The Theory of State Sovereignty and its Developments

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Abstract:

During these centuries, the political problem in Western European thought was the problem of power, not the problem of the state. What you see, whether it is at the national or international level within the limits of national law or public international law, as the case may be, and the limits of the sovereignty of other countries, where it began with absolute freedom from all restrictions, to end at the end of the twentieth century and the beginning of the twenty-first century derogating and restricted in favor of peoples at the national level For the sake of international regulation at the global level.

Keywords:

the theory of sovereignty, the state, law, the development of the international community.

نظرية سيادة الدولة والتطورات التي لحقت بها

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ملخص البحث

خلال هذه القرون كانت الإشكالية السياسية في الفكر الغربي الأوروبي هي إشكالية السلطة وليست إشكالية الدولة، فالأخيرة بمعنى القوة ذات السيادة لم تكن موجودة في الفكر السياسي وإنَّ كانت موجودة على الأرض، إذ أنَّ سيادة الدولة من الناحية القانونية تعني قدرة الدولة على أنَّ تفعل ما تريده بالكيفية التي تراها، سواء أكان ذلك على المُستوى الوطني أم الدولي في حُدود القانون الوطني أو القانون الدولي العام على حسب الأحوال وحُدود سيادة الدول الأُخرى، حيثُ بدأت مُطلقة من كل قيد، لتنتهي في نهايات القرن العشرين وبدايات القرن الحادي والعشرين مُنتقصة ومُقيدة لصالح الشعوب على المُستوى الوطني ولصالح التنظيم الدولي على المُستوى العالمي.

الكلمات المفتاحية:

نظرية السيادة، الدولة، القانون، تطور المجتمع الدولي.

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Introduction:

The theory of state sovereignty is one of the oldest theories in social sciences in general, and in law in particular, whether public international law or constitutional law, as the idea of sovereignty is one of the most controversial ideas in public international law, and also at the level of the state itself, or at the level of The international community, although this idea emerges through various forms, at the international level there is still controversy regarding the search for the process of reconciling the sovereignty of the state and its obligations [1]

The theory of state sovereignty has been linked to the theory of authority considering that state sovereignty is an aspect of its authority, as there is no sovereignty without authority, as sovereignty in its simple definition means the ability of the state to do what it wants at the time it wants, without restriction or condition. Hence, this ability to absolute action requires an absolute authority that also works to enable it to this absolute action, and thus it can be said that there is an indissoluble relationship between authority and sovereignty[2].

The problem of studying:

This study presents the developments that occurred in the theory of authority that necessarily led to the development of

the theory of sovereignty, and the reality of the questions related to the future of this sovereignty in light of the international trend, whether at the national or international level within the limits of national law or international law, depending on the circumstances and the limits of the sovereignty of other countries.

Study division:

The study of the concept of state sovereignty and the stages of its development will be addressed through two demands; The first deals with the concept of state sovereignty, while the second demand deals with the stages of development of state sovereignty.

The first requirement: the concept of state sovereignty

Public international law and constitutional law have established that the state is based on three pillars: people, territory and political authority; Sovereignty is a manifestation of state authority. [3]

Section one: the concept of sovereignty

In researching the concept of sovereignty, we find that it has a linguistic, idiomatic and legal concept, which will be addressed in the following:

Sovereignty concept:

Sovereignty includes the absolute power of the state at home and its independence abroad. The state possesses the authority of hegemony over its territory and its members, and that it is independent of any external control. Sovereignty is the highest degree of authority before the government. It is the authority, and the government as a structure; They are organs and externally that exercise sovereignty in the state to maintain

order, organize matters internally and governance institutions in the state that set and implement legal rules, and settle individual disputes; Including the work of legislation, enforcement and judiciary [4].

The definition of sovereignty:

Al-Siyada language: from blacks, it is said: So-and-so is the master of his people if the situation is desired, and dominant if the reception is intended by him, and the plural is masters, and it is said: their masters are black, dams, so-and-so, their masters are their stagnation, and their blacks are the black ones who are dominated by others, so the black one is the master [5].

And the master is called the Lord, the owner, the honorable, the virtuous, the generous, the forbearing, the one who is likely to harm his people, the husband, the chief and the leader, and his origin is from the one who prevails, he will prevail, and leadership is sovereignty and leadership [6].

