THE PRINCIPLE OF EQUALITY OF STATES UNDER INTERNATIONAL LAW: CRITIQUE OF THE INVASION OF VENEZUELA AND THE ARREST OF PRESIDENT MADURO

Edwin OKORO Esq*

Abstract

The principle of sovereign equality of states, enshrined in Article 2(1) of the United Nations Charter, stands as a cornerstone of modern international law. Yet this foundational norm faces persistent challenges from powerful states that seek to subordinate international legality to their own geopolitical interests. This essay examines the principle of equality of states from its theoretical origins to its contemporary application, and offers a critical analysis of the 2025–2026 United States military intervention in Venezuela and the arrest of President Nicolás Maduro. It argues that the U.S. actions-encompassing unilateral military strikes, coercive maritime operations, territorial airspace violations, and the extraterritorial arrest of a sitting head of state-constitute a systematic assault on the principle of sovereign equality. Through an analysis of the jus ad bellum framework, the immunity of heads of state, and the structural tensions between sovereignty and international justice, this essay demonstrates that the intervention exemplifies the continuing tendency of powerful states to privilege their own asserted interests over the foundational norms of the international legal order.

Keywords: international law, invasion, United States of America, Venezuela, United Nations Charter, President Maduro

I. Introduction

On January 3, 2026, U.S. military forces entered Venezuelan territory, captured President Nicolás Maduro and his wife Cilia Flores, and transported them to New York to face federal criminal charges. This extraordinary operation followed months of escalating U.S. military pressure in the Caribbean region, including naval build-ups, the sinking of dozens of vessels alleged to be involved in drug trafficking, and declarations that Venezuela's airspace was "closed". The United States justified its actions primarily on two grounds: a 2020 federal indictment charging Maduro with narco-terrorism and drug trafficking offenses, and an asserted right of self-defense against non-state actors operating from Venezuelan territory.

These events raise fundamental questions about the nature and resilience of the principle of equality of states in contemporary international law. If a powerful state may unilaterally invade another state, remove its sitting head of state by force, and prosecute him in its domestic courts-all without Security Council authorization, without a declaration of war, and without any colorable claim of self-defense against an armed attack by the target state-then what remains of the sovereign equality that the UN Charter purports to guarantee? This essay seeks to answer that question by critically examining the U.S. intervention against the backdrop of the principle of equality of states.

The analysis proceeds in five parts. Part II traces the theoretical foundations of sovereign equality, from its origins in the Peace of Westphalia to its codification in the UN Charter and its elaboration in the

* **Edwin Okoro Esq. LL.B (Hons.) BL** is a private legal practitioner base in Bende and Aba in Abia State.

work of the International Law Commission. Part III examines the substantive norms that flow from sovereign equality: the prohibition on the use of force, the principle of non-intervention, and the immunity of heads of state. Part IV applies these norms to the U.S. intervention in Venezuela, assessing the legality of the military strikes, the airspace closure order, the extraterritorial arrest of President Maduro, and the claimed justifications under U.S. domestic law. Part V examines the structural critique of sovereign equality-the tension between formal equality and material power, and the competing claims of sovereignty and international justice under doctrines such as the Responsibility to Protect. Part VI concludes by reflecting on the implications of the Venezuelan case for the future of international law.

II. The Principle of Sovereign Equality: Foundations and Content

A. Historical Emergence and Codification

The principle that states are equal in law, regardless of their relative power, wealth, or territorial size, has been a central tenet of international law since the Peace of Westphalia (1648). The Westphalian settlement rejected the hierarchical ordering of Christendom under the authority of the Pope and Holy Roman Emperor, instead recognizing a society of territorially sovereign states possessed of equal legal standing. This nascent principle found expression in the work of early international lawyers such as Emer de Vattel, who in *The Law of Nations* (1758) declared that "a dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom."

However, sovereign equality remained more theoretical than real throughout much of the nineteenth and early twentieth centuries. Eurocentric international law distinguished between "civilized" and "uncivilized" states, denying the latter the full rights of sovereignty. Colonial possessions lacked any international legal personality. It was only in the aftermath of World War II, with the adoption of the United Nations Charter and the subsequent wave of decolonization, that sovereign equality acquired concrete legal force as a binding norm of general international law.

