
Iraq and the Kurdistan Region, the complexity of sovereignty

25-02-2019

Authors

Dr. Parwiz Rahim Qadir

Summary : The concept of "sovereignty" and the nature of this concept is an important and major issue in political and legal sciences. Sovereignty is the core of the power / authority and government as a group of institutions, factors to the executive arm of that power/ authority. Rather, the concepts of state and sovereignty are considered to be synonymous.

The hypothesis of this study is that the fact that the sovereignty of Iraq depends on sovereignty, power / authority and disintegration between Shiites, Sunnis and Kurds, especially after 2003, due to the "constitution" and "federal / federal system" and "balance of power" in Iraq and interventions by regional and from world countries, and on the other hand defined by international agreements, charters, documents, laws and customs. Therefore, the Kurdistan Region, as a legal and political entity that represents a distinct component and identity, can, in light of post-Cold War changes in general and the changes that Iraq witnessed in particular, according to the Iraqi constitution and international laws, the binding principle of "the right to self-determination" and the concept of "the rule of law" to determine the sovereignty of the Iraqi state. It is also possible to read these matters together and in light of the changes that have occurred in the concept of international peace and security. The absence of wars and armed violence between countries no longer means international peace and security, but the absence of economic, social and political stability and violation of human rights represents a threat to global peace and security.

That is why this study has been divided into a number of topics or themes, the first of which talks about sovereignty, then the second deals with the relationship between sovereignty and political power. The third axis deals with the concept of the rule of law as an alternative to absolute sovereignty, and the fourth examines the right to self-determination, and the fifth, and the last, presents sovereignty in the current era through two topics, one of which deals with conditional and limited sovereignty and the other deals with the concept of sovereignty within the framework of the Iraqi constitution. Then the researcher presents the results that prove the study hypothesis...

Introduction

The concept of "sovereignty" and the nature of this concept is an important and major issue in political and legal sciences. Sovereignty is the core of the power / authority and government as a group of institutions, factors to the executive arm of that power/ authority. Rather, the concepts of state and sovereignty are considered to be synonymous. The concept of sovereignty is also considered one of the fixed concepts and principles sanctified by international law and international relations, but the changes that took place in the past century and the inclusion of the right to self-determination in the Charter of the United Nations (Articles 1 and 55), , Then coordinating the first article of the Universal Declaration of Civil and Political Rights, Economic, Cultural and Social Rights in 1996 and endorsing the draft resolution of the United Nations General Assembly and the decisions of the International Court of Justice regarding the issues of Namibia and South Africa in 1971 and Western Sahara in 1975 and East Timor in 1995 etc. That it considered part of international law and one of the main foundations of international law.

Various issues and problems such as terrorism, mass migration, wars, genocide, genocide, human rights issues, and even the political and economic dimensions of globalization, in practice and within the framework of preventing "sabotage of international peace and security", "humanitarian intervention" and "the principle of the responsibility of international protection" to violate this concept and principle, or narrowing it down and determining it. The existence of a democratic system of nations makes respect for minorities and avoids discrimination and ethnic exclusion is part of human rights, and on the other hand the pursuit of the right to self-determination in local affairs holds the sovereign states an international responsibility, and frame their sovereignty, whether at the local or external level.

Therefore, the importance of this research lies in the fact that it deals with the sovereignty complex between the Kurdistan Regional Government as a federal entity and the Iraqi government as a sovereign state. That is, their problems and struggles are directly related to the concepts and principles of sovereignty and the right to self-determination. Hence, the aim of this research is to show that sovereignty and the right to self-determination as binding principles at the international level, one that modifies the other and balances it until the Kurdistan Region becomes sovereign (independent state). So the main issue in this research is whether sovereignty has an absolute existence, and what does it have to do with the right to self-determination and the rule of law on the one hand and international peace and security

on the other hand, especially in the local area?

The hypothesis of the research is that the sovereignty of Iraq is limited due to the relationship of sovereignty to the power / authority and the difference between Shiites, Sunnis and Kurds, especially after 2003 due to the "constitution", "federal system" and "balance of power" in Iraq and the interventions of regional and global countries, agreements, treaties, documents, laws and international norms. Therefore, the Kurdistan Region, as a legal and political entity that represents a component and a special identity, can, in light of the post-Cold War changes in general, and Iraq in particular, according to the Iraqi constitution and international laws, and according to the binding basis of "the right to self-determination" and the concept of "the rule of law", Defining and narrowing the sovereignty of the Iraqi state, and all these matters can be viewed in light of changes in the concept of international peace and security and their evaluation. Because the absence of war and armed violence between countries no longer means the establishment of international peace and security, but the absence of stability in the economic, social and political areas and the violation of human rights is considered a threat to global peace and security.

For this purpose, this research was divided into a number of axes, the first of which deals with the issue of sovereignty, and the second deals with the relationship between sovereignty and political power, then the third addresses the concept of the rule of law instead of absolute sovereignty, and the fourth to the principle of the right to self-determination, and the fifth, the last, Looking at sovereignty in the current era in two separate parts, the first of which deals with conditional and specific sovereignty, and the second deals with the concept of sovereignty within the framework of the Iraqi constitution, then in the last, we review the results that prove the research hypothesis.

