



Principle of State Sovereignty in View of the Doctrine of the Obligation to Preserve

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Research Article

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Abstract

In the preamble to the United Nations Charter are stated the ambitions, aims, and principles that guide the functioning of the UN's pillars. The foundation of the system should be based on the ideals of fairness, as suggested by ideas like equality between UN member states and equality of big and small countries. Respect for the rules of international law regulating the UN Charter is a prerequisite for sovereign equality among UN member states. There is a foundational concept of sovereign equality of states that underpins other principles, such as the principle of non-interference and the principle of member states' geographical integrity and political independence. The idea of protectionism and the actions of sovereign nations are essential to the international community because they are consistent with the premise of sovereign equality of states and because they ensure the internal and exterior parts of sovereignty are met. Aside from the difficulties in implementing the principles of non-interference in the internal affairs of states and the doctrine of responsibility to protect, one could argue that government serves as a means of expressing and upholding the sovereign equality of states. Since the responsibility to protect doctrine emerged and has been applied over time, it has eliminated ambiguities and shortcomings and realized proof of a logical relationship between the principle of sovereign equality of states and the doctrine of responsibility to protect. Nevertheless, there are aspects of the conflict between the two that are disputed. In this article, we examine the theory and practice of the UN Charter's concept of sovereign equality of states, as well as their interrelationship, and we apply the duty to protect doctrine.

Keywords: United Nations Charter, Justice, Equality, Principle of the sovereign equality of States, Doctrine of responsibility to protect.

Introduction

Both the internal and exterior components of sovereignty are essential to the international community, and the duty to defend doctrine identifies sovereignty as a responsibility. Taking up the duty to safeguard human rights does not undermine sovereignty; on the contrary, it empowers it to meet its supporting commitments via compliance. Within the context of the concept of non-interference in the internal affairs of nations, there is also some debate about the need of paying attention to the principle of sovereign equality of states and communicating with the obligation to protect. How therefore may



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

the state's internal affairs be intervened with by the state to guarantee the preservation of human rights? As a result, the concept of non-intervention may be distorted or even violated. This article examines the idea of duty to protect and its contradiction with the principle of sovereign equality from the perspective of non-intervention, which may be seen as an expression of that principle. Discrimination against human rights violating regimes in international institutions is another issue connected to government support for human rights and the principle of equality; this necessitates nondiscriminatory sanctions and penalties that respect sovereignty. International courts must fairly and in accordance with the equalizer apply actions against existing regimes that violate human rights in order to observe the principle of sovereign equality. However, the international community's and procedures' experience shows that weak states, like African governments, are the ones most impacted by crisis pressure. Important in this context is the decision of the Organization of African Unity's Secretary General about Bashir's detention. Despite the prevalence of crime in other regions of the world, including Iraq, Gaza, Colombia, and the Caucasus, he claims that international criminal justice is only planning to impose anti-crime regulations on the African continent. It is often believed throughout Africa that the International Criminal Court is only chasing Africans, according to Senegal's president. As a matter of obvious reasoning, the international community has come to the conclusion that the intergovernmental notion of state equality is necessary. The connection must be founded on equality in a setting where every subject has sovereign rights. The "individual self is not superior to everyone" premise is based on the legal-philosophical understanding of the Roman jurists. Paragraph 1 of Article 2 of the UN Charter declares, "The United Nations is based on the principle of sovereign equality of its members." This idea of perfect equality of nations has definitely made its way into international law. A chain of reasoning leads to the conclusion that the principle of equality of states is fundamental. This principle underpins many other principles, such as the following: the right to self-determination with regard to one's own government and its internal affairs; the protection of one's own territory and political independence; the right to control one's own natural resources; and the right to be free from prosecution by other governments and their ministers and leaders. It is stated in the United Nations Charter, which was adopted on October 24, 1970, that "The principle of perfect equality state" must be upheld by all governments, regardless of their social, economic, political, or any other diversity, everyone is an equal citizen with the same rights and responsibilities in the global society. Governments have an equal right to participate in activities, employment, and organizational choices according to the basic concept of equality of states. There is no legal basis in this research for any argument or rationale that makes use of economic, military, or demographic importance to make an inequity of responsibility or profit from particular rights under the UN system. Inequality in organizations is not caused by activities like certain Member States' active involvement in peacekeeping operations or their financial contribution in supporting the organization. In this study, we analyze the controversial aspects of the UN Charter, which deals with the veto power of the five permanent members, the funding roles of some members, the presence of some members of the armed forces in peacekeeping operations, and other measures that demonstrate the paradigm of inequality among UN members.

