

## **Factors Responsible for the Protection of Iraq's Sovereignty under International Law**

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**Abstract:** The US coalition with alliance forces that invaded into Iraq since 2003 has really traumatise the state of Iraq's political economy, security and peaceful co-existence of the citizens in Iraq and beyond. This sinister has degraded the image of Iraq before the committee of nations and relegated its sovereignty to the background which metamorphosed some experts to describe Iraq as a failed state. This study aims to ascertain the factors that guarantee the protection of Iraq's sovereignty within the context of international law. The qualitative technique via interview and observation was duly adopted as the methods for data collection, whereby manual analysis was employed to present the result obtained from the field. The authors engaged experts among judges, members of the academia and diplomats into in-depth interview for this purpose. The study revealed that internal and external factors are held responsible as far as the protection of Iraq's sovereignty under international law is concerned. The Iraqi citizens are yearning for their country to be governed based on its own traditions and legal norms. It is also viewed that the total disengagement of Iraq from foreign dominance (US Coalition) would lead Iraq to attain its sovereignty. The study concluded that, all room that would guarantee sovereignty of Iraq was blocked and intimidated by foreign powers. Hence, total disengaging Iraq from foreign dominance (US Coalition) and allowing the Iraqi's to govern their own country is among the recommendations put forward in this study.

**Key words:** Sovereignty, international law, US invasion and UN Security Council, expert, powers

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### **INTRODUCTION**

Sovereignty is the cardinal pillar that determines the power, authority and strength of the state to contain its citizens in terms of providing them social security service like internal security as well to protect the image of the said country against external aggression, so as to maintain its national interest before the committee of nations. The state must become sovereign entity to protect its human and material resources internally and externally. The fact is that sovereignty is the feature of statehood in any state. Historically, Thomas Hobbes described the state of England as a state of 'Warre' that all against all, it was the perpetual struggle of all against all (Appadorai, 1963). This conundrum and political uncertainty made Hobbes to prescribe unchallengeable and sovereign power as a solution to that chaotic state. Hobbes and Heqel perceived sovereignty as supreme and

absolute as free from any limits (Thomas, 2004). Apparently the treaty of Westphalia in 1648 has remained the primary and overriding principle upon which the organisation of the modern world has been based. The treaty has led to the terminal point of thirty years war and to denote the existence of a supreme authority over a certain territory (Lake, 2003). This development paved the way for modern system of nation states, in which the sovereignty reigned supreme domestically as well as in its relations with other states. Furthermore, the second trend in the development of the principle of sovereignty was ushered in during World War II and its termination in 1945 (Bhalla and Chowla, 2014). This issue has brought some changes in the global atmosphere, due to the polarisation of international politics into two (Western and Eastern blocs), this led most of the nation-states to be affiliated to either the US or USSR as their mentor. In fact, this tectonic change has diminish the sovereignty of these

states, because they were been control by them systematically. In this respect, the absolute power claimed by sovereign states came *tete-a-tete* with the creation of the United Nations Organisation and various Inter-governmental bodies that espoused the idea of collective actions and state accountability to an international community (Bhalla and Chowla, 2014). Meanwhile, the end of cold war is the next phase for the development of sovereignty after the collapse of Soviet Union which created an avenue for internationalization of democracy and democratization process as a global agenda. This trend consolidated the patterns of globalisation due to the revolution and acceleration information communication and technology that is detrimental to the state of sovereignty (Bhalla and Chowla, 2014). This tragedy made each nation state to become interdependent and co-operated with one another as well as elevated some powerful nations such as members of the UN Security Council to determine the fate of other states in international system. This sinister helped the US to mobilize other states to wage war against Iraq which affected the country's sovereignty and turn it into a failed state due to the military incursion, destruction and devastation to both human and material resources and infrastructural facilities. The essence of this paper is to ascertain the factors responsible for the protection of Iraq's sovereignty under international law.

### **CONCEPTUAL FRAMEWORK OF SOVEREIGNTY**

According to free dictionary, sovereignty is the supreme absolute and uncontrollable power by which an independent state is governed and from which all specific political power derived; the intentional independence of a state combined with the right and power of regulating its internal affairs without foreign interference ([www.legal-dictionary.thefreedictionary.com/sovereignty](http://www.legal-dictionary.thefreedictionary.com/sovereignty)). In other words, sovereignty is the power of a state to do everything necessary to govern itself such as: executing taxes; making war and peace and forming treaties or engaging in commerce with foreign nations.