First: Theory of Sovereignty

Sovereignty is generally a supreme authority without competition and effectiveness for the state in ensuring independence and state authority. In other words, sovereignty is a basis that gives power to the state to draw up laws and implement them within its borders. Sovereignty is an organized basis, meaning that it is the authority to regulate relationships. Sovereignty also has two legal and political dimensions internally and has effects on the outside (مستقيمي, 223 :1385). Therefore, sovereignty is the supreme authority of the state over the people / citizens of a state, on the one hand, and other states formally recognize and respect it on the other (كريمي راد, 6 :1391).

In fact, " Niccolò Machiavelli 1469-1527" was the first thinker to present the idea of "sovereignty", while the French philosopher "Jean Bodin 1530-1596" was the first to use the concept of sovereignty in an organized, accurate and conscious way and considered it a supreme authority over the people and citizens, nor It adheres to and is not defined by law, because it considered sovereignty as a source of law and also considered it absolute and permanent that could not be granted to one or transferred to another (ویدیه, 35 :1385). So, in this sense, it is an authority granted by God or a social contract (Thomas Hobbes) for once and for all to the ruler and this sovereignty becomes the property of the ruler and is not restored (Wootton, 1986: 48). That is why power, power, and law in classical governments based on absolute sovereignty were in the hands of the ruler / king and the state was embodied in the person of its king (Franklin, 1973: 151).

This launch of sovereignty was the reason for the changing concept and the emergence of liberalism, modern democracy and the new view of the sovereignty of the people, and thus the concept of "conditional sovereignty" embodied by the political power of the people's representatives emerged (Keohane, 2002). Freedom and rights were also embodied in the face of power, the constitution received attention, and it appeared as a document of rights and freedoms and defining the image of power. The application of sovereignty became conditional and framed by law, and governments became legitimate within a legal framework and replaced their authority with legitimate and stable authority (Lipset, 1971: 10).

From the eighteenth century these matters led to the rejection of the absolute, permanent and central authority of the ruling individual / king to replace in her place "the sovereignty of the people" and his representatives (national sovereignty) within the framework of the law (the rule of law), which we will talk about in the following.

In general, there are four theories regarding the types of the concept of sovereignty:

1 - The theory of individual sovereignty, which links all power and authorities to the will and will of the person of the ruler, and it is often hereditary, but that power and power are conferred on him by God, for example by non-democratic or dictatorial regimes and properties.

2- Theory of Divine Sovereignty, which draws the power emanating from sovereignty from God / Lord, and rulers only implement the will and desire of God, as in theocratic or religious political systems, as in the Islamic Republic of Iran.

3- The theory of popular sovereignty, whereby everyone in society participates directly in the embodiment of the right to self-determination and sovereignty, just as in the communist regimes.

4- The theory of national sovereignty, whereby the nation as a legal personality and a unified society and with its independent identity, as in democratic systems (کريمي راد , 6 1391).

As Hinsley states, sovereignty means the existence of absolute and final political power in political society and there is no other absolute and final authority other than it. In this sense, the state is the only power and supreme power that governs citizens at the local level, and on the external level, other countries do not commit to any authority or force higher than them. Generally speaking, the concept of sovereignty does not mean the equality of states in power and power, but rather the equality of states in rights (قاضي شريعت بنهاهي , 72 :1380).

In general, the principle of "sovereignty and equality of states" has two dimensions, locally and abroad. The Montevideo Agreement set out in 1933, in its first article, four features or foundations for the state, namely: A- Population, B- Home or Land, C- Government, D- Ability to establish relations with other countries.

In Article 2, paragraph 1, and Paragraph 4 and 7 of the same Article of the Charter of the United Nations, states are considered equal in terms of sovereignty except in cases where international peace and security are at risk. The Declaration of Principles of International Law on Friendship and Cooperation between Countries of 1970 confirms the equality of states in terms of sovereignty. Generally speaking, the classic international legal system, as a general basis, operated on four foundations:

1- The unity of the land or the state.

2- The sovereignty of the state.

3- Prohibition of the use of force.

4- Prohibition of interference in the internal affairs of states.

On the basis of what we have mentioned, we can say that "political power and authority" is one of the main concepts and basis for the general law of political science, and thus the final task of public law will be to lay the foundations for defining and framing the power and authority of rulers, ensuring and achieving public rights and freedoms and drawing lines of relationship between state authorities and institutions. On the other hand, law and the constitution are two ways to legitimize political power, so political power and law are interlinked (regardless of the democracy of law or the sources of legislation and the political system of the country in question) (اجرلو وطاهري, 3: 1395).

On the other hand, political power is the content of the concepts of "government, state, and sovereignty". Thus, power-sharing, whether horizontal or vertical, in the state is an important part of the democratic political process and democratic systems. Authority has been defined as a force that has legitimacy, and the concepts of (Power), (force), and (Authority) that mean power, power, influence, and the ability to do something (act) or prevent (Ability to do or act) or who has influence or control (What that has influence or control) (Longman, 2005. 321; Oxford, 2000, 215).

Thus we can say that political power (depending on the type of political system) is the source of sovereignty and government. In this way the government is defined as the ability to implement and an administrative and organizational group under the political authority. The government can also be a concrete embodiment of sovereignty in the political foundations of a state that is based on a group of people and sovereign institutions within the framework of the Basic Law and the Constitution in the performance of its duties and actions, so no effective sovereignty will be possible except for those that have effective government (72 :1390 :72 , غمــــــــــــامي). Therefore, the political authority is distributed and concentrated at the same time in the three authorities, executive, legislative and judicial.

