A CRITICAL EXMINATION OF THE PRINCIPLE OF NON-INTERVETION

BY

NAMATOVU MARGARET

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DECLARATION

I, **NAMATOVU MARGARET,** do solemnly declare, that apart from reference to other people's work which has been duly acknowledged, this work is the product of my intellect and academic exercise and has not been presented to any university or institution of higher learning and where in the world by anyone, either in part or as a whole for the purpose of a certificate, diploma LLB, Bachelor of laws degree. I also certify that it was prepared by myself specifically for the partial fulfillment for the award of the degree in law at Kampala International University, Uganda.

Dated ..28.....this day of..June....., 2019

NAMATOVU MARGARET	**REG.NO**	**SIGNATURE**
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This is to certify that this research is entitled "**A CRITICAL EXAMINATION OF THE NON-INTERVENTION PRINCIPLE**" has been carefully supervised and approved to meet regulations governing dissertation writing of school of law, in partial fulfillment of the award of Bachelor of laws(LLB) Degree from school of law of Kampala International University, Uganda.

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DR. AMANDE ROBERTS AMANA

SUPERVISOR:

DATE.....28/6/2079

DEDICATION

I hereby dedicate this work to my beloved parents, Mr. Matovu John and Miss Nabanja Caroline, for they are the pillar within my academic building. May the Almighty God bless you with more life. May you live to enjoy the fruits of success.

ACKNOWLEDGEMENT

I am grateful to the Almighty God for being with me and guiding me throughout the whole period when I was pursuing this degree.

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LIST OF CASES

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US) ICJ Rep. (1986)

Corfu Channel (Albania v United Kingdom) ICJ Rep. (1949)

Armed activities on the territory of Congo (DRC v Uganda) ICJ Rep. (2005)

Gabcikovo-Nagymaros Project, (Hungary v Slovakia) ICJ Rep. 1997

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LIST OF ABBREVIATIONS

UN----------United Nations

UNSC----------United Nations Security Council

PCIJ----------Permanent Court of International Justice

ICJ----------International Court of Justice

AC----------Appeal Cases

ALLER----------All England Reports

Ch App----------Law Reports Chancery Appeals

ER----------English Reports

ILR----------International Law Reports

UNGA----------United Nations General Assembly

ED----------Edition

UNC----------United Nations Charter

DPKO----------Department of Peace Keeping Operations

UNOD----------United Nations Official Document

FRY----------Former Republic of Yugoslavia

PARA----------Paragraph

VOL----------Volume

PG/PP/P----------Page/Pages

FRD----------Friendly Relations Declaration

US----------United States

Rep----------Report

ABSTRACT

Non-intervention is a rule of international law that restricts the ability of outside states to interfere with the internal affairs of other states. Non-intervention is derived from the inviolability of state's sovereignty. This principle is rooted in Article 2 of the United Nations Charter. Nevertheless, there are recognized instances where other states may legitimately interfere with the internal affairs of another state. Investigating this situation and ascertaining where the lawful intervention may constitute the bedrock of this study. The study adopts the doctrinal research methodology and thus uses relevant primary and secondary materials. The study finds that lawful intervention may be undertaken where there are gross violation of human rights, and under the authorization of United Nations Security Council (UNSC).

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of Study

Non-intervention principle is a rule of international law that restricts the ability of outside nations to interfere or intervene with the internal affairs of another nations. The principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference. Non-intervention of sovereignty of states, further expounds that while a state is supreme internally, that is within its territorial frontiers, it must not intervene in the domestic affairs of another nations. This duty of non-intervention within the domestic jurisdiction of states provides for the shielding of certain state activities from the regulation of international law.[1] The principle was also noted in the Nottebohm case,[2] where the Court remarked that while a state may formulate such rules as it wished regarding the acquisition of nationality, the exercise of diplomatic protection upon the basis of nationality was within the purview of international law. In addition, no state may plead its municipal laws as jurisdiction for the breach of an obligation of international law. Accordingly the dividing line between issues firmly within domestic jurisdiction on one hand, and issues susceptible to international legal regulation on the other hand is by no means as flexible at first may appear. Article 2(7) of the UN Charter declares that: "Nothing contained in the present Charter shall authorize the United Nations 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."

Without losing sight of the following observations, this chapter will attempt to point out the major features of intervention. The analysis will distinguish a subject which embarks upon, and an object which suffers the intervention, the activity of intervention itself, the types of intervention and the purpose of the activity. Someone, some entity or group sets intervention in train. It might be a state. Britain intervened in Greek affairs when she dispatched a naval squadron to Greek waters in 1850 in search for redress for an alleged wrong done to one of her citizens. It might be a revolutionary group within a state. In both these cases of intervention, it's the state itself which held responsible for the action. Spain looked to the government of United

[1] International law on Malcom N. Shaw, 4th edn, pg. 454.
[2] ICJ Reports, 1955, pp. 4, 20-1; 22 ILR, pp. 349, 357.

States to curb the actions of its dissident generals. Intervention might also be an action of group of states, as when the powers of Europe presided over the separation of Belgium from Holland in the 1830s. Also regional and universal international organizations have taken their place as possible subjects of intervention.

Intervention may take several forms, including:

(i) Military intervention. Taking place when troops are dispatched to keep order or to support a revolution in foreign state, or when military aid is given to a government whose internal position is insecure or which is in conflict with a neighbouring state. It has also been argued that the very presence or display of armed force such location, such as the American Sixth Fleet in the Mediterranean Sea. Has an effect on the politics of the littoral states tantamount to intervention to their affairs.[3]

(ii) Economic intervention. When strings are attached to aid given by the great to the small state. When an economically developed state denies a contract to an under developed state.

(iii) Political intervention. When hostile propaganda is disseminated abroad, when moral support is lent to a revolutionary struggle within another state, or when the member state of commonwealth insists on discussing the internal affairs of another member.

States may intervene in the internal affairs of other States for diverse reasons. France intervened in Syria in 1860 in order to save the Christian Moronite tribes of Lebanon from the ravages of the Moslem Druses, an act which has been called one of pure humanity.[4]The Soviet Union and her allies intervened in Czechoslovakia 1868 to defend the socialist gains. The balance of power, the interests of humanity and the maintenance of ideological solidarity are some of the ends of states intervention among others. The function of the principle of non-intervention in international relations is majorly to protect state sovereignty.

In the late 1940s and 1950s, the European colonial powers fought a losing battle against the United Nations debate and adoption of resolutions concerning the issues of self-determination and independence for their colonies. Nevertheless, the concept does not retain validity in recognizing the basic fact that state sovereignty within its territorial limits is the

[3] See P. Calvocoressi, World Order and New States, {London, 1962} for distinction different sorts of military intervention

[4] The Cambridge History of British Foreign Policy 1783-1999, vol. 11, pg.456.

undeniable foundation of international law as it has evolved, and of the world political and legal system.[5] This rule was seen to derive by implication from the rule that states shall respect each other's sovereignty or exclusive competence. It will be as well to remember and to emphasize however, that the concept is often referred to as a central principle of international law from which particular rules derive.

In discussing the genesis of the principle of non-intervention, it is possible to make a broad distinction between the formulation of the naturalist and positivists school of international law. While the naturalists conceived of law as a body of rules inherent in nature of man and of the universe discoverable by the use of right reason, the positivists sought rules of international law by observation of the actual practice of states. For naturalists, the rights and duties of men, and states as collection of men, were no more than their natural inheritance as men or states. For positivists, on the other hand, a right or duty could have meaning only if it were sanctioned by custom or by treaty between states.[6] The right to state sovereignty was conceded by both schools. If a generalization is at all possible, it would be that the positivist approach, with its greater attention to the actual practice of state conditions, was more tentative in its formulation of rules than a Naturalism

Informed by supposedly immutable law. The Naturalists like Wolff and Vattel, challenged Thomas Hobbes by imaging a state of nature in which man's natural condition was one of peace and not of war, where the obligations of natural law were applicable whatever the social circumstances man found himself. Hobbes shared with these later naturalists, the view that kings and persons of sovereign authority existed together in a state of nature; he differed from them the conclusions he drew from the existence of such a condition.

With respect to the non-intervention principle, it is possible firstly to represent such a rule as a dictate of right reason which follows from the natural independence of states. In the second place it can be argued that a rule of non-intervention is an imperative without which a society of sovereign states would be an impossibility. Thirdly and more generally, the notion of law of nature has been sufficiently elastic to incorporate the view that would deny the possibility of rules operating between states existing in a state of nature. States in such a nature are obliged to

[5] International Law on Malcom N. Shaw, 4th edn, pg. 455.
[6] See H.L.A Hart, The Concept of Law, (Oxford, 1961), p.253.

obey natural law. In particular, Grotius, Hobbes and Pufendorf can regarded as precursors of the notion, there by taking in the ideas of Wolff and Vattel. Particularly Grotius can be taken to be a precursor of the notion because he concieved of international law as law which existed between sovereign states; he came to advancing such a rule in his denial that states had a right to intervene in the internal affairs an ally, if the subject of that ally claimed to have been wronged at the hands of their sovereign, whereas Hobbes and Pufendorf contributed to the notions of natural equality and a state of nature.[7]

Richard Cobden postulated that no government had a right to involve its people in hostilities, except in defence of their national honor or interest.[8] Unless this principle were made the rule of all, he thought, there could be no guarantee for the peace of any country, so long as there may be found a people, whose grievancies may attract the sympathy or invite the interference of another state. Thus Richard believed that the national interest was an intelligible concept, that fidelity to it required states to abstain from participation in the domestic conflicts of others, and that adherence to such a rule was in the general sense of it, peace among states. Cobden was a professional politician who, when he advocated the conduct of foreign policy according to the principle of non-intervention, had in mind the interests of the people of Great Britain. In his view, this did not mean that British interests were to be indulged at the expense of other nations, for he combined with his conviction about the rightness for Britain of a policy of non-intervention, a convenient belief in the doctrine of harmony of interests. "Now the House of Commons is a body that has to deal with nothing but honest interests of England", he said in a speech to that body, "and I likewise assert that the honest and just interests of this country and her inhabitants, are the just and honest interests of the whole world".

