Journal of Law and Administrative Sciences
No.20/2023

THE RESPONSIBILITY TO PROTECT IN THE CURRENT WORLD ORDER

Lecturer Gabriel MICU, PhD.
The National University of Political Studies and Public Administration;
University Bioterra Bucharest, Romania
gmicu2004@yahoo.com

Abstract
The imperative norms of international law represent concepts that have crystallized in long historical periods, with the aim of regulating the conduct of states and other subjects of international law in such a way as to respond to the imperatives of maintaining peace and security throughout the world. It is well known that the ten fundamental principles have binding legal force and are superior to any other sources of international law.
The violation of any imperative rule can be reported by any state, regardless of the context or conjuncture, and the only international court vested with the competence to judge such an approach is the International Court of Justice, according to the UN Charter. The question legitimately arises as to how a conflict in the application of such rules should be resolved, precisely because of their importance.
The purpose of this study is to identify the principles of international law in correlation with the sovereignty of states and the responsibility to protect, which derives directly from the imperative to respect fundamental human rights and freedoms.
Keywords*: state sovereignty, non-interference in internal affairs, human rights, multilateral diplomacy, humanitarian crises, international commission, intervention*

1. The context of the initiation of the responsibility to protect norm

The world order represents a concept in permanent adaptation to the developments registered in interactional relations. Depending on the stage we are referring to, the rules for conducting international relations correspond to the practice followed by states on the international stage, which reflects the evolution of humanity in several fields, such as the economy, technical-scientific research, the collective mentality of humanity.

In general, international relations have been characterized, since ancient times, by the struggle for resources, regardless of their nature, and war was the legitimate means of obtaining them.

With the end of the First World War, a new and significant page was opened in international relations, war was considered illegal and the *right of force* was replaced by the *force of law*.

The world order, based on rules, has developed over time, reaching today to be governed by ten imperative norms, which can be grouped into two large categories: those deriving from the principle of *sovereignty* (non-interference in internal affairs, respect for the territorial and political integrity of states , the inviolability of the state territory, the right of peoples to self-determination) and those whose essence is *cooperation* between states (respect for human rights and fundamental freedoms, the fulfillment of assumed obligations in good faith, non-recourse to force and the threat of force, peaceful settlement of disputes) [1].

State sovereignty enshrined the idea that sovereignty is not merely protection against external interference, but rather is a conduct of states that have positive *responsibilities for the well-being of their populations* and, in this context, to assist each other.

The rights that a state has in its internal organization, which arise from sovereignty, are characterized by the exclusivity of public power (legislative, executive, judicial) over the population, a fact that does not allow the activity of another public power on its territory. The principle of the sovereign equality of states is closely related to the principle of territorial integrity and the principle of the inviolability of the state border and imposes the obligation of all states to *refrain* in their international relations from the threat of force or the application of force against the territorial integrity or political independence of any state.

In the theory of international relations, the reference moment for consecrating the concept of sovereignty is the Peace of Westphalia in 1648, which, however, failed to stabilize relations between states, in a Europe torn by countless military actions, including the Thirty Years' War years, which had just unfolded.

However, the consequences of the two peace treaties that followed the end of the bloody and long military conflict had an important role in the international relations system of the 17th century, a century characterized by growing discontent with the abuses of the papacy. Different princes and kings tried to consolidate their sovereign authority, within the formations they led, over territories they had achieved through the use of several instruments, mainly as a result of military actions.

In its modern meaning, the *concept of sovereignty* implies a dual responsibility of states, of different legal natures, *internal* and *external*. In relation to the internal function of the state, it is recognized as supremacy in the exclusive organization of all aspects related to the existence and functioning of the state, which in essence can be said to be a recognition of a *unique authority* to exercise specific sovereign attributes.

This category includes legislation, tax collection, the use of force to maintain public order, but also respect for the human dignity of every person under its jurisdiction.
As a corollary of this supremacy is the abstention, to which any other subject of international law is obliged to interfere in the internal affairs of states.