Second: "Rule of Law" instead of "Absolute Sovereignty"

Rule of Law is the appropriate mechanism for resolving transitional problems and crises in societies emerging from post-conflict wars such as Iraq. In 2004, the United Nations defined the "rule of law" [1] as follows: "A principle of governance in which all persons, institutions and entities, public and private, including the state itself, are responsible before publicly issued laws, applied equally to all and governed in their framework by an independent judiciary, consistent with international human rights norms and standards. This principle also requires that measures be taken to ensure adherence to the principles of the rule of law, equality before the law, accountability before the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoiding arbitrariness, and procedural and legal transparency." [2] In accordance with the principles of international law and organizations In the United Nations, the rule of law includes all or "judicial, human rights, and national security" areas or a mechanism for achieving and ensuring these principles (see: Janson, 90-90): This definition by the United Nations can extend the law from its core to its implementation as well as the system and the composition Desperate for a country, As such, it is an important mechanism for determining the absolute sovereignty of the state vis-à-vis the various citizens, components, and various local identities, sharing powers (both horizontally and vertically; as in a federal and democratic system) and ensuring and independence of individual / group rights within the framework of the system. Because the "rule of law" to achieve "justice", "human rights" and "human security" is an indisputable necessity and directly related to one another. According to this definition, the following points must be taken into account in laws such as these societies and countries emerging from wars and conflicts, in accordance with the standards and values [3] of justice, human rights and human security [3]:

1-Accountability

2-The Content of Laws

3- The Drafting of Laws

4-The Application of Laws

5-Participation in Decision Making

6-Separation of Powers

7-Access to Justice

For this reason, the Kurdistan Region can / should work based on these principles and foundations at the local and international levels, in order not to issue, on the basis of the principle of majority and minority, a decision against the interests and security of the Kurds.

Third: The right of self-determination

Self-determination has many different and unclear definitions. For example, Professor Michael Akehurst sees: "The right of self-determination is a right whereby the people of a country determine their destiny and their political and legal affairs, and they establish a new state or become part of another country" (Akehurst, 1997: 290). The right to self-determination is also considered to be the right of a group of people who consider themselves a different nation from other nations and see that it is their right to determine for themselves their country and the form of their government (أَكْبَرِي لَلِيمِي , 62: 1395). The international covenants of civil, political, economic, and social rights consider the right to self-determination as part of the basic rights and freedoms, and every individual or social group, despite national, ethnic, sectarian, religious and sexual differences, can, through this right, manage their affairs in the political, economic, social and cultural fields. Therefore states have obligated to provide the conditions for realizing this right.

Most scholars agree on this issue: that democracy and human rights, and even ensuring the security of states, are all closely related to the issue of multiculturalism / nationalism, and thus recognition of the rights of these minorities, along with their political participation, is of international concern and democratic states. For example, the Framework Convention for the Protection of National Minorities Committee stressed the importance of political participation of minorities in the management of the country and political affairs to achieve economic and social rights and freedoms. The Helsinki Document issued in 1992 also affirms the political participation of minorities in national, internal, regional and local affairs in order to guarantee their economic, political, social and cultural life.

Basic human rights generally include many dimensions and areas, which can be classified into: 1- the right of life, 2- the right of freedom, 3- the right of political participation, 4- the right of legal support or the right of legal protection, 5- the right to provide basic social, economic, cultural services.

In general, the right of cultural / national pluralism is a major and fundamental part of human rights, and it is a global issue that cannot be separated from the rights that all human beings have the right to enjoy . Because human rights are inclusive of all human beings without reference to their race, religion, language, gender, etc. ... just because they are human beings. These rights are also reflected in many international agreements and conventions, including: The Magna Carta of 1215 in England, known as the Great Charter of England. After that, the first realistic realization of political and civil rights for citizens came in the United States Declaration of Independence in 1776, and then the Declaration of the Rights of Man and Citizen during the French Revolution in 1789.

In classical international law, only states had rights and duties, but the disasters left by the first and second world wars removed human rights from the authority and framework of the absolute sovereignty of states, and the first action of the United Nations was the ratification and declaration of the Universal Declaration of Human Rights on December 10, 1948, then the United Nations General Assembly in December 1966 ratified the ICESCR and International Covenant on Civil and Political Rights. It is worth noting that in 1971 Iraq ratified these two pacts and published them in its official newspaper. These treaties were considered the beginning and even revolution in the field of the impact of human rights on the treaties and other covenants related to human rights, such as the International Charter for the Elimination of All Forms of Ethnic Discrimination in 1969, the Convention against Torture, Inhumane Violence, and Behavior in 1969 ... etc.

The right to self-determination is one of the foundations that emerged at the beginning of the twentieth century to become today a pillar and a key component of legitimacy. This right was referred to several times in the 14-point Declaration of Principles of US President Woodrow Wilson in 1918^[4], and then confirmed by a publication known as the Atlantic Charter in 1945 to administer the international community. The Charter of the United Nations also considers this right one of the goals of the international organization and considers it a guarantee of achieving international peace and security (كليبيار , 173 :1386).

The General Assembly then approved Resolution No. 1514 on December 14, 1960 under the title "Declaration of the Granting of Independence to Nations and Colonial Countries"^[5] and then Resolution No. 2625 on October 24, 1970 under the title "Fundamentals of international law on principles of friendship between nations"^[6]. Although this right was embodied in the "colonialism" contract (1373 :253 , سيفي). Then the international convention of civil, political rights^[7], and economic, social and cultural rights^[8] in 1966, in their first article^[9] and frankly, touched on this right despite reference to it in general in paragraph (3) of Article (21) of the Universal Declaration of Human Rights and paragraph (2) of Article (1) From the Charter of the United Nations.