Sovereignty, literally:

Sovereignty has been defined as a description of the state, meaning that it has the supreme word and the upper hand over its territory, and over what is above or in it.

The previous definitions are convergent, and perhaps the most comprehensive of the concept of sovereignty idiomatically, is the last definition: to describe sovereignty as a supreme and absolute authority, and to single it out by obligation, and to include it in the rule of all matters, and relations, whether that take place inside or outside the state.

The second section: the legal concept of sovereignty:

In the wake of many years of religious wars in Europe between the Catholic and Protestant churches, which were essentially fought between the Germanic Empire on one side and a number of European countries led by France on the other, the German Empire has weakened and the Emperor no longer enjoys the absolute authority that he enjoyed, so it became independent Both the Netherlands and Switzerland on the one hand, and on the other hand, the papacy has weakened and weakened the Church, as the feudal system breathed its last in favor of the central state. The treaty ended these wars and laid the foundations of the rules of public international law, and following these treaties and the writings of the Dutch jurist "Grosius" and the emergence of the legal rules that came in international treaties and international norms; It has begun to talk about sovereignty that is restricted by international treaties and rules (9), as the fact that those treaties have provided for these countries' enjoyment of sovereignty and equality in sovereignty, however, the same treaties stipulate that states abide by the commitments they have committed, while on the national side, The ideas of the French Revolution of 1815 CE resulted in the transfer of sovereignty from the kings to the peoples, and that the nation became the source of the authorities, which enjoys sovereignty as well as the idea of legality, which means the actions of rulers, which must be in accordance with the law previously issued by the constituent assemblies elected in a constitutional form, or Ordinary laws passed by parliaments made up of representatives of the people. [10].

In the international sphere, the principle of sovereignty means the sovereign states that emerged in the seventeenth century. As for the internal sphere, it means the state's authority to manage its internal affairs within the boundaries of its territory

on the basis of non-interference in its internal affairs, i.e. the sovereignty of national decision In other words, sovereignty is considered an aspect of state authority, and state authority means the ability of rulers to issue orders and prohibitions to members of the people from among the ruled in order to run state affairs, and in that state sovereignty is an aspect of this authority [11] and it means according to international law "Supreme authority" over persons and subjects residing on the territory of the state, and this represents the personal element of sovereignty, as well as with regard to the jurisdiction of the state above all the elements and things that exist on its territory, and this is the territorial element in sovereignty, so sovereignty is an indispensable element in relation The existence of the state or any state, but the existence of two elements (the region and the people) is not sufficient for the existence of the state, as the state can exist only through the presence of a sovereign political authority, and the basis of this is that the sovereign authority is the one who conducts the The jurisdiction of the state over the region, including its material and personal elements as elements of the theory of sovereignty, and thus that represents the state at the external level within the framework of international relations [12], and this results in a negative principle, which is non-interference in the affairs of states on the one hand, and the principle of national loyalty to the nation-state on the one hand. another side.

From this point of view, some argue that the definition of sovereignty is essentially a negative definition, which is that sovereignty lies in not being subject to a higher authority, as it is a characteristic of the state and its source of strength.[13].

It can be said that the conferences in "Westphalia" wanted, through these principles, to establish an international environment that derives its stability from these principles, in light of relations between sovereign nation-states that refuse to interfere in their internal affairs, and that they seek by all means to achieve their national interest on the other hand. These principles are the basic pillars upon which international law and international relations are based [14].

It is worth mentioning that the theory of sovereignty from a scientific point of view was born at the hands of the French jurist (Jean Baudin 1530-1596 AD), where he was able to express in it all the elements that were associated with the overall balances that were reflected in his era, where he presented this theory in his book "The Six Books in the Republic", which Appeared in 1577 AD, Jean Boudin defined sovereignty as: "the supreme, absolute and permanent authority over the citizens and subjects in the state. Sovereignty is a reference that secures the common good of all and the interest of each individual on the one hand, and the spirit of the republic on the other. The republic is not considered a republic if it is not in it." The power of a lady unites all its members and its parts"[15].

