Principle of Sovereign Equality of States in the Light of the Doctrine of Responsibility to Protect

Behrooz Moslemi
Department of Law, Chalous Branch, Islamic Azad University, Chalous, Iran

Ali Babaeimehr*
Department of Law and Political Science, Chalous Branch, Islamic Azad University, Chalous, Iran
*Corresponding Author Email: Alibabaeimehr@gmail.com

Abstract

Mentioned phrases, in the preamble of the UN Charter are embody the aspirations, goals and principles that direct the performance of the pillars of the United Nations. Concepts such as equality of large and small nations, equality between UN member states, suggest the basing of system on the principles of justice. Requirement for sovereign equality among member states of the United Nations is observance on principles of international law governing the Charter of the United Nations. Principles such as the principle of non-interference and territorial integrity and political independence of member states are rooted in the principle of sovereign equality of states. One of the aspects that has a logical connection with the principle of sovereign equality of states is doctrine of protect responsibility and their action that makes the internal and external aspect of sovereignty, necessary to the international community. Away from the challenges of applying the doctrine of responsibility to protect and the principle of non-interference in the internal affairs of states and the doctrine of responsibility to protect, government can be considered a form of expression and constitutive principle of sovereign equality of states. However, aspects of the conflict between the principle of sovereign equality of states and apply the doctrine of responsibility to protect is disputed that is due to emersion of doctrine of the responsibility to protect and applying it over time eliminate the ambiguities and shortcomings and realizes proof of logical relationship between the doctrine of responsibility to protect and attend principle of sovereign equality of states. In this paper despite studying the theoretical and practical aspects of the principle of sovereign equality of States under the Charter of the United Nations, we also analyze the relationship between these principles and apply the doctrine of responsibility to protect.

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

The doctrine of responsibility to protect is the identification sovereignty as responsibility that makes the internal and external aspect of sovereignty, necessary to the international community. Responsibility for the protection of human rights, not only does not weaken sovereignty, but also enables it to comply with observance to supportive obligations. Attention to the principle of sovereign equality of states and communicate with the responsibility to protect, within the framework of the principle of non-interference in the internal affairs of states, is also is debatable. So that can the government ensure the protection of human rights be achieved through interference in the internal affairs of states? This can distort or violate the principle of non-intervention. According to the fact that the principle of non-intervention can be considered a manifestation of the principle of sovereign equality, Aspects of the conflict between the doctrine of responsibility to protect and the principle of sovereign equality are discussed in this article. Another topic related to government support for human rights and the principle of equality is discrimination against regimes that violate human rights in the international institutions, which means the respect for sovereignty and equality between sanctions and penalties should be non-discriminatory. Observing the principle of sovereign equality requires the actions of international courts of human rights violations by the regime to be applied fairly and in compliance with the equalizer applied to existing regimes, while the experience of the international community and procedures indicate that pressure in a crisis, is mainly weak states such as African governments.

In this regard, the Secretary General of the Organization of African Unity sentence for Bashir's arrest is important. He has said: International criminal justice plans to implant rules of combat with crime only in the continent of Africa, as if there are no news of these crimes in other parts of the planet, such as Iraq, Gaza, Colombia and the Caucasus. Senegal's president said earlier that in Africa it is widely thought that The International Criminal Court pursuing only Africans.

The principle of equality of States is a logical necessity that is concluded of the international community in intergovernmental concept. In an environment in which all subjects have sovereign rights, the relationship must be based on equality. Legal - philosophical interpretation of Roman jurists of the concept of "individual self is not superior to everyone" is the basis of this principle. Perfect equality of states was clearly entered international law and has appeared in the form of a legal principle in paragraph 1 of Article 2 of the UN Charter "The United Nations is based on the principle of sovereign equality of its members."

The importance of the principle of equality of States is the result of logical reasoning, in which the principles of the prohibition on intervention in the internal affairs of States, respect for territorial integrity and political independence, sovereignty over natural resources, immunity from prosecution and enforcement of foreign governments and leaders and ministers of all states is based on the general principle of equality of states. "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, according to the Charter of the United Nations General Assembly adopted on 24 October 1970, in order to achieve the purposes and principles of the UN Charter stipulates, "The principle of perfect equality state", has confirmed that governments regardless of social, economic, political or any other
differences, all are equal members of the international community and have equal rights and duties. The general principle of equality of states guarantees the equal right of participation of governments in activities, employment, and decisions of organizations. In this study, it is important to note that any justification or argument based on economic or military or population significance, to the making inequality of duty or benefit from certain rights in the UN system, have no legal validity. Activities such as active participation of some Member States in peacekeeping operations or financial participation in funding the organization are not any reason for the inequality in organizations. Attention to the veto of the five permanent members of the Security Council and the role of some members of the organization in funding, also, existence of some members of the armed forces in peacekeeping operations, as well as measures stemming from Chapter VII of the Charter, shows the paradigm of inequality of members of the organization that in this study, we analyze their controversial aspects.

