

**THE LEGALITY OF SYRIAN INTERVENTION IN
THE LEBANESE CIVIL WAR :1975_1976**

**A Thesis submitted for the award of the Degree
of Doctor of Philosophy in Law**

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Dedication

*In the memory of my eldest
brother and friend Fayez
Moraabi and those who fell
victim to the vicious civil war.*

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ABSTRACT

The Lebanese civil war is, undoubtedly, one of the most protracted civil wars that has ever been witnessed in the last two decades. Many interventions have occurred in Lebanon and most of them were the subject of discussion and legal analysis. Of all these interventions, the Syrian intervention has attracted no academic or scholarly attention whatsoever. It is the main concern of the present thesis to discuss the Lebanese civil war and the legality of the Syrian intervention under the rules of international law. It specifically and exclusively focuses on the Syrian intervention during the years 1975-1976.

In evaluating the Syrian intervention, of necessity, the thesis discusses in the first and second chapters the norm of non-intervention, the definition of intervention, and the attitudes and practices of the Superpowers towards the norm of non-intervention. Moreover, it provides a thorough review of the history of Lebanon, the causes of the conflict, and the legal nature of the conflict.

Having identified the nature of the Lebanese conflict, the rest of the thesis deals with the legality of the Syrian intervention under the rules of international law which are applicable to internal conflict. The discussion of Syrian intervention is dealt with from four legal perspectives: intervention under the rebels' invitation; humanitarian intervention; Lebanese government's invitation, and the effect of invitation on the Lebanese right to self-determination; and finally the legitimization of Syrian intervention through its inclusion in the peace keeping force of the Arab League.

The out come of the discussion establishes the illegality of the Syrian intervention and the ineffectiveness of regional organizations, namely the Arab League, in

responding to civil war. It also proves that, so long as the norm of non-intervention is not respected by powerful states, small states will be encouraged to break the norm and undertake intervention; and unless the international community responds positively to the norm of non-intervention, anarchy will be the prevailing norm with serious implications for the survival of mankind in the era of nuclear weapons.

| | PAGES |
|-------------------|-------|
| ACKNOWLEDGEMENT | |
| DEDICATION | |
| ABSTRACT | |
| ABBREVIATION | |
| TABLE OF CONTENTS | |

| | |
|--------------|-----|
| INTRODUCTION | XIV |
|--------------|-----|

CHAPTER ONE

GENERAL REVIEW OF THE NORM OF NON INTERVENTION

| | | |
|------|---|----|
| I- | The inevitability of intervention: An introduction. | 1 |
| II- | Definition of Intervention. | 6 |
| | A- The form of intervention. | 8 |
| | B- The end of Intervention. | 12 |
| III- | The norm of Non-Intervention. | 13 |
| IV- | Non-Intervention and Superpowers' practice. | 16 |
| | A- The Soviet Union Practices and Claim. | 16 |
| | B- The United State Practices and Claim. | 21 |
| V- | Remark. | 27 |

CHAPTER TWO

THE DEFINITION OF THE LEBANESE CONFLICT

| | | |
|------|--|-----|
| I- | Introduction. | 36 |
| II- | History of Lebanon. | 37 |
| | A- From the time of its inception until the French mandate. | 37 |
| | B- From the French mandate to Independence | 40 |
| III- | The causes of civil war | 43 |
| IV- | The identification of belligerents in the Lebanese civil war | 46 |
| | A- The internal parties to the conflict | 47 |
| | B- The external parties to the conflict. | 50 |
| IV- | The legal nature of the Lebanese conflict | 51 |
| | A- Introduction | .51 |
| | B- The legal meaning of the civil war | 52 |
| | C- The Palestinian factor in the Lebanese civil war | 54 |
| | D- The Cairo Agreement. | 57 |
| | E- Cairo Agreement and the legal standing of the parties. | 59 |
| | F- The Validity of the Cairo Agreement. | 62 |
| V- | Cairo Agreement and the validity of the Palestinian participation in the Lebanese civil war | 73 |
| VI- | Conclusion | 76 |

CHAPTER THREE

SYRIAN INTERVENTION UPON THE REQUEST OF THE REBELS

| | | |
|------|--|-----|
| I- | Prelude to Syrian intervention: A factual record | 87 |
| II- | The Syrian justification | 90 |
| III- | The classical rules of International law | 92 |
| IV- | The legal assessment of the Syrian intervention under customary international law | 98 |
| V- | The validity of Arumun summit's invitation | 103 |
| VI- | Conclusion | 106 |

CHAPTER FOUR

SYRIAN INTERVENTION AS HUMANITARIAN

| | | |
|------|---|-----|
| I- | Introduction | 113 |
| II- | Prelude to the Syrian intervention: A factual record | 115 |
| III- | The Syrian government's reference to humanitarian intervention | 118 |
| IV- | Humanitarian Intervention under international law | 119 |
| | A- General. | 119 |
| | B- The meaning of humanitarian intervention. | 120 |
| | C- Humanitarian intervention under customary international law. | 124 |
| | D- Humanitarian intervention under the United Nations Charter. | 130 |
| | E- Humanitarian Intervention and domestic jurisdiction. | 139 |
| | F- Unilateral or collective intervention. | 142 |
| | G- Humanitarian intervention and the search for criteria. | 146 |

| | | |
|-----|---|-----|
| V- | The legal analysis of the Syrian intervention | 152 |
| | A- The exhaustion of peaceful means. | 152 |
| | B- Necessity. | 156 |
| | C- Duration. | 158 |
| | D- Proportionality. | 160 |
| | E- Disinterestedness | 162 |
| IV- | Conclusion | 165 |

CHAPTER FIVE

SYRIAN INTERVENTION AS AN INVITATION

| | | |
|------|---|-----|
| I- | Introduction | 180 |
| II- | The Syrian justification | 181 |
| III- | The existence of an invitation by the Lebanese government | 183 |
| IV- | The validity of an invitation under international law | 191 |
| | A- The principle of effectiveness. | 191 |
| | B- The effectiveness of the Lebanese government. | 197 |
| V- | The validity of an invitation under the Lebanese constitutional law | 201 |
| VI- | Syrian intervention and the Lebanese right to self-determination | 209 |
| | A- General. | 209 |
| | B- The origin of the principle of self-determination. | 210 |
| | C- The principle of self-determination under the United Nations Charter. | 211 |
| | D- The realization of the principle of self-determination and the dilemma of civil war. | 219 |
| | E- The effect of Syrian intervention on the Lebanese right to self-determination. | 226 |
| VII- | Conclusion | 236 |

CHAPTER SIX

THE LEGITIMIZATION OF THE SYRIAN INTERVENTION BY THE ARAB LEAGUE

| | | |
|------|---|-----|
| I- | Introduction | 253 |
| II- | The foundation and the constitutional basis of the Arab League | 254 |
| | A- The origin of the Arab League | 254 |
| | B- The Pact of the Arab League | 256 |
| | C- The interrelation between the Arab League and the United Nation Charter. | 258 |
| III- | The Arab League Peace Keeping Force in Lebanon | 260 |
| | A- Prelude to the establishment of the Arab Symbolic Security Force. | 260 |
| | B- The Cairo Resolution and the formation of the A.S.F. | 261 |
| | C- The ambiguity of the mandate of the A.S.F | 262 |
| | D- Silence of the Pact of the Arab League on the peace keeping force. | 264 |
| IV- | The compatibility of the Arab Security Force with the conventional type of peace keeping | 267 |
| | A- The consent of the host state. | 268 |
| | B- Impartiality and non-coercive character of the Force. | 273 |
| | C- The conduct of the Arab Security Force in Lebanon: 10 June-18 October. | 275 |
| V- | The Establishment of the Arab Deterrent Force in Lebanon. | 279 |
| | A- Riyadh and Cairo meeting. | 279 |
| | B- The changing legal character of the Syrian Forces under the new mandate. | 283 |
| | C- comparison between the Arab Security Force and the Arab Deterrent Force | 287 |

| | | |
|------|--|-----|
| VI- | Compatibility of the Arab Deterrent Force with the United Nations Charter | 290 |
| | A- Introduction. | 290 |
| | B- The Arab Deterrent Force and the question of enforcement measure. | 291 |
| | C- Failure to comply with Article 53 (1) and 54 of the United Nations Charter. | 300 |
| | D- Compatibility of the Arab Deterrent Force with the purpose and principles of the United Nations Charter | 302 |
| VII- | The effect of Arab politics on the formation of the Arab Deterrent Force in Lebanon | 305 |

CHAPTER SEVEN

| | | |
|----|--------------------|-----|
| I- | GENERAL CONCLUSION | 327 |
|----|--------------------|-----|

| | | |
|--|----------|-----|
| | APPENDIX | 334 |
|--|----------|-----|

| | | |
|--|--------------|-----|
| | BIBLIOGRAPHY | 352 |
|--|--------------|-----|

Abbreviation

| | |
|---------------------------|---|
| A.J.I.L. | American Journal of International Law. |
| B. Y. B. I. L. | British Year Book Journal of International Law. |
| Calif. West. In` t. L. J. | California Western International Law Journal. |
| Colum. L. Rev. | Columbia Law Review. |
| Colombo. L. Rev | Colombo Law Review. |
| Current Leg. Prob. | Current Legal Problems. |
| Den. J. I. L. P. | Denver Journal of International Law And Policy |
| Den. L. J. | Denver Law Journal. |
| Egyp. Rev. I. L. | Egyptian Review oF International Law. |
| Ga. J. In` t. & Comp. L. | Georgia Journal of International and ComparativeLaw. |
| Hav. In` t. L. Club. J. | Harvard International Law Club Journal. |
| How. L. Rev. | Howard Law Review. |
| Ia. L. Rev. | Iowa Law Review. |
| I. C.J. | International Court of Justice. |
| ILL. L. Rev. | Illinois Law Review. |
| I. L. M. | International Legal Materials. |
| Ind. J. In` t. L | Indian Journal of International Law. |
| In` t And Comp. L. Q. | International And Comparative Law Quarterly. |
| I. O. | International Organization. |
| Isr. L. Rev. | Israel Law Review. |
| J. I. Aff. | Journal of International Affairs. |
| J. In` t. Comm. Jur. | Journal of The International Commission of Jurists. |
| J. Pals. St. | Journal of Palestinian studies. |
| Mc Gill. L. J. | Mc Gill Law Journal. |
| Mil. L. Rev. | Military Law Review. |
| N. D. L. Rev. | North Dakota Law Review. |
| N. W. Collg. Rev. | Naval War College Review. |
| N.Y. I. L. | Netherlands International Law Review. |
| N.Y. U. J. In` t.L &Pol. | N. Y. University Journal of International Law And Politics. |
| Proc. Am. Soc. I. L | Proceeding of The American Society of International |

Law

| | |
|--------------------------|--|
| Recueil Des Cours | Academie De Droit International Des Cours. |
| U. ILL. L. Forum. | University Of Illinois Law Forum. |
| Wash. L. Rev. | Washington And Lee Review. |
| Willamette. L. Rev. | Willamette Law Review. |
| W. L.L.R. | Washington And Lee Law Review. |
| Yale. St. Wld. Pol. Ord. | Yale Studies in World Politic Order. |
| Y. B. W. Aff. | Year Book Of World Affairs. |

INTRODUCTION.

The Syrian intervention in the Lebanese civil war has turned out to be one of the most protracted interventions in the twentieth century, and at the time of writing this thesis it had already reached its fifteenth year anniversary. Yet it has escaped even a scant analysis and evaluation. Although the political analyses of that intervention are numerous, nevertheless from a legal perspective, the Syrian intervention has passed almost unnoticed.

The first Syrian intervention began with the first flame of civil war but was restricted only to diplomatic activities. By January 1976, the Syrian government contemplated its first indirect intervention to influence the outcome of the civil war. From that time on, Syria carried out various types of activities, which culminated in the direct intervention on the first day of June 1976. Despite the ensuing events that befell Lebanon and the various interventions which were undertaken by the Arab-League, Israel, and multi-national forces, only Syria has succeeded in keeping its grip on Lebanon.

The Syrian intervention in Lebanon has so far demonstrated a lacuna in the legal literature which is regrettable. In the present international system, foreign intervention was originally and constantly pursued by Superpowers and powerful states, such as France in Africa and China in Vietnam, but rarely contemplated by small states such as Syria. It is very enriching for legal literature to evaluate the behaviour of Syria during its intervention in 1975-1976.

Many reasons can be invoked to explain the legal negligence of Syrian intervention. Foremost among these is the barrier of Arabic language. Nevertheless, English and

French publications on the political and historical event are numerous, but it is still not possible to grasp in detail the whole picture without consulting the Arabic documents which contain various official statements and the most relevant facts. Other difficulties are manifest in the absence of any legal discussion by Syrian officials concerning their intervention. The Syrian legal official justification was only detectable through various political statements made by the President of Syria, Hafez Assad , and his foreign minister, Abed Al Halim Kaddam, and other officials in the ruling Ba'ath party in Syria. The unavailability of primary sources necessitated a reliance on secondary resources.

The main concern of this research is an analysis of the legality of the Syrian intervention during 1975 -1976. Moreover, this study will attempt to fill the lacuna concerning the legality of that intervention and provide a better understanding of the Syrian intervention in Lebanon. The present study is divided into seven main chapters. The first two chapters serve as an introduction to the analysis of the Syrian intervention, while the remaining chapters deal with the Syrian justification and legal problems thereof.

In the first Chapter a review is made of the changes that have taken place in the international system and also, what constitutes an intervention ? It also deals with the norm of non-intervention and the superpowers' attitude towards non intervention.

In the second Chapter a thorough review of the history of Lebanon, and causes of the conflict and identification of parties to the conflict, is undertaken. Moreover, the legal nature of the conflict is discussed in order to out line the rules that are applicable.

Chapter three deals with the Syrian justification as an invitation from the rebels. It gives an account of customary and contemporary rules of international law and

discusses the Syrian intervention in the light of them.

Chapter four discusses the Syrian intervention as humanitarian. It throws light on the meaning and development of the concept and its validity in contemporary international law, and the necessity for criteria with which states conduct could be evaluated.

Chapter five deals with two matters: invitation by the Lebanese government and the effect of invitation on the Lebanese right to self determination. As to the former, it considers two issues: the validity of the invitation in international law and also in Lebanese constitutional law. As to the latter, the origin of the principle of self-determination and its present status in contemporary international law is re-examined.

Chapter six is mainly concerned with the transformation of Syrian forces into a peace-keeping force under the auspices of the Arab-League. It re-examines the origin of the League, its Pact, and its power to establish a peace keeping force. Moreover, it discusses the legality of the two types of Arab peace keeping force: Arab Security Force and Arab Deterrent Force . The above discussion clarifies the circumstances in which the Syrian intervention is being legitimized and by implication provides a clear idea about Arab-League action in Lebanon.

Chapter seven provides a general conclusion. It affirms the illegality of the Syrian intervention and puts it on an equal footing with similar modes of intervention by the superpowers. Also it draws attention to the fragility of the norm of non-intervention vis a vis national interest.

Moreover, the ineffectiveness of the norm is greatly explicable by the development that the international system has undergone since the recognition of the principle and the

willingness of national leaders to break the law in order to reap the short- term benefits of national interest.

CHAPTER ONE

GENERAL REVIEW TO THE NORM OF NON INTERVENTION.

I- Inevitability of intervention: An Introduction.

As the world was recovering from the unforgettable and devastating effect and terror of the Second World War, another episode of violence and suffering was being ushered in. However, this type of violence is very different from international war (which is between states across recognised borders) as it is a war between members of certain political communities carried out within the territory and jurisdiction of a state. Although this violence was well known years ago, particularly in the 18th and 19th century, its present intensity and complexity are unprecedented. Between 1946 and 1959, the New York Times reported more than one thousand two hundred cases of violence ranging from civil war, guerrilla war, coups d'etat, mutinies, to localized rioting.(1) Bearing this in mind, one may easily conclude that social violence or civil war is a common characteristic of present times. In general, most writers agree that the existence of the nuclear deterrent has, by eliminating wars between states with nuclear weapons, led to an increase in the occurrence of civil wars and to an escalation within such conflicts. However, the danger of nuclear war, with its potential holocaust, has never been completely eliminated. Parties to civil war may at some juncture, in order to achieve what they consider essential for their survival, resort to nuclear weapons. This possibility was well expressed by the American President Nixon, and Senator Douglas: "We should not automatically preclude the use of nuclear weapons to end the war in Vietnam".(2) With that, it becomes clear that a war such as was fought in Vietnam has the potential to extend beyond the country of origin and to involve other countries whose interests are at stake. In such a context, two questions arise: why do civil wars escalate to such a point that foreign powers become involved, and why is the

occurrence of civil war, particularly in underdeveloped countries, so very frequent ?

As a matter of fact, the problem is not very simple, and a satisfactory answer cannot be given unless one considers the causes of the violence, the nature of the prevailing international system, and the inter-relationship between the internal and external causes which shape the present international system.

The occurrence of civil war, especially in Third World countries, and its ramification on the international system are very serious. Civil war is no longer an isolated event which can be denied international attention. On the contrary, it has international implications which make it the focus and the primary concern for those who are involved in the maintenance of international peace and order. The interrelationship between civil war and the international system is undeniable. It is , thus true that internal war no longer takes place only within the internal system but also within the international system.⁽³⁾ The international system has undergone major changes since the Second World War; many states have emerged, in the process of decolonization, with great expectations and marginal capabilities. The major problem of these states is simply the lack of cohesion amongst their citizens. This is largely due to a variety of factors such as religion, tradition or culture, language and ethnic considerations, to any of which the citizens express their loyalty rather than to their state. Some governments, in such a context, are generally dominated or monopolized by a particular tribe or religious community to the exclusion of others. Thus, the said government is inaccessible to a large section of the population, and at the same time it denies political rights to certain parties, classes or ethnic groups.⁽⁴⁾ Such minority governments inevitably lead to dissatisfaction within the country. Furthermore, the situation is often exacerbated by the increasingly unequal distribution of wealth which leads to a growing belief that only violence could effect an amelioration of the political situation. For example, a recent analysis of the national income in Brazil showed that the poorest people representing 20 percent of the population, received only 3.5 percent

of the national wealth; in Nigeria the poor received only 7 percent of the national income where the rich received 60.9 percent.⁽⁵⁾ . This wide gross injustice is not by any means restricted to the said countries, but it is very common in Third World countries with only a few exceptions. This injustice in social welfare, together with the exclusion of a large portion of the population from power sharing, creates a sense of alienation and frustration. This alienation, due to the absence of any constitutional machinery to soften its impact, paves the way for the emergence of a coercive or undemocratic government whose survival depends entirely on the control of military force and coercive rule. Where both the above factors co-exist, the potential for revolution increase dramatically. John Gerrassi's comments support this view :

"from contradiction emerges confrontation, and from confrontation eventually surges progress ... no power has ever been too strong, no class too thorough, no elite too shrewd, no army too invulnerable permanently to suppress the desire for redress by ordinary people"⁽⁶⁾

This, however, does not reflect the wider political backdrop of the ensuing revolution. Nowadays, internal struggle for power is hardly achievable without the interference of outside states and particularly Superpowers states. Of the many factors which are responsible for that, the first is, the division of the world into what could be called a bipolar system in which the two Superpowers have divergent ideologies and each strives for dominance. However, there are many powerful states in the international system, most of them adhering, in one way or another, to the superpowers' policies. The second factor is the interdependence of all states in the world which, through the advance in modern technology, increases daily. That interdependence, in the case of weak states which lack stability and cohesion, increases the incidence of intervention to an unprecedented level. The third factor is the stalemate in nuclear deterrence. The existence of nuclear weapons makes it impossible for states to secure their interest through conquest, as used to be the case, and they resort to

intervention.⁽⁷⁾ As conventional war is no longer a very profitable enterprise, given the presence of nuclear weapons, powerful states resort to the exploitation of the internal contradiction in many Third World states as a means of achieving their national interest. In view of that, any event that takes place in those countries could hardly escape the attention or influence of the superpowers or states that are linked to them indirectly.⁽⁸⁾ Thus, any revolution which wishes to overthrow an undemocratic and tyrannical regime cannot undertake such an option without at least securing some support from outside states or, as in most cases, Superpowers. Logically, it follows that any change that might take place inside one state may have a negative effect on other states. That effect may vary in intensity and scope as the orientation of the regime and its strategic importance play a major role in decision-makers' strategy. It looks like a zero sum game where any gain to one party would mean a loss to the other. Therefore, the ideology of the regime and its alignment with an external state would guarantee the necessary help that, at some point, might be needed to defend its existence against any actual threat whether through internal revolution or subversion. This is clearly illustrated in the Superpowers' pattern of intervention, as they in practice reserve the right to use force directly to prevent any change in a regime which falls in their sphere of influence or bloc. Outside that bloc, and what some describes as "the loose bipolar system"⁽⁹⁾, superpowers can compete and extend any support to their proxy in order to secure their dominance. As such, competitive intervention increases in any state which is experiencing a civil war. And since the out-come of civil war is uncertain, foreign powers will increase their intervention and commitment to influence the out-come of the civil war.

Therefore, the extent of involvement to which foreign powers commit themselves, in a troubled nation, is entirely dependent on the importance of national interest at stake. If that interest is vital, foreign powers intervene and rarely give the legal consideration serious attention. What now is the norm in international relations is the conviction that any revolution which aims at overthrowing a backward or imperialistic regime deserves the assistance of socialist countries headed by the Soviet Union and China and other

socialist states. In contrast, Western states headed by the United States and its allies reserve their right to help any incumbent regime which is threatened by revolution. This kind of unilateral assertion, has been embraced by other states such as African states with their declaration to topple the regime of South Africa and the Arab states' manifesto proclaiming its intention to overthrow the state of Israel in order to secure the right of Palestinians to self determination.⁽¹⁰⁾ In such cases, the rule of law seems to give way to policy considerations with the inherent axiom: the best course of action is that which protects my interests. And if that is conceded, then the challenge to international law is very serious. Not only that, but further development of that self interest will make the rule of law irrelevant and ineffective in reducing conflict between states and maintaining justice. For states, under the guise of maintaining justice and progress, argue that sovereignty is not absolute and community values at some critical point have higher priority and command more respect.⁽¹¹⁾ With that, any state could claim that its action is in accordance with community values such as self determination or the protection of human rights and thus intervene in an internal conflict in which its interest was at stake. Whether or not a state's action is consistent with the Charter of the United Nations is not very relevant since states could use the uncertainty of some of the Charter's provisions to defend their action. There are many pretexts that can be used ranging from human-right, self determination, treaty obligation, invitation, to counter-intervention. Therefore, the prevailing circumstances or environment have accelerated the wheel of intervention and with it the spiral of violence. Consequently, an intervention becomes the norm and with it the prolongation of the conflict. This prolongation ultimately creates an atmosphere of hostility between parties in conflict, brings new issues to the surface and draws in uninvolved nations with the possibility of polarization of foreign states around internal factions⁽¹²⁾ Civil war, arguably, creates an incentive for outside intervention. However, the potential danger of civil war escalating into an international war is a distinct possibility. With this in mind, civil war ought to be looked at not entirely from a domestic perspective, as used to be the case,

but from an international one. If it is so, then the legal argument has to be interpreted and analysed in the light of the prevailing system in which internal and external factors are inseparably linked. As far as the rules of civil war are concerned, the general rule is that an external intervention in civil war is illegal. It is so because it violates the rule of international law and in particular the most sacred and cherished rule of non-intervention. However, there is an ambiguity and uncertainty surrounding the precise meaning of the word intervention; in other words, what actually constitutes intervention?. Moreover, other questions arise regarding the validity of the norm of non-intervention, as many states violate it frequently. All these question will be dealt with as briefly as possible. In the present chapter an attempt will be made to define intervention and to review the norm of non-intervention in the light of states' practice which is limited, in this chapter, to the Superpowers. This review will show how the norm has been interpreted by the Superpowers ; and the effect of that practice on other states, which in this investigation addresses the Syrian intervention in the Lebanese civil war.

II- The Definition of Intervention

The increasing occurrence of intervention in inter-state relations has put, in one way or another, the term intervention under more extensive analysis and scrutiny than before. Intervention is no longer viewed as an ordinary event in international relations but rather an action which brings about unpredictable and serious consequences. However, the degree of seriousness varies as to whether the change of a political authority is by subversion or by direct intervention.

The word intervention has several connotations, intervention may either enhance or undermine the principle of self determination and may either increase stability or cause instability of the international system. No wonder, therefore, that many commentators

and officials use the word some times to stigmatize, at other times to justify, certain behaviour as legal or illegal.

As such, the word "intervention" is one of the most ambiguous term in international law and politics. It has moral, legal and political connotations. One writer has summarized this difficulty by saying:

" The subject of intervention is one of the most vague branches of international law. We are told that intervention is a right; that it is a crime; that it is a rule; that it is an exception; that it is never permissible at all".(13)

The ambiguity which has surrounded the term intervention stems from the fact that intervention is not confined to one particular type of behaviour which is agreed upon or defined by legal writers and statesmen. This, in turn, creates a consensus amongst international writers that there is a pressing need for a definition. That necessity has become more urgent in the prevailing international system which is composed of sovereign states with great disparities in power and population, as well as with sharp ideological differences. In such a system the difficulty which arises is that states, especially weak states, are subjected to clandestine interference carried out by indigenous people who are linked to, or receiving orders from, more powerful states. That pattern of intervention, although illegal, is impossible to detect in some cases and this makes the task of formulating a definition very difficult, but at the same time very imperative.

In view of this difficulty, many writers have tried to formulate a precise definition which takes into account all the features and variables of intervention. However, so far all these attempts have fallen short of success. In fact, there is no uniform agreement amongst writers and jurists as to the meaning and content of intervention in international relations and law.(14) This is largely due to the fact that the term has been

used in a variety of senses. Sometimes the term is employed as a legal instrument to denote the illegality or legality of certain acts (15) That confusion is not just limited to jurists but has extended to the practice of states as well. In this respect, Lawrence points out that:

"there are few questions in the whole range on international law more difficult than those connected with the legality of intervention, and few have been treated in a more unsatisfactory manner. An appeal to the practice of states is useless: for not only have different states acted on different principles, but the action of the same state at one time has been irreconcilable with its action on another".(16)

Therefore, the exact meaning of intervention has not yet been defined. However, it must be reiterated that the need to formulate a definition is very important, especially at the present time when interventionist activities are soaring to a point when intervention has become the norm and the concept of non-intervention is the exception. Although, therefore, it is difficult to formulate a specific and satisfactory definition, nevertheless an attempt must be made.

The following attempt to elaborate on a definition will be based on two areas; firstly, an identification of the form of intervention through the work of international writers; secondly, a demonstration that any act can be judged and identified by the end to which such an act is directed; Afterwards an attempt will be made to form a link between the forms of intervention and the end upon which the legitimacy of the act rests, in order to arrive at a definition for intervention.

A- The form of intervention.

Intervention indicates a variety of actions and activities carried out by one state

within the domain of another state. These actions or activities are not uniform but, on the contrary, are varied in form and degree. That is to say, sometimes states intervene in indirect ways by lending support to dissatisfied groups in a state. On other occasions states resort to direct intervention with the use of force. However, one should not hold the belief that every intervention is illegal, for there are interventions which are compatible with basic world order policies, such as political independence of sovereign states, human rights and the prevention of aggression. Thus, it becomes difficult, in view of this, to set a clear-cut line between various actions in international relations by branding one interventionist and the other not.

The classical international writers tackle the issue of intervention by relying only on the theory that interference is illegal whenever involves the use of force.⁽¹⁷⁾ To them, intervention is a "dictatorial interference carried out by a state in the affairs of another state for the purpose of maintaining or altering the conditions of the things".⁽¹⁸⁾ The classical definition of intervention covers two areas: the first is intervention in the internal domain of a state, the second in the external affairs of a state.⁽¹⁹⁾

There is no doubt that the criterion of force as a means of identifying intervention is very valuable but still has many drawbacks. This is partly because of the drastic changes in the international system in which intervention takes place render the customary definition inadequate.

In the international system, which is composed of small and large states, there are powerful states which by their sheer economic, diplomatic, and military power can affect the conduct of the smaller states without using the customary method of dictatorial interference. For instance, by having economic or military aid cut off, some small states may experience major difficulties which affect their stability and progress.

Thus, with means such as economic aid, subsidies, diplomatic measures,, states can coerce others without resort to the traditional method of dictatorial interference. Undeniably, for example, this method was employed in Portugal when Western financial aid to the Democratic party, who were opposing the Communist party, brought the former into power in 1974, without any use of force as defined in traditional definition.(20)

In the present international system, without doubt, that the prevailing pattern is of indirect interference which lacks the characteristics of dictatorial interference. This pattern evolved largely because of the inability of foreign powers, and Western powers in particular, to undertake intervention as used to be the case in the past; the cost of such intervention would be very high and would run against western public opinion. Therefore, the term "dictatorial interference", as defined by one writer, is both too inclusive and exclusive at the same time.(21) It is inclusive because small states regard any act by the powerful state as dictatorial due to the implicit threat which is manifested in disparities of power between them; and exclusive, because it fails to take into account the economic measures and others, short of the use of force into consideration.(22)

In the light of these difficulties, other writers have adopted a different approach by which any influence exerted by one state upon the other in order to force it into certain behaviour would be regarded as an intervention so long as there is a sense of compulsion.(23) . The merit of this criterion, namely "compulsion", is that it takes into account other variables which the customary definition had failed to include, such as economic, diplomatic, propaganda.etc measures. According to the criterion of compulsion, if a state's action is accompanied by compulsion, the action becomes interventionary, irrespective of the forms in which it is carried out. As is advocated by one writer:

" The essence of intervention is the attempt to compel, for if a state

interfering is not disposed to support the interference with some form of pressure, it is evident that it is not imposing its will; such pressure would consist in placing the state in a position where it must submit or face certain consequences if it refuses".(24)

This approach, although very important, falls short of an comprehensive definition, since it relies on the intent of the intervening state which is hardly recognizable in certain areas such as international business transaction .(25) Other attempts to define intervention have been made by identifying two variables of illegal intervention: convention-breaking and authority oriented intervention(26) Convention breaking and authority oriented intervention could be easily identified " whenever the form of the behaviour constitutes a sharp break with the then existing forms, and whenever it is directed at changing or preserving the structure of political authority in the target society".(27) Although this definition is of great significance, it is still short on precision. During the Spanish civil war, the governments of Italy and Germany provided Franco's regime with every assistance to gain power, whereas Britain and France, for domestic reasons, abstained from any action. To many writers, this behaviour, although not convention breaking or authority oriented, has nevertheless been depicted as interventionary as their abstention facilitated Franco supremacy.(28) Another example is the Marshal plan, as it was convention breaking and was designed to shore up the political authorities of certain countries.(29) However, it would be far from true to depict it as interventionary, since it depended entirely on the intent. Moreover, the International Monetary Fund is another example of the imprecision of the definition, as the IMF is neither convention breaking nor authority oriented, but it has a great effect on states policies through its practices.

All these attempts to define intervention while they are not comprehensive, they do nevertheless, clarify the variables by which illegal intervention take place. All these variables which could be called the forms of intervention(30) are quite important in determining what constitutes interventionary behaviour. However, such forms have no

meaning on their own without being linked to the purpose of intervention or what could be called here the end of intervention.

B- The End Of Intervention.

It is generally assumed that every act performed has by itself an end which originally prompted the act. This end is the ultimate aim of the intervening person or state. Thus, the end of an intervention does help establish the legality or illegality of the act. With this in mind, one could say, intervention is, more or less, a means for a designated end which may or may not be legitimate under international law. The end which states seek to assert through their intervention is not very ambiguous or uncommon. States always intervene either to shore up or to undermine the political authority in the target state. In their intervention many justifications are offered all of which center on national interest. Morgenthau affirms that pattern by saying:

" [from] the time of ancient Greece to this day, some states intervene on behalf of their own interest and against the latter's will Other states in view of their interest have opposed such interventions and have intervened on behalf of theirs".(31)

Thus, intervention has always been carried out, with what could be called an "external animus".(32), in order to protect or adjust the conditions of that state of affairs which is vital to the intervening state. This is fully demonstrated in American and Soviet interventions in different parts of the world under a variety of pretexts.(33)

It becomes clear that the end of intervention plays an important role in identifying the legitimacy of certain interventionary behaviour. An intervention cannot be judged only by reference to forms of intervention. Intervention is not confined to a particular kind of activity, it is , on the contrary, a spectrum of activities, ranging from forceful,

non forceful, covert to overt acts. It is only by weighing up the the forms against the end that one can decide the legality of an intervention. A working definition of intervention could therefore be this: illegal intervention is a convention-breaking and coercive act carried out intentionally in the domain of another state in order to alter or influence the authority structure of the target state.(34)

III- The Norm Of Non-Intervention.

Non-intervention is, nowadays, the predominant principle in international law. It underlines the prohibition which forbids states from intervening in other states' affairs. It is the by-product of the naturalist writers who identified its importance and insisted on its observation. It is Grotius who took the the first step along this path; he perceived international society as being composed of sovereign states and also identified an ambit for a state within which other states are forbidden to exercise any power.(35)

Although Grotius failed to go further and identify the norm, his successors, such as Wolff and Vattel, succeeded where he failed.

Wolff's main contribution is in his assertion of states' equality. Basing his arguments on the analogy of individuals, he asserts: " By nature all nations are equal the one to the other. For nations are considered as individual free persons living in a state of nature. Since by nature all men are equal, all nations too are by nature equal the one to the other"; and that equality, as with individuals " the moral equality of men has no relation to the size of their bodies the moral equality of nations has no relation to the number of men of which they are composed".(36) From that premise he proceeds to assert that no nation has the right to meddle in the affairs of another sovereign.(37) Later , Vattel identified the principle of non-intervention more accurately. He relied on the above analogy in order to reach the conclusion , by virtue of states' equality and independence, that :

" each has the right to govern itself as it thinks proper and that no

one of them has the least right to interfere in the government of another. Of all the rights possessed by a Nation, that of sovereignty is doubtless the most importante and the one which others should most carefully respect if they are desirous not to give cause for offence".(38)

However, many writers who are from the positivist school of thought reach the same conclusion, although, they follow a different type of analysis.(39) Writers such as G.F Von Martens, James Kent, and Henry Wheaton earnestly and equivocally argue that the norm of non-intervention is one of the important pillars upon which the stability of the international system is dependent.(40)

Since the principle of non-intervention has, with the passing of time, been hardened and crystallized into customary international law, it has become one of the most basic and important principles in international law. It can be argued that in the absence of a central authority, which is capable of performing its task impartially in international society, the principle of non-intervention is expected to fill the gap and creates conditions which, if faithfully observed, would lead to the maintainance of peace and would nourish the spirit of co-operation amongst various states. Thus, according to the principle of non-intervention, states shall be immune from outside interference and shall freely choose whatever political system they desire and conduct their internal and external relation as they deem proper. Others suggest that the principle plays a stabilizing role by enabling states to communicate to each other their understanding and interpretation on any controversial issue.(41)

Since the basic premise of the principle, therefore, is based on the sovereign equality of states and their independence, irrespective of their size or strength, it is doubtful whether or not such premise could be expected to operate in the present structure of the international system.

The repeated violation of the principle has already given rise to the belief that the principle is no longer fulfilling its original purpose, or at least, its effectiveness is very doubtful. Despite that consistent violation of the principle, however, its existence has never been threatened, and its violation urged many writers and state officials to reassert it. Winfield pointed out that :

"...This rule, the pillar upon which the whole fabric of international law rests, should require some reassertion when national policy was so frequently pursued to the prejudice of international right and if the cavalier fashion in which the rule was treated urged Vattel to insist more earnestly upon it, its frequent infraction afforded equal reason for its restatement by those who followed him.(42)

This is rightly reaffirmed by the International Court of Justice in its recent judgment in the Nicaragua case:

"...though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law".(43)

In view of that assertion, the violation of the principle neither eliminates it nor invalidates it by virtue of the fact that rules must be effective and fully observed. However, one point needs more clarification: that states, whenever they violate the principle, do not do so explicitly and challenge its existence; they usually introduce a variety of justifications which indicate that their action is not a violation but rather than an action which is consistent with the principles of international law. This kind of justification which states often give for their international conduct is very important. If a justification, for an act which is usually considered illegal , is then fully approved and, what is more, repeated by other states it would be a major challenge to the principle of non-intervention and its effectiveness. Of the many states in the international system, the United States of America and the Soviet Union are the most

powerful and dominant. It follows that their behaviour is crucial for the development of international law and the principle of non-intervention in particular. Thus, their claims or justifications for their interventions are very important, as they set the pattern of behaviour in international relations. In the coming section, therefore, a concise review of the Superpowers practices will be given in order to demonstrate the legal strength of their justification and the prevalent practice in the international system. Moreover, this will help in illuminating the consequences of that practice on other states behaviour.

Therefore, the Syrian intervention in Lebanon will be seen in the light of that practice. It is the belief of the present author that small states tend fully to respect the law when they feel, for once, that great powers are behaving legally.

IV- Non-intervention and Superpowers practices and claims.

A- The Soviet Union: practices and claims.

The Soviet Union's policy and its orientation has its primary source in the philosophy of communism. The very core of that philosophy is based on the notion that the concept of nation would be replaced by class. This conviction has not only been on the level of theory, but emerged, after the victory of the Revolution, to shape the foreign policy of the Soviet Union, and later the international system as a whole. The People's Commissar for Foreign Affairs, proclaimed triumphantly: " I will issue a few revolutionary proclamations to the people of the world and then shut the shop".⁽⁴⁴⁾ At that point the principle of non-intervention had no superiority over other norms, so long as there are classes. According to Marxist ideology:

"The Marxist theory of morality asserts that moral rules do not possess an absolute value either throughout several successive historical periods or within the same epoch as long as there subsist antagonistic classes. A moral rule is neither perpetual nor immovable; it has no universal meaning in a society split up into classes".(45)

However, this revolutionary spirit and its vigor has been forced to retreat in the face of reality. The Soviet Union, unable to change the world, has modestly accepted other states' existence, with their different ideologies. The principle of co-existence has been introduced to illustrate the readiness of the Soviet Union to recognize other states' ideologies and the duty of non-interference in their affair. Respect for the principle of non-intervention has been asserted by A.Piradov:

" Without its faithful and consistent observance there can be no peaceful co-existence of states with different social systems, no disarmament, no assurance of non-aggression, no practice of the principle of self-determination, no respect for, or consolidation of , territorial integrity and sovereignty of nations".(46)

Despite that insistence on the absolute respect for the principle of non intervention, the Soviet Union has intervened forcibly in many countries, such as Hungary and Czechoslovakia. In the case of the latter, the Soviet Union has tendered a claim which has, particularly, the effect of splitting the principle of non-intervention into two categories: intervention in Socialist states and in non-Socialist states.

The Soviet leaders thought that the events which took place in Czechoslovakia were threatening their interest; and thus, they moved into Czechoslovakia to overthrow its government. At first they relied, as a justification, on the invitation of the legitimate government. However, in the face of mounting denials of any invitation from the government, the Soviet Union introduced what later becomes known as the "*Brezhnev*

doctrine". According to that doctrine, the Soviet intervention was not to be considered as a violation of the norm of non-intervention for that norm cannot be interpreted in isolation from the existing split in the international system. For " from the Marxist point of view, the norms of law, including the norms of mutual relations of the socialist countries, cannot be interpreted narrowly, formally, and in isolation from the general context of class struggle in the modern world....such a decisive fact of our time as a struggle between opposing social systems (Capitalism and Socialism)" (47) Thus, and in view of that interpretation, the norm of non-intervention has a new meaning in which " the people of the Socialist countries and communist parties certainly do have and should have freedom to determine the way of advance of their respective countries. However, none of their leaders' decisions should damage either Socialism in their country or the fundamental interest of other socialist countries, and the whole working class movement which is working for socialism".(48) Thus, by virtue of that interpretation, the Soviet Union has practically negated the norm of non-intervention. It does so on the basis that such an intervention is mere brotherly assistance from the Soviet Union to counter an imperialist intervention which is aimed at bringing the Czechoslovakian people into the circle of imperialism.(49)

Accordingly, the principle of non-intervention has, as far as the Soviet Union is concerned, two meanings: progressive and reactionary.(50) It is progressive whenever it is being employed to counter an imperialist plot, and it is reactionary whenever it becomes an obstacle in the implementation of that purpose. In the Document of the Twenty-Second Congress of the Communist party of the Soviet Union such an understanding is explicitly made:

" In fair weather and foul the people of the socialist countries act according to the principle - all for one and one for all. Whoever raises his hand against the socialist gains of the people of our community will be hurled back by a thousand million builders of socialism and communism".(51)

Therefore, it becomes clear that the principle of non-intervention is not an absolute norm, and its limitation ought to be understood in the inter-relationship between socialist countries.

As to non-intervention in relation with non-socialist states, that is to say outside the bloc of Soviet Union, the principle has a different interpretation. The crux of that interpretation hangs on the status of national liberation movements. Although the Soviet Union recognizes unequivocally the imperative of non-intervention⁽⁵²⁾, it nevertheless permits one exception, namely to assist any national liberation movements. Any national liberation movement which wages a just struggle to gain sovereignty and freedom, escapes the prohibition of the norm of non-intervention; in its struggle it can count on the help of Socialist countries and particularly the Soviet Union.⁽⁵³⁾ The struggle of a national liberation movement and its war are revolutionary and so fall in the category of "progressive justified war".⁽⁵⁴⁾ Khrushchev confirmed that socialist countries have faithfully fought against world wars and local wars which might have developed into world war, but the struggle of national liberation movements do not fit into this category "because the insurgent people are fighting for the right of self-determination, for their social and independent national development".⁽⁵⁵⁾ Consequently the help that should be accorded to national liberation movements is not a favour; rather it is a duty incumbent upon Socialist countries as those countries

"look upon the forces of a national liberation movement not merely as temporary fellow-travellers, but rather as allies in the struggle to spark the world revolution whose goal is to end all forms of oppression, exploitation and inequality. Life has drawn together the interests of national liberation movements with world socialism, the true friend and warrior for the peoples which have liberated themselves from the yoke of colonial subjugation".⁽⁵⁶⁾

However, the determination of the people who deserve the assistance of the Soviet

Union in their struggle is still arbitrary. In other words, self-determination is only applicable in a situation outside the dominion of the Soviet Union and especially in a place where there is no threat to its interest. The Soviet Union intervention in Hungary and Czechoslovakia are still outstanding examples. Moreover, the recent intervention in Afghanistan is another clear example of the violation of the norm of non-intervention. Although the people of that country wanted to have a different system from that identified with the Soviet Union, the latter insisted that it is defending the interest of the people of Afghanistan. It furnished more legal justifications: from the consent of Afghanistan, self-determination of Afghanistan, to the treaty of Friendship and Co-operation signed in December 1978.

In that respect the head of the Soviet Army and Navy's chief political administration affirmed that the Soviet Union's intervention in Afghanistan and Angola is progressive since, " Leninist understanding of the defence of revolutionary gains reflect the profound international character of insuring the transition of people to socialist and communist conditions where international and internal reaction is trying to prevent this historic process by force".⁽⁵⁷⁾ Moreover, the argument has been extended further to a point at which the danger to the revolution in Afghanistan is not only a threat to the Afghan people but to Russians as well.⁽⁵⁸⁾ Therefore, by intervening in such a manner, the norm of non-intervention is not being broken, nor does such an intervention go against the prohibition stipulated in the Charter of the United Nations.

Summing up , the Soviet Union's approach to the norm of non-intervention has developed to the point where the norm has already been stripped of its legal character and subordinated to the rhetoric of ideology and expediency. The Soviet Union has consistently used the principle as a vehicle for expansion, and at the same time, protection. On the one hand, when the Soviet Union in its infancy was weak and subjected to foreign interference, an appeal was made to the principle of non

intervention to halt such interference (59); on the other hand, when the Soviet Union became one of the Superpowers, an appeal was made to the ideology to negate or at least undermine the very principle they once held so strongly.

As a whole, and as far as the Soviet Union is concerned, the principle has already two functions: firstly, it does not apply in the domain of Socialist countries, and secondly, outside Socialist states, the principle does not apply to the struggle of people who wage a just war under the banner of national liberation movement. With such an attitude, the principle is no longer functioning according to its proper and original purposes; rather it is providing an outlet by which the Soviet Union can prevent any defection from its camp and at the same time can interfere in other nations' affairs under the flexible concept of national liberation movement. This auto-interpretation, if it is recognised, signals the demise of the norm and its dilution by the rhetoric of ideology and national interest. In a decentralized system, such practice is very dangerous as, under the principle of reciprocity, other nations which are less powerful might employ that justification to intervene in their weak neighbor affairs, possibly leading in time to the erosion of the imperative of the principle of non-intervention, and to more instability in the international system which is already under such strain.

B- The United States Practice and Claims.

As an emerging powerful nation, having a long tradition of democracy, obedience to the law, and paying full respect to the norm of non-intervention, the United States, in reality, is at odds with these broad principles. From the Monroe Doctrine, which was originally invoked to prevent European intervention in Latin American states, the United States, with its increase in prestige and power, has moved to the European style of intervention. The United States viewed the Monroe Doctrine in a way that the

doctrine is not applicable to its intervention. This attitude is fully explained by Thomas and Thomas:

" The Monroe Doctrine, like all human institutions, did not stand still. On the contrary, it was subjected to evolution and change, and with this change Latin America became ill-satisfied, for it signified that the United States did not feel itself bound to a policy of non-intervention in the affairs of its southern neighbour".(60)

As the world witnesses the emergence of the Soviet Union with its ideological purpose, the United States stood as a front line to curb Soviet influence. The division of the international system into two ideological blocs was fully recognized by the leaders of the United States. President Truman perceived the split in the international system into two divisions : democratic and communist. A democratic system is " based on the will of majority and is distinguished by free election, guarantee of individual liberty, freedom of speech and religion, and freedom from political oppression".(61)

The other system, however, "is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed election and the suppression of personal freedom".(62) .That division required the President of the United States to "support free people who are resisting attempted subjugation by armed minorities or by outside pressure".(63) That support was presented as a counter-revolution in order to upset the outside intervention which is, in the United States' view, communist.

This justification of the United States follows the same line of arguments which is presented by the Soviet Union. The United States' stand towards the norm of non-intervention is divided as well into two categories: first, in Latin American states which fall within the United States' sphere of influence ; second, outside the domain of Latin America.

As to the former, the United States expressed its total commitment to defeat any

attempt to upset the political status quo in the region, even though, it entailed the violation of non-intervention . That norm is enshrined in the Charter of the Organization of American States by virtue of Article 15 which reads:

" No state or group of states has the right to intervene directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state. The foregoing principle prohibit not only armed force but also any other forms of interference or attempted threat against the personality of the state or against its political, economic and cultural element".(64)

The United States throughout its history in Latin America has demonstrated its willingness to disregard the norm of non-intervention. Such disregard is implemented under different interpretations and pretexts. The United States intervention, for example, in the Dominican Republic is a clear illustration. In the beginning the U.S.A justified its action under the concept of humanitarian intervention⁽⁶⁵⁾ but, later, shifted its justification to one of defeating or countering the communist aggression. In the President's words:

" We are not the aggressor in the Dominican Republic. Forces came in there and overthrew the government and became aligned with evil persons who had been trained in overthrowing governments and in seizing governments and in establishing communist control, and we have resisted control and we have sought to protect our citizens against what would have taken place".(66)

It is worth mentioning that this statement was preceded by President Johnson's statement on the 2nd of May 1965 to the effect that the American troops' mission was not only for the evacuation of American citizens, but also to prevent the emergence of "another communist state in this hemisphere".(67) However, following outside criticism that their action was against the principle of non-intervention, which allows states to settle their own affairs as they see proper, the President then claimed this as

justification:

" what began as a popular democratic revolution committed to democracy and social justice was taken over... and placed into the hands of a band of communist conspirators... revolution in any country is a matter for that country to deal with. It becomes a matter calling for hemispheric action only when the object is the establishment of a communist dictatorship".(68)

This repeated shifting in their justifications for intervention lead one to conclude that the United States' attitude is not different from its counterpart, the Soviet Union. It is not really important, to the United States, whether or not there is a communist movement directed from abroad; rather they are concerned about their hegemony in Latin America. Therefore, if the leader of any country decides to distance itself from the orbit of the U.S.A, he would risk being charged arbitrarily with communist association and with that the imperative of the norm of non-intervention would be waived. Indeed, in the Dominican Republic ex-president Bosch proclaimed bitterly that: " a democratic revolution was smashed by the leading democracy of the world".(69)

Criticism was made by many Latin American states which consider American military action as a blatant violation of the principle of non-intervention.(70) Under sheer pressure of criticism, the American government asserted that its intervention facilitated the introduction of OAS troops in order to bring peace and stability and at same time prevent a communist takeover.(71) With that interpretation, it becomes clear that the norm on non-intervention is given no place in American policy especially whenever this norm challenges the United States interests. The American intervention in Guatemala in 1955, and Cuba in 1961 stands as a clear example.(72) However, before intervening in Guatemala the United States of America succeeded in having passed a resolution at the Caracas Conference where American states affirmed collectively:

" The domination or control of the political institution of any American states by the international communist movement, extending to this hemisphere the political system of extra continental power, would constitute a threat to the sovereignty and political independence of the American states, endangering the peace of America and would call for a meeting of consultation to consider the adoption of appropriate action in accordance with existing treaties".(73)

Following that declaration, the United States intervened in Guatemala and overthrew its legitimate government on the grounds of communist takeover. The assertion of United States of its right to intervene in Latin American states has prompted a spokesman for the Labour party in the U.K to say:

"...I am afraid that Guatemala has left a rather unpleasant taste in one's mouth because, to illustrate the theme I was putting, it seems in some instances that the acceptance of the principles of the United Nations is subordinated to a hatred of communism".(74)

The precedent of Cuba also shows the extent to which the United States will go to prevent the establishment of a hostile regime within its orbit. The United States argued that the intervention in Cuba was undertaken to prevent Castro from delivering the revolution to an alien power, to promote the principle of self-determination of the Cuban people and to prevent Castro from meddling in the affairs of American Republics.(75) Therefore, American policy in Latin American States has demonstrated that the principle of non-intervention has less status than retaining their own interpretation of democracy; and whenever the two diverge, non-intervention must be sacrificed.

As to American practice outside the domain of Latin American states the matter is not much different. To illustrate that attitude a reference can be made to Vietnam war. The Vietnam War demonstrates the ideological battle between the superpowers in which

the norm of non-intervention has no place. As the Soviet Union resurrected the concept of the "just war", the United States invoked the principle of invitation in order to negate the norm of non-intervention.⁽⁷⁶⁾ In Vietnam, the United States justified its intervention as a response to the invitation of the legitimate government of South Vietnam ⁽⁷⁷⁾, and in conformity with the right of self defence.⁽⁷⁸⁾

Although the war in Vietnam was internal, the United States' characterization of it as an international war⁽⁷⁹⁾, is only explicable by the strategic importance of Vietnam. Baldwin, a well known American military observer, has pointed out to this fact: " whoever dominates it (South Vietnam) will eventually control most of the Indonesian Archipelago".⁽⁸⁰⁾ This largely explains the very reason for intervention, despite Kennedy's previous insistence that the war ought to be fought by the Vietnamese people.⁽⁸¹⁾ President Johnson affirmed that the policy of many American presidents, such as Eisenhower, Kennedy..etc, had demonstrated over the eleven years their commitment to " help defend this small and valiant nation... over many years we have made a national pledge to help South Vietnam defend its independence".⁽⁸²⁾ Thus, to do otherwise, "would be unforgivably wrong".⁽⁸³⁾

The war in Vietnam clearly reflected the fragility of the norm of non-intervention in halting such interference. The violation of the norm was carried out under a variety of pretexts ranging from invitation, self-defence, humanitarian intervention to the promotion of freedom and democracy.⁽⁸⁴⁾ The United States pledge of promoting democracy was immutable and could not be repudiated ⁽⁸⁵⁾

Summing up, the United States has, through its attitude and practice, demonstrated the fragility of the norm of non-intervention. The norm is repeatedly broken within the United States sphere of influence. In Latin American states, the United States reserved for itself the right to intervene whenever it deemed it necessary. Outside the Latin

American states, it states that the norm of non-intervention must be respected, but an intervention can be undertaken under many circumstances. Even when the United States failed to show good reasons for intervention, President Kennedy did not conceal his dissatisfaction with the norm:

".. let the record show that our restraint is not inexhaustible. Should it ever appear that the Inter-American doctrine of non-interference merely conceals or excuses a policy of non-action if the nations of this hemisphere should fail to meet their commitments against outside communist penetration then I want it clearly understood that this government will not hesitate in meeting its primary obligation, which is the security of our nation".(86)

V- Concluding Remark.

The preceding review has illustrated the existence of an international environment in which interventionist activities are on the increase. Most of that interventionist behaviour may be expected to be carried out in Third World countries. This is mainly due to the inherent weakness in the structure of many of these governments, where feudal and dictatorial rule are the prevailing pattern . It is to the detriment of these countries, that the norm of non-intervention fails to command respect. This concise review demonstrates that both Superpowers are willing to acknowledge the importance of the norm in international relations. However, through their practice and attitude they create a variety of exceptions which, if ever accepted, would leave the norm of non-intervention utterly meaningless.

In the present decade many nations in different parts of the world intervene in their neighbours' affairs to change their government using, more or less, the same justification put forward by superpowers.

To what extent that attitude is reflected and extended to other states, particularly Syria, in its intervention in Lebanon is the main purpose of the present thesis.

FOOTNOTES.

- (1)- Harry Eckstein, The Internal War, Problems and Approaches, (1964) p 3.
- (2)- Tom Farer, "Intervention in civil war: A modest proposal" Columbia Law Review, Volume 67, (1967), p 268.
- (3)- George Modelski, " The international regulation of internal war", in James Roenau, International Aspect of civil war, (1964), p 18..
- (4)- Robert K. Woetzel, " Political Right In Developing Countries", Proc. Am. Soc. I.L. 1966-68, p 134.
- (5)- William Kornhauer, " Rebellion and Political development "in Eckstein, Internal War, op cit note (1).
- (6)- John Gerrassi; Toward Revolution, Volume 1, (1971), p 1; Sigmund Neumann, " the international Civil War" , World Politics, Vol I (1948-49) p 345
- (7)- Richard Falk; The International Law of civil war, (1971).
- (8)- J. Rosenau, " Internal war as an International event " pp 45-91 op cit note (3).
- (9)- J. Rosenau, op cit note (3), pp 57-60.
- (10)- In a conference in Addis Abbaba held to draft the charter of OAU, Ben Bella from Algeria declared: "...the Charter will remain a dead letter if our brothers in Angola, Mozambique, Portuguese, Guinea and South Africa do not immediately receive the unconditional support they have the right to expect from us " see Kessings Contemporary Archives, 1964. pp 19465.
- (11)- For general discussion see Myres S. McDougal and Florentino P. Feliciano; Law and Minimum Public Order: The Legal Regulation of International Coercion, (1961).
- (12)- For a stimulating analysis of the process of polarization, see S. Coleman; Community Conflict, (1957), pp 9-14.

- (13)- Two monographs on Intervention: H.G. Hodge, Doctrine of Intervention; Ellery C. Stowell, Intervention in International Law, cited in Winfield, "The History of Intervention", B.Y.B.I.L (1922-23), p 130
- (14)- Thomas Ann Van Wyen and A.J.Thomas Jnr.; Non-Intervention: The Law and its Import in the Americas, (1956), p 67.
- (15)- Richard Little; Intervention : External Involvement in Civil War, (1975) pp 1-15.
- (16)- T.J. Lawrence, The Principles of International Law, (7th ed.), Revised by Percy H.Winfield, (1923), p 121.
- (17)- Ibid, pp 124; Hans Kelsen, Principle of International Law, (1952), p 64; Amos. S. Hershey, Essentials of International Public Law and Public Organization, (1939), p 236.
- (18)- L. Oppenheim; International Law, ed. H. Lauterpacht, 8th ed. Volume 1, (1955), p 305.
- (19)- W.E.Hall, International Law, ed.Pearce Higgins, 8th ed, (1924), pp 337-38. and see op cit note (17).
- (20)- Philip Windsor, " Superpowers Intervention " In World Politics, ed. Hedley Bull, (1984), p 50.
- (21)- R.J . Vincent, Non-intervention and International Order, (1974), p 8.
- (22)- Ib.
- (23)- Thomas and Thomas, op cit note (14).
- (24)- Ib pp 71-73.
- (25)- J. N. Rosenau, " Intervention as a scientific concept ", Journal of Conflict Resolution, Volume 13, (1969), p154.
- (26)- Lawrence, op cit note (18), p 124.

- (27)- Rosenau, op cit note (25), pp 161-163.
- (28)- Talleyrand said that " Intervention or Non-intervention are the same thing"; Wolfgang Friedmann, " Intervention And The Developing Countries", Ya. J. In't. and Comp L Vol X, 1970, p 207.
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- (30)- General Assembly Resolution 1514 (XV) 14 December 1960. General Assembly Resolution 2131 (XX) 21 December 1965. General Assembly Resolution 2625 (XXV) 24 October 1970. Article 15 of the Charter of the Organization of American States
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CHAPTER TWO

THE LEBANESE CIVIL WAR AND ITS LEGAL CLASSIFICATION.

Introduction.

Lebanon's existence as a state has passed through different stages and with every stage there was disagreement and outside interference. This process left its negative impact on Lebanon and contributed to more distrust, and greivences, amongst the Lebanese.

The present civil war is a clear illustration of this fact. The present case has its own features. The existence of Palestinians on Lebanese soil has given rise to uncertainty regarding the real nature of the conflict. Since both parties to the conflict affirmed their different view about its real nature, the determination of the nature of the conflict becomes necessary. This became more urgent as the Lebanese conflict experienced direct Syrian intervention, which in turn highlighted the relevant question as to whether or not the Lebanese conflict was internal or not.

In this Chapter, an attempt will be made to outline the history of Lebanon and the causes of the conflict and to identife of the participants. Moreover, it will discuss the Palestinian factor in the Lebanese conflict and its effect on the classification of the conflict.

II- History of Lebanon

A- From Inception until the French Mandate

Throughout history, Lebanon experienced occupation and conquest which started with the Egyptians, Assyrians, Romans and Arabs who all had a great effect on the life of the Lebanese. The variety of occupiers can be explained by economic reasons, as Lebanon's location on the eastern shores of the Mediterranean qualified her as a liaison between the West and East.

There are many stories about the origin of the Lebanese people, but the most reliable one is that Lebanon's existence in its present form owed much to the flood of refugees who fled their homeland through the fear of persecution.⁽¹⁾ Because of Lebanon's formidable terrain and rugged nature, the refugees found it to be a secure haven for continuing their life. Those refugees can be broadly categorized into two religious groups: Muslim and Christians. Each group had its own reason for taking refuge in the Mount of Lebanon, from the Shi'ites who escaped Sunni fury, to the Armenians who fled from Turkish atrocities. However, when Lebanon came under Ottoman rule (1516-1918), the Mount of Lebanon was dominated by Christians (Maronite) and Druze. With the introduction of Ottoman rule, Lebanon as a political entity started evolving and taking shape. It was the battle of "Marj Dabiq" in 1516 which marked the eclipse of the rule of Mamluk and the rise of Ottoman rule. Following the Ottoman victory, Lebanon's rule was bestowed upon the Druze dynasty, namely the Ma'ns dynasty. The Ma'ans dynasty ruled Lebanon from 1516 to 1697 during which they managed to extend their influence over all part of Lebanon.⁽²⁾

Following the death of a Ma'ans prince who did not have any heirs, the rule of Lebanon transferred to another dynasty, Chabi. The origin of Chabi is Sunni Muslim and its rule over Lebanon was finally bestowed by virtue of the "AL-Samkanya" meeting.⁽³⁾ Following that meeting, Amir Bashir I became the governor of Mount Lebanon. After his death (1707) his successor, Prince Malhim, ruled the country until 1732. He was succeeded by Prince Haider who felt no desire to rule and instead preferred to pursue religious teaching. His two sons Yusuf and Kasam converted to Christianity and, hence, when the principedom was transferred to Yusuf, it signalled the rising power of the Christians for the first time in the history of Lebanon⁽⁴⁾. However, the principedom was again transferred to Bashir II after the execution of Yusuf by the Governor of Acre in 1788. The arrival of Bashir II sparked off hostility between the two sects, Druze and Christian. Taking advantage of the Egyptian military campaign which was designed to deal with the Greek revolt, Amir Bashir II attacked the Druze dynasty (Janmbalat family) destroyed their palace and confiscated their property.⁽⁵⁾

Following the deterioration of the relationship between the Egyptian ruler M.Ali and the Ottoman Port, Amir Bashir II allied himself with the Egyptian ruler. The Druze, on the other hand, supported the Ottoman authorities so that they could gain favour and at the same time avenge their old humiliation. For many reasons, the British supported the Port and the Druze, whereas the French gave their assistance to the Egyptian ruler and the Christians in Lebanon.⁽⁶⁾ The Ottoman authorities managed to regain power in Syria and Lebanon through the assistance of the British and Austrians. The victory of the Ottomans, coupled with European meddling, gave rise to civil war in 1841 between the two main sects in Lebanon: Christian and Druze. That civil war came to an end after European mediation and gave way to a new agreement in 1843; the system of Kaymakam was introduced by which the principedom was divided into two administrative districts, with the Beirut-Damascus dividing line.⁽⁷⁾ The Northern

District was to be ruled by a Christian governor and the Southern District by a Druze governor, but both governors were to be appointed by the Ottoman Empire.⁽⁸⁾

The creation of the Kaymakam system was geographically misleading as the population of the Christians in the Southern District was greater than the Druze, which created sensitivity and distrust. Furthermore, the system reinforced the political division by increasing the economic and social divisions.⁽⁹⁾ This system, as described by one observer, "was the formal organization of civil war in the country".⁽¹⁰⁾ Not long after, civil war erupted again in 1860 between the Druze and Christians.

Again, Ottoman and European powers devised a new system for Lebanon, the Reglement Organique (Mutassariffya). This system was the outcome of a hard compromise between internal and external parties which had great interest in Lebanon.⁽¹¹⁾ According to that plan, the two district or Kaymakams were reunited into a single governorate, to be ruled by a Christian non-Lebanese governor whose appointment was made by Ottoman authorities with the approval of the European powers. Alongside the governor, a Council composed of twelve members representing various sects was established to aid and advise him on various issues.⁽¹²⁾ Under such a system, Lebanon's autonomous status was guaranteed by the European power. The system worked well and contributed to the maintenance of peace, but it had disadvantages as it constitutionalized communal representation. That system was intact until the First World War in 1914.

Therefore, the development of events between 1516 and 1914 had established three features of Lebanon: the Christianity of the Governor, Confessional representation, and Christian orientation towards the west, particularly France.

B- From the French Mandate to Independence.

