



International Journal of Humanities & Social Science Studies (IJHSSS)
A Peer-Reviewed Bi-monthly Bi-lingual Research Journal
ISSN: 2349-6959 (Online), ISSN: 2349-6711 (Print)
Volume-II, Issue-IV, January 2016, Page No. 138-164
Published by Scholar Publications, Karimganj, Assam, India, 788711
Website: <http://www.ijhsss.com>

Responsibility to Protect, Terrorism and the Evolution in Traditional International Law Framework

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Abstract

After the end of the Cold War, the idea of the responsibility to protect was taken into consideration as a requirement of international legal order where the Human rights used as a cover for interference in the affairs of the states. Such an approach didn't meet the rules and principles of human rights and it has led to the gross violations, undermined the political regimes and even damaged the regional or even international public order. The events of the Balkans, Kosovo, Bosnia-Herzegovina, North Ossetia, Ukraine, Iraq and Syria are in this matter. Ambiguities in the exercise of the human rights rules and principles, shortness in international relations with regard to the principle of territorial integrity and weakening the principle of territorial integrity and other principles of international law have brought a misty circumference in front of the eyes of the world which undoubtedly double standards of some states have aggravated such atmosphere. The resolutions have been adopted in the name of justice, of equity and brotherhood are without scientific basis or logic analyzer or not applicable on the same terms. Mixture of the new theories in the international law such as responsibility to protect and their mutual relationship with issues such as terrorism has brought more complexity to the world. In this new world disorder situation, accepted principles of the Charter are redefined and a new system is being designed and implemented. At first the human rights was a justification for the idea of the responsibility to protect and it stabled the humanitarian interventions in a good status, but in relation to issues such as terrorism it became strongly political and finally led to withdrawal of the states to reach a consensus. There is no hope to reach a consensus on responsibility to protect and the idea has been deviated from its original purpose and nature, in action.

Introduction: Internationalization of Human Rights with much attention has been paid to it by the international community, has always been one of the main discussions after the United Nations was founded. The Generation of human rights law, distinction between legally rules or morally principles and its enforcement and monitoring mechanisms, has been rebuild and transformed on the basis of common interest of the international actors. Incorporating human rights into humanitarian principles through considerations to collective rights such as maintaining international peace and security, has drawn more attention from political and legal scholars. According to the UN Charter, one of its main purposes is to maintain international peace and security and its designers placed a framework which gives the UN Security Council primary responsibility to achieve this

purpose. The Charter invites member states to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other situations which might lead to a breach of the peace. 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 UN Charter and many titles of international law. A glance at the evolution of international law in this period reveals that many of the concepts of international law literature have been changed. 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. In such conditions, some states themselves to take measures which violate General Principles of International Law. Measures such as alliance to combat terrorism have provided an excuse to violate the territorial integrity of other states and such situation cannot be interpreted in compliance with UN Charter and International law. The purpose of this paper is depicting a real picture of what is actually happening in the international community in relation to international law. The responsibility to protect entered into international literature under the imperative need for the international order, especially after the Cold War and the humanitarian law and human rights played a crucial role in this area. Evolution of the three Maine elements of international law “sovereignty, self-determination and respect for territorial integrity” granted permission to initiate such a theory. Because without it, it is not possible to design and implement this theory. After the Arab Spring or Islamic Awakening, the new aspect of this theory was developed and implemented, which is not compatible with any of the basic elements of the theory. Subsequently, performing this theory through military operations against the territorial integrity of any state that recognized by international law, caused a sense of wonder in a large number of jurists, especially in the third world. Tendency of such measures has raised doubts and concerns about implementing this theory. This paper focuses on the responsibility to protect and likely influences provided by the evolutionary process in traditional elements of the international law. Therefore, more attention has been paid to elements that formulate and implement the responsibility to protect. It is clear that if the classic concepts of international law such as sovereignty, self-determination and principle of respect for territorial integrity remained chained to their basic definitions in legal instruments, the idea of the responsibility to protect would not evolve in lawmaking process of humanitarian law and human rights. As a result, the responsibility to protect diverted from human protection against gross violations of human rights to issues such terrorism. Considering the formation of new framework, the paper seeks to answer these two questions whether the concept of responsibility to protect, as a preventive or enforcement mechanism for the implementation and monitoring of human rights and humanitarian, has been diverted from its true purposes? And if the answer is yes, the counter-terrorism military operations based on this concept, is in accordance with the original purpose or not?

To answer the questions raised, it is necessary to reach a common understanding of evolutionary processes give rise to support the concept of responsibility to protect in the traditional frameworks of international law. Therefore, since the idea of the responsibility to protect, from first and most direct point has challenged three basic concepts of traditional international law “the right to self-determination, territorial integrity and sovereignty “, the first part of the paper will reviews these

concepts and afterwards the position and explanation of the responsibility to protect and the fight against terrorism and its role will be discussed. In the final part of this paper we try to provide a realistic answer to the given questions.

Human rights: The Challenge of territorial integrity and its Impact on the right to self-determination: The concept of sovereignty in the international law establishes respect to the integral territory and frontiers of all countries which refrains all states from the use of force against the Territorial integrity of any state. The principle of territorial integrity considers each territory as an inviolable and un collapsible entity. The territory is an essential and necessary attribute of the state existence. It is an indisputable fact that without territory state entity and sovereignty does not arise at all. In other words, respect to territorial integrity is one of the traditional principles of international law which adopted in international instruments and procedures of the International Court of Justice.¹ The principle considered to be a peremptory norm of general international law and shall not be violated. Therefore any attention to the autonomous activities around the world in acts of recognition or encouragement breaches the fundamental rules of international law such as the prohibition of intervention in matters within domestic jurisdiction, the sovereign equality of all states and territorial integrity. The UN Charter has cited the prohibition of threat or use of force against the territorial integrity and independence of any state based on traditional international law. However, there is different total land area of each state but it is regardless of the indisputable fact that without territory, state sovereignty doesn't exist. Based on the principle of territorial integrity each territory has been protected against act of military aggression. Any use of military, economic, political pressure or exercise military control over territory of any state is inadmissible and illegal under the international law.

From the human rights perspective, the right to self-determination is an exception to the general rule of states territorial integrity, on the other hand it is related to state sovereignty and determine the territorial integrity. Right to self-determination as a collective rights belongs to the third-generation human rights. The recognition of this right, along with the emergence of concepts in the international arena such as "states in formation process, People's, liberation movements" signifying the transition of traditional international law and human rights into a new discourse. Newly establishment of recognizing this human right on one hand and doubtfulness of substantive concept of it on the other hand, caused that the 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 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.² Around 100 years ago, Lenin wrote his booklet on the 'right of nations in their self-

¹ . ICJ Reports, 1978, p.36.