"Bodan" assigned sovereignty to the king, and this sovereignty means the king's possession of absolute authority within the state over the subjects and outside them towards the counterpart states, and this authority is absolute and there is no restriction on it except the divine laws and natural law, and thus he denied the church and feudalism from having sovereignty, and according to "Bodan" Sovereignty meant that the state that the king personifies has complete freedom in the internal legislation, and also possesses the same freedom in the process of determining the state's relations with other peer states, and that this sovereignty is not subject to division,

waiver or prescription. This doctrine expresses the personalization of authority as it is It is related to the person of the king and derives its foundation from him [16].

However, with the year 1815 AD, the French Revolution broke out, whose fuel was the ideas, writers and thinkers of the Renaissance, led by Jean-Jacques Rousseau, the pioneer of free democratic thought in the Renaissance through his famous book (The Social Contract), so that the idea of authority and sovereignty took another basis, which is that the people The Sovereignty is the source of the authorities, and then sovereignty has taken on an institutionalized character, as it has become the property of the state and not the ruler, whether he is a king or a president, and its role is to exercise it within this institutional framework. Sovereignty is a legal status attributed to the state when it is available based on material components of a total of individuals, a territory and an organized and governing body, and it thus represents the state's authority to confront individuals within its territory and face other states abroad, and one of the requirements of this authority is that it be a reference for the state's actions in various The affairs of its will alone (18), as it follows that the state's authority inside and outside is not superior to any authority, since after the French jurist "Jean Bodin" defined it as the supreme authority over citizens and subjects. and which are not subject to laws), we find that many jurists have agreed on the descriptions of sovereignty as: one, indivisible, not accepting to act, and not subject to either gained or projected statute of limitations. [19]

As for the nature of sovereignty, its components and limitations, Western jurisprudence in this regard goes to the fact that sovereignty is divided into two categories that must

be included in any definition of it. Sovereignty includes four elements, which are [20]:

1- The specified geographic region.

2- The population belonging to the state.

3- The sovereign working government recognized by the governments of other sovereign states within the framework of the international system.

4- The ability to enter into international relations with other countries.

Therefore, the comprehensive definition of sovereignty must include the internal and external elements of it, as internal sovereignty is the ability of the state to control the activities to which it is actually and legally subject, which means that it is subject to the decision-making authority with the presence of real oversight as it is known, given that the government The stable has the right to exercise final authority; As for external sovereignty, it must require recognition by other actors in the international system.[21]

From the foregoing, it can be concluded that the sovereignty of the state from a legal point of view means the ability of the state to do what it wants in the way it sees fit, whether at the national or international level, within the limits of national or international law, depending on the circumstances and the limits of the sovereignty of other states.

The second requirement: the stages of development of state sovereignty

It was made clear to us through the previous requirement that the sovereignty of the state from a legal point of view means the ability of the state to do what it wants in the way it sees fit, whether at the national or international level, within the

framework of the limits of national or international law, depending on the circumstances, and the limits of the sovereignty of other countries.

This theory (state sovereignty) is in fact an abstract concept, and therefore it is not subject to the process of empirical preference, as there are no units of sovereignty, but rather it is an indivisible whole, and on the other hand, it is difficult to embody sovereignty as a substance because it expresses a process of social development as it leads society. feudal to the path of the sovereign state [22].

The development of the international community has naturally contributed to its impact on the sovereignty of the state, and in light of what the study requires, this demand will be addressed in two sections.

Section one: The historical stages of the development of state sovereignty

Through the stages of development of sovereignty, we find that in the beginning, sovereignty was absolute without clear boundaries, where the ruler in the ancient eras enjoyed absolute authority without limits and no censors or accountability over it. to God), which was the case in Egypt during the eras of the Pharaonic rule, and in China and India, but with the descent of the Christian religion and its spread in the Roman Empire; After Christianity became the official religion during the reign of Emperor "Constantine," the (the theory of the god-governor) was no longer valid as a bond to the ruler's authority, considering that the Christian religion used to say that your God is in heaven, but we, including these rulers; We are nothing but creatures of this (the Great God),

and in light of that (the theory of sacred divine authorization) was born by the early church fathers, according to which this ruler is authorized by God Almighty to rule this group of human beings, and in the light of this consideration, it is not The delegate may be objected to; Therefore, it is not permissible to object to the will of the delegated (the ruler) [23].