B. Article 2(1) of the UN Charter and Its Interpretations

The Charter opens with a declaration of sovereign equality in Article 2(1): "The Organization is based on the principle of the sovereign equality of all its Members." The provision is deliberately brief, reflecting a political consensus that left considerable room for interpretation. The International Law Commission, in its work on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (1970), elaborated the content of sovereign equality as comprising six elements:

(1) States are juridically equal; (2) each State enjoys the rights inherent in full sovereignty; (3) each State has the duty to respect the personality of other States; (4) the territorial integrity and political independence of the State are inviolable; (5) each State has the right freely to choose and develop its political, social, economic and cultural systems; and (6) each State has the duty to fulfill its international obligations.

The Friendly Relations Declaration further clarified that sovereign equality entails the equal right of every state to participate in international affairs, the equal voting power of states in international organizations (subject to Charter provisions), and-crucially-the prohibition of any state from dominating or intervening in the internal affairs of another.

Beyond its formal expression, the principle of sovereign equality functions as a foundational premise of the entire Charter system. As commentators have observed, the Charter establishes two fundamental principles: the advancement of human welfare as the core objective of global governance, and sovereign equality as the fundamental norm governing interstate relations. Together with the prohibition on the use of force (Article 2(4)), the peaceful settlement of disputes (Article 2(3)), and the principle of non-intervention (Article 2(7)), sovereign equality constitutes one of the four pillars of the UN legal order.

C. Sovereign Equality as a Peremptory Norm

The International Law Commission has identified the principle of sovereign equality as having acquired the status of a peremptory norm of international law (*jus cogens*)-a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Several considerations support this characterization: sovereign equality is universally recognized by states, fundamental to the maintenance of international peace and security, and repeatedly affirmed in treaty law, customary international law, and the decisions of international courts and tribunals. The International Court of Justice, in the *Nicaragua v. United States* (1986) case, treated the principles of non-use of force, non-intervention, and territorial inviolability as "cornerstones of international legal order," which are in turn derived from the more fundamental norm of sovereign equality.

III. Normative Implications of Sovereign Equality

A. The Prohibition on the Use of Force (Article 2(4) and Custom)

The most immediate implication of sovereign equality is the prohibition on the threat or use of force against the territorial integrity or political independence of any state. Article 2(4) of the UN Charter provides:

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.

This provision is widely regarded as a peremptory norm and as one of the most significant achievements of post-1945 international law. It establishes a general prohibition on the use of armed force in international relations, subject only to two narrow exceptions: force authorized by the Security Council under Chapter VII of the Charter, and force exercised in individual or collective self-defense in response to an armed attack under Article 51.

The scope of the prohibition is deliberately broad. The phrase "or in any other manner inconsistent with the Purposes of the United Nations" was inserted to foreclose creative arguments that might otherwise circumvent the prohibition. The International Court of Justice has consistently held that Article 2(4) prohibits not only direct military invasion but also indirect uses of force, including the training, arming, equipping, financing, and supplying of irregular forces, and the sending of armed bands into another state's territory. Moreover, the prohibition extends to threats of force-a point of particular relevance to the U.S. closure of Venezuelan airspace and its stated willingness to consider ground operations against Caracas.

B. Non-Intervention and Respect for Sovereignty

Closely related to the prohibition on the use of force is the principle of non-intervention in the domestic affairs of states. Article 2(7) of the Charter provides that nothing contained in the Charter shall authorize the United Nations to intervene in matters essentially within the domestic jurisdiction of any state. While this provision formally applies only to UN organs, the Friendly Relations Declaration confirms that the principle of non-intervention extends to all states as a matter of customary international law.

The principle prohibits states from intervening, directly or indirectly, in the internal or external affairs of other states for the purpose of imposing their will. This includes not only armed intervention but also coercive economic measures, political subversion, and support for opposition forces. The International Court of Justice in *Nicaragua* held that the prohibition on intervention is a corollary of sovereign equality: each state has the right to choose its own political, economic, social, and cultural system without interference from other states.

C. Immunity of Heads of State and the Equality of States

If states are juridically equal, it follows that the organs through which states act-including their heads of state-must be treated as equal in the international legal order. This reasoning underpins the doctrine of head of state immunity, which provides that a sitting head of state enjoys immunity from the criminal jurisdiction of foreign courts.

The International Law Commission's work on the immunity of state officials from foreign criminal jurisdiction distinguishes between immunity *ratione personae* (personal immunity) and immunity *rationemateriae* (functional immunity). Heads of state enjoy the former-a full immunity that attaches to the office itself and covers all acts, whether official or private, during their tenure. This immunity is absolute and continues until the individual ceases to hold office. The rationale is functional: the effective conduct of international relations requires that heads of state be able to travel and communicate without fear of arbitrary arrest or prosecution by other states.