Just as Christian Wolff came closest to advocating an absolute principle of non-intervention among eighteenth century international lawyers, so, among nineteenth century politicians, Cobden was the nearest to urging an absolute policy of non-intervention. In 1858, he wrote in a letter to a friend: "*You rightly interpret my views when you say I am opposed to any armed intervention in the affairs of other countries. I am against any interference by the government of any one country in the affairs of another nation, even if it be confined to moral suasion. Nay, I go*

[7] A Concise History of the Law of Nations, revised edn.1954.
[8] The Political Writings of Richard Cobden, 1886, pg. 8

further, and disapprove of the formation of a society or organization of any kind in English for the purpose of interfering in the internal affairs of other countries".[9]

In writings on international law, and in theories of foreign policy, adherence to the rule of non-intervention has been urged as a right conduct for states in their relations with each other. Whether the motive of such urging is the maintenance of such a rule of law between states, or the advancement of the interests of a particular state, the function of the principle is one of restraint, its purpose is to prevent the state from conducting its foreign relations by a method perceived to be undesirable. The extent to which the principle can be said to have evolved is through three states to which the principle is said to have restrained their foreign policies. That is France at the time of the revolution and its aftermath, Britain after the Vienna Settlement, and the United States from her independence to the Second World War. The rule formed part of the language of diplomacy. Statesmen developed doctrines of non-intervention and used them to defend their own policies and to criticize the policies of others, to advance their own objectives and to hamper the achievement of the objectives of others and to communicate their views about the limits of the permissible in international relations. The principle of non-intervention served to legitimate action, in international politics to provide a doctrinal weapon in support of foreign policy, and to provide some guide by which states could predict each other's action, or reaction, in internal relations.

The French National Assembly declared on 22 May 1970, that the French nation will refuse to undertake any war of the conquest, and will never employ its forces against the liberty of any people. Coming as it did, after the Assembly's refusal to take part in a war with England on behalf of Spain over the Nootka Sound incident, this declaration can first be interpreted "an honest expression of a pacific policy". A second interpretation places emphasis on its significance as representative of a new international.[10] The Decree of Non-intervention of 13 April 1793 has to be taken into consideration. The new Decree aimed at reciprocal non-intervention between France and other European states: "*The National Convention declares in the name of then French people, that it will not interfere in any manner in the government of other powers; but it declares at the same time, that it will sooner be buried under its ruins than*

[9] Richard Cobden to Mrs. Schwabe, 1858. In Hobson.
[10] The French Revolution; from its origins to 1973, Georges Lefebre.

suffer that any power should interfere in the internal regime of the Republic, or should influence the creation of the constitution which it intends to give itself".[11]

The principle of no-intervention had always been a possible policy for Great Britain in her relationship with Europe. Indeed her insular position, reinforced by a powerful navy suggested by the seductive policy of total abstention from participation in the continental affairs, an isolationism which would interpret the non-intervention principle absolutely. The principle of balance and that of non-intervention, were consistent with each other at least in a sense that both were concerned to protect the independence of the several European states by preventing the aggrandizement of any one power beyond its frontiers. For Britain this concern was the independence of states. If non-intervention was possible for Britain, it was also actual, at least in the sense that it was widely held to be precept of foreign policy. The doctrine of non-interference in the internal affairs of other countries has been referred to as "an axiom of British politics since the accession of the House of Hanover".[12] It was a doctrine of British politics. During a House of Lords debate in 1849, Lord Derby declared non-intervention to be the one principle "the one principle of sound policy in which on both sides of the House there was a universal and unanimous concurrence".[13]

If British ideas about internal relations played some part in contributing the principle of non-intervention to the body of international law, that contribution was supplemented and strengthened by a United States practice which claimed the doctrine of non-intervention as the basis of its foreign policy. The full extent of the contribution was demonstrated when, in the twentieth century, the United States doctrine of non-intervention merged with the Latin America doctrine in the proclamation o f a near-absolute principle of non-intervention as a formal rule of inter-American public law. "Non-intervention" has been used as a generic term encompassing the various American doctrines that have existed from European politics, and as a synonym for any one of them.[14] The interest here is in the doctrine holding that United States should not interfere in the domestic affairs of other sovereign states. The roots of this doctrine may be traced to the ideas about the foreign policy current during Washington's second term as

[11] Anderson, Constitutions and Documents, pp. 133-134.
[12] C. K. Webster, the Foreign Policy of Castlereagh, 1815.
[13] Quoted in Bernard, on the Principle of Non-intervention, p. 2.
[14] Charles E. Martin, The Policy of United States as regards intervention 1921, pp. 58-59.

president, and more generally to that collection of ideas forming the "isolationist ideal".[15] This ideal, expressing the natural desire of every people for maximum self-determination, was reinforced in the United States by her sense of escape from a corrupt old world, and by a jealous regard for her novel institutions.[16] The ideal and its expression in terms of interest were rewarded on 22 April 1793 with Washington's proclamation of Neutrality which announced that the United States was to be impartial in the war between France and the European coalition.

1.2 STATEMENT OF THE PROBLEM

State sovereignty would appear to imply that states have complete control over their internal affairs. Therefore states could free to do whatever they want with their territory and it would not be the business of others. However, contemporary developments in international law have created significant erosion of the non-intervention principle, resulting in the problem of balancing the opposing ideas of non-intervention and lawful intervention. The examines the opposing ends and investigates how a balance may be achieved

1.3 AIM AND OBJECTIVES OF STUDY

The aim of study is to undertake an examination of the doctrine of non-intervention in the internal affairs of States. The objectives of the study are:

i. Examine the principle of State sovereignty.
ii. Analyze the doctrine of non-intervention.
iii. Discuss emerging contemporary limits on the non-intervention rule.

1.4 SCOPE OF THE STUDY

The study is conducted in Uganda. It focuses on the principle of non-intervention and addresses other issues like sovereignty, use of force, humanitarian intervention, responsibility to protect, inter alia. It examines relevant international instruments, especially the UN Charter.

[15] This phrase is Albert K. in The Historical meaning of the America Doctrine of Isolation, American Political science Review, Vol. xxxiv, No.4
[16] Louis J. Halle, American Foreign Policy: Theory and Reality 1960, pp. 1-33.

1.5 SIGNIFICANCE OF STUDY

The study is of significance to researches, and practitioners, in international law, internal relations and human rights law. The study will be accessible for the public since copies of research are deposited at KIU library.

1.6 RESEARCH QUESTIONS

In approaching this task. There is firstly a question about sovereignty.

1. Is the inviolability of state sovereignty still an establishment of principle of law?
2. What is the relationship between non-intervention and state sovereignty?
3. Are there contemporary limits to the principle of non-intervention?

1.7 RESEACH METHODOLOGY

The research will use the doctrinal method. The doctrinal method is the primary approach for data collection. The method shall involve the collection of relevant data that is most suitable for research. The data will be collected from research materials such as textbooks, articles, treaties, dissertations, panel discussion reports, case laws and productive resources found on the internet.

1.8 LITERATURE REVIEW

The purpose of this literature review is to give a clear guidance on the law of non-intervention principle, states compliance and the status quo. This shall be by critically analyzing different existing scholary writings that provide the guidelines on the above mentioned principle under the laws of international law.

Richard Cobden expounded the non-intervention principle through speech and such comprehensive writings where he prohibited intervention into the affairs of other nations. Through this he agitated for the acceptance of his doctrine in two main ways. The first was to stress the advantages which would accrue to people of Britain should their government adopt a policy of non-intervention and to point out the domestic disadvantages of an interventionary foreign policy. The second and more persuasive part of Cobden's argument consisted in the trenchant criticism of the interventionary policies of successive governments, by which Cobden

was concerned to show either that the purpose which intervention was intended to serve were spurious or that the intervention was an unfitting instrument.

Mill's concern was that England was misrepresenting the true motive of her foreign policy and that by her deeds she was abusing the habitual principles of that policy, which led mill to attempt to clarify the grounds upon which it was justifiable to intervene in the affairs of other countries.[17] In the internal relations of civilized nations, Mill reduced the question of legitimacy of interfering in the regulation of another country's internal concerns to whether, in time of civil war, a nation is justified in taking part on one side or another. In the case of a protracted civil war in which neither side would gain a sufficient ascendency to end it, Mill relied on "admitted doctrine" to justify intervention by neighbours insist that the contest cease. As tto intervention on behalf of people struggling for liberty against its government, Mill used similar arguments to Cobden to de deny its legitimacy. Assistance to a people kept down by foreign intervention, Mill argued, was a necessary requirement for the proper operation of the principle of non-intervention. Mill argued the case for counter-intervention in the following manner:

The doctrine of non-intervention to be a legitimacy principle of morality, must be accepted by all governments. The deposts must consent to be bound by it as well as free states. Intervention to enforce non-intervention is always rightful, always moral, if not always prudent.

By admitting the legitimacy of what might be called humanitarian intervention to bring to an end a deadlock civil war, and by insisting on the legitimacy of counter-intervention to uphold the rule of non-intervention, Mill parted company with Cobden's more extreme doctrine of non-intervention.

Kant's fifth preliminary article for eternal peace reads:

" *No state shall interfere by force in the constitution or government of another state.* "

Like Cobden he held this principle to be an indispensable condition for the achievement of peace among nations. Unlike Cobden, Kant seemed to allow exceptions to the rule of non-intervention in order to make it consistent with other articles that he set forth in his scheme for perpetual peace. International peace and a law of nations to preserve it, Kant thought must be

[17] Mill's Dissertations and Discussions Political, Philosophical, and Historical, vol.4 1875

based on the freedom and moral integrity of each nation.[18] There could be no justification for a state interfering in the constitution of another unless internal dissension had split it into two parts each constituting a separate state. But if the internal strife had not yet reached this stage of anarchy, then interference from outside powers was an infringement of the right of an independent people struggling with its own weakness. Interference of this sort Kant considered would tend to render the autonomy of all states insecure.

While Cobden agitated against intervention to promote or to bring down a particular form of government, Kant appeared to imply an exception to the rule of non-intervention if by intervention a republic could be established or a despotic regime crushed.

Raymond J. Vincent established that the developments in international law in the twentieth century –the admission of the individual into the international society as a subject of the law of nations, the progressive civilization of the states by law, and the emergence of international organizations as authorities in the embryo, above the state-either have undermined or are in the process of eroding the order of sovereign states in which the principle of non-intervention had meaning.[19]

1.9 ORGANIZATION LAY OUT

This study is organized into five chapters. The first chapter provides the general introduction. It provides the statement of study, aim and objectives of study, scope of study significance of study, research questions, research methodology, literature review and finally organizational lay out.