Sovereignty and equality

Nature of the states: The principle of sovereign equality in the legal system of the United Nations requires recognition of the state as noble institution of international law. The structure of public international organizations is formed from states, and thus first, we speak about states. In regard to the importance of the state, it is necessary to remind famous sentence of Ansilloti. He, who is a



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

follower of the school of voluntarism, writes: "True international law stems only from the will of the government" (Nguyen Coke Din and others, 2003).

Triple, in the context of the common theory of state says, "Source of law in the first place is the government." Also in relations between the states, source of law can be nothing but the will of the government" (Nguyen Coke Din and others, 2003). The concept of government within the framework of international law is as follow:

State is an institution; having given territory and permanent population that is under the supervision of the relevant government and other institutions to establish formal relations (Wallace, 2010). Indices of being state, in the 1933 Montevideo Convention are as follows:

The state as a person of international law should possess the following characteristics, (a) a permanent population; (b) a given territory; (c) government; (d) jurisdiction to establish international relations with other states (Wallace, 2010).

The emphasis in this paper on the state and its legal nature is because of a centrality of this topic, which means UN member states are equal states and interact with each other based on the principles enshrined in the UN Charter. And in the light of these fundamental principles, the continuity and durability and retain their basic elements (elements of government) from any interference by any other person or entities. Thus, according to the above description, state is an independent entity that is not subject to any other members of the international community. On the contrary the government is directly subject to international law and this situation gives the government a legal protection (Nguyen Coke Din and others, 2003).

Justice and equality: Justice may be expressed in several ways, and equality is one of them. Everyone agrees that defining and understanding equality is essential to any theory of justice that seeks to answer questions raised by Aristotle's writings on the subject in *Politic* (Vittorio Bufacchi, 2010). Having said that, how exactly did the framers of the UN Charter see equality? Does this idea represent a real equality of rights across states or is it only a legal one? This implies that all governments are equal in power and are bound by the same rules of international law. Paragraph one of Article 2 of the United Nations Charter stresses the importance of equality. Any state has the same character as any other state, and having equal rights implies that all states are protected equally by international law. According to Bruno Simma (1996), it is qualified and opposed to the unfettered implementation of international law. Consequently, the goal is not to achieve legal parity. The fact that various governments have different privileges does not diminish their inherent equality under the law. The United Nations Charter's stipulation of equality serves as a foundation for further concepts. This concept is shown not only via the expression of justice, but also by the fact that several of the UN's ideals, such sovereignty and equality of member states, have their origins in equality. The equality concept outlined in paragraph 1 of Article 2 of the Charter ensures the non-interference norm in the internal affairs of states, which is based on the similarity of state power. In addition to "non-interference," "non-discrimination," and "quid pro quo," the international system and the United Nations rest on the idea of equality, which is a basic notion of justice. In today's world, multinational communities are comprised of diverse and unequal individuals from many national backgrounds. There is a significant disparity between nations in terms of social and environmental factors, population size, territory, resources, and development (Falsafi, 2011). A lack of balance in the responsibility to respect the laws and freedoms of members



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

of the international community is based on the assumption that tiny nations lack actual political independence, which is the basis for much of the political influence of great countries. There is a clear example of prejudice and inequality in the UN legal system when the five permanent members of the Security Council are granted "special privileges" via the veto. A two-thirds vote of all members, including five permanent members, is required for the United Nations Charter to go into effect. Supporting international peace and security is of the utmost importance, as is the specific power of the Security Council. So, to sum up, weak nations are associated with strong states under the UN Charter Treaty, which initially delivers equality and, optimistically, these equal rights might increase inequality of weak governments. To grasp the idea of justice, which some academics have equated with equality, is necessary for comprehending the principle of sovereign equality in the United Nations Charter. The foundation for the existence of the international community is equality, and justice is seen as the tacit or explicit language of this need. To be sovereign in the sense of a state and all that it entails, one must be able to live in an environment free from hostility, harassment, and violence, and to establish laws founded on principles of fairness and equality. Independence and parity: It is the same in international law as it is in public and constitutional law: everyone is equal in the eyes of the law. In order for all states to be considered equal under international law, as stated in the theory of sovereignty As stated by Höben Pheldern in 2012. How does international law define the sovereign equality of states? That is the question at hand. All subjects of international law are treated equally, according to the United Nations Charter's definition of equality in paragraph one of Article 2. The organization's foundation rests on the idea of sovereign equality of all its Members, as stated in Paragraph 1 of Article 2 of the Charter. Nevertheless, as stated in paragraph 1 of Article 18 of the UN Charter, every member of the General Assembly has one vote.

