



STATE FOREIGN SOVEREIGNTY AND DEVELOPMENT OF THE NON-INTERNATIONAL ARMED CONFLICTS RIGHTS

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ABSTRACT

Political scholars and philosophers have always investigated the state sovereignty as an essential element in the structure of the state. Although the state sovereignty has been mentioned as an uncontested power, this power has created challenges in the international context. One of the major challenges has taken place in the context of conflict right, that we have witnessed an increasing number of them in the world, especially in the Middle East region. The question we have to answer it is the relationship between state sovereignty and the development of the rights of non-international armed conflicts, and which concept will link these two variables. The method used in this paper is an analytical-critical method. Although scholars of international politics and international law have referred to one aspect of these concepts, there has not yet been a view in line with finding a relation between sovereignty and the development of unexpressed conflicts rights. Given that, on the one hand, the sovereignty of states dependent on post-Westphalian order is tied to the concept of national interests, on the other hand, this is the sovereignty that stands as a barrier to the rights of non-international armed conflicts. It can be deduced that one of the most fundamental obstacles to the development of this emerging field of rights is foreign sovereignty, which is justified by national interests. Therefore, it is necessary to reread this concept.

Keywords: *Post-Westphalian Order, Non-International Armed Conflicts, State Sovereignty, National Interests.*

INTRODUCTION

One of the most important discussions of political philosophers and international law scholars has been the challenging issue of the state sovereignty. Sovereignty can also act as a refreshing element and can make the state alive, and it can also enter the transnational scene and international law as a double-edged sword and leads to the underdevelopment of its concepts. If we look at the evolution of this concept, we will recognize sovereignty as the most important element of the new government, because this is the sovereignty that distinguishes and differentiates the state from other groups and entities of human beings. In order for sovereignty to exist, the land and the people should not have any part(s) that, if geographically, be part of it, are politically not part of it. Totally, people should be independent so that sovereignty will be defined for them, and that there should be a competitor or equal authority in domestic terms. From an international perspective, the country should also be free from the domination of other states, but it may also be subject to agreements and commitments that it accepts and still recognizes (Alem, 1994: 144-145).

Many books and articles on the concept of sovereignty and the evolution of it have been written in the field. Each of the international politics and law scholars has explored some of

this essential element of government. Some have considered the notion of sovereignty, while others have looked at the causes of the underdevelopment of the treaty rights of the conflicts that take place within the territorial boundaries. Therefore, our aim is to re-examine the concept of state sovereignty from a legal point of view, which leads to an examination of the interdisciplinary nature of international law and politics. This review has not yet been published. More precisely, the goal is to clarify the role of the external sovereignty of states in the evolution of humanitarian law.

In this paper, with a critical analytical perspective, we first discuss the status of governance in the structure of state and international law. Then we consider the status of the rights of non-international armed conflicts in international public law and the nature of armed conflicts in the new age. Then we answer the question that "what causes the formation and increase of these conflicts?" after that, we examine the implications of increasing them. Then we look at the lack of development and advancement of the rights of non-international armed conflicts. In the end, we find that the lack of development of the rights of non-international armed conflicts that are now more likely to be confronted by human societies, especially the Middle Eastern countries, is an element of external sovereignty of states that is closely linked to the concept of national interest; a concept that has come to the fore in politics of Post-Westphalian era.

It is hoped that the results of this study will further institutionalize the importance of the existence of a new element and replace the national interest in the general Islamic framework, and in particular in the field of Islamic foreign policy; a concept that can be followed in a historical approach. Although numerous sources have been published in line with sovereignty and national interests as well as non-international armed conflicts and methods of controlling it in realist and liberal schools, which are two common perspectives on international relations; however, desirable and necessary scientific activity has not been carried out in relation to the Islamic approach. In this way, the result of this article can be effective in defining the scientific context appropriate in line with designing an Islamic theory and help to recognize the key concept in the field of state sovereignty in Islam.

Sovereignty and its position in the structure of government

The scholars of human sciences have considered each aspect in defining the elements of governance in the structure of government. The Roman jurists, among the existing definitions, have defined the element of power as a fundamental component and defined sovereignty as the "power totality". Among the scholars after the Renaissance, Jean Bodin was the first to speak in detail about the sovereignty. He described the sovereignty as "great power in the political community." In addition to these classical definitions, sovereignty can be interpreted as the power of the state in line with organizing government members and the right to absolute command to all those present in the realm of government (Maiolo, 2007: 83-84).

