. 124-188.

<sup>4</sup> - Richard(Ed.): John Locke Ashcraft 'Critical Assessments 'Routledge 'London '1991,p. 524.

<sup>5</sup> - Farshid Sarfaraz, the concept of legitimacy, and different approaches to it, the political and economic magazine, issue 177-178, June and Persian date Tir 2002 , [http://en.wikipedia.org/wiki/Dolf\\_Sternberger](http://en.wikipedia.org/wiki/Dolf_Sternberger)

institution for society. Robert Dahl<sup>6</sup> an American political theorist, has described the legitimacy as a reservoir and believes that the political stability is maintained until the water maintains its surface level, if the water level is lower than the required level, the political legitimacy will be exposed to risk<sup>7</sup>. Martin Lipset is also of the view that the existing political institutions are the most appropriate institutions of the society and finally Joseph Rose the professor of law philosophy is of the view that organizations have a legitimate power only under circumstances when their claim [to have the right to rule] is justifiable. The topic of power should also be dealt with for more accurate definition of legitimacy and investigating its place and role in the traditional international law. The general definition of power that has been presented, as Weber pointed it in 1964, the legitimate governments are the states which enjoy power and have the possibility and capacity to limit the behavior of people. Such comprehension manifests by the force, threat or intervention or based on the need of society to it. By presenting the military forces, the access possibility to all forces takes form. Of course, Swartz<sup>10</sup>, Turner<sup>11</sup> and Tuden were of the belief in 1966 that the legitimacy is some type of support and not threat and pressure on people.<sup>1</sup> On this base, the rules and regulations are made by government and recognized as a right or another way. In such expression, the legitimacy is defined as the base for manifesting the power under authority and power. Weber believes that in a more vast look, the possibility of discussion is discussed when an agreement would have been achieved on the government form.<sup>2</sup> From the viewpoint of Jan Jacque Russo, a government is legitimate only when it is based on the public Will. In his view, every one of us shares his whole ability under the rule of public Will and accepts each of the company members as inseparable part of whole community, that gives them right to express their opinion in public.<sup>3</sup> For Russo, the civil society is nothing but life under the framework of collective laws and rules; in a situation where people are subordinate of others but follow the self-written rules. Therefore, in view of Russo, people establish a political community or government in solidarity with each other that would protect their lives, freedom and property. Russo believes that, nobody has any rule on his congener/fellowman. Therefore the sovereignty is legitimate when it is based on the satisfaction of those submission them. Russo expresses that everybody shares himself and whole his rights under the high general Will. Every organ is accepted as inseparable part of whole in a social council.<sup>4</sup> In view of Russo, the sovereign power is valid until people are agree and satisfied with him, means the legitimacy of sovereignty depends on the consent of those under rule therefore it should be continuously renewed by them. Therefore, the philosophy of social contract of Russo, considers the real sovereignty by people. In fact, the government rule based on the social contract is crystallized by national Will arising from people's desire and the rulers can only stay in power until people want they remain in power.<sup>5</sup> However, David Bitam, believes that the power is legitimate when it has three conditions. First, power should be used as per existing and continuous rules, whether in the form of official laws or

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<sup>1</sup> - M.J. Swartz, V.W. Turner and A. Tuden 'Political Anthropology 'Aldine ' ,1972,p.10.

<sup>2</sup> - Weber 'Essays in sociology translated, edited and with an Introduction by H.H. Gerth and C. Write Mills 'Oxford University Press 'New Yourk '1964,p10.

<sup>3</sup> - Rousseau, Jean-Jacques, translation Gholamhossein Zirakzadeh, the social contract, Chehr Joint stock company Publications, 1968, Tehran.

<sup>4</sup> - M Taghi Sabzei, civil society as a social contract: a comparative analysis of the ideas of Hobbes, Locke and Rousseau, Journal of Law and Politics, 9th year, issue 22, spring and summer 2007.

<sup>5</sup> - Mahmoudi Seyyed Ali, political philosophy of Kant, theoretical philosophy and moral philosophy in the realm of political thought, Negah Moaaser Publications, 2005, Tehran.

unofficial agreements. Second, these rules should be justified in terms of joint beliefs of government and ruled people. Third, the legitimacy should be indicated with consent expression of ruled people.

This can be said in concluding all views that in the literature of international traditional law, in fact, to believe the legitimacy existence, there is no need that it's all subordinates should completely be agreed with all its rules and regulations; because, in many cases it is not easy to estimate the rate of agreement of a country's population<sup>1</sup>. For this reason, Swartz suggested the 'degree of legitimacy' should be discussed to eliminate this complication<sup>2</sup>. Because no political system enjoys the support of peoples' consensus, but always the existence of that regime causes the internal coherence of them. Of course, Swartz<sup>3</sup> in the book of 'philosophical anthropology' and his all other articles and writing works, has expressed that how this legitimacy could be achieved. Anyway, if any degree of such cohesion is accepted to assess the legitimacy of a government then we have become closed to the Claessen theory. This theory, discusses the general ideology of legitimation of governments by dividing the power. Of course this theory was criticized later by Claessen. Some people such as Janssen believe that the legitimacy of a state is a qualitative subject that can also be interpreted as a legitimate situation. Although in his view the legitimacy refers or governs to a process or a step to legitimize a situation.<sup>1</sup> This theme has also been confessed by other juristics such as Quartz. One of the reasons of interpreting the legitimacy as an internal topic not a theme of international law area, was the non-distinction between revolution and coup d'état in the traditional international law. In other words, in the traditional international law, the threefold elements of (population, territory and sovereignty) were considered as sufficient to establish a government in addition, the legitimacy of governments accepted a weak role for democracy, the coup d'état parallel to revolution was accepted as a way to change the governments by the international law. Hans Claessen the writer of 'principle of international law' (1952) can be referred to as a sample. He believes that, that the possibility of government persistence exists under the government change condition as the governments have been established as a result of revolution or coup d'état<sup>9</sup>. He has accepted revolution and coup d'état as two factors parallel to each other in all his discussions. He nowhere refers to the legitimacy subject of it in this area. Claessen in his other book, entitled 'general theory of law and state' republished in 2009, regarding the discussion of governments' legitimacy, considered this legal situation under some conditions and also refers to the coup along with revolution.

Under such concept that this replacement would have been taken place as a result of violation against persons by legal organs or organizations or others is not observable. In addition this change would have been taken place by mass of people or by others has no objectivity/subjectivity.<sup>2</sup> He expressed regarding the establishment of a government, by emphasizing the above views that a new government in the international law, comes into existence only when an independent government is sufficient that consists of effective discipline and established in a territory that could enjoy the submission of citizens in that country. That a new government accepts the responsibility of what has been occurred through revolution or coup d'état is suffice for its materialization.<sup>3</sup> When he called of recognizing of new government in the traditional international law, did not accept any distinction between the occurred situation as a result of revolution or coup d'état and investigated both under one context and considered them the developing of legal effect. Kelsen by obligatory considering the legal norms and their legal nature believes that law does not depend upon any source and extra

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<sup>1</sup> - Hood, David, translated by Abdul Rahman Alam, introduction to political theory, publishing Ghomes, 2009, Tehran.