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 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: One of the concepts, which are the expression of justice, is equality. Aristotle in his book, Politic, says about justice; it is generally accepted that the search for a theory of justice, involves the definition and interpretation of the notion of equality (Vittorio Bufacchi, 2010). Now, what is the concept of equality, which is intended to the authors of the Charter of the United Nations? Does this concept express the equality of right between states or it just means legal equality? This means that governments have the same rights and duties, or that governments are supported by international law equally. A sense of equality is emphasized in paragraph 1 of Article 2 of the UN Charter. Equal right, means having equal protection of international law and any state has character similar to other states. And it is qualified against the free execution of international law (Bruno Simma, 1996). Therefore, equality in rights is not the purpose. Governments may have different rights, but this does not conflict with their legal equality. The principle of equality enshrined in the UN Charter is the basis for some other principles. This principle is manifested not only in the form of manifestation of justice; also the root of some of the principles of the United Nations can be searched in equality, principles such as sovereignty and equality of member states. The principle of non-interference in the internal affairs of states, which is derived from the similarity of state authority, is a principle that is guaranteed by the principle of equality set forth in paragraph 1 of Article 2 of the Charter. The principle of equality as one of the fundamental concepts of justice is infrastructure of development of the principle of "non-interference", "Non-discrimination", “quid pro quo " and some other principles that The United Nations and the international system is based on it.

The international communities in the current era are of organs such as the members of different national communities and unequal. Countries in terms of natural and social elements, extent of territory, population and natural resources and level of development are in unequal state to each other (Falsafi, 2011). Most political influence of big powers predicate lack of real political independence of small states and there is no balance in the obligation to respect the rules and the freedom of members of the international community.

Veto "special privileges" which is reserved for the five permanent members of the Security Council, brings a manifestation of inequality and discrimination in the legal system of the United Nations in mind. The entry into force of the Charter of the United Nations is subjected to the approval of two thirds of the members, including five permanent members. As well as the special authority of the Security Council, with the aim of supporting international peace and security is especially important. In short, weak states under the UN Charter Treaty allied with the powerful states of the world that first, brings equality, and these equal rights, from optimistic view, can promote inequality of weak governments.

Principle of sovereign equality in the UN Charter requires an understanding of the concept of justice, as a concept that some scholars have considered it equivalent to equality. Justice is considered explicit or implicit linguistic of equality and the need for it, as the basis for survival of international community. Sovereignty within the meaning of state and its elements, only when can survive away from strife, harassment and aggression towards each other that put his rules based on equality and justice. Sovereignty and equality: As the constitutional and public law stated that all are equal before the law, in international law, the situation is the same. So that, according to the doctrine of the sovereignty, all States shall be equal before international law.
(Hohen Pheldern, 2012). Discussed subject here is that how is the sovereign equality of states in terms of international law? Equality as set out in paragraph 1 of Article 2 of the UN Charter suggests that all subjects of international law are treated equal. Paragraph 1 of Article 2 of the Charter provides that organization is based on the principle of sovereign equality of all its Members. However, in paragraph 1 of Article 18 of the Charter of the United Nations states each 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 Bandock 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 they represent inequality. Each of these five countries can struggles, 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:** Equality analysis requires classification for its implications. In the way that when equality in desired in the organic analytic form, it would be possible to have goof result. Provided Differentiation in organic analysis of charter for equality has two categories; first substantive equality and second right equality. This classification was considered, by the Permanent Court of International Justice, in the case of German immigrants living in Poland and was presented commentary for it.

First, the Court states that: In the absence of discrimination in law, substantive equality is specific enough as legal equality "(Charles, 2007).

Then he provides commentary in this regard: Legal equality prevented the emergence of any kind of discrimination. While the equality of rights, may bring a need of unequal behavior in order to reach the balance between different situations. Thus, the substantive equality is equality of states, regardless of cases that law distinguishes them from each other. Right equality is equality, which is provided in the form of rights to them.

Concept of equality in the twentieth century is very close to Justice. Sovereignty and independence are the logical consequence of justice to the concept of equality. In recent concept, from the concept of equality in terms of the centrality of justice, a balance emerges in international relations that weak state does not feel any pressure due to making contract with strong states and on the other hand strong state due to avoiding undermine his legitimacy, obligates itself to respect equality.

**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 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 "resposibility 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: International Commission on Intervention and State Sovereignty for the realization of the principle of "responsibility to protect" has offer a redefine to this rule. To this end, can make a commitment for all governments to protect their people and also to the international community, in necessity to intervene and resort to military action in extreme circumstances (emergency). According to the Commission, the concept of sovereignty, naturally, implies equal protection of all people of a country against damage and crises. So, this concept is not a new the concept, because it is also referred to in the genocide convention in 1948 (Dolatkhahi). The sovereignty, of the view of Commission means that governments are obliged to protect their citizens, and if the government will not to use its sovereign powers, or cause the situation, in which the right of its citizens is weekend, in this case, the responsibility is transferred to the international community. Therefore the Commission changes its basis theory of the "right of humanitarian intervention" to the "responsibility to protect" (Dolatkhahi).

