

Modern International sovereignty Between assumption and reality

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Abstract

Many developments have taken place since the adoption of the Charter of the United Nations up to now and are still ongoing. These developments have been reflected in the principles of int'l law, especially the principle of sovereignty. The Int'l authority has expanded at the expense of the national authority, which was considered a protective wall for national interests. On its acceptance by states as it has traditionally been known, Jus Cogens rules have emerged that include a core set of Int'l rules binding on all states, including those that did not agree to them, and many national rights have been transformed into Int'l rights of interest to the entire Int'l community, and issues of a global nature have crystallized to impose take precedence over the special interests of states, then the Int'l Organizations became independent and have competencies that are not related to the countries that established them and impose their binding decisions on the states. Finally, Human Rights issues occupied a position that allows the Int'l community to follow up and hold countries accountable for their violations of these Rights as an Int'l matter and not a National one, until Int'l intervention became under the pretext of protecting Human Rights. Combating Int'l crimes and terrorism, protecting the environment and the common heritage of humanity is a prominent feature of Int'l law, which has led to the decline of the principle of sovereignty to narrow and non-stop limits.

Search Plan

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- 6- Human Rights and Sovereignty
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Keywords: sovereignty, authority, organization, rights, international

(Abbreviations)

AJIL : American Journal International Law

EJIL : European Journal International Law

ICLQ : International Comparative Law Quarterly

J.Pol.E. : Journal Political Economy

OUP : Oxford University Press

Tulsa LJ : Tulsa Law Journal

UNDoc.: United Nations Document

Virg.JIL : Virginia Journal International Law

1- Introduction

The state still constitutes the main person of international law and will remain so as long as the United Nations Charter affirms the sovereignty of the state represented by the agreed preserved scope when drafting the Charter as a protective wall that prevents international law from interfering in the affairs of states, and this balance continued for several decades until great developments occurred that led To the decline of the preserved scope and the increase in the areas of international law intervention, which affects the principle of sovereignty agreed upon since 1945 and leads to its decline.

The increase in Jus-Cogens of international law based in their legitimacy on their importance and necessity in protecting international interests at the expense of national interests and adopting their direct implementation without being restricted or observing the principle of sovereignty has imposed a new reality that must be observed.

Public international law has expanded to include issues that are originally within the jurisdiction of states to include them in the jurisdiction of international law (the phenomenon of internationalization) , so states can no longer cover up with national competences to evade performing their duties established in international law.

According to the concept of globalization, international affairs, especially in the economic field , combating terrorism, environmental protection and nuclear energy, have been given precedence over national affairs as global affairs.

And the international organization expanded to get out of the mantle of the sovereignty of the countries that established it, to enjoy independence and to have an international personality distinct from its member states, and to carry out activities authorized to it and take decisions binding on its parties without the need for its approval.

Also, the development in human rights agreements and the opening of direct channels for individuals to complain from their countries to international institutions, and the international humanitarian law has provided guarantees of an international nature for individuals, all of which restricts the sovereignty of states and imposes on them

procedures and measures that penetrate affairs that were considered among the areas of the domain reserved for states.

Furthermore, the development of information and communication technology has made the world a small village in which information travels at the speed of light and economic transactions are exchanged without restrictions and beyond the limits of sovereignty.

The above-mentioned and other developments that will occur later have created conditions that the principle of sovereignty is no longer able to confront without adaptation and retreat in the domain of the preserved domain for the global interest without intersection or collision, with the continued existence of state sovereignty with borders that make it positive with the international interest.

Therefore, the research dilemma is to answer the question: Is sovereignty in its traditional sense still continuing?

Or, has it been adapted in a way that does not contradict or collide with the international interest?

What are the *jus cogens* rules in international law that affect the principle of sovereignty?

What are the limits of the international interest, and how can it be done if it conflicts with the national interest?

What is globalization and how is the principle of sovereignty affected by it?

How does international regulation affect the principle of sovereignty?

What are the developments of human rights and their impact on the principle of sovereignty?

