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AN EXAMINATION OF THE DEVELOPMENT OF THE PRINCIPLE OF NON-INTERVENTION UNDER INTERNATIONAL LAW

BY

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Abstract

The principle of non-intervention has its origin as far back as medieval period. It is well established principle of customary international law. It is purpose is to limit illegal involvement of one country in the affairs of others in the ordinary course of relationship among civilized nations. That is to say, states are sovereign and free from intervention. Sovereignty is what protects preserves and ensures non-intervention in matters within the domestic jurisdiction of states. Hence, the objective of this paper is to trace the development of the principle of non-intervention visa-a-visa the doctrine of sovereignty. A doctrinal method of research was adopted. Having examined its development, it was found that the principle seeks to prohibit all forms of illegal interventions in the domestic affairs of states and concluded by making recommendations.

1.1 Introduction

After the Second World War, it was the desire of the international community not to do anything which would rupture the stability, peace and security of the world or globe. For this reason, during the preparation of the United Nations Charter at Dumbarton Oaks, England, it was decided that, in as much as the member nations could seek for specific settlement of international disputes, some limitations were desirable under which circumstances, intervention should not be entertained by the United Nations.[1] One of the circumstances is, when the subject matter of a complaint is essentially within the domestic

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[1] See Preamble to the Statute: Charter of the UN Status of the International Court of Justice, United Nation's. New York (1945) p.3

jurisdiction of a state[2]. That is to say, if the issue, problem or complaint is absolutely termed local; in which case the attention of the United Nations to the problem, issue or complaint is not necessary. This problem was even perceived during the operation of the League of Nations, which preceded the United Nations.

In this paper, the task is to define, trace the development and limitations which are placed on the principles of non-intervention. The idea of sovereignty of state shall be discussed and how it is interwoven with the concept and principle of non-intervention.

Lastly, the recent trends of the concept and principle of non-intervention will be discussed.

1.1.1 Meaning of Non-Intervention

Most writers on international law do not bother to define what non-intervention means. Rather, they try to define intervention. Therefore, the meaning of intervention defined in a positive way, will be the meaning of non-intervention in a negative way.

According to international law, the word intervention means "interference with matters essentially, within the domestic jurisdiction of a state."[3] To Hingorani, intervention means a "dictatorial interference in the affairs of another sovereign state."[4] In another meaning, it is the use of force or threat of use of force for the purpose of getting support or otherwise of the country for which influence was exerted[5]. Non-Intervention may mean, restrain from exacting an act by use of force on another country, which has sovereign equality with others. Or, in another way it means restrain from act capable of denying or rupturing the idea of the principles of self-determination of a sovereign country[6].

According to Oppenheim, intervention means, specifically "a dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual conditions of things."[7] Stark defines Intervention as "act contrary to the will of the victim state and must, by design or implication impair the political independence of that state."[8] It is submitted that, the principle of non-

[2] Ibid
[3] Nicaragua v. USA (1986) ICJ Report. Pp. 723-731
[4] Hingorani, R.C., Modern International Law. Oxford & IBH Publishing Co., New Delhi Bombay Calcutta, 3rd Edition (1985) P. 303.
[5] Nicaragua v. USA (Supra) p. 728
[6] Ibid. p. 731
[7] Oppenheim, L. International Law. Longman. (1952) Vol. I p.34
[8] Stark, J.G. Introduction to International Law. Sweet & Maxwell, London, 9th Ed. (1984) p.99

intervention is a fundamental principle of contemporary international law, which prohibits not only armed intervention but all direct and indirect illegal intervention in the domestic affairs of a sovereign state.

1.1.2 Historical Development of the Principle of Non-Intervention

Many authors, including Cobden[9], Mill[10], Kant[11] and Mazinni[12] had espoused the theory of non-intervention. Cobden, a Manchester businessman and subsequently a professional politician, wrote in 1935 and advocated an absolute adherence to non-intervention by Britain. In his estimation, Britain, being a manufacturing nation depended upon trade, needed peace as pre-requisite for meaningful trade. He did not ascribe to the view which perceived Britain as the carrier of schemes of universal benevolence, "as enforcer at the behest of the almighty in every part of the globe"[13] or as the "gendarme whose office it was, gratuitously, to keep in order all the refractory nations of Europe"[14] He thus did not recognize humanitarian intervention as an exception to the doctrine of non-intervention.