When the First World War started, the whole area which was known as Great Syria (Palestine, Jordan, and Lebanon) was under Turkish occupation. Following the Ottoman defeat in 1918, these countries came under the British and French Mandate. During the war, the British and their Allies promised Arab independence and unity in return for their support. On 30 September 1918 Prince Faisal (the Leader of the Arab revolution), after the withdrawal of the Ottoman forces, marched to Damascus and took control of the city and extended his authority to Transjordan.⁽¹³⁾ However, such a development was not warmly received by the French authorities which objected to such measures as they contradicted the secret agreement drawn up during the war between British and French representatives (commonly known as the Sykes-Picot Agreement). According to that agreement, Syria and Lebanon became French spheres of influence, and Iraq and Palestine became British spheres of influence.⁽¹⁴⁾ Much to the disappointment of the Arabs, the peace conference at San Remo endorsed the division which was agreed on according to the Sykes-Picot Agreement.⁽¹⁵⁾

Attacks against French troops mounted by irregular Arab fighters led the French to demand the quick recognition of their Mandate and the punishment of irregular fighters who attacked French troops. Although Prince Faisal accepted the French demands, General Gouraud marched into the city and occupied it on 7th of October 1918. The French occupation had a great effect on Lebanon as Muslims viewed the French as occupiers whereas, Christians regarded them as saviours.

On the 1st of 1920 September the French authorities, to the bitterness of the Muslims, declared the creation of Great Lebanon, cutting off parts of Syria, such as Tyre, Sidon, Beirut, and Akar, and added them to Lebanon. That artificial creation had a great effect on the harmony of Lebanon, since the population of the newly annexed

areas were predominantly Muslims. According to one eminent historian:

"the annexed territory almost doubled the area of the country and increased its population by about one half over 20,000 predominantly Moslems...what the country gained in area it lost in cohesion...it lost its internal equilibrium".(16)

In 1920, the French government introduced a new constitution which, in one way or another, was a mere mirror of the Mutussarriffya system which had been introduced during the Turkish occupation. As both communities, Christians and Muslims felt the disadvantage of the Mandate and, because of the surge of nationalism, demonstrators took to the street demanding independence.

A new treaty was signed between France and Lebanon in which France was given some privileges in return for independence. That treaty was met with Muslim demonstrations and protest, but during the Second World War the French authorities suspended the Lebanese constitution, and Lebanon was again under French direct rule.(17) During the Second World War, Lebanon and Syria received the promise of independence from France and Britain.(18) On the 26th of November 1941, Lebanon was declared an independent state. In the process of independence, a temporary government was appointed to supervise the election headed by "Ayoub Thabt" who determined the number of parliamentary seats: 32 for Christian and 22 for Muslims. Following a serious protest by Muslims, a modification on 22nd of July 1942 was added by which Muslims were given 25 seats and the Christians 30, i.e in a ratio of 5 to 6.

In 1943, the first President of Lebanon, Bashara Al kahoury was elected to rule Lebanon. He chose Riyad al Solh as Prime Minister and they both worked on a plan for the future ruling of Lebanon. That plan is commonly known as the "National Pact" by which the distribution of power among the various sects was determined. The content

of the National Pact was a compromise between the major sects at that time, Christian and Muslim. However, in the face of Christian insistence on the link with the West and Muslim insistence with the link with the Arab world, the National Pact affirmed Lebanon's Arabic face and its special ties with the West.⁽¹⁹⁾ The Christians pledged that they would not seek help from the west, whereas the Muslims pledged not to demand unity with Syria. Moreover, the Pact confirmed the confessional system which was established during the Turkish occupation, with minor modifications. According to the Pact, the President would be Christian whereas the Prime Minister will be Sunni Muslim and the Speaker of Parliament would be Sh'ite Muslim. Therefore, the Pact asserted three principles upon which the newly emerged Lebanon is governed:

- 1- The Confessional system.
- 2- Co-operation with Arabic countries should be carried out within the framework of Lebanese sovereignty and on the basis of equality.
- 3- The neutrality of Lebanon, Lebanon having no alliance with the East or West..

With the conclusion of the Pact, Lebanon became a fully independent republic with its own features which brought the country into another civil war in 1958. That civil war was mainly due to the sharp cleavage between the Muslim Arab orientation and Christian western orientation. President Chammoun allied himself with the Eisenhower doctrine and refused to condemn the Anglo-French invasion of the Suez canal.⁽²⁰⁾

Fighting erupted between the opposition and security forces loyal to the President following charges that the President had rigged the election of that year. The government accused the United Arab Republic of subversion and appealed to the U.S.A for help. Following the United States intervention, the United Nations sent an observer group to investigate the Lebanese government's claims.⁽²¹⁾ The United Nations mission's finding did not fully satisfy the Lebanese government, as it failed to

support the government's claims.(22)

The crisis was eased after President Chammoun declared that he did not intend to offer himself for re-election. The Lebanese Parliament elected a new President, President Chihab. Successive Presidents came into power until 1970 when President Franjieh was elected . With the Franjieh election, and during his time in office, discontent and external factors led to the eruption of civil war in 1975.

III- The causes of the Lebanese conflict.

The crisis which entangled Lebanon cannot be attributed to only internal reasons, but external factors also played a great role in furthering the differences among the Lebanese people. Both internal and external factors knitted together and consequently paved the way for the eruption of civil war. In order to understand the causes of the civil war, a brief review of the internal and external factors is necessary.

Many will agree that the internal structure of the Lebanese system has played a great role in the present crisis. Since independence, the system has failed to respond to the changes which the country have undergone. That failure left the system obsolete and not responsive to the demands of a new Lebanese generation. The confessional system is basically a by-product of the French legacy which left power in the hand of one sect to the exclusion of others. It is this system which has provoked other communities to demand a more equitable share of power. However, the Maronites who are favoured more any than other sect under the confessional system, declined to surrender their privileges. With the emergence of a new balance in Lebanon whereby the Christian Maronites are no longer a majority, the confessional system has become increasingly a source of instability.(23) Moreover, the prevalence of confessionalism increased the

sense of exclusiveness of each sect by adhering to the sects' values at the expense of the nation. In this regard, Khoury remarks:

" Lebanon possesses a political community, but not much sense of community: it is a collection of ethno-religious sub communes(confession) bound together by common necessity, if that, and bridging the gap between the sub communes remains a crucial problem.(24)

Others factors played a role, but still within the strictures of the confessional system. The process of modernization and the rising expectations of the Lebanese population, in the absence of government response, have widened the gap between the "haves" and "have nots". A survey undertaken in 1970 showed that 4 percent of the population of Lebanon received about 35 percent of all income, whilst the lower 50 percent of the population received approximately 20 percent of all income. The income of the other 46 percent of the population was about 30 percent of overall income.(25) The inequality of distribution of national income worsened as a result of Lebanon's failure to hold to its strategic importance as an oasis for Arab and foreign financial capital.(26) The rise of Kuwait and Iraq in the seventies overshadowed Lebanon's financial role. What was worse was the government's failure to provide an alternative system of social welfare which could reasonably have reduced the sense of alienation and bitterness among the sects of Lebanon.(27) As the Lebanese divided on sectarian lines, consequently other sects, namely Muslims, naturally viewed the distribution of welfare with great scepticism. Added to this problem was the mass immigration of Lebanese from the South of Lebanon to the vicinity of Beirut searching for a better life and escaping Israeli attack in retaliation to commando attack from Lebanon against Israel.(28) That mass immigration is not limited to those who fled from Israeli raids, but also extends to economic migrants who were lured into the capital searching for better lives .(29)

The migration has provided the breeding ground for dissent, and has enabled the radical organizations or parties to attract dissident support. All these factors exacerbated the process of demand towards the elimination of the Confessional system which was regarded as the source of grievances to all sects save the Maronites. On the contrary, the Maronites refused to consider re-adjustment of the system and insisted that the danger was not in the system but in the presence of the Palestinians in Lebanon. The issue of the Palestinians, wittingly or unwittingly, was entangled in the Lebanese quagmire and hence the nature of the conflict became blurred. In fact, because of the absence of political institutions which could mitigate the crisis and provide a vehicle for dialogue and compromise, the Lebanese system, with its confessional features, was a source of complaint and bitterness, as Muslims demanded a more equitable share in the decision making power.

Moreover many Arab countries, through their support for the Palestinians, managed to have access to Lebanese Politics. For example, Syria, through the Palestinian Organization Al- Saiqa, played a great role; by equal token Iraq, through its support for the Al Bath party, and Egypt, through its support for traditional leaders, influenced the political process in Lebanon. Under the banner of giving protection to the Palestinians in Lebanon, radical Arab regimes extended every possible support to the Palestinians and Leftist parties in Lebanon which were striving to reconstruct Lebanon on a radical basis.⁽³⁰⁾ Contrary to the radical Arab regimes, the conservative regimes, such as Saudi Arabia and Jordan, extended support and sympathy to conservatives in Lebanon.⁽³¹⁾

In addition, the Israeli played their role as well. To the Israeli, the destruction of Lebanon as a model for future co-existence between the Jews and Palestinians is one of the important targets. By pitting the Palestinians and Christians against each other, the model of co-existence would collapse and, at the same time the Palestinians would

suffer and lose power in Lebanon.⁽³²⁾

External parties gained access to Lebanon through the Lebanese who for many reasons believed that soliciting support from outside would help to keep their sectional supremacy or help to achieve victory. In general the internal grievances of the Lebanese and the immovability of the system, supplemented by the negligence of the government, or its indifference, and its failure to respond to the rising expectation of the Lebanese, have played a great role in opening the door to external interference. It is undoubtedly the internal factors that helped the demise of stability in Lebanon, but external factors, on an equal footing, played a role in furthering and accelerating the process of the state's collapse which directly resulted in the ensuing civil war.

IV- The Identification Of The Belligerents In The Lebanese Civil War.

A- General.

It is very important to identify the parties to the conflict. Identification will help in differentiating between internal and external parties which is necessary in any legal analysis. In the Lebanese civil war, parties to the conflict are numerous and diverse. The confusion between internal and external factors, at some point, is hard to separate. The existence of Palestinians and their participation played a great role in that confusion. However, in this classification, the Palestinians are included among the internal parties under the coalition of the Lebanese National Movement. A thorough review of their legal status will be undertaken later.

For reason of clarity and simplicity, the parties to the Lebanese conflict are divided into two groups: internal and external. Moreover, given the sheer numbers of internal parties, and their diverse claims, the present classification will include all the internal

parties into two main groups: Lebanese Front and the Lebanese National Movement. This classification is based on actual facts which were demonstrated during the war as the two main groups were the principal parties to the conflict. As such, the manifesto of small parties will be disregarded so long as they joined one of the principal parties and accepted its manifesto.

B- Internal Parties to the conflict.

1- The Lebanese Front.

During the course of the war, and in response to the ensuing events, a new coalition came into being which is commonly known as the Lebanese Front. The Lebanese Front is a coalition basically established to pool the resources of Christians in order to confront those who, in the view of the LF, embarked on a policy of destroying Lebanon.

The Lebanese Front is composed of parties or groups who took up arms to defend the fatherland from the Palestinians and Leftist forces. Despite the sheer number of groups and parties which joined the LF, it is easy to remark that the composition of the LF is made up of two major parties: the Phalange and Liberal parties.

The Phalange party is the strongest and best equipped . Its existence preceded the civil war, as it was established in 1936-(33) Over time, the party became the main defender of Christian interests in Lebanon, especially those of Maronite Christians.

The second party is the Liberal Party which was formed in 1959 by ex-president Chammoun. The Liberal party shares with the Phalange party its values and goals. Besides the two main parties, there are other parties which emerged during the course of civil war such as the Cedar Guardian, AL Tanziem and Zgharta Liberation Army (formed by the then president Franjieh).

The main concern of the LF was to defend Lebanon from foreigners and Leftist groups who pose a real danger to the unity of Lebanon. Therefore, they called for the repudiation of all agreements with Palestinians in order to restore Lebanese sovereignty.⁽³⁴⁾ The task of liberating Lebanon, in the absence of an effective government, was ultimately their responsibility. In general, the LF's main concern was the foreigners (Palestinians). They did not consider that there was a real internal problem in Lebanon⁽³⁵⁾, and any internal reform ought to be based on the National Pact of 1943.⁽³⁶⁾

2- The Lebanese National Movement.

The National Movement also emerged to present a unitary vision of future Lebanon. The National Movement is a loose coalition of a variety of parties who are not ideologically alike, but share the same goals: dismantling the confessional system, and the protection of Palestinian resistance.

The Lebanese National Movement, throughout the civil war, was composed of some major parties which constitute its backbone, as other parties were minor and not effective in any real sense. These major parties are follows : the Progressive Socialist Party headed by the leader of LNM, Kamal Junblat; the Syrian Socialist Party; the Arab Bath Socialist Party (actually there are two parties with the same name, one belonging

to Syria and the other to Iraq); and finally, the two organizations which emerged during the civil war, the Lebanese Arab Army (established following the breakdown of the Lebanese Army and which provided the LNM with immeasurable strength during the fight) and Murabutoun a pro-Palestinian Party and finally the Disinherited Movement, which was established by the charismatic religious leader *Mousa Al Sader*, which fought with the LNM at the first stage and later sided with the Syrian government.

Other parties played a major role but these Parties are not Lebanese in the legal sense . The Palestinian rejectionist groups and the main stream of the PLO considered themselves part of the LNM. They joined the LNM to defend their right to be in Lebanon as the LF challenged their legal rights.⁽³⁷⁾ As mentioned earlier, the detailed analysis of the status of Palestinians in Lebanon and its effect on the classification of the Lebanese conflict will be considered later.

Contrary to the LF, the LNM forwarded an argument which affirmed the internal character of the struggle. The LNM insisted that the real reason or cause of the conflict was the existence of the confessional system in Lebanon. Moreover, the LNM challenged the LF's claim that the Palestinians are foreigners.⁽³⁸⁾

The LNM presented its political programme as the most urgent goal to be realized at any price. According to that programme, the most important points are⁽³⁹⁾:

- 1- The abolition of the confessional system.
- 2- Democratic reform for popular representation; changing the electoral law
- 3- Re-arranging the army on a non-sectarian basis.
- 4- Introducing constitutional reforms concerning parliament and creating a new institution
- 5- Although not stipulated in the programme, nevertheless the LNM considered the LF's demand concerning the Palestinians as part of an international conspiracy to

liquidate the Palestinian revolution.(40)

The LNM stipulated that no dialogue could be initiated with the LF unless its political and constitutional programme is fully recognised as the mainstay of any future construction for Lebanon.

C- External Parties to the conflict.

There were, in fact, many parties to the Lebanese conflict, but what is of primary concern here is those which were directly involved in the Lebanese civil war. The first interference was undertaken by both Israel and Syria. However the Syrian government, due to its close ties and Arab orientation, staged the first direct intervention but in different stages: mediation, indirect assistance to rebels and finally full fledged intervention on the side of the LF on the 1st of June 1976.(41)

The second external party was Israel which did not hesitate to declare its interest in the Lebanese civil war. According to the Israeli government, its interest in Lebanon was to keep the Palestinians away from the south of Lebanon and to stop the guerilla attacks on the northern border of Israel.(42) However, another interest was manifest in Ben Gurion's correspondence with his prime minister, Moshe Sharet, in which he urged the latter to encourage the partition of Lebanon through rendering support to the Maronites so that they could establish a Christian state.(43)

In fact, the Israeli government did not intervene directly in the civil war during the year 1975-76 and it repeated its statement: " We do not have to intervene in what is

happening inside Lebanon as long as the conflict is confined to the Lebanese people themselves"(44) However, the Israeli government met many delegates of the LF and, in consequence, Israel pledged to extend ammunition and weapons to the LF.(45) The Israeli government refrained from any direct intervention until 1978. It was in March 1978 that the Israelis invaded the South of Lebanon, in an operation named *Litani River*, to drive the PLO back deep into Lebanon and far from the Northern border.(46) Later the Israeli government supported renegades of the Lebanese army to form a state in the south of Lebanon which is commonly known as the Security Belt. The second Israeli intervention was in 1982 and culminated in the occupation of Lebanon's capital, Beirut, and the evacuation of military personnel of the PLO from Lebanon.

The Israelis, in fact, did not intervene directly in 1975-76, but kept watching the Syrian forces' movement in Lebanon very closely. The illegality of the Israeli intervention in Lebanon is not addressed in the present thesis which is mainly concerned with the legal implication of the Syrian intervention.

V- The Legal Nature of the Lebanese Conflict.

A- Introduction.

The participation of Palestinians in the Lebanese civil war has given rise to crucial difficulties concerning their legal status. Their classification as an internal or external party has become the centre of legal discussion.

The Lebanese Front argues that the Palestinians are strangers and hence the conflict is a war against them . In contrast, the Lebanese National Movement has rejected this explanation, and insisted on the internal character of the conflict. As such, the investigation into and the identification of the Palestinians' status is a major issue in the discussion of the Lebanese conflict and, consequently, of the Syrian intervention. Therefore, before proceeding to the analysis of the Syrian intervention in Lebanon, an attempt will be made to identify the legal status of Palestinians in Lebanon. The inquiry will cover a concise review of the meaning of civil war in international law , the Palestinians existence in Lebanon, and finally the validity of the Cairo Agreement and the attitude of the Lebanese and Palestinian parties towards it.

B- The Legal Meaning Of Civil War.

According to the *Dictionary of Contemporary English*, the term "civil war" is indicative of a " war between opposing groups of people from the same country fought within that country".⁽⁴⁷⁾ . However, this description is not necessarily confined to the term civil war. In fact, there are many terms for civil war which mostly indicate the same meaning, such as insurrection, internal conflict, and rebellion. All these terms, although they differ , nevertheless all have a common factor which is that the war is carried out between indigenous people and within the territory of that country.

The customary definition of civil war indicates the above features:

" When a party is formed within the state which ceases to obey the sovereign and is strong enough to make a stand against it, or when a Republic is divided into two opposite factions and both sides take up arms, there exists a civil war".⁽⁴⁸⁾

In 1863 Professor Francis Lieber identified civil war :

" A war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portion of the state are contiguous to those containing the seat of government.(49)

Similarly, Oppenheim's definition of civil war has, more or less, the same features. He defined civil war as being:

" When two opposing parties within a state have recourse to arms for the purpose of obtaining power in the state, or when a large portion of the population of a state rises in arms against the legitimate government.(50)

In a recent judgement on the issue of civil war the Israeli Supreme Court drew a concise definition which has the same features which are shown in the above definitions. In its judgment in *Diab v Attorney General*, the Court said:

" Civil war is a war of the citizens for the purpose of obtaining power in the whole state or in part of it. The emphasis is on the word "citizen" that is to say, civil war always implies an armed struggle by a group of citizens against the established order in order to obtain power over its own state and not a war against another state trying to impose its will over the territory and the citizens of that state, that is to say, a foreign country. This is the legal meaning of the word, and it is also its normal and natural meaning for the general public and for historians".(51)

Therefore, most of the definitions, starting from the customary one to the most recent one by the Israeli Court, emphasize two factors: the indigenous population who are waging the war and the location of the conflict as carried out within the territory of the state.

Other factors, following the development of the subject of human rights and the need for regulation of internal conflict, were added to the definition of civil war. Those factors are mainly addressed to the material factor, that is to say the level of violence.⁽⁵²⁾ In order to bring the conflict under the regulation of the laws of war there must be a genuine armed conflict. This factor has the benefit of excluding trivial incidences such as rioting or disobedience from the category of civil war.⁽⁵³⁾

As such, civil war is a genuine armed conflict among the people of a country carried out within its territory for the purpose of changing or altering the legal structure of their government.

That definition raises the question of Palestinian participation and their legal status. Since the Palestinians are not Lebanese citizens, their participation needs more factual and legal clarification.

C- The Palestinian Factor in the Lebanese Civil War.

In any review of the legal status of the Palestinians in Lebanon, one has to look at the history of the Palestinian settlement in Lebanon in order to determine their legal status. A review has the advantage of clarifying their first legal settlement in Lebanon, that is to say, whether or not it was carried out in accordance with Lebanese Law.

Palestinian settlement in Lebanon was not a natural migration from one country to another. Their existence in Lebanon was caused by extreme circumstances which forced them to leave their homeland and seek temporary settlement elsewhere. Their ordeal started with the establishment of the Israeli state. The Israelis have subjected the

native Palestinians to inhumane treatment which, at times, reached the point of mass killing. The systematic method of terror and killing transcended any reasonable limits and left the Palestinians with no choice but to leave their homes in order to save their lives.⁽⁵⁴⁾ These crimes were condemned by the United Nations and a variety of humanitarian organizations but this did not prevent or halt the immigration of Palestinians.

Lebanon, amongst many Arab countries, responded to the events with great generosity and opened its borders to the Palestinian refugees. In opening the border to Palestinian refugees, and by providing them with the necessary requisites of life, Lebanon was acting as an Arab country which owed to Arab Palestinians such behaviour and, at the same time, was responding to its legal obligation under the Geneva Convention for the Protection of Refugees.⁽⁵⁵⁾

That Convention was the culmination of efforts of states to present a legal document ensuring full protection for refugees. Since 1921 the need for international action for refugees has been recognized. However, with the Geneva Convention the problem of refugees has been addressed properly. The Convention provides a legal framework for treatment of refugee, and facilitates their settlement in a foreign country. The merit of the Convention is its attempt to narrow the gap between the citizens of states and refugees in term of employment and social welfare. Thus, the rights and duties of refugees have been confirmed by a multilateral treaty which has limited states' rights concerning the treatment of refugees.

Since Lebanon is one of the signatories to that Convention, the Palestinians in Lebanon, as refugees, have the benefit of it. An examination of that Convention will support the view that the refugees enjoy the same rights as citizens in matters relating to employment, security and social welfare.⁽⁵⁶⁾ Moreover, the Convention stresses the

fact that refugees must not be treated on an equal footing with aliens who have already enjoy the protection of their countries.⁽⁵⁷⁾ As such, refugees, under the Convention, enjoy to some extent the full rights that citizenship accords to citizens, save political rights.

As far as Lebanon is concerned, Lebanon has failed to fulfill its obligations towards the Palestinians in accordance with the Geneva Convention. This failure could be the result of the nature of the Lebanese system. Since most of the Palestinians are Muslim, their presence raises the Christians' fear that an imbalance might emerge in the structure of the confessional system. However, that reason cannot remove the legal obligation that Lebanon owes to the refugees. Lebanon's reluctance to provide the basic needs of refugees is shown by the Lebanese Public Minister of Work:

"...Let me point out here that we did not welcome the Palestinians with open arms or take them to our heart. We did not make available to them the most basic necessities of life.. neither water, electricity, nor drainage facilities, or social services. It is we who deliberately put them near urban areas and not on the frontiers, in response to the wishes of businessmen for cheap labour".⁽⁵⁸⁾

Therefore, the existence of the Palestinians in Lebanese cities was in response to the wishes of businessmen and government officials. Their legal status as refugees is fully affirmed by the Lebanese government. As such, the Palestinians did not cross the border in thousands against the wishes of the government, but rather the Lebanese government has welcomed them and classified them as refugees. However, the maltreatment that they received in Lebanon was the first step towards a conflict between them and the Lebanese government. As the exploitation of the Palestinians persisted, and because of encouragement for the militarization of refugees by the Arab regimes, a military conflict erupted between the Palestinians and the Lebanese government. The Lebanese government did not agree on drastic measures to solve the issue of

Palestinians who were demanding a special status in Lebanon. The Muslim Prime Minister declined to liquidate the newly born military wing of the PLO when the Christians pressed hard to that end. A stalemate ensued and, under the mediation of Egypt both parties, the Lebanese government and the PLO, convened in Egypt to settle the Palestinian issue in Lebanon. The Lebanese representative was given full power to negotiate a settlement with the leader of the PLO, Yassar Arafat. The out-come of that negotiation was a new agreement which later came to be known as the " Cairo Agreement".

With the agreement the Palestinians acquired a new status which was not available before. However, the point that needs to be stressed is that the Palestinians' existence in Lebanon was not contrary to Lebanese law nor against the sovereignty of Lebanon. Since the agreement came into existence, its legality should be looked at in order to clarify it and, at a later stage, to see whether or not the Agreement was in accordance with Lebanese constitutional law and not contrary to the Lebanese sovereignty.

D- The Cairo Agreement.

On the third of November 1969, the Lebanese representative, Emil Bastani, and the Palestinian representative, Yassar Arafat, met in Cairo under the auspices of Egypt's Foreign Minister, Mahmmoud Riyad, and War Minister Fawzi, to discuss the Lebanese crisis. The outcome of that meeting was a new agreement which is generally referred to as the "Cairo Agreement".⁽⁵⁹⁾ The main purpose of that Agreement was to prevent any future confrontation between the Lebanese government and Palestinians in Lebanon.

Ironically, that Agreement turned out to be the source of disagreement between the Palestinians and the Lebanese government on the one hand and the Lebanese themselves on the other. According to the Christians (Lebanese Front), the Agreement violates Lebanese sovereignty, whereas the Muslims (Lebanese National Movement) regard it as an instrument which justifies the military existence of Palestinians on Lebanese soil. The Cairo Agreement consists of two parts: the first deals with the Palestinians' presence in Lebanon, and the second addresses the activity of Palestinian commandos.

As to the first part, the Agreement mentions the rights of Palestinians to work and residence.⁽⁶⁰⁾ This is a mere reiteration of what the Lebanese government had already committed itself to under the Geneva Convention of 1951. The right of Palestinians to compose a committee to take charge of Palestinians' interests in the camps was recognised; but that must be done in accordance with the full agreement of the Lebanese authorities and " within the context of Lebanese sovereignty".⁽⁶¹⁾ Moreover, Article 3 and 4 granted the Palestinians the right to join the Palestinian revolution and the right of the Palestinians to carry arms in the camps, but in accordance with Lebanese law and sovereignty.⁽⁶²⁾

The second part of the Cairo Agreement was devoted entirely to the activities of Palestinian commandos. The Lebanese government pledged to furnish every possible assistance to the Palestinian commandos in order to attack the Israeli state. However, this was to be carried out from a designated area in the South of Lebanon.⁽⁶³⁾ Article 7 of the Agreement envisaged the appointment of a Palestinian representative to the Lebanese military headquarters to participate in the resolution of all emergency matters.

In addition, the Cairo Agreement affirmed the belief and determination of both the Lebanese government and the PLO to help the armed struggle of the Palestinians as " an activity in the interest of Lebanon as well as that of the Palestinian revolution and all

Arabs".(64)

As a whole, the Cairo Agreement transferred the legal status of the Palestinians from that of refugees under the Geneva Convention to a new status under the Cairo Agreement. The Agreement gave the Palestinians full freedom to act in Lebanon. However, such activities must be carried out in accordance with the Lebanese government and sovereignty; the Lebanese government by virtue of Article 13, has the full sovereignty and jurisdiction over all its territory without any exception.

The Cairo Agreement, however, did not succeed in providing stability and accord between the government and the PLO. Clashes took place and a new protocol which is known as the "Melkart Protocol" came into being on 17th May 1973.(65) That Protocol referred to the Cairo Agreement as a basis for any new agreement. However, according to the Melkart Protocol, the Palestinian commandos had no right to operate militarily against the Israeli territory from the Lebanese border.(66) Moreover, the Protocol determined that the term foreigner is not meant to cover Arab commandos (67) Apart from that, the Melkart Protocol does not differ greatly from the Cairo Agreement.

As was mentioned earlier, the Cairo Agreement was a source of discord among the Lebanese themselves and Christian Lebanese vis a vis the Palestinians. In the light of that, the legality of the Agreement becomes vital to the present study.

E- Cairo Agreement and the Legal Standing of the Parties.

The Lebanese belligerents have naturally expressed a different attitude towards the Cairo Agreement. The Lebanese Front considered it illegal. To the National Movement, it is a true reflection of the Lebanese commitment to the Palestinians'

cause.⁽⁶⁸⁾

The Lebanese Front's stand towards the Cairo Agreement was not, arguably, consistent or clear. The Lebanese Front declared on several occasions its intention to repudiate the Agreement.⁽⁶⁹⁾ On other occasions, the Lebanese Front, and especially the Phalange party, expressed its total respect for all agreements signed between the Lebanese government and the Palestinian Organization.⁽⁷⁰⁾ However, one can state that the Lebanese Front through various speeches affirmed its stand that the Cairo Agreement was no longer valid to regulate the Lebanese-Palestinians relations. It regards the Agreement as upsetting the internal equilibrium between various sects. On this ground, the Lebanese Front embarked on a policy of arming its members in order to meet the danger of Palestinian commandos. The former President of Lebanon and a president of the Lebanese Front questioned the Agreement which allowed Palestinians to carry weapons by saying:

"why have the foreigners and those seeking refuge in hospitable Lebanon the right to stage military training and carry arms, while Lebanon's sons have no right to do so in defence of their homeland?".⁽⁷¹⁾

The Lebanese Front regarded the agreement as a bridge upon which the Palestinians could occupy Lebanon. Therefore, according to the Lebanese Front, the sons of Lebanon have also full rights to use weapons and defend their land from Palestinian foreigners. The president of the Lebanese Front declared that " Christians of Lebanon fought a national battle to liberate their home land from Palestinian domination".⁽⁷²⁾ Moreover, he considered the mere acceptance of the Cairo Agreement a surrender to Palestinians as he said:

" despite the secrecy shrouding the agreement, it was becoming clear that it amounted to capitulation to the commandos demand to operate from Lebanon".⁽⁷³⁾

This view was shared by another Christian leader, Pierre Jamayle (the Phalangist leader) who voiced his discontent:

" We accepted the agreement reluctantly although we had preferred it be unwritten, However, the agreement underlines the fact that Lebanese sovereignty no longer exists yet we acceded to it to save or preserve the national unity".(74)

The issue of lost sovereignty was raised by another Christian leader Charel Al Hallau in whose term of presidency the agreement was signed. He declared that:

" The Cairo Agreement contradicts the existence of the state, but at that time it was impossible to compromise between the concept of Palestinian revolution and Lebanese sovereignty. Thus, the Cairo Agreement was the best of the worst".(75)

Another objection to the Cairo Agreement was introduced by the Monk Order of Lebanon. They argued, in a memorandum submitted to the Lebanese Parliament, that the agreement violates the constitution of Lebanon since it upsets the National Pact of 1945. The National Pact, according to the said Memorandum, ensures Lebanon's neutrality vis a vis West and East.(76) According to this, had the Cairo Agreement been an element in the Pact when it was drawn up, the Pact would have been different, or might never been concluded.(77) Thus, since the Pact is a part of a constitution, this Agreement must be invalid according to the constitution.

Others, in the wake of Israeli retaliation and the mass destruction of life and property, argued that the Agreement is invalid since the circumstances have changed.(78) In general, the Lebanese Front's objection could be summarized under four legal objections:

(1) The agreement was against the will of the Lebanese government.

(2) It runs against the Lebanese constitution

(3) The circumstances have changed underlying the need to repudiate that agreement.

(4) The agreement violates Lebanese sovereignty

As to the National Movement, the above arguments were rejected as unconstitutional and part of an imperialist attack on the Palestinian revolution.⁽⁷⁹⁾

Therefore, as far as the Lebanese Front is concerned the Cairo Agreement is no longer valid for the above reasons. And if the Agreement is not valid, then the Palestinians, by carrying arms and weapons, violate Lebanese sovereignty and give rise to the Lebanese Front's right to defend Lebanon from Palestinian foreigners. In order to evaluate the validity of the Lebanese Front's claims, an assessment will be carried out in order to affirm whether or not the Cairo Agreement is valid.

F- The Validity of the Cairo Agreement.

Before proceeding to discuss the legal objections of the Lebanese Front, some legal points have to be highlighted. The conclusion of an Agreement with the PLO raises some difficulties, since the PLO is not a state. Moreover, the term "Agreement" is not free of controversy. In view of that, two important questions must be answered: What is the legal nature of the Cairo Agreement? Is it a treaty subject to international law, or a mere agreement subject to Lebanese Law?

The choice of the term "Agreement" which was given to the document concluded between the PLO and the Lebanese government, does not create any problem. The Vienna Convention on the Law of Treaties 1969 does not stipulate that a specific term, such as treaty, is a necessary requisite for a legal document to be a treaty.⁽⁸⁰⁾ Accordingly, Article 2 (1) of the Convention defined treaty as an international instrument concluded between states and in a written form.⁽⁸¹⁾ Moreover, in a comment on the Law of Treaties, it was mentioned that " the fact seems to be that names are frequently given to the international instruments for reasons which have nothing to do with the legal significance of a particular term..".⁽⁸²⁾

Therefore, the term Cairo Agreement does not affect its legal importance since there are no requirements relating to the choice of terms. It is a matter relating to constitutional law which sometimes stipulates a certain procedures in matters relating to the conclusion of a treaty or an Agreement. For example, in the United States, for a treaty to be constitutionally valid it must be approved by the Senate and the President, the Supreme Court held that a postal convention concluded by the Postmaster General under the authority of an Act of Congress and approved by the President without the advice and the consent of the Senate was not a treaty according to constitutional and municipal law of the United States.⁽⁸³⁾

Therefore, the terms *treaty* or *agreement* are matters relevant to the parties and subject to their internal law, and have nothing to do with the law of treaties. According to Lebanese law, a treaty must be signed by the President and the Prime Minister and approved by Parliament.⁽⁸⁴⁾ These requirements were strictly observed in the Cairo Agreement. Therefore, the Cairo Agreement, as far as Lebanese Law is concerned, is a treaty signed between the Lebanese government and the PLO. However, a major difficulty arises as to the right of the PLO to conclude a treaty; Article 2 (1) of the Vienna convention provides that a treaty must be concluded between states. Since the PLO is not representing a state, it might be argued that it has no right to conclude a

treaty.

However, that assertion is incorrect. It was argued that the PLO does not represent Palestine but it is surely representing the refugees.⁽⁸⁵⁾ It follows that the the PLO has a non-state character. Its status may be compared to a national liberation movement. However, the National Liberation Movement status, although controversial ⁽⁸⁶⁾, has a legal personality which qualifies it to conclude a treaty with a state.⁽⁸⁷⁾ There are many precedents to support this conclusion. For example, the French government signed a treaty (Evian Treaty in 1962) with the Algerian Liberation Front, and the United States signed an agreement in Paris on January 27, 1973 with the National Liberation Movement of Vietnam. Moreover, during the Second World War, western powers recognized national fronts which were fighting for the liberation of their land from the Nazi occupation and were treated by western countries as governments in exile.⁽⁸⁸⁾

All these precedents suggest that the PLO does have the legal personality to conclude an agreement. The PLO was recognized by the Lebanese government as the legitimate representative of the Palestinians and that recognition is easily inferred from the actual meeting with the representative of PLO. Lauterpacht affirms in this regard that:

"Logic seems to demand that a state cannot become a party to a treaty with a state or government which it does not recognise that is to say, whose existence it denies - and that therefore the conclusion of a treaty amounts to recognition. Occasional pronouncements by governments substantiate that point".⁽⁸⁹⁾

However, given the special status of the PLO in Lebanon, it seems unreasonable to suggest that it has the capacity which a state normally has. The PLO's presence in Lebanon is a temporary one and that agreement is a mere arrangement of external relations between the Lebanese government and the PLO. Therefore, the Accord that

was concluded between the Lebanese government and PLO has an international character, at least within certain measures.⁽⁹⁰⁾

Given the character of the PLO and the recognition that was accorded to it by the Lebanese government one tends to view the Cairo Agreement as an international accord.

It follows that if this thesis is right, that the Lebanese Front objections regarding the invalidity of the agreement must be looked at in the light of international law in order to determine the legitimacy of their claims. For if their claims are not valid then the Palestinian presence in Lebanon could not be considered in violation of Lebanese law.

(1)- The agreement was forced on the will of the Lebanese government.

The argument that the Cairo Agreement was reached under duress needs more elaboration and examination in order to ascertain the legality of the said claim. Article (51) of the Vienna Convention reads:

"The expression of a state's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against them shall be without any legal effect".⁽⁹¹⁾

Moreover, Article (52) of the same Convention reads:

"A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations .⁽⁹²⁾

In view of both Articles, an agreement becomes void if it is concluded under coercion. To what extent the Lebanese Front's claims are legally valid is entirely

dependent on the facts. In the absence of an impartial court to rule on that matter, one may rely on certain external features to see whether or not the treaty was forced on the will of the Lebanese sovereign state.

There is no doubt that the Lebanese government was fully aware of the consequences of that agreement and thus accepted it. The Lebanese President himself affirmed that the conclusion of the treaty was necessary in order to preserve national unity⁽⁹³⁾. Lebanese public opinion was fully in support of Palestinians and their right to self-determination through the armed struggle and precisely from the Lebanese border against Israeli state. In November 1969, an independent public opinion poll showed that 85 per cent of the Lebanese population favoured commando activity in general and 62 per cent supported commando activity run from Lebanese territory.⁽⁹⁴⁾

Moreover, the Cairo Agreement was signed under the auspices of the Egyptian delegation and was later ratified by the Lebanese Parliament.⁽⁹⁵⁾ The claim that the Agreement was signed under duress seems unreasonable since the Lebanese government could have by its sheer military power, suppressed the Palestinian commandos and consequently avoided signing the treaty. There is no evidence furnished by the Lebanese Front that force was used to induce the will of the Lebanese sovereign. The existence of physical force is vital for nullifying the agreement as a mere economic or political pressure cannot be considered on its own.⁽⁹⁶⁾ In view of that, and in the absence of fact to the contrary, one can conclude that the Cairo Agreement was not signed under duress.

(2) The Agreement runs against the Lebanese constitution.

The claims that Cairo Agreement was signed in violation of the Lebanese

constitution is from international perspective not of much importance.

In fact, Article 46 of Vienna Convention reads:

"A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned with a rule of its internal law of fundamental importance".(97)

To the Lebanese Monk, the Cairo Agreement violated an important rule of the unwritten Lebanese constitution (the National Pact). That violation justified the nullification of the Agreement. However, such a claim cannot be taken at face value. The Permanent Court of International Justice in its advisory opinion in the *Treatment of Polish Nationals in Danzig* affirmed:

"It should, however, be observed that, while on the one hand, according to the generally accepted principles, a State cannot rely, as against another State, on the provisions of the latter's Constitution, but only on international law and international obligations duly accepted, on the other hand and conversely, a State cannot adduce as against another State its Constitution with a view to evading obligation incumbent upon it under international law or treaties in force".(98)

In fact, there are two schools of thought on this subject. One school considers that a treaty is void so long as it goes against the internal constitutional regulations.(99) The other school, on the contrary, considers that a treaty is valid, despite its violation of internal constitutional procedures.(100) However, it seems that the former school of thought goes against the major policy aim which encourages the stability of international arrangement through treaties. The first view "lays a burden upon other states to satisfy themselves in every case that the constitutional limitations of a State with which they desire to enter into a treaty are not breached".(101) In the light of practice, however, the second school is gaining predominance over the the first

school.(102)

As such, the Monk's claim as far as the invalidity of the Cairo Agreement is concerned looks irrelevant. However, one is tempted to take the matter further by questioning the status of the National Pact in the Lebanese context.

The National Pact itself suffers from the absence of precision. Many Lebanese officials played down the importance of the National Pact and considered it a mere temporary stage upon which the national leaders in 1943 reached a consensus regarding the future Lebanon. However, as Lebanon had passed that sensitive period, the Prime Minister, R. Karami, declared on the 25th of November 1975, that " ...there is a dispute which does have a confessional aspect because things have developed in Lebanon between 1943 and 1975" and confirmed that the Pact is no longer operative since " the new generation differs from that of the past".(103) It was not only the Prime Minister, but also many Lebanese officials who showed their negative attitudes towards the Pact.(104)

The fact remains that the Pact was an essential ingredient for building Lebanon at the time of independence. It envisaged the distribution of power amongst sects which, with the passing of time proved to be detrimental to Lebanon's future. It is the National Pact which gave rise to disagreement amongst the Lebanese as it was perceived by one party to be a manifestation of inequality and a stumbling block in the process of building a new Lebanon. It seems unreasonable, in such a context, to affirm that the National Pact has a supremacy which permits it to repudiate a treaty. Therefore, the National Pact does not have the power to repudiate the Cairo Agreement under international law; nor is it any longer valid in the Lebanese context since its existence has given rise to the civil war.

(3)-The circumstances have changed (Rebus Sic Stanibus).

Article 62 of the Vienna Convention on the Law of Treaties reads:

"A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

This concept is reflected in the ruling of the International Court of Justice in the *Fisheries Jurisdiction Case*(105), where the Court affirmed that change of circumstances " under certain conditions, afford the party affected a ground for invoking the termination or suspension of the treaty". It is not exclusively on the grounds of fairness that a treaty can be terminated, but rather than on the " disappearance of the foundation upon which it rests".(106) This conforms to the main policy which is concerned with the stability of international obligations by narrowing down the scope of auto interpretation.(107)

In ascertaining the existence of any fundamental change of circumstances, the intention of the parties to the agreement plays a decisive role. McNair adhered to the device of intention by saying: " Nevertheless the main object of interpretation of a treaty being to give effect to the intention of the parties in using the language employed by them, it is reasonable to expect that circumstances should arise (as they do in the sphere of private law contracts) in which it is necessary to imply a condition in order to give effect to this intention".(108) Others such as Professor Bishop(109), Professor

Briggs⁽¹¹⁰⁾ and Hyde⁽¹¹¹⁾ concluded that the criterion of intention is the decisive factor in the concept of changed circumstances (*rebus sic stantibus*). The intention of the parties could be inferred from the *raison d'être* or the cause of the treaty. Therefore, the concept of *rebus sic stantibus* must be limited to "cases in which the parties contracted with reference to a set of conditions which have changed" which, if it had been foreseen at the time of conclusion of the treaty, one "would have said that the treaty should lapse".⁽¹¹²⁾ This policy was affirmed in the International Law Commission debate on the concept of fundamental change of circumstances as the Commission reported " ..A general desire to emphasize the need for the stability of treaties and the narrow and exceptional character of the doctrine of changing circumstances (*rebus sic stantibus*)".⁽¹¹³⁾

Therefore, the question which needs an answer is, does the Cairo Agreement fit within such a description ? Or, in other words, do the subsequent events that led to Israeli retaliation against guerilla attacks bring the concept of changed circumstances into operation?

To answer this question one has to rely on the intention of the parties at the time of concluding the Agreement. In other words, were the parties aware of the consequences of that Agreement and, if so, would they have declined to conclude it ? This question is not difficult to answer. A state permitting its territory to be used as a base against another state, would logically be subject to retaliation. The Lebanese government not only permitted its territory to be used in this way but at the same time pledged its full support for the guerilla operation.⁽¹¹⁴⁾ Moreover, the mere signing of such an agreement would affirm the intention of the Lebanese government to violate the cease-fire agreement signed on 23rd of April 1949 between the government of Israel and Lebanon. That on its own suggests that Israeli retaliation was foreseeable at the time of signing the Cairo Agreement. If that is correct, then the invocation of the concept of

changed circumstances is out of place.

Moreover, and assuming that the circumstances were not foreseeable at that time, it is still arguable that the Cairo Agreement cannot be repudiated as a whole. The Cairo Agreement was not originally signed for the sake of permitting the guerilla attack from the Lebanese border, but mainly for regulating the presence of Palestinians on Lebanese soil regarding work, travel etc.. The clause which is related to military operations from Lebanese territory could be terminated without invalidating the whole Agreement. This is supported by the fact that the intention of the parties was to regulate the Palestinians presence in Lebanon.

Therefore, the Cairo Agreement cannot be terminated on the ground of changed circumstance, since both of the parties were fully aware of its consequences at the time of its conclusion.

(4) The Agreement violates Lebanese sovereignty.

The core of the argument focus on the rights which have been given to Palestinians in the Cairo Agreement. Palestinians have the right to establish bases in Lebanon and carry out military training on Lebanese territory. These sets of rights were perceived by the Lebanese Front as a violation of Lebanese sovereignty. Since sovereignty is of paramount importance, the Agreement must be void as it violates sovereignty. This argument raises the question as to whether or not a state has the right to conclude an agreement which runs against or limits its sovereignty.

In fact, the principle of sovereignty is no longer as it used to be in the past especially in the 19th century where it was perceived as absolute. The development of international society and interdependence has given rise to a concept of limited

sovereignty. The emergence of the EC and other international and regional organizations is a clear example of that concept. The member states of the EC have transferred some of their power to conclude treaties with different subjects of international law in certain fields with the implication that these states no longer have the power to pursue individual relations with other states in such fields which are redelegated to the Community.⁽¹¹⁵⁾ In view of this, member states have limited or transferred their sovereignty in certain fields.⁽¹¹⁶⁾

Another illustration of the state's right to limit its sovereignty is fully demonstrated in the *Wimbledon case*. The Permanent Court of Justice in its ruling against Germany for not permitting the S.S Wimbledon a free passage through the Kiel Canal under the terms of Article 380 of the Treaty of Versailles affirmed:

"..No doubt any convention creating an obligation of this kind places a restriction upon the exercise of sovereign rights of the state, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagement is an attribute of state sovereignty".⁽¹¹⁷⁾

Friedmann's view is not different from the above case, as he asserts that " it is certainly within the right of any state represented by its government, to surrender its national sovereignty".⁽¹¹⁸⁾ Therefore, the surrender of sovereignty by the Lebanese state does not justify the termination of the treaty. As it is phrased by Permanent Court of Justice, "entering into international engagement is an attribute of sovereignty". Moreover, the Cairo Agreement does not in any sense surrender Lebanese sovereignty to the PLO. In the introduction to the Agreement, respect for Lebanese sovereignty is fully recognised; the Lebanese government and the PLO confirm their brotherhood and common destiny, and stress positive co-operation for the benefit of Lebanon and the Palestinian Revolution within the framework of Lebanese sovereignty.⁽¹¹⁹⁾ Article (13) confirms the Lebanese government's right to exercise full authority over all the

Palestinians camps within the Lebanese territory.(120)

Therefore, it is clear that the Cairo Agreement does not violate the Lebanese sovereignty since the will of Lebanese sovereign validated this agreement. The Lebanese Front's claim, therefore, seems irrelevant, so long as the Front is not a party to that Agreement. That is to say, if there is a challenge to that Agreement, it must be exercised by the Lebanese state and not the Lebanese Front. For the Lebanese Front represent a portion of the population of Lebanon and this does not qualify it to speak for all Lebanese.

On the whole, it becomes clear that the Cairo Agreement legitimized the presence of Palestinians in Lebanon including the PLO. It follows that the Palestinians did not cross the border illegally and threaten the Lebanese government. Their presence was originally enhanced by the Geneva Convention for Refugees and later by the Cairo Agreement. That evidence suggests that the Palestinians are not an indigenous or an external party; their status is of a special nature since they settled legally in Lebanon and long before the eruption of internal conflict, and at the same time, given the impossibility of their return to Palestine, their presence in Lebanon becomes imperative. However, one may wonder whether or not the Palestinians have the right to participate in the Lebanese conflict.

V- The Cairo Agreement and the validity of Palestinian participation in the Lebanese civil war.

There is no doubt that the Palestinians have no legal ground to engage actively in Lebanese internal affairs as such activity goes beyond the letter of the Cairo Agreement. However, such a violation of the Cairo Agreement does not necessarily lead to the classification of Palestinian participation as an external intervention in any real sense.

The Palestinians have insisted constantly on their neutral role in the Lebanese conflict. The Executive Committee of the PLO declared its neutrality and affirmed that

"the Palestinian presence in Lebanon is not a political clique affiliated to any specific quarter nor does it wish to be, and the stability of Lebanon is the stability of the Palestinian revolution...the Palestinian revolution is bearing arms only for the sake of liberation and for defence of its existence, these are inseparable twins... the Palestinian revolution has nothing to say on whatever political social, and economic system, regime and legislation Lebanon may choose for herself, except to wish her continuing prosperity and greater success".(121)

Despite the existence of some Palestinian organizations which did not conceal their support for the Lebanese National Movement, the PLO, represented by Arafat, insisted on its respect for Lebanese sovereignty and Lebanese law and refused to discuss any problem concerning the Palestinians's presence with the Lebanese Front on the ground that LF is not a party to the Cairo Agreement and do not represent the Lebanese state.(122)

In asserting of the neutral role of Palestinians, the Mufti of Lebanon testified to this end:

"..Every one must realise that this ordeal is purely internal.. the crisis has no connection with anyone..the Palestinian revolution grasped this truth and stood aside, witnessing our pain with still greater pain, binding our wounds while its own bleed".(123)

As the Lebanese war escalated to engulf many parts of Lebanon, the Palestinians found themselves in an awkward position. The Lebanese Front declared its aim to uproot them from Lebanon, and did not hesitate to attack the Palestinian camps. The LF attacks forced the camps' inhabitants to leave, and left the PLO with no choice but to

join the Lebanese National Movement openly.⁽¹²⁴⁾ The active participation of Palestinians beyond doubt goes against the Cairo Agreement, but in view of the circumstances their participation is justifiable. Under the concept of self-defence every one has the right to defend himself. It is a natural right which gives every human being the legal right to ward off any threat to his life. Thus, the Palestinian participation could be equated with the right of self-defence as they have no choice but to defend their camps. The Lebanese Front attack has, in one way or another, justified Palestinian participation. In evidence to the Lebanese Parliament, the Prime Minister of Lebanon accused the Phalange party of a plot to drag the Palestinians into the Lebanese conflict:

" The clear proof of the responsibility of the Kataib (phalange) party for this incident (Ayen Al Rummana massacre) is made evident when we think of it with its precedents and with the attempts that followed to expand the fighting so as to include fighting between the Lebanese and Palestinians and the Lebanese themselves".⁽¹²⁵⁾

In view of the above arguments, Palestinian participation in the conflict was not voluntary but rather a measure to ensure survival. Such participation does not run counter to the Cairo Agreement which permits the Palestinians to defend their camps against any attack. However, Palestinian participation must be restricted to the defence of camps. Participation in fighting for reasons or goals beyond the protection of Palestinians is illegitimate as it contradicts the Cairo Agreement and the Lebanese right to determine its future as it wishes. However, given the religious and cultural features of the conflict, it is hard to draw a line between the defence of the camps and involvement in civil war in order to secure the victory of one party. It is that features which makes the task of legal classification very difficult.

VI- Conclusion.

The Lebanese conflict has presented a difficult dilemma as to its legal nature. The existence of Palestinians and their participation in the conflict has given rise to the belief that the conflict is not a civil war. However, it is a civil war as it contains the three essential features: it is between indigenous people, within the boundaries of the state, and a genuine armed conflict. The Palestinians did not cross the Lebanese border against the wishes of the Lebanese sovereign nor against Lebanese law. Their presence was legitimized by the Geneva Convention and the Cairo Agreement. The latter Agreement gave the Palestinians the right to carry weapons and settle legally in Lebanon under the protection of the Lebanese government. As the Lebanese government disintegrated and civil war erupted, the Palestinians participation could be justified under the right of self-defence. Their active participation beyond the protection of camps, however could be regarded as an extension of self-defence, as the victory of the LF would pose a real threat to their existence in Lebanon. The religious orientation and cultural similarity, not to mention their long presence in Lebanon, between Palestinians and Lebanese make the distinction between them very difficult. All these factors militate against the classification of Palestinians as an external party. The Lebanese Front claim that the Palestinians are occupiers of Lebanon is not valid under the Cairo Agreement.

Therefore, since the Palestinians did not cross the border against Lebanese law or threaten the sovereignty of Lebanon, their presence in Lebanon is legal. They are an internal party of special status and cannot be regarded an external party in the legal sense. As such, the Lebanese civil war is a war between the internal parties within the territory of Lebanon.

FOOTNOTES

- (1)- Philip K. Hitti, Lebanon In History, 1957, p 8
- (2)- Kamal Salibi, The Modern History of Lebanon, 1965, p 5
- (3)- Id.
- (4)- Khodr Khodr, La vie politique au Liban depuis 1952, diplome d'etudes superieures de science Politique, 1972, p 8.
- (5)- Op cit note (2), pp 22-27.
- (6)- Ibid, pp 32-37.
- (7)- Faries Walid, Al- Tadudia fi Libnan, 1979, p 113
- (8)- Id.
- (9)- J. Nantet, Histoire du Liban, 1963, p 168.
- (10)- Op cit note (2), p 64.
- (11)- Meir Zamir, The Foundation of Modern Lebanon, 1963, p 168.
- (12)- Op cit, note (2), p 10.
- (13)- J. Nevakivi, Britian, France and the Arab Middle East. 1914-1920, 1969, p 71.
- (14)- In the spring of 1916 a trilateral Agreement was concluded amongst France, England and Russia regarding the distrubtion of Ottoman territory. This Agreement later become known as

the Sykes-Picot Agreement due to the name of French and British delegates. See George Antonuis, The Arab Awakening, 1938, p 244.

- (15)- Id.
- (16)- Op cit note (1), pp 489-490.
- (17)- Leila M.T. Meo, Lebanon Improbable Nation, 1965, p 54.
- (18)- Eddman Rabbat, Intermediary in Constitutional Law, 1970, p 414.
- (19)- Basam AL Jaser, The Pact Why Was it and Did it Fail ?, 1955, p 480.
- (20)- See " The Lebanese Civil War and the Eisenhower Doctrine" in R. Barnet, Intervention and Revolution:The United States in the Third World, 1968, pp 132-151; F.I. Qubain, Crisis in Lebanon, 1961, pp 35-38.
- (21)- First Report of UNOGIL, UN Doc.5/4040 and Add. 1,3 , 5 July 1958.
- (22)- S.C Official Record, 828, 15 July 1958, p 11
- (23)- Halim Barkat, " The Social Context" in P. Edward Haley and Lewis W.Sinder, Lebanon in Crisis: Participants and Issues, 1979, pp 6, 7-20; Enver M. Koury, The Crisis in The Lebanese System: Confessionalism and Chaos, 1976
- (24)- Ibid., p 7, and Koury p .9.
- (25)- Koury, Ibid., p 35.
- (26)- Suleman Taqu AL Dyen, The Historical Development Of The Lebanese Problem 1920-1970, 1977.
- (27)- Edward Cody, " Struggle of Poor Against Rich is the Prime Motive in Beirut War", The Washington Post, 27 November 1975, p K- 21.

- (28)- see Ahmed Naveed, "The Lebanese Crisis: The Role Of The PLO", Pakistan Horizon, vol 29, 1976, pp 31-46; and see David Gilmour, Lebanon The Fractured Country, 1983, pp 93-105.
- (29)- Op cit note (23), and see M.C. Hudson, "The Palestinian Factor In The Lebanese Civil War", Middle East Journal, vol 32, 1978, pp 266-67.
- (30)- Gilmour, Op cit note (28) pp 121-124; and see Itmar Rabinovich, "The Limit Of Military Power: Syria's Role" in Haley and Snider Op cit note(23) pp55-63.; and see Lewis W. Snider, " Inter-Arab Relations" in Edward and Snider Op cit note (23) pp179-206.
- (31)- Id.
- (32)- W. Khalidi, Conflict And Violence In Lebanon: Confrontation In The Middle East, 1979, p 95.
- (33)- Tabitha Petran, The Struggle Over Lebanon, 1987, pp 42; and see Khalidi Ibid. pp 67-72; Marius Deeb, The Lebanese Civil War, (1980) pp 21-25.
- (34)- See Daily Star (Daily English Newspaper), Beirut, 3 January 1970.
- (35)- Wade R. Gonia, Sovereignty And Leadership In Lebanon, 1985, p 237.
- (36)- The Phalange Memorandum concerning the Lebanese war, cited in Arab Political Documents, 1975, pp 509-512
- (37)- A statment by Mohammed Nashashibi who is a member of PLO executive committee affirmed: " we were sucked into this side war in order to defend ourselves" and he added that the Phalange party " questioned our right to be in Lebanon and wanted to drive us out of the country " see Jonathan C. Randal, " Palestinians Seek To End Role In Lebanon's Civil War", Washington Post, 30 November 1975, A-22. Another party in the coalition of Christian (LF) The Gardian of Cedar announced that every phalestinian must leave Lebanon, see Gilmour Op cit note(28), p 103.
- (38)- K.Junmblat, I Speak For Lebanon, 1982, p 94.

- (39)- The National Movement Manifesto, circulated manifesto, Beirut.1976
- (40)- Junmblat, Op cit note (38), pp 4-11
- (41)- See Chapter Four of this thesis.
- (42)- Yair Evron, War And Intervention In Lebanon: The Israeli Syrian Deterrence Dialogue, 1987, pp 29-30.
- (43)- Ibid. p 26
- (44)- Ibid. p 36
- (45)- Ibid. p 43
- (46)- Ibid. p 71
- (47)- See Dictionary Of Contemporary English, 2ed 1987, p 176.
- (48)- Emmerich De Vattel, The Law Of Nations or The Principles Of Natural Law, cited in R. Falk, Vietnam War and International Law, Vol 1,1968, p 19.
- (49)- Cited in George Grafton, International Law, 9th ed, 1935, App.2.
- (50)- L. Oppenheim, International Law, ed.H. Lauterpacht, 8th ed, 1955, p 209.
- (51)- International Law Report,1957, pp 550-52.
- (52)- B.A Worley, " Observations On The Revision Of The 1949 Geneva 'Red Cross' Convention", B.Y. B.I.L Vol LIV, 1983, pp 149-150.
- (53)- Article 1 (2) of Protocol 11 relating to the protection of the victims of Non-Armed conflict (1977): " this protocol shall not apply to situation of internal disturbances and tensions such as

riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflict", Ibid. p 152.

- (54)- Jacque De Reeynier, " A Jerusalem un Drapeau Flottant sur la Linge de Feu", New Chatel Edition de la Boconniere, 1950, pp 69-74, Reprinted by W. Kalidi, Haven To Conquest, Institute for Palestinian Studies, Beirut, 1971.
- (55)- Lebanon is one of signatories to the Geneva Convention for the Protection of Refugees, 28th July 1951.
- (56)- Geneva Convention, see Article 17, 20, 21, 22 and 24.
- (57)- Id., Article (7).
- (58)- Political Debate between Henri Edde (public minister) and Right Wing's leader, cited in J. Pals, St., Autumn, Winter, 1975-76, pp 220-221.
- (59)- See Khalidi Op cit note(32) pp 40-41. The content of this Agreement was not revealed to Public but a version of the content appeared in many local newspapers. for a version of this Agreement see Khalidi Ibid., Appendices 185-187.
- (60)- Id., Article (1) (2) (3) and (4).
- (61)- See Article (13) and (14) of the Cairo Agreement.
- (62)- Article (3) and (4).
- (63)- The second part of the Agreement which deals with the commando activity see Article (1) which reads: "Facilitating the passage of commandos and specifying points of passage and reconnaissance in the border areas: 1- Safeguarding the road to the Arkub region.
- (64)- Article (14) of the Cairo Agreement.
- (65)- Attached in the Appendixes of the current thesis.

- (66)- see Melkart Agreement especially section 3 under the heading of military operation which reads:
All [Commodo] operations from the Lebanese territory are suspended according to the decisions of the Joint Arab Defence Council. Departure from Lebanon for the prupose of commando operations is forbidden.
- (67)- Ibid Under the heading foreigner the Melkart Protocol affirmed: " By the term foreigners it meant not Arab commodos".
- (68)- Said Jawad, "The Unity of Struggle between the Palestinian Revolution and the Lebanese National Movement: its Nature, Development And Forms", Palestine Affair, Vol 60, October-November 1976, pp 67-97.
- (69)- *Daily Star*, 3 January 1975
- (70)- Op cit note (68) pp 71-72.
- (71)- Arab Report And Record, 19 September, 1973, p 413.
- (72)- A statment was given by the president of the Lebanese Front, Op cit note (35) p 237.
- (73)- *Daily Star*, 3 January 1970.
- (74)- Antwan Khwyari , Hawadth fi Libnan [The Events In Lebanon], 1975, p 130.
- (75)- Id.
- (76)- International Document On Palestine, 1975, pp 515-516.
- (77)- Id..
- (78)- Farid Ghanem, Lebanon After Events, 1977; and see " The exection Of the Cairo Agreement", *Al- Mastaqbal Magazine* , 30 April 1977, p 20.

- (79)- Jawad Op cit note (68) pp 70-76.
- (80)- International Law Commission in its comment on Article 2 of the convention affirmed that the term "treaty" is used throughout as a generic term which cover all international agreements concluded between states and there is no particular or exclusive name for particular type of transaction" see the Report of the International Law Commission on the second part of its 17th and 18th session, 1966,G.A.O.R, 21st session, Supplement No.9, p 21; Doc A/6309/ Rev 1, Cited in P Weis, " The 1967 Protocol Relating To The Status Of Refugees And Some Questions Of The Law Of Treaties" B. Y. Book. I. L., Vol XL11, 1967, pp 49-50; and see Kelvin Widdows, " What Is AN Agreement In International Law", B. Y.B.I.L., Vol L, 1979, pp 118-149.
- (81)- See Article 2 paragraph (1) of Vienna Convention on the Law of Treaties
- (82)- "Introductory comment on the Law of treaty", A.J.I.L Vol 29, 1935, p 680.
- (83)- See The Case of Four Package Of Cut Diamond V United States, 1919, AJIL Vol 29, 1935, p 680.
- (84)- See Chapter Five, *The validity of Invitation under the Lebanese Constitutional Law*. pp 201-209.
- (85)- Guy Feuer, "Les Accord Passe's Parles Gouvernements De Jordanie Et Du Liban Avec Les Organisations Palestinienns, Annuaire Francaic De Droit International, Vol XV1, 1970, p 182.
- (86)- David E. Graham, " The 1974 Diplomatic Conference On The Law OF War: A Victory For Political Causes And A Return To The 'Just War' Concept Of The Eleventh Century", Wash.L. Rev., Vol 32, 1975, pp 30-31.
- (87)- Op cit note (85).
- (88)- R. Falk, "The Beirut Raid And The International Law Of Retaliation", A J I L, Vol 63, 1969, pp 423-424; Philip Marshall, " Sovereignty In Exile", A J I L, Vol 35, 1941. pp 666-68
- (89)- H. Lauterpacht, Recognition In International Law, 1947, p 371.

- (90)- Feuer Op cit note (85) p 188.
- (91)- Article 51 Of Vienna Convention; and for more information see T.o Ellias, The modern Law Of Treaties, 1974, pp 140, 167-176.
- (92)- Ibid., and see Article 52 of Vienna Convention.
- (93)- Khwyari, Op cit note (74) pp 130; Jawad, Op cit note (68) pp 73-74
- (94)- Faud Jaber, " The Palestinians Resistance And International Arab Politics", cited in William Quandt and Ann Mosely Lesch, The Politics OF Palestinian Nationalism, University Of California Press, 1973, p 193.
- (95)- Article 11 Of the Vienna Convention, where the Article expressed the idea that the consent can be expressed " ..by signature, exchange of instruments constituting ratification, acceptance, approval or accession or by any other means if so agreed"; On this issue One of the important figures in Lebanese Politics Rymmon Eddeh who opposed the Agreement affirmed: " ..the existence of the Palestinian Revolution, and its military wing, become constitutional after the Lebanese Parliament in December 1970 ratified the Agreement" and moreover, he affirmed that the Lebanese President told Mr Arafat that he should defend the camps as the Lebanese governemnt is unable to do so , see Khwyari Op cit note((74) vol 11, 1976, p 364.
- (96)- Ellias, Op cit note (91) pp 17-76.
- (97)- Article 46 of the Vienna Convention
- (98)- Permanent Court Of International Justice, ser. A/B, No.44 ,1932, p 24
- (99)- Ellias, Op cit note (90) pp 144, 143-152; Sir Ian Snclair, The Vienna Convention On The Law Of Treaties, 2ed ,1975, p 169.
- (100)- Id.
- (101)- Ibid. pp 144. For a wider view see Luzius Wildhaber," Provisions Of Internal Law Regarding Competence To Conclude A Treaty", VaJ In't.L., vol 7-8, (1966-68), pp 94- 149.