<sup>2</sup> - H.J.M. Claessen and P. Van De Velde 'Early State Dynamics 'E.J. Brill,1987,p.27.

<sup>3</sup> - Swartz, Turner and Tuden 'Political Anthropology 'Aldine ' '1972,p.32.

human origin such as God, nature, ruler or nation. The only origin of law is itself the law. This theory in 1930 was enjoying a considerable political significance in Germany and Australia.<sup>1</sup> The theories of Kelsen have been used by several of the investigators and researchers. In Austria, the Wien teachers college and in Ckezkoslavaki the teachers college of Berno has dealt with theories research of Kelsen under the presidency of Frantisek Weir. In addition, in the English literature of international law, under the effect of Kelsen theories, the thinkers such as Herbert Lionel Adolphus Hart<sup>2</sup> and Josef Raz, have presented independent analysis and in some cases different but branched from the Kelsen theories. Among the English language writers that have dealt with his theories, Stanley Polson can also be named out of them. Kelsen has defended the parliamentary democracy and liberal basic rights and portrayed it beyond the commitments inserted in the contracts. Raz was of the belief that the measures which are not allowed legally cannot be considered as sovereignty actions.<sup>3</sup> If we accept such believe in an absolute form, we have skimped the necessary tool from government for complete protection of its citizens.<sup>4</sup> The coup d'état is not necessarily associated with considerable intervention or effect of military forces. Although, the direct military intervention is undoubtedly regarded as the easiest method to achieve power<sup>5</sup>; yet in many of the literatures of international law the coup and revolution are considered as a way to achieve power. He by referring the coup d'état in Greece, same happening in Syria (1966) Iraq (1958) and Yemen (1962), though accept them in the military form but basically considers them having the political origin and root and interpret them in this manner:

As a whole, the legitimacy criteria can be classified in this way. First, the theory of social contract that based on it, the legitimacy of government is considered as resulting from social contract and based on the commitments that are concluded between people and government, and people and government require them to implement it. Second, the theory of consent/satisfaction that based on, the citizens consent/satisfaction is legitimacy standard that if the society people were satisfied of government, submission to the government orders is necessary for them. Third, the theory of Public Will whose conformity, if all people or majority of them desire the sovereignty of those, their rule becomes legitimate that in this case the legitimacy standard is the public's general will. Fourth, the felicity theory or the ethical values that based on it the legitimacy of a government depends upon it that government makes efforts for the felicity of society members and establishing the ethical values. These four theories can be based on two basic axes. First, social contract and public will second, justice or ethical values.<sup>6</sup> Critics are entered for each of the above criteria. For instance, this objection enters on a social contract that if a group is not ready to conclude the contract, naturally based on the theory of social contract, there will be no reason for submitting to the government commands. In governments, people practically are not in favor of government, and do not become satisfied in no way to participate in a contract to accept government. In addition, this critic enters on the theory of public satisfaction that what happens if someone is not satisfied with government? Based on the public satisfaction the government is not legitimate for him; so he has no

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<sup>1</sup> - Claessen and Van De Velde 'Early State Dynamics 'E.J. Brill ' ,1987,p.640.

<sup>2</sup> - H.J.M. Claessen and P. Skalník 'The Study of the State 'Mouton ' ,1981,p.16.

<sup>3</sup> - T.M.V. Janssen 'Foundations and Applications of Montague Grammar 'Centrum voor Wiskunde en Informatica, 1981,p.33.

<sup>4</sup> - Donal V. Kurtz 'Strategies of Legitimation and the Aztec State 'University of Wiscousin - Milwaukee ' ,1981,p.182.

<sup>5</sup> - H. Kelsen 'Principles of International Law 'Lawbook Exchange ' ,1952,p.264.

<sup>6</sup> - Alem, introduction to political theory, Ghomes publication, Tehran, 2009.

obligation for obeying the government. This is objected that the majority vote brings which type of obligations for those who did not vote the government? Why should the minority accept the commands of a majority government? The theory of ethical values is also encountered with several challenges that most important of it is relativism (relativism in the self of ethical commands and relativism in recognizing the ethical commands) the supporters of relativism in the self of ethical commands believe that there is no constant ethical commands and the ethical command may change from a society to other and even from a group to other group<sup>1</sup>; Therefore, On the basis of moral judgments and prosperity as well as human perfection a party cannot be recognized on cognition legitimacy base. As a whole, it sounds that among the criteria which are counted for legitimacy the standard of public will though encountered with critics but seems more acceptable. In a system where the citizens' Will dominates the governing affairs and citizens are the ruler on their own destiny, the humane status will be at the highest level of maintenance and guaranty and the mankind will not be a puppet of ruling council. Regarding the critic that runs for this theory, this could be said that though some people do not follow the imposing of their Will or their Will exposes against majority; but this matter does not mean the illegitimacy of dominant system for such people. Because, the legitimacy base is the Will of majority and minority will also enjoy their rights in such a system. In other words, such political system is based on democracy by maintaining the rights of minority. Therefore, the minority is also bound to be submitted to the commands of ruling council such as majority. As a result, the minority by accepting its election defeat will be necessitated to accept the excellence of majority and respecting it.<sup>2</sup>

Traditional international law, regardless of definition and the place of legitimacy in shaping of governments and states, the juristic for correct understanding of its legal effects, have examined the legitimacy from two internal and external views. This attitude has been more users friendly.<sup>3</sup> The legitimacy matter is also discussed in the sovereignty birth stage (initial legitimacy), also in its survival and persistence stages (secondary legitimacy). Attracting or forging the public satisfaction through diverse ways (to depict legitimacy) in fact is an effort by government to reach the legitimacy. Lithen outlines a circle and point that in attitude to legitimacy it should also be noticed and reviewed from internal and external viewpoints.<sup>4</sup> As Kurtz has pointed it in his writing works<sup>5</sup>, in the internal circle the legitimacy of people has be placed out of the international community. He believes that in the internal circle of legitimacy, the ruling and people's powers are placed which are affected by the religious, economic and political matters. From the outer viewpoint, there is no significance for that people lie in the internal circle they consider the government legitimate or not.<sup>6</sup> As a result the legitimacy has been defined as a right.<sup>7</sup> As mentioned above, in the framework of

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<sup>1</sup> - Ali Reza Saberian, political participation, right or duty, Journal of Law and Principles of Rights, Issue 11, Spring 2000.

<sup>2</sup> - Sadegh Larijani, the fundamentals of the legitimacy of governments, theology and law Journal, Journal of Razavi University of Islamic Sciences, third issue, spring 2002.

<sup>3</sup> - Seyyed Mohammad Hashemi, "human rights and fundamental freedoms, the Mizan publication, in 2005, Tehran.

<sup>4</sup> - K. And Leyton Hardie, The influence of vesicular-arbuscular mycorrhiza on growth and water relations of red clover New Phytologist , 1981,p.234.