John Stuart Mill, was troubled by the fact that while British policy was stated as non-intervention; her actions did not always conform to the principle of non-intervention[15]. The learned author, sought to provide justifications for the difference between British policies on the one hand and practice on the other hand. In this connection, he attempted to explain the doctrine of humanitarian intervention as a moral question[16]. In that respect, he distinguished between rules applicable to the relations between civilized nations and those, which relate to actions towards "barbarians". In distinguishing between "civilized nations" and "barbarian," Mill, of course, had in mind the colonizers and the colonized respectively. His aim was to justify the colonial policies of Britain, which should not be considered as intervention, for "barbarian" had no right of a nation. Mill supported Counter-intervention to end foreign intervention by another. According to him, the doctrine of intervention by another country to be a legitimate principle of morality must be accepted by all governments. The despots consent to be bound by it as well as free states. Unless they do, the profession of it by free countries comes, but to these miserable issues, that the wrong side may help the

[9] Vincent, R.J. Non-Intervention and International Order. University Press, (1974) p. 281
[10] Mills, J.S A Few Words on Non-Intervention. Reprinted from Fraser's Magazine, December, 1859 In: Mills, Dissertations and Discussions Political, Philosophical and Historical, London (1875) Vol. 111. Pp. 153 – 178
[11] Vincent, R.J. Non-Intervention and International Order. Op. Cit p. 281
[12] Ibid
[13] Bright and Rogers, Speech to the House of Commons, June 5, 1855, Vol. 1, p.51
[14] Vincent, R.J. Non-Intervention and International Order. Op. Cit, p.9.
[15] Mills, J.S A Few Words on Non-Intervention. Op. Cit Pp. 153-178
[16] Ibid

wrong but, the right must not help the right. Intervention to enforce non-intervention is always rightful, always moral, if not always prudent.

To Kant, the doctrine of non-intervention can have absolute application only when the international society became composed of only republican nations[17]. In his view, it was permissible for a republic to intervene to crush a despotic government and pave the way for the establishment of a republic. A part from that, Kant argued that if nation is split into two by internal strife verging on anarchy, the intervention from outside would be justified. He asserted, however, that the preservation of international peace must be based on freedom and "moral integrity" of each nation"[18].

Mazzini denied to the doctrine of non-intervention moral contents which Cobden and Mill had sought to infuse it with[19]. According to him, after the congress of Vienna, the rule became an instrument for the protection of the terms of the settlements of 1815 to sustain the status quo. Mazzini thus denounced the policy of non-intervention as "an abject cowardly doctrine: - term transplanted in to international life, the definition of self-interest"[20].

It is however, noteworthy that for quite sometimes even before the advent of League of Nations and the United Nations Organisation the principle of non-intervention had been recognized in domestic and non-domestic jurisdictions, for example under the Monroe Doctrine of USA (1823) which forbade the Principal European Powers of the Triple Alliance from intervening in affairs of Spain to restore her authority in Latin American Colonies that had become independent and recognized by USA. Full recognition was given to Non-intervention through the Drago Doctrine of 1902 and published at The Hague Peace Conference in 1907, which proposed that states not use armed intervention against other states to collect debts arising from government loan.

In 1902 Russia, Afghanistan, Turkey, Iran and Mongolia signed a Treaty on Non-intervention. It is, therefore, difficult to discern a generally agreed body of doctrine on the question of intervention in traditional international law. In a rather forthright manner, Wolf writing in the 18th century and Bernard in the

[17] Vincent, R.J. Non-Intervention and International Order. Op. Cit, p. 57.
[18] Ibid.
[19] Mazzini attributed to the doctrine of non-intervention two functions. First as a "useful and righteous protest against the lust of conquest and appetite for wars which then characterized the activities of Europe. Secondly, it served to prevent conflict between governments. In this view, the doctrine of Non-intervention became, after the French Revolution a mere tool of the great powers for the protection of their own self-interest".
[20] Ibid, p. 61

19th century denied any legal justification for intervention[21]. Others, such as Wheaton agreed on this view but granted an exception based on the doctrine of necessity[22]. To Winfield, non-intervention was the rule and intervention was merely the exceptions[23]. The idea of the principle of non-intervention was conceived during the League of Nations, the organisation which was succeeded by the United Nations. Article 15(8) of the Covenant of the League of Nations provided as follows. "if the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of the party Council shall so report, and shall make no recommendation as to its settlement".