But in the meantime, philosophers and political thinkers have accepted the principle of the intrinsic power of the state compared to the government's power over other political groups and institutions. Russell expresses the sovereignty and power of all individuals and groups as "sovereignty and transversal power"; in this case, only the power and sovereignty of the government-state can be considered intrinsic; therefore, the notion of a government without sovereignty is ambiguous and far from reality; in other words, by separating this power from the state, we have deprived this main role of it. Therefore, this definition can be presented from



the sovereignty of the state, which is the domination of supreme power that surrounds the people within the boundaries of the land and gives authority and independence to the state on the external borders. In the following, we will consider the different dimensions of this concept.

- ***Domestic sovereignty***

The domestic sovereignty examines the relationship between the ruling power and those under the umbrella of the government. Indeed, the most important component in domestic sovereignty is the legitimacy and the reason why the government has the ability to exercise authority within the borders of the country. Legitimacy in the course of state evolution history has come from a variety of sources; sometimes the kings named it as divine delegation and sometimes called it the social contract. If we consider the concept of sovereignty as supreme, dominant and independent power over a region or state, domestic sovereignty refers to the internal affairs of the state and the position of supreme power within it (Heywood, 2011: 92). Therefore, it can be said that a state that has a domestic sovereignty is chosen by the people and has legitimacy, which is why consider it as the stage of the emergence of their will.

The domestic sovereignty reviews the internal affairs of a country and how it functions. So a state with a domestic sovereignty can move different political, economic, and social institutions together in order to bring domestic peace to the people of that land. In contrast, when you are faced with weak domestic sovereignty, organizations such as insurgent groups challenge state authority and interfere in peace with anarchy. The presence of a strong government makes it possible that conditions do not bring vast changes and any violations of law will be punishable by severe penalties. Leadership ability in preventing violations of law itself can be a key variable for determining the extent of domestic sovereignty (Wolford, Scott, 2011: 1).

- ***Foreign (International) Sovereignty:***

Foreign sovereignty explores the relationship between a mighty power and other states. Each state has its own entity, and another state cannot harm this authority anyway. In international law, sovereignty means that a state has full control over the affairs of a territorial or geographical area, while other international actors cannot challenge this control (Beck, 2014: 68). However, with the development of humanitarian law, it is possible to make some changes at a specific time and with the humanitarian goal in line with applying power directly or indirectly. Foreign sovereignty is also used in the concept of national liberation. By studying the works of Professor Harold Laski, we obtain a more explicit picture of this kind of sovereignty. He defines modern government as an independent and authoritative government against other societies. By using the element of foreign sovereignty, Laski's government can show its will against other societies, without external power being able to influence this will (Laski, 2015: 44).

Challenges ahead of the equality of states foreign sovereignty

Since one of the basic concepts in international relations in the new age is national interests, the study of the relationship between foreign sovereignty and national interests is very important. Foreign sovereignty can be called the right of a state to define its interests (Claeys, 2015: 22). Based on this relationship, governments have the right to choose the goals, priorities, and ways to achieve them. The formation of alliances or ending them, the use of Force majeure and trade with other countries and companies are all examples of the results of foreign sovereignty. It should also be borne in mind that, according to international



government law, it is the only institution that has the legal right to exercise Force majeure, and it can also initiate a violent action, although it has not been explicitly mentioned in common law, with recent events it can be argued that Collective coercive measures come from the will of governments in their foreign sovereignty.

In the concept of equality of sovereignty, each independent state has the same rights as other independent states in line with the international laws. This concept, developed in the context of general international law and developed by the formation of United Nations, plans international law based on the concept of state and its national interests. In this approach, the government, in turn, is formed based on sovereignty that expresses the superiority of state institutions within the state and the superiority of the state as a legal person outside the geographical boundaries (Simmons, 2016: 3). Of course, other constructive elements of the state should not be neglected, because sovereignty rests on the notion of territory, and a state without this element cannot have a legal personality. However, this concept has been challenged with the formation of the concept of "government in exile" and instances of government in exile are General De Gaulle and the government in exile of the Republic of Korea and other examples of this concept.