According to Alwaffa (2004), sovereignty is a state or a governing body which has the full right and complete power to manage its affairs with no interference from external sources or bodies. Meanwhile, to Habib and Aoudi (2010) sovereignty is a political concept that refers to a supreme authority over certain territory. Indeed, the fundamental theory underlying the principles of sovereignty is the Westphalian model of state foundation.

In this respect, Krasner (2000) distinguishes four typology of sovereignty which include Domestic sovereignty Interdependence sovereignty International legal sovereignty and Westphalian sovereignty. To him, the domestic sovereignty refers to the organisation of political authority within a state and the level of control enjoyed by a state. While interdependence is the ability of the state to control the movement across its own borders. International legal sovereignty deals with establishing the status of a political entity in the international system. The state is treated at global scale similar to the individual at national stage. Finally, the Westphalian is an institutional arrangement for organising political life based on two principles (i.e. territoriality and the exclusion of foreign dominance from domestic structures of authority). As to international law in the context of this paper, it refers to rules and regulations governing the affairs between sovereignty and other derivatives and secondary subjects in relations to states, rule that represent the will of states and respect for each other (Florea and Gales, 2013). It can be supplied or imposed by the use of coercion applied by individual or on collective basis (Florea and Gales, 2013). In other words, international law is interpreted in accordance to the will of the major powers or powerful nations, under the pretext of maintaining security and international peace (Lakrennie *et al.*, 2004).

### **THE STATE OF IRAQ'S SOVEREIGNTY UNDER INTERNATIONAL LAW**

Iraq's sovereignty seems to have suffered due to the international coalition of US and its allies that invaded the country since 2003. The international community more especially US, UK and Australia waged war on Iraq under auspices of war against terror after September 11 attack. This is in line with the assertion of Bellamy (2003) that on 20th March, 2003, the United States and its allies, principally the United Kingdom and Australia (Collectively referred to as the 'Coalition'), began operation Iraqi freedom with a series of missile attacks on Baghdad and aimed at 'decapitating' the Iraqi leadership. This illegitimate attack was the beginning of the collapse of Iraq's sovereignty and American hegemony over Iraq in the Middle East.

Consequently, the former UN Secretary General Kofi Anan, described the US invasion into of Iraq at initial stage as illegal but later he justified the Coalition attack against Iraq. Jaburi (2007) pointed that the US invasion was a direct violation of the sovereignty of states, along with the necessities of striving to resolve the international disputes by peaceful means which have been used to deal

with Gulf crisis, instead of resorting to direct confrontation. In this regard, the US used its hegemony in controlling the members of the Security Council in the aftermath of September 11th, 2001 to invade Iraq which led to the toppling of its regime and subsequent formation of Military administration became what is known as the Coalition of Provisional Authority (CPA) to control Iraq's sovereignty and governance under resolution 1546 adopted by the Security Council in the aftermath of 8th June, 2004 (Bremer, 2006). The devastation of such invasion culminated to the exit of Baath Party government and execution of Former Iraqi's leader Saddam Hussein as well as the massive liquidation to both lives and properties in the state. This sinister prevails antagonistic sectarian violence between Shiates and Sunni in one side as well as the Kurdish and others in another wing. Though, the political tension is still on with affiliation to either sectarian or regional sentiment in the country. These conundrums have really affected Iraq's Sovereignty and turn it into the most failed state in the Middle East.

#### **FACTORS THAT GUARANTEE THE PROTECTION OF IRAQ'S SOVEREIGNTY UNDER INTERNATIONAL LAW**

As highlighted earlier, some factors such as the use of force by US and its allies, American supremacy in the International arena, membership in the Security Council especially the voice of the permanent members and the use of international law as a tool to invade Iraq have been detrimental to sovereignty of Iraq. In addressing this part of the study, the authors managed to conduct interviews with the respondents on the factors guaranteeing the protection of Iraq's sovereignty under international law. The respondents have responded as follows.

**What are the factors guaranteeing the protection of Iraq's sovereignty under international law?:** In this respect, the respondents were of the opinion that an internal and external factor determines or undermines the Iraq sovereignty. Internally, the ability of Iraq's government to discharge its responsibility of governance, (i.e., security service, national decisions and policy formulations etc). According to the respondents, this was not the case as a result of the invasion by the foreign forces. Hence, in order to guarantee the sovereignty of the country the government has an uphill task to liberate all Iraqi territories from the terrorist entity "Daash". By doing so, it would enable the government to exercise its competence and power over all its geographical territory and in return it will guarantee Iraq's full sovereignty.