What this mean is that it prescribed the standard of international law for determining whether a matter was solely within the domestic jurisdiction of a state and expressly empowered the Council to make the determination. Similarly, it was the standard of international law, which was evolved to determine whether a matter was essentially outside the domestic jurisdiction and hence required the intervention of the League of Nations. The Dumbarton Oaks proposal contained a comparable provision to that of the League of Nations. It provided that the provision dealing with the pacific settlement of disputes "should not apply to a situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the states concerned".

At the United Nations Conference in San Francisco, the sponsoring governments proposed an amendment which made non-intervention a governing principle for the whole organisation and member states. In the view of the sponsoring governments[24], the amendment was required because of the broadened scope of the organization's functions, primarily, with respect to economic, social and cultural matters. It was intended in particular to require the organisation, in carrying out its economic and social objectives, to deal with government, instead of allowing the organisation to "penetrate directly in to the domestic life and social economy of the member states. It was not intended to weaken the power of the United Nations in the maintenance of peace and security. To make this clear, the new proposal contained a provision to the effect that the application of the

[21] Wolf, C.Gentium Metnodo Scientifica Pertratum (1746), Ed. Trans, J.H. Drake, Carnegie Classics of International Law, Oceana, (1964). Also, See Bernard, M. The Principle of Non-Intervention, Oxford (1960) J.H.and J. Parker, page 26 et seq, and pp. 282 et seq

[22] Wheaton, L. Elements of International Law. Sweet and Maxwell, London (1973) p.72, Also See Vincent., R.J. p.283

[23] Winfield, T. History of Intervention in International Law. 3 Byil, (1922-1923) p.139

[24] Goodrich, et al., Charter of United Nations: Commentary and Documents, Steven and Sons Ltd. (1949) p. 111. Also, See Statement of Mr. Duller of the US Delegation, UNCIO, Summary Report of the 17th Meeting of Committee 1/1 Junes 14. 1945 1019. 1/1/42 p. 1-2.

principle of non-intervention of threats to the peace and acts of aggression and action with respect thereto, should not be prejudiced."[25]

This amendment was criticized. It was argued that it undermined the authority and influence of the United Nations. Secondly, it was argued that it weakened the role of the law in the new organisation. Thirdly, it was argued that it opened the way to arbitrary acts based on consideration of expedience and national interest[26].

On the other hand, it was believed that the new proposal was not fair enough, in that, while it adequately safeguard the position of the permanent members of the Security Council, who would be in the position to exercise the veto, it did not sufficiently, protect the smaller nations against pressure that might be brought to bear in connection with the wholly domestic matters. Therefore, the sponsoring governments[27], at the San Francisco meeting adopted the amendment proposed by Dr. Herbert Vere Evatt, the Australian representative which further restricted the authority of the organisation by saying that the organisation had the right to "make recommendations or decide upon measures to be taken to maintain or restore peace and security". This was interpreted by Goodrich, Hambro and Simons to mean that the Security Council had the power to decide upon terms of settlement of a dispute, as well as take enforcement measures[28]. In fact, they further argued that the proposal as they stood might place a premium on the threat or use of force. Today, the principle of non-intervention is interwoven with the use of force[29]. However, it is the view of this writer that the meaning of non-intervention should be wider than use of force. After all, it is not realistic to limit intervention to use of force alone.