The aim of the research will be to answer the above questions and determine the extent of the impact of the aforementioned developments on the principle of sovereignty in a manner that preserves the existence and continuity of sovereignty and that it is a guarantee of the national interest and in a manner that does not conflict with the international interest.

As for **the means** of research, it is to review all recent developments and determine the areas of their impact on the principle of sovereignty, through the latest books, research and university theses that have been researched in this regard, especially in the English language because of its modernity and continuous follow-up to this topic.

In order to achieve the foregoing, the topic will be dealt with according to the following topics:

2- jus cogens and sovereignty

The law is supposed to keep pace with the modernity of relations between its people and the change of interests and developments in all fields, and this is the case of public international law, whose rules have been adapted and developed in line with the requirements of international relations.

The jus cogens rules in international law were an important means for moving this law from the voluntary doctrine that requires the approval of states on its rules, which caused the decline of its position and its criticism of the lax implementation of it and the shift to the objective doctrine that explains the strength of the law and its source as it lies in the nature and importance of its rules .⁽¹⁾

Undoubtedly , this development has given impetus and intrinsic strength to international legal rules that are not affected by the will of states, because they express the interest of the entire international community as a general system and embody its general rules that are faithful to the guarantee of vital interests. At the beginning of its emergence, it was called the basic principles or general principles of international law.⁽²⁾

From an early time, the International Court of Justice referred to these rules in the Corfu case, when it affirmed the principle of freedom of navigation, which is not affected by international sovereignty.⁽³⁾

In the Vienna Convention on the Law of Treaties, the concept of jus cogens rules was explicitly defined as representing the minimum legal rules that the international community at a certain time deems necessary for its existence, or that impose its absolute obedience on all addressees without dependent on their will and they cannot agree otherwise.⁽⁴⁾

The International Court of Justice confirmed the peremptory character of international humanitarian law in the Barcelona Traction case⁽⁵⁾ and reiterated the basic principles of international law such as the prohibition of the use of force and the obligation to peacefully settle international disputes,⁽⁶⁾ Determining border and non-border armed actions⁽⁷⁾ and affirming the right of peoples to self-determination,⁽⁸⁾ and that the threat of nuclear weapons contradicts international humanitarian law applicable during armed conflicts, the prohibition of slavery and the slave trade , the prohibition of genocide, torture and the freedom of the high seas .⁽⁹⁾

In the case of the American hostages in Iran (1979) , the International Court of Justice confirmed that the immunity of diplomats was considered a peremptory norm, and in the Pinochet case (the Chilean dictator 1998) , the English judiciary confirmed that he should be extradited to Spain for crimes against humanity and genocide in contravention of jus cogens rules .⁽¹⁰⁾

Finally , a special rapporteur was appointed to include jus cogens rules in the work program of the International Law Codification Committee, and the Special Rapporteur

suggested that naming jus cogens rules be among the general rules of international law.⁽¹¹⁾

In sum, the jus cogens rules in international law began to crystallize, expand and consolidate to form a binding legal bloc for states that take into account the interests of the international community and take precedence over the national interests of states and transcend the principle of sovereignty, which was a protective barrier for states to rely on and protect their privacy and avoid being imposed or applied to them without the need for their approval as it is Countries are accustomed to it regarding other rules of international law.⁽¹²⁾

3- Internationalization and Sovereignty

The two theories of unity and duality of national and international laws are no longer able to accommodate recent developments in international relations, so the theory of plurality has emerged, which does not adopt the transcendence of any of the two laws over the other, but rather interacts between them, and one of the results of this interaction is that international law works to restrict the sovereignty of the state In the interest of the international community, especially since there are no separating boundaries in matters that fall within the jurisdiction of the two laws.⁽¹³⁾ The international community has developed, relations between states have converged, and I am convinced of the need to cooperate with each other, because the state is not able to close itself and meet its needs in isolation from other states. To enter within the jurisdiction of international law,⁽¹⁴⁾ which is what is called internationalization, which began with commercial and economic issues (the so-called freedom of trade) and then included environmental, climate and criminal issues .⁽¹⁵⁾ This is evident in the practices of the UN Security Council, which exceeded the traditional borders of sovereignty, as happened with Iraq, which was destroyed and changed its political system, and the former Yugoslavia, which was dismantled into several international entities against the will of its people, and Libya, whose fate is not yet known.⁽¹⁶⁾

In the dispute between Iran, the major powers and the International Atomic Energy Agency over its nuclear program, it is a kind of breach of the borders of sovereignty, because Iran is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons and is bound by international rules that it did not agree to.