² . Parvin, Kheirollah& Faghfour bilandi, Mohammadsadeq, Implementation of the right to self-determination Case Study: Syria, Quarterly of Islamic Human Rights Studies, Year 1, No. 2, p. 47.

Determination' during a theoretical contention with Rosa Luxembourgh the theorist and leftist polish warrior. He believed that commodity relations grow (which is the core of Capitalism) in the specific capitalist region that have a conflict with adjacent or greater capitalisms. He believed that this type of conflict emerges in nationalism and independence attributes which can be considered from two perspectives: 1) the province that suppressed and ruled by powerful state intend to upraise against the suppression. 2) In this situation, nationalism will grow less and be the most useful weapon against international worker campaigning the surrounding region. Lenin believed the right to self-determination should not be disregarded by any alibi such as nationalism, not only it should be considered as an approach to restrain the nationalism and chauvinism, but also stand against the wage slavery and capitalism. if indeed gaining the self-determination stops the battle, it will be a unfinished battle that benefits the capitalism. On the contrary, Rosa Luxembourgh based on historical facts and Poland bourgeois status believed that the defense of self-determination in Poland led to the strengthening of the Polish nationalist groups and the fight for socialism will become a nationalist movement. The debate of self-determination issue (between) didn't stop and continued to remain to remain one of the problems of underdeveloped countries with the "national diversity" feature.³

The principle of the right to self-determination⁴ is one of the fundamental principles of international law.⁵ This principle states that nations based on respect for the principle of equal rights and fair equality of opportunity have the right to freely choose their sovereignty and international political status with no outside compulsion or interference. Which can be traced back to the Atlantic Charter, signed on 14 August 1941, by Franklin D. Roosevelt, President of the United States of America, and Winston Churchill, Prime Minister of the United Kingdom who pledged The Eight Principal points of the Charter. In 20th century and After World War I, Woodrow Wilson the president of United States of America, announced the term self-determination to mean the free choice of one's own acts without external compulsion.⁶ 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.⁷ 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.⁸ 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

³ .see <http://hahei.blogfa.com/post/17>.

⁴ . Selbstbestimmungsrecht der Völker.

⁵ . 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.

⁶ . Daniele Archibugi, *A Critical analysis of the self-determination of peoples: a compolition prespective*, www.Tamilnation.org.

⁷ . Antinio Cassese *Self-determination of Peoples, a legal reappraisal* (Cambridge University Press, London, 1996, p. 37.

⁸ . *Ibid.*, p.37.

political system and participation in country's administration, as mentioned above was not recognized.⁹ 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. This principle especially after 1990s events transformed into a new era. 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.¹⁰ 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 right of self-determination, have no hint to that the decision making or its result would be whether independence, federation, some kind of autonomy or even how the homogenization should be. 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.¹¹ In fact, definitions and contradicted legal standards exist for determining the groups that could legally claim the self-determination.¹² An important step was taken in this regard when the UN General Assembly embodied "the right of nations to self-determination" article in the International Covenants on Human Rights. 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). It has been expressed in article 5 that immediate steps should be taken for the non-self-governing¹³ territories, or all other regions that have not become independent, yet. The expansion of self-determination's word in the sense of free election had associated some reactions. 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.¹⁴ 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. Based on the right of self-determination and as per resolution 1514 of general assembly 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. The right to freely determine the fate of nations is one of the fundamental principles and norms of public international law. The theory was recognized first in the United States Declaration of Independence on July 4, 1776, the french

⁹ . Bahmani Qajar, Mohammad Ali . 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, p.77.

¹⁰ . Ale-Habib, Ishaq. the International Criminal Court and the Islamic Republic of Iran, the State Department, Office of International Political Studies, 2000, Tehran, p.5.

¹¹ . Parvin, Kheirollah & Faghfour bilandi, Mohammadsadeq op.cit. p. 47.

¹² . Betty Miller Unterberger, Self-Determination, Encyclopedia of American Foreign Policy, 2002.

¹³ . Trust and Non-Self-Governing Territories listed by the United Nations General Assembly.

¹⁴ . Parvin, Kheirollah & Faghfour bilandi, op.cit. p. 50.

constitution of 1791, the Declaration of the Rights of the Peoples of Russia by the Bolshevik government of Russia on November 2, 1917, declaration by U.S. President Woodrow Wilson on January 8, 1918, Atlantic Charter, signed on 14 August 1941, as a doctrine, but it transformed into a right and principle according to the UN Charter article 1 (part 2), article 55 and article 73, General Assembly resolutions 545 and 637 on February 5 and 12 December, 1952. On 14 December 1960, General Assembly Resolution 1514 on the Granting of Independence to Colonial Countries and Peoples recognized the right with emphasis on such peoples of the world ardently desired the end of colonialism and attainment of their independence. Based on the resolution "all peoples have the right to freely determine their own destiny" and all the colonial or repressive powers against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, in trust and non-self-governing territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations. In General Assembly Resolutions: 421, 2621, 2625, 2627 and 2734, 3203, 2955, 3070, 3314, the universal declaration of Human Rights, the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights, the right of nations to self-determination has been reaffirmed. The article 1 of both covenant mentioned and defined the right to self-determination. The principle has been confirmed and developed in Declaration on Principles of International Law concerning Friendly

Friendly Relations and cooperation among States in accordance with the Charter of the United Nations), adopted by consensus as UNGA Resolution 2625 (XXV) of 24 October 1970, African Charter on Human and Peoples Rights. Adopted in Nairobi June 27, 1981, the Havana Declaration of the Non-Aligned Movement 1961, the article 72 of the Constitution of the Soviet Union 1970, final act of the Helsinki Conference on Security and Cooperation in Europe, 1975, and reaffirmed in International Court of Justice advisory opinions on the Issue of Namibia, Western Sahara, and East Timor. Based on the UN Resolution 1514 in 1961, the UN fourth committee was assigned to take measures for decolonization.