In short, the raison d'être for various amendments that were proposed was as follows:

> The organisation we are developing is assuming, under the present Charter, functions wider in their scope than those previously assumed by the League of Nations or other international bodies and even wider than those which were contemplated at Dumbarton Oaks, especially in the economic, social and cultural fields. The tendency to provide the United Nations with a broad jurisdiction is, therefore, relevant and founded. The necessity on the other hand, to make sure that the United Nations under

[25] Goodrich, et al., Charter of United Nations: Commentary and Documents, Op. Cit., p. 111.
[26] Ibid. p. 111
[27] The Original Signatories of the Declaration of the United Nations Charter of January 1, 1942 are: USA, Great Britain, Northern Island, USSR, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Netherland, New Zealand, Nicaragua, Panama, Poland, South Africa, and Yugoslavia.
[28] Goodrich, et al., Charter of United Nations: Commentary and Documents, Op. Cit., p.112
[29] Ibid.

prevalent world conditions should not go beyond acceptable limits or exceed due limitation called for principle 8, [Article 2(7)1 as an instrument to determine the scope of the attributes of the organisation and to regulate its **functioning in matters at issue.**[30]

Commenting on this quotation, Goodrich, Hambro and Simons opined that:

> The paragraph establishes a limitation on the authority of the United Nations and then proceeds to make exceptions to the limitation. It limits the United Nations by denying it authority to intervene in matters essentially within the domestic jurisdiction of any state and expressly providing that members are not required to submit such matters to settlement under the Charter." it makes an exception to this limitation by providing that the principle does not prejudice the application of enforcement measures under Chapter Vll.[31]

1.2. Sources of the Law of Non-Intervention

1.2.1 United Nations Charter

The issue as to what is the precise source of the law of nonintervention before 1986 was not unanimously settled by international law practitioners, jurists and philosophers[32]. However, as between the United Nations and sovereign states, the United Nations Charter prohibits interventions in matters which are essentially within the domestic jurisdictions of any state. Thus, Art. 2(7) inter alia provides: "Nothing contained in the present charter shall authorize the UN to intervene in matters which are essentially within the domestic, jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter, but this principle shall not prejudice the application of enforcement measures under chapter VII"[33].

It was argued by Henkin and Ladan that this Article prohibits United Nations from intervening in matters, which are essentially within the domestic jurisdiction of any state[34]. Therefore, no state is compelled to refer its dispute to

[30] See UNCIO Supplement to Report to Rapporteur, Committee 1/1 to Commission 1, Dec. 1970, 1/1/34 (1), p.1
[31] Goodrich, et al., Charter of United Nations: Commentary and Documents, Op. Cit., p.113
[32] In Nicaragua case (Supra) p.14, the court made reference to Corfu Channel case where it stated that "this principle of non-intervention is not as such spelt out in the UN Charter"
[33] Art 2(7) UNC, (Supra) p.2
[34] Henkin Pugh, et al., International Law: Cases and Materials. West Publishing Co. St.Paul. Minnesota, 2nd Ed., (1987) p.3 Also See Ladan, M.T., Materials and Cases on Public International Law. ABU Press Limited, Zaria (2007) p.84

the United Nations for settlement, if that dispute is essentially within its domestic jurisdiction[35]. The limitation in this Article is on the United Nations and not on the state. However, it is our strong submission that Art. 2(7) is a source of the law of non-intervention in as much as it limits intervention by the United Nations in the domestic affairs of state[36].

1.2.2. United Nations General Assembly Resolution 2131 (1965)

Resolution 2131, General Assembly of the United Nations regarding Declaration on inadmissibility of intervention in the Domestic Affairs of States and the protection of their independence and sovereignty, is another source of the law of non-intervention. In this resolution, the General Assembly solemnly declared that no state has the right, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any states. Consequently, armed intervention and all other forms of illegal interference or attempted threats against the personality of the state or against its political, economic, and cultural elements are condemned[37].

The resolution went further to say, no state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it, the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no state shall organize, assist, foment, finance, incite, or tolerate subversive, terrorist or armed activities directed toward the violent overthrow of the regime of another state, or interference in civil strife in another state[38]. This resolution has been accepted to be the source of the law of non-intervention[39].