Countries are obligated to the idea of internationalization in various ways, such as international treaties, which are the most general and influential method, followed by international norms to a lesser degree, and then the less influential modern general legal principles, which began to take root as a result of great international efforts. Certainly, there will be an overlap of jurisdictions that will cause confusion and ambiguity, and states try to maintain that they have jurisdiction, but as a result, their sovereignty is affected by this overlap.

Therefore, the continuation of holding international treaties and the approval of states on them means the continuation of the decline in the concept of sovereignty, especially in the field of human rights and economic relations of states. ⁽¹⁷⁾

The International Court of Justice in the case of *Cats Bay* (1982) approved many of the norms for the protection of the environment, and the adoption of international rules regarding global sport, as it is now united in all parts of the world, and non-governmental organizations mobilized against the problem of landmines, and the Ottawa Treaty of 1977 was approved, ⁽¹⁸⁾ And the administration of some regions (French Saar region, Kosovo, East Timor) has been internationalized.

And also the internationalization of wars, as in Syria, Yemen and Libya. ⁽¹⁹⁾ In a strange position of the Security Council, which demanded Libya to hand over its citizens accused in the Lockerbie case to the British court. ⁽²⁰⁾

Internationalization means that each country mutually contributes to achieving the interests of the international community. This means the expansion of the international authority through joint action, which is the apparent feature of the international community and was reflected in the dominance of international organizations over many of the traditional countries' jurisdictions, as is the case in the terms of loans imposed by the International Monetary Fund, and what is required by the application of environmental agreements to provide guarantees to protect the environment and prevent without prejudice to it in accordance with these agreements. ⁽²¹⁾

Internationalization has been reflected in the phenomenon of humanitarian intervention that has been repeated in the recent period. ⁽²²⁾ Also, many national constitutions are racing to quote international rules. ⁽²³⁾ That is, there is an increasing tendency to integrate international rules into national constitutions (internationalizing the constitution), especially those related to maritime transport, and airspace, global communications, human rights and environmental protection. ⁽²⁴⁾

Within the limits of the international authority, treaties for arms control, treatment of industrial waste, protection of some types of wildlife, treaties relating to the common heritage of mankind, combating drugs, counterfeiting currency and combating terrorism have become within the limits of the international authority.

4- globalization and sovereignty

Globalization is a set of processes that cover most of the globe and are predominantly economic first, then political, followed by social, cultural and legal ones. It differs from internationalization because it is mainly of an international nature and is not like internationalization that is related to issues that are mainly of a national nature. ⁽²⁵⁾

Globalization has recently emerged in the last decades of the past and present centuries as a result of the tremendous development in transportation, communications and

cultural and economic exchange that transcends the traditional borders of countries. The concept of the global village emerged as a metaphor for the countries of the world, economic globalization, multinational companies...etc. That is, economic and information activities have become the domain of global bodies outside the control of the state, and in light of globalization, the state has become responsible for its actions, even if they are legitimate if they cause harm to others (absolute responsibility).

Most jurists believe that globalization weakens the sovereignty of the state in three areas:

A- Increasing the levels of trade, global markets and economic integration in a way that weakens the nation-state.

B- Increasing the influence of international organizations that have become more independent in influencing the participating countries.

C- Increasing the centrality of international law in dealing with individuals directly and establishing obligations on states towards their citizens. ⁽²⁷⁾

As a result of the concept of globalization, sovereignty is no longer a starting point for the state to act freely in matters that have become the prerogative of the international sultan. The World Trade Organization is the best example of the applications of globalization and how it has transcended the political borders of the state and is affected by profit and loss and adopts the principle of opening markets to global trade in addition to the free flow of money.