The right of nations to self-determination and participate in the decision-making process of the State is embodied explicitly in article 21 of the Universal Declaration of Human Rights, articles 20, 24, 31, 34 and 38 of the American Declaration of Human Rights, Paragraphs a, b and c of article 25 of the International Covenant on Civil and Political Rights, article 3 of the first Protocol 1 to the European Convention on Human Rights, article 16 of the European Convention on Human Rights, paragraphs a and b of Article 23 of the American Convention on Human Rights, articles 13 (paragraphs I and II), 27 (first paragraph) and 29 of the African Charter on Human Rights. Article 25 of the declaration on the granting of independence to colonial countries and peoples 1960, is based on the attribute that the interference by colonial powers in the internal affairs, is denial of fundamental human rights and contrary to the UN Charter. Therefore, according to the declaration all peoples have the right to freely determine their political status and to develop their own economic, social and cultural institutions.

Consequently, the international community's attention to the issue of self-determination, was the independence of 70 territories during the gaps of 1945 and 1979. The implementation of covenants on the issue of self-determination has not been very successful. Reviews of the Human Rights Committee concerning apartheid in Namibia and Palestine, had been focused more on states than

nations.¹⁵ According to surveys among the countries around the world, nowadays, all the states have embodied the right of the nations to freely choose their sovereignty and political status in their constitution except about 10 countries such as Saudi Arabia and the other Persian Gulf littoral states. Anyway, the right to self-determination was accepted as one of the principle of international traditional law after the incidents of 50s and 60s decades. After the enacting of covenants in 1966, this right was changed to one the international rules officially and publicly, but there was a disagreement on the issue that the right to self-determination belongs to which generation of The Human Rights. Consequently, the International Law Commission in 1966 with respect to existing international instruments and their interpretation, states that the principle of self-determination is a peremptory norms of international law.¹⁶ International Court of Justice in order to the transparency of self-determination, in its advisory views explains the concept. The ICJ in its advisory opinion on Namibia case, stated that the principles of self-determination is a basic rule of customary international law which includes freedom to freely express the true will of nations and hence can be used to end all colonial situations and states.¹⁷ The same view was repeated in the case of western desert after few years.¹⁸ The right to self-determination with regard to conformity of international law commission in 1966 with reference of UN charter's content, covenants and declaration of granting the independence to the colonies (1960) and a number of UNO resolutions including the resolution number 1514 and 1803¹⁹ have been recognized as the Jus cogens.²⁰

The right to self-determination belongs all the peoples, or in other words belongs to the majority of population in any given country, and the religious groups, ethnic, national and other minorities in a country cannot rely on the right on basis of their minority perspective. The exercise of the right by all peoples in a country is possible; on the other hand, minority group's population will be able to benefit from this right along with other members. In this context, a minority group in a country cannot determine the political, social and economic independence for itself and separates from the rest of the population, under the pretext of self-determination.²¹ This interpretation has been confirmed in the practice of international law.²² In fact, minority groups are able to pursue their own legitimate objectives such as “the right to participate in political life, economic and social rights to protect their cultural identity” with respect for the sovereignty and territorial integrity. In international practice, Quebec situation in Canada and the Republic of Tatarstan in Russia are justified by this theory. In other words, applicability of the right to self-determination to minorities and indigenous peoples under the human rights framework and especially articles 25 and 27 of the International Covenant on Civil and Political Rights is taken into consideration.²³

Article 8 of the Statute of the International Criminal Court, adopted in 1963 after counting the

¹⁵ . Declaration on the Principles of Int'l Law, Supra note 4.

¹⁶ . Ibid., pp: 37-50.

¹⁷ . ICJ Reports 1971:16.

¹⁸ . ICJ Reports 1974:12.

¹⁹ . Bahmani Qajar, Mohammad Ali. op. cit. p. 77.

²⁰ . Antinio Cassese 1996, p.37.

²¹ . Parvin, Kheirollah & Faghfour bilandi, op. cit. p. 55.

²² . Antinio Cassese 1996, pp 112-114.

²³ . Bahmani Qajar, Mohammad Ali. op. cit. p. 80.

instances of war crimes and emphasis on the prohibition of these samples and punishment of 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.²⁴ 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.

However, with regard to semantic evolution of the self-determination, it seems that the right is no longer considered peremptory norms of international law.²⁵ According to the content of international legal instruments and interpretations, the self-determination is understood as a binding international obligation.²⁶ The International Court of Justice in its ruling on the eastern Timor (1995) termed the right of self-determination as a public inclusive obligation.²⁷ The ICJ emphasized on content of right of self-determination as an obligation erga omnes, over the case of Israeli Security Wall, 2004. Considering this right means that although this erga omnes 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.²⁸ Hence, as 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.²⁹

The principle of territorial integrity in international law establishes the general respect for the inviolability of frontiers and the territorial integrity of all countries. The principle expresses that territory of a country should never be invaded, aggressed or disintegrated illegally by others. Territory is the material base and necessary condition for the entity of a state. Government can have existence without territory that determines the existence of a state. In other words, respect to territorial integrity is one of the traditional principles of international law which adopted in international instruments and procedures of the International Court of Justice.³⁰ 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.³¹

²⁴ . Ale-Habib, Ishaq. op.cit. p. 549.

²⁵ . Antinio Cassese '1996, p. 1324.

²⁶ .Ibid., p: 1234.

²⁷ . ICJ Reports 1995; 24.

²⁸ . Aghaei, Bahman, law dictionary of Bahman, Ganj Danish, 1999, Tehran.

²⁹ . Wallace, Rebecca, Translation: Zamani, Sayed Ghasem and M. Behramlu, in 1387, Shahr Danesh, 2008, Tehran.

³⁰ . ICJ Reports, 1978,p. 36.

³¹ . Bahmani Qajar, Mohammad Ali. op.cit. p. 75.

The UN Charter obliges all members to refrain from using force or threat against the territorial integrity of any state. However, there is different total land area of each state but it is regardless of the indisputable fact that without territory, state sovereignty doesn't exist. On the basis of this principle the territory of all states are protected against aggression, invasion or illegal decomposition. Any military, economic, political, etc use of force against the territorial integrity of a state is inadmissible. Military occupation of any state territory should never be the case and any authority over a territory or occupation as a result of the use of force or the threat of it, is illegal. But the secession or separation in any territory with consent of people and state is legal. Under the international law, if the government ignore individual's rights, people will have the right to take their destiny into their own hands. As a result of self-determination, people can decide to separate from a territory and join to another state, or still may be a single state in the country to bring several other independent state. For example, many countries in Asia and Africa involved in conflicts and wars and finally gained independence from European colonial states. After the collapse of the socialist countries, new countries with new lands emerged that have been recognized by the international community.