The principle of non-intervention proclaimed in this resolution is now provided in art. 19 of the Charter of the Organisation of American States; art. 5 of the Charter of League of Arab States; art. 111 of the Charter of Organisation of African Unity; the Conference of Montevideo, Buenos Aires; Chapultepec and Bogota' decisions of Afro-Asian Conference at Bandung; the First Conference of Heads of State and Government of Non-Aligned Countries at Belgrade; in the programme for peace and international co-operation adopted at the end of the Second conference of Heads of State and Government of Non-Aligned Countries

[35] Nicaragua v. USA (Supra), para. 202
[36] United Nations Security Council whose power is to intervene, rarely exercises this power.
[37] Resolution No. 1 General Assembly, 20th session, December 21, 1965
[38] Resolutions No. 2, Ibid
[39] Nicaragua v. USA (Supra) para.202

at Cairo' and the Declaration of Subversion adopted in Accra by the Heads of State and Government of the African States.[40]

The United Nations General Assembly Resolution 2131 prohibits intervention by one state in the domestic affairs of other states. It also protects the independence and sovereignty of all states. This in fact guarantees the principle of non-intervention spelt out in the declaration.

1.2.3 United Nations General Assembly Resolution 2625 (1970)

Another source of the law of non-intervention is the General Assembly Declaration on principle of international law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, 1970. General Assembly Resolution 2625, October24, 1970.

This resolution reaffirms the customary international law on non-intervention. In it, the General Assembly solemnly proclaims that every state has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of UN. Such a threat or use of force constitutes a violation of international law and the Charter of the UN and shall never be employed as a means of settling international issues.

1.2.4 Case Law

The International Court of Justice in the case of Nicaragua v. USA redefines the law of non-intervention and said: "The principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference, though examples of trespass against this principle are not infrequent; the court considers that it is part and parcel of Customary International Law."[41]

1.2.5 Customary International Law

In Corfu Channel Case, the I.C.J said, "Between independent states, respect for territorial sovereignty is an essentially foundations of international relations."[42]

[40] Henkin, Pugh, et al., International Law: Cases and Materials. Op. Cit., p.690
[41] Nicaragua v. USA (Supra) para.11
[42] UK v. Albania (1949) ICJ Report p.4

In the case of Nicaragua, the I.C.J reiterated that the United Nations Charter does not spell out the principle of non-intervention, that the principle is a principle of Customary International Law[43].

1.2.6 Opinion Juris

In the Nicaragua Case, the I.C.J stated "the existence in the opinio juris of the states of the principle of non-intervention is backed by the established and substantial practice. Moreover, it has been presented as a Corollary of the principle of the sovereign equality of states"[44]

1.3 The Interpretation of "Domestic Jurisdiction"

At the San Francisco meeting, it was decided that the power to interpret the meaning of domestic jurisdiction should be vested in the International Court of justice (I.C.J). This was seriously resisted. The proponents include USA, U.K, France etc., argued that the standard of interpretation should be in accordance with international law[45]. For this reasons, the International Court of Justice, should be the right court for interpreting what domestic jurisdiction is. The opponents of this view include Australia, Belgium, Czechoslovakia, Cuba, Nicaragua, New Zealand, Costa Rica etc., had argued that the interpretation of "domestic jurisdiction" should not be vested in the International Court of Justice. According to them, the interpretation of domestic jurisdiction should not be legalistic. Instead, it should be general, so that both the Security Council and the General Assembly should interpret the provisions. It was argued that the role of the International Court of Justice should be supervisory one. In practice this has been the case over the years[46].

1.3.2 Some Reasons for Intervention

There are several reasons why a country may like to intervene in the actions of another country. Some of them are the great inequalities of powers. For example, economic motives, such as the desire to acquire or preserve access to resources. Ideological motives such as the desire to promote social revolution or national liberation, or to oppose it. Security motives, such as concern to effect the

[43] Nicaragua v. USA (Supra) para.11 Ibid
[44] Ibid
[45] Goodrich, et al., Charter of United Nations: Commentary and Documents. Op. Cit. p.114-5.
[46] Ibid.

global distribution of power. Perhaps, even humanitarian motives such as concern to uphold human rights against tyrannical regimes.[47]

These motives are against the principle of non-intervention. There is an overwhelming consensus behind the principle that all states are entitled to rights of independence or sovereignty. If a state has the right of sovereignty, that necessarily imposes the duty of non-intervention on others. That is to say, the principle of non-intervention safeguards the doctrine of sovereignty of states. Similarly, intervention destroys or raptures the doctrine of sovereignty of state. We shall now discuss the relationship between intervention and sovereignty, with the view to highlighting how intervention modifies, destroys, or is interwoven with the principle of non-intervention.