Some of the scholars of law have referred to the "right" in dealing with the notion of state sovereignty. In this view, one of the fundamental rights of each state is equality with other states. In fact, this right is inherent in the concept of government, and as one of the fundamental issues of international law, it is accepted by the longstanding performance of governments. Although providing an exact definition of the principle of equality of sovereignties is difficult, but the existence of many components, even in special situations, makes it necessary to distinguish between legal and political equality. Thus, legal equality regulates relations between states based on legal relationships and principles and promotes such relationships. Accordingly, the actors in the global context are treated equally, especially against the judiciary entities. In political equality, the relative distribution of economic and military power between states at the level of the international system is examined (Leibfried, 2015: 224-226).

- **Legal Challenges:**

The principle of equality of states in the legal aspect has several implications. The most important manifestation of this equality is the right to vote in each state on issues that require state consent. The natural consequence of such a right to vote is that each government, apart from other constructive elements of the state, has only one opinion, just like the others. Legal equality is also interpreted in this way that no state can challenge the eligibility of other countries, and as a result, each state decides independently of the political will of other states. Legal equality of sovereignty raises a new issue in the protection of the sovereignty of states. This immunity protects the pursuit of foreign sovereignty without the consent of the second party. Similarly, equality of nations indicates that no other country can question and challenge the legality of the formal actions of the other government. The example of lack of prosecution by another country has also been included in the judicial process of some states. For example, in the US law, there is the "Act of state doctrine". According to this doctrine, every state has the duty to respect the independence of any other independent state, and the court cannot judge the actions of another state in its territory (Glahn, 2013: 196).



- ***Political Challenges:***

The theory of equality of sovereignty, although has led to various legal effects and has been able to contribute to the development of rights among nations, it does not seem to be sufficient, because it must provide clear answers for the contradictions of the facts of the acts that are caused by exercising political power. Political equality in some ways is even closer to illusion because in political conditions and in the realities of the outside world, it seems very difficult to assume that all governments are equal, and only with the connivance we can put together several governments. The reason is that the power of each government is in hard and soft aspect. In addition, we cannot dare to talk about using the precise scale to measure the powers. More powerful governments can formulate mechanisms and agreements that force the weaker countries to be subjected to these mechanisms unofficially and out of legal frameworks. Even if we create an equality-based and strict legal system in order to realize the equality of sovereignty, the government, relying on the same rule of law, sees no choice but to enter into such orders, although governments do not want to control their sovereignty through such agreements. The difference between political and legal equality in the United Nations is also recognizable and can be regarded as an accepted issue by governments. Although the United Nations Charter unequivocally recognizes the equality of sovereignty, and the General Assembly also officially pursues its performance based on this principle, the presence of five permanent members of the Security Council, which have veto power, questions this equality; because this power is essential in important aspects of the functions of the United Nations, such as executive actions, membership acceptance, charter amendments, and the election of the Secretary-General (Chapter I: art. 2, 4).

Non-international armed conflicts and their rights

In line with recognizing the components of the definition of non-international armed conflicts, it is necessary to consider the third article of the Geneva Conventions and the Additional Protocol II. Based on the third common article (12 August 1949), non-international armed conflicts are armed conflicts involving one or more non-governmental armed groups. In this definition, the term "nongovernmental" was mentioned because the conflict may occur between the armed forces and non-governmental armed groups or among these groups, so the conflict between the two governments does not fall into this definition. In accordance with the Fourth Geneva Convention which has been ratified internationally by member states, the condition that the conflict "takes place on the territory of one of the major contracting parties" has actually lost its value (Sivakumaran, 2012: 156)." To consider armed conflict as a non-international armed conflict, it is necessary to consider the specific components:

- A. ***Rebel domination on a part of the land.*** Conflicts must reach the minimum threshold. In this case, governments are taking coercive measures against the insurgents and rebels, and the power employed is different from that of ordinary conflicts. For example, in this case, the government uses the army to control the situation instead of the police.
- B. ***The ability of the insurgents to implement the protocol.*** The parties involved (regardless of the state) in the war should be considered as contributing parties; this means that these nongovernmental groups have organized armed forces in the conflict. For example, these forces must be defined in terms of the designated command structure and have sufficient capacity to continue military operations (Lubell, 2010: 109-111). Although the Second Additional Protocol to the Geneva Conventions (June 8, 1977) was



held with the aim of developing and completing the Common Article 3, in practice, there was no particular change in its concepts, and only the element titled "Territorial Control" was introduced. Accordingly, the nongovernmental actors involved must act in such a way to "be able to conduct sustainable and coordinate military operations to implement the protocol." The Second Additional Protocol explicitly refers to the inclusion of some conflicts and only includes armed conflicts between the armed forces of the state and the armed forces of the opposition or other organized armed groups. Unlike Article 3, the Protocol is not applied to armed conflicts that occur only between non-governmental armed groups (Burri, 2015: 82).