Crucially, exceptions to head of state immunity are narrowly drawn. No exception exists for domestic arrest warrants issued by foreign states. The International Criminal Court may issue arrest warrants for heads of state (subject to Rome Statute provisions and Security Council referrals), but the ICC is a court of last resort with a carefully structured jurisdictional regime. Unilateral extrajudicial arrest by one state of another state's head of state, without ICC involvement, finds no support in international law and directly contradicts the principle of sovereign equality.

IV. The U.S. Intervention in Venezuela: A Legal Critique

A. The Unilateral Use of Military Force

The United States initiated military operations against Venezuelan vessels and territory beginning in September 2025. These operations involved multiple strikes against boats in the Caribbean Sea and eastern Pacific Ocean, resulting in over eighty civilian deaths. The strikes escalated into a full-scale military operation on January 3, 2026, when U.S. forces entered Venezuelan territory to capture President Maduro.

The question of whether the use of force against another state is lawful falls to be determined under the *jus ad bellum* framework. The United States offered a theory of self-defense against non-state actors—namely, the Tren de Aragua gang, which the Trump administration had designated as a foreign

terrorist organization alleged to operate under Maduro's control. According to this theory, the drug trafficking activities of non-state actors based in Venezuela constituted an armed attack against the United States, triggering the inherent right of self-defense under Article 51 of the Charter.

This justification fails for multiple reasons. First, the International Court of Justice has held that self-defense against non-state actors is permissible only if those actors have launched an armed attack attributable to the state from whose territory they operate. In the present case, the United States did not demonstrate that the Tren de Aragua had launched any armed attack against U.S. territory, nor that any alleged attack could be attributed to the Venezuelan state under the rules of state responsibility.

Second, the threshold for an "armed attack" under Article 51 requires a use of force of a certain scale and intensity. Drug trafficking, however reprehensible, does not constitute an armed attack for purposes of the right to self-defense. As UN independent experts noted, "these groups are not attacking the US and there is therefore no right of self-defence".

Third, no Security Council authorization existed for the military strikes. This fact alone renders the resort to force unlawful, as the Charter permits the use of military force only with Council authorization or in self-defense. The United States did not even purport to seek Council approval.

Fourth, the strikes violated the prohibition on the use of force articulated in Article 2(4) regardless of how they were characterized. As UN experts warned, "preparations for covert or direct military action against another sovereign State constitute an even graver breach of the UN Charter".

The illegality of the initial strikes infects the entire subsequent operation, including the January 3 capture operation. The use of force to effect an extraterritorial arrest-effectively, the forceful abductions of a sitting head of state-cannot be legally justified when the underlying resort to force was itself unlawful.

B. Extraterritorial Arrest of a Sitting Head of State

The arrest of President Maduro on Venezuelan territory and his transportation to the United States for trial raises distinct legal issues concerning both the immunity of heads of state and the legality of extraterritorial law enforcement.

On the immunity question, Venezuela's Attorney General Reinaldo Muñoz Pedroza stated unequivocally that Maduro, as a sitting president, enjoys absolute immunity *ratione personae* under international law. Maduro had been re-elected in July 2024 and sworn in on January 10, 2025, for a term extending to 2031. As the Attorney General argued, a sitting head of state cannot be arrested or prosecuted by foreign courts-even if the charges are fabricated or the foreign state claims jurisdiction under its domestic law.

The U.S. arrest warrant was a domestic instrument-a federal indictment issued by a grand jury in the Southern District of New York. Unlike an ICC arrest warrant, which at least theoretically operates within a multilateral legal framework, the U.S. indictment had no international legal effect. It did not override Maduro's immunity under customary international law. The United States' non-membership in the Rome Statute precludes any argument that the ICC has authorized the arrest, and the ICC itself had not issued any public arrest warrant for Maduro as of the time of his abduction. (There remained,

as of January 2026, the possibility that a sealed ICC warrant existed; however, no such warrant had been revealed or acted upon by the ICC prosecutor in relation to the U.S. operation.)

The extrajudicial abduction of a sitting head of state is an egregious violation of international law. As recognized in the *Eichmann* case and subsequent jurisprudence, states sometimes claim the right to exercise extraterritorial criminal jurisdiction through abduction, but such claims have never been accepted as overriding the immunity of serving heads of state. To the contrary, international law has consistently privileged the functional need for head of state immunity over the asserted jurisdictional interests of foreign states.