According to the Commission, the first limitation of sovereignty and international responsibility arises from the provisions of the UN Charter. The Commission claims that the government signed acceptance of the Charter of the United Nations have adopted a different type of rule, because with the passage of the UN Charter, what is known as sovereignty, is not sovereignty as "control and supervision", but is sovereignty as "responsibility for internal and external tasks". So, from the perspective of the Commission, members of the UN accept some limitation on the sovereignty, and henceforth, are responsible for the international community in the exercise of its functions (Dolatkhahi).

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 (Jabbari, 2011).

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:
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

Since the responsibility to protect, is still an emerging concept, and yet not defined in international instruments binding, thus, in connection with the provision of incorrect interpretation of the governments, who want to have single-sided action in other countries, always will be alarmed. That's why, during providing the concept of responsibility to protect, protections, especially by developing countries who feared intervention by the great powers in their realm of domestic affairs, were done. The controversial military intervention in Iraq in 2003 caused further strengthening these concerns. It can be said that statements provided by the United States and Great Britain to justify this as a humanitarian intervention, provide an example of a real risk of distortion of the doctrine.

Although the report of the Secretary-General and the leaders of the 2005 Final Document identifies the doctrine of responsibility to protect, and accordingly, the Security Council is the competent organ to decide, theorem of Russian military intervention in Georgia and its justification by the Secretary of State, underscoring the country's constitution to protect Russian citizens, showed that The risk of misuse of this concept is still there. Based on researchers of the global center for the Responsibility to protect. Even if there is enough evidence about atrocities in Georgia, any military action by Russia, should have been confirmed by the United Nations, however, this time is also allowed after diplomatic efforts. The use of military force, according to the 2005 World Summit outcome document, is also intended as a last resort and with the approval of the Security Council. However, despite the consensus of the international community to impose limits and scope of responsibility to protect, popularization and development of the concept of natural materials such as what was done in France by storm Burma, caused concern among supporters of this concept and was exacerbated by concerns of critics and opponents.

According to a theorist, the concept of responsibility to protect has been able to quickly become an internationally recognized concept. This doctrine, if it is properly used, has the possibility and potential to create collective responsibility in order to prevent fundamental human rights crimes. In the meantime the United Nations in relation to the provision of a proper definition and specify the limits and scope of application of this doctrine and thus enhance its credibility in the international community, has a decisive role.

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
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 principle of sovereign equality of states is one of the tenets of international law that in the Charter of the United Nations has been considered as one of the principles governing the actions and decision-making bodies by the authors of the Charter. This principle has a close relationship with other principles mentioned in the Charter, so that we can assume some principles of the Charter, derived from the principle of sovereign equality of Member States of the United Nations, such as the principle of non-interference in the internal affairs of another state.

However principle of sovereign equality of states is not consistent with some of the realities of the international community and events that happen in this society. One of those factors is the emerging concept of responsibility to protect. Despite writer awareness of the principle of perfect equality of states, the following challenges are applied in the relationship between the principle of sovereign equality of States and the responsibility to protect doctrine.

The doctrine of responsibility to protect is the result of progressive and progressive development of international la. However, some critics of application of the responsibility to protect doctrine do not know it as a factor to protect the rights of Member States of the international community, but application of the responsibility to protect, as a manifestation of inequality and injustice, and it shall constitute a new form of colonialism, so that the responsibility to protect in the name of defending human rights led to threats to their sovereignty, and because of it, the principle of sovereign equality of governments, which is the tenets of international law embodied and enshrined in the UN Charter, is violated.
Responsibility to protect doctrine could quickly become an internationally recognized concept. And if it is properly used, has the possibility and potential to create collective responsibility in order to prevent fundamental human rights crimes. Meantime the United Nations in relation to the provision of a proper definition and specify the limits and scope of application of this doctrine and thus enhance its credibility in the international community, has a decisive role. In this section, the following suggestions are offered:

1. The doctrine of responsibility to protect nature is emerging. And its actions in the international community have little experience and the experience has not emerged. On one hand the harmony between the norms and principles of the Charter of the United Nations - such as the relationship between the principle of the sovereign equality of member states and the doctrine of responsibility to protect, needs reform and change in the charter of the United Nations. According to the revised Charter aims to provide appropriate opportunities to apply the doctrine, Responsibility to protect in accordance with the principle of sovereign equality of Member States is necessary.

2. Regarding the concept of legal equality and real equality, it seem that existence of a new system in application of doctrine to of responsibility to protect, with the aim of creating mechanisms of inequality compensation, is necessary. In this approach, government support inequalities and discrimination resulting from underdevelopment, poverty and economic effects of ethnic conflicts and civil wars, states a new approach to applying the doctrine of responsibility to protect.
References


Nguyen Coke Din and others (2003). Public international law. Translated by Hassan Habibi, Tehran, Iran. 1.