As it is clear in the second protocol, this protocol does not include those conflicts that government forces do not succeed in suppressing the insurgents quickly, and without engaging other parties involved in a part of the land, the conflict will be prolonged. Also, contrary to Article 3, the protocol cannot be applied to armed conflicts that occur only between non-governmental armed groups. If most of the recent non-international armed conflicts in recent years have had such an element. For this reason, the International Former Yugoslavia Court issued a new definition on the vote of October 2nd, 1995. According to this definition, "a prolonged armed conflict continues between government forces and organized armed groups or between these groups within the realm of the state." In fact, the two main elements in this definition are one long-standing conflict and the presence of two or more armed groups in the conflict.

During recent decades, non-international armed conflicts have increased; on the one hand, this increase undermined the concept of humanity and, on the other hand, has led to the profound and quick transformation of international humanitarian law related to armed non-international armed conflicts. The occurrence of dozens of non-international conflicts at one time and the overcoming of fratricide spirit in this category of conflicts has led to serious human and material damage and has made the rights of non-international conflicts to be of great importance; so that some Law scholars have assigned the first rank to this category of conflicts. In recent years, these developments have prompted the international community to control this violence. Before it is too late so we must think about consolidating and strengthening the international humanitarian law in these conflicts.

These kinds of conflicts with a violent nature have also sometimes surpassed international conflicts in the destruction and killing of human beings and material damage and left unjustifiable human disasters (Schindler, 1996: 207). The conflict has been so bloody that it is the most outrageous reality of the post-World War II world, and especially the late decades of the twentieth century (Deyra, 1998: 11). Indeed, most of the armed conflicts in the present age have largely been attributed to the non-international character. The presence of non-international conflicts in countries such as Angola, Ghana, Nigeria, Congo, Algeria, Namibia, Sierra Leone, Burundi, Sudan, Liberia, Rwanda, Somalia, Uganda, Ivory Coast, former Yugoslavia, Mexico, Nicaragua, El Salvador, Colombia, Guatemala, Haiti, the Philippines, Sri Lanka, Russia, Lebanon, Azerbaijan, Turkey, Tajikistan, Georgia, Indonesia, Nepal, Iraq, Cambodia, Yemen, Afghanistan. Recently, Syria and other countries have all witnessed the increase in this kind of conflict in the present era.



The nature of non-international armed conflicts in the new era

With the end of the Second World War and the failures of the united governments, non-international conflicts in different countries of the world increased. The roots of non-international conflicts have varied in different periods of contemporary history. In the following, we look at the most important causes of the formation of non-international armed conflicts in contemporary history (Qawam, 2013: 46-145).

- *Ideology:*

During the Cold War, the ideology and financial and political support of the superpowers were the main drivers of these conflicts. With the end of the World Wars, the international scene was a place to compete with the two eastern and western blocs, and most of the non-international conflicts were encouraged and supported by the two superpowers. The United States and the Soviet Union, seeking to expand their influence in the world, were provoking insurgent groups to overthrow the governments that are dependent to the other bloc. Of course, there could be conflicts that would have begun without provoking the two superpowers, but after sometime around the conflict, they were leaning toward them to obtain the satisfaction and support of one of the two superpowers. Over the course of the four decades, most of the non-international conflicts began with incitement from outside the borders that we did not witness a war between the great powers.

- *The fight against colonialism:*

The fight of nations against Western governments' colonialism was another source of increasing non-international armed conflicts in the mid-twentieth century. At the end of the third colonial period, the Western powers tried to bring their colonial plans into a new form by introducing authoritarian and monarchical kingdoms. By the end of the Second World War, the United States also introduced itself as a colonial power, and, like other colonial rivals, supported authoritarian regimes, but with the emergence of anti-tyrannical and colonial movements, the interests of these powers were compromised, and there have been numerous non-international conflicts; because national liberation movements have been formed to eliminate foreign colonialism; on the other hand, Western powers have not been willing to be subjected to the demands of these people, and they were inclined towards authoritarian regimes that served their interests. Consequently, in this period of history, we are faced with an increase in non-international armed conflicts (Mentan, 2010: 180).