<sup>5</sup> - Kurtz ,Strategies of Legitimation and the Aztec State ,University of Wiscousin - Milwaukee , 1981,p.36.

<sup>6</sup> - Cohen and Toland ,State Formation and Political Legitimacy ,Transaction Books , 1960,p.25.

<sup>7</sup> - Cohen and Toland ,State Formation and Political Legitimacy ,Transaction Books , 1960,p.40.

traditional international law, different opinions and views have been discussed to assess, being or not being of legitimacy and or the legitimacy rate. It seems that most of the juristic would have accepted the Swartz viewpoint presented in 1968. Based on it, the legitimacy degree depends on its acceptance rate of that government by people as supporters of it. Although the legitimacy was changed in its concept as a result of social and political changes, but some people believe that it should not be limited to the governments' behavior. But in the traditional international law, all is interpreted in the internal circle of power and does not get subjectivity in the outer part, but what is significant from the traditional international law is the power of running government and its ability to create coherence and not consensus in the legitimacy of that government inside the boundaries. Finally, although all writers and juristic before the cold war have not rejected the legitimacy principle of states in international law, but never in their understanding had they considered the existence of a state-country depending on its legitimacy and basically the pillars of international traditional law have been based on elements other than the legitimacy of governments. That had been discussed in the international law on the legitimacy was to express the origin of sovereignty in philosophical literature; had been discussed in the theories of national-public sovereignty of (democratic) subject; a theory that had been based on the relation of ruling right of people.<sup>1</sup> We were observing during the recent years, that the topic of governments' legitimacy has been used to justify the government measures as a tool for legitimization. The military invasion of United States on Iraq in 2003 can be referred in this regard. Vast discussions have been discussed among juristic in this connection. All have agreed upon that the military strike by America was not in the framework of freedom for people but taken place as pretext to disarm and overthrow an inappropriate administrator. However, posing the humanitarian subjects in the military strike of America on Iraq, among different justifications, reasons related to legitimacy, can be a kind of justification, because in case of disarmament plan as the intervention goal, such step could not achieve a desirable result and it is not defensible.<sup>2</sup> It is obvious that noticing the subject of legitimacy and its redefining from internal subject to an international topic has international description, has led to a new doctrine of intervention. The root of this intervention was of humanitarian type that was named later as the responsibility for support in the form of selected commission report of UNO secretary general. It is not endeavored in this paper to more refer to the legitimacy changes of the political literature. However, what is related to subject matter is the use of legitimacy tool as one of the standards of human rights. The picture of shape and identity change of legitimacy can be seen in two charters and the global human rights declaration. Such evolution has been effective in the theme of human rights and determining the destiny right.

**4. Destiny determination, territorial integration and contradiction from theory to action:** The legitimacy for conceptual promotion of human right as well as political and legal justification for determining the destiny has been a theme that limited the sovereignty principle and prepared the ground for implementing the principle of humanitarian intervention and after that created responsibility to support and all related issues following that. As a result, by resorting to it, alongside of sovereignty, a novel plan was presented in one of the traditional international rights in the name of right to determine the destiny. The principle of territorial integrity in the international law is a principle that calls a respect to the land or territory of other countries. This principle, expresses that territory of a country should never be invaded, aggressed or disintegrated illegally by

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<sup>1</sup> - Abolfazl Ghazi, *Musts of fundamental rights*, Mizan publication, in 2005, Tehran.

<sup>2</sup> - R. Falk, M. Juergensmeyer and V. Popovski 'Legality and Legitimacy in Global Affairs' Oxford University Press, USA, '2012,p.303.

others. Territory is the material base and necessary condition for the entity of a state. No government can have existence without territory that determines the existence of a state. Therefore, the states have special attention to protect and satisfying the territorial integrity. In other words, one of the traditional principles of international law is the principle of respecting the territorial integrity or land. Numerous of the international documents in addition to the procedure of International Court of Justice emphasizes on the support of territorial integrity of countries.<sup>1</sup> In more accurate words, this principle was one of the traditional principles of international order such as territorial integrity, states sovereignty and even the principle of prohibition of intervention in the internal affairs of countries and in this way, any type of attention to the separatist claims is considered the review in the framework of international traditional law.<sup>2</sup>

In the later generation of prevalent human right, the right of self-determination has been considered under the third generation including the rights related to individuals and groups. Recognition of this right along with the concepts including 'governments under establishment', 'nations' and 'liberation movements' approves the transit and molting of international law from traditional stage and creating the newer discourse in this area. Newly establishment of recognizing this human right on one hand and doubtfulness of substantive concept of it on the other hand, caused that the legal doctrine could not present a comprehensive interpretation and an obstacle against this right. Perplexity in the concept of this right in theoretical area has also been pulled to practical scope in a way that it is not astray if said that by pretexting this right, the liberation struggles of a nation should be considered legal to liberate from the internal autocracy and external colonialism and also the interventions and hostile measures of a country in the territory of another country could be justified.<sup>3</sup> Territory and integration of it has been one of the traditional elements of establishing a state-government and one of the joint subjects in all traditional theories of sovereignty. There is no word of an individual in the international traditional law. No sign is found of noticing the human rights in the international community. Basically the individual has not been identified as submitter of international law and the legitimacy and acceptability of sovereignties in the society attitude has been an internal and not the external matter. The sovereignties are transformed from inside as a result of coup d'état or the power game by the neighbors. The result of military conflicts and power interactions has been writing the destiny of sovereignty. As a result of it or parallel to that, the individual gradually enters the theoretical literature of international law. Following such evolution the people become important and the international law tries to express the regulations to play the more important role by them. The novel changes start, regimes of international law are changed and further the teaching titles of international general law become different through not a distant past. Therefore, the right of self-determination is considered a beginning on a vast change.

Around 100 years ago, Lenin wrote his booklet on the 'right of nations in their self-determination' during a theoretical contention with Rosa Luxembourgh the theorist and leftist polish warrior. The issue of self-determination did not end in this discussion but has been remained as before in the form of one of the issues of non-developed countries with attribute of "national diversity". The principle

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<sup>1</sup> - ICJ Reports, 1978,p.36.