Also, international alliances of a military nature to confront terrorism and carry out war operations in which they cross the borders of states and not wait for the approvals of the states that conduct military operations on their lands or through them, where developed countries deal with national and political considerations as determinants of development and lead to the lack of well-being of societies, and therefore they give The priority of global interests over national and the economy over politics. ⁽²⁸⁾

After the events of September 2001, the Security Council issued resolutions that terrorism constitutes a threat to international peace and security, and that confronting it is carried out through Chapter VII of the Charter, which means the use of coercive force on states, ⁽²⁹⁾ in order to exceed the scope reserved for states that states tried to establish in the principle of sovereignty in the Charter of the United Nations.

And in order to accept the idea of putting global interests ahead of national considerations, the concept of compatibility emerged between the two directions. External influences are clear in determining the extent to which the state benefits from its natural resources in a way that does not affect the interests of the international community and the required environmental balance. And when the state is economically backward, it needs help, investment and external financing to carve out its sovereignty when it is not in control of the movement of markets and the movement

of money, which is called the development tax. Several attempts have been made to impose a tax on oil-producing countries in favor of protecting the global environment from pollution.

A new concept has emerged that investment and financing can be supportive of national sovereignty when it strengthens it economically, gets it out of the circle of underdevelopment, preserves its independence and ensures its welfare so as to justify the erosion of the principle of sovereignty for the benefit of the international community.

One of the most prominent indicators of globalization was the acceptance of dealing with Bitcoin as an acceptable currency in the payment of amounts for buying and selling, and no one knows its source or basis for it to be an acceptable global currency for trading without the new globalization system.

Although globalization tends to countries and large unions in ensuring global interests such as the European Union, small entities have proven their efficiency in ensuring global economic interests by increasing the effectiveness of management, raising efficiency and providing homogeneity and specialization, such as Holland, Sweden and Finland, and China and Russia still adhere to the principle of sovereignty To prevent interference in its internal affairs. ⁽³⁰⁾

The state, whether it is big or small, is still a symbol of international relations, and every state is legally equal to the other state despite the disparity between them in terms of capabilities and influence from the realistic side, and it seeks to achieve its interests without affecting the interests of others, and at the same time the state accepts a percentage of the loss in its interests in exchange for achieving International interests. ⁽³¹⁾

5- International organization and sovereignty

The idea of international organization was based mainly on the abandonment by states of some of the powers of national authority to international institutions with a personality independent of the states that established them to exercise these competencies for the benefit of these states.

The UN Security Council works on behalf of states in issues that threaten international peace and security, and it issues decisions that it imposes on states and interferes in their internal affairs, including the use of force against a state that cannot invoke sovereignty to prevent the use of force against it. ⁽³²⁾

Both the European Union and the European Coal and Steel Community issue binding decisions as a legitimate authority for their member states, and they are implemented by the countries of the Union even if they do not agree to them and conflict with their

interests. ⁽³³⁾ This is a development and deviation from the traditional trend of the principle of sovereignty.

The line separating the scope of the national and international authorities has become a changing line under the new international system, and the scope of national jurisdiction has begun to shrink in favor of international jurisdiction.

Also, the efforts of the Atomic Energy Organization and its inspection teams, the Chemical Weapons Organization, its follow-up to the communications and complaints of citizens, the European Court of Human Rights and its response to the grievances of Europeans and the International Criminal Court, its investigation and scrutiny of the information it receives even on countries that are not parties to it, as happened with Sudan and its issuance of the arrest warrant for its former president, ⁽³⁴⁾ The World Health Organization and the health rules it imposes on all countries and UNESCO and its protection of culture and historical sites as a world heritage and not national property, and the International Labor Organization and how it protects workers all over the world and imposes international rules on everyone, All of these efforts have extended to include affairs that were considered within the scope of the reserved power of states, and it was not possible for states to get out of their control and ability to act on them. ⁽³⁵⁾ When Indonesia tried not to implement the conditions of the International Monetary Fund, it led to forcing the head of state to resign. ⁽³⁶⁾