The ICJ in its advisory opinion 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 principle 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 statements.³² The international conference on human rights (Vienna meeting) in 1993 emphasizes on any secessionist prohibition. In paragraph 1 of second part of this statement, after counting the importance of implementing the right of self-determination we read that the right of self-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.³³

Sovereignty, Transformational frameworks and the Innovative International Law: State entity in international law, has an exclusive jurisdiction in relation to its territory and people and only it will be limited by any treaty with other states.³⁴ states 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.³⁵ This system currently operates in a decentralized way and yet the

³² .Antinio Cassese (1996, pp. 112-14.

³³ . Bahmani Qajar, Mohammad Ali. op.cit. p. 80.

³⁴ . 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.

³⁵ . Zamani, Qasem, International Law, Torn Between Intention and Law, Islamic Azad University, Tabriz Branch, Tabriz, 2010, p. 17.

validity and reliability of the rules depends upon the consent of states. International law system is not free of defects. It has its own weaknesses.³⁶ The states 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.³⁷ The only serious challenge against the concept of sovereignty of countries' government dates back to the final decade of 20th 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.

Sovereignty was first emerged in the literature of international law in the 16th and 17th centuries (the Peace of Westphalia), and it has been discussed similar to many fundamental political issues and it may involve substantial changes. For this reason, there are many jurists and politician believes that substantial change in terms of sovereignty is happening, from the concept to the states practices. Some researchers put post-modernism and post- sovereignty on equal footing. Some other imagine a global political system in which states, if any of them exists, follow the global community and they are no longer independent and individual actors. Other researchers switch from sovereignty to moral procedures in international politics and highlight a philanthropic atmosphere. This tendency has been more highlighted and human rights and humanitarian intervention as a standard for global strategy becomes more clear. Even some researchers 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.

Some other thinks of alternative methods. One of these methods is international federation in which the economy weakens the dominant power of states 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.³⁸ Some other researchers hold a more legal view of sovereignty. R. P. Anand defines sovereignty as the high authority of a state within its boundaries, but within the framework of binding international norms and conventions. The encyclopedia of international law has defined sovereignty as follow “sovereignty in the sense of contemporary international law denotes the basic legal status of a state that is not subject, within its territorial jurisdiction, to the governmental,

³⁶. Henkin Loius ‘International Law: politics, values and function, general course of international law ‘RCADI ‘1986-IV pp. 9-45.

³⁷. Abolfazl Ghazi. Basic law and political institutions, Tehran University Press, 1994.

³⁸. Jack Son Robert ‘*Sovereignty at the Millennium* ‘Political Studies ‘XL VII ‘1999, P.427.

executive or judicial jurisdiction of a foreign state or to foreign law other than international law”³⁹. But nobody has ever ruled out the possibility of emergence of widespread changes in his concept. 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 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.⁴⁰

The principle of sovereignty was introduced in the international context by the Charter of the United Nations for intensifying the process of decolonization in the 1960s and 1970s. This trend was created by team of designers of the UN Charter due to their special attention to the political and security importance of the principle of territorial integrity, sovereignty and the right to self-determination of all nations. In other words, for establishing the sustainable peace and security in international order, the domestic order, security and development were ignored and the states rules of conduct intentionally explained in such a way that the state treatment of its citizens and the relationship is strictly under the domestic jurisdiction and it has no relevance to the international law. By establishing the principle of sovereignty in this period, the role of people and nations to their sovereign rights and independence against states, became weak and secondary aspect. As a result, in many colonial territories governments and individuals came to power with no operational efficiency and popularity to create stability in the domestic institutions. But, the consequent of the process of decolonization and the emphasis on the ordering of international relations centered on sovereignty, was the importance and enlargement of the external dimension of governance sovereignty entity.⁴¹

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 states refused to accept the UN bodies’

³⁹ . Encyclopedia of Public International Law, Vo1.10, P.408.

⁴⁰ . see: <http://www.un.org/aboutun/charter/chapter1.htm>

⁴¹ . Eslami, Masoud, *From the State Sovereignty to Global Governance*, Reflecting on the Process of Establishing International Cooperation, Journal of the United Nations, Permanent Mission of the Islamic Republic of Iran in New York, Spring 1375, the first year, No 1, p. 33.

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.⁴² 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.⁴³

The broad interpretation of the Charter, the evolution of international security and development of international law in the future, will enter more restrictions on the concept of sovereignty. The recent developments in the international scene, mainly as a result of the collapse of the communist pole started a new situation that the Western world is sole player in the political scene and the NAM, which is seeking to find new targets for survival, has weakened further. The information revolution, the collapse of information and economic boundaries⁴⁴ 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.⁴⁵ Many Characteristics of communities such as sense of interdependence among members and general common interest don't exist in the international community. Lack of common beliefs, the widespread conflicts of interest, political and cultural diversity were the barriers to formation of international community, for a long time. However, the community formed and now exists. Some aspects of dependency such as "all the nations of the world are under the shadow of satellite and internet networks which has led to public awareness of their global peers and increased global exchange" have brought states together. United Nations subsidiary bodies, such as the Universal Postal Union and the International Telecommunication Union, have accelerated the international communications and also the business relations in diplomatic and consular contacts, have expanded the contacts between members of the international community.⁴⁶

Jurists and politicians in the 20th century are largely divided on the notion of sovereignty. There are some who describe sovereignty as external or internal independence, some other have considered two aspects for sovereignty; internal sovereignty or freedom and external sovereignty or independence and Finally, some who believe that in the current era of public international law, sovereignty is contrary to the new theories. According to these opinions, political power is such a limited power that competent authorities of the country establish under the constitution. None of the

⁴² . The principle of non-interference in the internal affairs of other countries is one of the most evident results 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 states. This principle obliges states 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.

⁴³ . Eslami, Mohsen, A Prelude to Concept of Sovereignty, Ettelaat Newspaper, No 22491, May 27, 2002, p. 6.

⁴⁴ . Luard Evan 'International Society 'Macmillian 'London '1990 p. 273.

⁴⁵ . M. Y. Saeed, Change in UN Definition of Sovereignty, Office of Political and International Studies, Tehran, 1994, p. 217.