All of these demonstrate the importance of maintaining and protecting national, cultural and religious minorities at the international level. Because it obliges states to provide the conditions necessary to exercise rights that affect the protection of identity, language, religion, sect, traditions and culture. Thus, the identity of the minorities and their cultural and national rights must be recognized.

Here, three mechanisms or methods proposed by Canadian Professor Will Kymilicka (despite criticism of this model) that can be followed in Iraq. Sovereignty it has element and dimension of responsibility that includes the external level, and internal sovereignty as well, and this obliges Iraq and the Kurdistan Region to protect Differentiated Citizenship and the Life and Identity of These Minorities, and in this regard, (Kymilicka) considers three types of rights:

First- Polyethnic Rights: which include all economic, financial and legal support by the state for entities with religious, sectarian and ethnic identities, and that relate to the affairs of their identities, and here in Iraq and the Kurdistan Regional Government through constitution and laws should follow all necessary measures to protect The peculiarities and differences of these entities with a distinct identity in Iraq.

Second _ Special Group Representation Rights: Ensure seats or positions for these components and minorities in a manner that ensures that their cultural specificities and identities are taken into account in majority decisions, and this must be observed and implemented in Iraq.

Third _ Self-Government Rights: These rights are granted to the minorities in various ways and mechanisms, up to the borders of federalism, which they have right to manage their economic, political and educational affairs. And here according to the type of country and the history of these minorities the political system will be designed, even in those regions the language of that historical minority will become official language alongside the predominant nationalist language in the country, and this is very appropriate for multinational countries and creates the Multinational Citizenship^[10].

Fourth: Sovereignty at the present time

4-1- Limited Sovereignty (Pluralism of Sovereignty)

As a result of the issues and changes taking place, especially after the end of the Cold War, these principles are no longer immutable. National sovereignty has become influenced by international sovereignty and the frameworks of international

norms and laws, and thus states have assigned part of their sovereignty and powers to supranational levels within the framework of international organizations and institutions (Scholte, 2000: 15-16). Where there are international and global formulas and values that have become a reason for building the Global Order and moving from the international system to the global or international community[11]. Thus international law has largely defined domestic laws to make absolute sovereignty within borders a cause of global or international reactions (Montbrial, 2011: 240-249).

On the other hand, interference in internal affairs through institutions, bureaucracy, and the use of various coarse and soft means was one of the classic foundations of sovereignty (صـدوقـي, 1382: 162), but with the existence of a metaphoric society, metaphorical social networks and technology, the borders began to fade and were no longer subject to For the absolute control of the state, this is one of the foundations that weakened the control and power of the state – the nation. So this sovereignty, whether political or legal, came out of its former absolutism, and the borders of states are no longer absolute. These pressures on states are from top to bottom and from bottom to top; they are higher or lower than the nation through the processes of globalization, lobbying groups, and non-governmental workers (يعقوبى پور, 1390: 117).

It should be noted that, since the UN International Law Commission, since assuming its duties in 1949, the "International Responsibility of States" is considered one of the issues that must be defined, although it has not yet been able to present it like other issues in the form of a binding international covenant, However, the United Nations documents for the year 1980 were ratified in 35 articles under the title "Draft of State Responsibility Issues" and it became one of the documents of the United Nations General Assembly. Then it was published in the year 2001, in 59 articles as an official document attached to the 56th meeting of the General Assembly. The importance of this document lies in benefiting from its foundations and customs adopted by the international courts in dealing with the problems of countries, and it contains many important articles for the Kurds[12].

According to one of the 2005 UN documents, known as the Summit, the "right to humanitarian intervention" was no longer the only basis adopted in the event of international peace and security at risk, but the principle of "Responsibility to Protect" appeared. On the other hand, peace and security in the Westphalian system consisted of respect for the sovereignty of states and equality in their rights, respect for the territorial integrity and non-interference in their internal affairs, A peaceful solution to problems and disputes, but the perception of the concept of international peace and security has now changed as a result of a change in the nature of threats and risks and the emergence of new threats and risks such as issues related to the environment, global warming, poverty, hunger, terrorism, and organized crime (arms, narcotics, human trafficking, etc.) In addition to cross-border diseases, the refugee issue, mass migration and human rights issues. All this pushed the UN Security Council as the center and authority of its duty to protect international peace and security worldwide, to consider civil wars and humanitarian crises as cleansing and genocide national, sectarian and ethnic, change in the political system, terrorism and widespread and grave violations of human rights are a threat to peace and human security (اشـرفـي, 1393: 83). And the United Nations General Assembly declared in Resolution No. (239/11) issued on November 12, 1984, that the main goal of the United Nations organization is to consider the protection and realization of a peaceful life for human beings as a basic human right and a major and sacred duty of states. This is what made the summit meeting of the members of the United Nations Security Council, on January 31, 1992, declare that the absence of war and armed violence between countries no longer means the maintenance of international peace and security, Rather, the absence of stability in the social and political spheres and the violation of human rights are considered a threat to global peace and security[13]. This put the concept of "human security" in the face of "collective security", which meant the collective response of states to aggressors against the sovereignty of states, which is to rid themselves of new threats and dangers such as poverty, hunger, oppression, persecution, exclusion and terrorism practiced by states[14] and within the borders of the state itself (وكيل, 1383: 133-132).