- *Political instability:*

Factors such as political instability in many countries called the Third World countries are among the roots of non-international conflicts. The lack of a dominant and independent government has led to the formation of many separatist groups in the so-called Third World countries. This political instability continued as long as it did not provide the most basic human right to security. Meanwhile, from within these countries, there were various groups, and by claiming to provide political stability and social security they did armed actions.

- *Lack of democratic structure:*

The twentieth century has seen more democratic movements than ever before. These democratic waves have come from different conditions. The war, the revolution, the struggle against colonialism and religious and economic events are of these conditions. Following the First World War and the collapse of the Ottoman Empire and the Austro-Hungarian Empire,



there were new governments that could at least be called democratic. Although in the second decade of the twenty-first-century democracy had rapid growth, with the emergence of The Great Depression over the next years, many European, Latin, and Asian countries experienced authoritarian or dictatorial regimes. Fascism and dictatorial regimes grew in Germany, Italy, Spain, and Portugal, as well as non-democratic states in the Baltic, the Balkans, Brazil, Cuba, China, and Japan.

World War II transformed this process dramatically in Western Europe. The prosperity of democracy in the United States, Britain, France and parts of Germany, Austria, Italy, Japan and other occupied territories provided a new model for later theories about the political system of states. However, with the formation of a bipolar system, large parts of Eastern Europe and Asia entered the non-democratic bloc of the East. The Cold War was followed by a struggle against colonialism, and once again the newly independent states experienced a democratic constitution. However, in the late 20th century, the overwhelming majority of countries had nominally democratic sovereignty, but the fact was that the people of such countries participated in the show election, thus democratic movements did not stop at this time. So, efforts to achieve a democratic structure and the elimination of authoritarian regimes can be regarded as the roots of non-international conflicts in contemporary history.

Ethnic-identity crisis:

With the disappearance of the bipolar system, the civil wars that were considered as proxy wars of super-powers were replaced by conflicts that were rooted in ethnic and religious differences. These conflicts, which are referred to as "Deconstructive conflicts" have ethnic, religious, and identity-based implications. In these conflicts, the concept of the enemy is well understood by the parties involved, because the parties are well aware of their opponent and know to which ethnicity or religion belongs. In other words, the conflicts of the recent period are rooted in the ethnic-identity crisis and the collapse of the sovereignty of the state (Resende, 2018: 70-71). In these conflicts, each side tries to consolidate its identity as the ethnicity overlying that land. So, we can see the ethnic and religious crisis as one of the root causes of the rise of non-international conflicts in recent decades.

Internal conflicts, along with elements such as poverty and underdevelopment, the collapse of government bodies, the inability of officials in the administration of the country, the hierarchy of command and arrogance of armed groups have become a tool for the brutal murder of humans and the introduction of heavy material damage. So the end of the rivalry between the two East and West blocs and the collapse of the Soviet Union led to the emergence of ideology and the opportunistic conflicts that had been pushed back to re-emerge. The same policy has led to a widespread violation of the international humanitarian law and completely abolished the humanitarian rules and principles of the conflict.

Increased non-international armed conflicts and the need to develop their rights

The unfortunate consequences of the international conflicts in the present era and the violence and brutality that have come about during these conflicts reveal the fact that more attention should be paid to this type of conflicts. The most widespread and terrible human rights violations in the last decade of the twentieth century have been characterized by non-international conflicts. In addition to the severity of these conflicts, their numbers have also been high, and according to some of the scholars of the law believe that it can be said that the conflicts of this period are the worst and most deadly ones.