C. Attempted Justifications under U.S. Domestic Law

The United States advanced several justifications that, even if cognizable under U.S. constitutional and statutory law, are irrelevant to the question of international legality. The distinction is fundamental: compliance with domestic law does not excuse violations of international law, and the obligations of the United States under the Charter and customary international law are binding regardless of the internal distribution of constitutional powers.

First, the U.S. government argued that the military strikes were justified by the President‘s constitutional authority as Commander-in-Chief to protect national security interests. As William Burke-White observed, this argument fails because Article 2(4) of the Charter prohibits the use of force without Security Council authorization or self-defense, and “under both frameworks, these strikes are unlawful”. No amount of domestic constitutional authority can override the categorical prohibition contained in the Charter.

Second, the government sought to characterize the arrest as an “execution of an existing criminal case” rather than a regime-change intervention. This attempted characterization cannot obscure the reality that the arrest was effected by military force on foreign territory without the consent of the territorial state. What international law requires is lawful process-not merely the existence of an indictment, but process that respects the sovereign equality of states, including the immunity of foreign heads of state.

Third, the government asserted that the strikes were justified because Venezuela had failed to prevent drug trafficking from its territory. Even assuming the factual premise, this argument misunderstands the nature of state responsibility. A state’s failure to prevent unlawful acts by private parties may give rise to diplomatic claims or countermeasures, but it does not authorize unilateral military intervention. As UN experts emphasized, “the use of lethal force in international waters without proper legal basis violates the international law of the sea and amounts to extrajudicial executions”.

D. Violations of the Prohibition on Intervention

Beyond the use of force, the United States engaged in a pattern of coercive measures that cumulatively amount to unlawful intervention in the domestic affairs of Venezuela. These measures included: the closure of Venezuelan airspace by unilateral declaration (a measure that has no basis in the Chicago Convention on International Civil Aviation), economic sanctions targeting Venezuela‘s oil sector, a naval blockade in the Caribbean Sea, and the U.S. Federal Aviation Administration’s advisory warning that Venezuelan airspace was unsafe, which effectively suspended international commercial flights to Venezuela.

Each of these measures independently violates principles of international law. The declaration that another state's airspace is "closed" constitutes a usurpation of sovereign authority that belongs exclusively to the territorial state. As UN experts stated, "International law is clear: States have complete and exclusive sovereignty over the airspace above their territory. Any measures that seek to regulate, restrict or 'close' another State's airspace are in blatant violation of the Chicago Convention".

The cumulative effect of these measures was to apply maximum coercive pressure on Venezuela to achieve politically desired outcomes-specifically, regime change. This is precisely the kind of intervention that the Charter was designed to prohibit.

V. Critique: The Structural Tensions of Sovereign Equality

A. Formal Equality Versus Material Power

The case of Venezuela exposes the central contradiction in the principle of sovereign equality: formal legal equality coexists with dramatic material inequality among states. The United States, as a military superpower, can act with impunity in ways that smaller states cannot. As Norwegian political scientist Glenn Diesen has argued, the U.S. "rules-based international order" functions as "a hegemonic system that follows the principle of sovereign inequality," in contrast to the UN Charter's principle of the sovereign equality of all states.

This is not merely an empirical observation but a structural feature of the international legal system. International law lacks centralized enforcement mechanisms and depends ultimately on state consent and state practice. Powerful states can violate international law without facing meaningful consequences, while weaker states are held to the full rigor of its norms. The Venezuela intervention illustrates this dynamic: the same states that condemned Russian intervention in Ukraine on sovereignty grounds found themselves unable to prevent or meaningfully sanction the U.S. intervention in Caracas.

Yet the persistence of power asymmetry does not render the principle of sovereign equality meaningless. The principle retains normative force as a standard by which state conduct is measured and condemned. When UN experts, regional organizations, and numerous states condemned the U.S. intervention, they did so on the basis of sovereign equality, non-intervention, and the prohibition on the use of force. The near-universal criticism of U.S. actions-including from traditional allies such as Brazil and Colombia-demonstrates that sovereign equality remains a widely shared normative commitment, even if it is sometimes honored more in the breach than the observance.

B. The Relationship Between Sovereignty and Human Rights

The most sophisticated challenge to the traditional conception of sovereign equality comes from the human rights movement and the associated doctrine of the Responsibility to Protect (R2P). Under the R2P framework, sovereignty is not merely a shield against external interference but also a responsibility: states have the primary obligation to protect their populations from mass atrocities, and when they fail to do so, the international community may intervene.