<sup>2</sup> - Mohammad Ali Bahmani Qajar, the manner to exercise the right to self-determination: The impermissibility of separatism, political and economic information, issues 261 and 262 in June and July, 2009

<sup>3</sup> - Kheirollah Parvin, Mohammad Sadiq Faqfury Bylandy, the implementation of self-determination by the people: The Case study of Syria, the Islamic Human Rights Studies, Vol. 2012 1<sup>st</sup> year.

of nations' right for self-determining is from the basic principles of international law. This principle was just for respecting the principle of equal rights and equality. Its background can be pursued to the Atlantic charter that was signed by Franklin Roosevelt president of America and Winston Churchill the prime minister of Britain on 14 August 1941 and committed to eight main points of charter.<sup>1</sup> During 20<sup>th</sup> century, after the world war 1<sup>st</sup>, Wilson the president of United States of America, seriously posed the right of people for self-determination.<sup>2</sup> from the time of Atlantic charter issuance in 1941 until the holding of San Francisco conference in 1944, this perspective existed that the self-determination was the right of the people living in the German under control territory and enjoying this right means permitting these people to achieve the national sovereignty. In 1945 when the UNO charter was to be enacted this concern came into existence for the big colonial powers that perhaps the self-determination may push the people of colonies to struggle. Therefore, the states like Belgium were motivated to oppose inserting this article in the charter. The outcome of de-colonization, was the independence of 70 territories during the gaps of 1945 and 1979. During the decades of 1950, 1960 and 1970, the right of self-determination had been recognized for the people of occupied and colonized territories, but its internal aspect, the right of a country's people to choose the arbitrary political system and participation in country's administration, as mentioned above was not recognized<sup>3</sup>. On the other hand, the independence of colonial territories ended in the independence of some countries with the structure of multi nations and it caused that these nations demanded their separation from their newly established countries<sup>13</sup>. In addition, to escape from implementing the principle of self-determination, there is no likelihood of referring to the non-intervention principle in the internal affairs of the states and the exclusive capacity of the governments is also impossible<sup>4</sup>. The right of self-determination to that the decision making or its result would be whether independence, federation, some kind of autonomy or even how the homogenization should be, have no hint. The people of world have accepted that the actions of self-determination should not be a pretext for separatist, disintegration and weakening the integration of a country or the sovereignty of states.

The first legal documents that granted this right a legal recognition was the charter of UNO. Noticing the article (1) and (55) expresses this fact.<sup>5</sup> In fact, definitions and contradicted legal standards exist for determining the groups that could legally claim the self-determination.<sup>4</sup> It has been expressed in article 5 that immediate steps should be taken for the non-self-governing territories,<sup>5</sup> or all other regions that have not become independent, yet. In addition, the general assembly on December 15, 1960, enacted the resolution number 1514 (XV). It was endeavored in this resolution that the complete conformity of decolonization should be guaranteed with the principle of self-determination in 1514(XV). The expansion of self-determination's word in the

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<sup>1</sup> - McWhinney, Edward (2007) *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option* .Martinus Nijhoff Publishers. p. 8 .ISBN 9004158359, Retrieved September 18, 2012.

<sup>2</sup> - Daniele Archibugi, A Critical analysis of the self-determination of peoples: a compilation prespective, [www.Tamilnation.o](http://www.Tamilnation.o)

<sup>3</sup> - Bilandi, exercise of self-determination by nations: a case study on Syria, Islamic human rights, quarterly Islamic human rights.

<sup>4</sup> - Betty Miller Unterberger ,Self-Determination ,Encyclopedia of American Foreign Policy, 2002.

<sup>5</sup> - Trust and Non-Self-Governing Territories listed by the United Nations General Assembly.

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sense of free election had associated some reactions.<sup>1 (15)</sup> The resolution number 14/1803 (1962) of general assembly titled "permanent sovereignty on natural resources" has expressed in its first clause the permanent sovereignty right of people and nations on their wealth and natural resources in the framework of national development resources and the wellbeing of population of the beneficiary state<sup>2</sup>. In addition, the declaration on 'establishment of new international economic order) enacted on May 1, 1974 by general assembly whose subject is the activity of extra national economic societies, also emphasizes on the same matter.<sup>2</sup> Based on the right of self-determination and as per resolution 1514 of general assembly<sup>3</sup> and the agreement of Monte Video 1933 until now more than one hundred territories and nations could have established independent countries and take the membership of UNO that last of them was East Timor, Kosovo and Ostia. Anyway, the self-determination right was accepted as one of the principle of international traditional law after the incidents of 50s and 60s decades. After the enacting of 'Twin conventions' in 1966, this right was changed to one the international rules officially and publicly. International Court of Justice also for the transparency of this right, dealt with the expression of this concept in its theories. Therefore, it can be used to end all colonial situations and states.<sup>4</sup> The same view was repeated in the dossier of western desert after few years.<sup>5</sup> The right of self-determination of view conformity of international law commission in 1966<sup>6</sup> with reference of UNO charter's content, 'twin conventions' and declaration of granting the independence to the colonies (1960) and a number of UNO resolutions including the resolution number 1514 and 1803 have been recognized as the *Jus cogens*<sup>7 (18)</sup>. The International Court of Justice in its advisory view related to the Kosovo issue has argued that the limit of Territorial integrity principle becomes limited to the relations among states and the place of its implementation is not in the framework of relations and the internal boundaries of the countries. In other words, the mentioned article obligates the states not to scratch the independence and sovereignty of other states and the people of those countries have no obligation to respect those rules and regulations. On the other hand, the stand of Security Council in resolution number 216 and 217 on the Southern Rhodesia, resolution 541 on north Cyprus as well as resolution 787 regarding Serbska, has decided not in abstract form but in view of status quo during the time of statement declaration, therefore the illegality of them does not result from the exclusivity of one sidedness of the statements. The international conference on human rights (Vienna meeting) in 1993 emphasizes on any secessionist prohibition. In paragraph 1of second part of this statement, after counting the importance of implementing the right of self-determination we read that the right of self-

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<sup>1</sup> - Antinio Cassese 'self-determination of Peoples, a legal reappraisal 'Cambridge University 'London '1996 ,p.37.

<sup>2</sup> - Bilandi, exercise of self-determination by nations: a case study on Syria, Islamic human rights, quarterly Islamic human rights

<sup>3</sup> - ICJ Reports 1971:16

<sup>4</sup> - Cassese 'self-determination of Peoples, a legal reappraisal 'Cambridge University 'London '1996, pp: 37-50

<sup>5</sup> - Cassese 'self-determination of Peoples, a legal reappraisal 'Cambridge University 'London '1996, pp: 37-50

<sup>6</sup> - Mohammad Ali Bahmani Qajar, the manner to exercise the right to self-determination: The impermissibility of separatism, political and economic information, issues 261 and 262 in June and July, 2009.