Hence, peace and security no longer mean the absence of war and armed confrontation. Rather, poverty, exclusion, the absence of democracy and the violation of human rights are all matters that threaten international peace and security.

Therefore, interference in the internal affairs of states is no longer illegal and does not violate state sovereignty. Rather, it has become a means to protect international peace and security. The UN Security Council considered the civil wars in Georgia, Liberia, the former Yugoslavia, Sudan, the humanitarian crises in Bosnia, Rwanda, and Iraq, the change of the political system in Haiti[15] in 1991 and the Lockerbie crisis, as threats to international peace and security, and therefore we can classify threats to international peace and security into a number of categories, namely :

1- War, hostility and clash between countries.

2- War, hostility and clash within countries.

3- Terrorism.

4- Nuclear weapons issues.

5- Issues related to chemical weapons and weapons of mass killing.

6- The transnational crimes of the organization.

7- Social and economic threats, such as disease, poverty and environmental issues. (اشرفي , 89 :1393)

The best example of this is the criminalization of the "Iraqi state" by the UN Security Council because of its threat to international security as a result of its military aggression against Kuwait (not just to attack a sovereign state) but rather to sabotage the environment by setting fire to Kuwaiti oil fields[16], then issuing Resolution No. 688 On April 5, 1991 due to the suppression of Iraqi (Kurdish) civilians internally[17], as the first practical application of the concept of "humanitarian intervention", while international law and respect for sovereignty were previously viewed these issues as an "internal matter", before the events of September 11, 2001 in USA [18], Resolution 748 considered terrorism a threat to international peace and security[19]. This is in addition to many other decisions related to providing and protecting the humanitarian and security conditions for refugees[20] and preventing the use of children in wars[21], and considering the proliferation of weapons of mass destruction as a threat to international peace and security[22], but rather the spread of the HIV / AIDS epidemic and H.I.V threat to international peace and security[23].

All these developments led a large number of legal jurists and political thinkers to regard sovereignty as the sovereignty of peoples and human beings, that is to say protecting peace and security of peoples / people is the spirit of international law that transcends the sovereignty of states and represents the duty and goal of the United Nations (Reisman 1990: pp. 866-870). On the other hand, as a result of the interactions of states and other organizations, especially organizations concerned with protecting collective security, the circle of "sovereignty" has narrowed compared to that of the past century.

-2- Sovereignty and the right of self-determination: the rule of law in a number of articles and paragraphs of the 2005 Iraqi constitution

In the end of the preamble of the permanent Iraqi constitution, which its strength and nature equal to all articles of the constitution says : (We, the people of Iraq, of all components and across the spectrum, have taken upon ourselves to decide freely and by choice to unite our future, to take lessons from yesterday for tomorrow, and to enact this permanent Constitution, through the values and ideals of the heavenly messages and the findings of science and man's civilization. The adherence to this Constitution preserves for Iraq its free union of people, of land, and of sovereignty).

From the analysis of this text it appears that:

First: Iraq is multi-spectral.

Second: The Past's experiences of persecution, marginalization, and repression should not be repeated.

Third: This sovereign state (Iraq) derives its sovereignty from the voluntary union of the people and the land, which means there is a contract that unites them.

Fourth: According to this constitution, the sovereignty of Iraq ends when the rights and freedoms of the various nationalities and components are violated. That is, it is the application of the principles and spirit of this constitution that preserves the sovereignty of Iraq. One of the most important principles of this constitution is the federalism and recognition of the Kurds' rights to share powers horizontally and vertically, which means that the autonomy within the framework of the federal union.

Fifth: This union consists of the elements of the land and the people, and thus there is not one nation or one land, and this matter is very important at the international level.

Sixth: Democracy and the rule of law are, in fact, a guarantee of the continued sovereignty of Iraq, that without which there is no such thing as Iraq, at least constitutionally.

The Constitution of Iraq states in Article 1 (1) of Chapter One (Basic Principles): (The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq). What matters most to the Kurds from this constitutional article is the inability to separate federalism and sovereignty, that is, federalism precedes unity, independence and sovereignty. On the other hand, federalism and sovereignty are considered partners. And it appears from them unambiguously that the system of government in Iraq is democratic, and democracy has many known criteria and foundations at the international level, including participation in power and protection of security and dignity and individual / collective rights and freedoms and identities, and the right to self-determination (at the local level at least A major principle of democratic principles. This article also reiterates that this constitution is a guarantor of the unity of Iraq, so according to this article, any violation of this constitution jeopardizes the principle of union, which is the main pillar of "sovereignty", because any sovereignty is devoid of its meaning without it.

From this it is clear that this sovereignty is not eternal, but that the Federal State of Iraq was established under a contract and this constitution is the text of that contract. If, for example, it violates the foundations and principles of human rights, freedoms, political participation and equality, then the sovereignty of Iraq will disappear.

After that, the permanent Iraqi constitution of 2005 stated:

(First: Islam is the official religion of the State and is a foundation source of legislation:

A. No law may be enacted that contradicts the established provisions of Islam

B. No law may be enacted that contradicts the principles of democracy.

C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.

Second: "This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals." despite the inconsistency of the articles of this constitution regarding the issue of conflict of laws with the established principles of Islam and the principles of democracy, it clearly indicates that no law in Iraq may contradict the principles of democracy. From this standpoint, and since these democratic foundations and rules were established at the international level and in accordance with the international programs and international institutions and organizations, documents, covenants and international agreements, and therefore the rule of law protects what in turn defines the classic foundations of sovereignty, even if it is based on legal foundations under the law and parliamentary legal work as a representative To the people.