With regard to the external function of the state, it has the free will to organize its external policy as it sees fit, in order to promote its national interests as efficiently and effectively as possible. It should be noted that, in this context, independence and sovereignty have the same foundation, namely the *political will of the state*, which is expressed within its borders, respectively outside them.

In the modern understanding of the two notions, sovereignty and independence, neither the internal nor the external function of states is *absolute*. Internally, the public authority is obliged to ensure compliance with at least the minimum standards of human dignity, and externally, to comply with the imperatives and all the commitments assumed towards the other subjects of international law.

Analyzing through this prism, sovereignty is the concept on which the equality that each state enjoys in relation to any other state is based, as well as the foundation of the legal personality of a state, the *legal identity* of each one in international law. Mutual respect for sovereignty by states ensures international order and stability, while providing a degree of predictability in international relations.

Summarizing the above, sovereignty can be analyzed on *three levels*. The first, the classic one, in which the state authorities exercise their sovereign attributes, having the duty to ensure the well-being of the population and the human dignity of each person under its jurisdiction, simultaneously with ensuring their security. The second level of analysis refers to the state's responsibility both to its own citizens and to the international community.

From here derives the third level of analysis, in the paradigm of which the present study is also included, the one that refers to the possibility of engaging the responsibility of the state, by virtue of its sovereignty, for the actions and inactions of its agents who, through their actions, contravene norms of international law.

According to what was mentioned, the acquisition of the sovereignty of a state is closely related to the respect of the sovereignty of the other states. In this context, another principle of international law was shaped and crystallized, that of non-intervention in the internal affairs of a state. It constituted, at the beginning, a customary source, later becoming an imperative norm, codified in the UN Charter and unanimously recognized by all states as a norm of international conduct from which no derogation can be made.

The principle of *non-admission of interference* in the internal affairs of a state is enshrined in the UN Charter (art. 7), with reference both to the UN and to other subjects of international law. The recognition of this right as a component part of the principle of sovereign equality of states allows them to enjoy effectiveness and stability.

In the era of globalization, the current fundamental principles suffer a series of nuances, some authors even denying the actuality of the essence of the principle of sovereignty. In the same context, we witness more and more situations in which we find the violation of some principles of international law. There is even a tendency to prioritize imperative norms, an approach that both in international custom and in official documents assumed by states, have equal legal force and even more, have imperative value.

In this sense, more and more international actors, as well as researchers and experts in the field of international relations, put the general interest of humanity at the forefront, thus paving the way for the third generation of human rights, generically called *solidarity rights*. In this context, the consecration of a new fundamental principle, that of the *responsibility to protect*, is taking shape more and more.

In this key, the new obligation of the international community in the face of extreme human suffering to intervene, in order to save and ensure the security of individuals, must be analyzed, not only in the face of external challenges to which a state may be subjected, but also in the face of significant violation and repeated of the fundamental rights and freedoms of the people under its jurisdiction.

Of course, the effectiveness and effectiveness of the adoption of such conduct fundamentally depends on its application, which must be correct and constant, regardless of the region or nation. [2]

According to the explanatory dictionary of the Romanian language, by humanity is meant ”feeling of goodwill”, compassion for the misfortunes of others, kindness, humanity, humanitarianism, and by human community is described the totality of people, mankind. Starting from this statement, the idea emerges that human rights are to be respected regardless of national borders.

In this sense, we can mention the exceptions to the principle of non-interference in internal affairs, provided in Chapter VII of the Charter, which refer to concerted actions that the international community is called to undertake, in case of threats to international peace and security, of any acts of aggression.

The main objective of the UN, assumed by all signatory states of the UN Charter, is to ensure international peace and security. In this sense, any aspect that constitutes a potential threat to peace constitutes an international concern and extracts it from the domain of domestic competence.

The decision-making role regarding possible actions that would be required on the part of the international community to restore international peace and security rests with the Security Council, authorized to analyze and take decisions regarding a conflict, before it reaches dimensions that are difficult or unmanageable. Accordingly, all implementing decisions adopted by the Security Council under Articles 41 and 42 of the UN Charter are excluded from the scope of the principle of *non-interference in the internal affairs* of other states.