But not all of these developments were positive. Rather, they were exploited in certain issues to achieve the interest of one state at the expense of another under the cover of international legitimacy, as happened when the Security Council intervened in imposing the borders between Iraq and Kuwait to the detriment of Iraqi sovereignty and interest, and the situation was repeated in the fragmentation of Yugoslavia and the recognition of Slovenia by the European group and Croatia, then the recognition of Bosnia and Herzegovina, and in the play of the American humanitarian intervention in Somalia. ⁽³⁷⁾

In an attempt to adhere to the principle of sovereignty in the midst of the rising field of international regulation, in 2001 the International Commission on Intervention and National Sovereignty (ICISS) presented its project, which included that the main consideration should be to provide protection and not to the right to intervene, in the sense of focusing on preventing violations before they occur and the responsibility to rebuild, and that Military intervention is an exceptional measure only in the case of grave violations that cause very serious harm, such as mass killing with intent to exterminate, or as a result of the state's actions, inability or neglect, or large-scale ethnic cleansing through killing and deportation. ⁽³⁸⁾

In a European development, the Dutch (in 2005) refused in a referendum to accept the European Constitution, as well as the United States of America refused to submit its nationals to the jurisdiction of the International Criminal Court. ⁽³⁹⁾

Recent developments regarding climate change and the requirements to confront it, in addition to the Covid-19 epidemic and nuclear threats, have proven that only joint international efforts through effective international organization are capable of confronting them, and that covering up sovereignty and internal affairs has become an unacceptable obstacle. ⁽⁴⁰⁾

6- Human rights and sovereignty

After the adoption of the major human rights conventions, from which permanent monitoring bodies were established, following up on the details

Implementing, reviewing, and holding states accountable when violating the rights established in them and their direct acceptance of individual complaints against their states has taken human rights out of the scope of the preserved sultan and brought them into the domain of international authority. ⁽⁴¹⁾ According to the charter, the inclusion of human rights within the framework of a legal system for international cooperation means that it has transcended national borders and is clear transboundary values. ⁽⁴²⁾ Sovereignty is restricted by international and regional legal and customary standards, and the state has obligations to harmonize its legislation with international covenants, ⁽⁴³⁾ and Article (27) of the Vienna Convention on the Law of Treaties of (1969) prevents the states party to it from invoking the internal law to justify the failure to implement a treaty they ratified, Certainly, it includes many human rights conventions, in addition to the state's obligation to prosecute Mint, as well as what is related to violations of international humanitarian law. Then the Criminal Court came to try those responsible for the most serious human crimes.

This development prompted the Secretary-General of the United Nations to present to the General Assembly the idea ⁽⁴⁴⁾ that sovereignty is no longer confined to the nation-state, which is the basis of contemporary international relations, but is related to the rights of individuals themselves, and this means that protecting human rights from any violation of the state is beyond the scope of Sovereignty should be understood as the responsibility of the state to protect the rights of its citizens. ⁽⁴⁵⁾

The new trend regarding sovereignty becomes clear when France expressed its desire to intervene in Chad, and the Security Council intervened in Iraq to protect the Kurds, in Somalia in 1991, and in the Darfur issue in Sudan in 2002. ⁽⁴⁶⁾ According to the traditional principles of sovereignty, this intervention is considered a threat to the territorial integrity of a member state of the nations. The United Nations, but it is no longer so in accordance with the recent developments of the principle of sovereignty. ⁽⁴⁷⁾ The human rights agreements are based on the premise that their implementation will lead to world peace, and the mechanism of the United Nations organs ensures discussion of human rights issues in the Security Council, which represents the top of the pyramid of the United Nations With executive powers up to the point of using force. ⁽⁴⁸⁾

And humanitarian intervention has become acceptable if it is to deal with massive violations of human rights that are carried out by international bodies and not by a single state, for which it is feared that they will not take into account the interest of the intervening state. ⁽⁴⁹⁾

International jurisprudence has emphasized that a state may not invoke national law to justify its failure to implement its international obligations, even if these obligations conflict with constitutional provisions. ⁽⁵⁰⁾

