

Public International Law

Lecture 6



Unit IV :-The Fundamental Principles Of International Law

1. UN General Assembly Resolution 2625 (XXV) of 1970
2. The Responsibility to Protect: a new principle of international law?
3. The Charter of the United Nations: Preamble, Articles 1 and 2
4. Extracts of UN documents on the 'Responsibility to Protect'

Declaration On Principles Of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations

Reaffirming in the terms of the Charter of the United Nations that the maintenance of International peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,



Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Noting that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

Recalling the established principle that outer space, including **the Moon and other celestial bodies**, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

Convinced that the strict **observance by States of the obligation not to intervene in the affairs of any other State** is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

Considering it essential that all States 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 purposes of the United Nations,

Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter, Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

Considering that the progressive development and codification of the following principles:

Solemnly proclaims the following principles:

The principle that States 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 purposes of the United Nations.

Every State has the duty to refrain in its 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 purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter, The territory of a

State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal. Nothing in the foregoing shall be construed as affecting:

- (a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or
- (b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the peaceful settlement of international disputes.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, 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.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The duty of States to co-operate with one another in accordance with the Charter

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

- (a) States shall co-operate with other States in the maintenance of international peace and security;
- (b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;
- (c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;
- (d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status

freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs 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 conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

The principle of sovereign equality of States

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

- (a) States are juridically equal;
- (b) Each State enjoys the rights inherent in full sovereignty;
- (c) Each State has the duty to respect the personality of other States;
- (d) The territorial integrity and political independence of the State are inviolable;
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
- (f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principle and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreement valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

The Responsibility to Protect: a new principle of international law?

The responsibility to protect embodies a political commitment to end the worst forms of violence and persecution. It seeks to narrow the gap between Member States' pre-existing obligations under international humanitarian and human rights law and the reality faced by populations at risk of genocide, war crimes, ethnic cleansing and crimes against humanity.

Background

Following the atrocities committed in the 1990s in the Balkans and Rwanda, which the international community failed to prevent, and the NATO military intervention in Kosovo, which was criticised by many as a violation of the prohibition of the use of force, the international community engaged in a serious debate on how to react to gross and systematic violations of human rights. In September 1999, while presenting his annual report to the UN General Assembly, Kofi Annan reflected upon "the prospects for human security and intervention in the next century" and challenged the Member States to "find common ground in upholding the principles of the Charter, and acting in defence of common humanity". He repeated the challenge in his 2000 Millennium Report, saying that: "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?"

The challenge was taken by the International Commission on Intervention and State Sovereignty (ICISS), set up by the Canadian Government, which at the end of 2001 issued a report entitled *The Responsibility to Protect*. The concept of the responsibility to protect drew inspiration of Francis Deng's idea of "State sovereignty as a responsibility" and affirmed the notion that sovereignty is not just protection from outside interference - rather is a matter of states having positive responsibilities for their population's welfare, and to assist each other. Consequently, the primary responsibility for the protection of its people rested first and foremost with the State itself. However, a 'residual responsibility' also lied with the broader community of

states, which was ‘activated when a particular state is clearly either unwilling or unable to fulfil its responsibility to protect or is itself the actual perpetrator of crimes or atrocities’

The subsequent report of the High Level Panel on Threats, Challenges and Change, entitled *A more secure world: our shared responsibility* and the Secretary-General’s 2005 report *In Larger Freedom: towards development, security and human rights for all* endorsed the principle that State sovereignty carried with it the obligation of the State to protect its own people, and that if the State was unwilling or unable to do so, the responsibility shifted to the international community to use diplomatic, humanitarian and other means to protect them. Neither report asserted a basis to use force for this purpose other than Security Council authorisation under Chapter VII of the Charter as a last resort, in the event of genocide and other serious international crimes.

At the 2005 high-level UN World Summit meeting, Member States finally committed to the principle of the responsibility to protect by including it into the outcome document of that meeting. Though the concept adopted omitted some of the aspects proposed initially by the ICISS, it retains its fundamental aspects in relation to prevention of and response to the most serious violations of international human rights and humanitarian law.



Adoption of the principle

In paragraphs 138 and 139 of the 2005 World Summit Outcome Document Heads of State and Government affirmed their responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity and accepted a collective responsibility to encourage and help each other uphold this commitment. They also declared their preparedness to take timely and decisive action, in accordance with the United Nations Charter and in cooperation with relevant regional organizations, when national authorities manifestly fail to protect their populations.

The Summit Outcome is a General Assembly resolution adopted at the level of Heads of State and Government. As such, paragraphs 138 and 139 represent an important new political commitment by Member States. However, the Responsibility to Protect as described in these paragraphs is based on an underlying body of international legal obligations for States which are contained in international instruments or are developing through State practice and the case-law of international courts and tribunals. These existing international obligations require States to refrain from and take a number of actions to prevent and punish genocide, war crimes, ethnic cleansing and crimes against humanity. The adoption of paragraphs 138 and 139 by consensus at such a high political level adds impetus to the development of these obligations.

Ultimately, the Responsibility to Protect principle reinforces sovereignty by helping states to meet their existing responsibilities. It offers fresh programmatic opportunities for the United Nations system to assist states in preventing the listed crimes and violations and in protecting affected populations through capacity building, early warning, and other preventive and protective measures, rather than simply waiting to respond if they fail.

Since the adoption of the Responsibility to Protect in 2005, the United Nations Secretary-General has taken a series of steps to elaborate on the principle and guide its practical implementation. Member States have also regularly considered

implementation of the principle during formal and informal meetings and the principle has been repeatedly referenced and reaffirmed in relevant United Nations resolutions. Other actors have advocated for and supported the implementation of the principle.

UN Charter

Preamble: WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Chapter I: Purposes and Principles

Article 1

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 the 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;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. 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 Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize 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.

Extracts from Key UN Documents

UN CHARTER

Article 2, paragraph 4

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 Purposes of the United Nations.

Article 11

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. Humanitarian Intervention and Political Support for Interstate Use of Force

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 24

In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recom

mendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.