The second paragraph of the same article refers to the protection of the rights of individuals and components in terms of exercising freedom of belief and religion, and thus this article casts a set of international obligations on the authority and does not allow sovereignty to be absolute under the pretext of the majority and minority and the religious identity of the Muslim-Shiite majority.

1. Article Three, despite what came at the end of it, is considered one of the most important articles of the Iraqi constitution as it refers to national and religious pluralism in Iraq: "Iraq is a country of multiple nationalities, religions and sects, and it is a founding and effective member of the League of Arab States and is committed to its charter, and part of the Islamic world." From here, too, it appears that this recognition of national and religious pluralism in Iraq imposes a set of obligations at the local and international levels on the authority in the center and limits its sovereignty. This article has its own importance in the external field, in addition to its importance in internal equations. If the army or armed forces are used on the pretext of protecting the sovereignty of Iraq against an Iraqi component or identity, it can take a basis for the work of the right of self-determination (externally) and it also nullifies the sovereignty of Iraq under the constitution. Because he violated a constitutional article through the use of force, this constitution requires that its application is a guarantee of the sovereignty and unity of Iraq. Also, Article Thirteen says: First: This constitution is the supreme and supreme law in Iraq, and it is binding throughout, without exception. In the event of departing from the foundations of democracy and federalism, and when public and private freedoms are violated, the deputy will have broken the oath that refers to democracy and federalism alongside the foundations of the state and sovereignty (water, land, sky, and wealth). Also includes articles 112 and 133 on oil and gas, words determined by the absolute federal authority over the Kurdistan Region, and besides this, they refer to the issue of justice. Article 117 recognizes the Kurdistan Region, and this matter has its special importance. Paragraph II of Article 121 says: "The authority of the region has the right to amend the application of federal law in the region, In the event of a contradiction or inconsistency between the federal law and the law of the region, regarding an issue that does not fall within the exclusive competence of the federal authorities. Security and Guard of the Territory, "and this explicitly defines the (Iraqi) federal authority. In addition to all that we mentioned, the fourth paragraph of Article 126 states: "No amendment may be made to the articles of the constitution, which would detract from the powers of the regions that do not fall within the exclusive powers of the federal authorities, except with the approval of the legislative authority in the region concerned, and the majority's approval. Its inhabitants by referendum ", and this article negates absolute sovereignty even if it comes across the legal-parliamentary majority and the referendum. In general, we find through this study that the Kurds in Iraq can at the international level in accordance with international laws and rules, and at the local level under the Iraqi constitution and the same international rules and laws specific to sovereignty, to control the complex of sovereignty, until the opportunity is created according to Iraqi local conditions and regional equations. And the international prospect of independence and becoming a sovereign entity. Therefore, insistence on implementing constitutional norms and establishing federalism, at the local level, can determine the implications of "absolute sovereignty", provided that this is accompanied by a political / legal pursuit of the status of the state. Although

political equations and the balance of powers, as well as states' interventions in Iraq affairs, determine this sovereignty. Because the Kurds have not yet worked in a specialized manner in the areas of human rights, human security and justice to achieve rights, the concept of "sovereignty" today has been transformed into the concept of "sovereignty as a responsibility" or "responsibility to protect." On the other hand, we can say that the Kurdistan Region as an active player can, in addition to its participation in countering terrorism, which is a threat to the overall political system and the survival of the Kurdistan Region, to play the role of strategic and important ally of Western countries, and this alliance stems from two dimensions, the first, the common enemy, and the second, The values of governance and the rules of the Western and modern political system of democracy, pluralism, and freedom. This study to break the knot of sovereignty in Iraq, in addition to working on other mechanisms and rules, suggests that the Kurds in Iraq insist on a model of "consensual democracy", and for this purpose it is advisable for Iraq to proceed from the constitutional, legal and institutional aspects towards this model and a broader federalism and greater activation of federal institutions. Because sovereignty in the federal system is divided between the center and the regions, This does not mean the distribution of sovereignty between the center and the regions at the international level and foreign policy, but rather the distribution of sovereignty at the local level only, but on the basis of international principles and rules that we presented despite the fact that changes in the concept of international peace and security increase the determination of the sovereignty of Iraq.