The most recent development was the prohibition by international criminal law of gross violations of human rights by special courts and the International Criminal Court, and the recognition of the criminal responsibility of individuals even if their actions were in implementation of the orders of their officials, and subjecting those who issue orders to criminal responsibility and depriving them of national immunity. ⁽⁵¹⁾ It may require the protection of the rights of Humanitarian intervention in the policy of states to accept illegal immigrants, which has become one of the concerns of the new international order. ⁽⁵²⁾

Since the Stockholm Conference in 1977, environmental protection has emerged and gained great international attention as one of the collective rights of the international community. The state is no longer able to dispose of its resources based on the principle of sovereignty in matters related to the environment. ⁽⁵³⁾

Thus, human rights are no longer a national affair, meaning that they have entered the international domain, and sovereignty has not been able to be an obstacle or an obstacle to protecting them and ensuring their implementation. ⁽⁵⁴⁾ And that recent developments require a review of the principle of sovereignty, not in order to weaken its essence, which is still important in security and the interests and rights of individuals that receive the attention and care of the international community, and that sovereignty is responsible to the extent that it adheres to the minimum standards agreed upon in international agreements. ⁽⁵⁵⁾ International cooperation, but in order to acknowledge that it is of multiple forms and has more than one function so as to accommodate the two types of human rights stipulated in international conventions.

7- Conclusion and recommendations

The state is still the cornerstone of the existing international system, despite the decline and decline of sovereignty in the interest of the international community. Many of the affairs that were considered to be the preserved power of states when the United Nations Charter was approved in 1945 have changed to be global interests despite the states' attempts to adhere to them for more than three decades until major human rights agreements were concluded, followed by environmental agreements, and a set of

international legal rules known as jus cogens were crystallized. which were considered binding on states, and their consent to them is not a lesson.

Then a group of international affairs moved from the national authority to the international one because it should be handled by international bodies that are keen on it from the states, because they are international rights, such as preventing discrimination between the human race for any reason, preventing genocide, protecting international communications, preventing drug trade, protecting the environment from pollution and protecting The common heritage of mankind..etc.

Then came the transformation of the globe into a global village through the development of communications and transportation, and countries no longer controlled the information that traveled at the speed of light without hindrances, and international bodies assumed direct control over the movement of the economy and global markets such as the World Trade Organization and unions that exceeded the national authority by imposing it Decisions without the need to accompany all countries on them.

International organizations have increased and expanded their competencies at the expense of the competencies of the countries that relinquished them to be exercised by international organizations on their behalf by granting them legal personality independent of the countries that established them, which made them one of the international persons. The broad and binding competencies of its members, such as the European Union, the European and American human rights courts, the military alliances (NATO, Warsaw), and finally the International Criminal Court, which are important developments that reduced the traditional field of sovereignty and expanded the competencies of the international field.

The rules of human rights and international humanitarian law constituted a set of binding rules that may be violated under any circumstances, even during armed conflicts, such as the right to life, freedom of belief, the right to a living environment, the prevention of torture, the fight against piracy, human trafficking and terrorism.

In view of the foregoing, we recommend the following:

A -Agreeing on peremptory norms of international law and codifying them in international treaties.

B-Agreeing on the rules that fall under the jurisdiction of the international authority.

C- Agreeing on global affairs, especially in the field of economy and freedom of trade.

D -Work on the establishment of international federations similar to the European Union and the establishment of human rights courts similar to the European Court of Human Rights.

E- Expanding the conclusion of human rights agreements to include areas that still require great international attention, such as domestic violence, protection of ethnic and religious minorities, and combating religious extremism.

F - Spreading a culture of international and global interests and the common heritage of mankind because of the good that it brings to the entire international community and not to be confined within the framework of preserved sovereignty and authority.

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- 22- Such as the Constitution of Spain (Article 10) and the Constitution of South Africa (Article 39/3) require the judiciary to explain the right Recognized constitutionally in accordance with international treaties and the Constitution of Bosnia and Herzegovina drawn up by treaty International (Dayton) and the Constitution of the Russian Federation declares the recognition of human rights and their guarantee of general rules and principles International law and recognition of the right of individuals to appeal to international organizations to protect human rights.
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