- (102)- Ibid. pp 143-152, and Sinclair pp 170; for general information see Theodor Meron, " Article 46 Of The Vienna Convention On The Law Of Treaties (Ultra Vires Treaties): Some Recent Cases", B.Y.B.I.L., Vol XLIX, 1978, pp 175-193.
- (103)- International Document On Palestine, 1975, p 515
- (104)- Junmblat, Op cit note (38) pp 44; and see Iddeh's statment Op cit note (94)
- (105)- See Fisheries Jurisdiction (United Kingdom V. Iceland), ICJ Report, 1973, p 18.
- (106)- J.L .Brierly, The Law Of Nations, 6th ed Waldock, 1963, pp 336-388
- (107)- Oliver J. Lissitzyn, " Treaties And Changed Circumstances", AJIL, Vol 61, 1967, p 900.
- (108)- Lord. Mc Nair, The Law Of Treaties, 1961, pp 436-437
- (109)- W.W. Bishop, " General Course Of Public International Law,1965 ", Recueil Des Cours, Vol 115, (1965-11), p 360 .
- (110)- H.W. Briggs " The Attorney General Invokes Rebus Sic Stantibus" AJIL, Vol 36, (1942), pp 90-93.
- (111)- Charles Cherey Hyde, International Law Chiefly as Interpreted And Applied By The United States, (2ed rev.ed) 1945.; J. W. Carner, The Doctrine Of Rebus Sic Stantibus And The Termination Of The Treaties", AJIL, Vol 21, 1927, p 509.
- (112)- Bishop Op cit note (108) p 360
- (113)- Lissitzyn Op cit note (107) p 900
- (114)- See Article 3 and 4 of Cairo Agreement.
- (115)- P.S.R.F. Mathijsen, A Guide To European Community Law, 4th ed, 1985, pp 231-156

- (116)- Id. and see Articles: 111,210,228,238, of EEC Treaty.
- (117)- The S.S Wimbledon Case, *Great Britian, France,Italy and Poland(intervening) v Germany* In World Court Report; A collection of the Judgement orders and opinions of the Permanent Court of International Justice (1922-1926), Edited by Manley. O Hudson, vol 1, 1934, p 175.
- (118)- W.Friedman, The Changing Structure Of International Law, p268.
- (119)- see the preamble of the Cairo Agreement and Article 14 which reads: " The Palestinian armed struggle is an activity in the interest of Lebanon as well as in that of the Palestinian revolution and all Arabs".
- (120)- See Article 13 of Cairo Agreement.
- (121)- International Document On Palestine, 1975, pp 428-29
- (122)- Ibid. p 492
- (123)- Id.
- (124)- See D.C Gordon, Lebanon The Fragmented Nation, 1980, pp 235, 244-245
- (125)- Op cit note (121) p 415

CHAPTER THREE

SYRIAN INTERVENTION UPON THE REQUEST OF THE REBELS.

I-Factual record: From 13th April 1975 to 4th January 1976.

Following the massacre of Ain-Rumaneh, the Lebanese internal parties to the conflict were further apart than ever before; a compromise amongst them seemed impossible. The leader of the Left Junmblat, having accused the Phalange of the massacre, demanded the exclusion of the party from the then government.⁽¹⁾ In retaliation, two ministers of the Phalange party resigned, followed shortly by another three ministers from the Liberal party.⁽²⁾ With the resignation of six ministers from the cabinet, the prime minister Solh, unable to perform his duties, offered his resignation on the 15th of May 1975.

On the 23rd of May 1975, president Franjieh nominated a retired military officer, Nour Al Refay, to form a government. As the new prime minister formed his cabinet⁽³⁾, a series of angry protests from the Left and traditional Muslims ensued; and both the Left and traditional leaders demanded the immediate resignation of Al Refay's government.⁽⁴⁾

The formation of a military cabinet as such provoked Syria to voice its concern over such a government.⁽⁵⁾ In the meantime, the fight continued to spread in the capital and its vicinity. Under such circumstances, the Lebanese president bowed to external and internal pressure, and hence the military government offered its resignation.⁽⁶⁾ A new government, headed by Karami, was formed and included some representatives of all the Lebanese parties. However, such a government did not succeed in halting the spate of violence which at that time spread beyond the capital to the centre and North of

Lebanon.⁽⁷⁾ A deadlock ensued as to whether to use the Lebanese army to halt the fight; the Christians insisted on its use whereas the Left and traditionalists refused its deployment.⁽⁸⁾ Furthermore, when the government of Karami agreed on the deployment of the army only in the north of the capital, charges were levelled against its impartiality.⁽⁹⁾

In such a context, the Syrian government moved to offer its mediation in order to ease the tension between the Lebanese parties, but with an implicit threat that unless the parties considered its initiative, other measures could be resorted in order to stop the fight.⁽¹⁰⁾ The Syrian initiative culminated in the formation of the Committee of National Reconciliation which was composed of the two opposing groups: the Left (LNM) and the Right (LF).⁽¹¹⁾ Despite the formation of such a committee, internal differences persisted as the LNM insisted on the implementation of its political reforms, whereas the LF insisted on maintaining law and order before any discussion of internal reforms.⁽¹²⁾

Fighting continued to rage on, which again forced the Syrian government to take a new initiative resulting in the formation of a new body, the " Higher Co-ordination Committee" which included both the LF and LNM.⁽¹³⁾ Like its predecessor, the committee failed to produce any results, and fighting erupted once more between the parties.

On the fourth of January 1976 the forces of the Lebanese Front initiated its major offensive on the Lebanese National Movement in an attempt to eradicate any Muslim presence in the Eastern sector. Their attempt resulted in laying siege to the major Palestinian camps Tall-Al Zatar and Jusr-Al Basha.⁽¹⁴⁾ The seige of the Palestinian camps dragged the reluctant Palestinian organisation (PLO) into the field of combat.⁽¹⁵⁾

With Palestinian participation, however, the course of fighting took a new dramatic course on both the domestic and regional levels. On the domestic level the Leftist forces retaliated by shelling the Christian coastal town on the Lebanese coast (Al-Damour) to pressurize the Right forces (LF) and to ease the siege of the two camps. In response, the right forces took the dramatic step of occupying another Palestinian camp (Al-Dabaya) and destroying it completely. Following the fall of camp Al-Dabaya a chain of retaliation took place. Leftist forces launched a major attack on the Christian town, Al-Damour, and Right forces attacked the Muslim slum area in Al-Masalkh and Al-Karantina and razed it to the ground after killing thousands of its inhabitants.⁽¹⁶⁾ The Left attack on Al-Damour ran into difficulties as their forces engaged in battle with the Lebanese Army which used its fighters to repel the attackers. The Muslim Prime Minister, Karami, was infuriated as his orders for the army withdrawal from combat fell on deaf ears, and news of a new massacre in the slum area (Al-Karantina and Al-Masalkh) left him with only one option, which was to offer his resignation.

On the regional level, the domestic development awakened Syria to the critical development which was taking shape in Lebanon. The attack on Palestinian camps and the engagement of the Lebanese Army aroused a reasonable fear in the minds of the Syrian decision-makers. As Syria perceives itself as the beating heart of Arabism and the champion of the Palestinians, dislodging Muslims from the Christian sector in order to set up a Christian state was utterly unacceptable to Syria. The defeat of the Palestinians and the Lebanese National Movement would lead to the defeat of Syrian policy and interest.⁽¹⁷⁾ To Syria, the events in Lebanon were of Syrian concern and any development should bear the Syrian seal of approval. The Syrian attitude towards the LF policy of attacking the Palestinians was made very clear in a statement made by the foreign minister, Kaddam: "This is a very sensitive situation in relation to us in Syria, and in relation to the presence of Palestinian resistance there".⁽¹⁸⁾

The Syrian Foreign Minister determined that his country's attitude was that Lebanon's partition was unacceptable. The occupation of the Al-Karanitina and Al-Masalkh enhanced the belief that the LF was strengthening its position in an enclave which could be a prelude to a sessionist policy. In response to that Mr Kaddam affirmed Syria's stand vis a vis the LF policy by saying:

"We made it clear in a decisive manner, that we would not permit the partition of Lebanon, any initiative for partition would mean our immediate intervention. For Lebanon was part of Syria and we would restore it with any attempt at partition .(19)

The Lebanese Front, however, did not give any regard to the Syrian warning, and on the contrary, its forces continued their attack on the Leftist positions. In the wake of these events, the Syrian decision makers decided to intervene to correct the imbalance in the Lebanese equation.

II- The Syrian justification

President Assad, in his famous and major speech regarding Syrian policy in Lebanon, explained his government's policy and the legal ground upon which the Syrian troops intervened in Lebanon. He drew his people's attention to the international conspiracy that beset Lebanon and the Syrian duty bound to foil it so defending the unity of Lebanon. He plainly outlined his government's option in such terms: "...we said that this plot cannot achieve its objectives except through fighting. Therefore, in order to foil the plot, we had to stop the fighting." Therefore, according to Assad's calculation the only way to stop the fight, was by rendering support to the left forces as "...the balance of forces was not equal, and fighting could not have stopped. This is why we were compelled to give weapons and ammunition".(20)

The legal ground upon which the President relied to explain his action of providing weapons to the rebel forces was largely explained in terms of policy, not law. However, regarding the dispatch of the PLA (The Palestinian Liberation Army), he vaguely referred to the legal justifications by pointing to the "Arumun summit" which, in the view of the President, provided the legal backbone to the Syrian intervention. In Assad's account, the Arumun summit which included various Muslims and Left leaders asked President Assad to contact the Lebanese President to arrange for a cease fire and prevent the right forces from storming the Western sector. Despite Assad's unwillingness, the fighting resumed and hence the participants of Arumun summit contacted him again urging him to save them from imminent defeat

The next day, the President received the leaders of nationalist parties (LNM) and assured them that Syria would be on their side by saying:

"...we are with you and with the Lebanese people. We will oppose the massacres. We will oppose the liquidation because this is in the interest of all the parties in Lebanon. We sent in the PLA and other forces, and matters were supposed to return to normal".(21)

The sending in of the PLA was the only option available to the Syrian government, for the presence of the Syrian Army would have provoked an Israeli retaliation. This assumption was inferred from Assad's statement:

"Thus, we said, we must go in to save Resistance. We decided to go in under the name of the PLA. The PLA began to go into Lebanon and nobody knew of this".(22)

With the Syrian intervention under the guise of the PLA, the only relevant question is whether or not Syria could intervene legally under such a justification. An intervention on the side of the rebel forces in the Lebanese civil war is not an ordinary event, irrespective of the invitation of Arumun summit; an evaluation of its legality is to

a great extent dependent on the legal status of the rebel forces at the time of intervention. In order to assess the legality of the Syrian intervention, two questions have to be answered:

(a)- Is the Syrian intervention consistent with the rules of customary international law ?

(b)- Is the Arumun Summit's invitation a valid justification under international law ?

To answer the first question, a general review of the customary rules of civil war is necessary. And if the inquiry proves that the Syrian government had no legal ground to intervene under the customary rules of international law, then the second question will be considered under the contemporary rules of international law.

In order to analyse the Syrian military action and determine its legality, one has to go through the existing norms of customary International Law and see to what extent the Syrians adhered to the said rules. In dealing with the customary law of civil war, however, one has to bear in mind the fragility of the rules in question and the strong tendency of most contemporary writers to regard it as irrelevant and outmoded. However, since there is no set of coherent and recognised rules bearing on the subject, the customary rules of International Law are indispensable.

II- The classical rules of International Law.

Customary International Law regarded the existence of a civil war as a domestic matter which has no legal connection with the subject of International Law. This view in one way or another accelerated the trend towards its demise, given the great effect that civil war has on the international arena. Despite this fact, many writers still regard

the customary law of great help in considering civil war by establishing the boundaries between domestic and international matters and moreover by determining the rights and duties of foreign states towards the parties of the civil conflict.⁽²³⁾

The customary Law's crucial thrust is the norm of non-intervention which binds foreign states to refrain from any action that violate the norms. In doing so the law offers a set of rules which precisely determine at what stage foreign states could regard the ensuing events in a state as being no longer within its domestic jurisdiction. So long as the matter is within a state's jurisdiction, foreign states have no legal right to intervene since they have no right to pass judgement on the merit of any case which is taking shape in the said state. This principle dates back to the time of Vattel who strongly asserted that:

"foreign nations must not interfere in the affairs of an independent state. It is not their part to decide between citizens whose civil discord has driven them to take up arms, nor between sovereign and his subject".⁽²⁴⁾

From such premises the customary law proceeded to deal with the subject of International Law and hence classified it into three categories. The categories, in view of the law, redraw the relation between the parent states and the parties and both of them with the outside states. The categorization of the conflict cover these three stages: rebellion, insurgency and belligerency.

The first category is identifiable with the surge of violence and spread of disobedience in the civil society. Precisely, it is a term applicable to "an uprising against a lawful authority which is lacking in any resemblance to justice."⁽²⁵⁾ Or it refers to this kind of domestic violence in which "there is sufficient evidence that the police force of the parent state will reduce the seditious party to respect the municipal law."⁽²⁶⁾ Then, it follows, according to customary law, that as long as the domestic violence is within

the said category, the parent state has the monopoly to deal with the matter as it is essentially within its domestic jurisdiction. Whatever the means employed by the parent government, the rule is very clear that foreign states have no right to intervene.⁽²⁷⁾ It follows that foreign assistance to the rebellious party constitutes a violation of the norm of non-intervention which is a pillar upon which sovereignty and independence stand. Thus, assistance is asymmetrical whereby assistance to the incumbent government is legal, and to rebel forces, illegal.

The implicit rationale of this rule clearly emanates from the perception that rebel forces were perceived by both the parent government and foreign states as mere law breakers fitting neatly into the category of robbers and criminals.⁽²⁸⁾ Therefore, customary law regards rebel forces as having no status in International Law at all, and by implication there is no acknowledged place for rebellion in International Law.⁽²⁹⁾

The second category is insurgency where the violence stretches out beyond the definition of the first category. As a matter of fact, the status of insurgency is imbued with ambiguity and confusion. It serves as an indication of the fact that the military struggle by the rebel forces is no longer within the confined limit of the rebellion, that is to say, it is "an intermediate stage between a state of tranquility and a state of civil war"⁽³⁰⁾ Thus, with the status of insurgency, the violence is not on a small scale which the police force could suppress, but a new stage in which the insurgents strengthen their grip on a certain territory and the incumbent government seems unable to contain their military power or suppress it. Insurgency, then floats the cause of the insurgents to the surface when this happens, foreign states should take note of the existing development inside other states especially when such developments affect their interest.

Foreign states cannot treat the issue with indifference, as insurgency gives rise to

the application of certain rules especially those relating to humanitarian law. However, insurgency is not very successful in bringing the insurgents to an equal footing with the incumbent government, and their position is virtually the same as the first stage of rebellion. The fact remains that, as long as the status of belligerency is not achieved, the incumbent government is still regarded in the eye of International Law as the constitutional authority to which all assistance is permissible. It was argued that insurgency is a mere recognition or proclamation of civil war and an indication that the insurgents have de facto status with respect to some issues, such as protection of foreign property or nationals in a sense that foreign states could be in contact with insurgents regarding these issues without prejudicing the right of the incumbent government. However, such a recognition does not give rise to any legally binding obligation on foreign states which are still bound by law to continue their support for the incumbent government; and hence any support for the insurgents will run against the existing law.⁽³¹⁾

Bearing this point in mind, the United States Department ruling during the 1930 revolution in Brazil supports the preceding view. The Department's decision prohibited the shipment of all arms to that country (Brazil) except to the incumbent government:

"..until belligerency is recognised and the duty of neutrality arises, all the human predispositions towards stability of government , the preservation of international amity and the protection of established intercourse between nations are in favour of the existing government".⁽³²⁾

Therefore, in general, the status of insurgency does not differ practically from the status of rebellion; it gives states only more freedom and flexibility in determining their reaction or attitude according to their interest whenever the occasion arises, but it does not breach the limitation of law which prohibits assistance to the insurgents. The interest in question is only that related to the protection of property and nationals where

necessity forces foreign states to do so, since the incumbent government is incapable of securing the foreign states interest. However, in assigning to states the right to determine the quantum of legal relations subjectively, the law at this point transcends the criterion of objectivity and replaces it with expediency.

It is no wonder that the status of insurgency was regarded as such " a catch all designation provided by international law to allow states to determine the quantum of legal relations to be established with the insurgents".(33) As a whole, insurgency is " an international acknowledgment of the existence of internal war, but it leaves each state substantially free to control the consequences of this acknowledgement. It also serves as a partial internationalization of the conflict without bringing the status of belligerency into being".(34)

The third category is the status of belligerency in which the conflict takes a dramatic course and the conflict can no longer be regarded as a domestic issue. Belligerency transfers the conflict from its domestic concern into an international arena and thereby brings the rules of neutrality into operation.

The recognition of belligerency by the foreign state is the acknowledgment of the fact that the incumbent government is no longer the sole beneficiary of assistance but, on the contrary, is on equal footing with its opponents. However, belligerency is not to be granted without any qualification at all: there are certain criteria which ought to be fulfilled and respected. Oppenheim determined the conditions that need to exist before granting the status of belligerency. To him, these conditions are as such:

" The existence of civil war accompanied by a state of general hostilities; occupation and a measure of orderly administration of a substantial part of national territory by the insurgent forces acting under a responsible authority; the practical necessity for the third state to define their attitude to civil war".(35)

Oppenheim's statement summarized the universal conditions regarding the status of belligerency; foreign states are under a legal duty to extend their recognition of belligerency whenever these conditions exist.⁽³⁶⁾ To recap, the status of belligerency required the existence of four conditions: First, the existence of general hostilities which means that the fighting is conducted on a large scale which makes it completely different from sporadic fighting. Second, the occupation of a large portion of territory and the administering of it by the insurgents. Third, the conducting of hostilities by the insurgents in accordance with the law of war by setting up a responsible command and having organized forces. Fourth, there is a need, in view of the circumstances for outside states, to grant the recognition of the status of belligerency. The existence of all four conditions gives rise to the need to recognise the status of belligerency. However, there is no agreement that the recognition is legally obligatory, as most states affirm that recognition is a political and not a legal act. However, recognition of belligerency, on the other hand, before the existence of the said conditions is a premature recognition which the law perceives as illegal and a violation of the norm of non-intervention. Therefore, with the status of rebellion, insurgency and finally belligerency, one could proceed to analyse the Syrian intervention in the light of the above classification.

The crucial questions which arise in this context are: what was the status of the Lebanese National Movement when Syria intervened on its side against the established legal government and its allies; and, consequently, was the Syrian government justified in its military action? Another question is of special relevance: to what extent had customary law managed to cope with foreign intervention in civil war; or to put it differently: does the law offer suitable rules that could control the violence emanating from civil war?

IV-The legal assessment of the Syrian intervention under customary International Law

The Syrian government's indirect intervention, to shore up the waning power of the Leftist forces (LNM) and Palestinian resistance, could hardly be regarded as consistent with the customary law of civil war. The Syrian government did not offer any legal argument regarding the status of the parties in order to justify their action. The government's failure, leaves one with the task of analysing the Syrian action by relying only on their actual conduct and their various political statements.

Intervention on the side of the Leftist forces was not the only step which was taken by Syria but on the contrary, they extended every possible help to the leftist forces before their collapse. The Syrian President explained this with surprise when witnessed the collapse of the leftist forces by saying:

"we have offered everything we could...despite our political and military effort as far as offering arms and ammunition in large quantities and various types, one day the front of the nationalist parties and the front of the Palestinian resistance collapsed".(37)

The collapse itself presented Syria with the awkward dilemma which was projected by Assad as follows:

"either we do not intervene and the resistance in Lebanon collapses and is liquidated in the view of the military situation and in the need for help; or we do intervene and save the resistance".(38)

The Syrian military action, however, was not in line with the wishes of the legitimate Lebanese government which protested against the Syrian measures. The Syrian response was very clear as Assad recalled the conversation between himself and

the Lebanese President over the issue, where he affirmed to the latter that, "our stand [the Syrian] towards the Palestinians was consistent and that as far as the Palestinians were concerned there was a red line that we would absolutely not allow any one to go beyond".⁽³⁹⁾ However, to what extent the Syrians were justified in rendering military assistance and finally crossing the border under the banner of the PLA, is the crucial question.

The only possible interpretation of their military action lies in the likelihood that the Syrian government viewed the conflict as one falling neither in the category of rebellion nor insurgency. For the simple fact is that insurgency and rebellion do not offer a legitimate excuse for their conduct since the only permissible assistance is that accorded to the legitimate government, not rebels.

Therefore, the only category left is the status of belligerency where neutrality is supposed to be the norm whenever the foreign government recognises the status of belligerency. Despite the fact that the concept of belligerency has not been much in use since the American Civil War, various states in explaining their military assistance to the rebel forces, recognised them as the legitimate government. During the Spanish Civil War, the Franco regime was recognised by Germany and Italy and hence they offered it full military assistance which culminated in its victory. Therefore, recognizing the rebel forces as the legitimate government, could offer the justification needed, provided there was a legal ground for such a recognition; otherwise, it would constitute a hostile act to grant premature recognition.⁽⁴⁰⁾

Assuming that the Syrian government recognised the Leftist forces as the legitimate government, one wonders whether or not such a recognition was premature. The rebel forces far from satisfying the four conditions laid down earlier in order to be recognised as belligerents, failed to hold on to any territory and they were far from fighting under a

unified command. Moreover, the rebels themselves did not declare their own government nor considered the Lebanese government illegal, and the most they demanded was the reform of the Lebanese system.⁽⁴¹⁾ On the contrary, the Lebanese government was in full control politically and militarily, despite the differences amongst the Lebanese leaders regarding the deployment of the Army. It would not be unrealistic to view the status of the LNM as that of mere rebellion, where the army could manage quickly to suppress it if it was given the proper legal and political authorization. In view of the foregoing fact, the Syrian assistance to the LNM and Palestinians through the flood of arms and ammunition, was illegal under the customary rules of the International Law.

Customary International Law viewed such assistance as violative of International Law and the sovereignty of the state in question. International Law prescribes assistance to rebel forces so long as they did not achieve the status of belligerency and were recognised by foreign states as such. In 1900, the Institute of International Law adopted a resolution relating to foreign intervention and the rights and duties of states. The resolution under the chapter of duties of foreign powers towards the incumbent government and in particular Article 1(2) as such states: "It is bound not to furnish the insurgents with either arms, ammunition, military goods, or financial aid." More relevant is section 3 of Article (1) which reads:

"It is especially forbidden for any third power to allow any hostile expedition against an established and recognised government to be organized within its domain".⁽⁴²⁾

Since the Syrian government did not declare its recognition of the rebel forces as the legitimate government⁽⁴³⁾ and so long as there was no ground to view the LNM as the full belligerent enjoying an equal status to the Lebanese government, the Syrian action was illegal and was a violation of the norm of customary International Law. This

verdict is consistent with contemporary international law where the use of force is prohibited and considered one of the most serious crimes. Article 2 (4) of the United Nations Charter makes it clear that the use of force in international relations is no longer permissible. Moreover, the General Assembly Resolutions, and in particular the 1970 Declaration on the Principles of International Law affirms that:

" no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state".(44)

Relevant to the discussion is the General Assembly's Definition of Aggression which in Article (1) says that:

" Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition".

And Article (3) of the Definition of Aggression and in particular paragraph (g) which reads:

"The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the act listed above, or its substantial involvement therein".(45)

However, the International Court of Justice in its ruling in the Nicaragua case did not strictly agree with the above view, as the court demanded the existence of a substantial involvement in order to consider irregular or mercenary attacks as acts of aggression. The Court went on to say:

" It may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces

on an international border, but also the sending by or on behalf of a state of armed bands, group, irregular or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to (inter alia) an actual armed attack conducted by regular forces or its substantial involvement therein".(46)

However, such a conclusion was neither agreed upon amongst international Lawyers nor amongst the Judges who ruled in the Nicaragua case. Judge Schwebel in his dissenting opinion affirmed that :

"Let us assume, arguendo, that the court is correct in holding that provision of weapons or logistical support to rebels of themselves may not be tantamount to armed attack (an assumption which I do not share, not least because the term 'logistical support' is so open ended, including , as it may, the transport, quartering and provisioning of armies). It does not follow that a state's involvement in the sending of armed bands is not to be construed as tantamount to armed attack when, cumulatively, it is so substantial as to embrace not only the provision of weapons and logistical support, but also participation in the re-organization of the rebellion; provision of command-and- control facilities on its territory ... provision of training facilities for those armed bands on its territory and the facilitation of passage of foreign insurgents to third countries".(74)

Many writers among them Brownlie, affirmed the same view by saying:

" It is conceivable that a co-ordinated and general campaign by powerful bands or irregular troops, with obvious or easily proven complicity of a government of a state from which they operate would constitute an armed attack".(48)

Therefore, since the Syrian government sent the PLA troops into the territory of Lebanon to support the Leftist Forces and Palestinians against the wishes of the Lebanese Government, their action clearly falls within the above description. The Syrian president himself recognised the difficulty of giving assistance to rebel forces,

as he recollected in his speech the conversation between him and the president of Lebanon as to the entry of the PLA into Lebanon to save the resistance and the National Movement by saying " This what I said to President Franjeh [saving the resistance] while knowing that such talk between two heads of state is more than necessary and more than what is acceptable".⁽⁴⁹⁾ Therefore, since the PLA was commanded and directed by the Syrian government and since the President of Syria admitted such an action, the military intervention on the side of rebel forces was illegal and against the customary rules of civil war and contemporary international law.

V- The Validity Of Arumun Summit's Invitation.

The reference to the Arumun Summit by the Syrian president deserves close scrutiny. So as to give legality to the Syrian action, the Syrian president emphasised that amongst the convenors in Arumun was the Lebanese prime minister. As far as the Arumun Summit is concerned , there are two questions: was there really an invitation ? and if that was answered positively then what is the nature of invitation and apart from its content, is it really valid under contemporary international law ?.

In fact, there is ample evidence that the Summit of Arumun appealed to the Syrian president, and indeed the summit at that time had held regular meetings which included most of the Muslim and Leftist leaders at that time. However, the most important question is: did the Arumun Summit invite the Syrian president to send his army into Lebanon? As far as this question is concerned, there is no clear evidence that an invitation was issued and the only mention of that invitation is by Assad himself.

Assuming there was an invitation, it was hardly acceptable under international law. After all, the Summit of Arumun had no legal or constitutional status to invite foreign troops into the country against the wishes of the legitimate government.

However, since the prime minister was present, and if the assumption as to the existence of an invitation was still valid, then a line of legality could be established. The prime minister being the representative of government may give a ground of legality for the Syrian military action. This was not, however, the case, as the prime minister under the Lebanese constitutional law had no power to invite or sign a treaty with a foreign nation without the approval of the Lebanese president and parliament.⁽⁵⁰⁾ Such an invitation is illegal unless approved by the president and parliament. Moreover, the Prime Minister, following the use of Lebanese army against the rebel forces, offered his resignation⁽⁵¹⁾, and hence he had no constitutional authority whatsoever. As such, the citing of the Arumun summit as a justification is not legally valid since that summit of Arumun could at best be considered as a council of opposition which had no constitutional character.

Apart from the illegality of the Arumun Summit, an invitation from such a body, assuming it was to represent to some extent the rebel's view, is of no legal importance in international law. An invitation from the rebel forces is illegal under customary and contemporary international law.⁽⁵²⁾ The International Court of Justice in the Nicaragua case asserted this view :

" It is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a state, were also to allowed at the request of the opposition. This would permit any state to intervene at any moment in the internal affairs of another state, whether at the request of the government or at the request of its opposition. Such a situation does not in the Court's view correspond to the present state of international law" .⁽⁵³⁾

It is beyond any doubt, that an invitation from any groups other than the government is invalid under the rules of international law. For admitting the invitation of the rebels would represent a fundamental change in the present rules of international law.

What is more relevant, apart from the illegality of the invitation by the Arumun Summit is the content of the invitation. President Assad himself conceded that the Arumun Summit asked him to speak to the Lebanese president on their behalf to stop the use of the army and prevent the LF from moving closer to their military positions.⁽⁵⁴⁾ As such, the use of force by the Syrian president is clearly beyond the actual request.

More to the point, no invitation for military intervention was ever issued. Saab Salam, the ex-prime minister, testified that the Arumun Summit did not issue any invitation. What was revealed was " the council of Arumun did not request a military intervention, and the Council's acquiescence to Syrian political mediation could hardly be interpreted as a sanction to military intervention".⁽⁵⁵⁾

Therefore, since there was no such invitation, and even if there had been, the invitation could hardly have been regarded as valid, given the legal status of the Arumun Summit and since the invitation by the rebels was invalid under contemporary international law, then the Syrian intervention in response to the Armun Summit was an illegal intervention.

VI- CONCLUSION.

Intervention, upon the rebels request, is not a matter which directly falls within foreign state decision-makers powers. Customary international law set the conditions for such a decision to be made. In a civil war, customary international law recognised three stages which foreign state must recognise. These stages are rebellion, insurgency and belligerency. The first two categories gives a foreign state no right to render any support to the rebel forces. On the contrary the government is the main beneficiary through the two said categories. However, a point has to be made that the traditional or customary rules of civil war are quite inadequate for the present type of civil war. In fact, the said rules were devised to respond to the old type of civil war and cannot meet the present complexities of modern civil war. According to such law an intervening state could cloth intervention with legality by recognizing the insurgents as belligerents. As there is no impartial body to determine the gradation of status of rebels or insurgents, states are left to determine subjectively whatever pleases them or serves their interest.

As far as the Syrian intervention is concerned, an intervention following the Lebanese Leftist forces request is not permitted under customary international law. The Lebanese Leftist forces at that stage were far from achieving the status of belligerency. Their status at best could be categorized as insurgency, if not rebellion, and as such, the Syrian intervention was a clear violation of customary international law. Moreover, the Syrian intervention is also a violation of contemporary international law; it is against the Charter of the United Nations and especially Article 2 (4) and various General Assembly resolutions.

As to the invitation of the Arumun Summit, the invitation was not issued from a proper constitutional body. Moreover, the invitation was not valid under international law which does not recognize as legal an invitation from rebel forces. Relevant to the

point is the content of the invitation, as it only requested Syrian officials to continue their political mediation but did not invite them to initiate military intervention. As a whole, the Syrian intervention clearly countered against both customary international law of civil war and the United Nations Charter.

FOOTNOTES

- (1)- J. Bulloch, Death Of A Country The Civil War in Lebanon, 1978, pp 75-76; P. Edward Haley and Lewis W. Snider, Lebanon In Crisis: Participants and Issues, 1979, p34
- (2)- Id; W. Kalidi, Conflict and Violence In Lebanon, 1979, p 47.
- (3)- Bulloch, Op cit note (1), Kalidid, Ibid P 47
- (4)- Bulloch, Ibid pp 78-79, Kalidi, Ibid pp 47, M.Deeb, The Lebanese Civil War, 1980, p 2; Haley and Snider, Op cit note (1), p35
- (5)- Bulloch, Op cit note (1) p 81; Deeb Ibid, p 2, Haley and Snider Op cit note (1) p35.
- (6)- Bulloch Id; Haley and Snider, Id
- (7)- Bulloch, Ibid p 83; Haley and Snider, Id; Kalidi, Op cit note (2) p 49
- (8)- Bulloch, Ibid p 84-85, Deeb, Op cit note (4) p 3
- (9)- Bulloch, Id; A. Khuwayri Antwan, Hawadith fi Libnan, 1975 [The Event In Lebanon, 1975], 1976, pp 177-78; K.S.Salibi, Cross Road to Civil war, 1976 pp 177-78.
- (10)- Bulloch, Id.
- (11)- Bulloch, Ibid p 86; Deeb Op cit note (4) pp 2; Kalidi Op cit note (2) p 49
- (12)- Bulloch, Id.
- (13)- Bulloch, Ibid p 89; Kalidi, Op cit note (2) p 52; Haley and Snider, Op cit note (1)

- (14)- Bulloch, Ibid pp 102-103
- (15)- Bulloch, Id; D.C Gordon, Lebanon The Fragmented Nation, 1980; p 244.
- (16)- Bulloch, Ibid pp 104; Kalidi Op cit note (2) p 51.
- (17)- Adeed I.Dawisha, Syria And The Lebanese Crisis, 1980, p 116
- (18)- Al-Nahar (Lebanese Newspaper) 8th January 1976; and see Naomi Joy Weinberger, Syrian Intervention In Lebanon: The 1975-76 Civil War, 1986, pp 180-181.
- (19)- Id.
- (20)- See the text of Assad's speech (Whole of speech printed in Itamar Rabinovich, The War For Lebanon:1970-1983, 1984)
- (21)- Id
- (22)- Id.
- (23)- R. Falk, "International Law Of Internal War", Legal Order In A Violent World, p 113
- (24)- E. Vattel, The law Of Nation Cited in Vietnam War And International Law, Vol I, 1968, p 19.
- (25)- Id p 20.
- (26)- Lothar Kotzsch, The Concept Of War In Contemporary History And International Law, 1965, p 230

- (27)- See Resolution of the Institute of International Law Dealing with the Law of Nations, 1920, pp 157-61 and Particularly Article 2
- (28)- Marjorie M Whiteman, The Digest of International Law, Vol 2, 1963, p 489.
- (29)- Kotzsch, Op cit note (26) p 230.
- (30)- T. C. Chen, The International Law Of Recognition, 1951, p 398.
- (31)- C.C Hyde, International Law Chiefly As Interpreted And Applied By The United States, 2ed, Vol 1, 1947, p 204
- (32)- R. Higgins, " Internal War and International War, in R.Falk, The Future Of International Legal Order, Vol 111, 1971, p 98.
- (33)- R. Falk, The International Law Of Civil War, 1971, p 119
- (34)- Id; another writer defined insurgency as such: " Insurgency, then, are an organized body of men within a state pursuing public ends by force of arms and temporarily beyond the control of the established government" in Bartelle Talmadge L, " Counter insurgency And Civil War", N.D. L. Rev. Vol 40, (1964) pp 263; 264
- (35)- Oppenheim, International Law, Ed H. Lauterpacht, 8th ed, Vol 1, 1955, pp 249
- (36)- Id.
- (37)- Assad's speech, Op cit note (20).
- (38)- Id.
- (39)- Id.
- (40)- Lauterpacht , Recognition In International Law, 1947, p 283; and see Op cit note

(34) p 262

- (41)- K. Junmblat, I Speak For Lebanon, 1982, pp 40-50; and see Chapter 11, the identification of the parties to the Lebanese conflict.
- (42)- See Op cit note (27).
- (43)- The Syrian President acknowledged in his speech that the Lebanese president is represented the legitimate government not the rebel forces see Assad's speech Op cit note (20).
- (44)- G.A Res 2625 (XXV) 24 October 1970.
- (45)- Aggression as defined by the General Assembly Resolution 3314 (XXIX) 1974
- (46)- Case Concerning Military and Paramilitary Activities in and Against Nicaragua, Merit in ILM Vol 25, 1986, para 195, p 1189
- (47)- Ibid, dissenting opinion, para 171, p 1184
- (48)- I. Brownlie, International Law And The Use Of Force By States, 1963, pp 278-79, 373; R. Higgins, " The Legal Limit To The Use Of Force By Sovereign States" , B.Y.B.I.L Vol 37, 1961, p 269; C.H.Waldock, " The Regulation Of The Use Of Force By Individual States In International Law" , Recueil Des Cours, Vol 81, 1952, part 11, pp 496-97; Ahmad M. Rifaat, International Aggression, 1979, p 217; The United States and Israel viewed the PLA not as Syrian forces and hence is not attributable to Syria but to Palestinian Revolution, see Bulloch Op cit note (1) p 109; according to one writer the PLA intervention " was to all intent and purposes a regular part of the Syrian army, with Syrian officers though most of the other ranks were Palestinian" Bulloch p 48.
- (49)- Assad's Speech Op cit note (20).
- (50)- See the Section relating to the validity of invitation under the Lebanese

constitution Law, chapter five.

(51)- Bulloch, Op cit note (1) p 104

(52)- Op cit note (27) and (39).

(53)- see Nicaragua Case Op cit note (46), para 246, p 1079

(54)- Assad's speech Op cit note (20)

(55)- Arab Political Document, 1976, p 497.

CHAPTER FOUR

SYRIAN HUMANITARIAN INTERVENTION.

INTRODUCTION

After the 15th of April the Lebanese civil war escalated to an unprecedented level of violence which by then was not restricted to the capital and its vicinity but to engulfed all of the Lebanese territory. By the end of May 1976 the balance of power shifted to the side of the Lebanese National Movement. Thus the leftist coalition pushed their forces to squash the Lebanese Front in an attempt to put an end to the confessional system. In response to this challenge the Lebanese Front aired their well-known partition plan as a last resort.

Such a development was mainly due to the disintegration of the Lebanese Army whose well trained soldiers and officers, once disbanded, contributed to these dramatic events. Thus, with the breakdown of the army which until then was the symbol of the Lebanese government and its powerful tool, the prospect of a one party victory loomed more than ever before.

The unfolding events in Lebanon were such that they disturbed Syria and set its leaders into motion. For the Syrians, the elimination or subjugation of one party to the will of the other was not acceptable at any price. The Syrian decision makers experienced a great deal of difficulty in their effort to reach a settlement to the conflict. The Syrian officials failed to do so because their perception of the events greatly differed from that of the parties concerned. To Syria, the Lebanese civil war was not a war emanating primarily from internal discontent rather than from an international conspiracy designed to implicate Syria and weaken its stand against Israel and the

United States and furthermore to drag Syria and the Palestinian Liberation Organisation into the Lebanese quagmire.

From the beginning of the civil war, the Syrian officials employed a variety of techniques ranging from negotiations, assistance to one party or another, and application pressure whenever it was deemed necessary. However, their mediation was met with extreme resistance from the Lebanese National Movement which considered the sanction of confessionalism as a serious blow to its programme and a Syrian betrayal to the principles of socialism. In Jumalat's words, "All our present woes stem from this political confessionalism....what we have now is a crusade by all patriotic Muslim and Christians for the secularization of the Lebanese state, the elimination of political confessionalism, and the establishment of a unitary state on a civilian foundation".⁽¹⁾ Left with no option, the National Movement after a long discussion resorted to the military option to implement the envisaged reforms. In taking this road, the Lebanese National Movement was assuming that the Syrians would stand idle.

Suddenly, and apparently without the knowledge of the National Movement, a battalion of the newly formed Arab Lebanese Army surrounded a Christian town in the extreme north of Lebanon and demanded the surrendering of the town or its total destruction. That very day, the people of the town appealed to the president of Syria, imploring him to intervene to save the people of the besieged town. Responding to this appeal, the Syrian army crossed the border under the banner of humanity to lift the siege and stop the bloodshed in Lebanon. Their intervention was classified as humanitarian and at the same time they stressed the fact that they had been invited by the Lebanese government. However, this chapter is mainly concerned with humanitarian justification and the next chapter will deal with the legitimacy of intervention under the concept of invitation .

With the Syrian intervention, the Lebanese civil war took on a new dimension and the conflict was transformed into an international conflict. Bearing this in mind, the question is: to what extent were the Syrians justified in their invocation of the concept of humanitarian intervention, and does such a right exist under contemporary international law? Therefore, as far as this chapter is concerned, the Syrian intervention will be dealt with in such a way as to answer the above questions. This chapter will be divided into the following sections :

(1) Prelude to the Syrian intervention :A factual record.

(2) The Syrian justification of their intervention.

(3) The concept of humanitarian intervention under contemporary international law.

(4) Legal analysis of the Syrian intervention

(5) Conclusion.

1-Prelude To The Syrian Intervention:A Factual Record

Since the 20th January 1976 and especially after the intervention by the PLA and until March of 1976 everything appeared unworkable; the Lebanese conflict was raging on and the prospect of a cease fire was remote. The Syrian plan for reforming the Lebanese system which was introduced following the PLA intervention was a catalyst which aggravated the situation.⁽²⁾ Many steps were undertaken to reduce the tension

amongst the parties but to no avail. With total opposition from the LNM to the Syrian plan which was known as the *document of 14th February*, the prospect of a settlement seemed impossible. Adding to the tension, was the disintegration of the Lebanese Army, the last symbol of Lebanese unity and government's control. The bulk of that Army joined the LNM and declared its loyalty to its leader and insisted on the implementation of the LNM political programme.

In an attempt to stop the disintegration of the Lebanese Army a pre-planned coup was staged by an old officer with the help of the Palestinian Liberation Organisation (PLO). The Palestinian involvement in the coup is quite puzzling. However, many factors suggested that the Palestinian leaders were unhappy about the total disintegration of the Lebanese government. One of these was the potential risk inherent in the disappearance of the Lebanese government which could open the door to a Syrian or Israeli intervention. However, the coup was not successful due to the extreme polarization of Lebanese society and the limited number of soldiers that was available to General Ahdab ; the leader of the coup.⁽³⁾ Although the coup was a complete failure, it brought about a new issue in the political theatre: the resignation of the Lebanese president as a way out of the crisis. The president responded by declaring that his resignation could only be considered when the Lebanese parliament requested him to do so. Although, parliament did so, the president refused to resign.⁽⁴⁾

Confronted with this impasse the LNM, with the assistance of the Arab Lebanese Army (ALA), marched to the presidential palace in an effort to force the president to step down. However, the military expedition advancement was halted when their way was blocked by the Palestinian Liberation Army (PLA) and a unit of the Saqia. Those units were acting under orders from the president of Syria who personally declared in his famous speech that such an option would not be tolerated.⁽⁵⁾

Given the impossibility of breaking through the barrier, the ALA commander ordered the shelling of the presidential palace by artillery to convey the message that he was no longer secure. Indeed, the president, under artillery bombardment fled the palace and took refuge in the bastion of the Lebanese Front. At this juncture the Syrian government warned the Leftist forces that if they did not terminate the military offensive, the Syrian army would be forced to intervene.

Bowing to this pressure, the LNM accepted a Syrian plan to amend the constitution and to clear the way for the election of a new president before the end of president Franjeh's term in office. However, the election of a new president did not solve the problem as the leftist forces accused Syria of imposing her candidate i.e Elias Sarkis. Added to this, the ex-president refused to hand over power to the newly elected president before the end of his term. This impasse led to a new round of fierce fighting in which the victory of the LNM was a reality. The leader of the Phalange Party in his appeal to the Christians reflected this reality when he said:

" Our people and our army are dispersed...there is no legislature , no judiciary, no sovereignty....Ruin and destruction spread over villages and cities,towns and mountains. I appeal to you, men and women to unite for the homeland.(6)

By that time, Syrian decision makers could not wait any longer as the intransigence of the leader of the LNM and PLO reached its climax. The Syrians interpreted this as a threat to its policies in Lebanon. On the 29th of May, a dramatic event took place when a battalion of the ALA surrounded two villages in the north of Lebanon. The officer of the force made his demands very clear," I am intending to destroy these towns if Franjeh does not give up the presidency".⁽⁷⁾ Responding to such a dramatic event the Syrian government finally decided to intervene directly in the Lebanese civil war, and put an end to the existing tragedy. In their intervention the Syrian government presented two justifications: Humanitarian and upon invitation.

II- The Syrian Government's Reference to Humanitarian Intervention.

The Syrian government advanced the argument that their intervention was initiated primarily to ease the suffering of the two besieged towns. Syrian officials were very quick to publicise the two messages which were addressed to the president of Syria. The two messages urged the president to take necessary action as soon as possible, otherwise the lives of people of the said towns would be put in jeopardy. In one of two messages, the people of "*Kybiat*" appealed to the president"...and the brotherly Syrian people, to rescue them who are for three and half days consecutively experiencing a massacre performed by the ALA and foreign mercenaries. We are confident that so long as we are enjoying the sanctuary of neighborhood, surely the noble Syrian people will not hesitate to halt the massacre".⁽⁸⁾

The other message which was telegraphed by the deputy of the town urged the Syrian president to halt the massacre by saying :

"In my name and on behalf of thirty thousand innocent people who, most of them perish beneath the debris of their destroyed houses, as a result of artillery bombardment directed by communist and their saboteur agents who are perpetuating their crime in the wake of unmindful civilized world....In the name of thirty thousands who are experiencing onslaught and torture, we appeal to your excellency to halt the bloodshed...".⁽⁹⁾

Indeed the official radio referred to these messages in their justification of the military intervention by broadcasting that "..Syrian intervention was a clear response to the variety of appeals and cables that were sent to president Assad to help the people of

Kybiat and Ayndicat.(10) The humanitarian motive was spelled out by the Syrian president in an interview, when he mentioned :

"We did not hesitate to respond to the request for help we received at the time, we saw that we had a fraternal and humanitarian duty toward our brother in Lebanonwe could not stand by and watch the massacres which were taking place every day in Lebanon.(11)

Therefore,it becomes clear that the Syrian government was justifying its military action in Lebanon on humanitarian grounds. To what extent, the Syrian government claim is legitimate under international law is the main concern of the next section.

IV- Humanitarian Intervention under International Law.

A- General

The revival of the theory of Humanitarian intervention in contemporary international law, undoubtedly, sheds new light on the theory and the validity thereof. The much increased use of the theory by states is to justify their recourse to force despite the ban which is enshrined in the charter, in particular article 2 (4) .

The Congo operation in 1960, the American intervention in the Dominican Republic in 1965, the Indian intervention in East Pakistan in 1971 and the Syrian intervention in Lebanon, suggest that the theory is no longer tied to historical events of the nineteenth century. However, the revival of the theory was not embraced wholeheartedly as a rule of contemporary international law. On the contrary, the theory was criticized and rejected by many scholars as inadequate because it represented an explicit violation of the complete ban on the use of force in the United Nations charter.

To what extent could this theory be accommodated under the charter and, if accepted, under what conditions would it become operational ?. Therefore, whether or not the theory constitutes a part of customary international law, as to the true meaning of humanitarian intervention in addition to its validity under the charter, are all questions which fall within the preview of this section and consequently the legality of the Syrian intervention will be analysed.

B- The Meaning Of Humanitarian Intervention.

In comparison with the definition of intervention in general, the determination of humanitarian intervention does not constitute a hard problem per se. For illegal intervention, as defined earlier, is a convention-breaking and coercive act carried out intentionally in the domain of another state in order to alter or influence the authority structure of the target state.⁽¹²⁾

As far as humanitarian intervention is concerned, the invocation of it requires special circumstances. Humanitarian intervention is only operative when a state is guilty of violating the minimum standards of humanity which is recognised amongst civilized nations. The test or the level of violation which could trigger the right of intervention is identified by Oppenheim:

" When a state renders itself guilty of cruelty against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind".⁽¹³⁾

It is thus the events which shock the conscience of mankind which constitute the setting up of the criterion for action. Others perceive the right of humanitarian

intervention as only operative when a state exceeds the limit of its authority. Stowell, in this regard, sees humanitarian intervention as:

"... The reliance upon force for justifiable purposes of protecting the inhabitants of another state from treatment which is arbitrary and persistently abusive as to exceed the limits of authority with which the sovereign is presumed to act with reason and justice.⁽¹⁴⁾

As such, humanitarian intervention is only invoked in order to prevent or stop a gross violation of human rights which is taking place in any state. It totally differs from other kind of illegal intervention which have already been defined. For humanitarian intervention is neither performed wilfully nor to alter the authority structure of the target state. Although in the case of humanitarian intervention, recognizably force must be kept to a minimum, deviations some times take place, but it is still valid to argue that force must be directed to restore the rights in question.

There is, in general, a clear uncertainty surrounding the subject of intervention: that is to say, who are the main beneficiaries of intervention? Many writers either differentiate or ignore the differences between the two categories: Intervention to save nationals of the intervening state and nationals of the target state which in this sense can be called intervention per se. Some argued that the first category does not fall within the meaning of humanitarian intervention. For to rescue nationals is only justified on a different legal ground. In this case the intervening state could rely on or invoke the link of nationality as a basis for its military intervention.⁽¹⁵⁾ That link gives rise to the right of self-defence; an attack on the nationals abroad is tantamount to an armed attack on the state itself.⁽¹⁶⁾ For nationals [one component of population] are one of the essential ingredients of the statehood and hence an attack on them could be regarded as an attack on the state.⁽¹⁷⁾ However, this argument is quite untenable. Allowing the concept of self-defence to be operative whenever nationals were exposed to danger

outside their country, is a way of readjusting the principle of self-defence to give a new interpretation.

Self-defence is only operative when there is an attack on the territory of the state.⁽¹⁸⁾ To do otherwise, is to enlarge the right of self-defence which the charter of the United Nations tends to restrict. Even if one concedes this, it is still hard to justify intervention on the basis of self-defence, as intervention, in some cases, involves rescuing other nationals with whom the intervening state has no link of nationality. In that case, it cannot be argued that intervention to save nationals is based on self-defence because rescuing others is based on something other than shared nationality. Another reason was introduced, in view of the difference between intervention to save nationals and intervention per se; intervention to save nationals is:

"..limited in effect since the purpose of the intervention can be achieved quite simply by this act of repatriation. The latter kind of intervention [intervention per se] ..to achieve its purpose, almost inevitably involves the imposition of fundamental changes in the structure, government, and/or boundaries of the state intervened against".⁽¹⁹⁾

Borchard in his writing on the subject indicated that the protection of nationals abroad was devised by civilized nations to guarantee their nationals liberty and property and since such an intervention had nothing to do with the political independence of a state it could be regarded as self-help, and in such a context was not an intervention.⁽²⁰⁾ This distinction, however, does not stand as clear evidence, since in practice many interventions carried out to rescue nationals resulted in a change to the structure of the government as was the case in the Dominican Republic, Grenada and Panama etc.

The irony of this view is well commented on by Lauterpacht:

" The individual in his capacity as an alien enjoys a larger measure of protection by international law than in his character as the citizen of his own state.(21)

This is true, and any arguments based on the right of intervention to rescue nationals on the ground of practicality is morally and logically invalid. It is illogical because reality shows that intervention will result in a change of government, and if not, it at least affects its conduct. And it is immoral, since the subject of that intervention is only the nationals of the intervening state with the exclusion of other nationals that is to say the target state's nationals. On what moral ground can an intervention be justified so as to rush and save a handful of foreign nationals and at same time ignore the plight of thousands who are experiencing torture and murder at the hands of a tyrant? If that is true, then the moral aspect of the law has to be questioned: the law that provides every possible help to certain nationals at a certain time and disregards those who are in great need of urgent help, is not the law that should be upheld by civilized nations. It is not the nationality nor practicality which determines the subjects who could benefit from humanitarian intervention, if recognized by international law, but the practice of the target state which "*shocks the conscience of mankind*" which necessitates humanitarian intervention.(22) Humanitarian intervention is only directed to rescue those who are suffering abuse of their basic rights, i.e right to life, in the hands of their state or foreign state. This intervention must be carried out for that purpose only, otherwise it will become an abuse of state sovereignty.(23)

Therefore, it becomes clear that humanitarian intervention is a short term use of force to re-establish exclusively respect for human rights without affecting the political independence or the territorial integrity of the state in whose territory the abuse of basic human rights is carried out on a massive scale to an extent which shocks the conscience of mankind. If humanitarian intervention is such, then the next question is whether or

not it is part of customary international law.

C- Customary International Law And The Right Of Humanitarian Intervention

There is a general agreement among early writers of international law that the right of humanitarian intervention was a part of customary international law.⁽²⁴⁾ The principle, although well known throughout history, evolved as a principle of customary international law and its crystallization began at the beginning of the 19th century. From that time, states invoked the principle as a justification for their use of force in order to redress or prevent injustice.

Given the nature of humanitarian intervention as an exception to the broad principle of non-intervention, and in view of the scarcity of cases relating to massive violation of human rights which provoked states to take action, there is no wonder that there are few precedents in history. In general most of these cases occurred in the domain of the Turkish Empire, especially during the period of its gradual disintegration. However, in order to establish the existence of the right of humanitarian intervention one is not bound to review all those cases. It is more appropriate in the present inquiry, to re-examine some of the controversial cases which left many international writers doubting the existence of the right.

One of the first controversial cases is the European power intervention in Greece. Great Britain, Russia and France concluded a treaty in London on July 6 1827 which primarily aimed at the protection of the Christian minorities whom, in the opinion of the said states, were subjected to a policy of discrimination and torture by the Turkish authorities. The out-come of their intervention culminated in Greek independence.⁽²⁵⁾ Humanitarian intervention was the justification claimed by the intervening powers.

In the treaty for Greek pacification, the signatories to the said treaty unequivocally affirmed that their intervention was motivated, " ... No less by sentiments of humanity than by interest for tranquility of Europe".⁽²⁶⁾ This characterization by virtue of treaty is a progressive illustration of the existence of the right. However, one of the writers dismissed it as irrelevant to the legal process of custom-formation. Brownlie commented on that precedent by saying it " cannot be discussed in term of legal concept which probably did not exist at that time".⁽²⁷⁾ Reflecting the same view, another writer explained the precedent in more detail, and he considered the above example of European power intervention as far removed from accepting it as a precedent contributing to the emergence of custom. In his opinion, since that practice had taken place in the era of unequal states, the practice could not be relied on to produce custom, because " community of law which prefers one socio-religious system over another and in which civilized states exercise de facto tutorial right over an " uncivilized" one. They are therefore of little precedential value in the contemporary world".⁽²⁸⁾

This argument, at first glance, does not sound unreasonable, but taken further will present a serious challenge to the existence of international law. To disregard all the customary rules of international law on the ground that during their evolution into custom, unequal relations between states existed, is not a widely accepted criticism. For if this criticism stood, one should also have to reject the greater bulk of the corpus of rules which evolved during that same era. It is therefore more sound to view the Greek precedent as one of the finest example of humanitarian intervention.⁽²⁹⁾

The second precedent of humanitarian intervention is the French intervention in Syria in 1860. Following a massacre of Maronite Christians in which more than five thousand were reported to have been killed, the French navy intervened to halt the massacres and to prevent their recurrence. It is commonly agreed that the unfortunate

events were implicitly encouraged by the Turkish authorities.⁽³⁰⁾ As far as this intervention is concerned, the reaction of contemporary writers was warm and encouraging; especially as one of the fiercest opponents of the right of humanitarian intervention considered it one of the most genuine examples of humanitarian intervention.⁽³¹⁾ Despite this positive reaction, there are two writers who have held different opinions. Frank and Rodely, relying on a single official document from the British commission which exclusively blamed the Christians for the trouble, concluded:

" If the Mount of Lebanon intervention is made law, it is a law which favours confrontational and insurgents tactics by dissident groups, an insufficiently calibrated response to the problem of injustice which is probably against the public policy and best interest of international community. There are everywhere fanatical leaders of schismatic groups willing to stir up and sacrifice their fellow if they can thereby secure the benevolent intervention of foreign super powers.⁽³²⁾

While such an argument is convincing with respect to the French intervention in Lebanon, nevertheless it is invalid for a conclusion to be reached in unequivocal terms from a single British document. In order to confirm such a conclusion more factual evidence is required. The British authorities after all sided with the Druz in their struggle for dominance in the Mount of Lebanon, and hence their finding was not impartial. The French intervention came at a time when the Turkish authority acted quickly and swiftly by sending a special envoy with great power to restore peace and tranquillity to the Mount of Lebanon.⁽³³⁾ In view of that, Pogany in a recent article affirmed that the French intervention cannot be considered humanitarian since the Turkish authority had already succeeded in ending the episode of violence.⁽³⁴⁾

However, it is still open to discussion that the mere sending of a navy by the French authority could have, as it did, accelerated the Turkish response in order to prevent any justified foreign intervention in Lebanon. In the end, and due to foreign pressure, a plan was devised to secure and guarantee the co-existence in Lebanon among its

various sects.⁽³⁵⁾ In general, whatever the French motive was, it is still valid to argue that the intervention had halted the massacre and prevented, for a considerable time, the recurrence of violence.

Other examples of humanitarian intervention are to be found in Eastern Europe and Latin American states. In Eastern Europe there was the Russian declaration of war on the Sultan of Turkey following the latter's refusal to implement certain reforms in the Balkans; such reforms were believed to guarantee specific obligation and a policy of non-discrimination towards the minorities in that area. The Russian intervention did not escape criticism either. It was contested by some writers as an intervention justified by virtue of a treaty, and hence could not be taken as a humanitarian precedent. Fonteyne in his defence of the customary right of humanitarian intervention proved conclusively the indefensibility of such a proposition.⁽³⁶⁾ He cited an official correspondence communicated to the Turkish government by the Russians which reads:

" His Imperial Majesty does not want war ...but is determined not to hesitate as long as the principles that have been recognized as equitable, human, necessary by the whole of Europe.... have not received full execution in effective guarantee".⁽³⁷⁾

That correspondence illustrated beyond doubt the Russian claim that the use of force would not be considered so long as humans rights were observed.

In Latin American states, there were many precedents, amongst them the American intervention in Cuba in 1848. This intervention did not provoke a hostile reaction from contemporary writers. The atrocities which were taking place in Cuba and which were being tolerated by the Spanish government was the reason for an American intervention. In the congressional Resolution of April 20 1898, the humanitarian reason was very clear :

" Where as the abhorrent conditions which have existed for more than three years in the Island of Cuba, so near our own border, have shocked the moral sense of the people of the United States".(38)

Similar to the reaction of European intervention in Turkish domain, American intervention was not well received by international writers; such an intervention was a clear example of self-interest. The criticism was directed at the fact that the American government was primarily concerned with huge sugar investments, and the search for a new market. Rodely and Frank, the staunch opponents of the principle, surprisingly conceded that the Cuban precedent formed a case of possible exception.(39)

What is surprising is that although the present two writers along with Brownlie rejected the right of humanitarian intervention, they nevertheless considered two exceptions but without agreement on the exception. Brownlie rejected the Cuban case but accepted the Syrian one; the others reversed both these decisions.

If there is anything to be inferred from such a contradiction it is that the determination of the existence of the right is mainly dependent on the facts which were not the same to the said writers. Thus, it would be absurd to affirm the non-existence of the right while one cannot be totally sure of the method of investigation. Moreover, the right of humanitarian intervention was well practiced by states and as such, apart from its sincerity, forms a solid basis for considering it as a part of customary international law. Although there is a strong claim that the intervention was motivated by the desire of self-interest, nevertheless the existence of self-interest cannot on its own repudiate the right. In fact, humanitarian consideration will never be the only factors which could lead to the operation of the principle; other factor could exist as well.(40)

Another claim is that humanitarian intervention was not well practiced in the sense

that there were many instances of violation of human rights where states did not react at all solely because there was no positive self-interest behind an intervention.⁽⁴¹⁾ However, such an inconsistency by itself cannot repudiate the right of humanitarian intervention.⁽⁴²⁾ Although the process of custom formation requires states practice to be consistent and uniform, nevertheless such a process is not supposed to be implemented rigidly. The ICJ in its ruling in the Nicaragua case addressed this question and affirmed:

" It is not to be expected that in the practice of states, the application of the rule in question should have been perfect... the court does not consider that, for a rule to be established as customary, the corresponding practice must not be absolute rigours conformity with the rule".⁽⁴³⁾

Moreover, Teson regards the issue of humanitarian intervention as an exception to the normal rule and as such a flexible approach should be adopted whenever one is dealing with the issue. He addressed this problem as the customary right of humanitarian intervention by saying:

" The decision as to whether custom exists in this regard should take the exceptionality into account and adopt a flexible standard for the analysis of state practices".⁽⁴⁴⁾

Given these views, and in the light of the discussed precedents, humanitarian intervention cannot be dismissed as falling outside the corpus of international law. This view is strengthened by many classical writers of the 19th century who vigorously defended it. Grotious, Wheaton, Woolsey, Vattel, Hyde and many others affirmed the validity of the right.⁽⁴⁵⁾ Therefore, humanitarian intervention by virtue of state practices and the writing of writers which is a secondary source of international law, the right of humanitarian intervention is part of customary international law. If it is so, then the second question is, to what extent is humanitarian intervention valid under the

C- HUMANITARIAN INTERVENTION UNDER THE UNITED NATIONS CHARTER.

The most persistent question that normally arises concerning the right of humanitarian intervention is whether or not it has survived the ban on the use of force under the United Nations charter. Answering this question is a troublesome task, given the diversity of opinions and the practices of states. However, the bulk of the arguments is centered, to a great extent, on two methods of interpretation: textual and contextual interpretations. The subject of that interpretation is in particular Article 2 (4) and its relation to other provisions of the Charter in general. Therefore, for the purpose of convenience the following analysis will review the two methods of interpretation with the aim of discovering whether or not there is a ground for humanitarian intervention under the Charter of the United Nations.

A-Textual interpretation.

The major thrust in the argument is Article 2(4) of the United Nations charter and its flat prohibition of the use of force. Article 2 (4) reads as follows:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the United Nations".(46)

Opponents of the right of humanitarian intervention have pointed vigorously to

Article 2 (4) arguing that any use of force or threat of force thereof is ultimately illegal. Whenever humanitarian intervention, therefore, is accompanied by the use of force, the right naturally becomes illegal as it contravenes with the flat ban enshrined in Article 2(4).⁽⁴⁷⁾ To this conclusion, Professor Henkin pointed out that any unilateral intervention would be against the territorial integrity and political independence of a state; it constitutes a literal violation of Article 2(4).⁽⁴⁸⁾

Proponents of the right of humanitarian intervention play down such an interpretation and reject, what they call, the simple reading of Article 2 (4). One of the most vigorous authorities who defended the right of the state to use force to defend human rights, postulates that Article 2 (4) must be interpreted with reference to Articles 1(1), 51, and certain general provisions of the Charter.⁽⁴⁹⁾ He argues that since Article 51 reserved the inherent right of a state to use force in cases of self-defence, states could employ this right to include rights "far beyond that reserved in Article 51".⁽⁵⁰⁾ As such, Stone affirms that all customary rights of self-help could be enjoyed by a state as long as it was not directed against the prohibition of Article 2 (4); the territorial integrity and political independence of a state.⁽⁵¹⁾

This construction is wholeheartedly embraced by many writers such as Lillich who argues that Article 2 (4) has two qualifications: it should not be against the territorial integrity and political independence nor be inconsistent with the purposes of the United Nations Charter.⁽⁵²⁾ As such, humanitarian intervention which respects the above qualification is, in fact, desirable as it corresponds with the purposes of the Charter; to argue against this interpretation would amount to a deliberate distortion of the fundamentals of the Charter.⁽⁵³⁾

Brownlie, on the other hand, rejects the arguments that Article 2 (4) has any qualification. In cases of ambiguity, he argues, resort to travaux préparations for

clarifying the ambiguity, is imperative. After reviewing the travaux, he asserts that the phrase " against territorial integrity and political independence of a sovereign state was not intended to be restricted rather than to give a guarantee to small states for the purpose of providing them with maximum protection".⁽⁵⁴⁾ Teson, however, rejects Brownlie's argument regarding the reference to travaux preparations and regards it as " a venturesome proposition".⁽⁵⁵⁾ He rightly affirmed that:

" An examination of original intent cannot determine the present states of humanitarian intervention doctrine. The travaux preparations of the United Nations Charter can be read either wayregardless of how one reads the drafting history, it is implausible to assume that the drafters of the Charter intended to repeal the whole corpus of customary Law.⁽⁵⁶⁾

The search for the intent of the drafters of the charter is not consistent with the method of interpretation of an organic treaty like the Charter. For, an interpretation of the Charter must be in accordance with the present purposes and expectations of international community.⁽⁵⁷⁾ Moreover, Damato challenges the opponents' thesis by asserting that the phrasing of Article 2 (4) is intended as such, to give way to the above qualification, and had it not been intended, the term inviolability would have been inserted. Damato offers a historical review of the term inviolability and in the wake of it he clings to the view that Article 2 (4) has the above two qualifications.⁽⁵⁸⁾ The tug of arguments between the opponents and proponents of humanitarian intervention has not yielded any fruitful conclusion. However, the phrasing of Article 2 (4) in a way affirms the thesis that intervention which is not directed at political independence or territorial integrity is not illegal. Neither is the invocation of travaux preparation of great help, since the drafters' intention is difficult to ascertain; and had the drafters intended to make no exception they would have chosen the term *inviolable* rather than *territorial integrity*. As such, it will be very difficult to give weight to the opponent's view regarding the interpretation of Article 2 (4). It would be more accurate or helpful to look for another method of interpretation of the Charter of the United Nations.