2. Most of the current violence and wars are not concentrated between states, but rather within states. This is why it can be said that the Kurds, through a new interpretation of the concept of "international peace and security", can determine the sovereignty of Iraq. Because the concepts and rules of "the right to self-determination" and "equality and sovereignty of states" balance and define each other, Thus, the main problem of the Kurds in Iraq stems from the incompatibility of the two concepts. Because every minority, component, or nationality with a linguistic or sectarian identity that is deprived of the right to political participation and subjected to injustice can at least exercise the right to self-determination locally at the local level.
3. From here, until the opportunity is provided to possess a sovereign entity (an independent state), the Kurds in Iraq must form specialized political and legal teams and advisory / legal academic competencies to implement the Iraqi constitution on the one hand, and benefit from the other side of the decisions, documents, treaties, customs, and international laws of the era Globalization is working to define that Iraqi sovereignty, given that the legal rules we have referred to benefit in this field.
4. Sovereignty has three main characteristics: union, internal unity, external independence, and the rule of law, which are the properties that none of them exist in Iraq, and the most important of all is that Iraq, as a result of its division in terms of identity on three Shiite, Sunni and Kurdish identities, lacks a "national identity" It can legitimize the establishment of "national sovereignty". That is why Iraq, as a country, cannot control and monopolize itself using violence / force.
5. **Conclusion:**
6. All this, and many other examples that show that the sovereignty of Iraq can be determined through constitutional texts, charters, agreements, laws, and international norms, In the event that this sovereignty is canceled as a result of violating one of the articles related to the formation of the state contract, it is the central authority or the Iraqi state that will lead to the end of this state, meaning that sovereignty as it is born can die one day.
8. There is another important article in the constitution of Iraq that can affect the position of the Kurdistan Region and absolute sovereignty. Article 48 says: "The federal legislative authority consists of the House of Representatives and the Federation Council," which means that the application of this article can abolish the authority of the majority, and ensure consensual democracy and a federal system In Iraq, even the omission of this article leads to a violation of the constitution and the abolition of Iraq's sovereignty due to the non-compliance with the constitution. Also, Article 50, which refers to the constitutional oath of the members of the Iraqi Council of Representatives, where the deputy must swear to ensure the integrity of Iraq's land, sky, water, wealth, and federal democratic system, and that it works to safeguard public and private freedoms ... etc.

9. Articles (14, 15, 16, 17, 18, 20, and 21) define and guarantee civil and political rights, and any violation of any of these rights exposes the sovereignty of Iraq to accountability and defines it. On the other hand, Articles (22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36) guarantee all economic, heritage and cultural rights, and violating those rights will nullify and limit that sovereignty at the same time. Articles 37, 38, 39, 40, 41, 42, 43, 44, and 45 also refer to all freedoms. According to Article 46: Defining and restricting is the essence of the right or freedom. " It turns out that freedoms cannot be restricted even by law, and if that happens, the constitution will be violated and in addition to determining the sovereignty of Iraq, the matter will extend to its abolition.
10. Second: It is not permissible to enact a law that contradicts this constitution.
11. In addition to the issue of official languages in Article IV, Article Five clearly indicates that: "Sovereignty is law, and the people are the source and legitimacy of powers, exercised by direct, secret ballot and through its constitutional institutions." This, in addition to the issue of the rule of law, requires the provision and observance of democratic norms and the right to self-determination (internally). Paragraph I / A of Article IX also indicates that: "The Iraqi armed forces and security services consist of the components of the Iraqi people, in a manner that takes into account their balance and similarity without discrimination or exclusion, and is subject to the leadership of the civil authority, and defends Iraq, and is not an instrument to suppress the Iraqi people, nor it interferes in political affairs, and has no role in the handover of power. "
12. From this standpoint, and since these democratic foundations and rules were established at the international level and in accordance with the programs of international and international institutions and organizations, documents, covenants and international agreements, and therefore the rule of law protects what in turn defines the classic foundations of sovereignty, even if it is based on legal foundations under the law and parliamentary legal work as a representative To the people. The second paragraph of the same article refers to the protection of the rights of individuals and components in terms of exercising freedom of belief and religion, and thus this article casts a set of international obligations on the authority and does not allow sovereignty to be absolute under the pretext of the majority and minority and the religious identity of the Muslim-Shiite majority.
13. Second: This constitution guarantees the preservation of the Islamic identity of the majority of the Iraqi people, as well as guarantees the full religious rights of all individuals in freedom of belief and religious practice). Hence, despite the inconsistency of the articles of this constitution regarding the conflict of laws with the established principles of Islam and the principles of democracy, it clearly indicates that no law in Iraq may contradict the principles of democracy.
14. B- It is not permissible to enact a law that contradicts the principles of democracy.

[1] For more information look at: مرکز : تهران: 2، چ، و برداشتها (مفاهیم، مبانی و برداشتها)، احمد (1385)، حاکمیت قانون (مفاهیم، مبانی و برداشتها)، چ 2، تهران: مرکز پژوهشهای مجلس شورای اسلامی.

[2] <https://www.un.org/ruleoflaw/files/2004%20report.pdf>

[3] https://www.inprol.org/sites/default/files/dari_inprol_practitioners_guide_voconnor_defining_rol_final.pdf

[4] http://web.ics.purdue.edu/~wggray/Teaching/His300/Handouts/Fourteen_Points.pdf

[5] Declaration on the Granting of Independence to Colonial Territories and Peoples. See: <http://www.un.org/en/decolonization/declaration.shtml>

[6] Declaration on Principles of International Law Concerning Friendly Relations and

Cooperation among States in Accordance with the Charter of the United Nations. See: <http://www.un-documents.net/a25r2625.htm>.

[7] International Covenant on Civil and Political Rights. See:

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

[8] International Covenant on Economic, Social and Cultural Rights. See:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

[9] ((All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development)).

[10] See: <https://www.humanityinaction.org/files/514-multiculturalism.pdf>

[11] See: <http://www.rochelleterman.com/ir/sites/default/files/buzan%201993.pdf>

[12] A/See: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

B/See: <http://legal.un.org/ilc/sessions/32/>

[13] See: Declaration of the President of the Security Council, S/23500, January, 1992.

[14] See: Security Council Resolution 748(31 Mar. 1992) U.N.Doc. S/RES/748.

[15] See: <http://www.un.org/documents/sc/Res/1993/sres/93.htm>.

[16] See: Security Council Resolution 687;P.16;(3 Apr 1991)UN.doc S/RES687.