Interference in the internal affairs of the state can be considered not only for reasons of threat to international security and stability. The concept of interference has, in this context, a wider meaning, such as interference in the economic and financial affairs of a state such as the implementation of an embargo against it, judicial interference or judging the interference, in which case the perpetrators of the crimes could be brought before the international criminal jurisprudence, the jurisdiction of the state being thus diminished.

Democratic interventions refers to the *politics of interventions* or the *philosophy of intervention*, which corresponds to the desire to translate the ideals of Western pluralist democracy into *humanitarian intervention*. This concept has a specific foundation, the protection of the *right to life* and the defense of all fundamental human rights, and this construction has a democratic purpose. [3]

The doctrine of the responsibility to protect was developed by international experts in response to the failure of the international community to prevent or respond effectively enough to the commission of genocide, war crimes, crimes against humanity and ethnic cleansing in Rwanda, Bosnia, Haiti and elsewhere. during the last decade of the 20th century and the first of the 21st century.

2. The legal content of the responsibility to protect norm

From the mentioned, the *concept of responsibility to protect* is based on an argument that can be summarized in three aspects.

First, states have a *responsibility to protect their citizens* from crimes against humanity, ethnic cleansing, genocide and war crimes. The state, as an exponent of sovereign power, has certain international rights and obligations, for the observance of which it has the full and exclusive competence internally to establish the legal regime of its population, of the various categories of persons under its jurisdiction, at a given moment.

However, recent developments in the international framework, and especially the evolution in the field of respect for fundamental human rights and freedoms, have transformed genocides, torture methods or slavery into international *crimes* and *misdemeanors*, sanctioned under international law.

Secondly, the responsibility of the international community to react, by offering assistance and applying concrete measures to prevent / manage a conflict, has the legitimacy, regulated in the UN Charter, to intervene and cooperate, through its institutions and bodies. The responsibility to assist states in fulfilling their obligations, including that of protecting their citizens, is therefore *shared* between the international environment and the state in which it intervenes. [4]

The sovereignty of a state requires compliance with a minimum set of domestic obligations. This condition is mandatory for the institution of *international recognition*, the states being the ones that, based on the principle of reciprocity, recognize each other's sovereignty.

In modern theories, the idea is increasingly promoted that *only under these conditions* states can benefit from the protection offered by the principle of sovereignty. If these obligations are not fulfilled, the international actors justify their intervention by the fact that certain normative imperatives are not respected, violating the international conduct shared by the majority of individuals belonging to a society.

In the current world order, *justified intervention* raises issues regarding those actions that threaten international peace and security and the resolutions of the UN Security Council, in the context of the application of Chapter VII of the UN Charter, in order to protect human rights.

This existing dilemma regarding the application of mandatory norms has its solution in art. 2, par. 7, of the UN Charter, which states that ”no provision in this Charter shall authorize the United Nations to intervene in matters which essentially belong to the internal competence of a State, nor shall it oblige its Members to submit such matters for resolution on the basis of the provisions of this Charter; however, this principle will in no way affect the application of the coercive measures provided for in Chapter VII.”

In the current world order, more and more experts appreciate that the *responsibility to protect* replaces the concept of the *right to intervene*, being considered a moral necessity, full of complexity, but more beneficial than passivity. [5] Intervention measures can range from direct assistance to sanctions, or from financial incentives to humanitarian aid. [6]

In practice, there are also situations in which states are not able to exercise their authority over the population, so that it has a more *fictitious nature*, which does not correspond to political reality.

At the same time, the expansion of democracy as a political system, authority and sovereignty, are established by the population, a fact that transforms the rule by which the *law is subordinated* to the authority of the state into the rule of law that is *subordinated to human rights and fundamental freedoms*. [7]

Third, the responsibility to react requires decisive action. The tools used to exercise the responsibility to react, by offering assistance and applying concrete measures, can take several forms, such as the direct involvement of the UN Secretary General in the settlement or mediation of the conflict, the creation of international commissions of inquiry, to establish the state of fact, economic measures [8] and a series of measures of a legal nature [9].