B- Contextual interpretation.

This method of interpretation is entirely dependent not on one provision of a treaty but rather than on its purposes and its overall provisions. Thus, in the case of ambiguity the general rule is that " a treaty provision should be read in its entirety ... it must be placed in its legal context as supplied by the other provisions of the charter and the principles of international law".⁽⁵⁹⁾ As such, opponents of the right of humanitarian intervention affirm again, in the view of this method, that the ban on the use of force is absolute and overrides all purposes.⁽⁶⁰⁾ Akehurst refers to Article (1) of the Charter which numerates the various goals which ought to be realized by peaceful means. To give an effect, Akehurst adds, to these goals by forceful means will inevitably run a mock of the Charter of the United Nations.⁽⁶¹⁾ There is no place for the use of force in the Charter, save the exception in Article 51 which is an exception to the general rule and as such it must be interpreted narrowly in order not to undermine the general rule i.e the maintainance of peace.⁽⁶²⁾ In line with this, Article 2 (4) cannot be divorced from Article 2 (3) which stipulates that an international dispute, must be settled by peaceful means only .⁽⁶³⁾

During the debate in the Security Council regarding the Indian intervention in East Pakistan, the Pakistani representative argued that " A principle basic to the maintainance of peace is that no political, economic, strategical, social, or ideological consideration might be invoked by one state to justify its interference in the internal affairs of another state" .⁽⁶⁴⁾ Supporting this view, Professor Frank asserts:

" Humanitarian intervention has in practice become a legal concept which whether or not it violates the provision of the Article 2 (4) and 2 (7) of the Charter [as I believe it does], certainly violates the public policy which underlies the Charter and its provisions for equality, independence and self-determination of states".⁽⁶⁵⁾

Proponents of the right of humanitarian intervention have persistently and strongly refuted the above legal construction. The thrust of their argument is dependent on lessening the privilege of the state. In other words, they argue that , by virtue of development of international law regarding human rights, the Charter and the variety of resolutions confirm the existence of humanitarian intervention. Like their opponents, they invoked the Charter's articles to justify their view; Article (1) of the Charter enlisted the major purposes of the United Nations, the maintenance of peace and principle of equal rights, principle of self-determination and the promotion of human rights. Article 1(3) affirms the link between the respect of the principle of self-determination and the promotion of human rights. In the opening of the first meeting of the General Assembly, Clement observed that :

" The Charter of the United Nations does not deal only with the Governments and states or with politics and war, but with the simple elemental needs of human beings whatever be their race, their colour, or their creed. In the Charter we reaffirm faith in fundamental human rights. We see the freedom of the individual in the state as an essential complement to the freedom of the state in the world community of nations. We stress too, that social justice and the best possible standards of life for all are essential factors in promoting and maintaining the peace of the world..".⁽⁶⁶⁾

The General Assembly, in its resolution 217 (111) of 1948, adopted the Universal Declaration Of Human Rights which affirms the Charter's pledge towards human rights. In the preamble, the declaration affirms the nexus between peace and human right especially in paragraph (1) which reads: " ..the inherent dignity and.... equal and inalienable rights of all members of the human families is the foundation of freedom, justice and peace in the world".⁽⁶⁷⁾ Paragraph (4) goes further to affirm that "..disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind".⁽⁶⁸⁾ The declaration is seen, by some writers, as

an "authoritative interpretation of the Charter of the highest order".⁽⁶⁹⁾

Humphrey embraces the declaration and affirms that by virtue of the development of new customary rule " the Universal Declaration of Human Rights has become an authentic interpretation of the Charter" and he went further to assert that " its provisions, like those of the Charter itself, bind all member states".⁽⁷⁰⁾

The preamble of the Charter of the United Nations explicitly refers to the will of the people of the world and its determination " to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women".⁽⁷¹⁾ Commenting on the preamble's phrasing, Professor Reisman sheds light on the importance of human rights which, in his view, outweighs the restriction on the use of force by saying:

" It is significant that, in the following paragraph of the preamble, there is a commitment [to ensure, by the acceptance of principles and the institution of methods, that armed forces shall not be used save in the common interest]. Hence the preamble statement of the Charter confirms that the use of force in common interest such as for self defence or humanitarian purposes continues to be lawful".⁽⁷²⁾

With such emphasis on the protection of human rights, the issue becomes clearer that " the use of force for urgent protection of such right is no less authorized than other forms of self-help".⁽⁷³⁾ The interpretation of the Charter, in such a way, is more in line with the Charter's commitment to the protection of human rights which were trampled on during the Second World War which to some writers, is a war which was originally initiated to vindicate human rights.⁽⁷⁴⁾ It is contended that the drafters of the Charter were aware of this and thus they were determined not to permit " an emergence of a new Hitler".⁽⁷⁵⁾

Therefore, any contextual interpretation cannot rule out the importance of human rights and at the same time insist on the paramount importance of peace; the two are in fact inseparable. Judge Lauterpact affirms:

"..The correlation between peace and observance of fundamental human rights is now a generally recognised fact. The circumstances that the legal duty to respect fundamental human rights has become part and parcel of the new international system upon which peace depends [add emphasis] to that immediate connection".(76)

In fact, whatever the choice would be, that is to say absolute ban the use of force in the name of peace or to permit the use of force for the sake of humanity, is entirely dependent on the choice of value which an intervening state ought to make. Ronzitti, has the value of peace in mind as he says:

" ... it is difficult to agree that the value protected by duty to safeguard human rights should prevail over the value protected by the duty which forbids the use of force".(77)

Teson on the other hand, regards the prohibition of massive violation of human rights a rule of *jus cogens*; it is the " value assigned to a rule that determines its status as *jus cogens*" and if it is so, then why the value of peace must prevail over the massive violation of human rights.(78) Moore, not different from Teson, considers that inaction in the face of massive violation of human rights is of great consequence. He observes that, "The protection of fundamental human rights should be permitted if carefully circumscribed. Although it is recognized that legitimizing such an intervention entails substantial risks, however, not permitting the necessary actions for the prevention of genocide or other major abuse of human rights seems to present a greater risk".(79)

This exclusive reliance on the pledge of the Charter regarding human rights to

legitimise humanitarian intervention is not a convincing premise. Although the Charter pledges promotion of human rights, nevertheless it never explicitly legitimizes the use of force unilaterally for such purposes. In our decentralized legal system, there is no ethical standard for establishing a jurisprudential basis for humanitarian intervention; international law depends on the will of the state as a basis of obligation.⁽⁸⁰⁾ As such, a state will resist any attempt to limit its sovereign right over its subjects by another state. Watson commented on a state's desire to avoid committing themselves to human rights which entails the restriction of their sovereign right, and he plays down the importance of the Declaration of Human Rights and the Covenant on Civil and Political Rights by saying:

" The Key questions which remains unanswered are how the Covenant became so authoritative and what kind of authority it has. It may be ethically authoritative, it may be legally authoritative, it may be neither. If it is legally authoritative,.. one is faced with the difficult task of proving as generally authoritative a document which has been ratified by only 28 percent of the nations of the world..".⁽⁸¹⁾

The refusal of states not to sign any agreement which restricts their freedom is very common in a decentralized legal system, and if they sign, the implementation of it will ultimately fall in the hand of the state. Furthermore, in the face of mass killing which some governments embarked upon as was the case in Cambodia, the Middle East, and Uganda and many other countries , the undesirability of humanitarian intervention becomes very obvious. However, the harsh reality of a states' indifference to the mass killing which is practised infrequently, brings the law as it stands into collision with reality.

There are in fact many provisions in the Charter and in various documents on human rights which legitimise a community's response to the violation of human

rights, basically the right to life. When thousands or millions of people are massacred, one must discount the jurisprudential basis of any rules that does not halt the mass killing. After all, the Charter was concluded to provide real protection to inhabitants of states, and not to abandon them to the mercy of a state which is primarily accepted in the international society on the basis of affording respect to human rights and the promotion of the well being of its citizens.

The argument that peace should take priority over the issue of human rights is not very convincing. There is no peace without securing and promoting respect for human rights. That link between peace and human right is dialectical. Apart from that, accepting the view that peace, according to the Charter, must take priority, is an entirely subjective-valued decision. That unilateral decision could differ from one person to another and from state to another. Therefore, to affirm one's value and disregard the other is not an objective method of interpreting the Charter. The Charter as a whole, contains many provisions which, if read together will furnish the necessary ground for humanitarian intervention.

In reading the Charter in such a way as to ascertain the legality of humanitarian intervention, one has to make a delicate choice: either the people die because no one has the right to intervene in a sovereign state or an intervention ought to be undertaken. The first suggestion is very hard to accept deliberately as it at best strips us of our humanity and degrades our civilization; the second one is entirely dependent on whether or not it is to be undertaken unilaterally or collectively under the auspices of the United Nations. However, before proceeding to discuss this, a more important question has to be dealt with regarding Article 2 (7) which prescribes intervention in the domestic jurisdiction of a state, and whether or not human rights fall within the domestic jurisdiction of a state.

E- Humanitarian Intervention and Domestic Jurisdiction

Most of the critics of humanitarian intervention are quick to point to the impermissibility of such action on the ground of interference in the domestic jurisdiction of a state. The Charter makes clear that interference in the domestic jurisdiction is no longer permissible. The existence of Article 2(7) is very clear on this issue. Article 2(7) reads:

"Nothing contained in the present charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII".(82)

Therefore, the question is, to what extent does the said Article affect the right of unilateral intervention? As such, one has to define clearly the meaning of the domestic jurisdiction and to affirm whether or not the issue of human rights could be considered within the domestic jurisdiction of a state.

There is no doubt that the issue of human rights in recent years has achieved universal acceptance and is no longer merely the concern of certain states but the concern of every participant in the International system. Judge Lauterphact refers to the issue of domestic jurisdiction with respect to human rights and confirms that:

"Human rights and freedom, having become the subject of a solemn International obligation and of one of the fundamental purposes of the charter, are no longer a matter which is essentially within the domestic jurisdiction of the members of the United Nations..".(83)

To this end, Dr Verwey's comments on the advisory opinion concerning the *Nationality Decree between Tunis and Morocco* in 1923 confirms that a matter which is regulated by International treaty is no longer within the state jurisdiction .⁽⁸⁴⁾

Regarding the issue of human rights, some suggested that the prohibition is only applicable to the United Nations as Article 2 (7) is only addressed to it. As such, the United Nations is exclusively restricted by the article and states are outside this prescription. However, such an interpretation is not illuminating and is, to some extent superficial. For it is recognised that any United Nations action is not motivated by self-interest and despite that, the prohibition did not exclude it. Thus it would be more appropriate and in line with the spirit of the Charter to contemplate that what is prescribed for the United Nations is also fitting to states, at least in such a context.

Therefore, it is more appropriate to reiterate to the thesis that the universality of human rights and its incorporation into a variety of treaties have given rise to the concept of human rights as outside the domestic jurisdiction of a state. The proliferation of many treaties on the subject of human rights is indicative of this trend. The sovereign state is no longer shielded by the concept of domestic jurisdiction to the extent that it can escape community action in matters related to human rights.

The International Court of Justice in its recent ruling in Nicaragua affirmed that:

"Nicaragua is accused by the 1985 finding of the United States congress of violating human rights. This particular point needs to be studied separately of the question of existence of a legal commitment by Nicaragua towards the Organization of American states to respect these rights; the absence of such a commitment would not mean that Nicaragua could with impunity violate human rights."⁽⁸⁵⁾

To this end Ermacora concluded that;

"The right to Self-determination and the protection of human rights in matter of discrimination as far as 'gross violation' or consistent pattern of violation are concerned are no longer essentially within the domestic jurisdiction of a state".⁽⁸⁶⁾

Moreover, the United Nations action regarding the unilateral declaration of Rhodesia's independence is a clear example of the sanctuary of human rights in contemporary international law.⁽⁸⁷⁾ The United Nations took an enforcement measure which is only reserved for the threat of peace. As such, the United Nations considered that declaration as a clear violation of the black peoples' right in Rhodesia to have equal participation in the government of their country.⁽⁸⁸⁾ Thus, since violation of human rights is no longer within the domestic jurisdiction of a state, a question might arise as to the determination of any issue which falls outside the domestic jurisdiction of a state. In this context it is wise to consider that the determination of the matter is not to be the privilege of a state. This conviction is supported by the legislative history of Article 2(7) as the participants of the San Francisco conference "do not confirm that each individual state holds the right to decide matters of domestic jurisdiction".⁽⁸⁹⁾

In the Norwegian Loans case, the argument was rejected that a party to a treaty can determine his obligation "for an instrument in which a party is entitled to determine the existence of its obligation is not valid and enforceable legal instrument of which a court of law can take cognizant".⁽⁹⁰⁾ Then Article 2(7) with respect to the subject of human rights is not an obstacle which might impede the United Nations from taking action to remedy the violation of human rights. It is only the United Nations which is qualified to determine whether or not the matter is within the jurisdiction of a state. In this respect, the United Nations is equipped with the necessary provisions to deal with such a violation. This violation could be looked at according to Article 24 and 39 of the Charter which the violation, in light of these articles could constitute a "*threat to peace*" or "*breach of peace*", or an act of aggression, a situation with which the Security

Council is entitled to deal with under chapter VI of the charter.⁽⁹¹⁾ However, should the Security Council fail to take the necessary action, then the General Assembly under the Uniting For Peace Resolution will hold secondary competence to deal with the violation by force.

Therefore, as far as domestic jurisdiction is concerned, states are no longer protected by the shield of domestic jurisdiction whenever the subject touches the issue of human rights. However, a question which still awaits an answer concerns the legitimacy of a state's action to protect human rights in the absence of any action on the part of the United Nations. That is to say whether or not a state can take unilateral action in the defence of human rights.

F- Unilateral or Collective Intervention.

Heretofore, the discussion shows that the right of humanitarian intervention, as an exceptional measure, is permissible. A state's right regarding its citizens is no longer absolute nor within its exclusive domestic jurisdiction. Although an intervention, in principle, runs against the sovereignty of states, nevertheless sovereignty cannot be absolute as to challenge the will of the community. There is no ground whatsoever for a state to massacre its own people and at the same time argue that it is no one else's business; accepting such an argument will inevitably put the validity of the United Nations in question. For it would be unrealistic to argue that the Charter insisted only on the promotion of human rights and encouraged co-operation,⁽⁹²⁾ and at the same time paid no serious attention to more urgent issues reflected in the mass killing which at its roots may destroy the spirit of co-operation.

Intervention to halt mass killing has a strong moral appeal and in some cases, it could legitimize what is generally perceived as a violation of the norm of non-

intervention.⁽⁹³⁾ There is no doubt that an intervention by the United Nations is the ultimate hope as it harbours no interest save the protection of human rights.⁽⁹⁴⁾ However, the present decentralized system with animosity and division among the major powers, underlines the conviction that an action by the United Nations is a remote possibility. In the absence of collective action by the United Nations, the only remaining possibility is to give a cover of legality for a state to undertake unilateral action. Unilateral action by a state, recognizably, is fraught with danger and is at the same time illegal.

The International Court of Justice in the *Corfu Channel* Case rejected the British justification and affirmed that the unilateral use of force:

"Given rise to most serious abuse and as such cannot, whatever be the present defects in international Organization find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of the thing, it would be reserved for the most powerful state, and might easily lead to perverting the administration of international justice itself".⁽⁹⁵⁾

While the court finding is very logical and persuasive, however, it cannot be projected as a defence against humanitarian intervention. The court in the *Corfu Channel* case is basically concerned with the right to secure evidence and the term "whatever defect" could be related to the shortcoming of an organization in gathering evidence and as such is not addressed to Chapter VII of the United Nations Charter.⁽⁹⁶⁾ The issue of discovering evidence which the Court tackled is not as the issue of massive violation of human rights and had the court considered the latter, it would have most probably declined to give a similar verdict.

The International Organization, apart from the division amongst its members, lacks

the necessary procedures to guard against violation of human rights.⁽⁹⁷⁾ Also it is quite puzzling to see many provisions in the Charter addressing human rights, yet there are no procedures for enforcing such provisions. This is only explainable by the fact that the omission is not deliberate; rather the drafters were fully concerned with affirming the importance of human rights and left to a later day the method by which these provisions of the Charter might be made effective.⁽⁹⁸⁾ Whatever the rationale for the omission, it is a recognized fact today that the International Organization is ineffective and unresponsive to the violation of human rights. This ineffectiveness urged the most staunch opponents of the right of humanitarian intervention, Eric Lane, to conclude that:

"Complaints of mass killing were lodged in both cases, several year passed and, in the end, nothing was done. Evidence was not taken, studies were not made, and recommendations were not forthcoming. Thus, even the mechanics necessary for affording the meagre of United Nations sanctions were, in essence, not undertaken. In the end, ironically, it was only war which has apparently ended the killing".⁽⁹⁹⁾

The inaction by itself gives weight to the thesis that so long as the International Organization is unable to perform its task to afford protection of human rights, a state feels at liberty to invoke the traditional right of humanitarian intervention.⁽¹⁰⁰⁾ There is a valid argument that the pre-existing right of self help is relinquished on the basis of the United Nations mechanism of enforcement action; if the latter fails the former surely will revive. Reisman espouses this argument in his defence of a unilateral action by a state:

"Historically this may be the correct interpretation of the Charter in general and Article 2 (4) in particular. However, subsequent dissention among the great powers in the Security Council has clearly rendered this construction caducous; rigorous adherence to the historical view means that self help measures are rendered unlawful, but no other forms of enforcement take their place".⁽¹⁰¹⁾

Recognizing this, Reisman affirms that the right of humanitarian intervention is legitimate " in so far the International Organization can assume the role of enforcer, when it cannot, self help will revive."⁽¹⁰²⁾ The reality of a decentralized system, coupled with the persistent violation of human rights, urged the most astonished defender of the role of U.N to concede that:

" ...It would seem that the only possible arguments against the substitution of collective measures under the Security Council for individual measures by a single state would be the inability of the international organization to act with the speed requisite to preserve life. It may take some time before the Council, with its military staff committee, and the pledged national contingents are in a state of readiness to act in such cases, but the Charter contemplates that international action shall be timely as well as powerful".⁽¹⁰³⁾

Therefore, since the Charter pledges to afford protection and promote human rights and since the International organization is unable to enforce that protection, a unilateral action by a state in extreme violation of human rights is not unlawful. In fact, there are certain provisions in the Charter which could be relied on to justify the unilateral action. Article 56 reads :

" All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55".⁽¹⁰⁴⁾

This Article per se according to Reisman justifies humanitarian intervention as it perceives that " members may act jointly with the Organization in what might be termed a new organized, explicit, statutory, humanitarian intervention. In the contemporary world there is no other way the most fundamental purposes of the Charter, in relation to human rights, can be made effective".⁽¹⁰⁵⁾ Following the Indian intervention in E. Pakistan, a committee of international jurists revised the case thoroughly and concluded

that:

"Indian's armed intervention would have been justified if she had acted under the doctrine of humanitarian intervention, and further that India would have been entitled to act unilaterally under this doctrine in the view of the inability of the International Organization to take any effective action to bring to an end the massive violation of human rights in East Pakistan".(106)

Therefore, a unilateral intervention could be undertaken to protect a massive violation of human rights. The thesis that the ban on the use of force is an absolute virtue is not totally valid if it is "weighed against other values as well".(107) This conclusion is quite right as to assume that the prohibition on the use of force is absolute whatever the case might be, is to also assume the conclusion that law and justice are incompatible. Confronted with the two concepts, the legal, which prescribes any unilateral action, and the moral, which encourages the unilateral action, one must give priority to the latter. However, in defending the right of humanitarian intervention, one has to be aware of the possible abuse of the right by the intervening state. It may be that a state, or states, have an ulterior motive in embarking on humanitarian intervention. Therefore, if humanitarian intervention is to be permitted safeguards must be introduced.

G- Humanitarian intervention and the search for a criteria

Having admitted that humanitarian intervention is possible whenever there is a massive violation of human rights which shocks the conscience of mankind, a problem emerges as to the protection of that right by an intervening state. In fact, the opponents of the theory have a good case when arguing that humanitarian intervention can allow an intervening state to promote its self-interest. As such, charges were levelled that, whatever the purpose of intervention was, the outcome of it would have a direct bearing

on the authority structure of the target state. The reality of this fear has been well demonstrated in the Indian and Tanzanian interventions and in other cases.

To some, this is a kind of rhetoric since humanitarian intervention ought effectively to stop the violation and to deter in future a potential violator.⁽¹⁰⁸⁾ For an intervention to protect human rights achieves two aims: "easing the suffering of the victim" and "could have a deterrent for a potential violator".⁽¹⁰⁹⁾ However, admitting that a state, by intervening, could change the structure of the government is very serious and surely falls outside the scope of humanitarian intervention. It would have great repercussions on the international system, and may trigger an international war. For, it becomes too easy for the powerful states to use the said intervention as a cloak and hence change the governments of small states. Such possibilities are not theoretical: Hitler did use the humanitarian motto to occupy Bohemia and Moravia in March 1939. He referred to "assault on the life and liberty of minorities" as the main cause which prompted him to intervene.⁽¹¹⁰⁾

The fear of such fabrication was voiced by many writers such as Brownlie⁽¹¹¹⁾ and Professor Henkin who contended that, "A humanitarian reason for military intervention is too easy to fabricate".⁽¹¹²⁾ However, this fabrication is not enough by itself to justify the denial of the right of humanitarian intervention. Any humanitarian intervention, nowadays, ought to be cross-examined by the international community and the intervening state's action afterwards should be judged as to whether or not it was motivated by self-interest. This review by the international community would be very important since it challenges the reputation of the intervening state. Professor McDougal and Felicino explored this point fully and concluded that:

"The characterisation is, of course, made by an individual state at its own peril. It partakes, in other words, of the nature of a provisional determination in precisely the same way that a claim of self defence does, and remains subject both to the subsequent review that the

organised community may eventually exercise. A policy of permitting individual initiative is, of course, again like the policy of allowing self defence, susceptible to perverting abuse; but this susceptibility is an attribute common to all legal policy, doctrine or rule".(113)

Although, McDougal's and Felicino's observation is realistic and of great importance, nevertheless it is still questionable as to whether or not the international community could manage to distinguish between real and false humanitarian interventions, especially in some complex cases. In the Congo operation which was carried out under the banner of humanitarian intervention, the Brazzaville delegate to the United Nations voiced his bitterness concerning the right of humanitarian intervention by saying, "The humanitarian operation referred to was fundamentally only a pretext...what humanitarian principles are at stake, when, on the pretext of saving lives of an insignificant number of whites, tens of thousands of blacks are massacred...? (114) Therefore, in the Congo operation and others, the international community has differed on the subject of the motive of the humanitarian intervention, and hence the intervening state or states secured their objectives through the invocation of the theory of humanitarian intervention. Thus, a close scrutiny of objection will certainly reveal that the most critical and sensitive aspect of the theory is its potential abuse by states .

To minimise the effect of abuse, some suggest that the principle of proportionality and disinterestedness are most needed in this regard. In the Congo operation, for example, the black Africans aired their protest by emphasizing the fact which touches the heart of the theory of humanitarian intervention: it is for the "sake of an insignificant number of whites, tens of thousand of blacks are massacred".(115) This criticism is not confined to the officials of some states, but is espoused by one of the most respected authorities who questioned the practicality of this right in terms of the outcome of it by saying "what is the price, in human terms of intervention? What were the casualty ratios in the Stanleyville operation in 1964, the Dominican Republic in

1965 and other possible examples."⁽¹¹⁶⁾ This criticism is very important, in the light of the theory, and therefore if a humanitarian intervention is to be relied upon, a state has to comply with the principle of proportionality which is applicable in the case of self defence. On this point, some suggest that the principle of proportionality in the context of humanitarian intervention "should be modified to reflect not only a proportional use of force which does not threaten a greater destruction of values than the human rights at stake but also a requirement of minimum force necessary to achieve the lawful humanitarian objectives".⁽¹¹⁷⁾ Such an application will, undoubtedly, reduce the risk and minimise the number of casualties to a great extent.

The second condition which is of great importance is that the intervening state has to comply with the condition of disinterestedness. In other words, the intervening state is supposed to have no interest whatsoever save the pure motive of safeguarding the lives of people who are facing slaughter and torture. On this condition, many writers doubted that the absolute disinterestedness could exist and therefore dismissed it as being unrealistic.⁽¹¹⁸⁾ As Bogen observed, states always intervene whenever their interest requires, and there is "...no single government willing to expand the money and manpower necessary for action unless it has some definite interest".⁽¹¹⁹⁾ However, the question which arises is how can one justify this in having an interest apart from the humanitarian one in such a situation, and to what extent is a state justified, especially in the case of civil war?

There is no doubt that the condition of disinterestedness is the most critical in the context of civil war. To intervene in a civil war is surely to affect the outcome of the conflict which is totally prohibited under the doctrine of non-intervention. It is likely that a state intervening in a civil war to save one party from total elimination will result in the destruction of the opposing party, and the victory of the party for whom the intervention was undertaken. This fact was well reflected in Pakistan, the Congo and

Uganda where the victim turned his defeat into victory due to the intervention of the external party. Bearing this in mind, it would be very naive to concede that a state could be allowed to have a national interest which has nothing to do with humanity.

A state must be permitted to initiate an intervention only to save human rights and nothing else. Failure to take notice of this danger will result in the manipulation of the conflict, and the intervening state under the banner of human rights could achieve its national interest and hence disregard the prohibition in Article 2 (4) and furthermore prevent the realisation of the principle of self-determination. To avert this abuse, the condition of necessity is very helpful in this context. A state ought not to intervene unless there is an overwhelming necessity which leaves no moment for deliberation and therefore, an action could be justified. However, this action must be limited in time and space. A state contemplating a humanitarian intervention must direct its intervention in accordance with the these mentioned conditions and seek no interest save that of easing the suffering of the victims.

It is very obvious then, that a state must leave the country as soon as the operation achieves its purpose in easing the suffering and must not proceed to pursue other goals which in the end will help the intervening state more than the original victim. In addition to these conditions, others have suggested that requisite for forceful action taken in defence of human rights in another country is that this action must be submitted later to the Security Council in order to sanction the humanitarian intervention.⁽¹²⁰⁾ Because such reporting will put the action before the international forum or regional organisation, [if the former fails to discuss it] it will reduce the danger that is inherent in every unilateral intervention. Added to this factor is that if humanitarian intervention is to be taken, it would be preferable to be collective rather than unilateral.⁽¹²¹⁾ Aware of the fact that a collective intervention does not gain more legality than a unilateral one just for being collective, it is still valid that a collective intervention would more likely

be disinterested than a unilateral intervention.⁽¹²²⁾ Out of the above, one could argue that unilateral intervention by a state in order to remedy a massive violation of human rights after the failure of United Nations to take action, and the exhaustion of peaceful means by the intervening state, would be legal and desirable if it satisfied the foregoing criteria. For states confronted with a situation which might endanger or increase its interest, would not hesitate to intervene. As Professor Baxter puts it, a state confronted with a situation in which its nationals are at risk, the decision-makers would say "no, it is more important that we should respect Article 2(4) of the charter and allow these people to perish". In such a situation they would surely have disregarded Article 2(4).⁽¹²³⁾

It is understandable that whenever a choice between Article 2 (4) and human rights is to be made, it seems to come down on the side of the latter. This is so because it is "contrary to all that is decent, moral and logical to require a state to sit back and watch while the slaughter of innocent people take place in order to comply with some blank or black letter prohibited against the use of force at the expense of more fundamental human values".⁽¹²⁴⁾

Therefore, it becomes clear that a unilateral intervention for the protection of human rights is not fully violative of the United Nations Charter provided the intervening state adheres to criteria which at least minimise the danger of abuse of the theory in question. These criteria, noted below, must be complied with in full:

(1) Exhaustion of Peaceful means

(2) Proportionality

(3) Necessity

(4) Duration

(5) Disinterestedness

V- Legal analysis of the Syrian intervention.

The fear of fabrication and the abuse of the right of intervention have urged many writers and authorities to lay down a set of conditions with which the intervening state must comply. These conditions may indicate or help to provide a legal assessment of any intervention that may arise. The Syrian intervention under the banner of humanity, and its subsequent consequences, necessitates an overall review of the said intervention in the light of the established criteria, for if Syria failed to meet the criteria, then its intervention would constitute a violation of the established norms of international law.

A- Exhaustion of peaceful means

Despite the controversy surrounding the concept of humanitarian intervention, it has been accepted as a last resort to remedy an extreme situation. However, to be successfully invoked, it must first of all be seen that there has been an exhaustion of peaceful means to restore the situation in conformity with Article (33) of U.N Charter. A state is thus obliged to pursue all the peaceful measures that could ease the tension and remove the threat to the life of the people in question. However, a peaceful initiative should be pursued with due respect to the wishes of the parties involved in the

civil war. That is to say, a state should not exert any illegal pressure to subjugate parties to its will or to subdue one party to another. Moreover, a state must be aware that in such a context its behaviour is strictly controlled by the rules of the civil war. It is in this framework that the Syrian intervention is best understood and analysed. However, due to the long process of mediation that the Syrian government followed the analysis of these processes is classified into three phases.

Phase (1): 24 May 1975

From the beginning of the civil war the Syrian government viewed the events that were taking place in Lebanon as of great importance. On 24th of May and following the formation of a military government, the Syrian president dispatched his foreign minister to moderate the crisis which had erupted between the belligerents. The mediation was crowned by the installation of a new government headed by a pro-Syrian Premier (Rashid Karami). However, the Syrian initiative was widely seen as a move to enhance Syrian interest.⁽¹²⁵⁾ For the Syrian government foresaw a military government as a great threat to the existence of the PLO and LNM and thus to Syrian interest.⁽¹²⁶⁾ Therefore, at this stage the peaceful Syrian initiative, one can say, was not based on humanitarian motives but rather on a desire to keep the various parties under its control.

Phase(2): 4 January 1976

During this phase the intensity of fighting and the possibility of a victory by the Lebanese Front alerted Syria to the sensitivity of the situation. Syria, which at the time was pre-occupied with the signing of the Egyptian-Israeli agreement, considered the continuing civil strife in Lebanon as a sabotage of its policy there. Therefore, Syria

made it clear that they would not permit the partition of Lebanon, and hence, when the occasion arose, "....It would lead only to our direct intervention, as Lebanon used to be a part of Syria, and we are ready to restore it if there is any attempt of partition...".(127)

Indeed, the Syrian government, faced with an invasion by Lebanese forces of Muslim areas (Karantina and Maslakh) and in response to a leftist and Muslims appeal, intervened indirectly under the banner of the Palestinian Liberation Army. In Assad's words:

"..I phoned president Franjeh ...and agreed on a cease fire ..but the fighting was going on, and so we convened in Damascus to think of a way to solve the impasse as we gave them(Leftist Forces) weapon , ammunition, but to no avail and finally we agreed to intervene under the banner of the Palestinian Liberation Army".(128)

As a result of this, the LNM with the help of the PLA occupied the Christian town (Al-Damour) and razed it to the ground in revenge for Karantina and Maslakh. Therefore, the Syrian mediation could hardly be regarded as a peaceful means of restoring the situation; rather, it was an intervention in the internal affair of a sovereign country, which escalated the conflict and brought about a massive destruction of life and property.

Phase(3): 9 February 1976

The distinction of this phase is the emergence of the LNM as a victorious party due to Syrian assistance. However, differences between the Syrians and LNM were becoming intense and bitter.

On the 14th of February 1976 the Syrian government in collaboration with the Lebanese President unveiled their plan for Lebanese reforms which came later to be known as the "constitutional document".⁽¹²⁹⁾ This document contributed to the break down between the LNM and the Syrian leader who described the leader of the former as a "stratum of leader and za'ims" who benefitted from confessionalism and feared a loss of privilege if the system was dismantled.⁽¹³⁰⁾ On the other hand, the leader of the LNM, Kamal Junmblat, dubbed the document a "caricature of parliamentary democracy" and he further said: "Our Syrian friends wanted to solve the Lebanese problem in their way, from above, artificially, with no genuine development of the constitutional law of a democratic parliamentary regime..".⁽¹³¹⁾

Confronted with such a rejection the Syrian government switched their support to the Lebanese Front. Thus the crisis reached its climax when the Syrian government succeeded in imposing its candidate for the Lebanese presidency in collaboration with the LF. As the gap between the Syrian government and the LNM widened and in the face of the success of the latter in pressing on the Lebanese Front towards a political accommodation, the event of the besieged town in the north of Lebanon gave the Syrian government the pretext they desperately needed at that time. On that occasion, the Syrian government did not make the slightest effort to defuse peacefully the threat to the besieged people in the said town. They quickly proceeded with military action, despite the denial of involvement in the seige by the LNM and their condemnation of it.

Out of the above, the Syrian government in its alleged effort to resolve the crisis, had indirectly contributed to the process of escalation and confrontation. However, in every mediatory move, the Syrian government was concerned with its prestige and its interest. They saw themselves as the only arbitrator of the crisis and refused and hindered the Arab League's effort and other foreign initiative to settle the issue. Therefore, during the mediatory phase the Syrian government did not meet the

requirements of the exhaustion of the peaceful means but, on the contrary, it pursued its mediation by illegal means through switching its alliance to suit its national interest.

B- Necessity.

The criterion of necessity is an essential pre-condition for the operation of the right of humanitarian intervention, for its existence contributes to the legitimization of the principle of humanitarian intervention. Although, the criterion of necessity is applicable particularly in the case of self-defence, nevertheless its utilization in the context of humanitarian intervention has its own importance. When the lives of certain people are in imminent danger and there is no alternative way to save them, then the right of humanitarian intervention arises. For " subsequent action, remedy ... or compensation cannot bring the dead to life or restore the limbs to the maimed. There is no remedy except prevention".⁽¹³²⁾ The right of humanitarian intervention becomes understandable whenever the necessity is " instant, overwhelming, and leaving no choice of means, and no moment for deliberation".⁽¹³³⁾

In the light of such an argument, the Syrian intervention on June 1 1976 under the pretext of humanitarian intervention could hardly meet the requirement of necessity. As far as the Kubyat is concerned, the town was, according to a variety of sources well defended and its eventual surrender was not inevitable.⁽¹³⁴⁾ Parallel to this, the attack on the city was not directed by the command of the Lebanese National Movement but, on the contrary, was condemned by both the LNM and PLO and was considered as a Syrian ploy to justify its intervention.⁽¹³⁵⁾

Furthermore, the besieged town was engaged in shelling nearby villages and as

such they were in a strong position which excluded any possible massacre. To this end, the President of the LF in his memoirs discredited the humanitarian motive of the Syrian government by affirming that the Syrian troops forced the Christian fighters to surrender their stronghold.⁽¹³⁶⁾ All these facts, lead to one conclusion that the city was in no way under imminent danger and the necessity was not instant and overwhelming and leaving no choice of means and no moment for deliberation.

Moreover, events that followed the Syrian intervention indeed created an atmosphere of necessity which, ironically, necessitated an intervention to halt the tragedy and killing which was precipitated by the Syrian military action. It is very surprising to note the timing of the Syrian military action. Why was the Syrian government not spurred into action by the looting and killing which had been raging in Lebanon before the siege of that isolated town on the Syrian border?

The inaction and indifference to the events in Lebanon before June 1976 coupled with the Syrian government material assistance to the internal parties is indeed very perplexing. However, this contradiction could be explained by the fact that the Syrian intervention on the first of June 1976 under the pretext of humanitarian intervention, was undertaken for purely political goals and had nothing to do with humanitarian sentiments. The Los Angeles Times commented on the Syrian intervention suggesting that if President Assad wanted to invade Lebanon " for the purpose not of conquering or destroying anyone but to bringing settlement and reaping the credit for it, the perfect time would have been in January or February, or even earlier, at the moment when the choice of a new president and specifying of political and social reforms... were open for negotiation [but when the Syrian government committed themselves in March to the conservative party] they earned the thorough mistrust of the opposition and imposed themselves by force; and if they persist in doing this, taking it upon themselves to shed a lot of Palestinian and Lebanese blood, it could be a political disaster for Assad's

regime".(137)

C- Duration.

An intervening state which is raising the banner of humanity as the only cause for its intervention, ought to do the job with as much speed as possible and leave the country in question with the same speed. For any delay on the part of the intervening state could result in the violation of the territorial integrity and political independence of the state which is experiencing the intervention.

Therefore, the criterion of duration is an important indication which could differentiate between justifiable and unjustifiable intervention on humanitarian grounds. In Falk's words:

"The duration of the interference is an important way of distinguishing interventions that are more or less a genuine sanction (self-help) from those that are mere dictatorial interferences (aggression).(138)

The rationale behind such reasoning is implicit in the fact that whenever a state intervenes and does not effect its withdrawal with the required speed, then the assumption is that the state is no longer performing a humanitarian task; it is rather, asserting its own interest.

In the Dominican Republic, the American intervention was condemned for not adhering to the criterion of duration. Senator Fullbright criticized the American intervention for not promptly withdrawing after evacuating their nationals, and had they done so " no fair minded observer at home or abroad would have considered the United States to have exceeded its rights and responsibilities".(139)

In the Syrian intervention the criterion was also not observed. The Syrian government made it clear that the rescuing of besieged people was no longer the main objective of their intervention; but it was to enable Lebanon to restore its stability and peace in order to continue the struggle against Israel.⁽¹⁴⁰⁾ Moreover, the Syrian president in justifying the action, asserted that :

"no one must object to our presence in Lebanon as Lebanon is an Arab country and the Syrian presence in that country ... is not a foreign presence as far as Lebanon is concerned...The Arabs are one nation " and thus " we will perform our duties toward Lebanon fully at all times and we will do everything in our power to halt the fighting".⁽¹⁴¹⁾

The Syrian claims matches to a great extent American and Soviet Union claims. The American assertion in the Dominican crisis was that the continuing presence of the American troops was essential to prevent a communist take over and to bring the country back to the process of democracy.⁽¹⁴²⁾ While the American intervention was labelled as an illegal intervention and a perpetual stick policy, the Syrian intervention was not dissimilar. Dr Lillich commented on the American intervention in the Dominican Republic by suggesting that the prolonged presence of the American marines in the Dominican Republic required a legal justification other than the traditional forcible self-help doctrine.⁽¹⁴³⁾ He further remarked that: " the longer troops remain in another country the more their presence begins to look like intervention".⁽¹⁴⁴⁾ Indeed, the Syrians brought about another justification as they referred to the concept of Arabism in order to legitimate their long presence. However, as Lillich remarked, as far as the right of humanitarian intervention is concerned, there are no grounds for any delay.

In such a context, one can only regard the prolonged presence of the Syrian army

on Lebanese territory and the escalation which followed, to demonstrate beyond any doubt the illegality of the Syrian intervention. Therefore, as far as the factor of duration is concerned, the Syrian government failed to meet this criterion.

D- Proportionality.

Again, in order for a state to justify its recourse to force, the compliance with the criterion of proportionality is imperative. The universality of this principle was borne out of the Caroline incident on December 29, 1837 in which Webster, Secretary of State, observed that in order to accept the British arguments, the latter had to show that, "they did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence must be limited by that necessity, and kept clearly within it".⁽¹⁴⁵⁾

In view of that, the measure undertaken must be proportional to the danger and must not go beyond what is necessary for the protection of the subjects in question. The French representative at the United Nations forum and pending the debate on the American intervention in the Dominican Republic, warned that a forcible action in the context of rescuing nationals must " ... be limited in objective, duration, and scale or run the risk of becoming armed intervention".⁽¹⁴⁶⁾ Bearing this in mind, the Syrian military intervention to rescue the besieged people could be disqualified as a humanitarian intervention. The introduction of four thousand soldiers to the besieged town coupled with nine thousand soldiers to the Baqqa valley in the centre of Lebanon were clearly disproportionate.⁽¹⁴⁷⁾ The forces successfully lifted the siege without any considerable bloodshed. However, on 2nd of June 1976 the Syrian government increased the number of troops to fifteen thousand which were fully equipped with two hundred tanks.⁽¹⁴⁸⁾

After completion of their mission, that is to say the lifting the siege, the Syrian government demanded the surrender of the LNM's weapons to the Syrian forces.⁽¹⁴⁹⁾ Following the refusal by the LNM to such a demand, the fighting between the Syrian troops and LNM escalated on a large scale. In such a context, the Syrian intervention could hardly be described as proportional. The size of the Syrian army which was introduced manifestly exceeded the number which was required to break the siege of the town. It is implausible to argue that such a number was necessary, since the unit of the Arab Lebanese Army which surrounded the town did not exceed a few hundred.

Moreover, the Syrian intervention clearly went beyond the proclaimed objective as it extended the geographical location of the fighting. The demand that the LNM must surrender its weapons had nothing whatsoever to do with humanitarian intervention. Yet it may be argued that in order to preserve the life of people in Lebanon, who were in general caught up in the quagmire of the civil war, required drastic action on the part of the Syrians in order to disarm the rebels. However, this assumption is also very superficial. The subsequent engagement of the Syrian troops with the LNM exacerbated the setting and raised the number of casualties to an unprecedented level. The high number of casualties prompted the hitherto staunch ally of Syria (USSR) to voice its protest:

" Syrian Arab Republic has repeatedly stated that the mission of the troops sent by it to Lebanon was to help stop bloodshed. Attention, must, however, be drawn to the fact that an ever-swelling river of blood continues to flow in Lebanon today . The first thing to be done in Lebanon therefore, is to stop the bloodshed. All those parties involved in the Lebanese events, in one way or another, must cease fire..."⁽¹⁵⁰⁾

With the scope of the Syrian military operation no longer restricted to the north of Lebanon, but extended to reach the South of Lebanon where there was no confessional or sectarian fighting, the adherence to the principle of proportionality becomes very

doubtful.

It is very possible to criticise the Syrian intervention on the criterion of proportionality which is demanded in cases of humanitarian intervention. Professor J. Moore affirmed that the principle of proportionality in the context of humanitarian intervention " should be modified to reflect not only a proportional use of force which does not threaten greater destruction of values than the human rights at stake, but also a requirement of minimum force necessary to achieve the lawful humanitarian objectives".(151)

With this qualified description of the principle of proportionality, one can rule that the Syrian intervention was not in line with the requirement of the principle of proportionality regarding the size, objective and finally the scope of the operation.

E- Disinterestedness.

Supporters of the doctrine of humanitarian intervention have strongly defended the thesis that an intervening state should in no way be discredited on the grounds that its intervention was prompted by national interest. However, they did not determine or define precisely the interest in question.

On this point, one cannot regard the toppling of the existing government or paving the way for the victory of one party in a civil war as an interest that the intervening state ought to protect. Accepting this presumption would be tantamount to negating all of the Charter provisions and various resolutions regarding the prohibition of the use of force for such purposes. In this context, the use of force would fall within the definition of illegal intervention.

In a humanitarian intervention, the only interest which is permissible is that an intervening state must do its best to stop the fighting and save lives without ulterior motives. Lawrence affirmed that humanitarian intervention could escape condemnation if it is "undertaken with a single eye to the object in view and without an ulterior consideration of self-interest and ambition".⁽¹⁵²⁾ Apart from that, international law recognises no validity of any action beyond that and consequently such an action will be illegal. Bearing this in mind, one wonders whether or not the Syrian motive was in line with the said interest.

From the beginning of the civil war, the Syrian government made it clear that it had a great stake in Lebanon. Following the Egyptian-Israeli agreement with its inevitable outcome leaving Syria alone to face Israel, the Syrian government embarked on a policy of consolidating its position through an alliance with the PLO and Jordan to prevent any further separate deal; and to enhance its bargaining position in any future settlement.⁽¹⁵³⁾ This was only achievable through the control of Lebanon and the subjugation of the PLO.⁽¹⁵⁴⁾ Moreover, the Syrian forces feared any Leftist victory which would leave them vulnerable to Israel.⁽¹⁵⁵⁾ All these factors provided a stimulus to Syria to commit its troops in Lebanon. Added to this, the success of the LNM on both military and diplomatic fronts irritated Syria and enticed it into Lebanon even before events became difficult to control.⁽¹⁵⁶⁾ This is very evident in the Syrian move to liquidate the LNM and subjugate the PLO which clearly runs beyond humanitarian motives. According to Kamal Jumbalat, the leader of the LNM, President Assad [this account was declared by Assad's speech] told him: "listen, for me this is an historic opportunity to re-orient the Maronites towards Syria. I cannot allow you to defeat the Christians' camp .." and when Jumbalat told him that the LF did not represent the Christians but the isolationist, he replied: "nonetheless I cannot allow you to beat the isolationists ...".⁽¹⁵⁷⁾ It seems that the Syrian government in rendering

support to Christians, was motivated by winning them over and hence the control of Lebanon through them.(158)

Significantly, the Syrian action was undertaken at a time when the parties to the conflict were engaged in dialogue to secure a cease fire and lasting settlement. According to the most influential man of the LF, Bashir Al Jammual:

" We were in the middle of negotiations, when the Syrian military intervention took us by surprise. To my mind we [the warring parties] were on the verge of reaching an agreement when the Syrian troops intervened and reshuffled the cards. This is also the view expressed by Kamal Jumbalat yesterday. The intervention toppled everything".(159)

As such, the criterion of disinterestedness was not complied with by the Syrian government. The Syrian government demonstrated that its intervention was not initiated for humanitarian purposes but rather for self-interest. This conclusion is supported by the fact that a state intervening in another state's affairs to protect human rights must have a clean record on this matter. Following the Belgium and U.S.A intervention in the Congo, and during the debate in the Security Council many representatives made the point that when a state is violating human rights at home and at the same time appearing through its intervention to protect human rights, must have its intervention dismissed summarily.(160) The Syrian government's record on the subject of human rights is not very impressive.(161) .

Therefore, having established that the Syrian motive was not to protect Christians but rather to protect its own national interest, and since their record on human rights was deplorable, their action in Lebanon cannot satisfy the criterion of disinterestedness.

VI-CONCLUSION.

Humanitarian intervention is still one of the most controversial issues in international law. Although it is part of customary international law few writers agree on its validity under the United Nation Charter. However, the increased importance of human rights which is reflected in the Charter and in many declarations and treaties, has paved the way for its acceptance in the corpus of international law as a last resort.

States can no longer escape censor for the violation of human rights under the pretext that it is within the domestic jurisdiction. The internationalization of human rights has effected states' right in this matter. However, due to the absence of procedures in the United Nations Charter to deal with the potential violation of human rights, coupled with the ineffectiveness of the United Nations due to its horizontal structure, the principle of humanitarian intervention cannot be dismissed at first hand. Since the United Nations is unable to defend the issue of human rights, especially those which involve practices which shake the conscience of mankind, any state may intervene to uphold respect for human rights.

Although humanitarian intervention is violative of a state's sovereignty and may be used as a cloak for aggression, one cannot at the same time assert that the state is free to massacre its own people without impunity. As collective intervention under the auspices of United Nations in such an international system does not occur, unilateral intervention could be accepted if it was carried out in accordance with certain criteria. From this perspective, the Syrian intervention could be accepted provided that it satisfied the established criteria: the exhaustion of peaceful means, necessity, duration,

proportionality and disinterestedness. Syria has failed to comply with each of these criteria. What is more, the Syrian intervention unequivocally violated these criteria and served neither restored human rights nor observed Lebanon's sovereignty.

Therefore, one can assert on both sides that if there is humanitarian intervention in contemporary international law, the Syrian intervention was illegal since it failed to meet the requirements which are attached to that right. On the other hand, if there is no such right, then a *fortiori* Syrian intervention was illegal.

FOOTNOTES

- (1)_ K. Jumblat, I Speak For Lebanon, 1982, p 30.
- (2)_ See W. Kalidi, Conflict And Violence In Lebanon, 1979, pp 52-56; D.C. Cordon, Lebanon The Fragmented Nation, 1980; pp 246-47
- (3)_ Tabitha Petran, The Struggle Over Lebanon, New York, 1987, pp 191-92; J. Bulloch, Death Of A Country, 1977, pp 120-21
- (4)_ Kalidi, Op cit note (2).
- (5)_ Assad's Speech, and for the complete text see Itamar Rabinovich, The War For Lebanon: 1970-83, Ithaca, 1984; Edward Haley and Lewis W. Snider, Lebanon In Crisis: Participants And Issues, Syracuse University Press, 1979, p 34, pp 40-41; According to one writer, the Syrian reaction was phrased as such: " For Syria to allow a unilateral action on this scale undertaken without prior consultation with Damascus would mean a significant erosion in Syria's position in Lebanon. If Franjieh had to go, it was up to Syria and no body else to devise the appropriate method" See Adeed I. Dawisha, Syria And The Lebanese Crisis, London, 1980, p 124
- (6)_ Bulloch, Op cit note(3) p 126.
- (7)_ Id.
- (8)_ Antwan Khwayri, Al- Harb Fi Lubnan, [The War in Lebanon], Vol 11, 1976, p 239
- (9)_ Id
- (10)_ Ibid p 253.

- (11)_ Statement By the President of Syria Hafez Al-Assad to the West German T.V. given on 9 September 1978, cited in Ronzitti, Rescuing Nationals Abroad Through Military Coercion And Intervention On The Ground Of Humanity, 1985
- (12)_ See Chapter One, the definition of intervention.
- (13)_ L. Oppenheim, International Law, Ed. Lauterpacht, Vol 1, 1955, p 312.
- (14)_ Elery E. Stowell, Intervention In International Law, 1921, p 53
- (15)_ Farrokh, Jhabvala, " Unilateral Humanitarian Intervention", Ind. J. I. L. ,Vol 21, 1981, pp 210-11
- (16)_ D. W. Bowett, Self-Defence In International Law, 1958 pp 91-94
- (17)_ Id.
- (18)_ I Brownlie, International Law And The Use Of Force By States, 1963, pp 289- 301
- (19)_ Frank and Rodely, " After Bangladesh: The Law Of Humanitarian Intervention By Military Force", A.J.I.L., VOL 67, 1973, pp 275-83
- (20)_ E. Borchard, The Diplomatic Protection Of Citizens Abroad, 1915, pp 448-51
- (21)_ H. Lauterpacht, International Law And Human Rights, 1950, p 121
- (22)_ Thomas Ann. Van Wyen and A.J. Thomas Jnr, Non- Intervention: The Law And Its Import In The Americas, 1956, pp 77-78
- (23)_ Moses. Moskowitz, Human Rights And World Order, 1959, p 16.
- (24)_ Brownlie, Op cit note (18) p 338. In this regard Brownlie enlists many writers such as Hall, Lawrence, Woolsey, Creasy, Wheaton and many others who regard humanitarian intervention as a part of international law.

- (25)_ Jean Pierre. Fontayne, " The Customary International Law Doctrine Of Humanitarian Intervention: Its Current Validity Under The United Nations Charter", Calif West.In't.L.J., Vol 4, 1974, p 207; and for more details see M. Ganji, International Protection Of Human Rights, 1962.
- (26)_ Id.
- (27)_ Brownlie, Op cit note (18) p 339. On this point he conceded that " the substantial motive was the prevention of racial extermination in the Morea".
- (28)_ Frank and Rodely, Op cit note(19) p 281
- (29)_ Reisman and Myres Mc Dougal, " Humanitarian Intervention To Protect The Ibos" R. Lillich, Humanitarian Intervention And The United Nations, 1973, p 177
- (30)_ Fontayne, Op cit note (25) p 207 .
- (31)_ Brownlie, Op cit note (18) p 340.
- (32)_ Frank and Rodely, Op cit note (19) pp 282-83.
- (33)_ I.Pogany, " Humanitarian Intervention In International Law: The French Intervention In Syria Re-examined", In't and Comp. Law. Q., Vol 35, 1986.
- (34)_ Id.
- (35)_ Meir Zamir, The Foundation Of Modern Lebanon, 1963, p 168
- (36)_ Fontayne, Op cit note (25) pp 208-212.
- (37)_ Id.
- (38)_ cited in Stowell, Op cit note (14) p 122n

- (39)_ Frank and Rodely, Op cit note (19) p 285.
- (40)_ In fact the humanitarian motive cannot on its own be the basis for the action, as other factors play a role as well, but still the humanitarian factor plays the major role. In this regard, De Schutter affirmed that " It is a big mistake, in general, to stop short of recognitions of an inherently just principle, merely because of the possibility of non-genuine invocation" see De Schutter, " Humanitarian Intervention: A United Nations Task", Calif. West. In't. L. J., Vol 3, 1972, p 26
- (41)_ For a general view, see Brownlie, Op cit note (18), and Frank and Rodely, Op cit note (19)
- (42)_ According to Oppenheim this is largely accountable to the fear of an " international configuration likely to follow an intervention" in addition to " the consideration that the interest of the persecuted state will suffer rather than benefit, have been mainly responsible for the relative infrequency of humanitarian intervention" see Oppenheim, Op cit note (13) p 313.
- (43)_ I.C.J.: Case concerning Military and Paramilitary Activities In and Against Nicaragua: *Nicaragua v. United States* in I.L.M., vol 25, 1986, p 98.
- (44)_ Fernando. R. Teson, Humanitarian Intervention: An Inquiry Into Law And Morality, 1988, p 156
- (45)_ H. Wheaton, Elements Of International Law, (8th ed) 1868, p 113; T.D.Woolsey, Introduction to the Study Of International Law, 4th ed, 1876, p 73; C.C. Hyde "Intervention in Theory and Practice" ILL.L Rev., Vol 6, (1911-12), pp 1-6; H. Hodges, The Doctrine Of Intervention, 1915, pp 87-91. He asserts that "few writers dismiss the theory and their dismissal is based on their conviction that the theory is not incorporated in customary law, but they do not refuse its ideological and philosophical connotation"
- (46)_ The United Nations Charter, see J.Harris, Cases And Material On International Law, 3ed, 1983, pp 748- 749.
- (47)_ Brownlie, Op cit note (18) p 433.

- (48)_ Louis, Henkins, " Remark", Proc Am. Soc. I. L. ,Vol 66, 1977, pp 95-96; and see Ronzitte, Op cit note (11)
- (49)_ Julis Stone, Of Law And Nation , 1974, p 23
- (50)_ Ibid p 24.
- (51)_ Id.
- (52)_ R. Lillich, " Intervention to protect Human Rights" Mc Gill. L. J. , Vol 15, 1959, pp 211-12
- (53)_ Mc Dougal and Reisman, Op cit note(29) p 177.
- (54)_ Brownlie, Op cit note (18) pp 267; Bowett, Op cit note (16) pp 146-151.
- (55)_ Teson, Op cit note (44) p 134.
- (56)_ Ibid p 136.
- (57)_ For more details, see M.Mc Dougal; H.O.Lassuell and J. Miller, Interpretation Of Agreement And World Public Order , 1967, pp 3-77.
- (58)_ Anthony D'Amato, International Law: Process And Prospect , 1987, pp 57-69.
- (59)_ I.C.J Report (1947-48); Dissenting opinion of the Judges: Basdevant, Winiarski, Sir Arnold Mc Nair and Read; Article 31 of the Vienna convention reads: " A treaty shall be interpreted in good faith in accordance with the ordinary meaning to given to the terms of the treaty in their context and in light of it's object and purpose".
- (60)_ B.V.A. Roling, " On The Prohibition Of The Use Of Force" in A.R. black shield, Legal Change: Essay In Honor Of Julius Stone , 1983, p 276.
- (61)_ M. Akehurst, " The Use Of Force To Protect Nationals" International Relation , Vol 5, (1975-77), p 16; Scott Davidson, Grenada: A Study In Politic And The Limit Of International Law ,

1987

- (62)_ Akehurst, Ibid p 16
- (63)_ B.V.A.Rolling, " The Use Of Force To Protect Nationals" in Black Shield, Op cit note (60).
- (64)_ 9 U.N Monthly Chronicle, 7 Jan 1972.
- (65)_ Cited in R.M. Chilstrom, " Humanitarian Intervention Under Contemporary International Law: A Policy Oriented Approach", Yale St Wld. Pol. Ord., Vol 1, 1974, p 133
- (66)_ U.N. G. A.O.R. 24 (1974), cited in Mc Dougal and Reisman, Op cit note (29) p 172
- (67)_ Resolution 217 A/(111), G.A, 10 December 1984, Official Record, 3rd Session (A/810).
- (68)_ Id.
- (69)_ L. Sohn, " The Universal Declaration Of Human Rights", Int'L Comm. Jur, Vol 8, 1967, p 23.
- (70)_ J.P Humphrey, " The Universal Declaration Of Human Rights: Its History, Impact, And Juridical Character" in B. Ramcharan (Ed), Human Rights: Thirty Year After The Universal Declaration, 1979, p 28.
- (71)_ Mc Dougal and Reisman, Op cit note (29) p 172
- (72)_ Id.
- (73)_ Id. Emphasis Added.
- (74)_ R.M Chistrom, Op cit note (65) p 120.
- (75)- Chistrom, Ibid; Teson, Op cit note (44) p 135.
- (76)_ Chistrom, Ibid p 123; and see Mc Dougal and Reisman," Rhodesia And The United Nations:

The Lawfulness Of International Concern" A.J.I.L., Vol 62, 1968, p 1-15

(77)_ Ronzitti, Op cit note (11) p 148

(78)_ Teson, Op cit note (44) pp 148-49; M. Sornarajah, " Internal Colonialism And Humanitarian Intervention" GA. J. In't. and Comp. L., Vol 11, (1981) pp 47-48.

(79)_ J.N.Moore, Law And Civil War In Modern World, 1974, p 25.

(80)_ See Leo. Gross, " The Peace Of Westphalia 1684-1948", A.J.I.L., Vol 42, 1948, pp 20-38.

(81)_ J.S. Watson, " Legal History, Efficacy And Validity In The Development Of Human Rights Norms In International Law", U.Ill. L. Forum, 1979, p 631.

(82)_ Article 2 (7), cited in Harris Op cit note (46)

(83)_ Lauterpacht, Op cit note (21), p 120; P. C. Jessup, A Modern Law Of Nations, 1948, pp 169-70; R.S. Pathak, " The Protection Of Human Rights" Ind.J.In't. L., Vol 18, (1978), pp 265-273.

(84)_ W.D. Werwey, " Humanitarian Intervention Under International Law", N.Y.I.L., Vol XXX11, issue 111, 1985, p 367.

(85)_ *Nicaragua Case*, Op cit note (43) para 267, p 1083.

(86)_ Ermacora, " Human Rights And Domestic Jurisdiction Of States" Recueil De Cours, Vol 124, 1968, pp 436; Ved P. Nanda, " From Gandhi To Gandhi: International Legal Response To The Destruction Of Human Rights And Fundamental Freedom In India", Den. J.L. L. P., Vol 6-7, (1976-78), pp 19-20 and 42.

(87)_ Mc Dougal and Reisman, Op cit note (76); Sornarajah, Op cit note (78), pp 47- 48; R.H. Payne, " Sub-Saharan Africa: The Right Of Intervention In The Name Of Humanity", GA. J.In't. and Comp. L., Vol (1-2), 1970-72, p 94

- (88)_ Nirmala Chandrahasan, " Internal Conflict And The Question Of Intervention At International Law", Colombo Law Review, Vol 24, 1979 pp 156-158.
- (89)_ Raifqual Islam, Bangladesh Liberation Movement, 1987, pp 116-119
- (90)_ Id.
- (91)_ Mc Dougal and Reisman, Op cit note (29) pp 174-75.
- (92)_ Farrokh Jhabvala, " Unilateral Humanitarian Intervention And International Law", Ind. J. In't. L. Vol 12, 1981, pp 226-227
- (93)_ H. Scott Fairley, " States Actors, Humanitarian Intervention And International Law: Re-opening The Pandora's Box", GA. J. In't and Comp. L., Vol 10, 1980, pp 29-63. However Fairley exclude the theory from the contemporary international Law, mainly due to the potential abuse. This point will be discussed in the coming section.
- (94)_ L. B.Sohn and T.Buergerthal, International Protection Of Human Rights, Indianapolis 1973, p 179, Sohn affirms that " The obligation of a state in the Charter referring to human rights were purposefully limited to co-operation with the Organization to promote human right and the suggestion of extending them to individual state protection of human rights were expressly rejected so as to avoid possible interference in what was considered to be an internal affair" p179
- (95)_ LCJ Report, 1949, p 35.
- (96)_ Teson, Op cit note (44) p 139.
- (97)_ Mc Dougal and Beher, " Human Rights In The United Nations", AJLL, Vol 58, 1974, p 629.
- (98)_ John Houston, " Human Rights Enforcement Issues Of The United Nations Conference On International Organization", Ja. L. Rev., Vol 53, 1967-68, pp 272-290.
- (99)_ Eric Lane, "Mass Killing By Governments: Lawful In The World Legal Order?", N.Y. U.

J.In't. L. and Pol., Vol 12, 1979. p 276.

(100)_ Inis. Claude, " The United Nations, The United States, And The maintenance Of Peace", IQ
Vol 23, 1969,,p 621.

(101)_ W.M Reisman, Nullity And Revision, London, 1971. pp 848-849; and see P.Jessup, A
Modern Law of Nations, 1948, pp 169-170.

(102)_ Id.

(103)_ Jessup, Id.

(104)_ Article 56 of United Nations Charter, Harris Op cit note (46).

(105)_ Mc Dougal and Reisman, Op cit note 929) pp 174-75

(106)_ E. Pakistan Staff Study, The Review, International Committee Of Jurist, No 8, 1972, p 2

(107)- R. Lillich, " Forcible Self_help Under International Law", N. W. Collg. Rev., Vol 22, 1970, p
61.

(108)- Chilstrom, Op cit note (65) p 103.

(109)_ J.N Moore, " The Control Of Foreign Intervention In Internal Conflict", Va. J. In't. L., Vol 9,
1969, pp 152-153.

(110)_ 1V Documents On British Foreign Policy (119-1939) No 259, pp 257. Cited in J.N. Moore Op
cit note (79) p 221.

(111)_ I. Brownlie, " Humanitarian Intervention" in Moore Op cit note (79) p 224.