Chapter two introduces the origins of the principle of state sovereignty. The concept state sovereignty is explained with various, scholary writing interpretations, and state policies on the concept. It discusses the different kinds of sovereignty that is; absolute sovereignty: internal, external sovereignty and de jure and de facto sovereignty.

[18] The Second Definitive Article of the Eternal Peace. Pg. 256, see also W. Sackteder, "Kant's Analysis of International Relations", in Journal of Philosophy, Vol. 51, No. 25 (1954)

[19] R. J. Vincent Thesis on "The Principle of Non-Intervention and International Order" in the Australian National University, September 1971.

Chapter three **discusses** the doctrine of non-intervention, the evolution of the doctrine of non-intervention, the analysis of related concepts, non-intervention principle in the strict sense of it and non-intervention in the UN Charter, force and the threat of force therein.

Chapter four deals with the emerging limits to the non-intervention doctrine. It undertakes a discussion of humanitarian intervention, responsibility to protect, peace keeping and peace enforcement and the use of force to protect nationals abroad. Furthermore, other limits such as lawful counter measures by a state, aid to enforce right to self- determination, self-defense and the pacific settlement of disputes analyzed too.

Lastly, **chapter five** concludes the study, and offers some recommendations too.

CHAPTER TWO

PRINCIPLE OF STATE SOVEREIGNTY

2.0 INTRODUCTION

State Sovereignty is the concept that states are in complete and exclusive and exclusive control of all the people and property within their territory. State sovereignty also includes the idea that all states are equal as states. In other words, despite their different masses, population sizes, or financial capabilities, all states ranging from tiny Islands of Micronesia to vast expense of Russia, have an equal right to function as a state and make decisions about what occurs within their own borders. Since all states are equal in this sense, one state does not have the right to interfere with the internal affairs of another.[20] Practically sovereignty means that one state cannot demand that another state take any particular internal action. For example if Canada did not approve of a Brazillian plan to turn a large section of Brazil's rain forest into amusement park, the Canadian reaction is limited by Brazil's sovereignty.

Under the concept of state sovereignty, no state has the authority to tell another state how to control its internal affairs. Sovereignty both grants and limits power: it gives states complete control over their own territory while restricting the influence that states have on one another. In the above example, sovereignty gives the power to Brazil to ultimately decide what to do with its rainforest resources and limits the power of Canada to impact this decision.

Sovereignty is understood as the full right and power of a governing body to govern itself without any interference from outside sources or bodies. In Political theory, sovereignty is a substantive term, designating supreme authority. It is a basic principle underlying the dominant Westphalia model of sate foundation. Derived from Latin through French souverainete, its attainment and retention, in both Chines and Western culture, has traditionally been associated with certain moral imperatives upon any claimant.[21]

Perhaps the outstanding characteristic of a state is the independence, or sovereignty. This was defined in the Draft Declaration on the Rights and Duties of States prepared in 1949 by the

[20] www.globolization 101. Org>the issue of sovereignty
[21] www. jstor.org/topic/sovereignty

International Law Commission as the capacity of a state to provide for its own well-being and development free from domination of other states, provided it does not impair or violate their legitimate rights.[22] By independence, one is referring to a legal concept and it is no deviation from independence to be subject to the rules of international law. Any political or economic dependence that may in reality exist does not affect the legal independence of a state, unless that state is compelled to submit to the demands of a superior state, in which case dependent status is concerned.[23]

A discussion on the meaning and nature of independence took place in the ***Austro German Customs Union case*** before the permanent court of International Justice in 1931.[24] It concerned a proposal to create a free trade customs union between two German-speaking stares, and whether this was incompatible with 1919 Peace Treaties (coupled with a subsequent protocol of 1922)pledging Austria to take no action to compromise its independence. In the event and in the circumstances of the case, the court held that the proposed union would adversely affect Austria's sovereignty. Judge Anzilotti noted that restrictions upon a state's liberty, whether arising out of customary law or treaty obligations, do not as such affect its independence. As long as such restricts do not place the state under the legal authority of another state, the former maintains its status as an independent country.[25]

The Permanent court emphasized in the ***Lotus case***,[26] "that restricts upon the independence of states cannot therefore be presumed". A similar point in different circumstances was made by International Court of Justice in ***Nicaragua case***,[27] where it was stated that "in international law there are no rules, other than such rules as may be accepted by the state concerned, by treaty or otherwise, whereby the level of armaments of sovereign state can be limited, and this principle is valid for all states without exceptions". The Court also underlined in the ***legality of the Threat or***

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[22] *Year book of ILC, 1949, Pg. 286 Judge Huber noted in the Palmas case that independence in regard to a portion of the globe is* the right to exercise therein,

[23]

[24] PCIJ, Series A/B, No. 41, 1931; 6 AD, pg. 26.

[25] A. Kiss, Repertoire de la Practique Francaise en Maitier de Droit International Public, Paris, 1966, vol. II. PP. 21-50 and survey of international law, prepared by the UN Secretary- General, A/CN. 4/245

[26] PCIJ, Series A/B, No. 41, 1931, Pg. 77(dissenting); 6 AD, P.30 See also the North Atlantic Coast Fisheries case (9110) Scott, Hague Court Reports, p.141 at p.170, and the Wimbledon case, PCIJ, Series A, No.1, 1923, Pg. 25; 2 AD, Pg. 99.

[27] ICJ Reports, 9186, pp.14, 135, 76, ILR, PP. 349, 469, See also Legality of the threat or use of nuclear weapons, ICJ Reports, 1996 pp. 226, 238, ILR, Pg. 163.

Use of Nuclear Weapons[28] "that state practices shows that the illegality of the use of certain weapons as such does not result from an absence of authorization but, on the contrary, is formulated in terms of prohibition". The starting point for consideration of the rights and obligations states within the international legal system remains that international law permits freedom of action for states, unless there is a rule constraining this. However, such rules exits within and not outside the international legal system and it is therefore international law which dictates the scope and content of the independence of states not the states themselves individually and unilatary.

The notion of independence in international law implies a number of rights and duties: for example, the right of a state to exercise jurisdiction over its territory and permanent population, or the right to engage upon an act of self-defence in certain situations. It implies also the duty not to intervene in international affairs of other sovereign states. Precisely what constitutes the internal affairs of a state is open to dispute and is in any event a constantly changing standard. It was stated on behalf of European Community, for example, that "the protection of human rights and fundamental freedoms can in no way be considered an interference in the states internal affairs". Reference was also made to the moral right to intervene whenever human rights are violated".[29] Tis duty not to intervene in matters within the domestic jurisdiction of any state was included in the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among states adopted in October 1970 by United Nation General Assembly. It was emphasised that: "*No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are in violation of international law*".

[28] ICJ Reports, 1996, pp. 226, 247; 110 ILR, P.163.

[29] E/CN.4/1991/SR. 43, Pg. 8, quoted in UKMIL, 62 BYIL, 1991, PP. 556.See also statement of the European Community in 1992 to the same effect, UKMIL,63 BYIL, PP. 635-6. By way of contrast, the Iranian fatwa condemning the British writer Salma Rushdie to death was criticized by the UK government as calling into question Iran's commitment to honour its obligations not to interfere in the internal affairs of the UK, ibid, pg. 635.see also M. Reisman, "Sovereignty and Human Rights in Contemporary international law," 84 AJIL, 1990, Pg. 866.

The prohibition also covers any assistance or aid to subversive elements, aiming at the violent overthrow of the government of a state. In particular the use of force. This amounts to violation of state sovereignty and the principle of non-intervention.

2.1 THE EVOLUTION OF THE PRINCIPLE OF STATE SOVEREIGNTY.

Law is a civilizing force that emerges and evolves as one expression of the process of societal development, transforming the power of physical violence into legal authority. This power process is institutionalized by a constitutive process into principles of authority, governance and law. These processes have evolved to a considerable extent at the national level resulting in modern societies with an unprecedented capacity for effective action and self-regulation. The evolution of the internal community is far less advanced. Ideas evolve with the evolution of society and in turn drive that evolution. The principal obstacle to development of global society is adherence to an outmoded historical conception of sovereignty that accords inordinate legitimacy to nation-state and only secondary rights to individual human beings and the global human community.[30] This article traces the concept of sovereignty.

Although no one realized it at that time, dramatic events unfolding in North America in 1861 where to have momentous consequences for the entire world throughout the 20th Century. They remain a crucial determinate of global development even today. The United States of America as it was then constituted was on the verge of dissolution. A year earlier seven southern states seceded from the union and declared themselves as a new sovereign entity. The Confederate state of America. Their number eventually grew to eleven states, with the addition of two states and two territories to the seven secessionist states. Indeed it seemed likely that the breakaway of these states would be the forerunner of similar moves by Calionia and other states and territories, creating a fragmented patchwork of sovereign states similar to the pattern on the other side of the Atlantic. The southern states seceded in order to defend themselves against the repeated efforts by northern abolitionists to halt the expansion of slavery and eventually outlaw it throughout the nation, as already it had been outlawed in England, France, Spain, Portugal, Canada, Mexico and in most of the other European and Latin American states.

[30] Erudition. Worldacademy.org [An article on Evolution of Sovereignty] September 26, 2013 By Winston P Nagan.

Force rather than principles of justice determined the outcome. Today the same issues of sovereignty and human rights are playing out round the world, nationally and internationally. Take for example civil war in Syria, Afghanistan and Iraq. Claims of national sovereignty and constitutional legitimacy clash with counterclaims of democratic freedom and fundamental human rights. At the international level, the threat posed by nu clear weapons and climate change pits the claims of sovereignty against the humanitarian rights of individual human beings and humanity as a whole. Politicians apply political leverage to negotiate limits on carbon emissions with a view to their national advantage, rather than rights of all human beings.

Law is a civilizing force. It is a central and essential instrument' for the establishment, survival, growth, development and evolution of society. Thus the deepest foundations of law represents a codification of public conscience. The concept of sovereignty is central at this deeper level of social causality as well, for it defines the relationship of organized state with its own members as well as with its external environment.