However, it can be said that the idea of the state's sovereignty has been affected by this transformation, but this influence in reality was not a great influence, except that he sent down authority from heaven to earth, and then the sovereignty of the ruler, in addition to the fact that the ruler became bound by moral frameworks, which are the ones brought by the Christian religion, even if Superficially, considering that an agreement has been made between emperors and kings on the one hand, and men of the Church on the other; Which means that the emperors and kings are left to the clergy to do what they like in their peoples and the affairs of government in exchange for the emperors and kings to let the clergy do the same within their churches [24].

In light of the increasing influence of the Christian clergy and the power of the Church in contrast to the weakness of the Roman emperors, the theory of sacred divine authorization is no longer valid as a support for the authority of the rulers, and then another theory was established to establish the authority of these rulers and was invented by the Christian clergy, which is (the theory of indirect divine authorization). Where this theory is based on the idea that God does not accept chaos for His servants, and then drives events in a way that leads to Christians choosing their rulers themselves. Based on that, the ruler would not be considered a legitimate ruler unless he was installed by the church at the head of the authority in the state. That the ruler is responsible before the church for the extent of

his commitment to the teachings of the Christian religion, and in light of this, the authority, in theory, has become restricted to the teachings of the Christian religion, and that the church has assumed a supervisory role over the rulers in order to verify the extent of their commitment to these teachings or vice versa, and then it can be said that the sovereignty of the state was personalized in the person of the ruler and became restricted by the teachings of the Christian religion, and these three theories that were previously mentioned are considered religious or theocratic philosophical theories [25].

This theory continued to prevail until the beginning of the Renaissance in Europe until the pioneers of the Renaissance established the contractual theory as a basis for state power, which is the cornerstone of the democratic system of government. Social contract", and this theory is based on the idea that the state's authority is established by an agreement between all members of society (a social contract), whereby all individuals within society decide to waive all their rights for the benefit of the social group and not for the benefit of the ruler, meaning that they give up The collective will, which is the will of all arising from this contract, and therefore as individuals, they have ceded to themselves as a group, and then the political authority established by the contract is the authority of everyone and not the authority of an individual, i.e. (the authority of an institution), since the subjects and the sovereign is only one visible entity. It has two aspects: the individual aspect, and the societal aspect, meaning that each of the individuals gives up his authority in order for all that authority to gather and pour into one stream that represents the supreme authority, representing the sovereignty of all. L, which is the sum of individual dominions, and with this

adaptation of the contract, Rousseau sees that it removes the conflict between the original freedom of the individual and the authority established by the contract, since that thalath is the authority of the total and always remains for the group, and the individual when he obeys the group but obeys himself at the same time, thus ensuring Freedom and power go hand in hand by virtue of that social contract [26].

Sovereignty moved from being for the individual ruler to be for the people, i.e. from personal authority to institutional authority, and accordingly the idea of sovereignty moved from having the ruler as a person to the state as a legal entity independent of individuals and rulers and these ideas were applied in France when the French Revolution settled and achieved Its goals, as it was also achieved in Britain, but realistically, it was the result of the conflict between the feudal lords and the kings of Britain on the one hand, which resulted in restricting the powers of the king with written documents such as the document of the Great Covenant (Magana Karta) and between the kings and the Senate on the other hand, which resulted in On the stability of the rules of the parliamentary system as one of the systems of government in modern democratic countries, and thus, in theory, sovereignty has moved from being an idea based on a religious philosophy or theocracy to a legal political idea.