⁴⁶ . Zamani, Sayed Ghasem, 2008, p.21.

opinions expressed are in compliance during their period. Therefore, firstly it's obvious that the innovative international law has recognized the sovereignty of states, and secondly the sovereignty only in the domestic field (national sovereignty), however not absolute and unconditional but as a subject to international law is acceptable. In other words, sovereignty as a new concept means the right to decide and govern all concerning affairs within its borders and being independent from any internal or external power (independency). The only limitation is due to the strength of the international law. But in the field of international, sovereignty becomes new concept named jurisdiction. The international law has recognized legal authority and power for each state in the international arena and its called jurisdiction.⁴⁷ However, it should be noted that the importance of fundamental human rights based on human dignity and the obligation of states to respect these rights, have weakened the absolute power of the sovereignty and geographical boundaries. Given the inconsistency of the principle of sovereignty with international support for human rights, two basic theories have emerged which support to the conflicting strategies. Some followers of this theory, have considered the nationalism, or transnational in coverage of the sovereignty of states as constituent elements in the international system. The transnational mechanisms of human rights, will replace international human rights protection. In this regard national sovereignty as an obstacle to the implementation of international human rights should become a secondary factor or destroyed through changing the traditional nature of the state. The regulators of the United Nations Charter had realized correctly by the embitter fate of the League of Nations, that ensuring international peace and security depends on economic and social cooperation among different nations and reduce and eliminate forms of discrimination and inequalities in the international arena and as long as international relations reside in the context of discrimination, inequality and injustice, it is impossible to attain a peaceful and secure community.⁴⁸ In contrast to this theory, another theory has been emerged and pursued especially by some pragmatic scholars in foreign policy, which is less interested in international protection of human rights. In fact, from this perspective, states sovereignty is the basic and fundamental formative element of the international system. Therefore, states with sovereignty not only provide the rules of the international protection of human rights, but also but it clarify whether or not it should be implemented in accordance with their will. These views have both been criticized and consequently a new concept is born out of sovereignty in modern international law, which considers sovereignty as a basic and essential element for all the states in the international system. It focuses on the rules of UN Charter as a international constitution. The Un Charter has recognized and emphasized on the equal sovereignty for all member states and liked it to the view that international legal and political order depends on the stability of states and their capacity for effective action.⁴⁹ The Charter clearly indicates that the basis of respect for territorial integrity is essential in international relations. Paragraphs 1, 4 and 7 of Article 2 of the charter openly call for respecting territorial integrity as the base of international

⁴⁷ . Ziaei Bigdeli, Mohammad-Reza, International Law, Ganj Danesh Edition, Tehran, 2010, p. 188.

⁴⁸ . Kharrazi, Fardin, the Human Rights Council and the strategy of the Islamic Republic, Institute of International Studies - Center for Strategic Research, Tehran, Summer 1386, p. 13.

⁴⁹ . Abbasi Ashlaqi, Majid, Humanitarian Interventions and National Sovereignty, Ettelaat Newspaper, Nos. 175-176, 2002, p. 90.

relations. There are some exceptions in Chapter VII of the charter, but none of them does consider as violation of the principle of sovereignty of states.⁵⁰

The extraordinary development of the science and technology and the Olympic Games have taken an important step and crossed all the borders between the nations of the world and increased intellectual activities. The natural disasters and changes in gold price, oil states follow with enthusiasm all around the world. All the efforts to solve the problems such as hunger, environmental pollution, human rights violation, terrorism, the threat of weapons of mass destruction and population explosion, have a global dimension and concerns the interest of all nations. The spread of swine flu is the best example of this subject. Maybe now it can be concluded that this amount of awareness is real basis for the formation of the international community. However, states are not the only subject in this community, but there are other subjects to participate such as non-state organizations, multinational Corporations, liberation movements, refugees, minorities, and there is a intense competition between these actors and the original subjects of the international community and somehow the non-state actors gradually expand their contribution and becoming an intensive cooperator. For instance, a glance at the expression “international community as a whole” in resolutions and statements released by international organizations, doesn’t indicate destruction of the state's sovereignty and anarchy. Continuity of the international community is dependent on the presence and cooperation of state actors and non-state actor's.⁵¹ Sovereignty means greater power to make decisions without any legal restrictions⁵² and the competent legal authority in the hierarchy of the civil justice system and in practice, mainly it belongs with domestic society.⁵³ States have no sovereignty outside of their borders, but they exist under the international hierarchy.

The consensus of jurists on objective developments in international relations is indicative of restrictions in the sovereignty of states 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 states.⁵⁴ 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 states, but due to its structure which has been developed by sovereign states, it is largely dependent on the survival of states. That is why international law is based on defending restricted states. Although international law is totally independent from international players, it is based on states and it recognizes the legitimacy and legality of states

⁵⁰ . see: <http://www.un.org/aboutun/charter/chapter1.html>.

⁵¹ . Zamani, Sayed Ghasem, 2008, p.22.

⁵² . A. V. Dieey ‘Law on Constituion, quoted by Neil McCormick. Questioning Sovereignty ‘ Oxford Uai. Press ‘Oxford ‘1999, p. 127.

⁵³ . Arsanjani, Hassan, the sovereignty of states, organizations Pocket Books, Tehran, 1342, p251.

⁵⁴ . Adoption of any legally binding rules necessarily limit the sovereignty of states Kazemi, Ali-Asghar, Theory of Convergence in International Relations, Qumes, Tehran, 1991, pps. 120-121.

except for certain cases of restrictions of freedom by some states. It seems that we can refer to the ICJ verdict in the Lotus case as a proof.

Not only the international law does not interest to adjust the sovereignty of states, but it has Not the potential to implement such a program. International law that is made by states, evolves to develop only in cases where actors decision emerge or requirements of the collective life leads the states to accept and implement international norms. Therefore, it protects the the sovereignty rather than puts limitation. In fact “ the protection of fundamental interests in any society requires the criterion that represents the interests of the whole community not limited part of that”⁵⁵ and collective life in society ensures the states to take measures or cooperate to gain what is best for the common interests. If it is necessary for states to reduce their initiative and freedom of action, only under the international legal order and other than this case, the sovereignty rules.⁵⁶ In other words, the relative sovereignty has been restricted over time in order to increase solidarity and cooperation of development in interstate ties and interests of human society and for the benefit of collective. But the fundamental norms and principles of international law prevent that this process bring any possible damage to the sovereignty of states or question the dynamic role of the states under the international legal order. The principle of state sovereignty and equality, is the cornerstone in survival of each state in international law.⁵⁷ Sovereign equality, derived from the nature of this rule which is defined state can have sovereignty over its territory and should not be governed by foreign state.⁵⁸ The right to conclude treaties as well as the possibility of exclude the binding effect rules which is freely accepted within the legal order, are the most striking cases in exercising the sovereignty of states in international law. Process of disarmament and non-proliferation weapons is an obvious example.