The evolution of democracy at national level in recent centuries radically altered the basis for national sovereignty, shifting it from the rights of the monarch and responsibilities of the people to the rights of the people and responsibilities of those that govern. This process is at much earlier stage of development at the international level, where the notion of sovereignty remains confined to national level, and the rights of humanity, the human collective, are yet to be fully recognized.

Sovereignty itself is yet to be understood as a common monopoly over matters of national security. Such claims are tempered by the fact that national security remains insecure without some version of cooperative sovereignty between nations. The sovereign right of any nation to develop and utilize nuclear energy coul and does pose existential risks to the people of neighbouring states. Thus the issue of sovereignty raises a fundamental question of whether global society should be solely considered as an aggration of territorially independent sovereign states or whether it encompasses a range of participators that ultimately includes every human being on the planet. If the latter is true then it is important for us to recognize that the ultimate authority of global constitutional process and Rule of Law.[31]

[31] Still the Evolution of Sovereignty article by Winiston

This concept has been formulated in different ways and with different views as to its legal nature by the USSR, China and the Third Word. It was elaborated in 1954 as the Five Principles of Peaceful Co-existence by India and China, which concerned mutual respect for each other's territorial integrity and sovereignty, mutual non-aggression, non-interference in each other's affairs and the principle of equality.[32] The idea was expanded in a number of international documents as the final communique of the Bandung Conference in 1955 and in various resolutions of the United Nations.[33] Its recognized constituents also appear in the list of Principles of the Charter of the Organization of African Unity. Among the points enumerated are the concepts of sovereign equality, non-interference in the internal affairs of states, respect for the sovereignty and territorial integrity of states, as well as condemnation of subversive activities carried out from one state and aimed against another.

Tracing the development of the concept of sovereignty in an evolutionary context can help us account for the circumstances and pressures that have defined and modified it in the past and are chasing today over its further evolution. Three of the earliest theorists to develop the modern idea of sovereignty were the French statesman, **Jean Bodin**; the English philosopher **Thomas Hobbes**; and the Dutch jurist, **Grotius** (Hugo de Groot). Bodin provided the foundations of modern concept of territorial sovereignty. The primary forces that influenced his scholarship and practice were the disintegration of Holy Roman Empire and the emergence of territorially-controlled political entities under localized elites. Bodin understood the importance of centralizing power over people and territory as a method of generating minimum order in the state. His work was in effect as a justified order under the Majestas of the sovereign to prevent crimes against the people and the state. The only limit on sovereign absolutism was whether the sovereign was willing to subordinate his power to the natural or divine law. Bodin believed in the natural law tradition as a limitation on sovereign absolutism, but this tradition was weakened by sovereign's monopoly over effective power. Clearly Bodin did not endorse sovereign absolutism, but his limits were ones that the sovereign could easily ignore. His view of sovereignty therefore, relies primarily on the capacity for coercion and to only a lesser extent on principles of authority.

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[32] See e. g. Tunkin, Theory, pp. 69-75 See also Ramondo, Peaceful Co-existence, Baltimore, 1967 and R. Higgins, Conflict of Interests, London, 1965, pp. 99-170.

[33] See General Assembly resolutions 1236(XII) and 1301(XIII). See also Year Book of the UN, 1957, PP. 524 and ibid., 1962, p. 488

Another version of the need for a centralized coercion was advanced by Thomas Hobbes. Hobbes took the view that there was an implicit contract between the ruler and the ruled. The obligation of the sovereign was to protect his subjects, which was in turn the basis for the consent of his subjects to obedience toward the sovereign. Like Bodin's, Hobbes' view does not suggest some modest limits to absolutism, but these limitations are very modest. The practical consequence was that the self-governing elite saw Hobbes as justifying a version of sovereign absolutism. Both of these theorists dealt with sovereignty and governance of a territorial community, in contrast to the approach of Grotius.

Grotius is regarded today as the father of modern international law. His approach to the problem of sovereignty concerned the role of sovereign functioning in the concept of a multitude of other sovereigns. Grotius was in part inspired by the early Roman law which had developed a system of law for the governance of Rome's relationship with other nations. The foundation of this system of law were known as lus Gentium (The law of Nations). This later supplemented by later developments in the natural law theory. From these roots, Grotius wrote his most famous work, The Law of War and Peace (1625), in which he identified the problem of sovereignty. At the international level. He suggested that although there an identifiable common law among nations, which functioned in the concept of war and peace, nevertheless there was a complete lack of restraint by sovereigns in rushing to arms and causing atrocity. Drawing upon the tradition of lus Gentium and the natural law tradition of right reason, Grotius developed principles implicating common sense, moral ideas as the basis for international obligation to which all sovereigns were bound. In short Grotius insisted that reason and reasonableness must be the foundations of the law between sovereign states.

The evolution of sovereignty to confirm its strength and importance appeared to confirm its strength and importance in understanding the internal governance of the state and the role of sovereign in international affairs. From the point of view of international law, the stress on restraints on the exercise of sovereign power focused on agreements that sovereign could enter into.

According to Eruditio the article on The Evolution of Sovereignty, it has been further explained that during World War II, serious thought was given to the development of international law that would provide a stronger constitutional framework for limiting sovereign absolutism this led to the drafting of Atlantic Charter 1941, as a policy statement which formed the basis for the UN Charter ratified in 1945. Parallel to these developments, international tribunals were created to try leaders of aggressor state for international war crimes. The UN Charter was the first serious global compact reflective in documentary form of the emergent expectations of global constitutional process. In this sense the Charter represents an important symbol of the idea of Global Rule of Law.

2.2 THE CONCEPT OF STATE SOVEREINTY

Sovereignty in political theory, the ultimate overseer, or authority, in the decision-making decision making of the state and in the maintenance of order. The concept of sovereignty one of the most controversial ideas in political science and in international law is closely related to the difficult concepts of state and government and of independence and democracy. Derived from Latin term ***superanus*** through the French term ***souverainnete*** (supra).[34]

The concepts of sovereignty have been discussed throughout history, and are still actively debated.[35] Its definition, concept and application has changed throughout. The current notion of state sovereignty contains for aspects consisting of territory, population, authority and recognition.[36] According to Stephen D. Krasner, the term could also be understood in four different ways:

i. Domestic sovereignty; actual control over a state exercised by an authority organized within this state,[37]
ii. Interdependence sovereignty; actual control of movements across state's borders, assuming the borders exist,
iii. International legal sovereignty; formal recognition by other sovereign states,

[34] https: //www. Britannica. org
[35] Jorge Emilio (2014), About the Impossibility of Absolute State Sovereignty. International Journal for the Semiotics of Law
[36] Thomas Weber, Cynthia (1996). State Sovereignty as Social Construct. Cambridge Studies in International Relations.
[37] Krasner, Professor Stephen D. (2001). Problematic Sovereignty: Contested Rules and Political Possibilities. pp 6-12

iv. Westphalian sovereignty; lack of other authority over state other than the domestic authority (examples of such authorities could be a non-domestic church, a non-domestic political organization or any other external agent).

All the above four aspects emerge from the same author, Krasner D Stephen. According to Immanuel Wallerstein, another fundamental feature of sovereignty is that it is a claim that must be recognized by others if it sis to have any meaning: "Sovereignty is more than anything else a matter of legitimacy that requires reciprocal recognition. Sovereignty is a hypothetical trade, in which two potentially conflicting sides, respecting de facto realities of power, exchange such recognitions as their least costly strategy."[38]

2.3 TYPOLOGIES OF STATE SOVEREIGNTY

2.3.1 ABSOLUTE SOVEREIGNTY

An important factor of sovereignty is its degree of absoluteness. As Jorge Emilio lays it. He explains that a sovereign power has absolute sovereignty when it is not restricted by a constitution, by the laws of its predecessors, or by custom, and no areas of law or policy are reserved as being outside its control. International law policies and actions of neighboring states; cooperation and respect of the populace; means of enforcement; and resources to enact policy are factors that might limit sovereignty. For examples parents are not guaranteed the right to decide some matters in the upbringing of their children independent of societal regulation, and municipalities do not have unlimited jurisdiction in local matters, thus neither parents nor municipalities have absolute sovereignty. Theorists have diverged over the desirability of increased absoluteness.

Furthermore, according to Hobbes and Absolute Sovereignty Essay, he adds that a state is sovereign when its magistrate owes allegiance to no superior power, and he or she is supreme with the legal order of the state. Thomas Hobbes and his denial of right reason. Hobbes' first argument in favour of the doctrine of absolute sovereignty is essentially the argument against right reason described as the vision and heart of Hobbes' moral and political philosophy. To cut the story short, almost in everything that we can that we can discover I his notion of sovereignty

[3838] Wallerstein, Immanue l(2004) World Systems Analysis: An Introduction. Pg. 44.

is his conclusion that it is essential for the sovereign to be absolute and to possess effective or coercive power.

2.3.2 INTERNAL SOVEREIGNTY

Internal sovereignty is the right of a nation to be free of internal forces of disruption to its rights and freedoms to exercise the internal governance of its societies and territory. Internal sovereignty can be further subdivided to include the rights and freedoms to of subsets of sovereign nation to exercise their constitutional or otherwise defined rights of governance within their regional boundaries. These subsets typically comprise of provinces, states, territorial regions and municipalities.

Max Weber said that the state is a "human community that successfully claims the monopoly of the legitimate use of violence within a given territory." That is somewhat brutal definition of internal sovereignty, the power of government and constitutional system over people within an autonomous territory. To be a state, however, it is necessary to have the external sovereignty as well-that is to say, it must be recognized as a state by other states. Internal sovereignty is necessary but not sufficient condition for statehood. There must be a territory, and a fixed population in order in order to have a government. That government must be the sole governing body, and there must be no higher authority within the state. The UK's sovereignty is vested in parliament: this has the power to make and unmake laws, the judicial system upholds. However there are currently states which lack internal sovereignty. Libya is a good example: there are three governments, many militias, one external invading force and lawlessness

2.3.3 EXTERNAL SOVEREIGNTY

External sovereignty is the existence of a state according to international politics –the recognition of its existence, and therefore rights to territorial self-rule, by other countries. The UN is the formal channel through which states are recognized, as it represents the (near-) entirety of the international community. However UN recognition is the recognition by individual states –Kosovo, for example is recognized by 111 UN members, but not Serbia. Somaliland declared independence a quarter of a century ago, and certainly has internal sovereignty, but is still unrecognized, although it is gaining international status. Libya's government is backed by the UN, but has no internal sovereignty.