In non-international armed conflicts, millions of people have been killed or displaced during these years. Displaced people of these conflicts were even driven out of their country at some time. Only in 1994, more than half a million people were killed in Rwanda. In Colombia's long conflict, more than a million and a half displaced and more than 40,000 was the result of the insurgent forces fighting the Colombian government, disasters in Bosnia and Herzegovina, during which no humanitarian requirements were followed by the Serbs. In the nine-month clash of Sierra Leone, insurgents displaying other aspects of human rights violations by demolishing villages, slavery of women and forcing children to engage in warfare. Some have estimated the number of deaths in the Congo up to 5 million people (Sehgal, 2008: 91). If we take a look at these Middle Eastern issues, we are well aware that non-international armed conflicts have left a huge financial and financial loss.

In spite of all the prohibitions specified in the international law, in recent non-international conflicts, civilians have become the main target of the parties involved. In the past, however, in international armed conflicts, civilians were often less directly attacked. Thus, the highest number of deaths from non-international conflicts is among civilians, and their ratio to military personnel is estimated at more than seventy-five percent. Among the civilian population, these women and children are the most injured. In addition to human casualties, the economic and social infrastructure of the country has been eliminated and has made life difficult for the people. It takes years for the people of that country to live in conditions before the war begins, provided they have a stable peace. This level of violence in international armed conflicts has been less frequent or, in other words, rare during the years after the wars. Because during the non-international conflicts, it is much more difficult to enforce the humanitarian law because of the presence and involvement of armed groups other than the government in conflicts. Parties involved in this type of conflict sometimes do not act under any rule of humanitarian law, especially when they argue that the government is illegitimate (Schütte, 2014: 109-115).

The Lack of Development and Advancement of the Rights of Non-International Armed Conflict

Despite the increasing number of armed conflicts in its non-international format over the past few years, the rights associated with this type of conflict have not been developed. For the development and evolution of these conflicts, two main sources of custom and treaty are examined. Of course, if we briefly examine the legal status of non-international armed conflicts before the Geneva Conventions of 1949, this part of the armed conflict, if not out of the International Armed Conflict Arrangements, at least, we must accept the claim that it remains low. In the following, we will examine the developments of the legal period after the Geneva Conventions of 1949 in two parts of the treaty law and customary law. As you will see, the concept of national interests and national sovereignty has had the most deterrent effect on the underdevelopment of this branch of humanitarian laws.

- ***Minimum Treaty Rights***

- ✓ ***Article 3, common to the four Geneva Conventions***

At the 1949 conference, which was formed to reform international humanitarian law, non-international conflicts were one of the most controversial issues that led to controversy among participating states. Indeed, at the end of the Second World War, it soon became clear that the number of conflicts between states would be less and less, and non-international conflicts are expanding. For this reason, the International Committee of the Red Cross (ICRC) took



advantage of the opportunity to raise the issue of human rights expansion to non-international conflicts.

At the end of the conference and after long discussions, it was agreed that the four conventions should be written with similar terms. This article is the same as Article 3, common to the context of the four conventions, and its writing attracted the attention of delegations other articles compared with other contents of the convention. Article 3 was only a minimum or even a simple measure for the implementation of the rights of non-international armed conflicts because if we compare it with the rules of the international treaties on the four conventions, its provided protection is very limited. However, the adoption of the third article by the Governments at the conference should be seen as a fundamental change in the protection of mankind during this type of conflict (Bassiouni, 2008: 287). Article 3, common to four Geneva Conventions has a special place in legalizing this type of conflict. Of course, today there is little doubt about the customary nature of Article 3. There is no doubt that the judgment of the International Court of Justice in Nicaragua problem has had a tremendous impact on the customary content of Article 3. According to a view, the inclusion of Article 3 into customary international law "was fully established after the judgment of the Court in Nicaragua".

The last clause of Article 3 is written so that it compensates to some extent the inadequacy of its provisions in terms of meeting all humanitarian requirements during the course of the conflict. This phrase, which is a simplified form of the famous Martens Clause, predicted that the belligerents would enforce all or part of other provisions of the four Conventions through special agreements. Based on this fact that we can claim that the way to complete and develop the guarantees provided for in Article 3 will be open.

However, if we take into account what actually happened, it should be noted that the implementation of the provisions of Article 3 in practice would not seem to be very definitive. It should not be forgotten that since 1949 there has been a lot of non-international conflicts, most of which have been national liberation wars. In other words, they are formed as armed struggles for liberation from colonial powers. The colonial governments involved in these conflicts often denied military conflicts and did not comply with the provisions of Article 3, because their foreign sovereignty discussion faced them with danger. The increase in non-international armed conflicts and the restrictions contained in Article 3 revealed the need to pay more attention to the rules of these conflicts more than before and urged the International Committee of the Red Cross to explicitly state in its 1969 Human Rights International Development Report that the common Article 3 does not make it possible for all humanitarian needs to be answered during internal conflicts (Clapham, 2015: 418). This report can be considered as the beginning of the process leading to the adoption of the Second Additional Protocol to the Geneva Conventions on June 8, 1977.