1.4. The Idea of Sovereignty of State

Already, we have defined what intervention means. But before discussing intervention and sovereignty, it is necessary at this juncture to endeavor to define the word sovereignty. It is hoped that if this word is defined, it will facilitate the general concept of idea of intervention and how it relates to sovereignty.

1.4.1 The Concept of Sovereignty

Jurisprudentially, there are two different types of sovereignty[48]. First, there is national sovereignty. This means, the highest internal body whose decisions regarding, economic, social and political matters of a country are final. In fact, a sovereign of a nation, is a body or groups of persons or a person who does not owe any allegiance to an external authority. In a country like Nigeria, the sovereign is the people represented by the National Assembly which comprises of the upper house known as the Senate and the lower house known as the Representatives[49].

In the Military regime, it could be the body which has power to make laws, and policies. The concept of national sovereignty is therefore synonymous with the embodiment of totality of powers in that body, person or group of persons.

Secondly, the most relevant concept of sovereignty in the context of our discussion is the external sovereignty. The external sovereignty of a state consists

[47] Henkin, Pugh, et al., International Law: Cases and Materials. Op. Cit., p.692
[48] Ibid.
[49] Section 47 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

of its independence of action, its freedom from external control, in its relations with other states or outside authorities[50]. "By sovereignty, we understand the whole body of rights and attributes which a state possesses in its territory, to the exclusion of all other states, also in its relations with other states."[51] It has been argued that the definition of external sovereignty like the one given above does not exist in the context of the contemporary international law. In other words, in view of the interconnectedness of the modern world, there is no authority which can claim absolute sovereignty of itself. Furthermore, Justice Alvarez of the International Court of Justice said: "Today, owing to special interdependence and to the predominance of the general interest, the states are bound by many rules which have not been ordered by their will. The sovereignty of states has now become an institution, an international social function of a psychological character[52], which has to be exercised in accordance with the international law." The learned justice further suggested that the new interpretation or meaning of sovereignty should conform to the modern idea of state[53].

An erudite scholar of international law, Prof. Brownlie described the doctrine of state sovereignty as a confused one. He said:

> The notion that the validity of international law raises some Particular problem arises from the confusion which the doctrine of sovereignty has introduced into the international legal theory The truth is that, states are not persons, however convenient it may often be to personify them; they are merely institutions, that is to say, organizations which men establish among themselves for securing certain objects of which the most fundamental is system of order within which the activities of their common life can be carried on. They have no wills except the wills of the individual human beings who direct their affairs; and they exist not in a political vacuum but in continuous political relations with one another. Their subjection to law is as yet imperfect, though it is real as far as it goes; the problem of extending it is one of great practical difficulty, but it is not one of intrinsic impossibility. Here are important differences between international law and the law under which individuals live in a state, but those differences do not lie in metaphysics or in any mystical qualities of the\ entity called state sovereignty[54].

In fact, this quotation has said it all about the debate whether there is a group of persons, individuals, or individual who can arrogate to themselves or to

[50] Goodrich, et al., Charter of United Nations: Commentary and Documents. Op. Cit. p.114-5.
[51] Corfu Channel Case UK v. Albania (1949) I.C.J. Report, p.43
[52] Nicaragua vs. USA (Supra) para.158
[53] Ibid, para.159
[54] Brownlie, I., International Law and the Use of Force by States. 37 BYIL (1961) P. 301

himself the designation of sovereignty in its real sense today. However, in the discussion that follows, it is assumed that a state can arrogate to itself the status of sovereignty as defined above.

1.4.2 Non-Intervention and the Doctrine of Sovereignty

From the foregoing, we have said that illegal intervention into matters essentially within the domestic jurisdiction of a sovereign state is a violation of the sovereignty of that state. Arguments have been put forward by many academicians of international law[55] and state practice[56], philosophers[57], and diplomats[58] that the doctrine of sovereignty is what protects weak nations from intermittent illegal interventions by strong nations[59]. The doctrine of sovereignty, it was asserted, is a safeguard against interference into the domestic jurisdiction of small and weak nations by strong and wealthy nations. The doctrine of non-intervention was fashioned out as a means of securing international peace and security. Non-intervention in principle is to protect the value of sovereignty and domestic jurisdiction of states[60].