One of the most important concepts of international law, which has many impacts particularly on the sovereignty is globalization. In the current globalization era, open society, open technologies, creation and institutionalization of the international regime facilitated. These factors are instruments to create pressure under the pretext of realization of an open society and promotion of human rights and democracy.⁵⁹ In fact, globalization in the modern world means expansion and deepening of transnational relations.⁶⁰ These trends has failed to act in weak or undeveloped states. These

⁵⁵ . Zamani, Sayed Ghasem, an Introduction to Impact of peremptory norms of international law on the interpretation and the implementation of Security Council resolutions, Alexander Arklsk Wiley, Journal of Law, Spring -Summer 84, No 7, p. 56.

⁵⁶ . In other words, the principles and norms of international law, persuade states to seek to gain the collective interests rather individual interests. The principles must replcae the power of the independent authority to sustainable international security . Trazkouhy, Hussein, the International Law Commission of the United Nations and Iranian jurists, *ibid.*1384.

⁵⁷ . Some aspects of this principle, such as the right to autonomy and self-determination of nations, is a peremptory norm of international law. see also: *ibid*, p 64.

⁵⁸ . Trazkouhy, Hussein, norms and international legal order, the Office of International Political Studies, Tehran, 1375, p. 28.

⁵⁹ . Zarif , Mohammad Javad & Zahrani, Mostafa, New International Practices, he Office of International Political Studies, Tehran, Winter 1386, p. 6.

⁶⁰ . Keohane, Robert O. 'Global Governance and Democratic Accountability'. translated by Ali Tabatabai, ournal of International Organizations, April 2004, No. III.

institutions not only for the organization but for the ideas and goals to undermine the sovereignty of states. These institutions, for example multinational corporations, with expanding the subdivisions become part of state activities.⁶¹ According to well-known theorist Robert Gilpin, the idea that the states have weakened by transnational forces of globalization has been a main debate. According to new research, international organizations and non-state actors has been a key factor in international relations. Some also believe that with the globalization of the economy, there is no other national economies and national policy has lost its effectiveness. Gilpin believes that such a hypothesis is not correct and the state-nation will remain a major player in the domestic and international scene.⁶² States remain the most powerful actors in world politics, but it is simplicity if we consider that global politics exists just between states.⁶³

With the globalization, the widening gap between the threats and security requirements and the states capabilities and resources is a new challenge. The current world political order is very complex and interconnected, along with the previous component in the international scene, where the cross-country increasingly influenced and surrounded by global political channels. It is because of the chaotic appearance and sights that it shows.⁶⁴ However, some given trends such growth of supranational union, the rapid development of various new forms of international regimes, evolution of the scope and subject of international law, the emergence of regional organizations and nongovernmental organizations, can be identified. All these developments indicate the global politics transfers in the form of complex and multi-layered system. Currently, we are witnessing multiple and overlapping political processes which undoubtedly effects on the issue of sovereignty. However, the concept of sovereignty hasn't transformed yet to a redundant and absurd, but there has been more pressures on its scope and forms of political definition emerged. Sovereignty tools and methods has been changed And states should establish new methods to develop and enforce it. In this world order, political community is still made by the government but not exclusively. With the globalization, the scope of power and power relations and execution has been expanded and the action of any state or non-state-actor in the continent can be profound and have consequences for nations, communities, families and individuals are located in other continents. The emergence and development of information and communications technology and network technology, has increased worldwide human communication to a new level it will continue with more speed. As we are becoming increasingly open to international network system and electronic information networks will be a central nervous system of international relations. At least in terms of subject and audience, there is not a clear boundary between the domestic and international scope. Because of the growth of information and communication technologies increases people's knowledge, foreign relations is outgrown foreign policy. The content of public diplomacy in addition to traditional subjects, political and military, covers a wide range of economic, social, cultural, environmental, scientific, etc.

⁶¹ . Cusimano, Maryann 'Beyond Sovereignty: Issues for a Global Adenada 'Catholic University of America 'New York '2003 Seconded. P. 80-95.

⁶² . Zarif, Mohammad Javad & Zahrani, Mostafa, Tehran, Winter 1386, p. 6.

⁶³ . Keohane, Robert O, *ibid*, p. 6.

⁶⁴ . Pug wash Report, Study Group on Intervention, Sovereignty and International Security, http://www.amacad.org/blvliiin4/blvliiin4_17.htm.

International organizations are another issues that will be useful to consider. International organizations have an important role 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 states and on the other is influenced by new theoretical views and international norms which regard sovereignty beyond the competency of states. The idea of global sovereignty is an alternative for state-nations ruling system.⁶⁵ Diplomats, foreign ministers and the entire staff of the foreign relations lose information on foreign affairs and no longer can control the flow of information from the outside towards the inside and vice versa. In the past, the limitation of information and communication technologies in the field of foreign relations had created the small frame of officials in the field of foreign relations and had made the gatekeeper stand in foreign relations information. But the important improvements, fast growth of technology Especially the increase in information networks connecting the world through information infrastructure and the growth of satellite communications, television and radio, significant evolution is happy enning in the duties, responsibilities, and the role of actors, diplomats and foreign policy.⁶⁶ Although the sovereignty as a political and legal concept is the top of a discussion, but no longer considered as an absolute and exclusive aspect. Global developments, although very slowly at the beginning and at the moment is very fast, but they have had broad impacts on the political and legal concepts especially such as sovereignty. States are not able to survive solitarily and they are components of bigger community and need to involve in mutual influence and affect. A few tools, techniques, methods and new mechanisms have trespassed and penetrated the territory of sovereignty. As mentioned above, wide changes will be emerging in relation to concept of sovereignty, territory and other related issues which will definitely reform international relations and the principles of international law. The concepts that will cost international community unthinkable struggle.

Responsibility to protect, Terrorism and deviation of the original concept: 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. 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

⁶⁵. Islami, Masoud, Spring 1375, P. 27. See also Knneht N. Waltz 'Theory of International Politics 'Reading, MA: Addison-: Addison '1973', p.81.