(112)_ Henkins, Op cit note (48) p 96; L. Doswald-Beck, " The Legality Of The United States
Intervention In Grenada", Ind. J. In't. L. Vol 24, 1984, pp 207-211.

(113)_ Mc Dougal and F. Feliciano, Law and Minimum World Public Order, 1961, p Vii; according to

Chilstrom international community as well as Lawyer are capable of passing a judgement on the genuinty of humanitarian intervention, Chilstrom Op cit note (65) p 218

(114)_ Cited in H.L Weisberg, " The Congo Crisis 1964: A Case Study In Humanitarian Intervention" Va. J. In't. L., Vol 12, (1972). p 269.

(115)_ Id.

(116)_ Brownlie Op cit note (111), p 224.

(117)_ Comment by Professor Moore in a conference on Humanitarian intervention, cited in Lillich, Humanitarian Intervention And The United Nations, 1973, p 59.

(118)_ Richard. Barnet, Intervention And Revolution: The United States In The Thirld World, 1960, p 249.

(119)_ D.S. Bogen, " The Law Of Humanitarian Intervention: United States Policy In Cuba (1898) And In The Dominican Republic (1965)", Hav. In't.L .Club. J, Vol 7, 1966, p 313.

(120)_ Chilstrom, Op cit note (65) p 137.

(121)_ Id.

(122)_ see Lillich (ed.), Humanitarian Intervention And the United Nations, Op cit note (117), p 188; On this point Walzer argued that an intervention under the name of humanity cannot be rejected on the ground of self- interest. Also it is accepted that collective intervention is more adequate, thus not always right " what one look for in number is a detachment from a particularist view and consensus on appeal; one appeals to humanity as a whole. States do not lose their particularist character merely by acting together. If governments have mixed motives so do coalitions of governments. Some goals, perhaps, are cancelled out by the political bargaining that constitute their coalition, but others are super-added; and the resulting mix is as accidental with reference to the moral issues as are the political interest and ideologies of a single state", see M. Walzer, Just and unjust war, 1977, p 107.

- (123)_ Lillich, Id.
- (124)_ Captain Thomas E. Behuniak, " The Law Of Unilateral Humanitarian Intervention By Armed Forces: A Legal Survey", Mil. L.Rev, Vol 79-82, 1978, pp 190; Doswald, Op cit note (112) p 211.
- (125)_ Saliba Kamal, Cross Road To Civil War: Lebanon 1958- 1976, 1976. pp 107-109
- (126)_ Naome J. Weinberger, Syrian Intervention In Lebanon: 1975-76 Civil War, 1986. pp 150-153.
- (127)_ Al-Nahar, (Lebanese Newspaper) 8 January 1976; and see Khwayri, Op cit note (8) pp 20.
- (128)_ *Assad's Speech* Op cit note (5).
- (129)_ Kaildi, Op cit note (2). pp 51-52; Edmond Rabbat, " Le Document Historique Du Fevries", L'Orient Le Jour, 24 February 1976.
- (130)_ Assad's speech Op cit note (5).
- (131)_ Junmblat Op cit note (1) p 74.
- (132)_ Gerald Fitzmurice, " The General Principles Of International Law Considered From The Stand Point Of The Rule Of Law", Recuile De Course, Vol 5, 1959, p 144
- (133)_ See, in general, The Caroline And Mclead Cases, AJIL, Vol 23, 1938. p 89.
- (134)_ Kameil Shammoun, Crisis In Lebanon, Beirut, 1977, p 105.
- (135)_ According to Abu Iyad the military commander the fighting in Al Qubyyat was not directed nor endorsed by the PLO or the LNM. He regarded the fight as a conspiracy and demanded an immediate cease fire. See Khwayri Op cit note (8). p 239; Moreover Tabitha affirmed that " Maamari an officer sided with the LNM and thereafter joined the Syrian orchestrated anti-Junmblat chorus. That Maamari persisted in his bombardment in defiance of order from both Arafat and Junmblat suggesting that he was acting to provide a pretext for Syrian intervention"

see Tabitha Op cit note (3). p 200.

(136)_ Shammoun, Op cit note (134).

(137)_ Malcolm Kerr, " Lebanon The Risk For Syria" , Los Angeles Times, 13 June 1976.

(138)_ R. Falk, " United States And The Doctrine Of Non- Intervention In Internal Affair Of Independent States", How. L. J.. Vol 5, (1959). p 176

(139)_ 111 Congress. Rec. 23369 (daily ed. sep 17,1965) cited in Ved Nanda "The United States Action In The Dominican Crisis: Impact On The World Order" Part 1, Den. L.J., Vol 43, 1966, p 469

(140)_ Khwayri Op cit note (8) p 253.

(141)_ Assad's Speech Op cit note (5).

(142)_ 25 Dep. state Bulletin 747 (1965) cited in Op cit note (137).

(143)_ R. Lillich, " Forcible Self-Help By States To Protect Human Rights", Ia. L. Rev., Vol 53, 1967, p 330.

(144)_ Id.

(145)_ Op cit note (132) .

(146)_ 2 U.N Monthly Chronicle NO 6, B, 1955 cited in Nanda, Op cit note (137)

(147)_ AL-Ahram [international edition] 1 June 1976.

(148)_ Al-Ahram 2 June 1976.

(149)_ Al-Ahram 10 June 1976; and see Efraim Karsh, The Soviet Union And Syria: The Assad Years., Royal institute of international affair, London, 1988. p 33.

- (150)_ Raymond Hinnebusch, "Syria Policy In Lebanon And The Palestinian", Arab Studies Quarterly, Vol 8, Number 1.(1986). pp 4-5
- (151)_ R.Lillich, Op cit note (29) p 54.
- (152)_ Lawrence, The Principles Of International Law, 1923, p 127.
- (153)_ Op cit note (148) .
- (154)_ Hinnbush Op cit note (148); and see P. Seale, Assad Of Syria: The Struggle For The Middle East, 1988, pp 279-282
- (155)_ Id.
- (156)_ Tabitha, Op cit note (3) pp 179-198.
- (157)_ Jumblatt, Op cit note (1) pp 81-82.
- (158)_ Id.
- (159)_ Monday Morning Magazine, June 14, 1976.
- (160)_ Farooq Hassan, " Real Politik In International Law: After Tanzanian_ Ugandan Conflict, Humanitarian Intervention Re-Eximened", Willamette L. Rev., Vol 17, Part 4, 1981, p 890. According to the said writer, " in a country in which persecution exists, any resources directed towards humanitarian objectives should be utilized at home before an attempt is made to export good intentionn" pp 890-91.
- (161)_ S.C Official Record, 38th 1983, Vol 2, P.V/2480

CHAPTER FIVE

AN INTERVENTION UPON THE INVITATION OF THE LEBANESE GOVERNMENT.

I- INTRODUCTION.

The Syrian government's allegation that its intervention was in response to the request of Lebanese legal authorities has revived a heated debate over the appropriateness of the concept of invitation in international law. As a matter of fact, the principle is surrounded by ambiguity and inaccuracy which in one way or another helps to undermine its legal relevance in contemporary international law. Generally, the principle is recognized as an exception to the widely recognized norm of non-intervention. However, since this principle has been violated many times, the premise upon which the principle stands had been undermined. The best illustrative example of this fact is to be found in the records of history. In 1939 Hitler received an invitation from the government of Czechoslovakia to intervene in its country. Years later the content of the letter was revealed to the public which was outrageous and shocking. Hitler addressed the Czech president in an aggressive manner:

" Of course we would like to have an invitation from you for Czechoslovakia to become a German protectorate; and we would like to warn you that if you do not give us that invitation we would be obliged to invade Czechoslovakia and your beautiful city of Prague would be destroyed on the first day".⁽¹⁾

Unfortunately, Hitler's example is not the only precedent of the misuse of the concept. In the following years, many states invoked the pretext of invitation to

demonstrate the legality of their military action.

Interestingly enough, the issue of invitation is not as confusing nor as uncertain as in the case of civil war, where the identity of the representative of the government is the vital element to be established. Despite such an indeterminacy, international law has not yet responded effectively to the challenge that the civil war has brought into light. Many states still cling to the notion that the government of any state could validly invite any foreign state to help in putting down an insurgency which had challenged the existing government.⁽²⁾ On the other hand, other states challenge this notion and insist on a new norm which lends support not to the government, but to the insurgents.⁽³⁾ However, whatever their divergences of views over this issue, an invitation by a government is still not contrary to international law. This notion of legitimacy is carried over from traditional law which prescribes that a government, by virtue of its representation of a state, has the right to, whenever it encounters difficulties, invite another friendly nation to assist it in easing the difficulties -which, in most cases, is to put down a rebellion.

As international law has undergone major changes, one wonders to what extent the right of invitation is still valid. If an invitation is still recognised in international law, the inquiry will be focused on the Syrian intervention under the principle of invitation and to see whether or not such an invitation is still valid under international law and Lebanese constitutional law.

II- The Syrian government justification

Following its intervention on the first of June 1976, the Syrian government relied on the invitation of the Lebanese government as well as on humanitarian intervention as the legal basis for its military action. The Syrian government strongly defended its

military action by reference to the invitation of the Lebanese government. As a matter of fact, on no occasion did the Syrian government abandon the claim that their intervention was in response to such an invitation. Mr Khaddem, a Syrian foreign minister on his visit to France following his country's intervention, affirmed to his French counterpart after a brief meeting that, Syrian intervention was in response to the Lebanese government's invitation. The French foreign minister affirmed this by saying:

"Mr Kaddem assured us that Syria intervened in Lebanon upon the request of a great portion of Lebanese public opinion and the Lebanese authority and the intervention was necessary to save life and losses".⁽⁴⁾

Moreover, President Assad in an interview to the American newspaper *Washington Post* declared that, his forces, " entered Lebanese villages in order to bring peace and stability and after having been requested by many Lebanese officials to offer such assistance".⁽⁵⁾

As the intervention was basically justified by an invitation from the Lebanese legal authority and moreover, by reference to Lebanese public opinion, the major question is whether or not Syria was justified in its intervention under such ground, and in particular what is the legality of an intervention upon the request of the majority of Lebanese people ? These issues could be summarized into four questions which will all need an answer in order to affirm the legality or illegality of the Syrian intervention. These are as follows:

(1)- was there in fact any invitation from the legitimate authority ?

(2)- What is the validity of that invitation under international law ?

(3)- What is the constitutionality of that invitation under the Lebanese constitutional law?

(4)- Finally what is the legal basis for intervention upon the request of the majority of people, that is to say self- determination ?

III- The Existence Of An Invitation by the Lebanese Government.

The Syrian government, on many occasions specifically affirmed that they intervened upon the request of the Lebanese government. The Syrian authorities, however, did not name in any way the officials who invited them. The determination of those who issued the invitation is of great importance since the validity of the intervention is dependent on that. The existence of a consent by the state will change the nature of intervention from an illegal act into a legal one. Thus, determination of the officials will ease the question of consent by reference to Lebanese constitutional law which ultimately determines whether the officials thereof were empowered to issue an invitation.

The absence of such a specification, however, leaves room for speculation regarding the issuer of the invitation. Moreover, such intervention by foreign troops must not take effect unless there is at least a written request or anything which could confirm the foreign government's claim. Given the absence of any evidence concerning the Syrian intervention, one is therefore left with speculation.

Since the Syrian government referred to the Lebanese government without indicating which member of the cabinet invited them, then an assumption can be made; either the prime minister on his own initiative, or the president invited the Syrians into Lebanon. Or perhaps there was a treaty between the two countries which gave legality

to the Syrian intervention. Therefore, a thorough review of these questions is vital to the inquiry in question.

A-The Prime Minister's Request

The question as to whether or not the prime minister invited the Syrian troops into Lebanon is not too complex to answer. The prime minister has preserved a reputation of being a man of dialogue and peace. His policy towards the Lebanese civil war is based on dialogue with various parties as he always advocated the point that violence never resolves a crisis. The prime minister's commitment to a peaceful resolution of the civil war has never waned even during the most critical time of the crisis.⁽⁶⁾

Against this background, an invitation by him to the Syrian troops would seem at odds with his beliefs. Indeed the prime minister voiced his concern over the Syrian intervention as he also discarded any military options. Despite his long standing support for the role of the Syrians in Lebanon, his steadfast resolution was unshakable that such a role must exclude a military option. Faced with the Syrian intervention in the conflict, the prime minister did not hesitate to call on the Syrians to withdraw their troops from the quagmire of the Lebanese civil war.⁽⁷⁾ On the contrary the prime minister insisted that if there was a need for military involvement in Lebanon, then such an involvement must be carried out under the auspices of the Arab League. In a manifesto after a meeting with the Islamic and National parties, prime minister Rashid Karami declared that:

" ..Out of our concern for national unity between the Syrians and the Palestinians on one hand, and the National forces on the other , and the commitment to face the danger which threatens our country, we request Syria to withdraw all its forces in order to prevent the

renewal of clashes which was condemned by all Arab world public opinion;and we kindly request the Secretary General of the Arab League, Mahmoud Riad, to speed up the execution of the Arab League resolution regarding Lebanon".⁽⁸⁾

The prime minister's statement is of great importance since it refers to the withdrawal of the Syrian troops and a replacement of them by Arab league forces. In this way, the prime minister did not abandon his conviction that the military intervention by the Syrians was against the wishes of most parties to the conflict and affirmed his acceptance of the Syrian political initiative as all parties had agreed upon. After four months following the Syrian military intervention,the prime minister reaffirmed what he believed as he submitted his resignation to the elected president (Sarkis) by saying that the Syrian initiative was " in the beginning political and thereby all the parties agreed upon it, but the successive development transformed it into a military one whereby the opinion was divided upon it".⁽⁹⁾ This statement, in contrast to the first one which called for the Syrian withdrawal appeared very mild, and far from explicitly condemning the Syrian intervention. However, such a contradiction must not be interpreted in a sense as to give credit to the Syrian intervention. Karami's last statement must be viewed in the light of the development which took place following the Syrian intervention, as the Syrian forces stormed nearly all the fortresses of the LNM and hence the Syrian forces were the dominant power. It is unreasonable to perceive a statement from anyone charging the Syrian forces with illegality, or calling on its troops to leave the Lebanese territory. Despite this factor,the prime minister's statement was indicative of the reluctance of various parties to welcome it.

Thus, one could only give credit to the first statement, for the simple fact that the prime minister was free from any foreign pressure; and consequently his second statement must be considered inconclusive.

Accepting the prime minister's statement as a reflection of his administration or at

least his conviction, one could then draw the conclusion that the prime minister was not in favour of Syrian military intervention, and as a matter of fact was against it. Then, if the prime minister opposed the Syrian intervention, it becomes illogical to assume that he invited the Syrian troops into Lebanon.

Therefore, the Syrian intervention was not requested by the Lebanese prime minister and any conclusion to the contrary in the light of the foregoing facts seems unreasonable.

B- The Existence Of A Treaty Or The Lebanese President's Request.

As there is no hard evidence relating to the prime minister's involvement in the invitation of the Syrian troops into Lebanon, other possibilities may exist. One of these possibilities is the existence of a legal arrangement, or in other words, the existence of a treaty which, if it ever existed, would legitimize Syrian military action.

There is no evidence to prove the existence of any such treaty. However, in reviewing all the Syrian and Lebanese officials' statements one can detect some of the legal arrangements referred to by the two countries. Whether or not those statements or legal arrangements can be considered as a valid legal document is a major concern of this inquiry. However, the Syrians and in particular their president in his most famous speech did point to some of the legal arrangements relating to his troops' intervention in Lebanon. The Syrian president uncovered an agreement between himself and the Palestinian forces in Lebanon which, according to the President furnished the legal support for his military action. This agreement came out of an understanding between the Palestinian and the Syrian government after the latter's insistence that the

Palestinians must not depart from Syrian policy which is not different from the Palestinian policy.

Thus, on the 16th of April 1976, the Syrian government headed by the Syrian president and the Palestinian Organization, represented by Mr Arafat, held a meeting and they thereafter agreed on a legal document which came to be known as the April Agreement.⁽¹⁰⁾ The major features of this agreement is its reference to the Lebanese civil war. The two parties agreed on a set of rules relating to the management of the Lebanese conflict. The most relevant of these rules are the following :

- (1)- To halt the fighting and adopt a unified stand against any side which resumes combat operation.
- (2)- To reform the tripartite Syrian-Palestinian-Lebanese Higher Military Committee.
- (3)- To resist partition in all its forms and any action or measure that harms the unity of Lebanon's territory and people
- (4)- To reject American plans and solutions in Lebanon
- (5)- Rejection of internationalization or the entry of any international forces into Lebanon.
- (6)- To reject the Arabization of the crises in Lebanon.⁽¹¹⁾

Thus, according to this agreement, the Syrians pledged to fight any one that resorted to the military option, rejection of the partition of Lebanon, and adherence to the Syrian policy in Lebanon. Following the rules of this agreement and particularly Article (1), which permits Syrian intervention to stop any party which resorts to violence, president Assad affirmed that, " We had agreed to take measures against any

side which started a fighting operation. It was they who started the fighting (the Palestinians and LNM) ..we pushed some of our forces in the direction of Beirut in order to restore things to normal".⁽¹²⁾ To what extent the president was relying on this document as a justification is not very clear as reference to it was only mentioned in Assad's speech.

Whatever the Syrian government's stand on this issue, the April agreement has no real legal value whatsoever. The cited agreement was an agreement to which the Lebanese Government was a non- party. The agreement then has no legal importance vis a vis the Lebanese government. On the contrary, the agreement is adverse to the prevailing norms of international law . It is contracted on behalf of the Lebanese government over an issue which the constitutional government is solely entitled to deal with. The conclusion of this agreement between the P.L.O and the Syrian government, in no way could be brought as a justification for the Syrian intervention. After all, neither the Palestinians nor the Syrians have any right to contract on the issue which is ultimately within the domestic jurisdiction of the Lebanese government. Therefore, the 16 April agreement must be dismissed as irrelevant and cannot be invoked as a justification.

Another agreement was referred to, not by the Syrian government but by the Lebanese president who claimed that the agreement legitimized the intervention since that agreement was conducted and signed by the Lebanese government.⁽¹³⁾ This agreement was negotiated between the Syrian and the Lebanese presidents when the latter visited Syria following the first phase of an invited Syrian intervention on the fourth of January 1976. As mentioned in the previous chapter, the agreement was a compromise envisioned by the two presidents to resolve the conflict. However, the agreement was far too short to satisfy the demands of the LNM. In citing the agreement as justification for the Syrian intervention, the Lebanese president in his letter

to the Secretary General of the Arab League affirmed his conviction that the Arab League had no legal right to intervene in the bilateral relations between Lebanon and Syria; and furthermore confirmed that the Syrian intervention was based on the constitutional document of the fourteenth of February which the Lebanese cabinet agreed upon.⁽¹⁴⁾

To the Lebanese president, the agreement was the proper legal document which revealed that the Lebanese government's consent was not absent and hence the Syrians were invited. However, the cited agreement was a mere set of reforms that were embodied in a document, commonly known as the *14th of February constitutional document*. This document has not touched on the Syrian military intervention in Lebanon.⁽¹⁵⁾ There are no rules or references in the document which could be cited in support of the president's statement. Briefly, the document was a plan embodying reforms and had nothing to do with the introduction of foreign troops.

The president's affirmation that the Syrian intervention to force the Palestinians to adhere to the Cairo agreement, already discussed in chapter two, is defenceless. The document's reference to the Cairo agreement was in such terms:

" Nor do the Palestinians need reminding that if the Palestinian revolution was to coexist with Lebanese legitimacy in a small and compact territory like Lebanon, which is not really the territory of the revolution, there had to be consideration, precaution if the two were not to come into collision. [They know] that the situation today requires close adherence to the agreement and greater endeavour in their implementation especially in the case of the Cairo agreement.⁽¹⁶⁾

According to the wording of the document, it is impossible to interpret its rules to the effect that the Syrians were entitled to intervene to force implementation of the document. In response to the Lebanese president's claim, the prime minister, Karami,

questioned the content of the document in order to see whether or not there was a reference to Syrian implementation. He said:

Whenever I, or others, returned to the constitutional document nothing could be found regarding the entry of the Syrian army, not to mention, the justification of its entry..and I stressed that this constitutional document is not constitutional unless the Lebanese parliament agreed upon it, and, so far, the document is still a preliminary suggestion for the envisaged reform.⁽¹⁷⁾

Therefore, the constitutional document cannot be invoked here in support of the Syrian intervention. Apart from its existence as a viable legal document according to Lebanese law, the document is still of no value because it is not concerned at all with the Syrian intervention. It is simply a formula or a plan for reforming the Lebanese system and moreover such a plan was rejected by various parties to the conflict.

Out of the above, since neither the agreement of 16 April nor the constitutional document could be relied on as a justification for the Syrian intervention, the only remaining possibility, is that it was the president who invited the Syrians.⁽¹⁸⁾ There is ample evidence that the Lebanese president acceded to the Syrian intervention. After all, the president and his partners of the Lebanese Front gave full support to the Syrian military intervention.⁽¹⁹⁾ The leader of the Phalange party expressed his full support for the Syrian action and praised the initiative by saying:" The Syrian initiative is the best illuminating step in the record of history since it attracted the fearful people towards an Arab country which is considered the castle of true Arabism,and foreclosed the colonization creeping through the door of Lebanon and the region".⁽²⁰⁾

Moreover,the Lebanese president has praised the Syrian intervention and defended it on every occasion. The Lebanese president's relationship with the Syrian president was a very special one which prompted the Syrian president to affirm to the Palestinian

leader that he was the best president among the Lebanese politicians, and according to Assad:" ..he is the only Lebanese president who would sign an agreement of unity if I asked him to do so".(21)

Following this argument one could speculate that the president, out of desperation, invited Syria's intervention or at least welcomed it as a helpful gesture. Therefore, assuming the president issued the invitation, the most relevant question that might arise is the validity of that invitation. An invitation issued by the president must be issued according to the constitutional law of Lebanon. Whether or not the invitation was in line with the Lebanese constitution is a question of special importance but before proceeding to discuss it an attempt will be made to discuss the legality of the invitation under international law.

IV- The validity of the invitation under the rules of international law.

A- The Principle of Effectiveness.

It is generally accepted as common knowledge that under international law a government by virtue of its representation of a state has the right to issue an invitation to invite another state into its territory. Such a postulate has long been adhered to and accepted by various actors on the international level.

The acceptance of the invitation, however, contributed to a breach in international law, as an invitation in the context of a civil war does not reflect the above claim. In other words, the representation of a state in a civil war is of great doubt, and hence no one could assert with great confidence its representation of a state. The government which has been challenged by a massive rebellion, and in the course of suppressing it, the government could hardly be justified in inviting another government to assist in

putting down the rebellion. To assert that the government is still enjoying that right is in fact introducing a norm which puts the government in a superb position vis a vis the rebel forces.

The norm that the government could be treated on equal footing with the insurgent when the latter is being recognized by foreign states or the parent government as belligerent, is outmoded. It is illogical to perceive a state which is challenged by insurgents to recognise them and hence open the way toward its demise. Neither is it possible to see a government recognising the insurgents as belligerent, given the historical irrelevance of the concept. In such a context, the incumbent government's survival is guaranteed and its legal strength is left untouched. To Carner, the matter is very clear:

"there is no rule of international law which forbids the government of another state from rendering assistance to the established legitimate government of another state with the aim of enabling it to suppress an insurrection against its authority".⁽²²⁾

Such assistance, according to Carner, as long as it is directed to the legitimate government "is not a case of unlawful intervention as is the giving of assistance to rebel forces who are arrayed against its authority".⁽²³⁾

In such a context one wonders to what extent the norm is applicable and whether or not the norm could be extended to include a situation where the rebels hold a great portion of territory and exercise effective control. In fact, there are many cases in which the insurgents hold fast to the territory and challenge the writ of the government to the extent of making it null and void. Against this backdrop the presumption that the incumbent government is still the legitimate one seems to run against logic. Then, the criterion of effectiveness is an indication that the government is no longer in control and

the insurgents are gaining the upper hand. The practice of states on this issue is very clear and abundant.

Following the abolition of the monarchy on June 1 1973 and the proclamation of Greece as a republic by the military Junta, the British foreign secretary said:

" We deplore the fact that the monarchy has been brought to an end by this illegal government ...nevertheless, they are a government with whom we have had relations all these years and the situation has not changed in that respect. They are in control of the country and therefore we recognise them".(24)

In this case, the matter was very clear as the new government was in total control. However, the case which needs clarification is where neither the insurgents nor the incumbent government hold complete control. International law dictates that the government which has lost control over the territory has no special advantage over the insurgents.

In the Hopkins case this conclusion was affirmed. The commission that investigated the acts of certain revolutionary authorities relating to the legality of the postal order issued by the Huerta (revolutionary authority) administration, reached the conclusion that the act was valid. The rationale of the ruling was as such:

" It will be borne in mind that an administration of illegal origin will either operate directly on the central authority by seizing,as Huerta did, the rein of government, displacing the regularly constituted authorities from their seats of power,forcibly occupying such seats, and extending its influence from the centre throughout the nation; or it comes into being through attacking the existing order from without and step by step working towards the centre. The act of an organization of the latter type become binding on the nation as of the date territory comes under its dominaton and control conditioned upon its ultimate success. [The] binding force of such acts of Huerta administratoin.....will depend upon its real control and

paramountcy at the time of the act over a major portion of the territory and a majority of the people of Mexico".⁽²⁵⁾

The commission continued to stress the importance of the criterion of control by drawing the following conclusions: "Once it had lost this control, even though it had not actually been overthrown, it would not be more than one among two or more factions wrestling for power as between themselves".⁽²⁶⁾

In another famous case the effective control of the government was the sole criterion for establishing the legality of the action. The Tinoco case concluded that a government which is in firm control, although not recognized by other states, is still the de facto government which could request and speak for the state.⁽²⁷⁾ The ruling of the Tinoco case was very specific.

" The issue is not whether the new government assumes power or conducts its administration under constitutional limitations established by the people during the incumbency of the government it has overthrown. The question is, has it really established itself in such a way that all within its influence recognise its control, and there is no opposing force assuming to be a government in its place".⁽²⁸⁾

It is the general rule that a government in firm control of the territory is the proper government whose representation of a state enables it to issue an invitation.⁽²⁹⁾ It is the firmness of control of the territory and the ability of a state to exercise its daily function which count under the rule of international law. If it is so, then to concede that in international law there is a ground on which to regard a government which has no effective control over its territory as the proper government is quite absurd and contrary to the preceding argument. For accepting this view is to virtually tie the government inseparably to the state, in a sense that the absence of the former signifies the absence of the latter. In fact, there is no legal ground for such a presumption. In the life span of

a state, governments come and go and with such a process a state may have different governments. However, the only government in the case of a struggle for power amongst the various factions is that which exercises effective control.

According to the *White Man Digest of International Law* the test of effectiveness depends upon the existence of the following factors:

- (1) Actual possession of supreme power by the government in the district or state over which its jurisdiction extends
- (2) The acceptance or acknowledgment of its authority by the mass of the people as proved by their general acquiescence in rendering habitual obedience .
- (3) The recognition of the government as de facto or de jure by foreign government⁽³⁰⁾

The firm control of the territory by the government was recognized by every authority on international law. This view is held by both classical and contemporary writers. As an example, Vattel's view is of great relevance :

"Since foreigners have no right to interfere in the domestic affairs of a state , they are not obliged to examine or to pass upon the justice or injustice of its conduct in the management of them; they may if they think fit, presume that the sovereign in possession is the lawful one.⁽³¹⁾

Lauterpacht's view is in total conformity with the said view, as he asserts:

"Although international law does not stigmatize revolutions as unlawful, it does not ignore altogether the distinction between the revolutionary forces and the established government. So long as the lawful government, however adversely affected by the fortune of the civil war, remains within national territory and asserts its authority, it

is presumed to represent the state as a whole".(32)

Therefore, the preceding argument illustrates the fact that an invitation by a government beset by civil war will not be recognised so long as the government in question is not in firm control of its territory. The incumbent government has no legal authority to issue such an invitation due to its failure to put down the insurgency which challenges its authority. No such argument is legally valid today even though in the nineteenth century a king could represent the state irrespective of his control of the territory; and when deposed by the revolution, he could still invite another nation to his aid. The monarchy which was pervasive in the 19th century is no longer applicable and the effective control of a government is the major theme in accepting the act of the government in question. After surveying the practice of states, Bundu summarised his conclusion by saying:

" The preponderance of the practice of states nowadays consider the principle of effectiveness as controlling; any manifestation of popular consent being treated as affirmation of that principle. The absence of popular consent is not therefore a conclusive factor militating against the issue of effectiveness".(33)

Quincy Wright reached this conclusion as he affirmed in this regard that:

"It is presumed that a government in firm possession of the territory of a state, even not generally recognized, can speak for the state. There is a presumption on the other hand, that a government, even if generally recognized, cannot speak for a state if it is not in firm possession of the state's territory".(34)

Summing up the argument, it becomes clear that a government's act cannot be recognised unless the government holds firm control over the territory. Then an invitation by the incumbent government cannot be regarded proper as long as the

government has no firm control.

Therefore, as far as the Lebanese government's invitation is concerned, the question is whether the Lebanese government was in firm control at the time of invitation. To what extent the Lebanese government was in firm control is a factual question which ultimately determines the legal question.

B-The Effectiveness Of The Lebanese Government.

In his comment on the traditional rules of international law Tom Farer recognised the fact that the identification of the true incumbent is inseparably linked to a set of facts, which if ever agreed upon, would enable one to reach the right conclusion.⁽³⁵⁾ From that perspective, the agreed set of facts which is required in order to draw a conclusion about the true incumbent, is not difficult in the Lebanese case. As far as the Lebanese case is concerned, the agreed set of facts relating to the true incumbent was not a subject of disagreement. Therefore, in determining whether the Lebanese government was in true effective control to be regarded as the true incumbent, is greatly dependent on a review of the facts. There is no doubt that the Lebanese government was not in firm control at the time of the invitation, as its writ hardly ran beyond the presidential palace.⁽³⁶⁾ The ineffectiveness of the Lebanese government could be reviewed on two levels: political and military performance.

On the political level the Lebanese government was in a state of paralysis. The differences between the prime minister and the president were too deep to be reconciled.⁽³⁷⁾ The president regarded the mere existence of Karami, the prime minister, as an insult, since his installation was due to Syrian pressure which was exerted upon the president following the crisis of the military government.⁽³⁸⁾ The

failure of Karami's government in bringing the parties together was believed to be one of the president's tricks. Later, Karami's frustration grew bigger as the president excluded him from the most crucial decisions⁽³⁹⁾, and to his irritation the president continued a policy of close collaboration with ex-president Chammoun who was regarded by the prime minister as a major party to the conflict.⁽⁴⁰⁾ The political differences reached a climax as the majority of the chamber of deputies called on the Lebanese president to offer his resignation as he was perceived to be one of the obstacles to the process of reconciliation.⁽⁴¹⁾ As the crisis of the president and his prime minister went on unresolved, the latter offered his resignation which was perceived by one of the most eminent historians as being "symbolic of the ineffectiveness of the Lebanese cabinet".⁽⁴²⁾

Given these facts, the Lebanese political decision-makers were not united on any issue. These differences, if they prove anything, prove that the incumbent government was not one which represented the bulk of the Lebanese people; only such a representation qualifies a government to ask for foreign help. A foreign state cannot respond to an invitation unless there has been a collective decision, where the processes of constitutional law have been fully respected, authorizing the invitation. However, with such a break down in decision making, one can affirm that the incumbent government was not united in the face of the rebel forces, but on the contrary was divided.

As to the military situation which is the most important factor in drawing the conclusion about the ineffectiveness of the government, the crisis of the incumbent was worse and much deeper. The impotence of the incumbent government was manifested in every aspect of its function.⁽⁴³⁾ Even before the desertion of the Lebanese army the government was experienced in living with the existence of various militias which exceeded the number in the Lebanese Army.⁽⁴⁴⁾ The number of the recruits in militias

were around thirty thousand operating on Lebanese territory against seventeen thousand of the Lebanese army. The crisis of the incumbent government deepened when the Lebanese army, the last symbol of the existence of the incumbent government disintegrated and consequently joined various parties which were fighting each other. However, owing to the power of the army which mainly joined forces with the LNM, the pressure increased on the president, as a unit of the army shelled the presidential palace and the president fled to the Eastern sector and joined the Lebanese Front.⁽⁴⁵⁾

As the war was raged on, the LNM succeeded in occupying the whole country and the last bastion left was the tiny enclave of the Eastern sector.⁽⁴⁶⁾ Even that sector was not immune from occupation as the strength of the LNM grew bigger and bigger.

As a whole, one could say that the ineffectiveness of the Lebanese government was not a matter for controversy or discussion. The government, in fact, was not in existence. On the contrary, the LNM was the only dominant party in the conflict. Borrowing the classification of the conflict according to customary international law, the National Movement was satisfying all the requirements of belligerency. The LNM was occupying three quarters of the territory and exercising full control over it.⁽⁴⁷⁾ The council of the LNM was representing all the parties and was headed by the leader Kamal Junmblat who was the commander of the forces.

As to the recognition of the third state, The LNM has not received that recognition. However, one could argue that the conduct of mediation by the Syrian government between the LNM and the Government could be interpreted as a recognition of the belligerency of the LNM. Whether or not Syria recognised the LNM is not the crucial question, but what is very relevant here is the degree of control. As Tom Farer observed:

" where the governments are unusually inept and the rebels unusually skillful in their military operation, and more important in their capability to satisfy the symbolic and material yearning of the bulk of the population. ...in such cases, perpetuation of the incumbent by the sheer power of unanswered external assistance is inconsistent with authentic political independence".(48)

The Syrian assistance to the Lebanese government at that time is hardly reconcilable with traditional international law. Offering help to the incumbent government at a time when the government in question exercises no effective control, is a delinquent act in international law, and a prevention of the domestic process from taking its preferred shape. During the Spanish civil war the Spanish government protested at the impartiality of foreign powers which deprived it from receiving military assistance. Its protest was based on international law which permits assistance to the incumbent but not to the insurgent. The Secretary of state of the United States replied unequivocally that: " This pretension has not been acceded to by this government, which has considered the contest in the light of a civil war in which the parties are equal".(49) The British government followed the same policy toward the Spanish government as the British recognition of the rebel forces as the *de facto* government was justified by the ineffectiveness of the *de jure* government. The British government affirmed to "...maintain that the lawful government holding out in one isolated fortress is entitled to continued recognition as *de jure* is to strain to the breaking point an otherwise unimpeachable rule ".(50)

Following this argument, undoubtedly, the Lebanese government was not in full control, and the opposing party (LNM) was in effective control of the territory. Hence, intervention by the Syrian government on the side of the Lebanese nominal government which was perceived by the Syrian as the sole government, ran foul of the rules of international law. The Syrian action, interestingly enough, bears a great similarity to the American military intervention in the Dominican Republic in 1965. The American

intervention was in response to an invitation which was issued by a government (military Junta) headed by Wessin though his power did not extend beyond the wall of the San Isidro air base⁽⁵¹⁾ Commenting on that military action, Professor Friedmann phrased his argument in the following sarcastic way :

"It has now been fully documented that the United States ambassador at the last moment, when it was clear that the U.S would intervene with overwhelming force, urgently phoned one of his friends in the Junta and said send us a request for intervention".⁽⁵²⁾

Similarly, in the Lebanese civil war, the Lebanese government was lacking any effective control and its existence was symbolically sustained. The president was unable to hold on to his palace and his writ hardly ran effectively in the Lebanese territory. Despite this, the Syrian president insisted that his troops were invited by the legitimate Lebanese government.

Even accepting this to be the case it remain to be resolved whether an invitation could be considered legitimate under Lebanese constitutional law:

V- The validity of the invitation under the Lebanese Constitutional law.

Under Lebanese Law, the president has a wide and great authority which has never been matched in any contemporary system. The president's power, however, is still subject to controversy and differences. One of the key disagreements is Article (52) which reads:

"The president conducts negotiations and signs international treaties which must be revealed by the president to the parliament when ever

the president sees that the interest of the country requires him to do so. Other treaties which contain conditions concerning the state's funds, commercial treaties, and treaties which cannot be terminated yearly cannot be put into effect unless parliament ratifies them".⁽⁵³⁾

This Article undoubtedly delegates to the president the power which qualifies him to invite or sign a treaty without the consent of parliament. However, a question vital to the inquiry is whether or not the prime minister is entitled to share the president's power or the latter needs the former's signature. Answering this question is not possible unless one can determine the type of system which has been adopted by the Lebanese constitution. For if the president's power is not limited by the consent of his prime minister, the invitation which was issued by him could be regarded as valid and hence the Syrian intervention is no longer illegal.

Therefore, determining the constitutionality of the President's invitation under Lebanese law requires a thorough analysis of the Lebanese constitution. From the constitution in question it is not very clear whether it adopted the parliamentary or presidential model. The Lebanese constitution mentions nothing specific in relation to this matter, but at the same time it embodies some features of both systems. Despite this duality, the majority of legal experts, using the comparative method, reached the conclusion that the Lebanese constitution adopted the parliamentary model.

Mustafa Fahmi in his study of the Lebanese constitution affirmed the thesis that the parliamentary model is the dominant feature of the Lebanese constitution. He simply compared the Lebanese with the Egyptian constitution of 1923. The Egyptian constitution of 1923 was clearly identified with the parliamentary model. Fortunately, most of the rules of the 1923 constitution were of great similarity to the Lebanese constitution which gives way to the assertion that the Lebanese constitution reflects the parliamentary model.⁽⁵⁴⁾ The Egyptian constitution affirmed three principles which

were also reflected in the Lebanese constitution :

I- The irresponsibility of the King, and likewise the Lebanese president , according to the Lebanese constitution.(55)

II- The council of ministers is responsible to the parliament and the same regarding Lebanese cabinet should be similarly responsible.(56) .

III- The existence of a kind of equilibrium between the legislative and executive organs and in the Lebanese constitution alike.(57)

Following this comparison, the nature of the Lebanese constitution is no longer uncertain, since it is as parliamentary as the Egyptian constitution. Therefore, against this background one could now proceed to the analysis of the president's power in the light of parliamentary principles.

To reiterate, Article (52) empowers the president to conclude an agreement or a treaty without referring it to the parliament and the president, whenever he sees fit, can reveal it to the parliament. However, the president cannot enjoy total freedom in concluding a treaty as he is obliged by the parliamentary rules to have the consent of the council of ministers, especially the prime minister. Therefore, reading Article (52) out of parliamentary context is a distortion of the spirit of the constitution. Article (52) must be read with other relevant Articles which clarify the extent of the president's power, especially relating to the invitation of foreign troops. In this regard, there are two articles which limit the power of the president, and at the same time, denote the parliamentary orientation of the Lebanese system.

Article (54) of the Lebanese constitution restricted the power of the president by requiring the signature of a specialised minister to any decision that the president may make.(58) Needless to say, in this regard, that Article (54) is a clear reflection of the

French constitution. However, there is a slight difference in the translation from the French text into Arabic. The French text stipulated that the minister's signature attached to every "act" of the president, while the Arabic translation referred to the "decision" of the president.⁽⁵⁹⁾ It is obvious that the French text is wider, and there is no doubt that, in the case of differences over a certain president's act as to whether it needs the minister's signature or not, a reference to the original text is inevitable. The second article which is of great relevance is article (17) which reveals that the president is not alone in performing his duties. Article (17) reads:

"..the executive power is performed by the president who carried it out with the help of ministers according to the rules of the constitution."⁽⁶⁰⁾

Therefore, ministers help the president in performing the executive power, and that help must be in accordance with the rules of law which stipulate that the ministers' signature is indispensable to the president's decision. To suggest that the president could make a decision without the consent of his ministers is not fully supported. The leading French authority on constitutional law, Julien la Ferriere, in his book affirmed unequivocally that, " Any act of the president which does not bear the signature of the prime minister and authorized ministers must be regarded as void, and it has no legal effect and that norm is absolute and has no exception save his resignation speech."⁽⁶¹⁾ This analysis is compatible with the parliamentary orientation of the Lebanese constitution which refers the executive power to the council of ministers.

If the president could, by the constitution, take a decision without the consent of the ministers, then the Lebanese system could no longer be called parliamentary, rather than presidential. It is only in the presidential system, which is prevailing in the United States of America, where the president enjoys sole executive power without any limitation from his ministers. As an example of that unhindered power, one can recall

Lincoln's precedent. During the latter's meeting with his ministers or consultants, the president asked their opinion regarding certain matters and consequently the ministers all said "No". Then the president sarcastically said, "seven said "No" and I say "Yes". Therefore, "Yes" must be considered.⁽⁶²⁾ Such absolute power is only recognisable in the presidential system where the president alone is responsible for his governmental acts.

In the Lebanese constitution, the president does not have this responsibility and the only responsibility he ever has is in two cases: treason and the violation of the constitution. Article (60) provides that the president is not responsible for his acts save in the case of violation of the constitution and treason.⁽⁶³⁾ On the contrary, the constitution stipulated that the ministers are responsible for their governmental duties before parliament. Article (66) reads that " The ministers are responsible collectively before the parliament for the government's policies and individually for their personal acts."⁽⁶⁴⁾

Therefore, to hold to the dogma that the president, by Article(52), can sign a treaty or invite troops without the consent of the council of ministers, and at the same time be immune from any action taken against him and the ministers collectively responsible, is an unacceptable interpretation. It would be more logical and fairer to assume that where there is no responsibility there is no power. Against this background one can sense the logical conclusion of Al-Hassan :

" Where the president cannot carry out his functions, according to the constitution, by himself but through his ministers and with their assistance,the constitution thus stipulates that the president is not responsible".⁽⁶⁵⁾

In order to shed more light on the matter,one could recall the arbitration which took place between the King of Egypt and his prime minister. The importance of this

precedent emanates from the fact that the Constitution of 1923 is of great similarity to the Lebanese constitution. Owing to the differences between the king and his prime minister regarding the appointment of members to Senate House, the king and prime minister agreed to submit their case to arbitration in order to determine who was qualified by the constitution to give effect to the appointment. Their choice was the Belgium Attorney General, who after a full review of the Egyptian constitution reached the following conclusion:

"..I have no right to appoint myself as a judge of the Egyptian constitutional system. However, the existence of a rule which prescribes that the king is not responsible for his governmental acts is basic to the system which provides that the king acts through his ministers. From the legal perspective, this principle is not subject to any legal exception. However, if an exception was made, that cannot be done without affecting the parliamentary system in its spirit and form. Thus, for this reason I believe that the appointment must be considered by the council of ministers.⁽⁶⁶⁾

Against this legal argument, it becomes very clear that the Lebanese president is not qualified to issue an invitation on his own initiative as the consent of the council is indispensable. The president cannot invite foreign troops or sign a treaty, and at the same time is not responsible for such an act. It is the council of ministers which is the best institution to consider the issue. However, one wonders whether or not the president could invite foreign troops by relying solely on the specialized minister's signature. In the preceding argument it was established that the council of ministers is responsible collectively before parliament for the policy of the government. Such a responsibility must be taken into account when considering the question. The specialized ministers are individually responsible for his personal acts. However, an invitation to foreign troops hardly falls within individual responsibility. An invitation to foreign troops is of great importance, and that which requires the whole council to decide upon. It is the collective responsibility of the council of ministers to take charge

of such matters and not the president and not the authorized minister. It is quite strange to envisage in a parliamentary system a situation where the president embarks upon a policy of deciding issues of great importance without the knowledge of his ministers. As rightly observed by one of the leading Lebanese authorities on the constitution: "The president cannot individually decide the foreign policy of the government and keep his policy secret and away from the knowledge of his government, as was the case in some old Western Kingdoms."⁽⁶⁷⁾ Another writer affirmed the same conclusion by saying : "Acting upon the provision of the constitution, the government as a whole is in charge of determining the general policy of a state...and the president cannot, according to the constitution, act authoritatively without government approval regarding any issue of a state's affairs".⁽⁶⁸⁾ Therefore, the government as a whole ought to discuss the issue and only after full consideration should the president, as the head of the council, issue an invitation provided that the signature of the specialized minister is attached.

However, in the Lebanese context, a special custom emerged, through practice, which is regarded by the major sects in the Lebanese system as indispensable. This custom was peculiar to the Lebanese system due to its confessional features. As the power was divided between the two religious sects, Muslims and Christians, the practice evolved to enhance the power of the prime minister vis a vis the president. This equilibrium stipulated that the prime minister's signature must be attached to the president's decision. However, this custom is not of a special nature since the prime minister's signature is necessary as he is responsible for government policy. It seems very odd to hold to the prime minister responsible for the president's act without at least acceding to the president's act.

Rabbat's analysis reflects the same conviction as he perceived that the custom does not run against the explicit provision of the constitution especially article(54) where the signature of the prime minister is necessary to give an effect to the president's act. It

would be inexplicable to hold that the president alone could conclude a treaty without referring it to the specialized minister and the prime minister. For such an act is at odd with the the parliamentary system and at the same time does not have a strong precedent in the custom or the provision of the Lebanese constitution.⁽⁶⁹⁾

Summing up, the argument the president under the Lebanese law is not constitutionally empowered to issue an invitation to effect the introduction of foreign troops into Lebanese territory on his own initiative. In order to regard his invitation as valid, the signature of the prime minister and specialized minister is vital.

Thus, as far as the Syrian intervention is concerned, this requirement was not met. The president failed to produce evidence which showed that the prime minister and the authorized minister accepted the invitation. In fact, there was no document whatsoever to support the claim that the president acted legally. However, whatever the case is, the Syrian's claim that they were invited by the Lebanese government is very doubtful. The Lebanese government as whole did not issue the invitation, and if the president issued that invitation his action can hardly be regarded as legal and therefore binding on the Lebanese government; for the president has no right to do so. The insistence of the Syrian authorities on the thesis that they were invited by the Lebanese government has no solid ground.

The Syrian government, as such, could be said, that it regarded the president as the only authority in Lebanon as was the case in the 19th century where the Alliance recognised no one but the king. The logic of the holy Alliance was very clear; the state was the king and to some extent ,the Syrian government, implicitly adhered to this by saying that the president is the state.

The failure of the Syrian authorities to acknowledge the legality of the president's invitation is hardly explainable. For the Syrian officials after all are very

knowledgeable of the Lebanese system and their acceptance of the president's invitation could only be explained by the fact that the Syrian government had long before decided to intervene, and the president's consent was the only available pretext.

Therefore, the president's invitation was illegal under the constitution of Lebanon and hence the Syrian military intervention was illegal. Following this conclusion, one comes to the last question which is mainly concerned with the right of the Lebanese to self-determination. The Syrian claim that its intervention was in response to the Lebanese masses needs more scrutiny and elaboration under international law.

VI- Syrian intervention and the Lebanese right to self determination.

A-General.

The Syrian government, besides its claim that its intervention was in response to the invitation of the Lebanese government, defends its intervention with reference to self determination. The Syrian foreign minister claimed that the Syrian intervention was in response to an appeal by the Lebanese people. The Syrian reference to the principle of self determination as a right upon which a state can intervene in another state's domain in order to support the right of the people to self determination is very doubtful. It is not yet clear whether or not the principle could be regarded as a legal right in contemporary international law; and if it is, the principle could in no way be invoked to support intervention

In looking into the Syrian claim, a set of questions have to be answered: Was the Syrian government justified in intervening in support of the Lebanese right to self determination, or does the Syrian government see no contradiction between the concept of invitation and self determination ? In order to find an answer to these questions, one has to determine first whether or not there is a legal right to self determination under the United Nations Charter; and if there is, does it permit a state to use force to implement the right of self determination.?

B- The Origin Of The Principle Of Self Determination

In general the principle of self-determination as the right of people to choose their political and cultural system and government dates back to the French revolution and to the thoughts and writings of writers such as Rosseau, John Locke and Thomas Paine. However , the principle owes its material existence to the principle of nationality. Nationalism activated the process as people challenged the myth that their position was unchangeable and strived to improve their lot towards other nations.⁽⁷⁰⁾ This kind of awareness gave the principle the features of a political principle.

The right of every nation to choose its political destiny, which is promulgated by nationalism, was grounded on the principle of democracy. The equality of men and the belief that the governed must give their consent to the governor also played a great role in the emergence of the principle. The idea of democracy mixed with the principle of nationalism paved the way for the emergence of the principle of self determination . Such a mixture prompted Johnson to say:" Democracy has been significant in respect to nationalist doctrine because it is the basis upon which each nation is formed and it accepts the nation as a unit of self government with an inherent right not only to choose its government but to determine its status as a state".⁽⁷¹⁾

The principle found its first materialization in the American Declaration of Independence which reads :

" We hold these truths to be self evident, that they are endowed by their creator with certain inalienable right, that among these are life, liberty, ..that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and institute a new government".(72)

Since then, the principle has gained in strength from developments such as: Lenin's declaration on the rights of the people of Russia in 1917⁽⁷³⁾; Wilson who recognised it and moreover equated stability and peace with full respect for the principle⁽⁷⁴⁾; and finally to the League of Nations. Unfortunately the principle was not included due to the stiff resistance by some states. Nevertheless the report of the commission of Jurists regarding the Aaland Island made a clear reference to the principle by recognising the importance it has in political thought.⁽⁷⁵⁾ However, with the emergence of the United Nations the principle was no longer only dictated by political thinkers ; moreover, the principle played a significant part in the development of contemporary international law. To what extent the principle has become binding in contemporary international law is still subject to controversy.

C- The Principle Of Self Determination Under The United Nation Charter.

Unlike the League of Nations, the Charter of the United Nations espoused the

principle of self determination and considered it to be one of the fundamental purposes of the United Nations. Article(1) enumerated the Purposes of the Charter and considered the development of friendly relations "based on respect for the principle of equal rights and self determination of the people"⁽⁷⁶⁾, one of the most important purposes. Other Articles and in particular Article (55) elevated the principle to a higher place and subsequently viewed it as a necessary " ..condition of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of peoples".⁽⁷⁷⁾

Despite the Charter's pledge to the principle of self determination, the realization of it seems to be hindered by many factors. Basic to these factors is the existence of the principle as a legal right. The failure to recognise the principle as such has undoubtedly delayed its application and its progressive development. Many protested against its recognition as a legal right⁽⁷⁸⁾ since it is impossible to determine who is the subject of it. The difficulty of defining the "Self" was the core of the criticism of the principle and consequently to its recognition. As most writers agree that the principle had been deployed in the colonial context which resulted in the massive proliferation of new states, they were still reluctant to recognise it in non colonial context.

The development of the principle in the body of the United Nations through a series of Resolutions, has played a great role in clarifying and explaining why states are fearful of admitting such a right. However, any close reading of the development will demonstrate that with every passing day hostility of the states seem to fade away. In 1960, the General Assembly passed a resolution titled " Declaration On The Granting Of Independence To Colonial Peoples" which was the starting point towards decolonization. Despite colonial power resistance, the General Assembly succeeded in passing the resolution. The resolution's stand towards the principle was very clear as it declared:

"The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, and is contrary to the Charter of the United Nations.. and all peoples have the right to self determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."⁽⁷⁹⁾

Since that time, states have accepted the application of the principle in dismantling the era of colonization. This willingness prompted Higgins to comment on that resolution by saying: " Self determination is regarded, not as a right enforceable at some future time under indefinite circumstances, but as a legal right enforceable here and now".⁽⁸⁰⁾ However, the issue becomes more blurred and confused whenever states are confronted with the application of the principle outside the colonial context. In such situations the principle seems to attract little sympathy as the majority of states, especially the third world countries, are reluctant to enforce the principle in response to the demands of a section of their population. It seems, states adopted the view that when independence has been achieved, there is no place for the principle of self determination for any of its peoples. Ironically, independence, however, has brought about a host of problems to the newly formed states which exposed them to various criticisms.

Secession was one of the most explosive issues upon which the principle of self determination was put to test. The principle failed to command strong support as many states feared the day on which they would have to confront secession. The reluctance of the third world states to uphold the principle and apply it whenever there was a fair demand on the part of the population, gives great credit to the thesis that beyond the salt water test the principle has no existence. The experience of the Katanga secession in the Congo(1960-1963) and the Biafran in Nigeria(1967-1970) are clear examples.⁽⁸¹⁾ The Secretary General of the United Nations affirmed that the principle is not applicable in the case of the secession by saying:

" When a member state is admitted to the United Nations, there is the implied acceptance by the entire membership of the principle of territorial integrity, independence, and sovereignty of that particular state...The United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its member state".⁽⁸²⁾

Despite all of this, the entire world accepted the emergence of Bangladesh as an independent state. However, it could be argued that the peculiar nature of East Pakistan and its special relation with the parent state makes it an exception.⁽⁸³⁾ However, in ruling out secession, states are reminded that repressive measures and explicit violations of human rights may change the international climate as was the case of East Pakistan. Secession is not valid when an entire population of the state enjoys political and economic rights. For such rights are clear evidence that the population is not ruled against its will. Accordingly, the principle of self determination could be considered as the right of the majority within a generally accepted unit to determine their future.⁽⁸⁴⁾ This right could be asserted when the people are unjustly submitted to repressive measures. They are entitled by that right to self determination. With such an interpretation, one can grasp the acceptance of East Pakistan as a new state with such a speed. Moreover, this line of interpretation of self determination helps in drawing a clear cut boundary between the right to self determination and the right to independence where a certain race seeks separation from a state.⁽⁸⁵⁾ That is to say between the right to internal self determination and external self determination.

During the discussion of the *Principles of Friendly Relations among States* the United States, submitted a proposal which precisely identified the principle with a representative government. The proposal regards the "existence of a sovereign and independent state possessing a representative government, effectively functioning as such to distinct people within its territory, is presumed to satisfy the principle of equal

right and self determination as regards to those people".⁽⁸⁶⁾ However, due to the stiff resistance from the third world countries who regard that a representative government is an invitation to disrupt national unity, the proposal was slightly modified.⁽⁸⁷⁾ The inclusion of paragraph (7) was the compromise upon which the Declaration of Friendly Relation among States found its way into light. Despite its commitment to the principle of self determination, the Declaration proceeded to make an exception by recognising that " Nothing in the foregoing paragraph shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states..".⁽⁸⁸⁾

Later on, in the General Assembly Resolution on Aggression, the principle was reiterated and at the same time subjected to severe criticism. However, the inclusion of paragraph (7) does not rule out the right of people to secede. The right to set up a new state is hardly forbidden when such separation does not affect the economic and political stability of the parent state. As Bowett rightly observed regarding the question of Kashmir, its incorporation into India or Pakistan as the result of a plebiscite posed no problem whatsoever. He continued by saying that:

" in such case one comes face to face not with arguments of economic and political good sense, but with arguments based upon political pride and a theory of statehood which attaches territory to state rather than to the inhabitants of the territory. One is left with the very basic question what is the purpose of the state ? It has at that stage ceased to be the promotion of the well being of the people of the territory according to their own freely expressed desire".⁽⁸⁹⁾

Opponents of the principle, challenged its existence on the ground that the principle suffers from many deficiencies. The assertion of the principle with reference to the General Assembly Resolution is not convincing since the latter is not binding, and moreover the principle is not capable of definition.⁽⁹⁰⁾ However, most of the criticism was directed at the non-binding nature of the resolution of the General Assembly.

General Assembly resolutions were the result of a compromise of different attitudes. In reaching that compromise, political orientation and expediency played a major role. Such a reality impressed some writers and pushed them to the extreme, claiming that the principle "Has ..always been the sport of national and international politics and has never been recognized as a genuine positive right of people of universal and impartial application, and it never will, nor can be so recognized in the future".⁽⁹¹⁾

Others questioned the value of the resolutions which were adopted by consensus, such as Friendly Relations and Definition of Aggression, in creating a legal norm and especially with respect to self determination. One such person was Shabtai who doubted the device of the consensus and defined its legal value by saying:

" procedure must never be taken for more than it is in given circumstances, in this case a procedural device to bring an unpleasant and perhaps useless discussion to an end in the least ignominious way. For consensus means agreement on the words to be used and on their place in the sentence, and absence of agreement on their meaning and on the intent of the document as a whole".⁽⁹²⁾

While the claim that states in voting for or against take full regard of their political orientation and preferences, it is still valid to regard the resolutions of the General Assembly as a tool for clarifying the law. Rosalin Higgins in her book on *The Development of International Law Through the Political Organ of the United Nations* asserts that resolutions of the General Assembly regarding the principle of self determination, were " taken together with seventeen years of evolving practice by the United Nations organ provides ample evidence that there now exists a legal right of self determination".⁽⁹³⁾ There is no alternative other than the organ of the United Nations to interpret the law and create the proper environment towards establishing a new norm that conforms to the changing reality of the international environment. The insistence on irrelevance of the General Assembly Resolutions without perceiving it as an

important component of international law⁽⁹⁴⁾ amounts to a deliberate distortion of the progressive development of international law.⁽⁹⁵⁾ Richard Falk offers a deep insight regarding the General Assembly Resolutions as he considers them as a tool to "disclose an altered normative which became established in the late 1950".⁽⁹⁶⁾ Whereas Prakash⁽⁹⁷⁾ considers the activity "in the General Assembly as one form of state practice and it cannot be dismissed as irrelevant evidence. It must at least, be considered". Others agreed for example, R.Sureda⁽⁹⁸⁾ and Asamoah, the latter taking a more positive attitude towards the Resolution of the General Assembly when he said that "In our view the Declaration in themselves are state practice. Furthermore, law is not created only after years of practice. Practice can be concentrated in a short space of time provided the *opinio juris* is evident, a rule attains the status of law".⁽⁹⁹⁾

Again the principle's existence as a legal right is not entirely dependent on the General Assembly Resolution, but could be enhanced through its inscription in a variety of treaties. Borrowing what D'Amato calls custom creation through treaty, the principle could by now, be approaching customary status. According to the D'Amato, custom is not only created through the old style i.e clash of claims, but could evolve through a treaty as well. That is to say, when the norm is of a generalizable nature as can be found in many treaties, the norm may have evolved through a variety of treaties into a binding legal norm. With time and constant assertion, the norm could be transformed into customary international law.⁽¹⁰⁰⁾ In defending his thesis against old types of custom-creation, D'Amato asserts:

" Nations have not painted themselves into such a theoretical corner, but rather have manifested by virtue of their behaviour over the centuries, that generalizable provision in treaties become part of customary law without need for such subsequent practice.⁽¹⁰¹⁾

As far as the principle of self determination is concerned, one could undoubtedly affirm it as a generalizable norm. After all, the principle has been included in a variety

of treaties, such as multilateral and bilateral⁽¹⁰²⁾ nevertheless treaties; of particular importance is the International Covenant on Human Rights, and the United Nation Charter, which bring into it the description of the generalizable norm. On the other hand, there are still those who disregard the principle as a legal right as it is incapable of being defined. The claim that the principle is surrounded by ambiguity and confusion which hinders its proper applicability is not very convincing. Fitzmaurice defined the legal principle as follows:

" A legal principle ..if its truly one, must be capable of definition and circumscription, and of application in accordance with objective rather than merely subjective criteria..".⁽¹⁰³⁾

While that description of a legal principle is quite right, a distinction has to be made between domestic law, and international law. In domestic law the legal principle is very clear and precise and in cases of uncertainty a court is capable of lending its binding interpretation; but in international law such a procedure is absent. However, if one insists on the criterion of precision as a standard for the acceptance of a rule, then one has to offer many explanations for the many rules of international law. As an example , any international lawyer will agree that the norm of non intervention is one of the most important norms in international law and yet no one is capable of defining what intervention is.⁽¹⁰⁴⁾ However, denying the existence of the principle just because of the difficulty of definition is not sound. For as in the case of non intervention, the absence of an objective definition did not rule the principle out of existence as was the case of self determination. There is no escape from subjectivity in international law, as there is no central authority to affirm or explain the law save the discussion in the General Assembly which is regarded by many as inadequate and unable to offer an alternative.

Therefore, following the above discussion, the principle of self determination has

been asserted in the United Nation Charter and through a variety of Resolutions.⁽¹⁰⁵⁾ Moreover, the International Court of Justice in its advisory opinion on the Western Sahara affirmed that the principle has already crossed the status of political principle to a legal one.⁽¹⁰⁶⁾ In addition, the principle finds its way into a variety of treaties which qualify it as a generalizable norm. The principle has been affirmed by the practice of states over many years. The principle therefore, no longer belongs to the political thought but its legal effect has been asserted in every aspect of international life; and by now it is a legal right under the charter of the United Nations.

With the emergence and acceptance of the principle of self- determination as a legal right under the United Nations Charter, controversy persists regarding its implementation. Of many questions, one relates to the realization of the principle particularly in the context of civil war: Is it legal for a state to intervene in a civil war, using force, to realize the principle of self determination ?

D-The realization of the principle of self-determination and the dilemma of civil war.

The emergence of self determination as a legal right in contemporary international law is one of the greatest achievements in the history of the principle. It signifies the right of the people to choose freely their political, economic, and cultural system and the type of government they desire, without any foreign pressure. The mere acceptance of the principle has contributed to accelerating the demise of the traditional rules of international law.

Since the principle recognises the right of the people to revolt against their repressive government, international law should revise its stand towards the incumbent government.⁽¹⁰⁷⁾ As the incumbent government enjoys the sanctuary of law, the rebellious people receive no regard whatsoever. It is hard to reconcile the right of revolution and the government's right to receive every possible assistance. The incumbent government by virtue of its representation of a state could invite another state to send troops to help in putting down the revolution which has been recognised by contemporary international law. Such a contradiction is of great hindrance to the principle of self-determination.

The dilemma that a civil war brings regarding the principle of self-determination and the rights of the government is not a new one. The relevant question is, how one can allow the principle to function properly without prejudicing the government's rights? Any external support to the rebels will constitute a violation of the state's right, and so the assistance to the government is a violation of the right of people to self-determination. This dilemma was presented by Hall who expressed a tendency towards a neutral norm by saying:

"If intervention on the ground of mere friendship were allowed, it would be idle to speak seriously of the right of independence. Supposing the intervention was to be directed against the existing government, independence is violated by any attempt to prevent the organ of the state from managing the state's affairs in its own way. Supposing it is on the other hand, to be directed against the rebels, the fact that it has been necessary to call in foreign help is enough to show that the issue of the conflict would without it be uncertain, and consequently there is a doubt as to which side would ultimately establish itself as the legal representative of the state. If, again, intervention is based upon an opinion, as to the merit of the question at issue, the intervening states take up on itself to pass judgement in a matter which, having nothing to do with the relations of the states, must be regarded as being for legal purposes beyond the range of its vision".⁽¹⁰⁸⁾

As a matter of fact most international writers such as Lauterpacht,⁽¹⁰⁹⁾ Lawrence⁽¹¹⁰⁾, Hyde⁽¹¹¹⁾, Stowell⁽¹¹²⁾, Friedman⁽¹¹³⁾, Farer⁽¹¹⁴⁾, and many others maintain that intervention upon the request of the government in internal conflict is illegal. The illegality of that particular intervention was based on the thesis that an inhabitant of a state must enjoy a right to self determination, and any foreign intervention on the side of the government will certainly hinder that right. Rohlik affirms the same conclusion by saying:

" because of the internationalization of the concept of self determination the right of the invited state to assist ceased to exist".⁽¹¹⁵⁾

In spite of that, a few writers still cling to the old norm which permits assistance to the incumbent government. John Moore in defending the old norm, forwarded four reasons which gives weight to his opinion:

- 1- The incumbent government by virtue of its control of the army, makes the military opposition resulting in a prolonged struggle.
- 2- The incumbent government may be incorporated in a bloc alliance which makes its overthrow unlikely and dangerous.
- 3- The incumbent government may have a defensive arrangement with a third power.
- 4- The incumbent government as a representative of a state may receive continuing military assistance prior to the struggle.⁽¹¹⁶⁾

All these factors militate against the norm which permits assistance to the rebels and consequently negates the legal right of self determination.⁽¹¹⁷⁾ On the other hand, there are others who defend the right of the rebel to receive such assistance, as their war is a

just one.⁽¹¹⁸⁾ Moreover, the issue becomes more troublesome when both groups claim that they are upholding the norm of self determination. In the Vietnam war, the U.S.A, through its support to the incumbent government, claimed that they were helping the people to realize the right to self- determination, and likewise the Soviet Union and China in their support to the Viet-cong in Vietnam. The American intervention in Cuba to overthrow Castro (Bay of Pigs) and in Grenada⁽¹¹⁹⁾, was justified in defence of the principle of self determination. Similarly, the Russian intervention in Czechoslovakia 1968 was grounded as well on the principle of self determination.