This chapter distinguishes external sovereignty from internal sovereignty. The distinction between internal and external and external sovereignty necessarily accompanied the territorialization of political rule. A ruler was sovereign only in his territory. Outside of it, there were other sovereigns who made the same claim for their own territories. This allowed a distinction to be made between the internal and external aspects of sovereignty; yet only if both existed could a ruler be considered sovereign. It was not enough that there was no higher ruler internally. The ruler also had to be free from any external control. Lack of external sovereignty means nothing less than the subordination of state power to a foreign will, and to the extent rules out of self-determination. Thus an external law emerged-international law-specializing in external relations among states, and was not concerned with a state's internal order.[39]

2.3.4 DE JURE AND DE FACTO SOVEREIGNTY

De jure, or legal, sovereignty concerns the expressed and institutionally recognized right to exercise control over a territory. De facto, or actual, sovereignty is concerned with whether control in fact exists. Cooperation and respect of the populace; control of resources in, or moved into, an area ;means of enforcement and security; and ability to carry out various functions of state all represent measures of de facto sovereignty.

De jure sovereignty is the legal sovereignty and it has its foundation in law. Its attribute is the right to govern and command obedience. But it may so happen that the de jure sovereignty may or may not be recognized by law but obeyed. It is necessary to point out the differences between effects of de facto and de jure sovereignty.

i. Only the de jure recognized state or government can claim property which is situated in the territory of the recognized state.

ii. Only the de jure recognized state can represent the old state for purpose of state succession.

ii. Only de jure recognized state can put forward any claim of a national of that state for injury done by the recognizing state.

[39] https://m.columbia.universitypressscholarship.com...Internal and External Sovereignty

iii. If a sovereign state de jure recognized, grants independence to its dependency, the new state is to be recognized de jure and not de facto.

The distinction is generally made in times of revolution or war when the legally constituted government is overthrown and a new authority assumes power by force, having no legal claim to power. The former would be known as de jure and the latter as de facto sovereign.

De facto and de jure recognition, recognition itself may take different forms of either of the above. A more correct way of putting this might be to say that government may be recognized de facto or de jure. Recognition de facto implies that there is some doubt as to the long term viability of the government in question. Recognition de jure usually follows where the recognizing state accepts that the effective control displayed by government is permanent and firmly rooted and that there are no legal reasons detracting from this, such constitutional subservience to a foreign power. De facto recognition involves a hesitant assessment of the situation an attitude of wait and see, to be succeeded by de jure recognition when the doubt is sufficiently overcome to extend formal acceptance. To take one instance the United Kingdom recognized the Soviet government de facto in 1921 and de jure in 1924.[40]

A slight different approach is adopted in the case of civil war where the distinction between de jure and de facto recognition is sometimes used to illustrate the variance between legal and factual sovereignty. For example, during the 1936-9 Spanish Civil War, the United Kingdom, while recognizing the Republic can govern as de jure government, extended de facto recognition to the forces under General Franco as they gradually took over the country. Similarly the government of the Italian conquering forces in Ethiopia was recognized de facto by the UK in 1936, and de jure two years later.[41] By this method a recognizing state could act in accordance with political reality and its own interests while reserving judgment on the permanence of the change in government or its desirability or legality. It's able to safeguard the affairs of its citizens and institutions by this, because certain legal consequences will flow in municipal law from the recognition.[42]There are in reality few meaningful distinctions between de facto and a de jure recognition, although only a government recognized de jure may enter a claim to property

[40] See e.g. O'Connell, International Law, pg. 161. See also Morison Statement, above note. 38.
[41] See e. g. Malcom N Shaw pp. 473 and 474
[42] Ses Haile Selasie v Cable and Wireless ltd (No.2) [1939] 1 Ch. 182; 9 AD, P. 94

located in the recognizing state. Additionally, it is generally accepted that de facto recognition does not of itself include the exchange of diplomatic relation.

2.4 CONCLUSION

In a nut shell, non-intervention in the affairs of other states extends to state sovereignty to decide freely for itself, the choice of political, economic, social and cultural system used in the state. It is therefore necessary for all states to respect the sovereignty, territorial integrity and political independence of other states as required under international law.

CHAPTER THREE

THE DOCTRINE OF NON-INTERVENTION

3.0 INTRODUCTION

In international law, the principle of non-intervention includes, but is not limited to, the prohibition of threat of or use of force against the territorial integrity or political independence of any state (Article 2.4 of the Charter). The principle of non-intervention in the internal affairs of other states also signifies that a state y. should not otherwise intervene in a dictatorial way in the internal affairs of other states. The International court referred in the ***Nicaragua case*** to the element of coercion, which defines and indeed forms the very essence of, prohibited intervention. [***ICJ Reports 1986, pg. 108, para, 205.*** As Oppenheim's International puts it, the interference must be forcible or dictatorial, or otherwise coercive in effect depriving the state intervened against control over the matter in question interference pure and simple is not intervention, [vol.1 9th edn. 1992, pg. 432,].

The more common term is non-intervention, though non-interfere also appears in texts. The latter may suggest wider prohibition, though in most contexts the two terms seem to be used interchangeably.

3.1 EVOLUTON OF THE DOCTRINE OF NON-INTERFERENCE

As already explained in chapter one, this chapter will a little establish the historical evolution of the doctrine of non-intervention. Vattel is credited with being the first to formulate the principle of non-intervention (Droit des gens ou principes naturelle, 1758, vol. 1, para 37). But whether the principle was reflected in practice of states remained doubtful well into the 19th Century. (See for example Holy Alliance). Among early treaty formulations of the principle was article 15 (8) of the Covenant of League of Nations and the Montevideo Conventions on Rights AND Duties of States of 1933, which prohibited "interference with the freedom, the sovereignty or other internal affairs, or the process of the Governments of other nations," together with the Additional Protocol on non-intervention of 1936. During the Cold War the Social countries in the Soviet bloc were particularly insistent on the principle of non-intervention, but so too were colonial powers in the early decades of the United Nations and later the many new independent States.

With the evolution of the right of self-determination and the development of international human rights law, the absolute nature of the principle has greatly diminished. The notion of the "responsibility to protect" may represent a further inroad.

There is no doubt that the principle of non-intervention remains a well-established part of international law. The prohibition of non-intervention "is a corollary of every state's right to sovereignty, territorial integrity and political independence."[43] The Friendly Relations Declarations [UNGA res. 2625 (xxxv) 1970, includes a whole section on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter. The UN General Assembly adopted a Declaration on the Inadmissibility of Intervention and Interference in the Domestic Affairs of States.[44] The International Court was in no doubt about the existence of the principle in the Nicaragua case.[45]

In the Corfu Channel case (Merits, 1949), the International Court regarded "the alleged right of intervention as the manifestation of a policy of force, such as, in the past, given right to the most serious abuses and as such cannot, whether be the present defects in international organization, find a place in international law."[46] As the International Court of Justice and said in its 1986 judgment in the Nicaragua case, "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 internal law. International law requires political integrity to be respected.[47] It went on to say that the principle forbids all states or groups of states to intervene directly or indirectly in the internal or external affairs of other states, and that a prohibited intervention must accordingly be one bearing on matters in which each state is permitted, by the principle of state sovereignty, to decide freely. One of these is the choice of political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The elements of coercion defines, and indeed forms the very essence of, prohibited intervention. In DRC v Uganda,[48] the Court noted

[43] Oppenheim's International Law, p. 428).
[44] UNGA Resolution 2131 (xx01965).
[45] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA) 1986 ICJ 1
[46] ICJ Reports 1949, p. 35.
[47] ICJ Reports 1986, p. 106, para, 202
[48] Democratic Republic of Congo v Uganda, [ICJ] GL No. 116, [2005]

that Nicaragua had made it clear that the principle of non-intervention prohibits a state to intervene, directly or indirectly, with or without armed force, in in support of the internal opposition within a state.[49]

3.2 ANALYSIS OF RELATED CONCEPTS

The thesis shall establish reconsidering statehood: examining sovereignty or intervention boundary.[50]

R. B. J. Walker recently noted that far from its largely accepted status an essentially contested concept, state sovereignty is instead an essentially uncontested concept. This is seemingly paradoxical comment for an international relations theorist to make in light of the recent revival of academic scrutiny concerning sovereign statehood.[51] Rather than marking an inattention to recent trends in sovereignty literature, Walkers statement is a commentary on the way sovereign statehood has been studied. Walker writes of sovereign statehood:

Its meaning might be marginally contestable by constitutional lawyers and other connoisseurs of fine lines, but for the most part state sovereignty expresses a commanding silence. At least some problems of political life, it seems to suggest are simple and settled, fit for legalists and footnotes, but not of pressing concern to those interested in the cut and thrust of everyday political struggle.[52]

A parallel observation can be made with respect to the intervention literature-that intervention is essentially uncontested. I want to suggest that the reason why intervention is essentially uncontested concept has to do with the coupling of the concepts sovereignty and intervention. This coupling of sovereignty and its transgressors continues to define the gambit of imaginable research programmes for intervention scholars. It is not the mere linking of the concepts sovereignty and intervention that presents an obstacle to offering unique contributions about intervention. Rather similar to Walker's remarks on the sovereignty debates, I argue that the particular understanding of sovereignty or intervention circulating international relations literatures effect ta silence. This silence is on potentially dynamic understandings of statehood.

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[49] [ICJ] Reports 2005, para. 164.
[50] www.jstor.org An article by Cynthia Weber, 18, 199-216 printed in Great Britain
[51] The State and Political Theory (Princeton, 1984 , investigations by Martin Carnoy
[52] R. B. J. Walker, Gender and Critique, In the Theory of International Relations(19920).

As Richard Little concluded in his review of the intervention literature, "For specialists in international relations to contribute to this debate about intervention, they will require a much more sophiscated approach."