Indeed, it will make the state of Iraq to control its internal security and protect national interest. In addition, the government has to practise the spirit of democracy in its totality, whereby all citizens have equal rights to vote and to be voted for as well in order to contribute to the national development of the country. This would ensure equitable distribution of positions, resources and respect to for each other without any discrimination, regional differences or sectarian faction. This is in conformity with the assertion of Eleftheriadis (2010) that sovereignty is an office of government under a right to govern in the name of the Political Society, a right that rightfully belongs to the people composing that society. In fact, if such is duly guaranteed to the people of Iraq it would facilitate them to adhere to their sovereign government as well to contain the security challenges within, so as to promote peaceful co-existence and national development.

Turning to the external factor, the respondents pointed out that there is total need of disengaging Iraq from foreign dominance under international law. Consequent upon, to the multi-joint task force invasion of US, UK, Australia and their allies on Iraq in 2003 under the umbrella of International law as contended by US in the Security Council. This was the commencement of destroying Iraq's sovereignty by the International Community within the context of international law. Hence, this is a diminution of sovereignty due to the US troops and influence on Iraq and Middle East region. This scenario is in line with the view of Currie who echoed that due to the Iraq War the framework of international law is currently under threat by the determination of the United States to redraw international law to allow its strategic imperatives.

The above manipulation of the US as one of the main allies on the war against Iraq as well as a permanent member in the Security Council, allowed it to justify the invasion as legal which led to the imposition of sanctions putting the country under chapter VII of the UN Charter. The respondents unanimously debunked putting Iraq under chapter VII of the UN Charter, due to the fact that such Chapter minimizes or relegates the sovereignty of Iraq to the background. Indeed, it makes Iraq to become subjective and vulnerable to the UN and American's decision making. Because this international community determine and control's the capital expenditure of Iraq, in terms of budgetary allocation, security, polity and the economy. This is detrimental to the sovereignty and the people of Iraq. Sequel to the aforementioned consequences, the respondents posited that, the international community under the banner of international law must remove Iraq from the clutches of control and subjugation under Chapter VII of the UN Charter, so as to

allow the state of Iraq to attain its sovereignty. This in conformity with the Article 2 Paragraph 7 of the UN Charter which states that the states and international organisation or regional organisation are prohibited to interfere in the internal affairs of any country. In this respect, a respondent opined that the permanent members of the Security Council and US should bear the consequences of all the disasters that befall the country.

**Do you consider that these factors guaranteeing the protection of Iraq's sovereignty under the International exist in reality?:** Accordingly, the majority of the respondents were of the opinion that these factors do not exist in reality due to the fact that the concept of sovereignty is subject to political interests of the state, public officials and its citizens. However, this is not the case in Iraq. For example, the country still remains fragile. In other words, the atmosphere and the appropriate condition for exercising sovereignty within the legal context has been blocked and intimidated due to the foreign domination by US and its Coalition forces. Hence, it could be argued that, the foreign dominance has downgraded Iraq's sovereignty to the background. The US occupation and the presence of the allies in Iraq has really destroyed the country's power to govern itself and made its sovereignty ineffective. This episode is contrary to the International legal sovereignty as pointed out by Lake (2003) that sovereignty implies a relationship of formal equality. Sovereignty also states that no state is entitled to command and obey the instruction of another state (Waltz, 1979).

This type of sovereignty was described as juridical or legal sovereignty (Krasner, 1999). Furthermore, the dominance is against Article 2, Paragraph 7 of the UN Charter which clearly provides 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 but this principle shall not prejudice the application of enforcement measures under Chapter VII". That would guarantee such equality to all nation-states across the globe. But, yet the reverse is the case in relations to the Iraq sovereignty after its occupation. In fact, Iraq's sovereignty since the invasion has been determined by the US Coalition based on their own political interests.

Contrasting the above presentation, a respondent argued that these factors guaranteeing the protection of Iraq's sovereignty under international law exist in reality and this can be seen from the application of the federal system, i.e., the arrangement between the federal states

and the central government. Indeed, this is a peculiar view by one of the respondents bearing in mind that the federal arrangement between the federal states and the central government is seen as a shallow view in explaining the concept of sovereignty as far as international law is concerned. Beside sovereignty is the power pertaining to the affairs of the State. It is important to note that even in Iraq the central government is answerable to the US directive and cannot act or take decisions on internal security measures and policy formulation unless they seek permission or has been directed by the US. This is in fact a bitter pill to swallow as far as the notion of state sovereignty is concerned.