<sup>7</sup> - Cassese 'self-determination of Peoples, a legal reappraisal 'Cambridge University 'London '1996,p.37.

determination should not be considered as a license for the whole or partial threat for territorial integrity or political unity of the countries enjoying independent sovereignty as per the principle of equal rights and the right of self-determination of the nations, in this manner they enjoy a government that is the representative of all people related to that territory.<sup>1</sup> Considering the Semantic change of this right, now it cannot be considered as one of the Jus cogens of international laws.<sup>2</sup> What is comprehended by the recent international documents and interpretations is that the right of self-determination is one of the international and public inclusive obligations.<sup>3</sup> The International Court of Justice in its ruling on the eastern Timor (1995) termed the right of self-determination as a public inclusive obligation.<sup>4</sup> In addition, regarding the issue of Retaining wall it emphasizes on the public inclusive obligation of self-determination right.<sup>5</sup> Considering this right means that although this right does not enjoy the obligation of a Jus cogens, but it is included in the fundamental principles of current international laws that makes all states obligatory to respect it against the international community. Hence, as per such a pervasive interpretation, the governments will be allowed to refer to the liability of the trespassing states against the undertaking violation against entire international community.<sup>6</sup> Despite the whole significance and the legal place of self-determination right in the traditional international law as a legal norm, its use depends on the coordination with the principle of territorial integrity.<sup>7</sup>

**3- Limited sovereignty, outer legitimacy and newly born aggressive tools:** The most important security phenomenon after the end of cold war has been the expansion of civil wars and insecurity in the internal boundaries of the countries. In the modern era, the new threats including the organized crimes, terrorist attacks, mass destruction weapons, Ethnic violence, drugs, poverty expansion, internal conflicts and systematic and severe violation of human rights in different forms, ethnic cleansing, genocide and war crimes have been exposed to humanity; such that in 1990s the Human beings received much effects than the boundaries.<sup>8</sup> Under the shadow of such changes the concept of security encountered with transformation and the idea of 'national security' alongside the concept of 'human security' even posed with more attention and focus; such that in 1990 many of the people inside and outside of governments watched the modern world for long period through their eye glasses. Since 1990 until 1994, the security council of UNO passed many resolutions. What was considered as the threat against the international peace and security as per the 7<sup>th</sup> clause of UN charter, expanded the humanitarian concerns and based on it issued the license for intervention in the international affairs of the countries. Issuance of UN Security Council Resolution 688 in April

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<sup>1</sup> - Cassese 'self-determination of Peoples, a legal reappraisal 'Cambridge University 'London '1996, p.1324.

<sup>2</sup> - ICJ Reports 1995;24

<sup>3</sup> - Cassese 'self-determination of Peoples, a legal reappraisal 'Cambridge University 'London '1996 ,p: 1234

<sup>4</sup> - Mohammad Ali Bahmani Qajar, the manner to exercise the right to self-determination: The impermissibility of separatism, political and economic information, issues 261 and 262 in June and July, 2009.

<sup>5</sup> - ICJ Reports 2004:155

<sup>6</sup> - Behman Aghaei, law dictionary of Behman, Ganj Danish, 1999, Tehran

<sup>7</sup> - Rebecca Wallace Translation: Sayed Kassem Zamani and M. Behramlu, in 1387, Shahr Danesh, 2008, Tehran.

<sup>8</sup> - Cassese 'self-determination of Peoples, a legal reappraisal 'Cambridge University 'London '1996, pp. 112-1.

1991 on Iraq was a beginning of change and novel thoughts in this context as well as establishment of a norm as the humanitarian intervention in this decade. This trend that was followed in Somalia, Haiti, Sierra Leone, Bosnia and Moldova, created a challenge against one of the basic principles of international law on the sovereignty of the states. The failure of the international community in a timely and effective response to crimes (Rwanda) in 1994 and genocide in 1995 in Srebrenica, despite the presence of UN peacekeeping forces, created the fundamental questions about the political will and the capacity of the UN. The Secretary General of the United Nations during the years 1998 and 1999 and in several speeches warned that the international community must choose between silences and watch the massive crimes and the military intervention.<sup>1</sup>

The decade of 1990 was the crux of intervention and Sovereignty; such that the humanitarian intervention was done under both conditions and its non-performance was debate and protest. Two views were discussed in this connection. Some believed that the international community does not intervene sufficiently. Conversely, some believed that extra interventions are taking place. This was the gap the international community suffered it for decades. However, this gap must have been redressed in the interest of victims and suffered people.<sup>2</sup> Following these developments, the Government of Canada on September 20, by announcing the formation of an International Commission entitled 'International Commission on Intervention and State Sovereignty' tried to answer the challenge that was posed by the secretary general of UNO. This Commission by performing necessary studies and consultations presented its report to the secretary general of UNO under the title of 'responsibility to protect'. The base of this report, was the concept change of 'intervention right' to 'responsibility to protect' in the discussion on humanitarian intervention and to solve the intervention crux and sovereignty.<sup>3</sup> This report that was passed by the world leaders (2005) (2005) with some changes, expresses that Millions of human beings are exposed to civil wars, unrest, state repression and consequences of the collapse of the state. This is a hard, obvious and undeniable reality and the most important issue that the International commission on Intervention and State Sovereignty now buckle up to it. The goal is not to build a safer world for the great powers or violate the sovereignty of smaller states, but goal is to provide practical support to ordinary people whose lives are at risk and their governments are not able or willing to support them. Experience of interventions in Somalia, Rwanda, Srebrenica and Kosovo and non-interference in other countries, revealed the Objective need for a comprehensive review of tools and mechanisms governing international relations, to be able to meet the foreseeable needs of the 21st century.<sup>4</sup>

The doctrine of responsibility to protect was developed with the aim of intervention for humanitarian purposes. Based on this theory, the self of state sovereignty guarantees the responsibility and therefore, the government's primary responsibility is to protect the people, in this state the principle of non-intervention becomes international responsibility. Obviously, the responsibility to protect by military intervention in the international community is not limited to protect the humanitarian responsibility, but covers the broader responsibility for prevention, reaction to crimes against humanity and the reconstruction of the damages resulting from the felonies.<sup>5</sup> More

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<sup>1</sup> - ICISS, *The Responsibility to Protect*, 2001, p. 67

<sup>2</sup> - Sajjad Soltanzadeh, legal review, citing Russia's support doctrine, *Journal of foreign policy* 23 year, issue 4, Winter 2009.

<sup>3</sup> - ICISS, *The Responsibility to Protect* (Ottawa: International Development Research Center, 2001, p. 80.

<sup>4</sup> - UN General Assembly, *World Summit Outcome, Resolution A/RES/60/1* October 24, 2005 .

<sup>5</sup> - Evans, *The Responsibility to Protect*, 2008., p.164

More than a decade has been passed of the idea proposed by the Canadian Commission on the intervention and the state sovereignty<sup>1</sup> under the title of responsibility to protect. In the past decade, however, the international community repeatedly has demanded a wide range of humanitarian intervention, but still in its administrative rules in several cases, such as Somalia, Bosnia, Rwanda and Kosovo, there is no consensus seen in this regard.

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'<sup>19</sup> changed to "protect"<sup>20</sup> 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. On this basis, the sovereignty is manifested in the first part of Article 2 of the Charter and the principle of non-interference in Section 1 of article 2. In fact, supporters of the government's sovereignty admit now the authority of states in taking measures against their citizens is no longer unlimited. Thus, double<sup>2</sup> responsibility has been depicted for the governments. The sovereignty as Responsibility is a least thing that should be existed for a good international citizen.<sup>3</sup> The process is such that some believe that the sovereignty is not so sacred<sup>4</sup> today as it was in 1945. In such an atmosphere Richard Hams, has given the proposal of encroachment and abuse<sup>5</sup> of sovereignty.