Sovereignty is the legal and political status of international society. It is a prerequisite and major criterion, which differentiates nationalism from internationalism. The doctrine of sovereignty provides limitation against illegal intervention or interference of one nation against another. In this respect, Koretsky observed in the international Law Commission, in 1949 thus:

> That sovereignty of states must so regulate relationship between states that the mastery of superiority of one state over another could not exist. To limit the power of one's own state was to open the gates to the intervention of other states. The international field must not be dominated by those who interfere in the internal affairs of others, by reactionaries who sought to organize other countries by force..[61]

The world lawyers are ardent champions of sovereignty. In this context, Prakash Singh, rightly points out that: "Sovereignty is the most treasured possession of the newly independent states. On one hand, it make them the

[55] Vincent, R.J. Non-Intervention and International Order. Op. Cit., p. 281
[56] Ibid.
[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] Nicaragua, Cuba etc.
[61] Vincent, R.J. Non-Intervention and International Order, Princeton University Press (1974) p.281. Also see International Law Commission Report, 1949, Session 1, p.72

masters of their houses, on the other hand, it provides them with a legal shield against foreign incursion or attempts of threat by strong states."[62]

It is also natural that sovereignty is seen as a means of achieving demands for a fair share in the participation in international decision making process in different field of international relations. On the internal sphere, sovereignty as Okoye, correctly remarks: "it is a powerful instrument for shaping national identity, breaking the claims of subordination which are factors of backwardness and furthering social and economic progress."[63]

However, the danger in the third World, is that sovereignty in the internal sphere may well be used, and indeed has been used in many instances, as a wall which masks and justifies violations of human rights. For example, in the continent of Africa and other parts of the world sovereignty is used to shield countries who are perpetrating violation of human rights. For example, Rwanda, Angola, Uganda, Zimbabwe and recently Libya, Mali, Algeria, Egypt and presently Syria.

1.4.3 The Concept of Sovereignty and Contemporary World

There are opinions against the usefulness of sovereignty. In fact, there is a growing tendency, generally in the Western World, which considers that the notion of sovereignty is obsolete and that it does not correspond to the development which has been taking place in the international society. In this context, as far back as 1925 Politis, wrote and condemned the notion of sovereignty as outdated. He then suggests the replacement of sovereignty by the notion of liberty.[64]

It must not be forgotten that any rejection of the role of sovereignty in international society would, in practice, be in the interest of the developed countries and their multinational corporations, since the latter are struggling for the abolition of borders and jurisdictions in order to have direct access to markets and national resources.

Badjaoni[65] refutes suggestions of integration and interdependence by going back to history. According to the learned author, the logic of these old

[62] Prakash, S. Representative of the Newly Independent States on the Binding Quality of International Law. In:
Fredrick Snyder and Surakiats (Eds); Third World Attitudes Toward International Law: An Introduction. Martinus Nijihoff, Drordrecht, Boston, (1987) p.28,
[63] Okoye, F.C. International Law and the New African States, Sweet and Maxwell, London, (1972) p.185
[64] Politis, N.S. Le Problem Des Limitation Dela Sourverainete, RCAD 1, (1925)1, Pp.10-12
[65] Badjaoni, M. Pour Nouvel Order Economique International, UNESCO, Paris (1979) p.83

times are not over, the crux of the matter is that any call for integration and the abandonment of sovereignty will never be in the interest of the weak units of international society who will by abandoning their sovereignty, lose everything or control over their destinies and their social, cultural and political particularism, whereas the strong, the multinationals and their protectors or their governments will inevitably gain everything because of their strengths, might, and know-how. The relinquishing of sovereignty would give them a free hand to shape the economic face of the world and consequently gain the maximum of profits.

The contention that it is necessary to abolish sovereignty in order to assert the supremacy of the individual is not on the agenda. Some political scientists, such as Maclaurin simply maintain that we need not write many words on sovereignty because; - "the world is interdependent, socially, economically and even juridically, and the sovereignty of a government consists in making decisions that are primarily adjustments to conditions and demands determined to by other."[66]

Among those who waged the hardest attack on sovereignty is Kenk, he writes-

> Sovereignty holds no promise of peace. It affords no prospect of defense. It gives no assurance of justice. It gives no guarantee for freedom. It offers no hope of prosperity. It furnishes no prescription for welfare. It hardens the opposition to orderly and peaceful social changes. It disrupts the discipline without which scientific and technological innovations become the Frankenstein of our society. It is a mockery not fulfillment of the deepest aspirations of humanity[67].