Section Two: State Sovereignty and the Development of the International Community:

What is imposed by the logic of matters and the nature of things of an inverse proportion between the sovereignty of the state and the development of the international community is that the greater the size of the organizational development of the international community, the more negatively it affects the sovereignty of the state at the internal level and more on the

international level, because of the entry of states into establishing international organizations that necessarily leads to this This is due to the waiver by these countries of some of their sovereignty and privileges of their unilateral will in favor of this collective legal entity (the international organization), and this is due to this entity so that this entity can achieve the desired goals of it, which was the motive behind the establishment of these countries in the establishment of this entity, for example, the stability of the idea of issuing decisions It is binding on the majority of members of international organizations with the establishment of the United Nations Charter [27], where specifically for the Charter the commitment of states that are not members of the United Nations to the decisions of the United Nations Organization, where Articles 10, 11, 18, Chapter IV of the Charter of the United Nations stipulate the following:

First: Article [10]: The General Assembly may discuss any issue or matter within the scope of this charter or related to the powers or functions of one of the branches stipulated in itself. It may also, with the exception of what is stipulated in Article [12], recommend to the members of the Commission or the Security Council or both of them what it deems appropriate in those issues and matters.

 Second: Article [11]:

1- The General Assembly may consider the general principles of cooperation in maintaining international peace and security, including the principles related to disarmament and the regulation of armaments, and it may also present its recommendations regarding these principles to members or to the Security Council or both.

2- The General Assembly may discuss any issue related to the maintenance of international peace and security brought to it by any member of the United Nations and the Security Council or a country that is not a member in accordance with the provisions of the second paragraph of Article 35, and it may - except for what is stipulated in Article 12 - that Its recommendations on these issues are submitted to the state or countries concerned, to the Security Council, or to both. Each issue of the foregoing in which it is necessary to take action, should be referred by the General Assembly to the Security Council before or after its consideration.

3- The General Assembly may draw the attention of the Security Council to situations that are likely to endanger international peace and security.

Third: Article [18]:

1. Each Member of the United Nations shall have one vote in the General Assembly.

2- The General Assembly issues its decisions in general matters by a majority of two-thirds of the members present and participating in the voting. These issues include: recommendations for the maintenance of international peace and security, the election of members of the Trusteeship Council in accordance with the provisions of the first paragraph (c) of Article [86], the admission of new members to the United Nations, the suspension of members from exercising the rights of membership and enjoying its benefits, the dismissal of members and issues related to the functioning of the membership. Trusteeship system and budgetary matters.

3- Decisions on other issues - and this includes defining the groups of additional issues that require a two-thirds

majority for approval - are issued by a majority of the members present and participating in the voting.

From the foregoing, the OIC General Assembly has wide powers to issue resolutions on all issues related to the charter of the organization, foremost of which are matters related to achieving international peace and security against countries that did not vote in approval of these decisions from the members of the organization, but also towards countries that are not members of the organization, but it is true that the organization It currently contains all countries of the world, but at the beginning of the establishment of the organization, this matter was not achieved.

This means that the member states of the organization will be bound to do or refrain from an act that is not in accordance with their will, based on the decision of the organization to which they belong, and in the case of the United Nations, countries that do not belong to the organization.

Likewise, Article [103] of the Organization's Charter states that: If the obligations to which the members of the United Nations are bound, in accordance with the provisions of this Charter, conflict with any other international obligation to which they are bound, it is the lesson of their obligations arising from this Charter. Therefore, the international organization, whose backbone is this UN body, restricts the sovereignty of states under this charter, and then absolute sovereignty ceased to be restricted sovereignty under this organization, and the idea of international organization referred to is the same that occurred with the development of human society, when the individual abandoned a life of isolation And his entry into societal organizations such as the

family, the family, the tribe, the province and the state, whereby entering into these social organizations resulted in the individual voluntarily giving up part of his freedom and personal authority over himself in favor of these new organizations, so that these organizations can play their societal role in managing the lives of the individuals who make up him.

As for the Security Council, the matter has developed as one of the important organs of the United Nations, where, according to the Charter of the United Nations, we find that it consists of fifteen countries, including five permanent members (the United States of America, China, Russia, Britain, and France) and ten members elected by the General Assembly from the members of the organization [28], and its decisions are issued by a majority with the approval of nine of its members on substantive issues, provided that they include the votes of the five permanent members in it.[9] Therefore, only nine countries have the right to impose their will on all the countries of the international community, and only one of the The five permanent members of the Council can stop the will of the international community as a whole, represented by the United Nations, through the use of (veto), and these matters undoubtedly undermine the sovereignty of the countries concerned [30], and this view is supported in Western jurisprudence, where some go to the fact that The state's conduct of its activities in the international field makes it obligatory to take into account international decisions in its internal decisions.[31].