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<sup>1</sup> - ICISS

<sup>2</sup> - T. Reinold 'Sovereignty and the Responsibility to Protect: The Power of Norms and the Norms of the Powerful, Routledge ' 2012,p.20.

<sup>3</sup> - Graeth Evans and Mobamed Sabnoun, The responsibility to Protect, Foreign Affairs, November/December 2002, p.102.

<sup>4</sup> - R2P After9/11 And The World Summit, Thomass G. WEISS Wisconsin International Law Journal, P 744 .

<sup>5</sup> - Richard N. Haass, The Opportunity: America's Moment to Alter History's Course 41(2005).

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<sup>1</sup> 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). 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.<sup>2</sup>

After 9/11, America tried to activate the capacity of Security Council by exploiting the atmosphere that was created following this incident. The adoption of multilateral sanctions within the framework of the fight against terrorism is considered as its samples.<sup>3</sup> The resolution 1267 of Security Council is interpreted in the same direction. By declaring the resolution 1368, in fact the Security Council by accepting the American doctrine of terrorist attack ousted from the 'legitimate defense' format and by recognizing it as the act against international security and peace, motivated these actions in the framework of 'collective defense'. All statements, speeches and actions of America and its allies, continued with the same stand and position.

After the end of 40s, two permanent members of the Security Council (America and Britain) discussed and posed new ideas about sovereignty as responsibility. In this view, the sovereignty was not defined only in terms of human rights. In 1998, Philip Zlykv in his reports and articles termed the main origin of "responsible sovereignty" as reaction against terrorism. In the report on national security of America in 2002 that was also written by him, he expressed that the international rules should cover the states obligation in removing the concern and adopting the rational measures and plans for the transparent expansion of armaments.<sup>4</sup> Richard Hass the then president of foreign relation council of America and the former administrator of political project of foreign ministry, Paul, contributed the basic role in developing the American concept of sovereignty as responsibility. Hass believes that the sovereignty should give equal significance to the human rights issue and the war on terrorism and disarmament of mass destruction weapons and considered responsible. Therefore in 2002 he tried to prove that states cannot keep the out of border incidents far from their eyes. After two years one of his colleagues in the ministry of state named Stewart Patrick by defending this viewpoint defends in this way that was the main obstacle of military intervention for the humanitarian purposes etc. was the sovereignty doctrine that has prohibited the territorial integrity of all countries.

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'.<sup>5</sup> 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.<sup>6</sup> 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

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<sup>1</sup> - Theresa Reinold 'sovereignty and responsibility to Protect 'Routledge 'london '2012,p.94.

<sup>2</sup> - A. Hehir and R. Murray 'Libya, the Responsibility to Protect and the Future of Humanitarian Intervention 'Palgrave Macmillan '2013, p.142.

<sup>3</sup> - Reinold 'sovereignty and responsibility to Protect 'Routledge 'london '2012, p.98.

<sup>4</sup> - A.J. Bellamy 'Responsibility to Protect 'Wiley ' '2013,87

<sup>5</sup> - Contingent.

<sup>6</sup> - Bellamy 'Responsibility to Protect 'Wiley ' '2013, p. 54.

international 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).<sup>1</sup> 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.<sup>2</sup> However, the idea of the Canadian Commission, in the statement of responsibilities to protect, was emanated from the lack of ability for proper reaction to crimes committed in Rwanda, but crystallized in the reaction of without Security Council authorization. Many of developing countries interpreted it as a sign similar to war on terrorism after September 11, but you cannot claim easily a consensus in this context.<sup>3</sup> For this reason in all cases where the Security Council gets involved, with the Claim to stimulate human conscience considers the situation a threat to the international community and global justice identified as a preventive war.<sup>4</sup>

War with 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.<sup>5</sup> In fact, the proposed criteria for intervention and non-interference were ridiculed in Iraq. For sure we can say this did not coincide with any of the terms and conditions of humanitarian intervention. Many of the juristic have also emphasized on it. Fernando Teson<sup>6</sup> and Nardin<sup>7</sup> can be referred in this regard.

Now the situation is such that since 2001 that rationalizing and codifying the rules of using the force for humanitarian purposes, has become much more difficult. Transiently, but finally, the Commission of sovereignty and humanitarian law was formed by the Secretary General of United Nations, although due to the fault of UN Security Council for involving in the action on humanitarian crises in Rwanda and Kosovo. But the intervention done in 1994 was little, short period and even slow. As a result of the lack of appropriate action, it led to the assassination of eight hundred thousand of people. Although in 1999 AD the North Atlantic organization took action with brilliance in Kosovo, but many have announced the NATO action in 780 days bombardment as

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<sup>1</sup> - G. Duncan, O. Lynch, G. Ramsay and A.M.S. Watson 'State Terrorism and Human Rights: International Responses since the End of the Cold War 'Taylor & Francis ' ,2013 ,p.75.

<sup>2</sup> - Combating terrorism status of DOD efforts to protect its forces overseas: report to congressional requesters 'DIANE Publishing, p.19.

<sup>3</sup> - J. Hocking and C. Lewis 'Counter-terrorism and the Post-democratic State 'Edward Elgar Publishing, Incorporated, '2007 ,p.125.

<sup>4</sup> - Preemptive or Preventive war

<sup>5</sup> - P. Cunliffe 'Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice 'Taylor & Francis, 2011, p.43.

<sup>6</sup> - Fernando R. Teson, Ending Tyranny in Iraq, 19 ETHICS and International AFF.1,1(2005).

<sup>7</sup> - Terry Nardin, Humanitarian Imperialism: Respones to Ending Tyranny in Iraq, 19 Ethics and International Aff. 21, 21 (2005).

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very much and early.<sup>1</sup> What did NATO was not fair as an international response compared with what happened in Rwanda.<sup>2</sup>

America's national security strategy documents<sup>3</sup> have posed considerable points for the use of force to protect the human being. The Bush's doctrine has caused the fear of America's domination and the chaos resulting from such action in the critical areas of the world. Some of the juristic, such as Adam Roberts, have provided portray in the atmosphere of international community after 9/11.<sup>4</sup> One of the possible consequences of such interventionist doctrine by the United States of America is that the states will act more cautiously than in the past to accept the doctrine of humanitarian intervention or any theory that implies the responsibility to protect. From the very beginning, when some people in the scientific and diplomatic circles were following to be imagined as relation between the responsibility to protect and terrorism and war against Iraq, posed concerns in this regard, as a instance, the article of 'humanitarian interventions: as a tribunal' can be referred that was published in the journal of 'Millet'.<sup>5</sup> This is expressed in this article that no virtual subject exists to be accomplish'. Such tendency increasingly, deepens the instability slope in implementing of Bush's perspective.<sup>6</sup> Richard Falk also noted that After September 11, America's approach to humanitarian intervention has been changed to a one-sided costume from Rationalization of the use of force to bring peace to escape from the difficulties of international law.<sup>7</sup> United States of America's military action in Afghanistan was done on the basis of self-defense, in accordance with the Security Council authorization that covered the humanitarian results, but lacks any kind of humanitarian license. So the Iraq war without Security Council authorization and approval covered no humanitarian situation in this country.<sup>8</sup>

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.