**What would guarantee the effective protection of Iraq's Sovereignty under International Law?:** At this juncture, the respondents were of different opinions based on their understanding of the chaotic State of Iraq. In this regard, a respondent opined that they have to respect the human rights of the entire citizens, improve the security services to the entire citizens regardless of their sects, religion or region in Iraq. This would entrench democratic system to govern the mantle of Iraq's Leadership. This is in conformity with the view of Potter (2004) that is the responsibility of the State to deliver political goods, security, health and education, economic opportunity, good governance, law and order and fundamental infrastructural facilities (transport and communications) among others. Corroborating this, Hall stated that, a state is deemed to be legitimately sovereign once it is supporting the rights of individuals and granting all the basic right and liberties. Meanwhile, a respondent viewed that the only way for effective and sustainable sovereignty of Iraq is through the implementation of Article 2 Paragraph 7 of the UN charter which condemns external interference of either state or International Organisations to the affairs of other state. This would consolidate the hegemony of that state and ensure its effective sovereignty.

In this respect, another respondent pointed out that international law cannot be law if there is a sole powerful nation (US) controlling its operation. He called for the international balance of power and rejected American hegemony in international balance of power configuration. Therefore, there was no room for either US or the Security Council to determine the sovereignty of Iraq unless in certain circumstances that is contrary to the will of the committee of nations at the global arena. To him, the balance of power would enhance all states and Iraq in particular to regain factual and legal sovereignty that will ensure effectiveness before international law.

In this regards, another respondent merely corroborated the above that the alternative to Iraq's sovereignty is to discard the State of Iraq from foreign dominance of the members of the Security Council and the US Coalition and to liberate the Citizens from anti-sectarian tendency or sectarian violence, indiscipline, corruption, intolerance and lack of patriotism. This would instil the spirit of loyalty, nationalism and patriotic support to the state of Iraq by its citizens and shun away from foreign dominance and loyalty. This is in line with the suggestions put forward by Shammary (2012) and Qader (2009) that is, using Iraq's experience is unrealistic within the Charter of UN. This has made the sovereignty of Iraq to become severe in the annals of modern contemporary politics, the nature of the country's internal and external relations has ended with relegating its sovereignty resulting from US invasion since 2003. Such occupation has been widely condemned and termed as being unjustifiable. This gesture has precipitated the infusion of negative attributes that has undermined Iraq's sovereignty and territorial integrity. Indeed, this episode has occurred due to the failure of the UN to observe its role of non-interference in the affairs of the state. Accordingly, the US Occupation has been the bedrock for eroding the sovereignty of Iraq and made the country to become heavily dependent on foreign domination. This scenario has fuel legitimacy crises, sectarian violence, breaking of law and order, terrorism and political disorder. It is important to note that foreign dominance may lead to draconian decision and dictatorship against the will and aspiration of the citizens of the state. This paradigm shift has turned Iraq into a state of war and crises or as described by Appadorai (1963) as "Hobbesian State of nature". Thus, in order for Iraq to attain an effective and sustainable sovereignty, the country has to become independent in carrying out its decisions, political system and economy and security service without any directives or interference of foreign giant states or international organisations. In the global arena, Iraq should not be subject to the will of other countries neither international nor supranational organisation. This would consolidate the power and ability of Iraq to determine its future political career in all aspects of survival and public life.

### **CONCLUSION**

The study discussed that the US Occupation of Iraq was the bedrock of tampering with the sovereignty of Iraq which turned the country to be in a state war and crises. In fact, since the American invasion in 2003 up to date, Iraq as a country is suffering from legitimacy crises, sectarian conflict, regional dispute, secessionist movement of ISL known as Islamic State of Iraq and Levant and destruction caused by terrorist activities such

as IS and not forgetting the damages caused by the foreign powers (US troops) as well as the government forces as a result of fighting terrorism. This tragedy has created formidable threat to the life of the citizens and devastation against their infrastructural facilities. Putting all these facts together, it has prompted some scholars of international law to describe the state of Iraq as a failed state.

### **SUGGESTIONS**

The study suggests that the total disengagement of Iraq with foreign dominance (US influence and their troops) is mandatory in order for Iraq to regain its sovereignty. The UN should optimistically draw the attention of all alliance foreign forces to order as well as to remove Iraq under Chapter VII of the UN Charter. This would enable Iraq to attain its sovereignty and governs its citizens without any hindrance or interference by the foreign powers or the international community. The government of Iraq should liberate its citizens towards democratization process so as to get visionary leaders and developmental elites. The liberation would enhance peaceful co-existence and denounced sectarian violence between Sunni and Shiites is IS and the government so as to instil attitudinal change and Psycho-Social Therapy in the mind-set of the government of Iraq. The UN Security Council should also penalise those who intervene into the affairs of Iraq before the International Criminal Court.

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