✓ *Second Additional Protocol to the Geneva Conventions*

In the years after the 1949 Convention, the International Committee of the Red Cross sought to reduce the dichotomy between the rules governing these two groups of armed conflicts, because these rules pursue a common goal, which is to protect human beings and human personality in the course of conflicts. If that is indeed the goal, then we should no longer distinguish between international and non-international armed conflicts. In other words,



human involved in the internal conflict is same as a human presence in the international conflict and, according to an interpretation; blood is always and everywhere in the same color. During the 1974-77 diplomatic conference in Geneva, some Western European governments, with the same arguments, called for the development of rules for non-international conflicts, but after the conference agreed to put liberation struggles in the category of international conflicts and to enforce international humanitarian law in these kinds of conflicts, their enthusiasm has subsided quickly. Since then, Third World governments and some socialist countries have stood firmly against any attempt to develop the rights of non-international conflicts.

Those governments feared that the ratification of a binding instrument would undermine their freedom of action in controlling internal insurgency, a struggle that threatened their loose and fragile national unity. In addition, governments against approving a specific protocol for non-international conflicts, often subject to various domestic problems, were concerned that the implementation of such rules would open the way for foreigners to enter and interfere in matters other than their exclusive jurisdiction. Governments such as China, Indonesia, and India, with a large population and ethnic and racial diversity, were at the forefront of these opponents. Relying on the sovereignty of the government against insurgents, these governments considered the adoption of this protocol as a means of internationalizing the internal problems and providing a ground for foreign intervention (Schabas, 2011: 110-111). Therefore, in line with defending national sovereignty, it was natural to not disguise their opposition against the protocol that threatened sovereignty.

The approach of these states saw national laws for adopting two fundamental, but contradictory, principles much more suitable than international law. Two contradictory principles are realizing humanitarian goals and the principle of preserving the sovereignty and security of the state fighting internal conflict. Despite such conditions, in order to reach an agreement between the opponents and the governments that wished to provide widespread support to the victims of non-international conflicts, the conference decided to accept a text on the initial draft proposed by the International Committee of the Red Cross, containing 48 articles. It was much simpler. This simplified and easy text was proposed by Pakistan at the last conference, and in fact, all important and effective arrangements were drawn out. Consequently, the text that was eventually approved as the Second Additional Protocol to the Geneva Conventions did not have many of the essential humanitarian requirements, but this was not the end, as soon as it was ratified, about twenty governments rushed to make statements to emphasize that their participation during the approval and the consensus should not be interpreted as verification of the provisions of the Second Protocol, but their sole purpose was Not to prevent its adoption. By issuing such declarations, the consensus that had been made with great difficulty was abandoned.

The rights protected by the Second Protocol are the same as the basic laws that the 1966 Covenant calls for and protects and imposes the same obligations to comply with it. Therefore, the interpretation of legal scholars that the second protocol expresses customary international law seems right. In addition, the judicial procedure affirms the legality of the rules contained in this protocol (Tadic Theorem, 1995, Paragraph 117). The final text of protocol was the simple text that even a phrase such as “Parties to the Conflict” was removed from it. This was true for a word or phrase that would undermine the rule of the government or the meaning of



identifying the insurgents. Eventually, the opportunity of the 1947-7 conference was lost, and the Second Additional Protocol, the only international instrument dedicated to armed non-international armed conflict, could not find their true scope and breadth. This opportunity has not been repeated yet, and so far this is the first and last document that remains completely specific to non-international conflicts. However, it should not ignore the role of the custom and moral in this regard, as the customary evolution of the rules of the second protocol has been completed and deficiencies have been resolved in terms of execution so that even obsoleted the second protocol (Oswald, 2010: 235-36).