Developing states on the one hand resort to the concept of "sovereign equality", where the principle of "one state - one vote" in the General Assembly, benefits in its two-thirds majority. On the other side, arguing that in many years have been violated by the major powers (the developed countries today), in order to compensate weakening happened to them, and they expect certain behavior. And in this case we have the concept of "inequality compensation".

The principle of sovereign equality of states: The principle of sovereign equality of states is one of the five principles of peaceful coexistence that was proposed in Asian-African Conference 1955 in Indonesia with all third world governments and was approved by all members. Subsequently, the Conference of NAM member states Bandung has approved this principle as one of the tenets of international law in the statutes of the organization and as a basis for government relations with each other. The simple meaning of principle of sovereign equality is that all states have equal sovereign right and this right must be respected by governments. All states have equal duties and rights and all, regardless of differences in economic, social, political, demographic, geographic, etc. equal members of the international community. This principle is reflected in various international pages. The principle of sovereign equality above all is reflected in the Charter of the United Nations and is accepted by the international community. In paragraph 1 of Article 2 of the Charter of the United Nations it is stated that "organization, based on the principle of equality, has sovereignty of its members." Indeed, governments are members of the organization. Sovereign equality is a fundamental principle.

Permanent existence of members of the UN Security Council and its veto in the United Nations



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

they represent inequality. Each of these five countries can struggle, with their veto, any resolution that most other states would agree to it, while the 193 countries are member of this organization. In short, the content of the principle of sovereign equality is as the following:

- All states have equal rights each state is benefited from special rules of sovereign.
- The government must respect each other's sovereign equality and properties. They also shall ensure that all rights of other states to respect the sovereignty and legal personality.
- Each state has right to choose its political, social, economic and cultural system grow it and to develop their own legal and administrative provisions of legislation.
- Governments are obliged to respect each other on contact and stable relationships with other governments.
- Each state is entitled to participate in international organizations and agreements.
- The government should implement their obligations under international law (Hasanvand, 2014). These are the basic elements of equal sovereign. And governance is achieved only when equal rights exist in the international system and equality in international relations is the condition of implementation right of sovereignty.

Substantive equality and right equality: Classification is necessary for the consequences of equality analysis. To the extent that it is feasible to get incorrect results while seeking equality in the organic analytic form. Given that There are two distinct types of equality that are considered in organic analysis of the charter for equality: substantive equality and right equality. In the instance of German immigrants residing in Poland, this categorization was deliberated and supported by the Permanent Court of International Justice. To begin, the Court has ruled that: "Substantive equality is specific enough as legal equality in the absence of discrimination in law" (Charles, 2007). Moving on to this topic, he offers some commentary: Discrimination of any type could not arise due to the existence of legal equality. Equal rights, however, may need unequal conduct in order to achieve harmony in various contexts. Therefore, substantive equality is the equality of states, notwithstanding the fact that the law differentiates between them in some instances. Equality that is bestowed onto individuals in the form of rights is known as right equality.

In the 20th century, the idea of equality was somewhat similar to justice. Justice, when applied to the idea of equality, always leads to sovereignty and independence. The idea of equality as it pertains to the importance of justice has recently given rise to a new equilibrium in international relations, whereby powerful states are obligated to respect equality in order to preserve their legitimacy and weak states are relieved of pressure when they enter into contracts with stronger states.

The responsibility to protect

The doctrine of responsibility to protect, in fact, answers to questions about the intervention of the human pain and suffering caused by genocide, war crimes, ethnic cleansing and crimes against



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

humanity. This principle, known as the doctrine of responsibility to protect, first were discussed in the report of the International Commission on Intervention and State Sovereignty countries. It was 2005 accepted in the World Summit and was reaffirmed in the Resolution 1674 of the Security Council. (Simbar, Ghorbani, 2012). Responsibility to protect, in fact is providing a new and also carefully and planned approach to a perfect replacement for challenging the concept of "humanitarian intervention". The "responsibility to protect" is totally different concept from humanitarian intervention. A set of actions, that should be undertaken because of this doctrine is concluded from three aspects, the responsibility for prevention, response and reconstruction. And perhaps most important aspect of responsibility is the responsibility for prevention. Even in the response phase, a series of political and economic and other measures are intended. And permits military intervention is given by the Security Council only as a last resort in extreme conditions and in the presence of specified criteria. And together, these measures only apply to certain types of crimes (Ghaderi and Ghorbannia, 2013).