⁶⁶. Sovereignty, Intervention, and Peacekeeping: The View from Beijing, <http://www.brook.edu/dybdocroot/views/articles/gill/2000survival.html>.

glasses.⁶⁷ Transformation of this concept into the dominant paradigm in the current decade providing a new conceptual framework for international action in the context of war and, ethnic, religious, and etc insecurity was another practical consequences. 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 7th 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 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 Horror in 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.⁶⁸

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. The UN former Secretary General Kofi Annan called this controversy as a "real dilemma" between the "defense of sovereignty" and the "defense of humanity". But this gap should be resolved in favor of victims.⁶⁹ UN Secretary General Kofi Annan on the Millennium Report of the General Assembly in 2000 entitled "We the people, the role of the United Nations in the twenty-first century," with recalling the dilemma stated "If the humanitarian intervention is an unacceptable invasion to sovereignty, then what would be our response to the atrocities and gross and systematic violations of human rights in Rwanda and Srebrenica?". 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 UN. This Commission by performing necessary studies and consultations presented its report to the secretary general of UN 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 predicament between intervention and sovereignty.⁷⁰ This report that was passed by the world leaders (2005) with some changes, expresses that Millions of human beings are exposed to civil wars, unrest, state repression and consequences of the collapse

⁶⁷ . Soltanzadeh, Sajjad, Legal Review of Russie Invoke on Responsibility to Protect, Journal of Foreign Policy, Winter 1388, Year 23, No. 4, p. 2.

⁶⁸ . ICISS, The Responsibility to Protect, 2001, p. 67.

⁶⁹ . Soltanzadeh, Sajjad, Ibid, p. 3.

⁷⁰ . ICISS, The Responsibility to Protect (Ottawa: International Development Research Center, 2001, p. 80.

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.⁷¹

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 state'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.⁷² More than a decade has been passed of the idea proposed by the Canadian Commission on the intervention and the state sovereignty⁷³ 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 terrorism⁷⁴ 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 (1993) 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

⁷¹ . UN General Assembly, World Summit Outcome, Resolution A/RES/60/1 October 24, 2005 .

⁷² . Evans, *The Responsibility to Protect*, 2008., p.164.

⁷³ . ICISS.

⁷⁴ . *Response to Global Terrorism*.

'intervention' changed to "protect" and a bit isolated from the literature of humanitarian intervention. At present, the meaning that is understood by humanitarian intervention is deeper than that was discussed in 2001. With all these developments, the focusing was on issues such as responsibility to protect widespread killing, systematic women rape, famine and children for many years. Despite all the developments, there has been an accordance which give the primary responsibility for action to the origin state and in case of inability or unwillingness to act in a complementary competencies transferred responsibility to the international community. The concept of responsibility to protect also includes responsibility for response, reconstruction and prevention as well in itself. The idea of the responsibility to protect has been in the traditional concept of humanitarian intervention anyway. Westphalian concept of sovereignty was attributed in their decision-making authority of the government in connection with the People and resources within the country.⁷⁵ On this basis, the sovereignty is manifested in the first part of Article 2 of the Charter and the principle of noninterference 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. Therefore, double responsibility has been depicted for the states. From the external perspective, to respect the sovereignty of other states and the from internal perspective, to respect the integrity and rights of all its people. The international human rights covenants, states and UN policies and procedures include these two responsibilities. Sovereignty as responsibility is the least thing that should be existed for a good international citizen.⁷⁶ Although the principle is not considered as a new rule of customary international law, but it was accepted and respected in the international process. The process is such that some believe that the sovereignty is not so sacred today as it was in 1945.⁷⁷ In such an atmosphere Richard Hams, has given the proposal of encroachment and abuse5 of sovereignty.⁷⁸

Before 9/11, the reaction against terrorist attacks was justified in the form of self-defense and the right of legitimate defense. The actions taken by America in justifying the military attacks can be referred in relation to Libya 1986 for the pretext of terrorist attacks to the night club of Berlin, aggression against Iraq 1993 as a pretext of attacking the then president Bush of that country, aggression against Afghanistan and Sudan as a pretext of detonating the embassies of this country in Kenya and Tanzania 1998.⁷⁹ 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.⁸⁰

After 9/11, America tried to activate the capacity of Security Council by exploiting theatmosphere that was created following this incident. The adoption of multilateral sanctions within

⁷⁵ . T. Reinold 'Sovereignty and the Responsibility to Protect: The Power of Norms and the Norms of the Powerful 'Routledge '2012, p.20.

⁷⁶ . Graeth Evans and Mobamed Sabnoun, The responsibility to Protect, Foreign Affairs, November/December 2002, p. 102.

⁷⁷ . R2P After9/11 and the World Summit, Thomass G. WEISS Wisconsin International Low Journal, P 744.

⁷⁸ . Richard N. Haass, the Opportunity: America's Moment to Alter History's Course 41(2005).

⁷⁹ . Theresa Reinold 'sovereignty and responsibility to Protect 'Routledge 'london '2012.

⁸⁰ . A. Hehir and R. Murray 'Libya, the Responsibility to Protect and the Future of Humanitarian Intervention 'Palgrave Macmillan '2013, p.142.

the framework of the fight against terrorism is considered as its samples.⁸¹ 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 90s, 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.⁸² 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'. 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.⁸³ 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 the regimes can take action against their citizens, neighbors or the rest members of 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).⁸⁴ 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.⁸⁵ 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

⁸¹ . Theresa Reinold (2012, p. 98.

⁸² . A.J. Bellamy (Responsibility to Protect (Wiley (2013, 87.

⁸³ . A.J. Bellamy (2013, p. 54.

⁸⁴ . 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.

⁸⁵ . Combating terrorism status of DOD efforts to protect its forces overseas: report to congressional requesters (DIANE Publishing (,p.19.

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.⁸⁶ 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 war⁸⁷.

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.⁸⁸ 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 Teson⁸⁹ and Nardin⁹⁰ 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 very much and early.⁹¹ However, Ineffective action in Rwanda, (similar to action was adopted on Darfur) is serious threat to international order and justice in compare to what happened in the case of Kosovo. What did NATO was not fair as an international response compared with what happened in Rwanda.⁹²

America's national security strategy documents⁹³ 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

⁸⁶ . J. Hocking and C. Lewis 'Counter-terrorism and the Post-democratic State 'Edward Elgar Publishing, Incorporated '2007, p.125.

⁸⁷ . Preemptive or Preventive war.

⁸⁸ . P. Cunliffe 'Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice 'Taylor & Francis '2011, p.43.

⁸⁹ . Fernando R. Teson, Ending Tyranny in Iraq, 19 ETHICS and International AFF.1,1 (2005).

⁹⁰ . Terry Nardin, Humanitarian Imperialism: Respones to Ending Tyranny in Iraq , 19 Ethics and International Aff. 21, 21 (2005).