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<sup>1</sup> - F.L. Edwards and F. Steinhäusler 'NATO And Terrorism: On Scene: New Challenges for First Responders and Civil Protection 'Springer ' 2007,p.162.

<sup>2</sup> - A.S. Sidahmed, W.C. Soderlund and D.E. Briggs 'The Responsibility to Protect in Darfur: The Role of Mass Media 'Lexington Books ' 2010,p.106.

<sup>3</sup> - National Security Council, The national See unity Strategy of the United States of America (Sep. 2002), available at <http://www.whitehouse.gov/nsc/nss.pdf>

<sup>4</sup> - Adam Robers, The united Nations and Humanitarian, Intervention, in HUMANIT INTERVENTION and International Relations 90 (Jennifer woush., 2004)

<sup>5</sup> - The Nation

<sup>6</sup> - Richard Falk et at., Humanitarian Intervention: A Forum, The Nation, July 14, 2003, at 11,12.

<sup>7</sup> - Id. Richrad Falk was joined by Mary Kaldor, Carl Tham , Samantha Power, Mahmood Mamdani, David Rieff, Eric Rouleau, Zia Mian, Ronald Steel, Stephen Holmes, Ramesh Thakurd Stephen Zunes.

<sup>8</sup> - T.A. Johnson 'The War on Terrorism: A Collision of Values, Strategies, and Societies 'Taylor & Francis ' 2008, p.17.

**4- Conclusion:** The structure of traditional international law is based on the fundamental principles such as sovereignty. In the legal literature of that time, the state and its constituting elements were manifested in an absolute sense. Sovereignty, the height of its boundary and the zone of influence of elements set forth in it, had been drawn in an atmosphere like this. The principle of non-interference in internal affairs, the ban on resorting to force, principle of maintaining the territorial integrity, principle of internality of legitimacy and non-recognition of individual in the international law included the principles that had adapted and conformed itself with traditional concept of sovereignty. The government of a country enjoys the external sovereignty that is equal to the governments of other countries in its mutual relations at international level and behaves with other states as a legal personality with other states. External sovereignty from the perspective of foreign governments was an expression of internal sovereignty and internal sovereignty cannot be understood without external sovereignty. These concepts and definitions have been transformed due to the entering of quantitative political variables.<sup>1</sup> The serious challenge against the concept of sovereignty of countries' government dates back to the final decade of 20<sup>th</sup> century. On one hand, the end of the Cold War and the collapse of the bipolar system, and on the other hand the dawn of a new world of people and Several organizations through modern technology, have been moving freely as real or virtual around the globe and they were free of the limitations of the rules, are considered significant components. Changes arising from interdependence caused a Post-Westphalian system be noticed whereby and engaged the mind of political and legal theorists in its expansion. Although the concept of sovereignty among the legal-political themes is still a show-off, but there is no news of traditional structure of autocracy that has been dissolved in the nature. As investigated above, Wide developments are emerging in the concept of sovereignty, territory and other issues related to it that would evolve many of the international interactions and principle of international law.

Nowadays, in place of thinking on the end of the sovereignties, basically the adjustment with protection of sovereignty principle was pursued instead. The requirement of collective life in a government centered society is that the states should step forward and cooperate with each other to materialize what is the common boundary of interests. The relative sovereignty has been limited in the interest of collective intellect in the transition time by increasing of correlations and cooperation emanating from the expansion of intergovernmental relations or the interest of human society members. Changes in the nature and definition of sovereignty as well as the shortening of its walls evolved the legitimacy from an internal theme to a subject holding an international description. Besides this, the individual has taken subjectivity in the international law and the debate related to human rights and the humanitarian rights takes modern appearance to it.

Indication of different accidents on the other traditional principle also affects the name of the principle of necessity to protect the territorial integrity. Similar to that, the right of self-determination also ousts from its traditional core and makes it more in conformity with all changes. In the behavior of the UN members, this right was not more than decolonization. The separation instances and the birth of new states that had no roots in decolonization or did not establish with the willing agreement, have been accepted unwantedly after stabilizing the success of separatist movement. But in recent years, especially after the collapse of the Soviet Union and the former Yugoslavia, the situation was different. According to the new evidence, the right to self-determination became beyond decolonization situation of the Movement and stimulant to the claims

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<sup>1</sup> - Abolfazl Ghazi. Basic law and political institutions, Tehran University Press, 1994, Tehran.  
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that beyond the foreign occupation, the instances in which the human rights became violated and the Will of majority of people was suppressed in its worst form. These claims established the post-colonial and new self-determination. The new definition of territorial integrity, self-determination and human rights role quickly entered the literature of international law and changed its traditional structures. The sovereignty is redefined, restructured and becomes more limited in such atmosphere.

Developments after the end of the Cold War and after the terrorist attacks of September 11 caused massive changes in the preservation of territorial integrity and self-determination, responsibility to protect and rapid response mechanisms in this area. After the end of the Cold War and especially after the September 11 terrorist attacks, in the beginning the broad interpretation of the UN Charter, and then creating the legal mechanisms using such interpretations, has put into a tumble the United Nations Charter and many titles of international law. A glance at the evolution of international law states that many of the concepts of international law literature have been changed and differed. In such Metamorphosis, the immunity of authorities to their responsibility, has intermixed the national security with human security, the high walls of sovereignty have been changed to the weary thin strips, the national security has become infertile in its utmost capacity, the hard law have given their place to the soft law, the case capacity of security council has been changed to a public and lawmaking competence and the responsibility idea for that different protection has swept all indices and rules of charter that even it considers the states allowed to plan with the help of its soldiers intervene and aggress the integrity of all states, Al-Qaeda, Taliban, Annosrah and Daesh organizations. In such conditions this question is posed that how the principle of self-determination, territorial integrity protection, and entire sovereignty has given the permission to the extralegal Coalitions. It seems that the study of three basic elements, the right of self-determination from the human right domain, has had sovereignty and responsibility for protection, important role of achieving the realistic analysis. All of them have been the tools, regardless of their supporting arguments' soundness or legitimacy, their implementing and usefulness had sense in defining the direct and indirect sovereignty. The only thing that could weaken the resistance of countries against the trend of limitation of their sovereignty and justify the public opinion easily against it was the serious violation of human right. In this matter, the effort of proponents of this trend was too distant the public opinion and also juristic from the definition and stability indices related to human rights rules. The depiction and institutionalization of double standards on human rights and extension of its contrary actions, as a threat to international peace and security and in the same direction, its exposure to potential threats, caused widespread transformation in the titles of international law. However, there is no doubt in preservation of human rights objectives, but the problem lies in the conflict of international law principles and the mentioned trend. In fact, the traditional international law that laid its foundation on the sovereignty and the principle of equality of sovereignty, the principle of non-intervention in the internal affairs of countries, the prohibition principle in resorting to force and finally the principle of peaceful resolution of conflicts that can be considered as the collective measures to preserve the peace and global justice, cannot be placed in a coordinated and coherent set with new plan and fresh process. Thus, the studies conducted by the author in the related documents and articles whose one part has been mentioned and published in this paper states that the responsibility to protect, that has been planned and designed based on human need and imperative need for the international order in the framework of traditional international law and presented to the international community, now it has been ousted form its initial framework in terms of form and content. Acting without Security Council authorization in the form of action in the fight against terrorism and not in human and humanitarian affairs in nature, was a serious diversion that has changed this idea from an action in the framework of traditional