It is the political interest, which is alluring in a civil war and plays a great role in the foreign states's decision. It is by no means the Sanctuary of self determination nor the respect to the incumbent government as the representative of the state which influences external parties, but only the self interest in the struggle. Friedmann observed that:

"Civil war usually arises from clashes of political philosophy and of government and political groups outside the state torn by the civil war are usually deeply engaged on one side or the other. This tends to mould legal interpretation of the right of intervention and duties of abstention".⁽¹²⁰⁾

Accepting this view would not amount to the recognition of non existent rules relating to the civil war and admitting the foreign states right to choose the convenient way of responding to the civil war. The subject, however, is not as simple as that, since there are many relevant rules which could be relied upon to provide the minimum protection to the right of self determination and to the prevention of foreign intervention.

The most relevant norm is Article 2 (4) which acknowledges that " the people of a territory of a state form one of the constituent elements of that state and their right of

self determination can find its expression only in 'their right to be left alone' and determine for themselves the form of government, the political, social, and economic system, or to dismember the state in question and establish two or more states".⁽¹²¹⁾ The Article is also very clear and needs no elaboration as the use of force is illegal and constitutes a violation of the Charter of the United Nations.⁽¹²²⁾ Relevant to the issue are the General Assembly resolutions as there are many Resolutions relating to the issue of intervention in civil war. The General Assembly Resolution on the Inadmissibility of Intervention in the Domestic Affairs of States offers a clear norm which could be regarded as a neutral norm by affirming that states should respect the right of self determination and independence of the people by not intervening " directly or indirectly, for any reason whatsoever in the internal or external affairs of any other states"; and stressed that the use of force to deprive the people of that right constitutes a violation of that right and the norm of non intervention.⁽¹²³⁾

In the Friendly Relation Resolution, the principle of self- determination seemed to have a better position since the resolution recognized the right of people who were deprived of their right to self determination to " seek and to receive support in accordance with the purpose and principles of the Charter."⁽¹²⁴⁾ The phrasing of this paragraph is quite contradictory as the word "support", if in this case meant military support, would run against the Principles and Purposes of the Charter. This contradiction was a result of a compromise between the two trends; western and third world countries in alliance with socialist states.⁽¹²⁵⁾ Thus, in view of the differences, the only possible solution was "to lie in regarding the use of force to deny people their right of self determination is a delict giving rise to right on the part of the people concerned".⁽¹²⁶⁾ The issue was revived during the discussion of the Definition of Aggression, as the western powers referred to the word 'support' to mean moral and political support whereas the third world states interpreted it as meaning military support.⁽¹²⁷⁾

As a matter of fact, the differences between the two trends could be reduced to a single issue, that the point of disagreement was over racist and colonial regimes. The majority of states regarded the continuation of a racist regime as a perpetuation of the colonial regime, and hence the necessity to use force. However, when the use of force is outside this issue, no states admit to using force to promote self determination. The use of force is then only workable in colonial and racist regimes.⁽¹²⁸⁾ Accordingly, there is a positive tone in such an argument, as the existence of a racist regime is not acceptable and not compatible with the United Nations Charter, nor with the level of civilization and more than that the U.N considers its continuation a threat to peace.⁽¹²⁹⁾ More encouraging is that there are no states which have used their army to cross the border to overthrow a racist or colonial regime. The Indian invasion of Goa can still be regarded as the only exception to the above rule.⁽¹³⁰⁾ The use of force, is by no means legal and there is a clear consensus on that. J.Rohlik affirms that:

"The normative content of the right of self determination of peoples has developed only in the last twenty and twenty five years. And there is not the slightest doubt that the international community did not develop consensus...as to the limitation of sovereignty in favor of the right of third state to promote self determination of people, other than those in the colonies, contrary to the prohibition of Article 2(4) of the Charter".⁽¹³¹⁾

Thus, apart from the issue of colonialism and racism the use of force to overthrow a government is not at all acceptable to all states. Keeping in line with the belief that the use of force is non-permissible the American representative to the U.N (Seymour Finger) made the following statement:

"It was not the United States view that people should be denied the right to resort to any means at their disposal, including violence, if armed suppression by a colonial power required it. Indeed, the United States itself was obliged to resort to violence in order to gain independence. The difficulty lay in giving a general endorsement by

the United Nations, an Organization dedicated to peace, to such violence and in employing language which suggest that member states have an obligation to provide material assistance to such violent actions against other member states. Such action could hardly be reconciled with the requirements of the charter of the United Nation".(132)

What is encouraging is the fact there is no longer a colonial power using force to deprive people of their right to self-determination, save the existing regime in South Africa. Therefore, one can assert that states will render every possible support for people struggling for self-determination, but that support must not be military support. It is the duty of the people to win their freedom, and challenge their government by relying on themselves. In this case when the people challenge their government, neither the government nor the rebel forces should be entitled to receive external help.(133) One can, somehow, sense the cruelty of that norm. However, it is still more appropriate to world public order, to reject the use of force under the concept of self-determination as it arrests the dangers which emanates from a foreign intervention.

Intervention by a foreign power to promote the principle of self-determination hardly brings any good to the people. Liberty has to be won by the people themselves for the liberty " which is bestowed upon them by other hands than their own, will have nothing real, nothing permanent".(134) Whatever the merit of the case might be, the use of force must not be conceded. Oscar Schachter, in his response to Reisman's progressive interpretation of Article 2 (4) which permits the use of force to promote self-determination, affirmed that the use of force by states to that end is to " be a mistaken interpretation as a matter of law and policy. If followed it would weaken a key principle of the minimum world public order essential for peace and security".(135) Professor Bowett reflected the same argument by playing down the suggestion of intervention by the use of force to promote the principle of self-determination. In his opinion two reasons militate against the use of force; firstly, the norm of non-intervention must be "

an order of priority in the scheme of world order that to derogate from it in order to pursue an otherwise legitimate objective is wrong and dangerous. Secondly, if we are speaking of intervention not authorized by the appropriate organs of the world community within the United Nations, then the exception to the rule of non intervention would open possibilities of highly subjective evaluation of what is, and what is not, contrary to self determination".(136)

Therefore, in a civil war, foreign intervention is impermissible for both sides, and the struggle is left to the domestic parties to decide what future they desire. Intervention on the side of the parties by the means of force is a violation of the United Nation Charter and the customary law which prohibits the use of force. Once the struggle crosses the threshold of mere rebellion no states can intervene in the domestic violence. It is clear that the inhabitants of a state have an inalienable right to determine their own political future. It is for them to chose, by whatever means they find appropriate, to change the government. However, this popular will has to struggle for itself and no other state is allowed to use force to implement it. To what extent the Syrian government adheres to this description is the purpose of inquiry in the next section.

E-The Effect Of Syrian Intervention On The Lebanese Right To Self Determination.

As mentioned earlier, the Syrian intervention, upon the request of the Lebanese government, was not valid under the rules of international law. For intervention by invitation according to the majority of writers becomes " an instrument to prevent social change which is a vital aspect of national self- determination".(137) However, the

Syrian insistence that its intervention was not frustrating the right of the Lebanese people to self determination, deserves a close examination. The Syrian foreign minister on his visit to France following his country's intervention affirmed to his French counterpart that the Syrian intervention was in response to the great majority of Lebanese public opinion.⁽¹³⁸⁾ What the foreign minister meant by Lebanese public opinion is not clear. For the term "public opinion" as a matter of fact, has never ever been used before as a legal justification for foreign intervention. It is a loose term which usually belongs to the realm of politics and not law. It is a catch phrase deployed by politicians in order to paint a certain policy as not being opposed by domestic voters. However, such a term could be scientifically asserted through conducting a poll; and whatever the deficiency of the poll, it is still an instrument which could lead to the identification of public opinion.

To what extent this term could be employed by the foreign power in order to justify its intervention in the domestic affairs of another country is very doubtful. In the Lebanese civil war, the mood of Lebanese public opinion was impossible to gauge. How a foreign state could manage to reach an accurate grasp of public opinion in a state experiencing a devastating civil war, is quite incomprehensible. For the assessment of public opinion requires the existence of great stability and an independent body to carry it out. It is quite absurd to accept such an assertion as a justification for intervention. However, one may tend to minimize such an interpretation and give it another interpretation since the Syrians did not state exactly what they meant by such a term. It could be that the Syrian government was referring to the principle of self-determination and, if this is so, the principle has to be re-examined in the light of the principle of invitation. For there is a great contradiction between the concept of invitation and self determination. Even if it is assumed that the Syrians used the term public opinion as a reference to the principle of self determination, their intervention is nevertheless still illegal.

The Syrian insistence on the Lebanese government's invitation and at the same time the principle of self determination, presupposed that the Lebanese civil war was not a revolution against the incumbent government. Because the peoples, according to the Syrians, were not against the government, but the government and the people were confronted by a minor group whose sole aim was to overthrow the Lebanese government. However, this suggestion is not convincing and no one could see how a government, supported by a strong army and the bulk of the people can be defeated by a minor group. The real fact is that the Lebanese government was challenged by a popular demand, and the need for a restructuring of the system was a major demand. As mentioned in the preceding chapters, the Lebanese civil war was originally against the confessional system; the people revolted against the government and consequently the war raged on. Thus it is impossible to accept the Syrian thesis that their intervention was upon an invitation and at the same time to promote the principle of self determination. It is impossible to see the Lebanese who revolted against their government in order to have a different system, could welcome a foreign troop whose sole aim was to suppress their revolution. Accordingly, the claim that the Lebanese people requested the Syrian intervention is hardly plausible. However, assuming that the request was made, there is no legal ground to justify that particular intervention. As defined earlier, there is no rule which permits a foreign state from intervening under the banner of self determination in another state's domestic affairs.

The Syrian government over the passing years has demonstrated beyond any doubt that an intervention in the domestic affairs of any state is illegal. They went further, as the Syrian delegation during the discussion on the Friendly Relation and co-operation Among States affirmed that the principle of non intervention in matters which falls within the domestic jurisdiction of a state was the very basis of peaceful co- existence and called on states not to intervene in " any form of subversive activity and any direct or indirect intervention, on any pretext whatever, in the internal and external affair of

another state".(139) The delegation went on to affirm its country's stand on the principle of self-determination as one of the basic principles by saying " the principle of sovereign equality was closely bound up with the principle of non-intervention and with the right of peoples to self-determination".(140)

Moreover, the Syrian reaction to the principle of self- determination was very clear and they attacked vigorously the United States invasion of Grenada. Although the Americans invoked the concept of invitation as a justification and an indication that is not against the principle of self-determination, the Syrian representative Al Fattal described the American intervention as " a flagrant violation of the inalienable right of the people of Grenada to self determination and the structuring of its society free from any outside intervention".(141) The delegate went on to say:

" The United States is trying to impose its value on the whole world. It is therefore depriving the people of that world of the right to rebuild their countries in accordance with their local circumstances based on their cultural values and national priorities.(142)

Therefore, the Syrians according to their representative denounced intervention in general, under any pretext whatsoever, and claimed that such an intervention is violating the principle of self determination which is embodied in the principle of sovereign equality of states. The Syrian rejection of the invitation by the Attorney General of Grenada and moreover their claim that intervention was illegal due to the sacrosanct of self determination is quite interesting. The Syrians, however, did not see their intervention in Lebanon as such and on the contrary they asserted, as the Americans did, that their intervention was upon an invitation and a realization of the principle of self determination.

The Syrian attitude towards the principle of self determination was reaffirmed in 1983. Following the Israeli invasion of Lebanon and subsequently the introduction of

the Multi-National Forces upon the request of the legitimate government, the Syrians demonstrated again their unshaken belief in the principle of self determination. Their perception of the principle, nevertheless deserves closer scrutiny. Having refused to accept the Lebanese government's request for the Syrian troops' withdrawal, the Syrian government ignored it and instead asked the Multi-National Forces to leave Lebanese soil, as the latter exceeded their declared objectives.⁽¹⁴³⁾ In response to the Syrian arguments, the United States representative affirmed that:

" We wish no one to misunderstand our intention in Lebanon...The forces of the United States of America are present in Lebanon at the express invitation of the government of Lebanon; their purpose in Lebanon, along with the forces of three other countries, is simply stated. It is to work with that government and to assist it in every way possible in the rebuilding of its domestic institution and extension of its sovereignty throughout its territory".⁽¹⁴⁴⁾

The Lebanese representative confirmed the American explanation that the Lebanese government was committed to the quick withdrawal of all unauthorized non- Lebanese forces [viz,the Syrian and Israeli] from Lebanon and referred to the multi-national forces by saying: " We confirm that their presence in Lebanon is at the request and the approval of the Lebanese government".⁽¹⁴⁵⁾

The Syrian delegate at the forum of the Security Council dismissed that argument on the ground that the Lebanese government's decision regarding the multi-national forces was not truly reflecting the will of the Lebanese people. In explaining this, he affirmed that " The freedom of the Lebanese decision stems only from the freedom of Lebanon".⁽¹⁴⁶⁾ He continued to say that freedom cannot be enjoyed unless there is " full Israeli withdrawal and the lifting of the American hand from Lebanon".⁽¹⁴⁷⁾ Although this argument took place in 1983 and after the Syrian intervention in Lebanon in 1976, it is however, of great importance since it could be employed to clarify the

Syrian position regarding invitation and the principle of self-determination.

As the preceeding arguments have demonstrated, the Syrians cannot accept an invitation from the legitimate government, since that invitation does not reflect the will of the Lebanese people. The will of the Lebanese people was largely distorted or prevented by virtue of the presence of foreign troops on Lebanese territory. Therefore, one could assert that the Syrians perceived the mere presence of forceful intervention on the request of the incumbent government as illegal since that intervention is suppressing the right of the peoples in question to self determination.

This conviction was positively affirmed in The General Assembly discussion and the Syrian government's criticism of the American invasion of Grenada and their presence in Lebanon. The Syrian proclamation, as mentioned above, clearly reflects the legal stand of the Syrian government on the issue. The pronouncement as such could be employed to analyse the Syrian intervention in Lebanon. As Asamoah declares in his analysis of the General Assembly resolutions:

" These declarations express the agreement of a number of states on the principle which should govern their activities ...That the circumstances surrounding their adoption indicated a clear intention to accept them as law and as such they represent the law for those who voted for them".(148)

Therefore, the Syrian pronouncement on the principle of Friendly Relations and other matters could be cited as evidence regarding the meaning of the law on that particular issue. Against this background, it becomes clear that the Syrian intervention runs against the principle of self determination and the ban on the use of force in the Charter of the United Nations and the principle of non-intervention in the domestic affairs of any state.

The Syrian intervention in 1976 against the Leftist forces in Lebanon needs a special explanation by the Syrian government. Oscar Schachter puts an obligation on the intervening state to offer an explanation regarding its military intervention by saying:

"There is good reason therefore to place a heavy burden on any foreign government which intervenes with armed forces even at the invitation of the constitutional authority to demonstrate convincingly that its use of force has not infringed the right of people to determine their political system and the composition of their government".(149)

As far as the Syrian intervention is concerned, the Syrian authorities did not offer that explanation, save the foreign minister's statement regarding public opinion. Despite that, the Syrian intervention, raises the question : why was the American intervention in Grenada or in Lebanon illegal and a violation of the Charter, and was not so regarding their military intervention in Lebanon ?

Assuming that the use of force was legal to promote the principle of self determination, (a policy on which the Syrians hardly agree), one wonders whether or not the Syrians were sincere in their military action regarding the right of the Lebanese people to self determination. In answering this question a host of factors need to be explored. Was the Syrian military action welcomed by the Lebanese population and was there no armed resistance on their part ? Or were there special circumstances that could be considered in invalidating the Syrian intervention ? Regarding the first question, the welcome by itself could stand as evidence of the popularity of the action and the absence of it could prove the opposite; the Syrian forces were hardly accepted as being friendly forces.

There is no doubt that the Syrian forces were treated as occupying forces, and

seems as a tool of conspiracy against the patriotic Leftist forces.⁽¹⁵⁰⁾ Over the four months that followed the Syrian invasion, stiff resistance was encountered by the Syrian forces⁽¹⁵¹⁾, and voices of protest from a great section of the Lebanese population were raised against the Syrian military action.⁽¹⁵²⁾ Among those voices was the statement of The Lebanese National Movement which was broadcast to Syrian soldiers. The statement asked every Syrian soldier to think of what he was doing and why he was ordered to fight the patriotic Lebanese masses:

" Don't you ask yourself why [The Lebanese] masses greet you by digging trenches ?....Does it make sense that you should enter today to suppress the Lebanese Arab masses and ...the Palestinian Resistance and to support the isolationist [the Lebanese Front].⁽¹⁵³⁾

Given this evidence, the Syrian military intervention could hardly be conceived as an intervention to promote the principle of self determination. The resistance of the Lebanese people over three to four months in the face of twenty thousand Syrian soldiers, demonstrated beyond doubt that there was a genuine popular resistance to the Syrian intervention. Compared with the American intervention of Grenada where the Americans completed their military operation in a very short time, and left the country with as much speed as possible, the Syrian intervention does not seem to satisfy these two conditions. Despite that, the Syrians perceived the American intervention as a violation of the right of Grenadians to self determination.

This argument leads to the second question regarding the circumstances of the Syrian intervention. It is generally recognised by every observer of the Lebanese civil war that the Syrians have had too much control over the direction of events. The circumstances that led them to send the PLA into Lebanon on the Fourth of January 1976, against the wishes of the Lebanese government, coupled with their intervention on the First of June 1976 against the Leftist forces whose protection was the sole aim

of their first intervention is a clear testimony to that end.

The motivating force behind the Syrian intervention could be explained in the struggle for dominance in the Middle East following the separate Egyptian deal with Israel. Syria felt betrayed and the sense of isolation was very strong and decisive in its decision-makers. To compensate this imbalance, an alternative had to be found, as Syria could not afford the risk of war with Israel on its own. The Lebanese civil war represented a golden opportunity as the control of Lebanon could be used to serve two purposes. First, it enabled Syria, in controlling Lebanon, to realize the historic dream of Greater Syria, especially as her relations with Jordan at that time were very intimate.⁽¹⁵⁴⁾ The establishment of Greater Syria would compensate for the loss of Egypt and enhance Syria's prestige in the region as the main broker in any future settlement in the Middle East. Second, being the major power in Lebanon, the threat of an Israeli attack on its soft southern part would also be removed.⁽¹⁵⁵⁾

Confronted with the success of the Lebanese National Movement, whose basic aim was the establishment of a socialist independent Lebanon, the Syrians were alarmed at the prospect of having a radical state on their frontier and with it the dream of Greater Syria would slip away. It was not only the Syrian government that was alarmed, but the Americans also perceived the success of the LNM and the PLO as a devastating outcome to their plan in the region.⁽¹⁵⁶⁾ Adding to this, the Israeli fears of witnessing the emergence of a radical state allied with the Palestinians whose basic goal was the destruction of Israel, was behind the Israeli acceptance of the Syrian intervention. All these factors together [Israel, Syria, USA,] were at play in the Syrian decision to intervene.

After all, the intervention would eliminate the possibility of establishing a radical state, enhancing Syria's prestige in controlling Lebanon, removing the threat of an

Israeli surprise attack, and finally gives way to the emergence of Greater Syria. Where the interest of the Lebanese people lies in this analysis is hardly detectable. The Lebanese right to self determination was not even considered by the Syrian decision makers, given the strategic factor of controlling Lebanon. The Syrian policy in Lebanon with its inherent characteristic of shifting alliance, or as described by Weinberger as "tactical flexibility".⁽¹⁵⁷⁾, was deployed only to protect Syrian interest. Their support of the LNM at the outset of the struggle under the guise of affording protection for the revolution, and later their intervention to liquidate that revolution was clear proof of their insincerity towards the Lebanese right of self determination.

To sum up, the Syrian intervention under the principle of self determination is not supported by law nor by fact. The existence of the principle of self determination as a legal right does not justify the use force to implement it. Nevertheless, the Syrian intervention [assuming the legality of the use of force] remains an instrument to promote the Syrian national interest under the guise of self determination

VII- Conclusion

The Syrian intervention in response to the Lebanese invitation is beyond any doubt illegal. There is no invitation or treaty which gives credit to the Syrian government's claim. However, there is a shred of an argument with which the Syrian could have been invited by the Lebanese president. As such, such an invitation is neither valid in international law or Lebanese constitutional law.

As to the former, the rules of international law are very clear. An invitation to be legally valid must emanates from a government which exercises effective control. These requirements are well founded in international law. The Lebanese government, as far as this criterion is concerned, has failed. The rebel forces at that time were in effective control and not the government. Accepting an invitation, on the assumption there was one, would clearly run against the rules of international law.

As to the latter, the president had no right, under Lebanese constitutional law, to issue an invitation. Having established the parliamentary orientation of the Lebanese system, the president cannot issue an invitation without the signature of the Prime Minister and the specialised Minister. Since there are no such signatures, the president's invitation becomes invalid.

Regarding the validity of intervention to promote the Lebanese right to self-determination, the analysis has proved the illegality of such a claim. There is no doubt that the principle of self determination is by now a principle of international law. The principle was mentioned in the Charter and reaffirmed by the General Assembly Resolutions. The claims that the Resolutions are not binding is not very convincing. As far as the principle of self determination is concerned, the General Assembly

Resolution could be referred to as explaining the law and cannot be dismissed as irrelevant. The practice of states over the issue coupled with the insertion of self determination through a variety of treaties gives way to its emergence as a customary principle of international law is further proof of the existence of the right of self determination.

The existence of the principle as a legal right, however, does not at all justify the use of force. After all, the policy of the Charter is to eliminate force and prevent its occurrence under whatever pretext. The acceptance of all states of the illegality of the use of force is unanimous, save in the context of colonial and racist regimes. More interestingly, was the use of force to promote self determination in the context of civil war which was unanimously regarded by all states as being against the principle of the U.N. Charter. This is against the norm of non intervention which acknowledges that no state has any right whatsoever to meddle in the domestic affairs of another state. Accordingly, intervention, upon invitation was ruled out as a legal act in the context of civil war since it contradicts the right of the people to self determination.

The Syrian government has acknowledged the superiority of the norm of self-determination. The Syrian delegate asserted continuously his country's stand which was that the use of force or intervention upon whatever pretext in a civil war will run against the wishes of the native people. The Syrian condemnation of the American action in Grenada and Lebanon testify to this conclusion. However, the Syrian military intervention in June 1976 is a clear departure from this asserted policy. The Syrian intervention was against the wishes of the Lebanese people and their right to self determination. The Syrian intervention is a violent manifestation of the use of force which represents at its lowest level a challenge to the Charter of the United Nations and a state's acceptance of illegality of the use of force. The Charter's pledge in Article 2 (4) that the use of force is forbidden whatever the circumstances save in self defence, is

an important priority in a drive towards preserving peace and stability, an interpretation the Syrian government wholeheartedly embraced in its public pronouncement. Basic to this, the principle of self determination which is enshrined in the charter in both Articles (55) and (1), not to mention the International Covenant on Civil and Political Rights and various international agreements, prescribes the use of force to deprive people of their right to self determination as illegal.

As the Syrian government failed to demonstrate that its intervention was to promote the legal right of the Lebanese people to self determination, and since there is no right to use force to that end, its intervention will fall within the category of aggression. Its intervention was then a clear attack on Lebanese sovereignty and independence and the right of the Lebanese to choose whatever system they desire.

FOOTNOTE

- (1)- Louis B. Sohn, " Gradations Of Intervention In Internal Conflict", GA J. Int'L. and Comp.Law Vol 13, 1983, p 225; Roger S. Clark, " Humanitarian Intervention: Help To Your Friend And State Practice", GA.J. Int' L and Comp.L, Vol 13, 1983, pp 214-215
- (2)- See chapter one section IV United States And Soviet Union attitude toward the norm of Non-Intervention.; J. N Moore, " Panel One: General Discussion ", GA. J. Int'L and Comp.L Vol 13, 1983, pp 231-234.
- (3)- Id.
- (4)- The War in Lebanon: from Ayin AL Rummana to Arab Deterrent Force, 1976, p 73.
- (5)- Arab-Political Document, 1976, p 847.
- (6)- J.Bulloch, Death Of A Country: The Civil War In Lebanon, 1978, pp 6, 99, 103 ,119.; W. Kalidi, Conflict And violence In Lebanon, pp
- (7)- Ex-Prime Minister Saab salam 's statement in his response to Assad's speech affirmed that the prime minister Karami in co-operation with other muslim leaders demanded the Syrian withdrawal from Lebanon. see A. Khwayri, Al- Harb Fi Libnan, [The war in Lebanon] ; 1977, vol 2, pp 733-34.
- (8)- Arab-Political Documents, 1976, pp 424.
- (9)- Ibid. p 474.
- (10)- See Assad's speech (whole of speech printed in Itamar Rabinovich, The War For Lebanon: 1970-1983, 1984.
- (11)- Id.

- (12)- Id.
- (13)- The Syrian President referred, also, to this agreement as a justification while he was visiting France when he was asked by journalists about the justification of intervention. He asked them to go back to the Lebanese president's letter to the Arab-League. See Khwayri, Op cit note (7), p 480.
- (14)- Arab-Political Document, 1976, pp 442; Khwayri, Op cit note (7), p 575.
- (15)- For a brief explanation of the February 14 Agreement see Kalidi, Op cit note (6), Appendix 11.
- (16)- Id.
- (17)- Arab Political Document, 1976, p 450.
- (18)- See R. Iddeh Statement cited in Khwayri, Op cit note (7), pp 365.
- (19)- Id.
- (20)- Khwayri, Op cit note (7), p 323.
- (21)- See K. Junmblat, I speak For Lebanon, 1982, p 11.
- (22)- J. Carner, " Question Of International Law In The Spanish Civil War", A.J.I.L., vol 31, 1937, p 68.
- (23)- Id.; For a critical view see R. Falk, " The Internal Regulation Of Internal Violence In The Developing Countries", Proc. Am Soc. I. L. (1966-68).
- (24)- A.C. Bandu, " Recognition Of The Revolutionary Authorities: Law And Practice Of State", In't. and Comp. L. Q. Vol 27, 1978, p 30.
- (25)- Judicial Decisions, A.J.I.L., Vol 21, 1927, pp 164-65

- (26)- Id.
- (27)- Judicial Decisions involving questions of International Law: Arbitration between Britain and Cost Rica 1923 (Tinoco Case). A.J.I.L., vol 18, 1924, pp 147-155.
- (28)- Ibid. pp 154.
- (29)- Q. Wright, "United States Intervention In Lebanon", A.J.I.L., Vol 53, 1959. pp 120-121.
- (30)- M.M WhitMan, Digest Of International Law, Vol I, 1963 p 920.
- (31)- E. Vattel, Le Droit Des Gens, Bk, IV , cited in H. Lauterpacht, "Recognition Of Government: I", Colum. L Rev., Vol XLV, No 6, November 1945, pp 828-29.
- (32)- Ibid. pp 822; According to Bynkershock who articulated the same view as he said: " A ruler must be an independent sovereign in order to send an envoy, does not customarily distinguish whether he holds his sovereignty by just title or whether he has acquired it unjustly and in fact such a distinction would be impossible. It is sufficient to those who receive the embassy that he is in possession of sovereignty. see cited in Lauterpacht, Ibid p 828; B.R. Bot, Non Recognition And Treaty Relation, 1968, pp 23-25.
- (33)- Op cit note (24), p 40.
- (34)- Op cit note (29) pp 120; J. W. Carner " Editorial Comment: Recognition Of Belligerency", A.J.I.L., Vol 32, No 1, (1938), p 106.; Philip C. Jessup, " The Spanish Rebellion And International Law", Foreign Affair, January 1937, Vol 15, No 2, pp 260, 266-67; Thomas Ann Van Wyen and A. J. Thomas Jnr. Non-Intervention: The Law And Its Import In The Americas, 1956, p 218; Q. Wright, " International Law And Civil Strife", Proc. Am. Soc. L. L., 53rd, Annual meeting, Washington, April 27-29, 1959, pp 148-49.; George Schwarzenberger, " Hegemonial Intervention", Y. B. W. Aff. 1959, pp 236, 256-257.
- (35)- Tom Farer, " Foreign Intervention In Civil Armed Conflict", Receuil De Cours , Vol 11, 1974, p 324.

- (36)- Bulloch, Op cit not(6), pp 114-115; 120-129; Kalidi, Op cit note (6) pp 51-58
- (37)- It was reported that the Lebanese representative in the United Nations stressed the fact that the trouble in Lebanon emanates from the Palestinian presence. However, the Lebanese Prime minister, Karami, in a letter to the Secretary General affirmed that the Lebanese representative statement is not representing Lebanon's official view. On the other hand, Franjeh the president of Lebanon insisted that the said statement represents Lebanon's official view. See Sha'uun Falestinia, No 66, May 1977, pp 43-45.
- (38)- Marius Deeb, The Lebanese Civil War, 1980, p 2; and see David Gilmour, Lebanon: The Fractured Country, 1983. pp 116-118.
- (39)- The Lebanese President gave an order to the army to repel the Lebanese insurgents who surrounded the Christian town without the knowledge of the prime minister. However, the latter demanded the quick withdrawal of the Army, but such demand was totally ignored by the Lebanese president and the Army. see International Herald Tribune, 7 November 1975; and see Aez Al Dyen Salam, "Cease Fire In Lebanon will not last", AL-Talia Magazine, No 531, 29-July 1975, 1975, p 25
- (40)- Deeb, Op cit note (38); Gilmour Op cit note (38) p 121.
- (41)- Beirut Al-Masae Magazine, No 111, 16-22 March 1976, pp 10.; And Al-Thaer Al Arabai Magazine, 15 March 1976, p 13.
- (42)- Deeb, Op cit (38) p 4.
- (43)- During the election of new president there was no Army whatsoever at the disposal of the government. The Syrian government offered its sponsored force Al-Saiqa to protect the Parliament and ensure the safety of deputies. See Bulloch Op cit note (6), pp 134-38; Arab Political Document, 1976, p 383.
- (44)- Gilimour Op cit note (38) p 122.

- (45)- Kalidi, Op cit note (6) pp 55-54.
- (46)- Enver M. Koury, The Crisis In The Lebanese System: Confessionalism And Chaos, Washington D.C. 1976, p 60
- (47)- Time (English Newspaper) 4 June 1976.
- (48)- Farer Op cit note(35) pp 362; For a different view see Michael J. Matheson, " Practical Consideration For The Development Of Legal Standards For Intervention", GA. J. Int'l And Comp.L, Vol 13, 1983, p 207
- (49)- H. Lauterpacht, Recognition In International Law, 1947, p 181.
- (50)- H. Lauterpacht Op cit note (31) p 825.
- (51)- A.J. Thomas Jr and An Van Wyen Thomas, The Dominican Republic Crisis 1965, 1967, p 92-93
- (52)- Ibid. p 94.
- (53)- Article 52 of the Lebanese Constitution.
- (54)- Mustafa Abu Zaid Fahmi, Lebanese Parliamentary Law, 1969, pp 318-321
- (55)- Article 33 of the Egyptian Constitution reads: "The King is the head of state and himself is untouchable"; Article 60 of the Lebanese Constitutional Law affirmed as well the unaccountability of the president in a similar phrasing.
- (56)- Article 60 of Egyptian constitution reads as follows: "The ministers are responsible collectively before the parliament for the general policy of state and each individual responsible for his ministerial act"; Article 66 of the Lebanese constitution affirms the same principle .
- (57)- Op cit note (54).

- (58)- Article 54 of the Lebanese Constitution.
- (59)- Edmond Rabath, A Guide To Lebanese Constitutional Law, 1970, p 689.
- (60)- Article 17 of the Lebanese Constitution.
- (61)- J. La Ferriere, Manuel De Droit Constitutionnel, 2ed Edition 1947, cited in Op cit note (54) pp 323-24.
- (62)- Cited in Al-Hassan Hassan, Constitutional Law In Lebanon, 2ed Edition, 1963, p 125.
- (63)- Article 60 of the Lebanese constitution.
- (64)- Article 66 of the Lebanese constitution.
- (65)- Op cit note (62) p 274.
- (66)- Op cit note (54) p 325.
- (67)- Rabath, Op cit note (59) pp 699-700.
- (68)- Abu Zaid, Op cit note (54) p 322.
- (69)- Rabath, Op cit note (59) pp 688-93; It is worth mentioning that in 1967 the Lebanese government forwarded a draft law to parliament to have an exceptional power in order to invite Arab troops into the country. The parliament gave the requested power and hence the government invited Arab contingents into the country. See Khwayri Op cit note (7) p 365.
- (70)- Hans Kohn, " Changing Africa in a Changing World, Current History, Vol XL1, October 1961, p 194. ?
- (71)- Harolds. S. Johnson, Self-determination Within The Community Of Nations, 1967, p 26.
- (72)- I. Brownlie, " An Essay In The History Of Principle Of Self-Determination" in Grotian Society

Papers 1968: Studies in The History Of The Law Of Nations, Edited by H. Alexandrowicz, 1970, p 92.

- (73)- Lenin declared the equal right and sovereignty of the people of Russia; the right of the people of Russia to free self-determination including the right of secession and the creation of independent state. see Djura Ninncic', The Problem Of Sovereignty In The Charter And In The Practice Of The United Nations, 1970, pp 219-220.
- (74)- U.S Congressional Record, LIV, Part 2, Cited In H. Johnson, Op cit note (2). Wilson declared that " No peace can last or ought to last, which does not recognize and accept the principle that governments derive all their just power from the consent of the governed and that no right any anywhere exist, to hand people about from sovereignty to sovereignty as if they are property" p 33.
- (75)- Ninncic' Op cit note (73) pp 220-221; and see C. Straanshenko, The Principle Of National Self-Determination In Soviet Policy, 1963 pp 161-62..
- (76)- Article 1 of the United Nations Charter.
- (77)- Article 55 of the United Nations Charter.
- (78)- Michla Pomerance, Self-Determination In Law And Practice: The New Doctrine In The United Nations, Martinus Nijhoff, London, 1982, pp 14-28 and 73-76.; F.A. Lyall, A working Paper extended to the conference of the Scottish International Lawyers, 1987, pp 3-4.
- (79)- U.N. G.A. Res . 1514 (XV) 14 December 1960.
- (80)- Rosalyn Higgins, The Development Of International Law Through The Political Organs Of The United Nations, 1963, p 100.
- (81)- Anthony Verrier, International Peace keeping: United Nations Force In a Troubled World, 1980, p 67. The General Assembly under the Pressure of Thirld World Countries and in particular African states passed a Resolution calling on the United Nations Force to end the session by force if necessary.

- (82)- Secretary General Of United Nations U. Thant's statement in a press conference at Dakar, 4 January 1970 in U.N Monthly Chronicle, No 2. Feb 1970, p 36.
- (83)- M.K. Nawaz, " Bangladesh And International Law", Ind. J. In't. L. vol 11, 1971, pp 251-266.; and for more detail see Ved.P. Nanda, " Self- Determination In International Law: The Tragic Tale Of Two Cities- Islamabad (West Pakistan) And Decca (East Pakistan), A.J.I.L vol 66, 1972, pp 321-337. In fact there are three factors which exist in the case of East Pakistan which makes secession possible: (1) Constitutional and geographical boundaries, (2) historical relation and economic viability, (3) sociological and psychological factors; C.Don Johnson, " Note: Toward Self-determination- A Reappraisal As Reflected In The Declaration On Friendly Relations", GA.J Int'L and Comp.L, Vol 3, 1973, pp 161-162.
- (84)- Higgins, Op cit note (80) pp 104- 105; and see D.W.Bowett, " Self-Determination And Positive Rights In The Developing Countries" in Proc. Am.Soc. I. L. 1966-68, p 131.
- (85)- Higgins, Op cit note (80), pp 104-105.
- (86)- U.N. Doc. A/Ac. 125/L.75 (sept. 15,1969). and for the U.K representative's view, see p 6.
- (87)- U.N Doc.A/Ac.125/ S.R.68, 4 December 1967
- (88)- Declaration On The Principle Of International Law Concerning Friendly Relations And Co-operation Among States In Accordance With The Charter Of The United Nations. see G.A.Res 2625 (XXV). 24 October 1970 in I.L.M. vol 9, 1970, p 1295.
- (89)- Bowett Op cit note (84) pp 130-132.
- (90)- Pomerance, Op cit note (78); J. Stone, Conflict Through Consensus: United Nations Approach To Aggression, 1977, pp 66-86.
- (91)- J.H. W. Verzijl, International Law In Historical Perspective, vol 1, 1968, pp 324-25; Stone argued that " In so far as the General Assembly now seeks to arrogate such magisterial authority to itself, it imperils also its true moral and hortatory role in international security matters. As it

becomes a mere weapon in one side's political armory, the effect is to consolidate rather than resolve hostile alignments, and to deprive states subject to its pressure of any but military alternatives". see J.Stone, Op cit note (90), p 175.

- (92)- Shabtai Rosenne, " Review Of Benjamin B.Ferencez, Defining International Aggression: The Search For World Peace", Isr. L. Rev. Vol 12, 1977, p 405.
- (93)- Higgins, Op cit note (80) p 104.
- (94)- L.B. Sohn, " The Universal Declaration Of Human Rights: A common Standard Of Achievement ? The Status Of The Universal Declaration In International Law", J. In't Comm. Jur. Vol 8, 1967, pp 17-20.
- (95)- Oscar Schachter " Law And The Process Of Decision In The Political Organs Of The United Nations", Receuil De Cours, (1963-11), p 181. He argued that " But it would be misleading to consider the declaration as the only outcome of the proceeding; it is in fact more like the upper part of iceberg, by far the larger part remaining beneath the surface. This larger part, in my view, must be found in the wide record of the case, for those proceeding contain material bearing upon the contemporary attitudes of states towards their right and obligations in regard to their resources" p 182 and see pp 183-84
- (96)- R.Falk, " Intervention And National Liberation" in Intervention In World Politics, Edited by H. Bull, 1984, p 129.
- (97)- S.Prakash, " Has Self-Determination Become A Principle Of International Law Today ?".., Ind J.L. L., Vol 14, 1974, p 348.
- (98)- A.R.Sureda, The Evolution Of The Right Of Self- Determination: A Study Of The United Nations Practice, 1973.
- (99)- O.Y Asamoah, The Legal Significance Of The Declaration Of The General Assembly Of The United Nations, 1966, p 243.
- (100)- A. D'mato, "The Concept Of Human Rights In International Law", Colum. L. Rev., Vol 82,

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- (101)- Ibid. pp 1129-1133.
- (102)- A treaty signed between the governments of Egypt and U.K concerning the right of the sudanese people to self-determination on 19 February 1953 where the parties expressed their belief on the " right of the sudanese people to self determination and the effective exercise thereof at the proper time and with the necessary safeguard" see 161 United Nations Treaty Series, Year 1953; Another bilateral treaty between the Republic of Indonesia and the Kingdom of Netherlands concerning West Guinea (West Iria) on 15 August 1962, see 41 I.L.M., 1962, p 231; also another treaty between Saudia Arabia and the United Arab Republic was signed on 24 August 1962 regarding the people of Yemen to exercise their right to self-determination, see, 4 I.L.M 1965, p 1139.
- (103)- Sir Gerald Fitzmaurice " Herch Lauterpacht: The Scholar As A Judge Part II", B.Y. B. I.L. Vol 38, 1962, p 10.
- (104)- See Chapter 1. section 11, definition of intervention; and see Bowett Op cit note (84) p 131.
- (105)- Q. Wright, " Recognition And Self-Determination" Proc. Am. Soc. I. L. Vol 84, 1954, pp 23-27; and see the comment of Thomas Frank in Robert K. Woetzel, " Political Right In Developing Countries", Proc. Am Soc. I. L. . (1966-68), p 150.
- (106)- ICJ Report 1975, p 32.
- (107)- Josef Rohlik, " Some Remarks On Self-Defence And Intervention: A Reaction To reading Law And Civil War In The Modern World", GA. J. Int'L And Comp. L. Vol 6, 1976, p 409.
- (108)- William E.Hall, International Law, Ed Pearce Higgins, 8th ed, 1924, p 347.
- (109)- H.Lauterpacht, " The Contemporary Practice Of The United Kingdom In The Field Of International Law- Survey And Comment", In't. and Comp. L. Q., Vol 7, 1958, p 103.
- (110)- T.J. Lawrence, The Principles Of International Law , 7th ed., Revised By Percy H.Winfield,

1923, pp 131-132.

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- (112)- Elery E. Stowell, Intervention In International Law, 1921, pp 329- 345.
- (113)- W. Friedman, The Changing Structure Of International Law, 1964, pp 262- 68.
- (114)- Tom Farer, " Harnessing Rouge Elephants: A short Discourse On Foreign Intervention In Civil Strife", Harv. L. Rev. Vol 82, 1968-69, pp 511-541.
- (115)- Rohlik, Op cit note (107) p 409.
- (116)- J.N Moore, "Toward an Applied Theory For The Regulation Of Intervention" in J.N.Moore ed., Law And Civil War In The Modern World, Baltimore and London, 1974; J.N.Moore, "Intervention: A Monochromatic Term For A Polychromatic Reality" in R.Falk ed., The Vietnam War And International Law, American Society of International Law, vol II, 1969 pp 1067-1088.
- (117)- Bhupinder Singh Chimni, " Toward A Third World Approach To Non Intervention: Through The Labyrinth Of Western Doctrine", Ind. J. In't. L. Vol 20, 1980, pp 250-251.
- (118)- David E. Graham, " The 1974 Diplomatic Conference On The Law Of War: A Victory For Political Causes And A Return To the Just War Concept Of the Eleventh Century", Washington And Lee Law Review, Vol 32, 1975, pp 25-63; and see Chapter One, United States and Soviet Unions attitude towards the norm of non-intervention.
- (119)- For progressive view see M. Reisman, "Coercion And Self-Determination: Construing Article 2 (4)", A.J.I.L. Vol 78, 1984,
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- (121)- Rohlik, Op cit note (107) p 400.

- (122)- O. Schachter, " The Right Of States To use Armed Force", Mich.L Review, Vol 82, 1984, pp 1641-46; Chimni, Op cit note (117), pp 234-264.
- (123)- Resolution 2131 (XX) On The Inadmissibility Of Intervention In The Domestic Affairs Of States And The Protection Of Their Independence And Sovereignty, 21 December 1965.
- (124)- Op cit note (84) pp 130- 132.
- (125)- Robert Rosenstock, " The Declaration Of Principles Of International Law Concerning Friendly Relations: A Survey", A.J.I.L., Vol 65, 1971,
- (126)- Ibid, p 733.
- (127)- Stone, Op cit note (90) .
- (128)- Statement made by the representative of Kenya see U.N Doc. A/Ac 125/SR .69, 4 December 1967 p 22. and see Stone, Op cit note (90)
- (129)- Nirmala Chandrahasan, " Internal Conflict And The Question Of intervention In International Law", Colombo. L. Rev., Vol 24, 1979, pp 154-58; Myres S.Mc Dougal and W.M Reisman, " Rhodesia And The United Nations: The Lawfulness Of International Concern", A.J.I.L. vol 62, 1968, pp 1-19.
- (130)- Bowett, Op cit note (84) and Rohlik, Op cit note (107)
- (131)- Rohlik, Op cit note (107) p 407.
- (132)- Seymour M. Finger, " A New Approach To Colonial Problem At The United Nations", L.Q., Vol 26, 1972, pp 145-46.
- (133)- Schachter, Op cit note (122); J.N. Moore, " Legal Standard For Intervention In Internal Conflict" GA.J. Int'l and Cop. L., Vol 13, 1983, pp 191-199.
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- (137)- W.Freidman, " U.S Policy And The Crisis Of International Law", AJLL, Vol 59, 1965, p 866.
- (138)- Cited in Op cit note (4) p 73.
- (139)- Declaration Of Principles Of International Law Concerning Friendly Relations And Co-operation Among States In Accordance With The Charter Of United Nations, Sixth Committee, 1963, A/C.6/ SR. 807.
- (140)- Id.
- (141)- S.C. debate, 27 October 1983, UN Doc S/P.V 2491, pp 204, n.73.
- (142)- Id.
- (143)- S.C Official Record, 38th 1983, Debate on Secretary General Report Concerning The U.N Interim Force In Lebanon. S/ P.v 2496, p 12.
- (144)- Id.
- (145)- Ibid pp 27.
- (146)- Id.
- (147)- Id.

- (148)- Asamoah, Op cit note (99) p 243.
- (149)- Schachter, Op cit note (122) p 1645.
- (150)- NJ Weinberger, Syrian Intervention In Lebanon: The 1975-76 Civil War, 1986, p 333.
- (151)- Kalidi, Op cit note (6) pp 63-65.
- (152)- See Deeb Op cit note (38) p 92. One of the Lebanese deputies Iddeh, commented on the Syrian intervention by saying " the Syrian army entered Lebanon as it is part of Syria. In the face of this naked aggression on the sovereignty of Lebanon and in contrary to what some have claimed, the majority of the Lebanese people did not welcome the Syrian army and the true evidence is that the Syrian army is fighting a fierce battle in Sofar and Bhamadon, and had there been a true welcome it would have been received with flowers and songs", cited in Khwayri Op cit note (7) p 365.
- (153)- AL-Nahar, 4 June 1976 cited in Weinberger, Op cit note (151), p 215.
- (154)- Maarive (Israeli Newspaper) 6 June 1976. cited in the Journal of Palestinain Studies, 1976, p 128.
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CHAPTER SIX

THE LEGITIMIZATION OF SYRIAN INTERVENTION BY THE ARAB LEAGUE.

I-Introduction.

On the 9th of June 1976 an extra session of the Arab League Council, at Ministerial level, took place to consider the Syrian intervention in the Lebanese civil war. The outcome of the meeting was the establishment of a peace keeping force to end the civil war in Lebanon. With the establishment of a peace-keeping force, the Syrian forces were called on to withdraw from Lebanon in order to be replaced by an Arab-peace keeping force. However, due to the refusal of the Syrian government to withdraw its forces another meeting of the Arab League was held in Riyadh at the level of Heads of State. The outcome of the meeting was the establishment of the Arab Deterrent Forces (A.D.F) which included the Syrian forces. With the formation of A.D.F, it was argued that the Syrian forces, were no longer an illegal force. To what extent this assumption is valid is the main purpose of this chapter. Moreover, it will highlight the circumstances which made possible the inclusion of the Syrian forces in the Arab peace keeping force. First it is necessary to consider the Arab-League as a regional organization and its relation with the United Nations Charter, and then proceed to discuss the legality of Arab-League action and its effect on the legitimization of the Syrian presence in Lebanon.

II- The Foundation and Constitutional Basis of the Arab League

A- The Origin Of The Arab League.

On the 22nd of March 1945 of March and upon the invitation of the Egyptian Prime Minister, a meeting took place in Egypt, where Arab leaders finally put their seal of approval on what later came to be known as the Arab League.⁽¹⁾

The emergence of the Organisation of the Arab-League was a natural outcome of the Arab yearning for unity which had been a persistent phenomenon since the nineteenth century. The drive or desire for Arab unity was occasionally employed by foreign powers to gain Arab support in critical times. The first attempt was made by the Ottoman authority through its governor Shafiq Pasha with King Abed Al-Aziz.⁽²⁾ However, the Ottoman offer was not welcomed, as the Arab world was divided on the issue, and generally treated it with scepticism.⁽³⁾ In this regard, the Arabs allied themselves with the Allied Forces in the First World War under the impression that their most cherished hope of unity and independence would be the ultimate outcome.⁽⁴⁾ However, their hope of unity never materialized. Both France and Britain refused to recognise the new Arab King Al Sharif Hussain and, on the 24th of July 1920, the French forces invaded Damascus and overthrew the government of Al Sharif's son.⁽⁵⁾ Following that, Arab countries were subjected to the new international arrangement whereby Syria and Lebanon fell under the French mandate while Iraq and Palestine came under the British mandate.⁽⁶⁾ Thus, the promise of Arab unity was a dream which never come true.

During the Second World War, the British government again raised the subject of unity. The British Foreign Minister, Anthony Eden announced on May 29, 1941 that the

Arab world has shown a great desire for unity and to realize that they should rely on the British government. He proceeded to say "No such appeal from our friends should go unanswered" and thus " His Majesty's government for their part will give their full support to any scheme that commands general approval".⁽⁷⁾

Responding to the British offer, the Iraqi prime minister in the spring of 1943 forwarded a plan envisaging the establishment of Greater Syria and an Arab League.⁽⁸⁾ Likewise, Prince Abdallah of TransJordan envisaged the establishment of a federation composed of Greater Syria and Iraq.⁽⁹⁾ The last reaction to the British offer was from Egypt. On March 30, 1943 the Egyptian Premier, in a speech, was committed to exploring the opinion of Arab governments on the issue of unity.⁽¹⁰⁾ In July 1944 the Egyptian Premier invited Arab States to a joint conference to exchange opinion on the issue of unity.

On September 25 1944, a meeting was held in Alexandria, Egypt and in the course of the meeting three proposals were submitted:

- (1)- The establishment of a unitary state with central authority and compulsory settlement of disputes.
- (2)- A federated state consisting of central assembly and executive committee with full power over federal system.⁽¹¹⁾
- (3)- A loose federation sharing nothing with the above proposals, aimed at increasing co-operation and co-ordination of Arab state policy.⁽¹²⁾

After full consideration, and upon the insistence of Lebanon that a unitary state would ultimately destroy state sovereignty, the conference abandoned the first proposal.⁽¹³⁾ In contrast, Syria argued for the unitary state and pledged its readiness to surrender its sovereignty.⁽¹⁴⁾ However, the conference managed to reach a compromise by which an Arab-League would be established and independent Arab

states would be free to join it.⁽¹⁵⁾ This compromise came later to be known as the Alexandria Protocol⁽¹⁶⁾. Thus the establishment of the Arab-League, despite the differences between various Arab states' view of unity and its achievement, was primarily attributable to the " natural expression of trends which were already present and which could not be denied eventual fruition".⁽¹⁷⁾

Later, a sub-committee created by the Protocol prepared a draft pact for the Arab League. After the sixteenth session, an agreement was reached on that draft.⁽¹⁸⁾ On March 20, 1945 the committee transformed itself into a general Arab conference⁽¹⁹⁾ and on 22rd of March 1945 the pact was finally approved and signed by the states' representatives.⁽²⁰⁾

B- The Pact Of The Arab League.

The Pact of the Arab League is an international treaty signed by the heads of independent Arab states. The purposes of the League are set forth in Article 2 of the Pact. These purposes are: strengthening relations between member states; co-ordinating their policies in order to prompt further co-operation and safeguarding their independence and sovereignty; and a general concern for the affairs and interests of Arab countries.⁽²¹⁾ However, co-operation was addressed specifically to matters concerning economic and financial affairs, commercial relations, customs , industry, social relation and health etc..

On the other hand the Pact failed to regulate matters relating to defence against armed attack,co-ordination of military resources or co-ordination of foreign policy.⁽²²⁾ Moreover, the absence of committment to co-ordinate foreign policy was a clear departure from the Alexandria Protocol which prescribe d that Arab states should "co-ordinate their political plan so as to ensure their co-operation".⁽²³⁾ The stress of the Pact on the respect of sovereignty and independence and non interference in domestic

affairs was the major theme in the Pact. However, such a position could be seen as a clear retreat from the ideal that gave rise to the Alexandria Protocol.⁽²⁴⁾ Member states pledge their commitment to refrain from any intervention or action directed at changing or weakening other government systems. Article 8 reads:

" Each member state shall respect the system of government established in the other member states and regard them as the exclusive concern of those states. Each shall pledge to abstain from any action calculated to change the established system of government".⁽²⁵⁾

In Article 5 the Pact renounced the use of force to settle disputes and for any dispute not involving sovereignty or independence, in cases referred to the Council by the parties, the decision of the Council would be binding.⁽²⁶⁾

Regarding the membership, the Pact opened the door to every independent Arab state but at the same time did not ignore the plight of non independent Arab states.⁽²⁷⁾ The admittance of Algeria as an observer and Palestine as a member was a clear manifestation of the flexibility of the pact.⁽²⁸⁾ Upon their admission, member states were to pledge their commitment to abide by the rules and procedures and support their execution . Withdrawal was allowed on giving notice which ought to be served one year in advance to the Council.⁽²⁹⁾ Expulsion could be considered in the light of a Member's state's failure to fulfill it's obligations.⁽³⁰⁾

The Pact dealt with the issue of aggression stipulating that in the case of aggression by one state against another member state, the victim of such act would ask for the convocation of the Council which would take the necessary action to check that illegal incursion.⁽³¹⁾

The Pact also envisaged the establishment of an institutional structure for the Arab

League and provided the rules for its regulation. Although there are many organs envisaged by the Pact⁽³²⁾, the most important organs are: the Council, Permanent Secretariat and Committee. The Council is composed of representative states of the Arab-League. It holds two ordinary sessions each year and each representative has one vote.⁽³³⁾ However, the Council can meet in extra-ordinary sessions upon the request of two members⁽³⁴⁾. The procedure of voting is unanimity as a general rule and thus decisions taken unanimously ought to be binding, but decisions taken by the majority would be only binding on states accepting them.⁽³⁵⁾ However, in the case of aggression, the vote of the aggressor must be excluded.⁽³⁶⁾ Moreover, the council would be, according to the Pact, the appropriate organ to discharge or to see to the realization of the purposes of the Pact.⁽³⁷⁾

As to the Permanent Committee, according to the pact its function was confined to preparing and planning the extent of co-operation in accordance with the purposes listed in Article 2 of the Pact.⁽³⁸⁾ Finally, the Permanent Secretariat, which is composed of the Secretary General and Assistant secretaries and appropriate other officials⁽³⁹⁾, is charged with the preparation of the League's budget and convening the ordinary council sessions.⁽⁴⁰⁾

C-The Interrelation Between The League And The United Nations Charter.

Although the Pact of the Arab League preceded the establishment of the United Nations⁽⁴¹⁾, nevertheless the Pact's provisions ensured room for a future relationship between the two organizations. This flexibility was clearly reflected in Article 19 which envisaged the possibility of a modification of the pact in order to be compatible with the United Nations.⁽⁴²⁾

The Charter of the United Nations provided for such a relation under Chapter VIII, and in particular Article 52 (1) which reads:

"Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations".⁽⁴³⁾

The Charter stipulated that the regional organization performing its duties in accordance with article 52 (1) ought to make " every effort to achieve a pacific settlement of local disputes".⁽⁴⁴⁾ In course of such pacific settlement by the regional organization, the Security Council will, in its turn, "encourage the development of a pacific settlement of local disputes through such regional arrangements or by such regional agencies".⁽⁴⁵⁾ On the other hand, the Security Council restricted the freedom of regional organization in dealing with the local disputes as it stipulated that an enforcement action by such agencies or regional organization must at first obtain the authorization of the Security Council.⁽⁴⁶⁾ Article 52, paragraph 4, affirmed that the existence of regional organization shall " in no way impair the application of Article 34 and 35" of the United Nations charter.⁽⁴⁷⁾ In addition, the Charter imposed another restriction on the freedom of regional organization by stipulating that the regional organization must keep the Security Council " informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security".⁽⁴⁸⁾ However, the Arab-League as a regional organization and a kind of collective body could operate a system of collective security. Indeed the Arab-League at a later stage signed a treaty of collective defence (Treaty of Joint Defence). Such a treaty qualifies the Arab-League to take collective action in response to an aggression. The United Nations Charter recognized such measures

under Article 51 which was inserted upon the insistence of Latin American states in order to allow regional organization to take action without reference to the Security Council.(49)

III- The Arab League Peace Keeping Force in Lebanon.

A- Prelude to the establishment of The Arab Security Force

As the Syrian forces continued their illegal intervention in the Lebanese civil war, the ferocity of fighting took a dramatic shift. The belligerents in their strive for supremacy used every type of conventional warfare ranging from tanks and artillery to the use of large troop tactics in their offensive war. Despite all of that, the Syrian forces met stiff resistance and its advance was thus very slow.(50) Responding to the Syrian offensive drive, the LNM and Palestinian resistance, waged a war against the Syrian proxy [Al-Saqua and the Bathist party] in the capital which ended in their surrender.(51)

In the course of these developments, Arab public opinion was outraged by the Syrian military drive against the Leftist and Palestinian forces, and that pressure was so great that the Arab leaders felt it necessary to hold a meeting in order to form a new initiative. The urgency of the meeting was reconfirmed following the Iraqi government's criticism of Syrian activity in Lebanon coupled with mass troop movement on the Iraqi-Syrian border.(52) Thus, in response to the Libyan, Iraqi and Egyptation request for an extra ordinary session of the Arab-League, a meeting was convened on the 6th of June 1976 to discuss the Lebanese crisis.(53)

On the 9th of June 1976, an extra-ordinary session of the Arab-League Council, at the level of Foreign Ministers, took place in Cairo , to consider the implications of the Lebanese civil war and the Syrian intervention. The outcome of the meeting was a Resolution which is commonly known as the Cairo Resolution.

B-The Cairo Resolution And The Formation Of The Arab Symbolic Force

The Cairo Resolution of the 9th of June 1976 called on all parties to " cease fighting immediately and to consolidate such a cease fire".⁽⁵⁴⁾ Interestingly enough, to secure a cease fire, the Resolution envisaged the establishment of a commission representing the League to be dispatched to Lebanon as soon as possible in order to "co-operate with the parties concerned in following up the situation and ensuring security and stability in Lebanon".⁽⁵⁵⁾

In addition, the resolution provided for the establishment of the Symbolic Arab Security Force under the supervision of the Secretary General of the Arab-League, Mahmoud Riyad. The Force (A.S.F) would be entrusted with the task of maintaining "security and and stability in Lebanon". The most important paragraph was that pertaining to the Syrian replacement as the resolution stipulated that the A.S.F." should start to perform its task immediately, replacing the Syrian forces".⁽⁵⁶⁾

In line with the model of a peace keeping force, the resolution stipulated that the A.S.F "should be brought to an end if the elected president of the Republic of Lebanon so requested."⁽⁵⁷⁾ In general, the rest of the Resolution consisted of the call to all parties to bring about a comprehensive national conciliation under the auspices of the Lebanese president-elect and affirmation of the Arab-League commitment to the

Palestinian revolution so as to provide protection and increase its effectiveness and strength.⁽⁵⁸⁾ On whole, the Resolution failed to determine accurately the kind of consent which the force needed to operate in Lebanon, since there was a constitutional crisis as regards to who was the proper or legal president of Lebanon. This came about since President Franjieh refused to resign and hand over the presidency to the newly elected president before the end of his term. However, the council on the night of June 9 1976, and in a further session, decided to make a slight modification to the mandate with reference to the consent which was rephrased in such terms that the A.S.F. was to act " within the frame work of Lebanese sovereignty".⁽⁵⁹⁾ Moreover, the Resolution was quite ambiguous on the issue of Syrian troops as it failed to determine the procedures by which the Syrian forces could find their way out of Lebanon. This ambiguity of the mandate needs more elaboration and comment.

C-The Ambiguity Of The Mandate Of The A.S.F.

As mentioned previously, the resolution of the League on the 9th of June 1976, was quite ambiguous on the issue of consent and Syrian replacement. As the consent will be discussed later, the effort in this section will be devoted to the ambiguity of the clause relating to the Syrian troops in Lebanon.

The failure of the Resolution to explicitly condemn the Syrian intervention cannot be taken as a sanction of the Syrian military action. On the contrary, the mandate made it clear that the withdrawal of Syrian forces was one of the main purposes. Thus, by inference, an assumption could be made that reference to the Syrian replacement was an indication of the illegality of the Syrian intervention. Moreover, the mandate fell short of setting out in detail the procedures necessary for such replacement. There was no

time table for measures which were to be taken in order to effect the Syrian replacement. However, this lacuna permitted an argument that the resolution of the 9th June did not contemplate full Syrian withdrawal, otherwise the resolution would have explicitly mentioned that and provided a time-table for that purpose.

Later events affirmed this thesis as discussion concentrated on the the size of Syrian participation and not on their full withdrawal. Faced with the Palestinian and LNM rejection of full Syrian participation⁽⁶⁰⁾ and Franjeh with LF insistence on the Syrian participation⁽⁶¹⁾, an Arab League spokesman affirmed the Syrian participation, but made no reference to the size of the Syrian contingent.⁽⁶²⁾

In the course of these discussions, the Syrian government made the point very clear that they would not withdraw from Lebanon nor reduce the number of troops. The Syrian foreign minister elaborated on this point:

"When our troops entered Lebanon, it was in order to impose security and stability and to create a climate favorable to political dialogue between the Lebanese. When all that has been achieved, there will not be a single Syrian soldier left. We will take all the time that is necessary".⁽⁶³⁾

In the light of the Syrian statement and the Arab-League spokesman's clarification, the issue of the Syrian replacement became clear . The word replacement did not mean withdrawal of the Syrian troops as there was no time-table or arrangement to that end. Therefore, since the Arab-league resolution was ambiguous about the Syrian replacement and in light of the aforementioned statements, one wonder whether or not the League has ever condemned the Syrian intervention. In general, the ambiguity of the mandate, has provided the necessary loopholes which permitted the Syrians to participate in the Arab peace keeping force, and saved the League from delicate questions concerning the condemnation and withdrawal of the Syrian forces .

D - Silence Of the Arab-League Pact On The Issue Of Peacekeeping Force

As far as the Arab-League Power to establish a peace keeping force was concerned, the Pact so far provided no legal ground for that purpose. The failure of the Pact in this field was overcome by what could be called a progressive interpretation of the Pact. This method of interpretation was employed in the interpretation of the Charter of the United Nations.