3.3 NON-INTERVENTION PRINCIPLE

If the existence of the principle on non-intervention in the internal affairs of states is beyond doubt, its exact content is far from clear. In the Nicaragua case (supra), the international Court considered only those aspects of the principle that appeared relevant to the dispute before it (para.205). Apart from the prohibition of the use of force (Article 2.4 of the UN Charter), its difficult to be categorical about what is and what is not, prohibited by the principle. Much may depend upon the context, and on relations between states, the general state of society in the states concerned and their level of political development. For example it seems to be well established that the diplomats should not interfere in the internal affairs of state to which they are accredited. But even here as Denza points out, "with greater emphasis in modern international relations on the encouragement and protection of human rights in other states, conflicts between the diplomatic duty of non-interference and the objective of promoting observance of human rights are frequent "(E Denza, Diplomatic Law (3rd ed., 2008, 465-6). The principle of non-intervention and the limits on a state's jurisdiction can be seen as related. Thus when the United States sought to impose obligations on the foreign companies extraterritorially in support of its own foreign policy objectives, this may be seen as improper intervention in the affairs of states whose companies are affected and lead to counter-measures by them (protection of trading interests). Among other activities which, depending on the circumstances, may contravene the principle of non-intervention are interference in political activities (such as through financial or other support for particular political parties, comment on upcoming elections or on the candidates; seeking to overthrow the government –so-called regime).

Where there is an exception to the principle of non-intervention in the case of assistance to people seeking to exercise the right of self-determination remains controversial, and was not dealt with in Nicaragua. Humanitarian intervention seems to have gained ground in recent years, but likewise remains very controversial. For instance; foreign humanitarian intervention in civil

war in Somalia, for example Uganda and Kenyan army troops among other countries.[53] What is largely uncontested is that states and international organizations are entitled to criticize human rights impairment in other countries. In other words non-intervention is wrong except where it aims at justified reason such as humanitarian intervention, inter alia lawful state ambitions.

3.4 NON-INTERVENTION IN THE UN CHARTER[54]

The doctrine of non-intervention in the domestic affairs is the logical corollary of the principle of sovereignty. Currently, the UN Charter establishes and oversees the observance of this fundamental norm of state relations.

In this section of the study, we discuss the legal framework for non-intervention in the UN Charter, and the contributions of the UNGA and UNSC to the interpretation of this norm by reference to their pronouncements over the years. The UN Charter does not explicitly spell out the principle of non-intervention as a rule governing relations between member states. It is rather implied in the Statement of Principles of the United Nations. Thus, **Article 2 (1)** of the UN Charter roots the Organization on the "principle of sovereign equality of all its Members," and **Article 2(3)** calls for peace settlement of international disputes. For the purpose of this article, however, the two most important provisions are Article **2(4) and Article 2(7).** While the former lays down the general prohibition of the use of force-and in this respect can be said to govern the proscription of military intervention by states-, the latter establishes the UN jurisdiction on sovereign states, and thus draws the boundary of UN intervention itself.

The UN Charter prohibits States from resort to force or the threat of force, in their internal relations. Article 2 (4) of the UN Charter represents the most explicit Charter provision against intervention with the use of force. Its interpretation constitutes the basis for discussion of unilateral military interventions. **Article 2(4)** reads as follows: *"All Members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purpose of United Nations".* As such **Article 2(4)** stipulates a general prohibition of the use of force beyond armed conflict to include other types of unilateral use and threat of force. More precisely it extends the

[53] The Somalia Civil War. [It grew out resistance to the military junta led by Said Barre during 1980s-still ongoing].
[54] The Principle of Non-inter vention at the United Nations: The Charter Framework and the League Debate by Muge Kinacioglu

prohibition of force beyond war to include other types of unilateral use and threat of force. It therefore endows the prohibition of force as a general and authoritative principle.[55] The substantial majority of legal scholars attribute the norm contained in **Article** 2(4), a jus cogens character.[56] To begin with, by providing for a collective security system, the Charter limits the permissible basis for acts of self-help. Secondly the Charter also stipulates in **Article 2(6)** that the organization will ensure the observation of its principles by non-Members as well in response to their threat or use of force. Thus the prohibition of threat or use of force binds all states, members and non-Members alike. Thirdly, in **Article 35(2),** non-members are allowed to bring to the attention of then Security Council or of the General Assembly any dispute to which they are parties. Finally Article 103 establishes the precedence of members' obligations under the UN Charter in the event of a conflict between the obligations of members under the Charter and under other international agreements. Hence the Charter is instrumental in providing a framework for prohibiting force and elevating it to a jus cogens status.[57] Notwithstanding the consensus on the prominence of the norm of prohibition of the use of force and its customary international law status, **Article 2(4)** raises questions of interpretation due to an absence of definition for the various notions stipulated in the article.

3.4.1 FORCE.

The Notion of Force [58]

The prohibition of force in article 2(4) comprise both the threat and the use of force. However the language of Article 2(4) neither defines nor qualifies the term force. The prevailing view is that the notion of force in Article 2(4) does not extend to all kinds of force, such as political and economic coercion, but signifies solely armed force.[59] The General Assembly Declarations on the Principles of International Law, which is considered to be the key interpretation of the main principle of the UN Charter, confirms this reading of force. In its interpretation of the principle of refraining from the threat or use of force in international relations, the Declaration only refers to military force. It deals with other types of coercion in the context of the general principle of

[55] Louis Henkin, "Use of Force Law and US Policy" in Right v Might, International Law of use Force, New York, Council on Foreign Relations Press.1991. pg. 38
[56] See for example Malcom N. Shaw, International Law Cambridge, Grotius Publications Limited, 1991. Pg. 686
[57] Belatchew Asrat, Prohition of Force Under, the UN Charter. A Study of Article 2(4).
[58] The Notion of Force by Muge Kinacioglu
[59] Buno Simma, The Charter of United Nations, pg. 113

non-intervention in matters within the domestic jurisdiction of a state.[60] Thus it can be inferred that what General Assembly was implying by its use of the term "force" in Article 2(4) was specifically limited to armed force. In addition, the ICJ supports this narrow conception of force in Nicaragua case (supra), as it refers to this resolution for determining the scope of the prohibition of force in customary international law.[61]

Yet the term provokes further questions with respect to the use of indirect force. Included in the notion of indirect force are one state's allowing its territory to be used by troops of another country for fighting a third state and or providing arms to insurgents in another country.[62] Although legal scholarship generally tends to consider this problem within the framework of defining intervention, it is also relevant within the scope of Article 2(4). In this respect the Declaration on the principles of International Law provided specifications regarding the prohibition of use of indirect force in its section dealing with the prohibition of force more generally: "*Every state has a duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state. Every state has a duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to the present paragraph involve a threat or use of force.*"

The ICJ in Nicaragua judgment of 1986, reiterates the Declaration on the principles of International Law, reaffirming the above formulation of indirect force within the scope of Article 2(4).[63] As a result the notion of indirect force is also included in the prohibition of the use or threat of force.

3.4.2 THREAT OF FORCE

Legal opinions have given far less consideration to what is meant by the "threat of force" than to use of actual force. Brownlie describes the "threat of force" as an express or implied promise by

[60] General Assembly Resolution 2625 (xxv), 24 October 1970.
[61] ICJ Reports, (1986) para, 191.
[62] Simma, The Charter of the United Nations, pg. 113
[63] While describing the arming and training of the Contras by the United States as acts amounting to the threat or use of force, the Court did not characterize he mere supply of funds to them as use of force. The Court however stated that supplying funds constituted an act of intervening in the internal affairs. ICJ Reports (1986). Para. 228

a government of a resort to force conditional on non-acceptance of certain demands of that government.[64] Another author noted that the relevant feature of threat as form of coercion is not so much the kind of force applied, but rather the purpose and outcome of the threat: a genuine reduction in the range of choices otherwise available to states.[65]

The Declaration of the principle of International Law acknowledges "threat" as an instrument of coercion, by declaring that "the territory of state shall not be the subject of acquisition by another state resulting from the threat or use of force." Therefore Article 2(4) includes the threat of force, which may possibly result in the violation of a particular state's territorial integrity and political independence. However since most threats of force have generally been justified on the basis of the right of self-defence, there seems to be a higher degree of tolerance toward threat, than the actual use of threat in state practice.[66] This tolerance results from the general recognition of the difficulty to prove coercive intent in an international system characterized by power disparities and the consequent dominant and subordinate relations between states. Notwithstanding, scholars agree that an open and direct threat of force to compel another state to give up territory or yield considerable political concessions, unlawful under Article 2(4).

3.5 CONCLUSION

Although the UN Charter does not explicitly lay down a principle of non-intervention applying to the relations between states, the principle is implicit in the general prohibitions of the use of force in international relations and observable in the leading general Assembly declarations. Article 2 (4) spells out the illegality of any unilateral use of force not authorized by the UN. In this sense, it is the cornerstone of the rule of non-intervention between states. The norm it establishes has universal applicability in the sense that it has been consistently reaffirmed in a number of international documents as well as in the general Assembly declarations. While the UN Charter is restrictive with respect to use of force and intervention by the organization itself, by assigning broad powers, particularly to the Security Council, in matters of international peace and security, it leaves a great deal of room for political considerations and deliberations. Although the enforcement measures under Charter VII are the only exceptions to the rule of non-

[64] Ian Brownlie, International law and the use of Use of Force by States, London, Oxford Press. 1963, pg. 364.
[65] Romano Sadurska, Threats of Force, American Journal of International Law. Vol. 82, NO. 2, (1988), pg.242
[66] Simma, the Charter of United Nations, pg. 118.

intervention in the in the domestic affairs, the UN has developed certain mechanisms for interventions short of the enforcement measure.

CHAPTER FOUR

EMERGING LIMITS TO INTERVENTION DOCTRINE

4.0 INTRODUCTION

I argue that the norm of non-intervention is a default response that best serves the purpose of international society. However there are cases in which the default position of non-intervention may not be the best alternative to serve the purposes of international society. I there considered a number of possible exceptions, humanitarian intervention, self-dense, inter alia as expounded bellow. The exception violate the non-intervention principle of international law but, for the good and maybe the right cause. I note that I have borrowed many assumptions from scholars, articles, journals to achieve my intended goal within this thesis.

4.1 HUMANITATRIAN INTERVENTION

Although I have argued that intervention is usually against the purpose of international society, might there be an exception to this rule when the intervention is to be undertaken for the purpose of preventing a humanitarian catastrophe? In this chapter I argue that there is a cause for an exception to the rule of non-intervention when the intervention is undertaken to save a population from crimes so excessive that they necessitate the use of armed force in order to prevent losses that most rational persons would find unconscionable. To make this case I look to the purpose of non-intervention and humanitarian intervention to determine that their ends can be compatible with each other. One is demarcation of boundaries so that people may coexist in the finite territorial expanses afforded to humanity, and the other is the rescuing of people that have come to be threatened in a way that disallows participation in political life.