Redefining sovereignty in the light of the doctrine of responsibility to protect: In order to bring about the "responsibility to protect" concept, the International Commission on Intervention and State Sovereignty has proposed a redefinition of this regulation. In order to achieve this goal, it is possible for all countries to pledge to safeguard their citizens and the global community, even if it means intervening and using force in severe cases (an emergency). Sovereignty, the Commission argues, inherently entails providing equal protection to all citizens of a nation from harm and disasters. Thus, this is not an entirely novel idea; the 1948 Genocide Convention made reference to it as well (Dolatkhahi). According to the Commission, "sovereignty" implies that governments must ensure the safety of their citizens. If a government refuses to exercise its sovereign powers or creates an environment where citizens' rights are violated, then the onus is on the international community to step in and help. The "right of humanitarian intervention" is therefore superseded by the "responsibility to protect" (Dolatkhahi) as the guiding principle of the Commission's work. The United Nations Charter, asserts the Commission, is the primary source of the first restriction on national sovereignty and global accountability. The Commission asserts that the government's acceptance of the UN Charter signifies a shift in rulemaking, since the definition of sovereignty has changed from "control and supervision" to "responsibility for internal and external tasks" since the UN Charter came into effect. According to Dolatkhahi, the international community is accountable for carrying out its tasks after UN members accept certain limitations on sovereignty.

The dimensions of doctrine of responsibility to protect: Report of the International Commission on Intervention and State Sovereignty countries for full responsibility to support has emphasized on three factors of prevention, response and post-conflict reconstruction, as elements of the responsibility to protect (Jabbari, 2011). If the international community realize that citizens suffer from one form of identification damage and the country is not able or willing to protect the public, the international community is committed to initiate and support measures. If the conflict and aggression are so that continue of prevention is considered as a useful option, the international community must use all possible measures other than military intervention, to prevent public. Sanctions, political and diplomatic pressure and other coercive measures should be used; in this case, military intervention takes place as a last resort and after careful consideration of all facts and concepts. The international community and especially the General Assembly and the UN Security Council must, by identifying factors driving human rights crisis and the adoption of appropriate mechanisms, prevent any cases of human rights violations



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

Responsibility to protect threat to sovereignty: Critics of the application of the doctrine of the responsibility to protect by the international community to support the people of other countries, while consider this as new form of colonialism also knows it as a threat to the sovereignty of the state under the protection of human rights (Wha Lee, 2012). In the meantime, the struggle is going on between proponents of traditional and modern definition of sovereignty (Ghavam, 2010). The most important concern of supporters of traditional state can be restricted to two categories:



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

- A) Lack of effectiveness of non-aligned countries on the Security Council decisions and even not taking their participation in decision-making seriously; Commenting Abdelaziz Bouteflika could well explain this: We do not deny that the United Nations has an obligation to prevent human suffering, but we are very sensible about our sovereignty. Not only because sovereignty is the last defense against the rules of unequal world, but because we do not participate in the decision-making process of the Security Council (Ghavam, 2010).
- B) Uncertainty about the extent of which can limit sovereignty. The case can also be named as the risks of abuse of the principle of responsibility to protect

Concerns about governments seeking unilateral action in other countries stem from the fact that the notion of duty to protect is still in its early stages and has not been codified in legally enforceable international agreements. Since emerging nations were afraid that the major powers might meddle in their internal affairs, they took precautions while introducing the idea of duty to safeguard. The contentious 2003 military invasion of Iraq only served to heighten these worries. There is a genuine danger of distorting the philosophy in the remarks used by the US and UK to justify this as a humanitarian action.