The United Nations Peace Keeping Force was based on two grounds; either that the establishment of the peace keeping force is based on a treaty provision or on the assumption that the Organization is acting *intra vires*.⁽⁶⁴⁾ However, such an interpretation was not completely accepted by the major actors as opinion referred to the practice of the United Nations where others discounted any practice that could not be supported by the provisions of the Charter.⁽⁶⁵⁾ As there is no specific provision in the charter pertaining to the subject of peace keeping forces⁽⁶⁶⁾, the conviction was that the the Organization was acting *intra vires*. In the *Certain Expenses Case* the ICJ held the opinion that:

"When the Organization takes action which warrants the assertion that it was appropriate for the fulfillment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization".⁽⁶⁶⁾

Therefore, on the analogy of interpretation of the United Nations Charter, one can analyse the Pact of the Arab-League. Since the purpose of the Arab League Organization is to preserve peace and stability in the region, then action taken by it for such a purpose is not *ultra vires*. In fact, there are many provision in the Pact of the Arab-League which permits such an interpretation. In particular, Article 2 of the Pact

specifies the purposes of the Organization(68);

(1)- "To strengthen relations between member states.

(2)- Co-ordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interest of the Arab countries".

Thus, the Arab-League's action could be considered as an action inherent in the purpose of the organization, and moreover consistent with Article 2 pertaining to safeguarding independence and sovereignty of Lebanon which was in great danger following the Syrian intervention. In addition, some suggested that the action of the Arab-League in Lebanon could be legitimized on other grounds such as the Treaty of Joint Defence which was signed by Arab states.⁽⁶⁹⁾ Hassouna one of the leading authorities on the Arab-League, relied on such a Treaty as a basis for the Arab-League initiative in Lebanon.⁽⁷⁰⁾ The Treaty provided two options for the Arab League:

(1)- " As a regional collective security system concerned with the prevention or resolution of conflict within its members"

(2)- " And as a regional collective self-defence system aimed at providing joint security against an external threat".⁽⁷¹⁾

It is within the first option that the new form of establishing a peace keeping force was manifested in the establishment of a peace keeping machinery in Kuwait, and so it would be the case in Lebanon.⁽⁷²⁾

Another lawyer writing on the topic shared the view that the Arab League peace keeping operation in Lebanon could be based on the Treaty as well.⁽⁷³⁾ Pogany

referred to the preamble of the Treaty of Joint Defence which includes inter alia, the desire of the contracting states to maintain peace and security and moreover Article 3 which reads: "The contracting states shall hold consultation whenever there are reasonable grounds for the belief that the territorial integrity, independence, or security of any one of the parties is threatened" as a justification for the peace keeping operation.⁽⁷⁴⁾ However, as far as this Treaty serves as a basis for the establishment of a peace keeping force in Lebanon is concerned, the validity of it is very doubtful. The said Treaty is concerned with the subject of collective security and its operation arises only in cases of aggression and violation of another state's independence and sovereignty. This violation does not make any difference whether or not it emanates from a member state of the League or an external one. The reference to Article 3 as a justification is quite misleading since it does not correspond to the intention of the drafters of the treaty. In fact Article 2 defines the parameters of Article 3 which affirms that "The contracting states consider any (act of) armed aggression made against any one of them or their armed forces, to be directed against them all" and therefore in accordance with " self defencethey undertake to ...use armed forces to rebel the aggression and restore stability and peace".⁽⁷⁵⁾

Therefore, the words stability and peace are confined only to cases of aggression in which the Arab states respond collectively to halt the aggression and restore peace and security. Another reason which confirms the view that the action of the Arab League was not based on the said Treaty is Pogany's argument regarding the Arab peace keeping in Kuwait. His conclusion seems to contradict his verdict in the case of the peace keeping force in Lebanon.

Departing from Hassouna's position, he asserts that the Force in Kuwait was not a peace keeping force and was a manifestation of collective self-defence. He proceeded to confirm that the Arab peace keeping force in Kuwait was based on the resolution of

20th July 1961. The resolution specified that the force was to give "effective assistance for the preservation of Kuwait's independence". He rejected Hassona's arguments that the force was not directed against any party since as he believes, the reason for that was attributable to the fact that Iraq pulled back and took no more hostile action. For if the Iraqi troops attacked the Arab League force, the League would repel it and by virtue of that the League force constituted a measure of collective self defence and not a peace keeping force.⁽⁷⁶⁾ Following this reasoning, one wonders how the Arab League peace keeping force in Lebanon could be based on the *Treaty of Joint Defence*. For if it is so then the League action would have been in accordance with collective self defence and not a peace keeping force. After all, the League action was undertaken following the Syrian intervention in Lebanon. Such an intervention was a clear violation of Lebanon's sovereignty and independence. Thus, one can reverse Pogany's analogy, to demonstrate that the constitutional bases of the Arab League peace keeping force could not relate to the said treaty. To Pogany, the League peace keeping force was not directed against any state, but that was presumably because of Syrian willingness not to use force any more; and had the Syrians used force the League troops would presumably repel that attack. And if that holds true, then the force would no longer be a peace keeping force rather a collective self-defence measure. Therefore, the Arab-League peace keeping force in Lebanon was based on the Pact of the Arab League only and not on the Treaty of Joint Defence. The Pact, however did not envisage the peace keeping role but an assumption could be made that the League's action was inherent in its purposes and as such was not *ultra vires*.

IV- The Compatibility Of The A.S.F With The Conventional Type Of Peace keeping

The establishment of the A.S.F by the Arab-League in order to carry out a peace

keeping operation in a civil war, was a novelty as far as the League is concerned. It was the first time that the Arab League experienced such a situation in which a member state was torn by civil strife and external intervention. Therefore, it is imperative to examine the requirements that are necessary for peace keeping forces and to see to what extent the League adhered to such requirements. In this regard, the experience of the United Nations is enriching, and in light of it, the Arab League peace keeping force could be judged. As far as the conventional type of peace keeping force is concerned, there are three important factors: the consent of the host state, composition of the force and control of the operation. Therefore, in this section an attempt will be made to see how the Arab-League responded to these conditions or requirements.

A-The Consent Of The Host State

It is a pre-requisite that the consent of the host state has to be obtained in order for the peace keeping force to operate in its territory. Without such a consent, the force would be considered an enforcement action under Chapter(VII) of the Charter . The consent of the host state originally emanated from the practice of the United Nations peace keeping force in Egypt 1956. The General Assembly Resolution 998 (ES-I), which was passed following the British, French and Israeli invasion of the Egyptian territory, requested the Secretary General to submit within 48 hours " a plan for the setting up, with the consent of the nations concerned, of an emergency international United Nations force to secure and supervise the cessation of hostilities".⁽⁷⁷⁾ Consequently, the Israeli government refused to give its consent while Egypt accepted the presence of that force on its territory.⁽⁷⁸⁾

Moreover, the Secretary General in his second and final report (6th November

1956) regarding a plan for an emergency international United Nations force affirmed that:

"...the force, if established, would be limited in its operation to the extent that consent of the parties concerned is required under generally recognized international law. While the General Assembly is enabled to establish the force with the consent of those parties which contributes units to the force, it could not request the force to be stationed or operate on the territory of a given country without the consent of the government of that country".⁽⁷⁹⁾

However, since the United Nations force in Egypt was not utilized in the context of civil war, an argument might be put forward that in a civil war, in the absence of a recognisable government, it would be irrelevant for the United Nations to seek consent before establishing a peace-keeping force. This is not quite true since the experience of the United Nations in the Congo furnishes a clear precedent. During the ONUC operation in the Congo, although in response to the Congolese government's request following the Belgian invasion, the Secretary General at a later stage sought the consent of all the parties to the civil war since the government was no longer representing the Republic of Congo. This is clearly illustrated by the Secretary General's endeavor to obtain the consent of the Katangese government headed by Mr Tschombe.⁽⁸⁰⁾

As to the form of the consent which was supposed to be given, there are two methods; either through a message to the Secretary General or through an agreement between the host state and the United Nations ⁽⁸¹⁾ However, the methods of giving the consent are not restrictive to the aforementioned types. Therefore, the consent is very important to the operation of the peace keeping force since that Force is not engaged in an enforcement action under Chapter(VII) of the Charter of the United Nations.⁽⁸²⁾

As far as the A.S.F. is concerned, one could assert that the force was not an

enforcement action. Thus, one wonders whether or not the A.S.F obtained the necessary consent from the proper authority as a pre-requisite to its deployment in Lebanese territory. The Resolution of 9th June 1976 stressed the fact that the A.S.F mandate would be terminated upon the request of the president elect Illias Sarkis. This specification has the advantage of removing any ambiguity that might arise in the case of termination as was the case regarding UNEF.⁽⁸³⁾ However, stressing the right of the president regarding the termination of the mandate of the A.S.F could not reveal on its own whether or not the consent was properly addressed. For the president-elect has the right to terminate the mandate then by right his consent is necessary to the deployment of the force.

Given the constitutional crisis in Lebanon, the president elect was not yet inaugurated as the constitutional president as president Franjieh's term had not yet expired. However, the council of ministers of the Arab League realized the loophole and in a later session they affirmed that the deployment of the force would take place "within the frame work of Lebanese sovereignty".⁽⁸⁴⁾ Despite that, the Lebanese president protested against the resolution of June 9th and considered it null and void. According to him, the resolution was passed in the absence of Lebanon and against Article 7 of the League which required that a state concerned with the decision of the League, had to give its consent for it to be binding. In a letter addressed to the League Franjieh stressed that:

" It is contrary to the League's charter and to the very reasons which had prompted the creation of the League for an Arab League meeting to take place to discuss the Lebanese matter...and to attempt to make decisions binding on Lebanon without inviting Lebanon to attend or be represented at the meeting by a responsible person".⁽⁸⁵⁾

However, it is worth mentioning that the Lebanese ambassador to Egypt was present at that meeting.⁽⁸⁶⁾ Nevertheless, president Franjieh and the Lebanese Front

continued their attack on the League's decision and insisted that the A.S.F. would be met with every possible resistance in order to defend the sovereignty of Lebanon. In order to solve the impasse, the Secretary General of the Arab-League, Mahmoud Riyad, arrived in Lebanon to secure the consent of president Franjeh. Thus on the 15th of June 1976 and after a meeting with president Franjeh and the leaders of the Lebanese Front, the latter gave their consent to the deployment of A.S.F.⁽⁸⁷⁾ However, it was later revealed that the consent was given on the ground that the deployment of the peace keeping force would "take place... in agreement with the Lebanese authorities regarding all details and especially those relating to the size and nationality of the contingents. According to the memoir of the president of the Front, Chammoun, the Secretary General agreed to the following conditions:

- (1)- Lebanon will not oppose the Arab-League's initiative so long as the initiative's sole aim is to preserve peace and security.
- (2)- The mission of the Arab contingents are to supervise the implementation of the Cairo agreement and its appendix i.e the Melkart agreement.
- (3)- The Arab contingents will not replace the Syrian forces but, on the contrary, ought to co-ordinate with, and any decision would not be considered unless the Lebanese government was consented.
- (4)- The Lebanese government holds the right to veto any decision regarding the composition of A.S.F, and rejects the participation of Libya, Iraq, Algeria and the PLO in the peace keeping force.⁽⁸⁸⁾

These conditions were indirectly hinted at by president Franjeh in his statement regarding acceptance of the A.S.F, as he stipulated that acceptance was given " within the limit set by assurance and clarification offered by the Secretary General in the name of the League, and provided that initiative is coordinated with the fraternal Syrian

initiative currently underway and to which Lebanon had acceded".⁽⁸⁹⁾ In response to Franjeh's statement, the Lebanese prime minister, Karami, criticized the president for exceeding his authority in determining exclusively Lebanon's view.⁽⁹⁰⁾ However, the Secretary General's attempt at securing the president's consent as a pre-requisite to the deployment of the force is quite controversial. In doing so, the Secretary General ignored the limitation imposed by the practice of the United Nations peace keeping force, that is to say that the force must not intervene in internal affairs. The Secretary General, in recognising Franjeh as the legitimate president amounted to an interference in the domestic affairs of Lebanon. After all, the Lebanese president was not the proper legal authority as was demonstrated in the previous chapter, and if he was, then, his consent was not enough on its own. Not only that, the president explicitly took sides in the internal conflict and his alliance with the LF was public. Against this background, one wonders whether or not the Secretary General was treating the president as one of the parties whose consent is vital for the success of the A.S.F or as the proper legal authority of Lebanon. For securing the consent of parties to civil war is consistent with the practice of the U.N as was the case in the Congo and hence the Secretary General's attempt to do so could be considered valid and proper. However, there are contradictory statements on this point, and whether or not the weight of evidence suggests that the Secretary General's contact with Franjeh was an attempt to secure the consent of all parties to the conflict, could be regarded as controversial.⁽⁹¹⁾

Therefore, the consent of the host state was more or less complied with despite the controversial status of President Franjeh. The Secretary General's attempt to secure the consent of all parties to the conflict was consistent with the practice of the UN peace keeping force. However, if the Secretary General is acting on the assumption that the consent of president Franjeh was the consent of Lebanon, then his attempt would be considered biased and an interference in Lebanese domestic affairs.

B-Impartiality And The Non Coercive Character Of Force.

Other features of the peace keeping force are the impartiality and the non-use of force. These two features are well understood since the peace keeping force is not directed against any one nor is it entitled to use force to execute its mandate. It is completely a peace keeping force designed to supervise a cease fire which enables the parties to reach an agreement on the various political issues. This attitude was demonstrated by the United Nations peace keeping Force during its operation. Following the resolution of 1956 which established the UNEF, the Secretary General of the United Nations complied with the Egyptian request to exclude a contingent from New-Zealand and Pakistan as they were perceived by Egypt as politically allied with Great Britain and France and thus were considered unfit for the mission of peace keeping.⁽⁹²⁾

On the same ground, the Secretary General excluded the participation of permanent members of the Security Council and other countries that were directly involved or have an interest in the conflict.⁽⁹³⁾ Consistent with the factor of impartiality, the non-use of force by a peace keeping force, save in self-defence,⁽⁹⁴⁾ is mandatory. The only case in which the use of force is permissible, is when an action is considered an enforcement action under chapter(VII) of the UN Charter.

By adhering to such requirements the peace keeping force could not be regarded as an intervening force. The field of its operation must be restricted to a buffer zone where their task is to supervise a cease fire and prevent any attempt to cross that zone. Such a task will enable the parties to devote their time to a political settlement and reach an agreement on pending problem. Therefore, in order to perform its task properly the peace keeping force must be neutral and not coercive. For if neutrality is not ensured,

the participating state will run the risk of getting involved in the internal conflict.⁽⁹⁵⁾ The A.S.F was more or less in line with the aforementioned requirements. However, an objection was raised concerning the Syrian and Libyan participation.

The Syrian inclusion in the A.S.F was a clear deviation from the principle of impartiality. For Syria intervened in the conflict and sided with one party against the other in order to influence the outcome of the conflict.⁽⁹⁶⁾ Their participation, especially in large numbers, put the concept of impartiality in great doubt. Moreover, its mere inclusion would run against the resolution of 9th June 1976 which stipulated the replacement of Syrian troops as a way to end the Lebanese civil war. However, the resolution affirmed that the composition and the size of the A.S.F must be settled in accordance with the Lebanese authorities.⁽⁹⁷⁾ In view of the absence of the Lebanese government, the composition of the force could either be based on the discretion of the Secretary General or in consultation with the parties. The insistence of the Lebanese president Franjeh, on the role of the Syrian troops must not be considered since the president was a party to the conflict and was not constitutionally empowered to do so.

On the other hand, the Libyan participation was rejected by the LF and president Franjeh as the latter insisted that:

"Libya is in no way suited to participate in the Arab-peace keeping force which is expected to have a neutral position in this conflict".⁽⁹⁸⁾

However, the participation of Syrian troops was of much more importance than the Libyan troops since the former was required by the League's resolution to be replaced following their participation in the fight. Despite all of that, one could say that the

Syrian participation was not to form the bulk of the force, and moreover the command of the force was to be under the authority of the Secretary General, which allows the assumption that the force was more or less impartial. This view, although inconclusive, must take into consideration the political difficulties in excluding the Syrian participation at that time.

Regarding the coercive nature of the force, the A.S.F was consistent with the conventional type of the peace-keeping force. The Secretary General made this very clear when he said that "...the entry of the A.S.F is dependent on the co-operation of all parties and their respect for the cease fire" and he affirmed that the A.S.F " will leave Lebanon as soon as its mission was accomplished as it is not a deterrent force... and its mission is to preserve and supervise the cease fire".(99)

Therefore, the A.S.F could be viewed as a peace keeping force despite the Syrian participation, as the political necessity made their exclusion impossible. The mere control of the A.S.F by the Secretary General directly contributes to the concept of impartiality. As a whole, the presence of the consent and non-coercive character of the Force coupled with its control by the Secretary General satisfies the conditions of a peace-keeping force.

C-The Conduct of The A.S.F in Lebanon: 10 June- 18 October.

The peace keeping force which was established by the League on the 9th of June sought to start its operation very quickly, but difficulties regarding its structures and the issue of consent played a major role in its delay. The Lebanese Front's refusal of Libyan participation, coupled with their insistence on the participation of Syrian troops in large numbers, put a major obstacle in the process of its formation and consequently

its operation.⁽¹⁰⁰⁾

On the 21st of June 1976, the first contingent of the A.S.F arrived in Lebanon. The Force was composed of three battalions; two Syrian and one Libyan.⁽¹⁰¹⁾ On 22nd of June, these forces took positions in Khalda, around the international airport and around Saida in the South of Lebanon.⁽¹⁰²⁾ However, the Sudanese and Saudi contingents did not arrive at the expected time as the Saudi government stipulated that a cease fire had to take place before sending their troops.⁽¹⁰³⁾ As the A.S.F. did not arrive as planned, the fighting intensified and was culminated by the fall of the Palestinian camp Jisr Al-Pasha in the Christian zone, which marked a set back to the Arab-League resolution.⁽¹⁰⁴⁾ This situation urged AL Kohli, the representative of the Secretary General of the Arab League in Lebanon, in his report to recommend the despatchment of other peace keeping contingents quickly.⁽¹⁰⁵⁾

On the 30th of June 1976, another meeting of Arab foreign ministers convened in an emergency session to consider the situation in Lebanon. The outcome of the meeting was a repetition of the 9th June resolution but with an additional clause urging the Arab countries to send their troops as soon as possible.⁽¹⁰⁶⁾ On the first of July 1976, the Saudi and Sudanese contingents arrived and an Egyptian Major-General Muhammad Hassan Ghoniem was appointed commander of the A.S.F.⁽¹⁰⁷⁾ During July, the A.S.F did not succeed in its task as the parties to the conflict persisted in their arguments regarding the participation of Syrian and Libyan contingents ⁽¹⁰⁸⁾ This failure was attributed to the intransigence of the Lebanese Front as the Tunisian representative in the Arab committee, (established in accordance with the 9th June resolution to help the parties in Lebanon) affirmed that the LF was responsible and was seeking a military victory.⁽¹⁰⁹⁾ Again, the impasse warranted another session for the foreign minister in Cairo to consider the Lebanese conflict. The meeting did not come up with any solution and an appeal was made urging the parties to reach a cease

fire.⁽¹¹⁰⁾ On 21st of July, the A.S.F managed to take positions on the green line which separates the capital (Beirut), but an attempt to extend its deployment collapsed following its exposure to fire and consequent injury of its members.⁽¹¹¹⁾ Again, the finger was pointed at the Lebanese Front as the source of the fire came from its camp, coupled with its leader's insistence that the A.S.F must not to be deployed in the victim's territory and, if it was, had to support the victim against the aggressor.⁽¹¹²⁾

On the first of August, an agreement was reached that only a small contingent of A.S.F would enter the East sector (Christian sector) to establish a supervision post.⁽¹¹³⁾ However, the Libyan participation was excluded upon the request of the Lebanese Front.⁽¹¹⁴⁾ By the 12th of August, the Palestinian camp Tel Al-Zatar fell to the Christian forces and consequently thousands of civilians were slaughtered.⁽¹¹⁵⁾ Following the fall of Tel Al-Zatar, a military campaign was undertaken by the LF and Syrian forces to dislodge the LNM and the Palestinian resistance from the Mount of Lebanon and position around Beirut.⁽¹¹⁶⁾ However, the commander of the A.S.F, General Ghoniem in Lebanon, managed to produce a fourth plan to establish a cease fire. It envisaged the gradual withdrawal of the LNM, the Palestinians and LF from the Mount of Lebanon to certain areas, and the deployment of the A.S.F. in their places and the execution of the Cairo agreement which was included upon Syrian insistence.⁽¹¹⁷⁾ However, this plan did not succeed as the LF insisted on the total withdrawal of the LNM and Palestinians from the Mount of Lebanon and the Syrian government insisted on their exclusion from withdrawal from the Mount of Lebanon.⁽¹¹⁸⁾

During that September, all attempts to give the A.S.F a bigger role failed due to the opposition of the parties as every one insisted on their own conditions. On 23rd September, president Sarkis was inaugurated as the president of Lebanon in Shtura under Syrian protection. In his message, he appealed to all parties to start a dialogue,

and at the same time acknowledged that the Syrian presence in Lebanon was in accordance with Lebanese consent.⁽¹¹⁹⁾

On the 28th of September, the situation reached a peak with a massive invasion undertaken by the Syrian Forces and the LF against the LNM and the Palestinians in the Mount of Lebanon. The Syrian Forces finally dislodged the Leftist forces from Dhour Shwaire and they were regrouped at Bahmdoun and Aley below Sofer where the Syrian troops were stationed.⁽¹²⁰⁾ Following that escalation, a meeting of foreign ministers was scheduled for the 15th of October, to be followed by a heads of states summit on the 18th of that month.⁽¹²¹⁾ In what seemed to be a race against time, the Syrian forces, two days before the scheduled meeting of the Arab League, attacked the Leftist forces in their bastion in Bhamdoun where the fighting resulted in massive casualties.⁽¹²²⁾ With the fall of Bhamdoun the Syrian forces marched steadily into the headquarters of the LNM amidst protest and appealed to the Arab leaders to take action and stop the Syrian military offensive. In fact, the Saudi government managed to bring Syria and Egypt to Riyadh with Lebanon represented by Sarkis. The Riyadh meeting marked the end of the A.S.F as a new peace keeping force was announced which came to be known as the A.D.F.

On whole, the A.S.F was indeed a peace keeping force which was reflected in its performance. The A.S.F. deployment was entirely dependent on the consent and co-operation of the parties to the conflict. Its use of force was only in self defence. This was clearly demonstrated during its deployment. The Secretary General Mahmoud Riyad affirmed his peaceful mission as he said:

"This Force -the A.S.F- cannot perform its task unless there is a political decision regarding the cessation of fighting...this A.S. F is a symbolic force and it is working on the same basis as the UN Emergency peace keeping force which only operates in a situation where a cease fire is observed hundred per hundred".⁽¹²³⁾

The symbolic role was clearly reflected in its size and weapons, and its mandate. However, its failures fully contributed to the reluctance of the parties to co-operate. Moreover, the Syrian presence and their support for the LF made the mission of the A.S.F useless. The Syrian factor has undoubtedly contributed to the ineffectiveness of the peace keeping force of the Arab-League. Therefore, a conclusion can be drawn that the A.S.F, as a peace keeping force was quite successful. Despite all the pressure, it succeeded in preserving its impartiality and the non-use of force. Their failure to prevent the outbreak was largely attributable to the syrian troops which not only disregarded the presence of the A.S.F but the order of newly elected President Sarkis who did not authorize the syrian offensive.⁽¹²⁴⁾ The syrian troop's disregard to the peace keeping force, led to a new initiative which culminated in establishing the A.D.F. in which the Syrian troops were included.

V- The Establishment Of The Arab Deterrent Force.

A- Riyadh And Cairo Meeting

The success of Saudi Arabia in securing the consent of the major Arab countries, and in particular those which were embroiled in the Lebanese civil war, to hold a meeting has undoubtedly paved the way to a new Arab initiative. Indeed a meeting was held in Riyadh on the 17th and 18th of October 1976, which was attended by the heads of state of Egypt, Kuwait, Lebanon, Saudi Arabia, PLO, and Syria.⁽¹²⁵⁾ In part, the summit convocation reflected the de facto reality of the parties to the civil war following the Syrian military operation which resulted partially in the destruction of the military wing of the Leftist Alliance, and at the same time showed the pressure that Saudi Arabia

exerted on Syria and Egypt.⁽¹²⁶⁾ The willingness of the two major Arab countries to attend the meeting was crucial to the success of the summit. As was expected, the six party summit after a tense deliberation and discussion reached an agreement which came to be known as the Riyadh resolution.

The crucial point of that resolution was its effect on the course of the Lebanese civil war. The resolution transformed the existing A.S.F into an Arab Deterrent Force with a substantial increase in its number, weapons and mandate. Constitutionally, an argument arose concerning the validity of the Riyadh resolution in relation to the changing character of the previous A.S.F. It was argued that the resolution validity, having been taken outside the frame work of the Arab-League, was questionable.⁽¹²⁷⁾ Despite the fact that the resolution was taken as such, there are many writers who argue that it must be considered as an Arab-League resolution.⁽¹²⁸⁾ This opinion relies on the prevailing practice of Arab states since 1964, when Nassar the president of Egypt invited other Arab Leaders to discuss some urgent problems pertaining to the Arab cause.⁽¹²⁹⁾ From that time the Arab Heads of State summit has been treated as a session of the Arab League Council.⁽¹³⁰⁾ Therefore, the resolution of Riyadh is an Arab-league resolution, and consequently the formation of the A.D.F is constitutionally formed.

The resolution determined that the A.D.F must comprise of thirty thousand soldiers drawn from various Arab countries, with the mission of putting an end to the civil war.⁽¹³¹⁾ The resolution outlined the main purpose that the Arab Deterrent Force ought to execute :

(1)- To ensure observance of the cease fire and the ending of the fighting, to separate the warring forces and deter any violaters.

(2)- To implement the Cairo agreement and its appendices;

- (3)- To safeguard internal security
- (4)-.To supervise the withdrawal of armed personnel to the places where they were before April 13,1975 and to remove all evidence of military presence in accordance with the time table outlined in the appendix.
- (5)- To supervise [the gathering of] all heavy weapons- artillery,mortar, missile-launcher and armoured vehicles -which come under the responsibility of the parties concerned.
- (6)- To help the Lebanese authorities, when necessary, to take over the public establishment and utilities in preparation for the resumption of their work and to protect military and civilian public utilities.
- (7)- That life in Lebanon is to be restored to normal, in the state it was in before the outbreak of the incidents, that is to say, before April 13,1975, as a first stage in accordance with the time-table outlined in the attached appendix.
- (8)- That the Cairo agreement and its appendices be implemented and adhered to in letter and in spirit with the guarantee of the Arab-League participating in the meeting, and that a committee to be set up consisting of representatives from Saudi Arabia, Egypt, Syria, and Kuwait, to work in coordination with the president of the Republic of Lebanon with regard to the implementation of the Cairo agreement and its appendices, its term of office to be 90 days with effect from the date of the announcement of the cease-fire.
- (9)- That the PLO affirms its respect for Lebanon's sovereignty and security as well as its non-interference in the country's domestic affairs, out of its total commitment to the Palestinian national issue. The Lebanese legitimate authority guarantee for the PLO, the safety of its presence and work on Lebanese territory within the framework of the Cairo agreement and its appendices.(132)

In addition the resolution was accompanied by an appendix which set out in detail

the manner in which the resolution ought to be executed. This appendix was considered by the resolution itself as an integral part of it.⁽¹³³⁾

Of the many provisions in the annex, the most important are: the cessation of fighting in all Lebanese territories as from 6.a.m on the 21st of October 1976 (A-Day) and the establishment of check points by the A.D.F after the creation of a buffer zone in areas of tension in order to consolidate the cease fire and the termination of fighting.⁽¹³⁴⁾ The rest of the annex provided a time table for the withdrawal of the troops and the collection of heavy weapons. It stipulated that the A.D.F forces should be formed with the agreement of the Lebanese president, and ordered the execution of the Cairo agreement and the exit of Palestinian forces that entered the country after the beginning of the civil war⁽¹³⁵⁾. Furthermore, the implementation of the agreement had to be completed within 45 days starting from the first day of the formation of A.D.F.⁽¹³⁶⁾

Therefore, the resolution of Riyadh, as shown above, was of great significance both to the character of the A.D.F and to the absence of any condemnation of the Syrian intervention. The Riyadh finding reversed the League's resolution of the 9th June 1976 which clearly referred to the replacement of the Syrian troops.

As such, one wonders whether or not the Six party summit wanted to legitimize the presence of Syrian troops in Lebanon. As a matter of fact, the Arab-League in its subsequent meeting in Cairo not only failed to condemn the Syrian intervention but secured their role under the banner of the Arab-League. Thus with the Riyadh Resolution the legal character of the Syrian forces has changed dramatically.

B-The changing legal character of the Syrian Forces under the new mandate

Since the establishment of the Arab security forces to deal with the Lebanese civil war, the Syrian government made it clear that the presence of their forces in Lebanon was to carry out a specified purpose; stability and creation of a favorable political atmosphere for dialogue.⁽¹³⁷⁾ The Syrian government not only failed to observe that guideline, but directly through its military might, dealt a severe blow to the Leftist Forces. Consequently, the Arab-League seized the opportunity that was created by the Syrian intervention and proceeded to recognize the Syrian role in Lebanon as a decisive factor in maintaining stability and order.

This attitude was clearly reflected in the new mandate of the Arab-League which failed to address the presence of the Syrian Forces in Lebanon and on the contrary secured their presence in the newly established force. The recognition of the Syrian forces as part of the A.D.F is a clear departure from the earlier mandate which required the replacement of the Syrian troops. This novelty of the mandate antagonized some Arab countries which protested at the accommodation of the Syrian Forces in the Arab-League peace keeping force. As a manifestation of their resentment of the mandate, they refused to endorse the Riyadh Resolution of 18th October 1976 ⁽¹³⁸⁾ In particular, Iraq and Libya insisted on a full Syrian withdrawal, and if not possible, at least the limitation of the Syrian contingent to 10,000 soldiers.⁽¹³⁹⁾ However, their demand was obstructed by the elected Lebanese president who insisted that the Lebanese government was committed to welcoming the presence of Syrian Forces. He referred to the presence of Syrian troops in Lebanon in his speech at the Riyadh summit by saying:

" Lebanon has appealed to the Syrian army, entrusting it with the mission of securing order and maintaining stability, and such an appeal is based on the existing special relations between the two

countries: Lebanon and Syria. It is natural that the Syrian Forces [which means the forces that already exist in Lebanon] should have a leading role in the Arab Deterrent Force. And these force must be under the control and direction of the Lebanese government which has an exclusive right regarding the number, operation and duration".(140)

The kind of leading role that the Syrian forces should play in the newly formed peace-keeping force was the centre of discussion at the Riyadh summit. The Palestinian leader Yassar Arafat was very anxious to limit the Syrian role since he believed that the Syrian government was behind the defeat which he endured. He insisted that the Syrian participation, if not to be ruled out altogether, must be limited in size to the number of other Arab contingents and the control of the forces must be under the authority of the Arab-league.(141) Interestingly, the Syrian president responded to Arafat's claim by drawing the attention of the Arab leaders to the danger of Arafat's proposal:

"What the Palestinian leader Yassar Arafat is asking for, is the disappearance of the Lebanese government. He wants to nullify the Lebanese government's right, in the application of the Cairo agreement, and transferring it to the Arab-League. This is a violation of a sovereignty of an Arab state which has never taken place before. It is illogical to build an authority over the authority of the Lebanese government. And it is unfamiliar to empower the Arab-League with the right of veto and supervision regarding every order that the Lebanese president might issue".(142)

The Lebanese president embraced the Syrian interpretation of the Lebanese right to hold control over the Arab forces as he drew the attention of heads of Arab states to the inherent danger of the proposal in putting the force under the authority of the Arab-league. He specifically affirmed that:

"I cannot accept the stationing of troops on Lebanese soil unless it is under my command,and I don't need any authorization from anyone whenever I direct the Force"(143)

As the leaders felt unable to find a formula between the Palestinian and the Lebanese demands backed by the Syrian president, the Egyptian delegate proposed a compromise which was accepted by the said parties. The compromise conceded to the Lebanese demand and allayed the fear of the Palestinian leader by establishing a commission composed of Saudi Arabia, Kuwait, Egypt and Syria to supervise and assist the Lebanese government and the PLO in application of the Cairo agreement.⁽¹⁴⁴⁾

Following the aforementioned compromise, the parties at the Riyadh conference overcame the stumbling block and agreed on the establishment of the A.D.F with Syrian participation. It is of significance to mention that the Lebanese parties were not invited nor consulted by the Riyadh summit. The Riyadh summit was fully pre-occupied with the salvation of the Palestinian Resistance, the internal causes of Lebanese conflict and the demand of the Lebanese parties, presumably excluded from the discussion. However, both parties to the conflict, the LNM and LF although voicing their criticism, nevertheless accepted the Resolution.⁽¹⁴⁵⁾

Later, at the Arab-League summit in Cairo on October 25th/26th 1976, the Resolution of the Riyadh summit was formally endorsed by the League.⁽¹⁴⁶⁾ However, the issue of Syrian participation was raised again as pressure was increased to limit the Syrian participation. Again, the Palestinian leader demanded Egyptian participation in the force and if possible the PLO participation as well, as a mean of reducing the fear of the LNM.⁽¹⁴⁷⁾ However, the Palestinian participation was utterly rejected by the Lebanese government, and Egypt was also reluctant to commit troops to the A.D.F. As to the size of Syrian participation, the leaders failed to reach a compromise and thus, they assigned the task to the Arab Foreign Ministers on the night of 25th October. However, neither the foreign ministers nor the private talks amongst

Arab leaders succeeded in producing an understanding on that issue.(148) As a solution to the impasse the Secretary General M.Riyad suggested that the size of the force would be left to the Lebanese president who would have ultimate power in this regard.(149)

Therefore, the presence of the Syrian forces was left to the Lebanese president who owed his presidential post to the Syrian effort. Not surprisingly, the A.D.F turned out to be composed of twenty thousand Syrian soldiers out of the total force which account for thirty thousands soldiers.(150) By integrating the intervening Syrian forces into the A.D.F, the illegal presence of the Syrian troops was transformed into a legitimate one. Not only that, the Cairo meeting had the benefit of propping up the Syrian regime as the resolution of Cairo eased the financial burden that the Syrian forces bore in their intervention of Lebanon. The resolution specified the establishment of a special fund to cover the expenses of the force which was in practice the Syrian forces, and the fund would be paid by Arab states. Moreover, the supervision of the fund was to be assigned to the Lebanese president who after consultation with the Secretary General of the Arab_League and Arab states would issue the necessary regulation concerning expenditure; and the fund would remain for six months renewable by the Arab-league council upon the request of the Lebanese president.(151)

Therefore, with the new mandate of the Arab League, the Syrian forces were no longer an occupying force but an Arab peace keeping force designed to restore order and stability. It is quite an unusual practice, although there is a precedent in the Dominican Republic where the legality of U.S.A intervention was subject to great controversy. The benefit which the Syrian government has gained from the changing legal character is very important and a quick comparison between the A.S .F and A.D.F will show the difference.

C- Comparison between the A.S.F and the A.D.F

As noted above, the new mandate was marked by a clear departure from the 9th June 1976 resolution. The effect of the new mandate was significant since it transformed the Syrian forces into a peace keeping force. Of particular importance was the power that the mandate gave to the A.D.F. which was permitted to use force to prevent the occurrence of civil war and to restore order and security. These powers were absent in the mandate of the A.S.F. This contrast between the two forces precipitated the question as to whether or not the A.D.F was a genuine peace-keeping force.

As a matter of fact there is no strict rule that determines exclusively the type or model that a peace keeping force should adhere to. However, the practice of the U.N in this field sheds some light on the issue. The Secretary General of the United Nation in his final report on the plan for setting up an Emergency Force identified three types of peace keeping: "An emergency international United Nations Force can be developed on the basis of three different concepts:

It can, in the first place, be set up on the basis of principles reflected in the constitution of the United Nations itself. This would mean that its chief responsible officer should be appointed by the United Nations, and that he, in his function, should be responsible ultimately to the General Assembly and/or the Security Council. His authority should be so defined as to make him fully independent of the policies of any nation. His relations to the Secretary General of the United Nations should correspond to those of the Chief of Staff of the United Nations Truce Supervision Organization;

A second possibility is that the United Nations charge a country, or a group of countries, with the responsibility to provide independently for an emergency

international force serving for purposes determined by the United Nations. In this case it would obviously be impossible to achieve the same independence in relation to national policies as would be established through the first approach;

Finally, as a third possibility, an emergency international force may be set up in agreement among a group of nations, later to be brought into an appropriate relationship to the United Nations. This approach is open to the same reservation as the second one, and possibly others".⁽¹⁵²⁾ However, this specification does not exclude other types of United Nations peace keeping as, "variation of forms, of course, are possible within a wide range, but the three concepts mentioned seem to circumscribe the problem".⁽¹⁵³⁾ The report proceeded to mention that the first type was used for the UNEF in 1956 and the second one was utilized in Korea and there was no utilization of the last type.⁽¹⁵⁴⁾

In the case of the A.S.F., the Force was based on the first model of the Secretary General's report. Therefore, the force was established on the basis of the Arab_League and its command was in the hands of the Secretary General of the Arab-League.⁽¹⁵⁵⁾ It needs to be mentioned that the A.S.F was not coercive in character, and the Syrian role was at its lowest level, not to mention the insistence on the replacement of the Syrian forces. Therefore, the A.S.F was a peaceful and impartial force directly controlled by the League.

In contrast the A.D.F was completely lacking in these characteristics, as the Force was neither under the command of the League nor was it impartial. The Syrian forces composed the bulk of the force and hence their wide mandate with the power to use force to prevent civil war, brings into doubt the peaceful character and impartiality of the A.D.F. However, what the A.D.F does share with its predecessor is the consent of the Lebanese state. Newly elected President Sarkis consented to the establishment and presence of the force. As such it is doubtful that the A.D.F in its present form could be

properly viewed as a peace-keeping force. It is questionable, indeed, that an illegal intervention could be transformed into a legal presence. It is quite hard to separate the requirements that the peace keeping force ought to respect, and the reality that manifested in the composition of the A.S.F. To clarify the matter it is worth mentioning a remark made by the Secretary General Hammarskjold's remark pertaining to the ONUC operation in the Congo:

"The Force isnot under the orders of the Government nor can it, as I pointed out in my statement to the Council, be permitted to become a party to any internal conflict. A departure from this principle would seriously endanger the impartiality of the United Nations and of the operation".(156)

If it is so, then how could one reconcile the presence of the Syrian army in the A.D.F. with such a dominant role with the Secretary General's remark. Moreover, the A.D.F. was under the order of the Lebanese president whose presidency was vigorously supported by the Syrian government and against the wishes of the LNM. As such, it is very doubtful that the Force could be called a peace-keeping force since it was a Syrian force under a new name. How this force which was fighting the Leftist forces for around six months could be expected to forget its interest and hatred and act as an impartial force is quite puzzling. Despite all of that the force was widely recognized as a peace-keeping force and welcomed by every state. Such a recognition undoubtedly had the effect of setting a precedent which is very dangerous to accommodate in the corpus of a peace-keeping force. For such a precedent would ultimately change the basis of peace keeping and at the same time would encourage a powerful state to break the law in the name of law. If the A.D.F is not compatible with the conventional type of peace keeping force, then one wonders whether or not the A.D.F. is compatible with the United Nations Charter and if not then why did the A.D.F find its way into existence ?

VI-Compatibility Of The Arab Deterrent Force With The United Nations Charter

A- Introduction

The formation of the A.D.F, with the wide and coercive character of its Mandate, necessitates an overall examination of its legality , and in the light of that, to see to what extent the mandate of the force was consistent with the Charter of the United Nations. Although the Charter qualified a regional organization like the Arab-League to take the necessary action to maintain peace and security in any regional conflict, nevertheless the Charter by virtue of Article 52 affirms that:

"Nothing in the present charter precludes the existence of a regional arrangement or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations".(157)

In addition, the Charter has imposed some limitation on the freedom of the Regional Organization in matters relating to enforcement measures. Article 53 (1) reads:

"No enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council..".(158)

Therefore, the charter determined clearly that regional organization are duty-bound to observe the conditions set out by the Charter ; the action must not be inconsistent with the purposes and principles of the United Nations Charter, and no enforcement action shall be taken without the prior authorization of the Security Council.

As far as the Arab-League action is concerned, the prevailing belief is that the action was not contrary to the above conditions. It was argued that the action was consistent with purposes and principles of the Charter and there was no enforcement action on its part. Therefore, the purpose of this following section is to analyse the extent to which this allegation or assumption is true.

B- The A.D.F. and the question of Enforcement Measure.

The legal character of the Arab Deterrent Force (A.D.F) is beyond any doubt coercive. It was empowered to use force to prevent the civil war and deter any potential violator. The coercive character of the force is explicitly recognizable from the title which it bears. The term Deterrent, which in Arabic is, '*Al Radae*', means furnishing unlimited power in order to deter and consequently force compliance with the action recommended. Despite its obvious character, one leading authority on the Arab-League maintained :

"It must be emphasized that in spite of the transformation of the force-in size, level of equipment, scope of mandate and pattern of supervision- its basic nature is to assist the legal authorities in Lebanon in restoring peace and security in the country".(159)

This statement is not conclusive and failed to grasp the distinction between the conventional type of peace keeping and the type that involved an enforcement action. By ignoring that distinction, however, one tends to narrow the gap between two distinct categories, peaceful measures and enforcement action. It seems that it is not only the authority which holds such a view, but another writer adhered to that description.(160) In support of his view, Pogany justified his conclusion by relying on

the reasoning of the International Court of Justice in *Certain Expenses cases*, as the court reached its verdict on the ground that the action of the ONUC was not directed against any state. The court made a distinction between the use of force as a sanction and the use of force to maintain law and order.⁽¹⁶¹⁾ And since the force was not a sanction but to preserve law and order, the ONUC action was not an enforcement measure. By the same analogy, Pogany asserted that the A.D.F. was deployed to assist the Lebanese government in restoring security and peace, as was the case in the Congo, and it is not true to say that the A.D.F. " was mandated to use force as a sanction in the sense of Article 42 of the Charter" but in the " view of the finding of the court.... it seems reasonable to conclude that the Arab Deterrent Force was also a peace keeping operation".⁽¹⁶²⁾

Following this argument, and since it is entirely based on the ONUC analogy, a re-examination of the United Nation action in the Congo is imperative. The rationale for this re-examination lies in the belief that the action of the ONUC was an enforcement measure under Chapter VII of the U.N Charter. However, in proving this, the A.D.F's action would no longer be regarded as a peace-keeping measure, but as an enforcement action.

As far the ONUC action was concerned a spectrum of different opinions ensued in the wake of its controversial action in the Congo. However, it was suggested that collective measures that is to say an enforcement action has its own description. It has three ingredients or factors:

- (1)- Application of tangible pressure;
- (2)- Performance by the United Nations;
- (3)- Application to a situation constituting a threat to international peace, breach of peace or act of aggression.

As such, it would be a collective measure which is defined in Article 1(1) and Chapter VII of the Charter.⁽¹⁶³⁾

Viewing the ONUC operation from such a perspective the issue would become more distinct and clear; since the nature of the operation could be determined by its objectives and characteristics . The ONUC deployment in the Congo was in pursuit of the Security Council Resolution of 14 July 1960 following the request of the Congolese government.⁽¹⁶⁴⁾ The Security Council entrusted the Secretary General with the task of providing the military help that the government needed until such a time when the government could use its own resources in preserving security and order. The Secretary General in explaining the legal basis of the Force, referred to two factors: the consent of the Congolese government and the threat to international peace.⁽¹⁶⁵⁾ However, subsequent events suggested that the consent was not of much significance as the issue was equated to the threat to international peace. The Secretary General in his reply to the Congolese government which demanded the United Nations troops to refrain from entering the Matadi territory maintained that:

" We are, of course, strongly aware of the fact that the initial action of the United Nations was undertaken in response to a request of the Government of the Republic of the Congo. But I am certain that you, on your side, are also aware of the fact that this action was taken because it was considered necessary in view of an existing threat to international peace and security. Thus, in its resolution of 22 July 1960, and subsequent resolutions, the Security Council expressly linked the maintenance of law and order in the Congo to the maintenance of International peace and security, and made it clear that the primary basis of the Security Council decision was the maintenance of International peace and security. ...The relation between the United Nations and the Government of the Congo is not merely a contractual relationship in which the Republic can impose its conditions as host State and thereby determine the circumstances under which the United Nations operates. It is rather a relationship governed by a mandatory decision of the Security Council. The

consequence of this is that no Government, including the host Government, can by unilateral action determine how measures taken by the Security Council in this context should be carried out. Such a determination can be made only by the Security Council itself."⁽¹⁶⁶⁾

Therefore, the Secretary General Acknowledged that in matters threatening international peace, such as in the Congo, the consent of the government regarding the Force is insignificant. That acknowledgment may strengthen the fact that the Force was implicitly considered as a collective measure under Chapter (VII) of the United Nations Charter.⁽¹⁶⁷⁾ The insistence, however, that the Force was not as stated above is likely to be attributable to the theory which " regards *collective measures* as limited to positive 'enforcement' actions directed against states or other political entities; an operation with the characteristics of ONUC would be excluded".⁽¹⁶⁸⁾ The subsequent events and the resolutions of the Security Council have demonstrated clearly that the ONUC was authorized to use force in order to execute its mandate. The Security Council Resolution of February 21, 1961, which was passed after the killing of Prime Minister Lumumba, authorized the ONUC to use force by declaring that: "the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangement for cease-fire, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort". Moreover, the Resolution expressed concern " at the grave repercussions of these crimes and the danger of wide-spread civil war and bloodshed in the Congo and the threat to international peace and security,". In such a context, it becomes clear that the Security Council is referring to article (39), though refraining from spelling it out explicitly and at the same time enlarging the spectrum of the use of force to go beyond the concept of self- defence. However, despite that evidence there are some authorities who constantly affirmed that " While in Resolution S/4741 The Council now spoke of a ' threat to international peace and security' (employing the language of Chapter VII there is still no evidence that the ONUC had embarked upon enforcement action".⁽¹⁶⁹⁾ Higgins proceeded to defend the view that the U.N action was not an enforcement measure by

referring to Article 2 (7) which could no longer be operative if an enforcement measure was taken. She confidently confirmed that:

"there is ample evidence that the U.N still regards itself as being bound by the domestic jurisdiction requirement: it could not enforcibly end the secession of Katanga".(170)

It is quite puzzling to see that the action of the U.N is perceived as such since the mere action on the part of the United Nations is indicative of the fact that the situation is no longer within the domestic jurisdiction of the state; as the premise of the U.N measure was the concern for world peace.⁽¹⁷¹⁾ The explanation by the Secretary General that the United Nation troops' action in the Congo was based upon the forces' right of free movement and maintaining public order⁽¹⁷²⁾ is quite controversial. Commenting on the action of the ONUC under the right to free movement, Mona asserted that :

"The United Nations does not have freedom of movement if one of the parties can stop United Nations troops at will, but if the troops move in the face of such opposition, firing back if fired upon, they are in effect imposing a United Nations policy against whatever force is resisting them. The operation is consensual but coercive".(173)

Therefore, the action cannot be justified as self defence, since the U.N troops took the initiative and moved in despite the reluctance of the opposition. Even Bowett, considered the action to be beyond the boundary of self defence but again he reconciled the action with the right of the force to freedom of movement.⁽¹⁷⁴⁾ However, if one accepts the argument that freedom of movement permitted such action, what would remain of the principle of domestic jurisdiction since the force under the guise of freedom of movement puts an end to the secession ?

Despite his consistent assurances that the ONUC was not employed to regulate the internal political affairs, the Secretary General in his annual report on 16 June 1963, made it clear that the operation in Congo was to preserve the "territorial integrity of the country, and to prevent civil war....while sparing no effort to achieve a peaceful solution,.. it did what it could ..to prevent the attempted secession from becoming an accomplished fact...The United Nations operation thwarted the Katanga secessionist's effort".⁽¹⁷⁵⁾ Therefore, it is an inappropriate finding to perceive the action as a peaceful resolution since the purpose was to eliminate by force the secessionist movement and at the same time, it could be argued that the mere elimination of that movement would give rise to an enforcement action which only by it, could the United Nations escape the restriction imposed by article 2(7).

As to the finding of the ICJ, that the action was not under Chapter (VII) of the United Nations Charter, it is the opinion of the present writer that the court finding was inadequate. To apply the Halderman technique of drawing a comparison between the constitutional basis of the UNEF and ONUC, the issue would become clear and far from confused. The ICJ in the *Expenses case* did not hesitate to identify the status of the UNEF by coming to the conclusion that it was a manifestation of a " peaceful settlement" and hence the court took the task of identifying the specific provision of the Charter pertaining to the peaceful settlement viz Article 11 (2) and 14 ⁽¹⁷⁶⁾ In the case of the ONUC the court failed to identify the status of the force but maintained that the ONUC operation was not an enforcement action. The court's restrictive interpretation of the enforcement measure was clearly declared:

" It can be said that the operation of the ONUC did not include a use of armed force against a state which the Security Council, under Article 39, determined to have committed an act of aggression or to have breached the peace. The armed forces which were utilized in the Congo were not authorized to take military action against any State. The operation did not involve preventive or enforcement measure's against any state under Chapter (VII) and therefore did

not constitute 'action' as that term is used in Article 11".(177)

The failure of the court to specify the provision under which the action was taken, as it did in the case of UNEF, is attributable to the fact that " Having excluded the 'collective measures' concept, the concurring Judges were unable to find a category of United Nations activity within which it could satisfactorily be placed".(178) Given this fact, one can assert that under Chapter VII the ONUC was established and was thereafter authorized to use force to prevent the civil war, arrest and expulsion of mercenaries from the Congo, and moreover engaged in combat without obtaining the consent from the government in both areas: Matadi and Katanga.(179) The insistence of the Officials of the U.N, and not to mention the ICJ finding that the action was a peaceful settlement despite the aforementioned characteristic of the force, would only have the effect of eliminating or breaking down the barrier between the two categories: peaceful settlement and enforcement action.(180) Judge Koretsky in his dissenting opinion asserted that the ONUC action was an enforcement measure and he affirmed that the United Nations force " had grown into an army numbering many thousands " and their task in the Congo was not " to persuade or parade, but to carry out a military operation".(181)

Thus, if the case was as such, then why did the Secretary General prefer to take such a course of action since it had the power to take an enforcement action? Many suggested, infact, that a practical consideration was the motivating power behind the Council's decision. It was suggested that if the Secretary General had acted under Chapter (VII), he would certainly have applied Article 42 and with it states which were contributing troops to the force would be aware of the implication of the decision.(182) Such states would be more reluctant to furnish troops and material for defined and restricted objectives.(183) Giving the partisan relationship between the internal factions and external states in the Congo where the latter provided assistance to their clients, an action under an enforcement measures would also be hard to reach in such a setting

where the political interest played a major role in the state's decision.⁽¹⁸⁴⁾

Whatever the merit of justification might be, the ONUC action as demonstrated, was an enforcement action. However, the insistence that the action was not directed against any state is untenable, since the action applied the three factors: tangible pressure, enforcement by the U.N, and application to a situation which constitutes a threat to international peace. The claim that the action was not directed against any state as is required in the case of enforcement action⁽¹⁸⁵⁾ is not conclusive. It is not necessarily that the action ought to be directed against a state to be qualified as an enforcement action. Kelsen affirmed that enforcement action need not necessarily be directed against the state but it could be against a " group of the population not having the character of a state".⁽¹⁸⁶⁾ Judge Koretsky, questioned the legitimacy of that interpretation by saying:

" What is the basis for such an interpretation ? If we turn to the first Article of Chapter (VII) i.e to Article 39, we are unable to find there any direct reference to the fact that the measures which, as directed by the Security Council shall be taken ...to maintain or restore international peace and security should be directed against any of the states "⁽¹⁸⁷⁾

Moreover, it was said that although Katanga is not a sovereign state, as was stated in the Resolution of 24th November 1986, nevertheless the Resolution cannot deprive it of the " capacity to constitute a 'threat to the peace' or to commit a breach under Article 39".⁽¹⁸⁸⁾ Even the Secretary General has dealt with the provisional government of Katanga in a way which implicitly implies a recognition of its de facto status.⁽¹⁸⁹⁾ Therefore if the action of the Security Council was undertaken to prevent a breach or threat to peace, and the consent of the state was in some aspect of the operation not adhered to on the ground that the action was initiated under the terms of breach of peace; and force was used on a massive scale which ended with the collapse of

secession, then one would ridicule himself by insisting that the action was a peaceful measure and not an enforcement action.

Having established that the action of the ONUC was an enforcement measure, then the argument that the A.D.F. was a peace keeping force would collapse. The A.D.F. was authorized to assist the government and prevent the occurrence of civil war, to deter any violator, and to preserve security and order. However, the term to prevent civil war, and deter any violator requires the A.D.F. to employ tangible pressure in case one of the parties refused to evacuate his position or surrender his weapon. The equipment of the force suggests that they were combat troops armed to the teeth, which enabled it to initiate an offensive attack. It is quite unreasonable to perceive a force armed with an offensive weapon, in a situation requiring them to be the messenger of peace, as a peace keeping force. The conventional type of peace keeping adheres to the notion that the weapon must be defensive in character, since the mission is peaceful and carrying defensive weapon is a measure of precaution to defend oneself if fired upon and not to initiate an attack. The weaponry of the A.D.F. coupled with its wide mandate which gives the Force the right to collect weapons and move freely in any area they wish, gives the indication that the authors of the Force would have contemplated enforcement measures had the Force encountered resistance in implementing its mandate. This interpretation is not of an academic nature as the A.D.F. in its operation used force on a massive scale. For an operation on such a large scale ought to be determined on "the basis of its actual practical consequences rather than upon the question of its form or the procedure by which it was initiated".(190)

Therefore, as far as the A.D.F. is concerned, the action which was taken by the Arab-League was an enforcement measure. Any view, contrary to that, would be unrealistic since the Force according to its mandate and action furnished irrevocable evidence of its coercive character. If it is such, then a second question has to be

answered: Was the Security Council informed by the Arab-League regarding the enforcement action of the A.D.F? And if the answer was negative, then another question has to be answered as well: was the action in conformity with the purposes and principles of the United Nations Charter ?.

C- Failure to comply with Article 53 (1) and 54 of the United Nations Charter

Article 53 (1) of the United Nations Charter affirms that there is no enforcement action on the part of a regional organization in a matter relating to regional disputes unless it obtains the prior authorization of the Security Council.⁽¹⁹¹⁾ In view of that, the Arab League action regarding the establishment of the A.D.F. as a peace keeping force failed to comply with the United Nations requirements. The failure of the Arab-League to obtain the prior authorization could be explained by the conviction of the Arab League that the action undertaken by it was not an enforcement action. Such a conviction is not sound since the A.D.F had all the pre-requisites of an enforcement action.

It was suggested by Pogany that the silence of the Council on the action of the Arab-League is indicative of the fact that the action was not an enforcement measure.⁽¹⁹²⁾ However, it might be contended that the failure of the Council to criticize the Arab-League for its non-compliance with Article 53 (1) cannot be interpreted as evidence of approval for that action. It could be that the Council's reluctance to criticize the Arab-League action in Lebanon was based on political, rather than legal considerations. After all, the Lebanese civil war was unique in its nature and posed a serious risk to international peace. This was demonstrated by the willingness of Syria to assert its interest and at the same time by Israel's commitment to prevent the

PLO and the LNM from establishing a radical state on its border. Moreover, the crisis was sensitive for the super powers as well. The Soviet Union opposed the liquidation of the PLO and at the same time its prestige and interest were in the balance after the success of United States diplomacy in convincing Syria to weaken the Left coalition and maintain the status quo in Lebanon. In view of these factors, an Arab-League action would have reduced the danger by legitimizing the Syrian intervention and at the same time would have arrested the danger that might result from civil war. This holds true since the mere discussion of the case in the Security Council would have transformed the issue into a power bloc struggle and were the right of veto used, the danger would become real. Apart from that political reason, the claim that the failure to criticize the Arab-League by the Security Council is not quite valid on its own. This claim was advanced by the Legal adviser to the U.S.A. during the American intervention in the Dominican Republic and its subsequent incorporation in the regional peace keeping force under the banner of the O.A.S . He claimed that prior authorization of the Security Council was no longer necessary as the failure of the Security Council to " disapprove regional action amounts to authorization within the meaning of Article 53".⁽¹⁹³⁾ The danger of that proposal is quite obvious. It opens the door to free action by the regional organization, since any superpower could make the Security Council fail to disapprove the action which was undertaken by the regional organization . Therefore, the Arab-league action was inconsistent with the requirements of Article 53. However, in view of the present circumstances, it could be argued that the Security Council's reluctance to criticize the Arab-League was motivated by that political reason rather than by any legal consideration.

Similarly, the Arab League's position was no less clear regarding Article 54 of the Charter which stipulates that:

"The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional

arrangements or by regional agencies for the maintenance of international peace and security".⁽¹⁹⁴⁾

Although there was muted criticism of the Arab-League's failure to report adequately to the Security Council⁽¹⁹⁵⁾, nevertheless the prevailing view is that practice indicates that the Security Council never protested against the failure to report; and hence compliance with that Article becomes optional.⁽¹⁹⁶⁾ However, this could be acceptable in matters relating to peaceful measures taken by a regional organization, and not by an enforcement action. The mere existence of Article 54 suggests that receiving information from a regional organization is vital since the Council's authorization is required in the first place. It is unrealistic to assume that since the Council gave the required authorization, there was no need to follow up the action of the organization. Such an interpretation is not consistent with Article 53(1) which was inserted to affirm the superior authority of the Security Council in matters pertaining to the maintenance of peace and security.

Therefore, the Arab-League action in Lebanon was an enforcement action and hence it failed to follow the requirements set out in Article 53(1) and 54. However, the silence of the Security Council pertaining to the need to obtain prior authorization as stipulated in Article 53 (1), can only be attributable to the political setting of the Lebanese civil war.

D- Compatibility Of The Arab League Action With The Purposes And Principles Of The United Nations Charter.

Articles 1 (1) and (2) of the United Nations Charter provide that:

"The purposes of the United Nations are:

- 1- To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
- 2- To develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples, and to take other appropriate measures to strengthen universal peace".⁽¹⁹⁷⁾

According to Article 24 (2), the Security Council in discharging its duties, ought to do so in accordance with the purposes and principles of the Charter.⁽¹⁹⁸⁾ Thus, the Security Council is not immune from those obligations, and its action has to be in accordance with the purposes and principles of the Charter. It must follow, then, that the Arab League is embraced by the same limitation and thus its action must be in accordance with the purposes and principles of the Charter of the United Nations. Therefore, Arab-league action could be looked at as an attempt to meet the purpose set forth in Article 1 (1).

To this end, it was suggested that the Arab-League action was to meet a threat to international peace. The Lebanese civil war, posed a real risk to the maintenance of peace in the region, following the Syrian intervention and Palestinian infiltration. However, this cannot be accepted, as Article 1 (1) stipulates that the removal of aggression is one of the ways in which the threat to international peace can be removed. In this regard, the Arab-League also demonstrated its willingness to see the replacement of the Syrian forces according to the 9th of June 1976 resolution, as was the case in Congo regarding the Belgium troops, but its endeavor was short of implementation. The refusal of the Syrians to withdraw prompted the League to abandon what is stipulated in Article 1; that is to say the removal of aggression as a pre-requisite to the

maintenance of international peace. In addition paragraph (2) of Article 1 speaks of the need for respect for the principle of self determination.

Thus, Arab-League activities must not eliminate the right of the Lebanese people to self determination, and it is incumbent upon the League to refrain from the use of force, pressure or taking sides in the internal conflict. However, the reluctance of the League to recognise the interest of the Leftist forces was fully reflected in the Riyadh discussion which excludes the Lebanese belligerents. The recognition of the Lebanese president who was perceived by the Leftist Forces as a Syrian candidate and at the same time representing the Lebanese Front, suggests, that the League was interested in the maintenance of the status quo. That argument was cemented by the fact that the volatile subject at the conference of Riyadh was the Palestinian subject and the Lebanese problem was assigned to second place. The stress on the implementation of the Cairo agreement could be viewed as a vindication of the Lebanese Front's claim and a rejection of the case of the Leftist Forces. The League's decision to empower the president with the power to use the A.D.F was in direct agreement with the Rightest camp's position vis a vis the Left. It is worth mentioning, that the Secretary General in the case of the Congo refused to put the ONUC under the control of the government, for such a step would clearly have amounted to taking sides and at the same time preventing the people from deciding their own destiny.⁽¹⁹⁹⁾ The Arab-League, however took an unprecedented step and assigned to the president what the Secretary General would have considered a partial action and an interference in internal affairs.

As a whole, the Arab-League action could be considered as an action designed to prevent a threat to international peace, but at the same time it fell short of removing the Syrian aggression as was stipulated in Article 1 (1). The Arab-League action provided an atmosphere in which the Palestinian subject took priority over the reforms which was demanded by the LNM. Moreover, by putting the control of the A.D.F. under the

Lebanese president, (although proving to be theoretical), the League provided the latter with the power to impose any settlement against the opposition whose weapons, according to the League resolution, ought to be handed over to the A.D.F. Following this, one might contend that the League action prejudiced the right of the Lebanese people to restructure their political system as they wished. Despite the failure of the Arab-League to conform with the Charter of the United Nations, it escaped criticism and on the contrary its action was welcomed by every state. The inclusion of Syrian forces has warranted no criticism whatsoever save some Arab radical states. The absence of such criticism is not surprising, given the unique circumstances of the Lebanese civil war. What these circumstances are which permitted the Syrian forces to be admitted in the Peace Keeping Force, is the theme of the following section.

VII- The effect of Arab politics on the formation of the A.D.F in Lebanon.

The high number of Syrian troops participating in the A.D.F. confirmed that the force was, in practice, Syrian, while the presence of other contingents, was only theoretical. The structure of the A.D.F, however, in such a form roused suspicion concerning the validity of the regional Organization and its effectiveness in the prevention of aggression or in the maintenance of peace . The Syrian intervention in Lebanon and the subsequent formation of the A.D.F naturally reflected the fragility of the organization of the Arab League in meeting the danger of civil war. However, the Syrian case, arguably, could be seen as a special case since the accentuated circumstances of the intervention qualified it as such. These circumstances undoubtedly played a major role in cementing the Syrian position, and at the same time, contributed to what could be called pax Syriana in Lebanon. Bearing this in mind, the question concerning Syrian participation cannot be fully answered unless one grasps the political

reality that prevailed at the time of the Syrian intervention. This can be done only by focussing on the regional and international setting at the time of intervention and the subsequent events that led to the formation of the A.D.F.

On the regional level, the Arab world, at the time of, or shortly before the Syrian intervention, was divided on the issue of peace-talks between the Israelis and the Arabs. The Second Sinai disengagement agreement between Egypt and Israel under the auspices of the United States, was the catalyst that contributed to the major division in the Arab world. The conservative regimes on one the hand, and the radical ones on the other, were striving to dominate the scene and to dictate their policies. Saudi Arabia and Jordan, in particular, supported the Egyptian policy which was positively blessed and supported by the United States, while radicals such as Iraq and Libya were opposing such an approachement.⁽²⁰⁰⁾ Naturally, the opposing sides thus found an outlet in the Lebanese civil war and their struggle for supremacy persisted on the Lebanese battle field.