- ***Custom; an Insufficient but Alternative Source***

In the years of international humanitarian law development in armed conflicts, the existence of customary rules governing non-international conflicts has been controversial. Governments seeking to restrict the implementation of humanitarian law toward such disputes tried to deny the existence of such rules and would only show themselves bounded to the resources of the treaties. The entry of the Martens Clause in a simplified form into the introduction to the Second Additional Protocol was in order to satisfy those states. This phrase is in the preamble to the Second Protocol, without referring to the "Principles of International Law that derives from the custom", and recalls that, in the absence of binding legal rules, the persons are subjected to protection guided by the principles of humanity and the verdict of public conscience. The development of the concept of the protection of human rights and the functioning of the United Nations organs over the past two years is considered to be two of the most influential components of this transformation.

As previously mentioned, the 48-article draft of the International Committee of the Red Cross was faced with opposition from many governments. In fact, the efforts made during the 1974-77 conference, in order to ensure that the rules governing international conflicts extend as much as possible to non-international conflicts, failed like the 1949 conventions. After these years and until now, there was still no other conference on the evolution of the treaty provisions on such hostilities, and there is no clear vision for government approval in the near future. Because it would be very far from the fact that governments will be able to formulate another conference that will help to further the richness of the rights of non-international conflicts.

In the meantime, the transformation of customary law has greatly reduced the defects of the treaty system. Of course, there are various difficulties and barriers to identifying and outlining customary rules in non-international armed conflicts. In other words, the governments involved in these conflicts, due to security reasons, do not allow their positions to be clearly revealed against these conflicts. It seems, however, based on the approach of such governments adopting this method is rational, since adopting a clear and coherent stance on the implementation of the humanitarian law may be an excuse and an incentive to rebel. Therefore, the precaution of governments in this regard faces many problems in proving an international "procedure". Of course, it should be noted that a large number of international humanitarian rules have focused on these conflicts in the form of prohibitions, but due to the lack of transparency in the preparation of cases of violations of these rules is very difficult task and observance and lack of commitment to them is not easy to manage. The proof of the legal beliefs of governments in this regard is very sensitive and time-consuming. To date, two



institutions of the International Committee of the Red Cross and the International Institute for Human Rights have worked to this end (Arnold and Quéniévet, 2008: 17-18).

Accordingly, we can say that due to the lack of development of the law of treaties on the non-international armed conflicts, the custom is considered more appropriate, though inadequate. In other words, the international law of the Non-International Armed Conflict, in contrast to the rights of international conflicts, is very brief and is limited to several articles, which, according to the prevailing opinion of the law scholars the rights of the development of these rules, and the approach to the rules of international conflicts, according to the current global conditions and the sovereignty of states seems to be difficult.

CONCLUSION

In the present era, we have faced an expansion of non-international armed conflicts. These conflicts have to date imposed upon humanity a heavy toll of life and property. What causes concern is the lack of development of rights related to these conflicts. In other words, the treaty laws, which includes Article 3, common to the four Conventions, is not the only one in the four 1949 conventions, also has failed to provide a suitable solution to reduce human sufferings. Although the Second Additional Protocol to the 1977 Protocol was dealt extensively with the rights of non-international armed conflicts, according to lawyers, Article 3 shared the broader concept of the wider concept and thus attempts to formulate the rights of armed conflicts failed with the opposition of many states. Along with the law of the treaty, the custom tried to cover a large part of the rights of these conflicts, but these efforts were also useless.

But why the widespread efforts made in the current era to provide equal rights in comparison with the rights of international conflicts have guided us to the notion of state sovereignty. In other words, the sovereignty of states as a barrier has hindered the development of this law. Governments, which continue to be the main actor in the international system, believe that granting any right to their opponents is a defect and will create a gap in their sovereignty. Referring to another concept, they try to provide the right justification. This notion is embedded in the national interest. The close relationship between states national sovereignty with the Post-Westphalian concept of national interest affirms the weakness of legal and political literature in different countries of the world, especially the Middle East.

Therefore, on the one hand, we see that governments are turning to the concept of national interest in justifying their behavior and, on the other hand, this is the national sovereignty of states that impede the development of the rights of non-international armed conflicts. Accordingly, national interests can be considered as the main factor in the lack of development of this field of law. To solve this problem, it is necessary for scholars and academics to study more and more the concept of national interests that originated in the Westphalian order. Because by restoring the central concept of governance before the new government, instead of national interests, one can think about the key to solve this problem.

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