To see how humanitarian intervention might fulfill its purpose, I examine two cases. The first is the mass exterminations that occurred during the Holocaust. In my examination of the Holocaust, I question whether humanitarian intervention serves to protect humanity that comes under threat, whether it can serve beneficently for the perpetrators of atrocities, and whether it can enhance the stability of international society. Next I look at the case of Former Republic of Yugoslavia (FRY) to determine if humanitarian intervention can be justified for the same reasons when the combat is less one-sided and all groups perpetrate atrocities.

The purpose of humanitarian intervention is to rescue people and hence preserve life. "Humanitarian intervention is justified when it is a response (with reasonable exceptions of success) to saving a life. It therefore comes in through the mass violation of what would be considered the basic conditions of human life. Appealing to the idea of self-help and considering a state to be more representative and stable after having worked out its identity internally it becomes abominable when whole of humanity is being subjected to conditions where they merely just survive or unable to survive at all. In this case it is no longer feasible to discuss the internal mechanics of disputes or state identity or policy, as one scholar narrates. If we are to appeal to Walzer's legalistic paradigm for examining state behavior,[67] we could say that in the conditions under which humanitarian intervention is justified are those in which the individual state has violated Mill's harm principle.[68]

Humanitarian intervention and the principle of non-intervention can be compatible because each tries to remedy human loss. Although non-intervention is foundation to an arrangement that abstracts international affairs away from individual, somehow its purpose was to give individuals a tool to express their will and identity in their territory. However, recourse to violence can be limited through customary acceptance of particular states, their particular viewpoints, and their particular ways of governing. Without this the right of individuals to live the life they desire may be obstructed by powerful actors forcing their particular models of life onto them. Humanitarian intervention shares these concerns for individuals, but it instead wishes to save them from their own government. These individuals are to be rescued from a situation in which their self-determination as a political community is impossible. Like non-intervention, humanitarian intervention is seeking to preserve humanity and allow it to exist in it.

Through an examination of the events that occurred during the Holocaust, I will argue that humanitarian intervention rescues people from an unjust fate, aids the perpetrators of atrocities by ending and preventing irrational behavior, and adds stability to international order. In turning to FRY, I will seek to apply the lessons learned about humanitarian intervention to determine if the criteria are applicable or need to be expanded.

[67] Ibid pp. 58-63
[68] John Stuart Mill, On Liberty, and Other Writings.

The history of Holocaust is in many ways the history of National Socialists, or the policies adopted in regard to Germany and Europe's Jews. The ideology of National Socialist party was heavily influenced by race based assumptions and an attempt to build a superior culture based upon the Aryan race. When doing this the methods was always in negative instead of positive. Thus in attempting to build the German people, cleansing became the method often used. Policies that sought to cleanse the German people of jewish influence inevitably turned to freeing them from the influence of the individuals that comprised the Jewish community. National Socialists increasingly deprived the Jewish community of their rights, set up policies of deportation and subjected remaining Jews to tyrannical control from the party.[69] As I further note from an article, making *Judenpolitik* central to their governing, the National Socialists fund themselves force to address the human element of racial cleansing. The answer was treat Jews as beneath the German and eligible to harsh treatment in the name of racial purity. As such Jews found themselves unable to participate in commerce, politics, and unable to walk in the streets without facing harsh treatment.

The treatment of Jews became worse when National Socialists began to look Judenpolitik, territorially. After the entry of Hilmmler's SS, the action turned more genocide as National Socialists killed almost all members of the Jewish communities in an attempt to cleanse the territory.[70] Here we see that human lives are sacrificed for racial purity of German land.

Therefore if we ignore such breaches of international law perpetrators by National Socialists and assume they had sovereignty in the territory they administered, would the crimes they committed against the Jews justify humanitarian intervention? Since the purpose of humanitarian intervention is to rescue people, then yes, humanitarian intervention would be justified. The Holocaust therefore gives evidence that humanitarian intervention is justified intervention.

Humanitarian intervention in the case of FRY would also benefit international order by delegitimizing behaviors that could endanger the goals of international system and by coercing states that might one day act aid in Holocaust. In this case a well-planned intervention may aid in preventing regional instability produced by refugee flows. These flows produce a humanitarian crisis that is not confined to the territory of state involved in civil war. The stability of an entire

[6969] Ibid, p, 423.
[70] Ibid, p. 238.

region can be jeopardized this way, with states falling and more civil wars breaking out as more communities realign. In FRY, humanitarian intervention can be justified for the same reasons as it could have been in the Holocaust, even if justification is not as strong in this case. Humanitarian intervention would serve to prevent massacre and loss of whole population of people. Intervention would also serve to correct irrational behavior or crimes against humanity.

Conclusively therefore, among the already justified reasons above, humanitarian intervention comes in to limit the liberty of certain communities to live a life as they see fit, but this is compatible with the aims of international order. According to ***Terry Nardin, "The Moral Purpose of Humanitarian Intervention", pp. 12-9,*** common morality seeks to identify what morality is meant to do; it seeks to overcome particularities in varying forms of morality and understand what purpose is. Ultimately, common morality upholds something like the golden rule or the Kantian principle of respect that identifies the humanness of others and seek to identify it. International society based upon international law, sovereignty, and non-intervention seeks to respect their desires to live according to their customs. However, I strongly aver that non-intervention is not violated if it seeks to respect humanity of different groups, preserve and protect their lives.

In conclusion, humanitarian intervention serves as a permissible exception to the principle of non-intervention if conducted in such a manner as highlighted in the above submissions.

4.2 RESPONSIBILITY TO PROTECT

The principle of responsibility to protect is based upon the underlying premise that sovereignty entails a responsibility to protect all population from mass atrocity crimes and human rights violations. The principle is based on the respect for the norms and principles of international law, especially the principle relating to sovereignty, peace and security, human rights and armed conflict. Responsibility to protect provides measures that already exist (i.e. mediation, early warning mechanisms, economic sanctions, among others) to prevent atrocity crimes and to protect civilians. The authority to employ the use of force under the framework of responsibility to protect rests solely with United Nations Security Council and considered a measure of last resort. The United Nations Secretary General has published annual reports on the Responsibility to Protect since 2009 that expand on the measures available to governments, intergovernmental

organizations, and civil society as well as private sector, to prevent atrocity crimes.[71] Responsibility to protect is a political commitment unanimously adopted by all members of the United Nations General Assembly at the 2005 World Summit and articulated in paragraphs 138-139 of 20005 world Summit Document:

138. Provides that, "each individual state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails that prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility will act in accordance with it. The international community should as appropriate encourage and help states to exercise this responsibility and support the United Nations in establishing an early warning capability.

139 reads that, "the international community through the United Nations, also has the responsibility to use the appropriate diplomatic humanitarian and other peaceful means in accordance with Chapter VI and VIII of the Charter, to help protect population from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context we are prepared to take collective action, in any timely and decisive manner, through the Security Council, in accordance with Charter, including chapter VII.

The above paragraphs serve as basis for inter-governmental agreement to the responsibility to protect. The General Assembly adopted the 2005 world Summit Outcome Document in its resolution 60/1 of 2005. The UNSC first affirmed the responsibility to protect with its resolution 1674 of 2006 on the protection of civilians in an armed conflict. The scope and limitation of responsibility to protect is; according to the report of International Commission on Intervention and State Sovereignty, which first articulated the responsibility to protect in the December 2001 Report, where it envisioned a wide scope of application in its articulation of the principle, which included "overwhelming natural or environmental catastrophes where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened."

Responsibility to protect consist of three important and mutually reinforcing pillars, as articulated in 2009 Report of Secretary General on the issue, and which built off paragraphs 138

[71] Implementing the Responsibility to Protect: Reports of the Secretary General(2009)

and 139 of 2005 World Summit Outcome Document and inter-governmental agreement to the principle;

The protection responsibility of the state

1. International assistance and capacity building
2. Timely and decisive response.[72]

According to UN Secretary General's 2012 report , the three pillars of the responsibility to the project are not pillars must be implemented in a manner fully consistent with a purposes, principles and provisions of the Charter." the pillared approach is intended to reinforce not to undermine state sovereignty.

4.3 PEACE KEEPING AND PEACE ENFORCEMENT.

Peace enforcement is the use of military force to compel peace in a conflict, generally against the will of those combatants.[73]To do this, it generally requires more military force than peacekeeping operations. The United Nations through its Security Council per Chapter VII of its Charter, has the ability to authorize force to enforce its resolutions and cease fires already created.[74]

Peace enforcement defers from peace keeping as peacekeeping enforcement are generally used to create peace from a broken ceasefire or to enforce peace demanded by United Nations .Peacekeeping refers to activities intended to create conditions that favour lasting peace.[75] Research generally finds that peacekeeping reduces civilian and battlefield deaths and reduces the risk of renewed warfare. According to the UN peacekeepers often referred to as "blue berets or blue helmets" because of their light blue berets and helmets, can include soldiers, police officers, and civilian personnel.[76]

There are four major types of operations encompassed in peacekeeping.

1. Observation Missions which consists of contingents of military or civilian observers tasked with monitoring ceasefires,

[72] United Nations Official Document.
[73] Kaplan Richard. "Peace keeping/Peace Enforcement.
[74] Nau, Hennry R (2015). Perspectives on International Relations.
[75] United Nations Peacekeeping . "Department of Peacekeeping Operations. (DPKO)"
[76] DPKO

2. Interpositional Missions, meant to serve as buffers between belligerent factions in the aftermath of a conflict.
3. Multidimensional Missions, they attempt to implement robust and comprehensive settlements.
4. Peace enforcement Missions, these are multidimensional operations. One of the most famous examples of peace enforcement was the UN intervention during Gulf War to force Sadam Hussein's Iraq army from Kuwait. The United Nations was able to compel Iraq's compliance with the UN Resolutions which demanded its withdrawal from the region.

A report on peacekeeping and peace enforcement in 1990s for United States army established this difference between peace enforcement and peacekeeping.