⁹¹ . F.L. Edwards and F. Steinhäusler 'NATO And Terrorism: On Scene: New Challenges for First Responders and Civil Protection 'Springer '2007, p.162.

⁹² .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.

⁹³ . National Security Council, The national Seurity Strateg of the United States of America (Sep. 2002),

as Adam Roberts, have provided portray in the atmosphere of international community after 9/11.⁹⁴ 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 'The Nation'.⁹⁵ 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.⁹⁶ 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.⁹⁷ 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.⁹⁸ 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.

As it seems to be the literature of the humanitarian intervention to the responsibility to protect has been evolved, but still can't say for certain that it has increased the vigor of the political arena. In short, after the so-called victory in Iraq, the attention was seriously drawn to the issue of humanitarian intervention, but then relevant events such as Afghanistan situation and the war on terrorism happened have emerged as a new challenge in future. As a result of the irregular and dishonest practices from Washington and London against the third world countries, the process has been reversed and started slow. Similar events such as Bahrain and Yemen situation in recent years represent the deviation of the idea of the responsibility to protect. In fact, the attitude of the states

available at [http:// www. whitehouse.gov/nsc/nss.pdf](http://www.whitehouse.gov/nsc/nss.pdf)

⁹⁴ . Adam Robers, The united Nations and Humanitarian, Intervention, in HUMANIT INTERVENTION and International Realations 90 (Jennifer woush., 2004).

⁹⁵ . The Nation.

⁹⁶ . Richard Falk et at., Humanitarian Intervention: A Forum, The Nation, July 14, 2003, at 11,12.

⁹⁷ . 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.

⁹⁸ . T.A. Johnson 'The War on Terrorism: A Collision of Values, Strategies, and Societies ' Taylor & Francis '2008, p.17.

sponsor the idea of the responsibility to protect, indicate the use of double standards in this field and often the original idea of the responsibility to protect has been used as a political tool.⁹⁹

Conclusion: In this paper, as described in the introduction as well, to achieve a common understanding of the existing international legal regime and what is changing in international legal literature, three main elements were discussed. The principle of territorial integrity as a fundamental and traditional rule of international law, were scrutinized. Then it was indicated that the change of the territorial integrity nature and providing limitation rules has had a considerable effect on the extension of the right to self-determination. It was found that in practice of the United Nations (and its specialized organs and agencies) the right to self-determination was nothing more than the decolonization and there has been an utter silence about the benefit of the special rights of minorities and even separation and Instead underlined the need to respect states sovereignty, independence and domestic jurisdiction. The separation and the formation of new states, which have not their roots in decolonization or not made by voluntary agreements, and after a successful stabilization separatist movement, has been reluctantly recognized by the UN. It also noted that there has been a different situation in recent years, and especially since the collapse of the Soviet Union and former Yugoslavia. There are ongoing evidences that affirm the right to self-determination has been considered far beyond the decolonization and going further to the foreign occupation. In this case there is a explicit violation of human rights and the willingness of the majority and sovereignty of the people will be suppressed. These claims conduct the self-determination in a new post-colonial way. It was noted in Kosovo and South Ossetia cases that the recognition of the Kosovo is a exceptional case and does not create a precedent in international law. in light of these studies it seems that a new definition of the principle of territorial integrity, self-determination are entering the literature of international law. Such an approach cannot be achieved unless the evolution of the sovereignty are examined. The author of this article come to understand that the sovereignty has been redefined, reconstructed and limited.

Alongside with developments after the end of the Cold War and after the so-called terrorist incident of September 11, redefinition process of the territorial integrity and self-determination principles under the influence of international human rights and globalization has led to an approach called responsibility to protect, and rapid response mechanisms in that regard. All of these instruments, regardless of the legitimacy or validity of the supporting arguments of the whole idea, have Implemented direct or indirect under the definition of sovereignty. The gross violations of human rights was the only concern that could overcome the resistance of states in favor of the sovereignty against the limitations that have been put forward and easily satisfy the public opinion over the sovereignty. Advocates for this matter have been tried to shift the public attention and jurists from the original and established rules of human rights. Describing and institutionalization of double standards on human rights and adopting measures to do so In the form of threats to international peace and security and rapid reaction forces have provided a metamorphosis in a wide range of topics of the international law. Malfunction of the concept of responsibility to protect, uncontrollable events and circumstances after the intervention in the host country, all these facts have left the whole concept in theoretical form not practical. There is no dispute and doubt to the

⁹⁹ . Gillian Duncan , Orla Lynch and Alison M.S. Watson, *State Terrorism and Human Rights: International Responses Since the End of the Cold War*, HWA Text and Data Management, Routledge, London, 2013, p68.

protection of human rights norms, but the problem is the conflict between these norms and the traditional principles of international law. In fact, the traditional international law which is founded under the principle of equal sovereignty, the principle of non-interference in the internal affairs of states, the ban on the use of force and the principle of peaceful settlement of disputes and has encouraged all the states to take collective action for peace and justice in the global policy, it can't be designed in a new layout and process. Using the international organizations as a new authority and capacity in the multilateral diplomacy on the pretext of combating terrorism is in this matter. In response to the first question, it can be noted that the traditional form of international law has been cracked and there are new branches to appear. Reviews conducted by the author based on the most important documents and papers related to it which is cited in this article, stating that the responsibility to protect was on the basis of human need need to ensure the establishment and maintenance of international order and was proposed to the court of the international community in the form of traditional international law, but it currently has deviated from the origin purpose. In response to the second question it should be noted that the use of this capacity in the fight against terrorism was not in accordance with traditional principles of international law and the responsibility to protect the, in such a situation, the law is misguided and unacceptable. Action without Security Council authorization in the form of the fight against terrorism is a serious deviation from the original idea in practice, and it is just a tool to accelerate the transformation of traditional international law. In the new international legal regime there this desperate urges to establish and define a new mechanism as if the Second World War has recently been ended and the world needs to create international mechanisms such as the UN. Although it is too early to predict whether to change the Charter of the United Nations or other entity will be substituted, but its inefficiency and ignorance of the major victor powers of World War II will be evident. Such publicity will decrease the sense of security and states whether strong or weak, will lead to the design of and access to alternative security mechanisms. In this context, all the fragile principles of international law, from human rights to disarmament and collective rights will change. Thereby, it can be concluded that the coalition member states seek to adopt a new approach to make the charter infertile and build a new constructer.

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