Russian military intervention in Georgia and its justification by the Secretary of State, highlighting the country's constitution to protect Russian citizens, demonstrated that the risk of misuse of the doctrine of responsibility to protect remains, even though the 2005 Final Document and the report of the Secretary-General identify it, and the Security Council is the competent organ to decide. A worldwide center for the Responsibility to preserve researchers' findings indicate that Any military action by Russia should have been authorized by the United Nations, regardless of the amount of proof about crimes in Georgia. However, this time is also permitted after diplomatic attempts. As stated in the 2005 World Summit conclusion paper, the use of military action is likewise meant to be a last option and requires consent from the Security Council. Nevertheless, proponents and detractors of the idea of natural resources were both worried about the concept's growth and its impact on situations like the one in France caused by storm Burma, even though the international community had already agreed to set limits and responsibilities for protecting these resources. The idea of duty to protect has, according to a thinker, managed to gain widespread recognition quite rapidly. If implemented correctly, this philosophy has the ability to foster a sense of shared accountability for the prevention of basic violations of human rights. Meanwhile, the UN plays a pivotal role in developing international legitimacy for this concept by providing a correct definition and outlining its boundaries and scope of application.

The principle of equality in the Charter of the United Nations

The major powers, including China, England, America and the Soviet Union in Atlantic Charter (1941) and also in the Moscow Declaration of 1943 have declared the necessity of establishing a global international organization, so that, the organization was based on the principle of equality



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

regimes of all peace-loving countries. The Dumbarton Oaks Conference that was prepared for the United Nations Charter by the great powers, it was announced that the intent and purpose of the organization is equality between men and women of large and small nation, which is explicitly mentioned in the preamble to the UN Charter. Following, it was quite clearly stated in Article 2, paragraph 1 of the Charter of the United Nations that the organization is based on the principle of sovereign equality among its members. The emphasis of the UN Charter principle of sovereign equality in Article 78 of the Charter of the trusteeship system is also important, which states, trusteeship system includes the countries that have become members of the United Nations and their relationships is established based on respect for the principle of sovereign equality. From this material, it is understood that no state is superior to any other (Anand, 1986).

The principle of sovereign equality of States was considered at the San Francisco conference. The conference stated: "the principle of the sovereign equality of states is understood the following elements: 1. Governments are legally equal. 2. Each State benefit from its inherent rights, according to its sovereign. 3. The legal character of the government is respected, as well as the territorial integrity and political independence of it, is respected.

Governments should act in good faith to assignments, based on the existing order of international law and its international obligations. International Law Commission on the Draft of Declaration of the Rights and obligations of states in 1949 said that any state has legal equality to other states.

Conclusion

The founders of the United Nations Charter took into account the idea of sovereign equality of nations as a foundational concept of international law that would guide the organization's operations and decision-making bodies. Since this principle is closely related to other principles mentioned in the Charter, we can infer that some Charter principles, like the principle of non-interference in the internal affairs of another state, are derived from the principle of sovereign equality of Member States of the United Nations. The international community and current events do not always conform to the premise of sovereign equality of nations. The growing idea of personal accountability for one's safety is one such aspect. Despite the writer's familiarity with the idea of complete equality of states, the following difficulties arise when attempting to reconcile the obligation to protect doctrine with the idea of sovereign equality of states. The ever-expanding scope of international law gave rise to the concept of duty to protect. Nevertheless, there are many who view the responsibility to protect doctrine as more of a symbol of injustice and inequality than a tool to safeguard international member states' rights. They worry that it could usher in a new era of colonialism, where countries' sovereignty is undermined in the sake of protecting human rights. This goes against the principles of sovereign equality of governments, which are codified in the United Nations Charter.



International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

The idea of "responsibility to protect" has the potential to gain widespread acceptance throughout the world very soon. And it may, with the correct application, foster a sense of shared accountability for the prevention of basic human rights violations. At the same time, the United Nations plays a pivotal role in defining the doctrine correctly, outlining its boundaries and its applications, and boosting its credibility on the global stage. The following recommendations are provided in this part:

1. A new duty concept to preserve the natural world is taking shape. Furthermore, it has not yet escaped from its lack of experience in the international community's activities. On the one hand, the UN charter requires revising and updating so that its norms and principles are consistent with one another. This is especially true when it comes to the connection between the idea of duty to safeguard and the principle of the sovereign equality of member states. The updated Charter states that in keeping with the idea of sovereign equality of Member States, it is essential to provide suitable chances to implement the philosophy of responsibility to protect.

It would seem that a new system based on the notion of duty to protect is required in order to establish mechanisms for unequal compensation, with respect to the ideas of legal equality and actual equality. This method offers a fresh perspective on the notion of duty to safeguard citizens from economic injustices, discrimination, and underdevelopment that stem from ethnic tensions and civil wars.

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International Journal of Legal Theory and Legal Doctrine
Volume 1, Issue 1 2025

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