[17] See: Security Council Resolution 688; (5th Apr.. 1991); U.N.Doc. S/RES/688.

[18] See: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1368%20%282001%29.

[19] <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/011/07/IMG/NR001107.pdf?OpenElement>.

[20] See: Security Council Resolution 1208;(19th Nov. 1998); U.N.Doc.;S/RES/14;1208.

[21] See: Security Council Resolution 1460;(30 Jan. 2003)U.N.Doc; S/RES/ 1460.

[22] See: Security Council Resolution 1540 ;(28 Apr. 2004);U.N.Doc.S/RES/1540.

[23] See: Security Council Resolution 1308; (17 July 2000); U.N. Doc; S/RES/1308.

Sources in Arabic:

1- الدستور الدائم لجمهورية العراق للعام 2005.

أولاً: الكتب

2- اجرلو، إسماعيل و طاهري، دانيال (1395)، أشنایي با مفاهيم حقوق عمومي: بررسی مفهوم قدرت سياسي، تهران: پژوهشکده شورای نگهبان، دفتر مطالعات نظام سازی اسلامی.

3- جانسون، گلن (1377)، اعلامیه جهانی حقوق بشر و تاریخچه ی آن، ترجمه: محمد جعفر پوینده، تهران: نشرنی.

4- صدوقی، مراد علی (1382)، تکنولوژیهای اطلاعاتی و حاکمیت ملی، تهران: انتشارات وزارت امور خارجه.

- 5- غمامی، سید محمد مهدی (1390)، حقوق اساسی جمهوری اسلامی ایران، تهران: انتشارات مرکز اسناد انقلاب اسلامی ایران.
- 6- قاضی شریعت پناهی، ابو الفضل (1380)، بایسته‌های حقوق اساسی، تهران: نشر دادگستر، چاپ ششم.
- 7- کلیبار، کلود. آلیر (1386)، نهادهای روابط بین‌الملل، مترجم: هدایت اللة فلسفی، تهران: نشر نو.
- 8- وکیل، امیر ساعد (1383)، حقوق بشر، صلح و امنیت بین الملل، جلد اول، تهران: انتشارات مجد.

ثانياً: المجلات العلمية

- 9- اشرافی، داریوش (1393)، تفسیر جدید از صلح و امنیت بین المللی و تاپیر آن بر مفهوم حاکمیت ملی، تهران: دانشگاه علامه طباطبائی، فصلنامه پژوهش حقوق عمومی، سال پانزدهم، شماره: 42.
- 10- اکبری لالیمی، مرتضی (1395)، اجرای حق تعیین سرنوشت؛ تقابل حقوق بشر با حاکمیت دولت ها، تهران: مجله حقوقی اکبری لالیمی، مرتضی (1395)، اجرای حق تعیین سرنوشت؛ تقابل حقوق بشر با حاکمیت دولت ها، تهران: مجله حقوقی اکبری لالیمی، شماره: 96.
- 11- سیفی، سید جمال (1373)، تحولات مفهوم حاکمیت دولتها در پرتو اصل تعیین سرنوشت ملت ها، تهران: دانشگاه شهید بهشتی، مجله تحقیقات حقوقی، شماره: 15.
- 12- کریمی راد، سعید (1391)، کنکاشی در مفهوم حاکمیت و انواع آن، تهران: روزنامه رسالت، شماره: 7587، 1391-4-22.
- 13- مستقیمی، بهرام (1385)، فناوری اطلاعات و حاکمیت، تهران: دانشگاه تهران، مجله دانشکده حقوق و علوم سیاسی، شماره: 71.
- 14- ویژه، محمد رضا (1385)، مفهوم تازه حاکمیت در حقوق عمومی، تهران: مجله اطلاعات سیاسی- اقتصادی، انتشارات اطلاعات، شماره: 231 و 232.
- 15- یعقوبی پور، مهدیه (1390)، تأثیر جهانی شدن فرهنگ بر هویت ملی، تهران: مجله اطلاعات سیاسی - اقتصادی، انتشارات: اطلاعات، شماره: 267 - 268.

Sources in English:

A-Books

- 16- Akehurst, Michaelb (1997), *Modern Introduction to International Law*, Oxford University Press, Sixth Edition.
- 17- Avid Robertson (1998), *Dictionary of politics*, London, Penguin books.
- 18- Franklin, J. H., (1973), *Jean Bodin and the Rise of Absolutism*, Cambridge University Press.
- 19- Keohane, Robert Owen (2002), *Power and Governance in a Partially Globalized World*, Psychology Press.
- 20- Lipset, S. M. (1971), *Political Man*, London: Heinemann.
- 21- Montbrial, T. (2011), *Action and Reaction in the World System: The Dynamics of Economic and Political Power*, UBC press.
- 22- *Oxford Advanced learners Dictionary (2000)*, sixth edition, edited by sally wehmeier, oxford university press.
- 23- Scholte, J. A. (2000), *Globalization: A Critical Introduction*, Palgrave Macmillan.

24- Wootton, D. (1986), *Divine Right and Democracy*, Middx: Penguin Books.

B-Researches and Documents:

25- Reisman, Michael (1990), "Sovereignty and Human Rights in Contemporary International Law", *the American Journal of International Law*, Vol. 84, No. 4.

26- UN Charter: Available At: <<http://www.un.org/en/sections/un-charter/un-charter-full-text/index.html>>. Last seen: 28-6-2018.