However, regardless of the instrument used, the aim is to *help the state in difficulty* to resolve the conflict in which it is in by peaceful means, and in the event that it refuses assistance and continues to repeatedly violate its assumed obligations, refusing to be cooperative with the international community, it must exhaust all peaceful means at its disposal before considering *military intervention*. [10]

The international community has a responsibility to react to human rights violations when the state is unable or unwilling to fulfill its obligation to respect them, either through economic or political sanctions, or through the use of armed force as a last resort.

Resolution 1973 of the UN Security Council can be considered an indicator of the application of the concept of the *responsibility to protect*, considering the authorization of the military intervention of several states on the territory of another state, in order to protect civilians. [11]

Like all other imperative norms of international law, there is an *uneven application* of the concept of the *responsibility to protect* internationally, with omissions or, even worse, *unauthorized interferences* under the pretext of responsibilities to protect.

In conclusion, it can be stated that the emergence of an imperative norm, which aims to protect the population under the jurisdiction of a state from the abuses of its national authorities, is still at the stage of *pros* and *cons* debates. The normative tenor of this approach places, nowadays, *the responsibility to protect* at an *early stage*, not having met a majority, necessary for states to assume this concept as an imperative norm.

References:

[1] U.N. Charter of 26 June 1945, In: https://www.un.org/fr/sections/uncharter/chapter-i/index.html.
[2] Damrosch, Lori Fisler, "The inevitability of selective response? Principles to guide urgent international action" In: Albrecht Schnabel, Ramesh Thakur (eds), *Kosovo and the Challenge of Humanitarian Intervention*, New York: United Nations University Press, 2000, p.406.
[3] Agaar, Samia., *La responsabilité de proteger: a new concept?* Available at: https://tel.archives-ouvertes.fr/tel-01587742 , document, p. 68.

[4] Resolution of the UN General Assembly of 16.09.2005, art. 139, Available at: https://undocs.org/fr/A/RES/60/1
[5] Agaar, Samia, *La responsabilité de proteger: a new concept?* Available at: https://tel.archives-ouvertes.fr/tel-01587742 , document, p. 43.
[6] In 1991, France, Belgium, the United Kingdom, and the United States were authorized by the UN Security Council to use force and intervene in Iraq through Resolution 688, which aimed to end human rights violations against Kurds and Shiites.
[7] Mascré, Aline., *Comment la Responsabilité de protéger a t-elle étè développee, appliquée et débatue?*, Available at: https://www.ie-ei.eu/Ressources/file/memoires/2015/ALINE_MASCRE.pdf , p. 8.
[8] funds for development, humanitarian aid and funds for conflict resolution or prevention efforts
[9] establishment of International Criminal Tribunals for Rwanda, Yugoslavia and Sierra Leone
[10] Mascré, Alin, *Comment la Responsabilité de protéger a t-elle étè développee, appliqué et débatue?*, In: https://www.ie-ei.eu/Ressources/file/memoires/2015/ALINE_MASCRE.pdf
[11] UN Security Council Resolution 1973 (2011), Available at: https:// www.undocs.org/fr/S/RES/1973%20(2011)

Bibliography

1. Agaar, Samia., *La responsabilité de proteger: a new concept?*, Available at: https://tel.archives-ouvertes.fr/tel-01587742 , document
2. Damrosch, Lori Fisler,"The inevitability of selective response? Principles to guide urgent international action" In: Albrecht Schnabel, Ramesh Thakur (eds), Kosovo and the Challenge of Humanitarian Intervention, New York: United Nations University Press, 2000
3. Mascré, Aline., *Comment la Responsabilité de protéger a t-elle étè développee, appliquée et débatue?*, Available at: https://www.ie-ei.eu/Ressources/file/memoires/2015/ALINE_MASCRE.pdf , p.
4. Resolution of the UN General Assembly of 16.09.2005, art. 139, Available at: https://undocs.org/fr/A/RES/60/1
5. U.N. Charter (June 26, 1945), https://www.un.org/fr/sections/uncharter/chapter-i/index.html
6. UN Security Council Resolution 1973 (2011), Available at: https://www.undocs.org/fr/S/RES/1973%20(2011)