In such a context, Syria found itself in a better bargaining position as both camps of Arabs wooed and solicited its support. The strength of the Syrian position was fully demonstrated when Syria refused to attend either meeting of the Arab League in October 1975 and May 1976 to discuss the Lebanese crisis. This was because the Syrian government had been financially lured by Libya in return for Syrian renunciation of the Egyptian- Saudi- American coalition.⁽²⁰¹⁾ Thus when Syria intervened against the Leftist forces in June 1976, Syria was aware of its powerful position, and hence its co-operation with the conservative Arab countries, helped it escape the wrath of Arab-world public opinion. The conservative governments were in favour of the status quo and the neutralization of the Palestinian and Lebanese radical groups. However, such a course could not be undertaken without risking stability at home, disrespect and the charge of conspiracy by Arab public opinion. By explicitly urging Syria, one could

argue, to attend the Arab-League meeting in order to stop the bloodshed, and tacitly approving Syrian action, the conservative governments scored two goals with one strike: improving its image as the saviour of Palestinian and the Muslim Lebanese, and reaping stability and admiration at home. The reluctance of Saudi Arabia to send their troops during the summer of 1976, and their refusal to take drastic action to stop the Syrian intervention, if it meant any thing, was indicative of either their helplessness or approval. However, the financial support and the reconciliation between Egypt and Syria by the Saudi government, could only reflect their approval of Syrian action in Lebanon. However, unlimited freedom was not accorded to Syria in Lebanon. The total elimination of the moderate Palestinians, headed by the PLO leader Arafat, was not acceptable to the Saudi government, neither was the total domination of Lebanon. This was clearly reflected in the Riyadh summit where the Saudi government exerted enormous pressure on Syria to attend the summit and stop its military campaign against the Palestinian and Leftist Lebanese . During the summit, an Arab political compromise was worked out by which Syria would stop its attack on the Egyptian disengagement agreement and in return Egypt would acknowledge the Syrian influence in Lebanon but under the banner of Arab-League.⁽²⁰²⁾ Syria and Egypt were the major players in the Arab world, and their agreement on the Lebanese issue was imperative, as the rest of Arab states, especially those who opposed the peace talks with Israel such as Iraq and Libya, were unable, because their geographical location denied them the opportunity to engage militarily in Lebanon, to influence the outcome. Consequently, the Syrian participation was agreed upon and met no serious opposition.

On the international level, the Syrian government was, similar to its position on the regional level, in a comfortable position. Both superpowers were seeking and soliciting its support. The United States' initiative and its success was a severe blow to Soviet policy in the Middle East. The reason for the success of the American policy was coincidental as both the U.S.A and Syria were in favour of restricting the activities of

the Palestinians and the rise of LNM in Lebanon for different reasons.⁽²⁰³⁾ The American approval helped Syria to push their army into Lebanon with the guarantee of no Israeli objection as both America and Israel considered the liquidation of the PLO as a bonus.⁽²⁰⁴⁾ However, the Soviet Union was in an awkward position as the Egyptian authorities, once one of the major allies of the Soviet Union in the Middle East, distanced themselves from the Soviet Union and embraced the United States policies. It was the ultimate hope of the Soviet Union, following the Egyptian defection, to prevent further defection to the American camp. Faced with the choice between its two allies in Lebanon, namely the Leftist and Palestinians on one hand, and the Syrians on the other, the Soviet Union was reluctantly on the side of Syria.⁽²⁰⁵⁾ After all, Syria was the only key element in the Soviet Union policy in the Middle East and with Syria, the Soviet Union could guarantee that there would be no settlement in the Israeli-Arab conflict without its participation.

It is these international and regional setting which mainly contributed to the success of the Syrian intervention and consequently to its dominant role in the peace keeping force in Lebanon. During the performance of the A.S.F over the summer of 1976, both superpowers, were eager to praise the Syrian role in Lebanon. However the Soviet Union was very cautious and at one point criticised the Syrian's military action against the LNM and its Palestinian allies. Therefore, because of its delicate position, the Soviet Union was very pleased to see the establishment of the A.D.F with the acknowledgment of the Arafat leadership and, the dominant role of Syrian troops. The Soviet news paper Pravda, signalled that trend when it said:

"Lebanon is gradually returning to normal life ...already it is clear that the pan_Arab peace keeping force has accomplished its first objective- to stop the bloodshed in Lebanon..".⁽²⁰⁶⁾

Similarly, the American decision-makers were very pleased as well with the Syrian role, as Kissinger in his testimony before Congress affirmed that : " It is quite possible

that as the situation in Lebanon is being resolved .. we can go back to the peace process. I believe that the events in Lebanon may have crystallized forces that may make a return to the Middle East peace negotiations more hopeful".(207) Thus, there was no serious objection from any regional or international actors save the Iraqi government. However, the Iraqi objection was not of much importance due to its geographical location which hardly made it possible to disturb the process. With this in mind, the Syrian dominant role would become clearly explainable in term of politics and not law. Politically, Syria would be better qualified to supervise the implementation of the Riyadh and Cairo resolutions and to provide a deterrent reminder to the Leftist that they could no longer could rely on the outside world since their presence was legitimized both internationally and regionally. Equally, the Syrian participation in the A.D.F. saved the Soviet Union from a delicate and embarrassing situation, as they were now a part of the Arab-peace keeping force. Likewise, the American decision-makers appreciated the mission of Syrian forces in taming the PLO and Leftist forces and they had no objection so long as Syria kept within that limit and did not threaten Israel.

Regarding the Arab states, the Syrian incorporation into the A.D.F was an acknowledgment of the compromise which guaranteed Syrian silence on the Egyptian agreement, and at the same time, brought Syrian action in Lebanon under the authority of the Arab_League. Moreover, as Syria suppressed the Leftist forces and tamed the PLO in Lebanon who might, at some stage, have posed a real danger to Arab conservative states by their revolutionary propaganda, there would be no reason on the part of Arab conservative states to object to the presence of Syrian forces in Lebanon. For, the incorporation of Syrian troops in large number in the A.D.F, at least enabled the conservative states to exercise a kind of pressure through the institution of the League either through the finance of the force or legal cover. Together, all these reasons, paved the way for the presence of Syrian forces in Lebanon. It is quite

important to note, that there was no discussion whatsoever about the legality of the Syrian intervention nor about Lebanese interests. The major issue was the protection of Palestinians and the process of peace talks between the Arabs and Israelis. In such a context, it becomes clear that the rule of law was of no importance and its real value was only in using it as a means to support any political decision by political leaders. Therefore, the Arab-League as a regional organization and an organ intended to protect the sovereignty and independence of Arab states, turned out to be a means of legitimizing the illegitimate so long as it concurred with the political leaders priorities.

FOOTNOTES

- (1)- Ahmad. Al- Shuqairi, The Arab League: How to be a League and be Arabic, 1979, p 13..
- (2)- Ibid, pp 15-18 King Abed Al Aziz in his reply suggested that either the formation of a single Arab-state headed by one Arab leader or the division of Arab states into mini states (waliat) where every waliat would be governed by competent Arab governor and they will be linked together by a web of administration; under such a scheme the Ottoman authority's role would be supervisory.
- (3)- Id, disagreement over the issue of alliance was fully reflected in Al-Sharif Hussian's sons: Abdallah and Faisal where the former did not favour the Ottoman offer but the latter did. see pp 15-18, and see pp 19-20.
- (4)- Id
- (5)- Id
- (6)- Id
- (7)- Cited in Robert W. Mac Donald, The League of Arab States: A study in the Dynamics of Regional Organization, 1965, pp 33-34. For more details explaining the reasons behind British attitude toward Arab Unity see George Lenczowski, The Middle East in World Affairs, (1962), pp 634-5.
- (8)- Hussein A. Hassouna, The League Of Arab States And Regional Disputes, 1975 p 5; and see R. Mac Donald, op cit supra (7), p 35; C. A. Hourani, " The Arab League in perspective", Middle East Journal, vol 1, 1947, p 128.
- (9)- M. Khalil, The Arab States and the Arab League: Documentary Record, Vol II, Beirut, (1962), pp 9-12; Hassouna op cit note (8), pp 5; and see Mc Donald, op cit note (7), pp 35-36.

- (10)- Phillip Ireland, " The pact of the League of Arab States", A.J.I.L. vol 39, (October) 1945, 798;
and see Hassouna, op cit note (8), and Mc Donald, op cit note (7), pp 36-37.
- (11)- Mac Donald, op cit note (7), pp 37, and op cit note (8), p 6.
- (12)- Id.
- (13)- Hassouna, op cit note (8), p 6.
- (14)- Id
- (15)- Ibid, p 7; Mac Donald, op cit note, (7), p 38
- (16)- Id
- (17)- C. Hourani, op cit note(8) p 128.
- (18)- A. M Gommaa, The Foundation of the League of Arab States, 1977, pp 239-40.
- (19)- Hassouna, op cit note (8) pp 7-8
- (20)- Gommaa, op cit note (18), p 239.
- (21)- The Arab League Pact, Article 2
- (22)- Mac Donald, op cit note (7) p 8.
- (23)- Resolution 1, Alexandria Protocol
- (24)- M. F. Anabtawi, Arab Unity in terms of Law, 1963, p 66.
- (25)- The Arab League Pact, Article 8
- (26)- The Arab League Pact, Article 6

- (27)- The Arab League Pact, Article 1
- (28)- Hassouna, op cit note (8) p 8, and Mac Donald, op cit note (7) p 44.
- (29)- The Arab League Pact, Article 18.
- (30)- Id , in the history of the League there is only one precedent; the expulsion of Egypt following the peace treaty with Israel (Camp David Accord) whereby the headquarter of Arab League was transferred to Tunis.
- (31)- The Arab League Pact Article 16
- (32)- For more details regarding the institutions of the Arab League see Hassouna, op cit supra (8) p 11.
- (33)- The Arab League Pact, Article 3
- (34)- The Arab League Pact, Article 11
- (35)- The Arab League Pact, Article 7
- (36)- The Arab League Pact , Article 6
- (37)- The Arab League Pact, Article 3
- (38)- The Arab League Pact, Article 2
- (39)- The Arab League Pact, Article 12
- (40)- Id.
- (41)- The Arab League Pact came into force on the 10th of May 1945 months before the charter of the U.N which came into force on 24th of October 1945.

- (42)- League Pact, Article 19
- (43)- Charter of the U.N. Article 52
- (44)- Charter of the U.N Article 52 (2) and (3).
- (45)- Id
- (46)- Id. Article 53.
- (47)- Id. Article 52 (4).
- (48)- Id. Article 54.
- (49)- Hans Kelsen, The Law Of United Nations:A critical Analysis of its Fundamental Problem, 1951, pp 319-324; Omar Abubakar Bakhsaad, The Organization of African Unity and regional Disputes: A Study of African Conflict, 1984, p 69.
- (50)- see Khalidi, Conflict and Violence in Lebanon, 1979, p 59.
- (51)- Id.
- (52)- Id, it was the Iraqi deployment of troops on the Iraqi-Syrian border that hastened the Arab League to consider the Lebanese crisis because of possibility of being exploded into a regional conflict.
- (53)- Id, and see K. Chammoun, Crisis in Lebanon, 1977, p 107.
- (54)- see the League's Resolution on the 9th of June (1976), Cairo, in Appendix.
- (55)- Id
- (56)- Id

- (57)- Id
- (58)- Id, and See I. Khwayri, The war in Lebanon, Vol 2, p 384. The Syrian refusal to adhere to the League's Resolution resulted in adjusting or modifying the resolution by adding that the Palestinians would abide by all agreements which were signed between the Lebanese government and the PLO.
- (59)- Id, See Istvan Pogany, The League Of Arab States And Peace Keeping In Lebanon 1976-83, 1988 p 210
- (60)- I. Khwayri, op cit note (58), p 561.
- (62)- Ibid, pp 395-96, and see Pogany, op cit note (59) pp 408-432.
- (63)- Pogany, op cit note (59) p 211; and Khwayri also affirms that the Syrian government sent a message to the Lebanese president and urged him to co-ordinate with Syria by insisting on the Syrian initiative and the refusal of any proposal calling on the Syrian troops' withdrawal from Lebanon, and opposing the Iraqi and Algerian participation in the Arab Security troops op cit note (58), p449
- (64)- Pogany, op cit note (59) p 260.
- (65)- The Secretary General and the President of G. Assembly, in their joint report 1965, advocated the approach which relies on the practice as a justification for the establishment of peace keeping force. This was criticized by the Soviet Union's delegate who said: " an attempt is made to define the functions and powers of the Security Council and the General Assembly in peace keeping matters on the basis, not of the charter, but mainly of the past practice of these organs when violations of the charter were allowed to occur, " cited in Dan Ciobanu, " the power of the Security Council to organize a peace keeping operation" in A. Cassese, United Nations Peace Keeping: Legal Essays, 1978, pp 16 and see pp 40-41
- (66)- Higgins affirmed that " Although no article of the Charter is specifically mentioned, it would appear to be based on Article 40" in R. Higgins, United Nations Peace Keeping 1956-1967:

Documents and commentary, vol 1, (1969), pp 60.; (1956), and see also, Sohn , " The authority of United Nations to establish and maintain a permanent United Nations Force" AJIL vol 52 (1958) pp 229-240; and see O.Schachter, " Legal Aspect of the United Nations action in the Congo", AJIL, vol 55 (1961), p 6; and see F. Riyad, " The United Nations Action in Congo and its Legal Basis" Egyptian Review of International Law,vol 17 (1961).

(67)- I.C.J. Report 1962, p 151.

(68)- The Arab League pact Article 2

(69)- see op cit note (59), p 262, and H. Hassouna, " The League of Arab States and the United Nations: Relations in the peaceful settlement of Disputes" in B. Andemicael (ed.), Regionalism and the United Nations, 1979, p 317.

(70)- Ibid. and Hassouna, Ibid pp. 316-317.

(71)- Hassouna, Id.

(72)- Id

(73)- op cit note (59), p 263.

(74)- Id.

(75)- The Joint Defence Treaty, Article 2

(76)- op cit note (59), p 58.

(77)- Yoer Arnon Tsur, " The United Nations Peace Keeping Operation in the Middle East From 1956-1976" in Cassese, op cit note (65), pp 183-84.

(78)- Ibid, p 205.

(79)- A/3302, 2nd and final report of the secretary General on the plan for an emergency international

U.N Force, 6 November 1965, cited in R.Higgins, op cit note (66), p 336.

- (80)- Antonietta Di Blase, " The role of the host state's consent with regard to non-coercive action by the United Nations", in Cassese op cit note (65), p 85.
- (81)- Ibid, p 82.
- (82)- Article 53 (1), and see P. Haekkerup, " Scandinavia's peace keeping force for United Nations", Foreign Affair, Vol 42, (1963), pp 676-681.
- (83)- Pogany op cit note (59), p 226.
- (84)- see Khwayri, op cit note (58), p 384.
- (85)- Khwayri, op cit note (58) vol 2, p 575.
- (86)- *Al- Safir*, (Lebanese Newspaper) 11 June 1976, the translation in English is taken from Pogany op cit note (59), pp 211-212.
- (87)- Kessings Contemporary Archives, 1976, pp 28119; and see Chammoun, op cit note (53) pp 110-111.
- (88)- Chammoun, op cit note (53) p 110.
- (89)- *AL Nahar* (Lebanese Newspaper) 17 June 1976.
- (90)- Khwayri op cit note (58)
- (91)- Ibid, p 417 . The Secretary General of the Arab-League affirmed that the arrival of a peace keeping force in Lebanon is dependent on the wishes of legitimate Lebanese president and also on the co-operation of all parties in Lebanon.
- (92)- Di Blase, op cit note (80), p 60

- (93)- See Report of Secretary General, A/3943 of October 1958, para 12 and 16, cited in R.Higgins, vol III, op cit note (66) p 125.
- (94)- see Mona Harrington Gagnon, " Peace Force and the Veto: the Relevance of Consent", I.Q., vol XXI, 1967.
- (95)- Id. and see Marianne von Grunigen, " Neutrality and Peace Keeping " in Cassese op cit note (65) p 137.
- (96)- see Chapter Four and Five of this thesis
- (97)- Arab League Resolution of 9th June 1976
- (98)- see Pogany op cit note (59), p 294.
- (99)- Khwayri, vol II, op cit note (58), p 487.
- (100)- Ibid p 432.
- (101)- Ibid p 105.
- (102)- Ibid p 509 the Syrian troops were the largest as stands at 70 percent of the total force.
- (103)- Ibid p 562
- (104)- Ibid p 573
- (105)- Ibid p 585
- (106)- Id.
- (107)- Ibid p 585

- (108)- Ibid p 619
- (109)- Ibid pp 639-640
- (110)- Ibid p 656
- (111)- Ibid pp 729-730 and 762-763.
- (112)- Ibid p 763
- (113)- Khwayri op.cit note (58) vol III, pp 62-63.
- (114)- Id.
- (115)- Ibid p 60
- (116)- Ibid p 121
- (117)- Ibid pp 218-219
- (118)- Ibid p 239 and p 216
- (119)- Ibid pp 456-57
- (120)- Khalidi op.cit note (50) p 63
- (121)- Ibid p 64
- (122)- Id
- (123)- Khwayri, vol III, op.cit note(58) p 230
- (124)- Kariem Bacradine, Al-Salam Al Mafquod (the missing peace), (1984) p 50. According to Bacradine the Syrian delegate AL Kohli asked Sarkis (the Lebanese President) to approve a

Syrian offensive to dislodge and liquidate the Palestinians and the LNM. However, President Sarkis replied " I do prefer the political resolution of the crisis and I cannot agree on a military solution. Yesterday I swore in as a president and pledged not to use force and at the same time I am still pursuing a dialogue with Palestinians and as such I cannot resort to force pending that dialogue". However, according to Bacrodine the Syrian delegate took the consent of the LF.

(125)- P. Edward Haley and Lewis W. Sinder (ed.), Lebanon in Crisis: Participants and Issues, 1977, p 130.

(126)- Ibid pp 130-138.

(127)- Jean Pierre Isseld, " The Arab Deterrent Force in Lebanon 1976-1983" in A. Cassese (ed.), The Current Legal Regulation of the Use of Force, 1986, p 186.

(128)- Pogany op.cit note(59), p 44

(129)- Ibid and see Hassouna op.cit note (69) pp 389, and see Boutros Ghali, "The Arab League 1945-1970", Reviue Egyptienne de Droit International, vol 25, 1969, pp 76-77

(130)- Id

(131)- Resolution adopted by six party Arab Summit conference (Riyadh 1976) ; *Kessings Contemporary Archives*, vol 22, 1976 pp 28122-28123 .

(132)- Id

(133)- Id

(134)- see Riyadh resolution

(135)- Id

(136)- Id

- (137)- op.cit note (59) p 22, The Syrian foreign minister declares: " When our troops entered Lebanon it was in order to impose security and stability and to create a climate favorable to political dialogue between the Lebanese. When all that has been achieved, there will not be a single Syrian soldiers left. We will take all the time that is necessary".
- (138)- Iraq refused to endorse the Riyadh resolution see 22 *Kessings Contemporary Archives* (1976) p 28123.
- (139)- see khalidi op.cit note (50), p 65.
- (140)- see Bacradoni op.cit note (124), p 59.
- (141)- Ibid p 61
- (142)- Ibid p 64
- (143)- Ibid pp 64-65.
- (144)- Ibid
- (145)- Ibid p 69
- (146)- 22 *Kessings Contemporary Archives* (1976), pp 28122-28123.
- (147)- op.cit note (124) p 72.
- (148)- International Herald Tribune, 27 October 1976, and see Pogany op.cit note (59) p 295.
- (149)- op.cit note (59), p 295
- (150)- The Times, 28 October 1976.
- (151)- 22 *Kessings Contemporary Archives* (1976), p 28123.

- (152)- A/3302, 2nd and final report of the Secretary General on the plan for an emergency U.N Force, 6 November, 1956, cited in Higgins op cit note (66) p 263.
- (153)- Id
- (154)- Id.
- (155)- see Resolution of 9th June of the Arab League.
- (156)- U.N Doc S/4389, 18 July 1960. First report of S.G on the implementation of S.C Resolution S/4387 of 14 July 1960, para 7.
- (157)- Article 52 of the U.N charter
- (158)- Article 53 (1).
- (159)- Hassouna op cit note (69) p 321.
- (160)- Op cit note (59) p 268.
- (161)- I.C.J Rep, 1962, p 177.
- (162)- Op cit note (59) p 269.
- (163)- John W. Halderman, The United Nations and the rules of Law, 1966 p 99, and the same author " Legal Basis for United Nations Armed Forces " A.J.I.L., vol 56, 1962, p 974.
- (164)- United Nations Security Council, Off. Rec. 15th Year, supp, July-Sept 1960 (S/4387), p 16
- (165)- Id.
- (166)- United Nations Security Council, Off. Rec. 16th Year, supp, June-March (1961) (S/4775) pp 262-63

- (167)- E.M. Millar, " Legal Aspect of the United Nations Action in the Congo" A.J.I.L., vol 55, 1961, pp 14-15.
- (168)- Halderman, Op cit note (163) p 102; O. Schachter," The technique and legal aspect of Emergency Peace- Keeping ", Recueil De cours, Vol 2 (1963), pp 221-222.
- (169)- See Higgins, vol III, Op cit note (66), p 57.
- (170)- Ibid p 58
- (171)- Schachter, Op cit note (168) p 222, and see M. Akehurst, " Enforcement Action by Regional Agencies with Special reference to the the Organization of American States", B.Y.B.I.L., vol 42, (1967), Akehurst affirmed that " the recent practice has been to interpret the proviso more loosely, in the sense that the occurrence of any of the jurisdictional facts of chapter V11 (threat to peace, breach of peace or act of aggression) is enough to remove the matter from domestic jurisdiction of any state, so that the Security Council may act not only under Chapter VII, but also under Chapter VI." p 187.
- (172)- Annual Report of the Secretary General on the work of the organization 16 June 1962, U.N General Assembly. Off. Rec. 17 session, Supp. No. 1, pp 4-14 .
- (173)- Gagnon, Op cit note (94) p 828.
- (174)- W.D. Bowett, United Nations Forces, 1964, pp 200-205.
- (175)- Introduction to the Annual Report of the Secretary General on the Work of the Organization, 16 June 1963 -15 June 1964, U.N G.A. Off. Rec. 19 Sess., Supp.No 1A, p 7.
- (176)- Halderman, Op cit note (168), pp 110-111.
- (177)- Ibid p 113.
- (178)- Id

- (179)- Id
- (180)- Id
- (181)- I.C.J Report 1962, p 270
- (182)- Schachter, Op cit note (168), p 222
- (183)- Halderman Op cit note (168) p 123
- (184)- See the Fourth Report of Secretary General on the Congo U.N Doc S/4482 cited in Schachter Op cit note (168) p 223
- (185)- See, Higgins Op cit note (66), p 58.
- (186)- H. Kelsen, Op cit note (49) p 731.
- (187)- Judge Koretsky in his dissenting Opinion , I.C.J Report 1962, pp 274 - 275.
- (188)- Finn Seyersted, " United Nations Forces Some Legal Problem" B.Y.B.I.L, vol 37, 1962 p 446
- (189)- Gagnon op cit note (94), pp 823-24
- (190)- Op cit note (168), p 975.
- (191)- The United Nation Charter Article 53 (1)
- (192)- Pogany Op cit note (59) p272; and for different view see Asjorn Eide, " Peace keeping and Enforcement by regional Organization: its place in the United Nations system", Journal of peace Research, (1966) pp 125-143
- (193)- Cited in Asjorn Op cit note (192), p 139.
- (194)- The United Nation Charter Article 54

- (195)- Op cit note (127) p 188
- (196)- Akehurst Op cit note (171) pp 175 and 185
- (197)- The United Nation Charter Article 1 (1) and (2) .
- (198)- The United Nation Charter Article 24 (2)
- (199)- see Bowett op cit note(174) " In so far as the territorial state requested the force to assume functions not necessary for the maintenance of international peace and security ...these functions should not be accepted by a United Nation Force." For to embark upon such functions even with the consent of the host government would involve the United Nations Force in what is plainly a domestic matter and not one affecting international peace" pp 425-26.
- (200)- Marius Deeb, The Lebanese Civil War, 1980, pp 132-133; and for wider understanding of Saudi policy see M. Deeb, " Saudi Arabian Policy Toward Lebanon Since 1975" paper presented at 9th Annual Symposium of the centre for Contemporary Arab studies, 12-13 April 1984
- (201)- N.Weinberger, Syrian Intervention In Lebanon:1975-1976 Civil War, 1986, pp 258-259
- (202)- E.Edward Haley and L.W. Sinder, Lebanon In Crisis: Participants And Issues, 1979, p 129
- (203)- Khalidi, Op cit note (50),pp 88-89; Robert Stookey, "The United States In Lebanon", in Op cit note (202)pp 233-234.
- (204)- Khalidi Ibid p 238; and see Weinberger, Op cit note (201) pp 301-302
- (205)- Robert O. Freedman, " The Soviet Union And The Civil War In Lebanon: 1975-1976", Jerusalem Journal Of International Relations, Vol III, NO IV, 1978, pp 61-91; I. Kassa, " Moscow And The Lebanese Triangle", The Middle East Journal, Vol XXXIII, No IV, 1979, pp 167-87; Efrain Karsh, The Soviet Union And Syria: The Assad Years, 1988, pp 30 and 32-33; Weinberger, Op cit note (201),p 303.

(206)- R. Freedman, Ibid p 89

(207)- Nasseer Arari, " The Syrian Strategy and Lebanese Conflict" cited in Weinberger op cit note
(201) p 300

CHAPTER SEVEN

GENERAL CONCLUSION.

The drastic changes that the international system has undergone since the Second World War contributed, in one way or another, to an unprecedented level of interventionist activities. Most of those interventions were undertaken by superpowers and powerful states against weak states. Those interventions were invariably justified on different grounds which conveyed the belief that such intervention was not against the norm of non-intervention.

Intervention, with the passing of time, has become no longer confined to powerful states, but small states have also embraced it in order to impose their will on weak neighbours. In carrying out that intervention, small states resorted to the same type of rhetoric that was originally invoked by superpowers and powerful states. This, in fact, was well demonstrated in the Lebanese civil war, in which a variety of foreign interventions were undertaken.

The Lebanese civil war mainly emanated from the legacy of the French Mandate which left the Lebanese divided. The concentration of power in the hands of Christian Mornites caused bitterness and dissatisfaction among the rest of the sixteen communities in Lebanon. Another factor playing a role in accelerating the trend toward violence was the existence in Lebanon of Palestinian commandos and their guerrilla attacks against Israel. Arab states and Israel did not hesitate to use Lebanon as an alternative battle ground. Despite the existence of Palestinian commandos on Lebanese territory, the conflict was regarded as a civil war, since the Palestinian presence was legitimized by the Lebanese government under the Cairo Agreement. However, the Palestinian participation on a large scale in that civil war went far beyond the letter of

the Cairo Agreement.

The Syrian intervention in that conflict, however, was the first foreign intervention in the Lebanese civil war and surpassed the traditional indirect assistance to one party or another. The Syrian government's justification overlapped with that of the superpower states', the United States of America and the Soviet Union. The first Syrian indirect intervention in response to the rebels' invitation was a clear departure from the classical rules of international law. It signified the readiness of a state to misuse the norm in order to bring legitimacy to its intervention. There were no rules that permitted a state to render direct support to rebel forces which embarked on overthrowing the legitimate government unless the rebels achieved the status of belligerency. The Lebanese rebels were far short of achieving that status. However, since states have full discretion in granting that status to any group or party to civil war, the application of rules becomes optional.

Moreover the classical rules of international law , although regarded as outmoded and unresponsive to the changes that took place in the international system, are still operative so long as there are no rules to replace them. There is nothing inherently wrong with the rules in themselves, except for the absence of an impartial body to whom the determination of the status of parties would be assigned. The prevalence of subjectivity would in the long run undermine the legal function of the norm, as an objective standard for evaluating behaviour. That subjectivity was manifested again in the Syrian intervention in June 1976 under the triad of legal justifications.

The intervention on humanitarian grounds was considered by the Syrian government as one of the bases upon which their intervention was undertaken. However, such intervention is highly controversial in international law. Despite its persistent invocation by various states and especially by the United States, many

writers deny the existence of such a rule. Humanitarian intervention, in contemporary international law, is not valid in the way it was thought to be in the nineteenth century, but it is still very hard to disregard it as irrelevant. The international recognition that the human rights issue has received in the present century highlights the view that states are no longer free to violate human rights. It is conceivable that humanitarian intervention could be undertaken in very limited and special circumstances in a situation where the violation of human rights (especially the right to life) is perpetrated on a massive scale which shocks the conscience of mankind. However, such intervention, if it can ever be accepted, must be implemented in accordance with certain criteria: the exhaustion of peaceful means, proportionality, necessity, duration, disinterestedness. Those criteria were originally designed to prevent states from using that intervention as a cloak for self-interest. As far as the Syrian intervention is concerned, it was in violation of those criteria.

Similarly, intervention by invitation represents a controversial issue in international law. It is recognised that a government could invite another nation to help whenever it faces difficulties. However, with the new development of international law, invitation is no longer perceived as an absolute right of a government. The emergence of the principle of self-determination has influenced the concept of invitation greatly. Apart from that, an invitation, from the perspective of international law, to be regarded legally valid ought to emanate from a government whose effective control of its territory is unquestionable. To accept an invitation from a government which had lost every power to control the population who opposed it with every means, clearly runs against the wishes of the peoples and their right to self-determination. The invitation of the Lebanese government was hypothetical, as there was no invitation according to factual records; even if such an invitation had been issued, it would have been against the rules of international law, since the Lebanese government exercised no effective control over its own territory. The Syrian insistence that they were invited by the

legitimate government has no legal validity according to the principle of effectiveness in international law. Similarly, the invitation was invalid under Lebanese constitutional law. Moreover, an invitation from a government, whose legitimacy was challenged by its own peoples, if ever accepted by a foreign government, would ultimately run against the principle of self-determination.

The Syrian government did not miss the opportunity to point out that its intervention was in response to Lebanese wishes and desire. However, there are no legal grounds that permit a state to intervene in a civil conflict in order to promote the principle of self-determination. An acceptance of such a rule would prejudice the sovereignty of a state and run counter to recognized principles of international law. Legitimizing such intervention would ultimately open the door to potential abuse and hence every foreign state would meddle in another state's affairs under the pretext of self-determination. The principle, although recognized as a legal principle of international law, has no effect in validating a foreign intervention in its name. In a civil war, parties to the conflict ought to settle their differences by themselves and any foreign intervention would ultimately prevent the operation of the principle of self-determination. Such interpretations were wholeheartedly embraced by the Syrian government throughout its pronouncement in the United Nation or through officials statements. As such, the Syrian intervention was running against its own interpretation of the law and, consequently, its intervention under the principle of self-determination becomes invalid.

The only ground of legality with which the Syrian enjoyed some legitimacy was under the umbrella of the Arab-League. The Arab-League intervention in the conflict, although in the latter stage, had a great effect on the legality of the Syrian presence in Lebanon. By virtue of its legal personality as a regional organization which comprises Arab states, the League action in Lebanon was regarded as one of its main purposes and duties. The legality of the League action would, ultimately, contribute to the

legitimacy of the Syrian presence. In the first peace-keeping force, which was established in accordance with a conventional type of international peace keeping force to replace the Syrian forces, the League initiative suffered a set back in the face of Syrian's refusal to submit to the will of the Organization. The Syrian government consistent disregard of the League, and the obstruction of the Arab peace keeping operation over the summer of 1976, led to a new initiative by which the Syrian government was recognized as a major power in the newly established peace keeping force, namely the Arab Deterrent Force. The Arab Deterrent Force was regarded as a peace keeping force and not an enforcement action. However, the A.D.F action and its mandate pointed to a different conclusion. The Force bore all the characteristics of enforcement measures which as such, needed the prior authorization of the Security Council in accordance with Article 53 (1) . Moreover, the Arab-League failed to comply with Article 54 which stipulates that all activities of the peace keeping force must be reported to the Security Council. In addition, the action that was undertaken by the League in fact halted the process of self-determination.

In view of that, the Arab-League action manifestly served the Syrian interest in the long run. It contributed to the legitimacy which they desperately needed to justify their existence on Lebanese soil. Under the cover of A.S. F the Syrian forces destroyed the military apparatus of the Lebanese National Movement and enhanced the position of the rightist camp. Moreover, under the A.D.F the Syrians became the only power that had total supremacy in Lebanon.

In general, the Syrian intervention, through its various stages, presented the major challenges to international law. The Syrian government, following the steps of superpowers states, furnished the usual and traditional justifications for their intervention. More interestingly, and in line with Monroe and Brezhnev Doctrine, they offered the doctrine of Arabism. Under such doctrines, Syria could intervene in

Lebanon which, is an Arab country, since the interest of all Arabs are the same. This argument hardly differs from American and Soviet justifications. Such an argument re-asserts the potential danger that can be exposed in civil war. It also affirms the disrespect that the norm of non-intervention has received. So long as the national interest is seen as vital, states tend to violate the norm of non-intervention under many pretexts. This readiness to intervene, by states, is a major defect of international law. International law has no power to influence states by means of coercion as is the case in domestic law. The only power it possesses is the moral one. Therefore, any attempt to modify the law to make it more responsive to the situation of a civil war, would ultimately suffer from the absence of a central authority and its coercive character. International law, in the absence of a central authority, could only be made effective through the willingness of national leaders to submit their case to the rule of law . Instead of pursuing a short term goal of national interest, an observance of the law would in the long run serve their interest and the interest of the international community alike.

Therefore, any proposal which might be introduced has to stress the importance of the role that a national leader has to play. In fact, many proposals have already been put forward by eminent writers to improve the quality of law into the situation of a civil war, and to minimize the danger that might emanate from it. However, most of these proposals, in the absence of a central authority, rely for their implementation exclusively on the national leaders. As such, the existing rules could have served well without any need for new proposals, if the national leaders had conceded that the rule of law has supremacy over the national interest. It is ultimately the decision-makers' responsibility in every country to facilitate the application of law, by refraining from breaking it.

It is unrealistic to put forward a variety of proposals which are intended originally

to make the law effective, without urging the leadership of powerful states such as the United States and Soviet Union to abandon their damaging attitudes and approaches toward the norm of non-intervention. It is their behaviour that has encouraged small nations to break the law and offer the same justifications. More relevant is the need to look objectively and impartially at the issue of internal conflict. It is that conflict which is threatening peace and giving rise to the breaking of the law. Foreign states, especially powerful states, hold primary responsibility to encourage democratic procedures and economic reforms which are an essential ingredient of internal stability. By rendering no support to autocratic regimes, and exerting pressure on those regimes to change their undemocratic practices, civil conflict would become more rare. The elimination of that conflict would undoubtedly enhance the upholding of the law.

In our present international system where the shadow of nuclear war still haunts every one, an internal conflict might turn out, through various foreign interventions to be the locus for a nuclear war. Therefore, it is not just a matter of improving the quality of law, rather of making the law preserve our existence and provide a bright future.

APPENDIX

Resolution of the Arab League Council regarding the war in Lebanon.

Cairo June 9, 1976.

In the course of its session, the Arab League Council considered the deteriorating situation in Lebanon and the bloody incidents that are taking place there and , and in the light of its responsibility to the Arab nation, resolves the following:

- 1- To thank the secretary general of the Arab League for his initiative in calling this extraordinary session to discuss this fateful issue.
- 2- To call on all parties to cease fighting immediately and to consolidate such a cease-fire.
- 3- To form a symbolic Arab security force under the supervision of the general secretary of the Arab League to maintain security and stability in Lebanon, which force should start to perform its task immediately, replacing the Syrian forces. The task of this Arab security force should be brought to an end if the president-elect of the republic of Lebanon so requests
- 4- That a commission representing the League Council and consisting of the foreign minister of Bahrein, chairman of the session, the secretary of the Arab League and the heads of the Algerian and Libyan delegations, should be dispatched immediately to cooperate with the parties concerned in following up the situation and ensuring security and stability in Lebanon.
- 5- The council calls on all the Lebanese parties to bring about comprehensive national conciliation under the auspices of the Lebanese president-elect, to ensure the maintenance of the unity of the Lebanese people and the unity of their territory and the country's sovereignty, security and stability.
- 6- To affirm Arab commitment to support the Palestine revolution and to protect it from all dangers, and to insure that it is provided with everything that can increase its strength and effectiveness.
- 7- The Council will remain in session to follow up the situation.

Statement Issued By Six-Party Arab Summit Conference Held in Riyadh.

On the initiative of the Kingdom of Saudi Arabia and the state of Kuwait, a six party conference, attended by president Mohammed Anwar El Sadat of the Arab Republic of Egypt, president Hafez El Assad of the Syrian Arab Republic, president Elias Sarkis of the Lebanese Republic, Mr Yasser Arafat, Chairman of the Palestine Liberation Organization, His highness Sheikh Sabah AL Salem Al Sabah, Ruler of the state of Kuwait, and his Majesty King Khaled bin Abdel Aziz Al Saud of the Kingdom of Saudi Arabia was held in Riyadh from 16 to 18 October 1976 to discuss the crisis in Lebanon, to consider ways of solving that crisis, and to agree on the steps necessary to halt the bloodshed in the country; it was agreed to resort to dialogue rather than fighting, to preserve the security, safety, independence and sovereignty of Lebanon, and further to safeguard Palestinian resistance as represented by the Palestine Liberation Organization.

The conference recognized the national and historical commitment to enhancing the collective Arab role in such a way as to ensure the settlement of the situation in Lebanon and prevent any further outbreak of hostilities.

The conference also recognized the need to transcend the attitude and negativism of the past, to move towards the future in a spirit of conciliation, peace and construction, to provide the guarantees necessary to ensure stability and normalcy in Lebanon, to preserve Lebanese political, economic and other institutions, to maintain Lebanese sovereignty, and to ensure the continuation of the Palestinian determination.

The conference examined the situation in Lebanon and considered the measures and steps necessary to restore normalcy in that country within the context of the preservation of the country's sovereignty and independence, the solidarity of the Lebanese and Palestinian peoples, and the collective Arab guarantee of the foregoing. The Conference decided to declare a cease-fire and an end to the fighting, and pledged the full commitment of all parties to this agreement.

The conference further decided to reinforce existing Arab security forces, so that they might act as a deterrent force within Lebanon under the command of the president of Lebanon himself.

The conference unanimously rejected the partition of Lebanon in any form, whether legally or in practice, expressly or implicitly; it also unanimously confirmed the obligation to

maintain the national unity and territorial integrity of Lebanon, as well as to prevent any form of interference in that country's internal affairs.

The conference requested all Lebanese parties to engage in a political dialogue with the aim of achieving national reconciliation and establishing unity among the Lebanese people.

Agreement was also reached on the implementation of the Cairo Agreement and its annexes, and the Chairman of the Palestine Liberation Organization announced his full commitment to that Agreement. In that connection, the Conference decided to establish a committee consisting of representatives of the kingdom of Saudi Arabia , the Arab Republic of Egypt, the Syrian Arab Republic and the state Kuwait to ensure co-ordination with the president of Lebanon in respect of the implementation of the Cairo Agreement. The committee's mandate will cover a period of 90 days, beginning on the date of the announcement of the cease-fire.

The conference affirmed its commitment to the decisions of the Seventh Arab Summit Conference held in Rabat declaring the Palestine Liberation Organization the sole legitimate representative of the Palestine people , pledging the full support of all member states of the Arab League to the Palestine Liberation Organization, as well as their non-interference in the internal affairs of any Arab country.

In that connection, the Conference affirmed that participating States would guarantee the security, unity, sovereignty and independence of Lebanon. The Conference also discussed the question of reconstruction in Lebanon and the cost of removing the traces of the armed conflict and making good damage affecting both the Lebanese and the Palestinian peoples.

Resolutions adopted by this Conference will be submitted to the full Arab Summit.

Annex

Resolution of the Six party Arab Summit Conference Held In Riyadh.

The limited Arab Summit Conference , held in Riyadh from 16 to 18 October 1976, on the initiative of His Majesty King Khaled bin Abdel Aziz Al Saud of the Kingdom of Saudi Arabia and His Highness Sheikh Sabah Al Salem Al Sabah, Ruler of the State of Kuwait,

Having reviewed the resolution adopted by the council of the League of Arab States at its extraordinary sessions on 8-10 June 1976, and 1 July 1976, and its session on 4 September 1976,

Recognizing the national commitment to preserve the unity, security and sovereignty of Lebanon, to ensure the continuation of Palestinian resistance, as represented by the Palestine Liberation Organization, recognized by Rabat resolutions to be the sole legitimate representative of the Palestine people and to increase the capacity of the Palestine Liberation Organization to resist threats to the existence of the Palestinian people, their right to self determination and their right to return to their national soil,

Having faith in the unity of objective and destiny binding the two fraternal Lebanese and Palestine peoples and the impossibility of any contradiction of the interests between these two peoples,

Determined to transcend the attitudes and negativism of the past, to face the future in a spirit of reconciliation, dialogue and co-operation, to accelerate the establishment of conditions and guarantees necessary to ensure stability and normalcy in Lebanon, to consolidate the political, economic and other institutions of Lebanon, and to enable the Palestine Liberation Organization to attain its national goals,

Recognizing the positive and constructive spirit demonstrated by the leaders attending this Conference, as well as their sincere desire irrevocably and decisively to end the crisis in Lebanon and to overcome any disputes that might arise in the future,
Decides the following:

1- That all parties should definitively cease fire and terminate fighting in all Lebanese territories as from 6.00 a.m. on 21 October 1976, and that they shall all be fully committed thereto

2- That existing Arab security forces should be expanded to 30.000 men so that they might become a deterrent force operating inside Lebanon under the personal command of the president of the Lebanese Republic with, *inter alia*, the following principal task:

(a)- Ensuring observance of the cease fire and termination of hostilities, disengaging belligerent troops and deterring any violation of the agreement;

(b) Implementing the Cairo Agreement and its annexes;

(c) Maintaining internal security;

(d) Supervising the withdrawal of armed troops to positions they held prior to 13 April 1975 and removing all military installations in accordance with the schedule set out in the enclosed annex;

(e) Supervising the collection of heavy weaponry such as artillery, mortars, rocket

launchers, armoured vehicles, etc. , by the parties concerned;

(f) Assisting the Lebanese authorities when necessary with respect to taking over public utilities and institutions prior to their re-opening as well as guarding public military and civilian establishments;

3- That, as a first stage, the normal situation in Lebanon, as it existed prior to the incidents (i.e prior to 13 April 1975) will be restored in accordance with the schedule set out in the annex;

4- That the implementation of the Cairo Agreement and its annexes and the observation of the letter and spirit of their contents shall be guaranteed by the Arab states participating in the Conference; a committee is to be established, comprising representatives of the Kingdom of Saudi Arabia, the Arab Republic of Egypt, the Syrian Arab Republic and the State of Kuwait to ensure co-ordination with the president of Lebanon in respect of the implementation of the Cairo Agreement and its Annexes; the mandate of the said committee will cover a period of 90 days, beginning on the date of the announcement of the cease-fire;

5- That the palestine Liberation Organization shall affirm its respect of the sovereignty and security of Lebanon, as well as its non-interference in Lebanese internal affairs, recognizing in this respect its full commitment to the national objectives of the Palestinian cause. For their part, the legitimate authorities in Lebanon shall, in accordance with the Cairo Agreement and its annexes, guarantee security to the Palestine Liberation Organization with respect to its presence and activities in Lebanese territory;

6- That the Arab States participating in the Conference pledge their respect for the sovereignty, security, and territorial integrity of Lebanon, as well as the unity of its people;

7- that the Arab States participating in the Conference reaffirm their commitment to the decisions taken at the summit Conferences held in Algiers and Rabat to support and uphold Palestinian resistance, as represented by the Palestine Liberation Organization, and to respect the right of the Palestine people to use all means at their disposal in their struggle to recover their national rights;

8- That with respect to information:

(a) All publicity campaigns and psychological warfare by all parties should be stopped;

(b) Information activities should be directed towards consolidating the termination of hostilities, establishing peace and promoting a spirit of co-operation and brotherhood on all sides;

(c) Action should be taken to unify official information activities;

(9) That the attached Schedule concerning the implementation of these resolutions is to be considered an integral part of the resolution.

Signed:

Ruler of the State of Kuwait

President of the Syrian Arab Republic

Chairman of the Palestine Liberation Organization

President of the Lebanese Republic

President of the Arab Republic of Egypt

King of the Kingdom of Saudi Arabia

Annex

Schedule Regarding the Implementation Of The Resolution Of The Six-Party Summit Conference Held In Riyadh From 16-18 October 1976

1- Declaration of final cease-fire and termination of fighting in all Lebanese territories by all parties as from 6.00 a.m. on 21 October 1976 (D-Day).

2- Establishment of check point by the deterrent security force after the creation of buffer zone in areas of tension in order to consolidate the cease-fire and the termination of fighting.

3- Withdrawal of all armed troops, collection of heavy weaponry and removal of military installations in accordance with the following schedule:

(a) Mount Lebanon : within five days (D-Day+5)

(b) Southern Lebanon: within five days (D-Day+5)

(c) Beirut and outskirts: within seven days (D-Day+7)

(d) Northern Lebanon : within ten days (D-Day+10)

4- Reopening of international highways:

(a) The following international highways shall be reopened within five days (D-Days +5):

_ Beirut/Al Masnaa

- Beirut/Tripoli/the Borders

- Beirut/Tyre

- Beirut/Sidon/Marjoyoun/Al Masnaa

(b) Check points and patrols shall be established along unsafe routes, and shall consist of units from the deterrent security force as agreed by the parties concerned and the

commander of the said force.

5- The legitimate Lebanese authorities shall take over public, military and civilian utilities and establishments:

(a) after the removal of armed troops and non-employees, the Arab security force shall be assigned to guarding such utilities and establishment and facilitating their operation by employees who shall begin work within 10 days (D-Day+10);

(b) the utilities and establishment shall be handed over to an official central Lebanese commission which shall, in turn, be responsible for forming a sub-committee in each utility or establishment to make an inventory of its contents and to take over.

6- The forces required to strengthen the Arab security force shall be formed in agreement with the president of the Lebanese Republic, and these forces shall arrive in Lebanon within two weeks (D-Day+15).

7- As a second stage, the Cairo Agreement and its annexes shall be implemented, particularly those provisions concerning the existence of weapons and ammunition in refugee camps and the exit of those armed Palestinian forces that entered the country after the beginning of the incidents. The implementation of the agreement is to be completed within 45 days, beginning on the date of the formation of the Arab deterrent security force.

Communique Concerning The First Extraordinary Session Of The Arab Summit Conference.

Cairo, 25-26 October 1976

The Kings and Heads of State of the League of Arab States met in Cairo in order to examine the crisis in Lebanon, to consider ways of solving it, to protect the security, sovereignty and unity of Lebanon, to safeguard Palestinian resistance as represented by the Palestine Liberation Organization, and to enhance Arab solidarity.

They recognize the national and historical commitment to enhancing the collective Arab role in such a way as to ensure the settlement of the situation in Lebanon and to prevent any further outbreak of hostilities, to provide the guarantees necessary to ensure stability and normalcy, to preserve the political, economic and other institutions of Lebanon, to preserve the country's sovereignty and to ensure the continuation of Palestinian determination.

They are convinced that the liberation of the Arab territories occupied by Israel and the

recovery of the national rights of the Palestinian people, notably the right to return to their national soil and establish their own independent state, require the further strengthening of Arab solidarity, and the mobilization of Arab efforts and potential in the service of this great cause.

They are aware of the need to help Lebanon overcome its crisis and reconstruct its economy, institutions and utilities in order to restore normal life and the country's effective role in the Arab economic domain.

They have examined the present situation in Lebanon in the context of preserving Lebanese sovereignty and independence and ensuring the solidarity of the Lebanese and Palestinian peoples.

They welcome the outcome of the Six-Party Arab summit Conference in Riyadh, and express their appreciation for its achievements with respect to promoting the settlement of the Lebanese crisis, and continuation of the Palestinian resistance and the further strengthening of Arab solidarity. The Conference decides to approve the resolutions of the Six-Party Arab summit Conference published on 18 October 1976.

The Arab Kings and heads of state reaffirm their commitment to providing the necessary guarantees with respect to the consolidation of the cease fire announced at 6.00 a.m. on 21 October 1976, the aim being to put an end to all forms of fighting in Lebanon, and to restore normal life there. They further reaffirm that the Arab Security force will be strengthened so that it might become a deterrent force operating inside Lebanon under the personal command of the President of Lebanon.

They unanimously reject the partition of Lebanon in any form, whether legally or in practice, expressly or implicitly; they are also unanimous in their commitment to maintain Lebanon's national unity and territorial integrity, and to refrain from prejudicing the unity of its land or interfering in its internal affairs in any way.

They have also examined with great attention the situation in Southern Lebanon, and are extremely concerned over the growing number of Israeli acts of aggression against Lebanese territory, particularly in the South, as well as over Israel's persistence in its aggressive expansionist policy in Arab territories.

They further stress the importance of implementing the Cairo Agreement and its annexes, to which the Chairman of the Palestine Liberation Organization has declared his full commitment. They have agreed on the formation of a committee comprising representatives of the Kingdom of Saudi Arabia, the Arab Republic of Egypt, the Syrian

Arab Republic, and the State of Kuwait in order to ensure co-ordination with the President of Lebanon in respect of the implementation of the Cairo Agreement; the committee's mandate will cover a period of 90 days beginning on the date of the announcement of the cease-fire.

The Arab Kings and Heads of state reaffirm their commitment to the decisions of the Seventh Arab Summit Conference held at Rabat, decisions whereby the Palestine Liberation Organization was declared to be the sole legitimate representative of the people of Palestine, all Arab states belonging to the League of Arab States pledged their support for the Palestine Liberation Organization and undertook not to interfere in its affairs, and the Palestine Liberation Organization affirmed its policy of non-interference in the internal affairs of any Arab State.

The Arab King and Head of states have agreed that Arab countries should contribute to the reconstruction of Lebanon to the removal of the traces of the armed conflict and to the making good of damage affecting the Lebanese and Palestinian peoples, and for that purpose have agreed to extend urgent assistance to them.

The Arab Kings and Heads of State have paid particular attention to the consolidation of Arab solidarity, this being the essential basis for the success of joint Arab action and for the realization of the Arab nation's objectives concerning liberation and development. In this respect they also reaffirm their full commitment to implementing the decisions of the Arab summit conferences and the council of the League of Arab states, particularly the Charter of Arab Solidarity issued by the Casablanca Summit Conference on 15 September 1965

They have studied with great concern the explosive situation in the occupied Arab territories, a situation caused by continued Israeli occupation, the increasing incidence of oppression, intimidation and expulsion, as well as the confiscation of land and the desecration of religious places, particularly the Al Ibrahimi Mosque; all of these measures are being applied by the occupying authorities in flagrant violation of the provision of international law and the Charter of the United Nations.

They hail the steadfast Arab people in the occupied territories and their legitimate national struggle, and reaffirm the support of all Arab states.

They call on all countries and peoples of the world to condemn and stand up against continuing Israeli aggression and to discontinue any dealings with Israel that might consolidate the Israeli occupation of Arab territories, or allow the continuation of oppressive Israeli measures directed against the population of these territories.

Resolution Adopted at the First Extraordinary Session of the Arab Summit Conference

Cairo, 26 October 1976

The king and Heads of State of the League of Arab States meeting from 25 to 26 October 1976 at the quarters of the League of Arab States in Cairo,

Having examined the present situation in Lebanon and the outcome of the Six-Party Arab Summit Conference held in Riyadh, as announced on 18 October 1976, and having examined also the importance of further strengthening Arab solidarity.

Decide the following.

I- The situation in Lebanon

1- To approve the statement, resolutions and annexes, issued on 18 October 1976, by the Six-Party Arab Summit Conference held at Riyadh attached hereto; (the Delegation of Iraq did not agree to this paragraph)

2- That Arab States should, according to their individual capabilities, contribute to the reconstruction of Lebanon, and help meet the related material requirements in order to remove the traces of the armed conflict and make good damage affecting the Lebanese and Palestinian peoples; Arab States should also extend urgent assistance to the Lebanese government and to the Palestine Liberation Organization.

II- Further Strengthening of Arab Solidarity:

To affirm the commitment of the Arab Kings and Heads of State to the relevant provisions of the resolutions adopted by Arab summit conferences and the Council of the League of Arab States, particularly the Charter of Arab Solidarity published in Casablanca on 15 September 1965, and to take steps towards their immediate and full implementation.

III- Financing of Arab Security Forces:

The Arab Summit Conference:

With a view to providing the financial resources required to maintain the Arab Security

forces in Lebanon, forces established in accordance with the second resolution adopted at the Riyadh Summit Conference,

Having reviewed the relevant report of the Military Secretariat of the League of Arab States,
Decides the Following:

- 1- A special fund shall be set up to meet the requirements of the Arab security forces in Lebanon;
- 2- Each member state of the League of Arab states shall contribute a certain percentage to the fund, to be determined by each state according to its capabilities;
- 3- The president of the Republic of Lebanon shall supervise the fund, and, in consultation with the General Secretariat of the League of Arab States and those States contributing at least 10 per cent, shall work out general rules governing payments from the fund and its liquidation when its term expires; the present regulations for the Arab security force shall remain in effect until new regulations are drawn up;
- 4- The fund shall be set up for a six month period renewable by a decision of the Council of the League of Arab States; the Council shall meet for this purpose at the request of the President of the Republic of Lebanon.

IV-Renewal of the Appointment of the Secretary-General of the League of Arab States.

The Arab summit conference decides to renew the appointment of Mr.Mahmound Riad as Secretary-General of the League of Arab states for another term beginning at the end of his present term.

V-Special Resolution:

The Arab summit conference, holding its first extraordinary session in Cairo, having met in an atmosphere of brotherhood and concern with respect to the further strengthening of Arab solidarity and having successfully concluded its work is pleased to express its deep gratitude to the president, Government and people of the Arab Republic of Egypt, for hosting and welcoming the conference and providing for its success. The conference is also pleased to express its deep appreciation for the sincere efforts of President Mohamed Anwar El Sadat during preparations for the Conference for his wise chairmanship, which enabled the Conference to attain its objectives, and for his efforts towards the further strengthening of Arab solidarity.

The Cairo and Melkart Agreements: Regulation of PLO presence in Lebanon.

The Cairo Agreement, 3 November 1969.

On Monday, 3 November 1969 the Lebanese delegation headed by Army Commander Emile Bustani and the PLO delegation headed by Yasser Arafat met in CairoIt was agreed to re-establish the Palestinian presence in Lebanon on the basis of :

- 1- The right of Palestinians presently living in Lebanon to work, reside and move freely;
- 2-The establishment of local committees from Palestiniens living in the camps to look after the interests of Palestinians there, in cooperation with the local authorities and within the context of Lebanese sovereignty;
- 3-The presence of command centers for the Palestine Armed Struggle Command inside the camps to cooperate with the local authorities and guarantee good relations. These centers will handle arrangements for the carrying and regulations of arms within the camps, taking into account both Lebanese security and the interests of the Palestinian revolution;
- 4- Permission for Palestinian residents in Lebanon to join the Palestinian revolution through armed struggle within the limits imposed by Lebanese security and sovereignty.

Commando Operation

It was agreed to facilitate operation by Palestinian commandos through:

- 1- Assisting commando access to the border and the specification of access points and observations posts in the border region;
- 2- Ensuring the use of the main road to the Arqub region;
- 3- Control by the Palestine Armed Struggle command of the actions of all members of its organizations and to prevention of any interference in Lebanese affairs;
- 4-The pursuit of mutual cooperation between the Palestine Armed Struggle Command and Lebanese army;
- 5- An end to media campaigns by both sides;
- 6- A census of the complement of the Palestine Armed Struggle command through its leadership;
- 7- The appointment of representative of the Palestine Armed Struggle command to the Lebanese High Command;
- 8- Study of the distribution of suitable concentration points in the border regions to the Lebanese High Command;

- 9- Organization of the entry, exit and movement of Palestine Armed Struggle elements;
- 10- Abolition of the Jainoun base;
- 11- Assistance by the Lebanese Army in the work of medical centers, and evacuation and supply for commando operations;
- 12- Release of all internees and confiscated arms;
- 13- Acceptance that the civil and military Lebanese authorities will continue to exercise effective responsibility to the full in all region of Lebanon and under all circumstances;
- 14- Confirmation that the Palestine Armed struggle acts for the benefit of Lebanon as well as for all Arabs.

The Melkart Agreement, 17 May 1973.

Both parties eagerly agree to serve the Palestinian cause and to continue its struggle, and to preserve the independence of Lebanon and its sovereignty and stability, and in the light of contracted agreements and Arab decisions, comprising: the Cairo agreement and all its annexes; agreement concluded between Lebanon and the leadership of the resistance forces; and decisions taken at the joint Arab Defence council; it was agreed on all points as follows

Presence in the Camps of Personnel

- 1- No commando presence;
- 2- Formation of permanent Palestine Armed Struggle Command units;
- 3- Confirmation of militia presence for the guarding and internal protection of the camps. By militia is understood Palestinians residing in the camps who are not members of the resistance force and who practice normal civilian duties;
- 4- Establishment of a guardpost for Lebanese internal security forces at a location to be agreed upon close to each camp.

Presence in the Camps of Arms

- 1- The militia will be permitted to carry light arms individually;
- 2- No medium or heavy weapons will be permitted within the camps (e.g mortars, rocket launchers, artillery , anti-tank weapons, etc.)

Presence in the Border Regions

- 1- Western sector: presence and concentration outside the camps is forbidden
- 2- Central sector: According to agreements made at the meeting between the Lebanese High Command and the resistance forces leadership in 8 October 1972: Presence will be

permitted outside Lebanese village in certain areas by agreement with the local Lebanese sector commander. Resistance forces are not permitted east and south of the line running Al-Kusair/Al-Ghandouriya/Deir Kifa/ Al-0Shihabia/ Qana. This prohibition applies to all these points inclusively. Concentration of resistance forces at a guardpost south of Hadatha is permitted. The number allowed is between five and ten men in civilian clothes, with all military appearance to be avoided. They will be supplied by animal transport. At all these places the total number permitted must not exceed 250.

3- Eastern sector : According to decisions taken by the Lebanese High Command and the resistance forces leadership, three bases will be permitted in the Southern Arqub at Abu Kamha Al- kharbiya (Al-Shahid Salah base) and Rashaya AL Fakhar (Jabal Al Shahr). Each base will contain no more than 30 to 35 men each. Supply for these bases will be by motor-transport. Elements at these bases will be forbidden to proceed in the direction of Marjayoun unless they have a permit. The carrying of arms in Marjayoun is forbidden. In the northern Arqub and at Tashaya al Wadi, presence is permitted at a distance from the villages, but not west of the Masnaa-Hasbaya road. .At Ballbeck no commando presence is permitted except at the Nabi Sbat training base.

Note: Medium and light arms are permitted in these sectors; commando presence inside Lebanese villages is not allowed; all units which have been reinforced in Lebanon from abroad will be adjusted.

Movement in the Camps

Movement will be allowed without arms and in civilian dress.

Movement in the Frontier areas

Movement will be allowed by arrangement with local Lebanese commanders and according to agreement.

Movement of Civilian and Military Leaders

Military leaders will be allowed to move freely provided they are above the rank of lieutenant, carrying no more than a personnel weapon and are accompanied by a driver only. Civilian leaders will be supplied with numbered permits signed by the responsible joint liaison committee. The number of permits issued to area leadership will be determined by the Lebanese Liaison centre and supplied under the request of the Palestinian Political Committee in Lebanon.

Military Training

Military training is forbidden in the camps but allowed at the training base at Nabi Sbat. Technical military training is permitted at points to be agreed upon by arrangement with the Lebanese High Command liaison centre. Practicing with arms is forbidden outside the training base.

Operation

All Commando operation from Lebanese territory are suspended according to the decision of the Joint Arab Defence Council. Departure from Lebanon for the purpose of commando operation is forbidden.

Command

The Palestinian side reaffirm that the chief command base is Damascus, and that the Damascus office has representatives in other countries including Lebanon. The Palestinian side pledged to reduce the number of offices in Lebanon.

Informations

The Palestinian side affirmed that the resistance in Lebanon only produces:

- a- Filastin al-Thawra;
- b- Wafa news agency, in addition to certain cultural and educational publications issued by palestinian organization for for their own use;
- c- The Palestinian side pledged that these publications would not touch upon the interests and sovereignty of Lebanon;
- d- The palestinian side adheres to the abstention form broadcasting in Lebanon;
- e- the Palestinian side pledges not to involve Lebanon in any of its publication or broadcast news items or announcements emanating from resistance sources in Lebanon.

Controlling Contraventions and Offences

Lebanese laws will be implemented on the basis of Lebanese sovereignty and offenders will be referred to the responsible courts.

1- Contraventions in military sectors will be submitted to local liaison committees. In cases where no result is achieved, they will be referred to the Higher Coordination Committee which will give an immediate decision.

2- Contraventions inside the camps will be the charge of the internal security forces in cooperation with the Palestine Armed Struggle Command, regarding the pursuit of all

crimes, civil or criminal, which occur within the camps whoever the offender. They will also be responsible for delivering all legal notices and orders pronounced against persons residing in the camps. Incidents occurring in the camps between the commandos which have a bearing on the security and safety of the Palestinian revolution will be excluded from this procedure and be the responsibility of the Palestine Armed Struggle Command.

3- Contraventions outside the camps shall be subject to Lebanese law. The Palestinian Armed Struggle Command will be informed of detention and the procedures taken against offenders. In the case of commandos being apprehended in an offence and where the Lebanese authorities deem necessary the co-operation of the Palestine Armed Struggle command, contact will be made through the liaison committee and the decision on the offender will be left to the Lebanese authority.

The Palestinian side condemned detention of any Lebanese or foreigners and the conduct of any investigation by resistance forces and pledged no repetition of such matters.

Regarding traffic offences, it has been agreed previously that a census would be taken of cars with Lebanese number plates under the auspices of the Internal Security forces, and cars entering Lebanese territory under temporary licensing regulations of the customs authorities. Therefore any commando vehicle on Lebanese territory will be prohibited unless it carries a legal license according to Lebanese traffic regulation.

Foreigners

By the term Foreigners it meant not Arab commandos. The Palestinian side pledges to deport all foreigners with the exception of those engaged in non-combatant work of a civilian or humane nature (including doctors, nurses, translators and interpreters).

Coordination

Implementation will be supervised by the liaison Committee and its branches in accordance with the Palestinian side.

Highly Confidential

Aspiration of the Palestinian side After the Joint Meeting.

Re-establishment of the atmosphere to its state before the incidents of 9 May 1973;

Gradual easing of armed tension;

Reduction of barriers of suspicion;

Aspirations towards the cancellation of the emergency situation;

Dealing with the matter of fugitives from the law particularly those persons pursued as a result of the incidents of 23 April 1969;

Freeing of those persons detained as a result of the incidents of 2 April 1973;

Return of arms confiscated since 1970;

Facilitation of employment for Palestinians resident in Lebanon

For the Palestinain side

Lt Col Abal Zaim

Abu Adnan

AlSayyid Salah Salah

For the Lebanese side

Lt Col Ahmd Al-Hajj

Col Nazih Rashid (Col Salim Mogabghab

Col Dib Kamal

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