Advocates of human rights-driven intervention might argue that the U.S. action, however procedurally irregular, served to bring a human rights violator to justice. The ICC's investigation into crimes against humanity in Venezuela documented systematic abuses including extrajudicial killings, arbitrary detention, torture, and political persecution. Venezuela's National Assembly had voted to withdraw

from the Rome Statute, and the ICC prosecutor had concluded that Venezuela made "no meaningful progress" in domestic investigations, signaling the possible issuance of sealed arrest warrants.

Does the seriousness of these alleged crimes justify the U.S. intervention? The answer must be no. The structure of international law provides lawful mechanisms for holding human rights violators accountable-notably, ICC prosecution, universal jurisdiction exercised by states in accordance with international law, Security Council sanctions, and UN-mandated interventions. What it does not permit is unilateral military action by one state to deputize itself as enforcer against a sitting head of state.

The R2P doctrine, adopted at the 2005 World Summit, explicitly limits armed intervention to cases authorized by the Security Council. It does not create a unilateral right of humanitarian intervention. As one commentator noted, "the theory has not changed the existing law on the use of force, and the international community has not reached a consensus on the issue of military intervention under R2P".

More fundamentally, to accept the U.S. justification would be to endorse a return to the pre-Charter era in which powerful states determined for themselves when intervention was justified. That is precisely the system the UN Charter was designed to replace. The choice is not between sovereignty and justice; it is between a rule-based system that channels accountability through lawful processes and a power-based system in which the strong do what they can and the weak suffer what they must.

C. The Receding Role of the Security Council

The Venezuela case spotlighted the dysfunctional state of the UN Security Council at a moment of geopolitical fracture. The United States, as a permanent member of the Council, enjoys veto power over any proposed authorization of force against Venezuela, while also possessing the capacity to block any attempt to condemn its own actions. This structural feature of the Charter has always been recognized as a limitation on the collective security system, but the Venezuela intervention demonstrates the costs of that limitation with unusual clarity.

The Security Council's inability to respond effectively to unilateral uses of force by permanent members raises profound questions about the future of the collective security system. When the Council cannot act—or, more precisely, when one of its permanent members ensures that it cannot act-the prohibition on the use of force risks becoming a dead letter. States facing military intervention have no effective remedy; the principle of sovereign equality is asserted but cannot be enforced.

Yet the alternative-abandoning the prohibition on unilateral force altogether-would be worse. The Charter's prohibition on the use of force, however imperfectly enforced, has contributed to a marked reduction in interstate warfare compared to the pre-1945 period. It provides a legal framework for condemning illegal uses of force, a basis for sanctions and countermeasures, and a focal point for diplomatic efforts to resolve disputes peacefully. The response to the Venezuela intervention should not be to jettison the prohibition but to strengthen the institutional mechanisms for enforcing it.

VI. Conclusion

The U.S. military intervention in Venezuela and the arrest of President Maduro represent a direct assault on the principle of sovereign equality that lies at the heart of the international legal order. In the name of enforcing U.S. criminal law, the United States invaded a sovereign state, abducted its sitting head of state, and claimed the right to try him in its domestic courts. It did so without Security Council

authorization, without a valid claim of self-defense under Article 51 of the UN Charter, and without any colorable argument that head of state immunity does not apply.

The action constituted a violation of multiple rules of international law: the prohibition on the use of force (Article 2(4)), the prohibition on intervention in the domestic affairs of states (Article 2(7) and customary international law), the principle of state sovereignty over territory and airspace, and the immunity of heads of state from foreign criminal jurisdiction. UN independent experts, regional organizations, and dozens of states condemned the intervention precisely on these grounds. The near-universal criticism of the U.S. action demonstrates that the principle of sovereign equality retains normative force, even as powerful states continue to test its limits.

The Venezuelan case exposes the enduring tension between the formal equality of states under international law and the material inequality of states in the international system. The principle of sovereign equality is a noble aspiration, central to the UN Charter‘s vision of a lawful international order. But it remains a fragile norm, all too easily battered aside by those with the power to do so. The response of the international community-condemnation, but no enforcement-suggests that sovereign equality is not a rule of law in the municipal sense, but a standard of legitimacy that can be publicly invoked to delegitimize unilateral action. This is not nothing. But for the principle of sovereign equality to be fully realized, the international community must develop more effective mechanisms for enforcing its foundational norms against all states, powerful and weak alike. Until that day arrives, the equality of states will remain more promise than reality-a principle to which nations pay homage while reserving the right to violate it when their interests demand.