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international law, to a tool for accelerating the transformation of traditional international law. In the new under planning regime of international law what has been defined and will be described, justifies the need that perhaps the world war second has been ended recently and the need to create the new international mechanism such as UNO is felt again. Although it is earlier to judge that whether the charter or the UNO itself will be changed to another organization, but the inefficiency elegance of it and non-abiding of the same victorious powers to their offspring in the international arena is going to be public. The generalization of such issue fades the security feeling and leads the weak and powerful states towards planning and accessing the substitute security mechanism. All of the traditional half-heartedly international laws, from human rights, to disarmament and collective rights will be evolved under this atmosphere. This can be expressed at last that the new member states of alliance have promoted a new method that by resorting to it, sterilize the charter and voice the melody of new organization. As a result it sounds that the fundamental framework of the traditional international law has been evolved and its changes are substantive not pertaining to form.

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#### Footnotes:

- 1- Refer to internet address:
- 2- [http://fr.wikipedia.org/wiki/Les\\_Six\\_Livres\\_de\\_la\\_R%C3%A9publique](http://fr.wikipedia.org/wiki/Les_Six_Livres_de_la_R%C3%A9publique)  
<http://www.un.org/aboutun/charter/chapter1.htm>
- 3- Government's commitment to respect fundamental principles of human rights that have been developed in various human rights documents, despite claims by some countries has been interpreted as Commitment that is not considered as illegal or illegitimate against the sovereignty of states. In this way, Kelsen and Word Russ who are the founders of norm orientation school believe that the national government follows the following parameters: international rules which are accepted with consent and propensity; 2- some international rules which are not emanating from will process; 3- decisions of a number of international organizations that have the ability to adopt such decisions and governments are attached to some of them.
- 4- Refer to internet address: <http://www.un.org/aboutun/charter/chapter1.htm>
- 5- In addition, an accurate definition of intervention is seen in no legal document
- 6- 6-No doubt, diversity of cultures, traditions, political systems, economic, and religious formation is one of the main obstacles of international community shaping and shared interests among countries, were not enough to encourage collective tendencies until recently. The formation and stability of any society that arises from traditions and value systems of Common institutions that the international community suffers its lack.
- 7- ***Sovereignty, Intervention, and Peacekeeping: The View from Beijing***, <http://www.brook.edu/dybdocroot/views/articles/gill/2000survival.htm>
- 8- From the perspective of international law, five aspects of self-determination are identifiable including:
- 9- The right of peoples lies within the framework of a state and the independence of government and not interfering in the affairs of other states. This right is linked to the sovereignty of states, Territorial integrity and non-interference in the internal affairs of another state and not to any foreign domination over the peoples legitimate means in the framework of an independent state.
- 10- The right of the people of a colony that is ruled by a foreign power, is in ending the colonial domination, and gaining independence

- 11- The right of people to elect a government under which they want to live, this means the right to choose the government of a population group, and it can be expressed in the form of a request about ethnic, racial and national minorities; disparity of this fact with other principles of international law, has led to the conclusion that autonomy is only recognized by the common Will of the government and the minority, Of course, the right of peoples to choose their respective government does not depend only to the ethnic minorities, but it is also true about choosing the respective government by the people of a land that are liberated from the colonial rule.
  - 12- Self-determination means the right of peoples of a territory to choose the political system they desire in their country.
  - 13- Another aspect of self-determination, that is seen in Article 21 of the International Covenant on Civil and Political Rights and the right to participate in a regular, continuous and free and equal participation of people in the government of their country.
- The five sections are divided into two cases. A section on the outer aspect of the right to self-determination and the second part of it is related to internal aspect of it. Items 1 and 2 of the linkage linked to the aspects of external and aspects 4 and 1 are in connection with internal aspect of this right. The item three has basic aspects and can also be considered in linking to the internal aspect of self-determination.
- 14- /9- in fact, the main theme of these two leftist fighters was the 'National issue of Poland', a country that had become the big issue of Tsarist Russian Empire and Eastern Europe for about 100 years. Poland, like many countries in the Balkans, was under Russian occupation. But two features distinguished it from other Balkan countries. 1-Economic relations within that country; 2- fierce struggle of polish people to get self-determination.
  - 15- /10-Even in the October 1917 revolution, one of the most pressing issues and the basic demands of Bolsheviks was self-determination for all peoples living in the Russian Empire. Such that it was referred in the statement on overthrow of the government by the workers and soldiers.
  - 16- /13- Pakistan is a clear example of the countries cited. In this country several groups such as Bengali, Pashtuns, Baluchistan and Sunnis against what they called the monopoly domination of Punjabis, demanded the separation and setting up a new or at least self-autonomous country. Among these nations only Bengalis could achieve independence with the help of Indian government and established a country called Bangladesh.
  - 17- "This clause of resolution requires that: the activities of these organizations should be regular and controlled within the framework of economic benefit of the governments who act on respecting their sovereignty.
  - 18- In explaining the meaning of self-determination, what is accommodated in the resolution: All nations are free to determine their political status. This phrase is repeated in all documents that deal with the explanation of self-determination. What is understood from this phrase is the determination of political regimes' type, ruling in the internal territory of a country by the people of same country. This autonomy and internal independence cannot be considered materialized and perfect without external self-autonomy. For this reason, the resolution 14/1514 expresses in its very first paragraph that 'subjugate the people by force, domination or foreign exploitation ...is against charter of United Nations'.
  - 19- Article 8 of the Statute of the International Criminal Court, adopted in 1963 after counting the instances of war crimes and emphasis on the prohibition of these samples and punishment of

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 their perpetrators emphasizes now on  
 this point that Governments are entitled to defend themselves for the unity and territorial integrity of the country with all legal instruments. In other words, the governments are even entitled to suppress any secessionist movement by using force; provided they do not perpetrate the War crimes, crimes against humanity and genocide, which is illegal. Beyond that, by looking on the resolution of United Nations' Security Council on Kosovo it becomes clear that the Security Council, even in a situation like Kosovo where Human rights were violated clearly, has stressed the importance of preserving the territorial integrity of the countries. Although the UN Security Council announced the NATO countries actions must be in compliance with the territorial integrity of Yugoslavia to avoid a clear violation. The ban on Separatist and secessionist in international law has reasons that are always important.

20 - Intervention.

21 - Protection.

22 - Westphalia System of Int. Relations.

23 - Dual Responsibility.

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