Article 1/3, 4 of the Charter of the United Nations states that: The purposes of the United Nations are:

Achieving international cooperation in solving international issues of an economic, social, cultural and humanitarian nature, and in promoting and encouraging respect for human

rights and fundamental freedoms for all without discrimination based on gender, language, or religion, and without discrimination between men and women.

Which made this body a reference for coordinating the work of nations and directing them towards realizing these common goals.

Also, the phenomenon of globalization as a phenomenon related to the development of the international community has affected the sovereignty of the state. Globalization is a language that is generalizing something and expanding its circle to include the whole world. It transcends the borders of the state, in a way that resulted in a single global market, so that the world has become in light of globalization a single global village[30 - 35]

Also, globalization can be defined as: a managed voluntary and purposeful process through which the dominant forces in the global system aim to benefit from the international situations based on the increasing degree of interdependence, the intensity of international interactions, the current global distribution of power, the transformation in market mechanisms, and technological and information wealth, all of which resulted in a feeling of pressure Time and place and the erosion of regional divides in which the political borders of nation-states disappear, and in which the main actors from states, as well as economic blocs, international organizations and multinational companies agree on the rules of behavior in accordance with the new patterns of the current international system [36 -39].

From the above, the collapse of the Soviet Union and the hegemony of the United States of America over the world, and

the end of the global bipolar phenomenon in favor of the unipolar world phenomenon, are all of the main factors that led to the emergence of the phenomenon of globalization, and one of the most prominent legal applications of this phenomenon is the agreement establishing the World Trade Organization (WTO). As well as the General Agreement on Customs Tariffs and Trade, which is known for the acronym (GATT), whose most prominent features were the removal of customs barriers in favor of freedom of global trade, as the phenomenon of globalization, with its previous description, whether in terms of its causes or in relation to its concept, it affects From the theory of traditional state sovereignty in favor of the free circulation of trade and information and its flow across regional political borders, and the disappearance of sovereignty is based on the idea of the erosion and erosion of sovereignty by virtue of the influence of the forces of globalization in all its dimensions and strategic, economic, social, cultural and political trends, so that the new function of the state is to serve the dominant interests, especially if We learned that the major countries played a major role in supporting this trend to achieve their interests globally.

Conclusion:

 The sovereignty of the state began in ancient times absolute sovereignty from every restriction and condition, as the rulers were gods who had the right to ask and no one to ask them about their actions, and when Christianity came from heaven, the sovereignty of the ruler came down with it to the earth considering that he is human, but it remained on its absolute. With the success of the Westphalian Conference in 1648 AD, to conclude peace between the parties of the European continent, the sovereignty of the state was restricted by three principles (the principle of national loyalty, the principle of

sovereignty, and the principle of non-interference in the internal affairs of states). International is the ruler of the external relations of states, and then the sovereignty of the state is restricted at the external level.

The internal sphere remained the sanctuary of state sovereignty throughout the nineteenth and early twentieth centuries, until the establishment of the United Nations as a UN international organization that brings together all the countries of the world to work to achieve international peace and security, by working to expand the scope of dialogue and cooperation between different countries, which Positively affects the spread of the culture of peace and brotherhood among the peoples and regimes of these countries, which has resulted in member states relinquishing part of their national and international sovereignty in favor of the UN body so that it can work to achieve its global goals.

To the end of the twentieth century and the conclusion of the World Trade Organization agreement; Parallel to the collapse of the Soviet Union and the unipolarity of the United States of America, and the emergence of the phenomenon of globalization, which means the demise of the traditional borders between the countries of the international community, which led to the openness of countries to each other, which contributed to the convergence of views and visions between the systems of these countries with the convergence of cultures as well. Among the peoples of these countries, the emergence of the universality of human rights and their consideration of them as an international matter at the expense of the internal sovereignty of the state, which further diminishes the national sovereignty in favor of the international organization, until sovereignty reached the end

of the twentieth century, as with the beginning of the twenty-first century, sovereignty became restricted according to the foregoing, This is in contrast to the beginnings of sovereignty, which was absolute, and that future developments in various fields at the international level will come in favor of freedom at the expense of the theory of the sovereignty of the nation-state to be restricted.

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