4.5 THE USE OF FORCE TO PROTECT NATIONALS ABROAD

The doctrine of protection of nationals abroad deals with legal justification for the military assistance to the citizens of a state outside its border. This involves an intervention by one state, often represented by its armed forces into the territory of another state for the purpose of protection of lives of its own citizens.[77]British jurist Sir Hummphrey Waldock pointed out three conditions which need to be fulfilled in order to the right of protection of nationals abroad to be valid,

i. An imminent threat of injury to nationals must exist.
ii. There must be a failure or inability on the part of territorial sovereignty.
iii. The measures of the protection must strictly be confined to the object of protecting them against injury.

The act by a state of sending armed forces in order to protect its nationals abroad are complex issues of infringing territorial integrity and political independence of another state. It is noted that before 1945, intervention of this kind was permitted.[78] After the adoption of UN Charter, whenever the territorial state consents, rescue operations and evacuations can be lawfully carried out. However the problem arises where there is no consent from the territorial state. In such

[77] Andrew Thomson. Notion of Protection of Nationals Abroad
[78] Tom Ruys, The Protection of Nationals Abroad Doctrine revisited. (2008)13, journal of conflict and Security law, p. 235.

circumstances whether "protection of nationals" in foreign territories is compatible with the UN Charter or not is subjected to much debate. Its legality and legal basis are strongly contested. However, some scholars have continued to argue that there is a right to protection of nationals broad by use of force under the customary international law but this is uncertain.[79] Scholars who support this doctrine invoke a variety of arguments, important being that these interventions do not infringe the prohibition on the use of force under Article 2(4) of the UN Charter since it does not harm territorial integrity or political independence, but the idea is merely to protect nationals from danger , which the territorial state fails to do. The second argument in their favor is that intervention constitutes an act of self-defense, which is enshrined in the UN Charter as a right to self-defense under Article 51 of the UN Charter. Since national form an essential part of a state, an attack against nationals abroad is an attack against a state itself, thereby triggering Article 51.

4.5 LAWFUL COUNTER-MEASURE BY A STATE.

The leading case on counter-measure is the International Court of Justice decision in the Gabcikovo-Nagymaros Dams case, the Court remarked that for a counter-measure to be justifiable, it must meet the conditions below:

1. The act constituting a counter-measure must be taken in response to a previous intentional wrongful act of another state and must be directed against the state.
2. Injured state must have already called upon the state committing the wrongful act to discontinue its wrongful conduct or to make reparation, but the request was refused.
3. The counter-measure must be commensurate with the injury suffered, taking into account the rights in question.
4. The purpose of counter-measure is to induce the wrongdoing state to comply with to comply with its obligations under international law

Counter-measures are unilateral measures adopted by a state in response to breach of its rights by the wrongful act of another state. There is s requirement of prior exhaustion of all the amicable settlement procedures available under general international law, the UN Charter or any other dispute settlement instrument to which a state seeking redress is party. Internal law prohibits state intervention in the affairs of other states. However, the proponents of international law

[79] James Crawford, Brownlie's Principle of Public International Law (8TH ED.)

contend that having exhausted all options therein to preserve humanity and state sovereignty, such other means like the Nagymaros case put it, may be utilized to remedy the situation.

4.6 AID TO ENFORCE RIGHT TO SELF-DETERMINATION

It is the responsibility of all ststes to ensure that right is realized.in the openingnof the Charter of UN, respect for the right to self-determination of people is presented as one of the purpose of UN. The right to self-determination was confirmed by the United Nations General Assembly in the Declaration of Friendly Relations, which was unanimously adopted in 1970

The right of people to self-determination is a jus cogens rule binding as such on the United Nations as authoritative interpretation of the Charter's norms.[80] It states that people based on respect for the principle of equal rights and fair equality of opportunity, have right to freely choose their sovereignty and international political status with no interference.[81] Woodrow Wilson having announced his fourteen points made a firm statement that "self-determination is not a mere phrase; it is an imperative principle of action." The principle of self-determination does not only outline just the duty of states to respect and promote the right, but also the obligation to refrain from any possible action which deprives people of the enjoyment of the enjoyment of such a right. The obligation from the principle of self-determination has been recognized as erga omnes, namely existing towards the international community as a whole. The International Court of Justice has recently reiterated the erga omnes status of the general principle of self-determination in its advisory opinion on the wall. Subject to the study topic, non-intervention in the internal affairs of other states, states may come in even without consent to as aid to self-determination.

4.7 SELF DEFENCE

Self-defense refers to the use of force to repel an attack or imminent threat of attack directed against oneself or others or a legally protracted interest. Self-defense in international law refers to inherent right of state to use force in response to an armed attack. It is one of the exceptions to the prohibition against use of force under Article 2(4) of the UN Charter and customary international law. However whether the armed attack that gives rise to self-defense should originate from another state (as opposed to an armed group) and whether the attack should

[80] Mc Whinney, Edward(2007)
[81] Chapter 1, Purpose and Principles of Charter of United Nations.

materialize to lawfully invoke self-defense are ongoing conundrums for scholars. The right self-defense is enshrined in Article 51 of the UN Charter. The right to self-defense can permit the use of force within the borders of the victim state or in the territory of another state from where the attack is carried out. Accordingly, states may respond to an attack by the armed forces of another state or irregular armed groups that use the territory of other states for their attacks.[82]

Therefore the right to self-defense enables states to use force lawfully to protect their sovereignty, political independence and security without any international responsibility. However, exercisindg this right is limited to one specific circumstance-an armed attack. Moreover states must demonstrate that force was used necessarily, proportionally and immediately, as well as informing the UN Security Council. [83]

The modern origin of the right to self-defense dates back to the Caroline incident between the British and the United States government in 1837. On the night of 29, December 1837, the Caroline an American ship that was allegedly bringing assistance to the rebels moored on the American bank of Nigara River. British troops crossed the river and attacked the ship. They killed some Americans and burned the ship. The US claimed that British troops crossed its borders and violated its sovereignty but the British justified the attack as self- defense.[84] The customary understanding of self-defense is not only exercising of a state's right in response to a military attack, but also to counter an imminent threat of armed attack. This type of self-defense is named anticipatory self-defense or pre-emptive self-defense.[85]

I conclude by quoting Article 51 of the UN Charter that "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Members taken by measures in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not any way effect the authority and responsibility of Security Council under the present Charter to take at

[82] Russian Law journal, Vol. VI, 2016
[83] ANTHONY Clark Arend, International Law and Preemptive use of Military Force, 26, (2003)
[84] Arend 2003, 90-91
[85] Niaz A. Shash, Self-defense, Anticipatory self-defense and pre-emption. Journal of Conflict and Security. 111 (2007)

any time such action as it deems necessary in order to maintain or restore international peace and security."

4.8 THE PACIFIC SETTLEMENT OF DISPUTE

The purpose is to provide a general survey of the practice among states of the peaceful settlement of international disputes. There are variety of instruments for peaceful settlement, including negotiation, commissions of inquiry, mediation, conciliation and good office.

1. Negotiation. This is a method by which people settle differences. It is a process by which agreement while avoiding dispute. It can be applied at all kinds of disputes, whether political or legal or technical. Unlike other means listed in Article 33 of the Charter, it involves only states which are parties to the dispute.
2. Mediation. This is the use of independent or impartial and respected third party called the mediator in settlement of a dispute. The mediator may use wide variety of techniques to guide the process.
3. Conciliation. Is the process of settling a dispute by referring specifically constituted organ whose task is to elucidate the facts and suggest proposals for a settlement to the parties concerned. However the proposals here, just like in mediation may have no binding force.
4. Method of good office. Consists of various kinds of action aiming to encourage negotiations between the parties to a dispute. Also in contrast to the case of mediation and conciliation, the proffered of good offices does not meet with disputants jointly but separately with each of them. Normally this end s when the parties agree to negotiate.

4.9 CONCLUSION

The settlement of international disputes is one of the most important roles of United Nations "to bring about peaceful means, and in conformity of the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace. To this end the Charter provides a system for pacific settlement or adjustment of international disputes. This system is delineated in mainly in Chapter VI under Article 33 of the Charter.

CHAPTER FIVE

5.1 CONLUSION

In conclusion, states are obliged to refrain from interfering in the affairs of other states and are further prohibited to use unlawful force, as stipulated under Articles 2(7) and 2(4) of the United Nations Charter. Since the end of cold war, new emergent forms of humanitarian intervention are challenging the norm of non-intervention, based upon argument that while sovereignty gives rights to states, there is also a responsibility to protect its citizens. The idea has been used to justify the expounded exceptions to the principle of non-intervention in the study.

I therefore conclude that states should commit themselves not to intervene the affairs of other states. However, international society allows humility to build artificial norms that guide international behavior and help to prevent disasters that may accrue as a result of state intervention. Sovereignty is chief among those norms. Non-intervention therefore serves the purpose of sovereignty.

5.2 RECOMMENDATION

The study recommends that the law on non-intervention of states in the affairs of other states is a state responsibility to all UN Member states and should also be recognized and respected by non-members, for the global security and preservation of humanity. A limit should be imposed on unlawful or unjustified intervention in the affairs of other states as it impairs state sovereignty. Paramount among issues is non-intervention in the affairs of other states.

he study recommends that chief among chief among the norms of international society is sovereignty. Through sovereignty the unique character of each state and the character of its citizens as unique from the citizens of other states is respected and observed. Humanity exists in diversity; the norm of sovereignty respects this, especially by leaving to each state the administration of its domestic affairs. Sovereignty is the recognition of diversity and individuality and the fact that people wish to live in a manner guided by their identity. Social setting and history shape different communities in different ways. Sovereignty seeks to maintain this by making domestic affairs independent of foreign powers.

Furthermore, the study recommends that non-intervention ensures sovereignty by making it unjust to meddle in the affairs of another state. It establishes a boundary. States are not meant to inject themselves into the affairs of another state, even if these affairs are unfolding in a violent fashion. Non-intervention provides states with normative protection against the whims of the more powerful states. The people of a state are able to determine their institutions, domestic policies, and their indentities if non-intervention is maintained as a law of international society. This in turn allows each state to reflect the uniqueness of its people.[86]

Lastly, the study also recommends that in this case of non-intervention, it is always sufficient to meet the purpose of international society, or humility, nature and state's behavior, for as long as the principle is upheld or in line with the sole purpose of UNSC. For instance the study has discussed reasonable exceptions I find to intervention is humanitarian intervention, self-defense among others discussed above.

[86] Robert Jackson, The Global Convenant.

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