He also thought that the conscious rejection of the dogma of sovereignty is an essential step in "releasing our creative facilities that we can build together the prosperity, and welfare of a free commonwealth in which peace with justice, freedom and welfare rest solidly upon the common law of mankind."[68] He holds a firm view that the world has outgrown sovereignty. He agrees with Max Huber that: "The concept of sovereignty which existed long before the Renaissance may have been necessary for transforming feudal medieval states into modern ones but for any ethic of a supranational community it is mortal poison."[69]

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[66]Maclaurine J.The UN Power and Politics. George Allen and Uwin (1957) p.427

[67]Jenkins, C.W. A New World of Law? A Study of Creative Imagination in Internal Law, Harlow and Longmans
(1969) p.134.

[68] Ibid.

[69] Ibid, p.133

It is our strong submission that, sovereignty is not a mortal poison, it is healthy medicine. People need it to keep their national identity, for which they fought hard. Moreover, it makes them the masters of their destiny. It ensures that they have a full right to choose the forms of their political, economic and social organisation without any interference[70]. Hence, super powers cannot impose on or prohibit small states from choosing their ways of life as indeed the I.C.J has noted in Nicaragua case.

In fact, the court implicitly refuted any illusions that we are moving towards a "world government". Sovereignty is still the main pillar of international organisation. Our conclusion concerning the rejection of sovereignty by some western scholars would be our agreement with Hector Gross Espiel, who rightly stated that:

The concept of sovereignty is necessary and fundamental part of international law and international life and policies today. To seek to eradicate the concept and confirm its incompatibility with international law, as certain doctrinaire schools have attempted, constitutes useless and anti- historical effort incompatible with the world as it is and the inescapable and undeniable political and mythical force for the idea of sovereignty[71].

Furthermore, it is worth nothing that the argument against sovereignty comes from a section of western doctrine. However, even within that section, two bases for rejecting sovereignty were advanced. The first school is the idealist and humanist, which regards sovereignty as a real obstacle against full realization of human rights on a planetary level. To this school, all individuals in all countries are the same and they need to be treated alike, only the fiction of sovereignty separates them. The main criticism of such opinion is that, in practice, it is doubtful whether all people and individual aspire to live under the umbrella of one-world government and opposing values and ways of life.

The second school seems to base its rejection of sovereignty on the basis of the advances made in technology, communications, and the expansion of business. To the trend, in our modern world sovereignty has become a real brake in the face of the demands of trade, business and international communication.

It is the view of this writer that, this kind of argument is in the interest of big business since a territorially organized world would be a very serious obstacle for the expansion of mighty multinational corporations which possess the necessary know-how in the sphere of industrial and technological production.

[70] Nicaragua v USA supra para.202

[71] Gros, H.E. Sovereignty and Independence of States. Jiri Tanam 2nd Ed. (1986) p. 27

Bearing in mind that developing countries especially have a very long experience with the exploitation of their natural resources and their wealth, they seem to consider that in order to escape another wave of sophisticated domination in the economic and other fields, it is best to cling to sovereignty and demean its full achievements.

In other words, third world countries use sovereignty as a political weapon in their struggle against inequality. It is also the opinion of this writer that, the third world countries are justified in defending sovereignty to protect themselves from economic and cultural hegemony of the west. They nonetheless accept that sovereignty should serve the protection of human dignity inside their territories. Sovereignty must not be used to justify violation of human rights either in times of peace or emergencies, like internal disturbances or civil wars.

1.5 Conclusion

Throughout this paper, we have analyzed the principle of the law of non-intervention. Pertinent to this are the sources of the law of non-intervention. It is meant to protect and preserve the territorial integrity, political independence and sovereign equality of states. Particularly noteworthy, is the promotion of friendly relations among states and assurance of peace and security of the international community. To this end, all form of illegal armed intervention, aggression, subversion are contrary to the principle of non-intervention and consequently, constitute violation of the Charter of the UN.