

The Legality of Humanitarian Intervention and the Responsibility to Protect: Examining the Roles and Jurisdiction of Intervening Parties

*¹Aniket Sunil Gaikwad and ²Dr. Anisa Shaikh

¹LLM, Department of Law, New Law College Bharti Vidyapeeth (Deemed to be University), Pune, Maharashtra, India.

²Assistant Professor, Department of Law, New Law College Bharati Vidyapeeth (Deemed to be University), Pune, Maharashtra, India.

Article Info.

E-ISSN: 2583-6528

Impact Factor (SJIF): 5.231

Available online:

www.alladvancejournal.com

Received: 20/April/2023

Accepted: 27/May/2023

Abstract

This article examines the concept of humanitarian intervention and the principle of Responsibility to Protect (R2P) in humanitarian crises. It argues that the global community is responsible for intervening in such situations to prevent atrocities and protect vulnerable populations. The Responsibility to Protect, established by the United Nations, acknowledges that states are responsible for protecting their citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity. However, when a state fails in its duty, the international community must halt the atrocities. The article emphasizes the importance of recognizing the need for humanitarian intervention and fulfilling the responsibility to protect under the R2P principle.

*Corresponding Author

Aniket Sunil Gaikwad

LLM, Department of Law, New Law College Bharti Vidyapeeth (Deemed to be University), Pune, Maharashtra, India.

Keywords: Humanitarian intervention, Responsibility to protect (R2P), Atrocities, Vulnerable populations.

Introduction

The world has witnessed numerous cases of atrocities and human rights violations in different parts of the world. As global citizens, the question that we must ask ourselves is who should be responsible for intervening in these cases of humanitarian crises? While some argue that humanitarian intervention should be left to individual nations or regional organizations, others believe in the need for a global responsibility to protect. ^[1] In my opinion, the global community has a responsibility to intervene in cases of humanitarian crises under the principle of the Responsibility to Protect (hereinafter referred as R2P) ^[2].

Humanitarian crises have resulted in untold suffering and loss of lives over the years. This has led to a growing recognition that there is a need for intervention in cases of humanitarian crises. ^[3] The Responsibility to protect is an international norm that was established in 2005 by the United Nations General Assembly as a response to the failure of the international community to prevent and respond to cases of genocide, war crimes, ethnic cleansing, and crimes against humanity. The R2P principle acknowledges that sovereignty is not absolute and that states have a responsibility to protect their citizens from these crimes ^[4].

However, when a state fails to protect its citizens or is complicit in committing these crimes, the international community has a responsibility to intervene in order to halt the atrocities and protect vulnerable populations. The global community should not turn a blind eye to human suffering and must actively fulfill its duty to protect under the R2P principle ^[5].

It is imperative that we recognize the importance of humanitarian intervention and the Responsibility to Protect in preventing and responding to cases of genocide, ethnic cleansing, war crimes and crimes against humanity. ^[6] The global community must realize that when these atrocities occur, there is no time for indecisiveness or hesitation; action must be taken to prevent further harm and protect innocent lives. Therefore, it is crucial for the international community to take collective action and fulfill its responsibility to protect vulnerable populations around the world under the principle of R2P. ^[7] We must act swiftly and with determination to prevent further atrocities and safeguard human dignity. In conclusion, the global community has a moral obligation to intervene in cases of humanitarian crises where innocent lives are at stake. ^[8]

Background

The Responsibility to Protect (R2P) is an international norm that was established in 2005 by the United Nations General Assembly. The R2P principle acknowledges that sovereignty is not absolute and states have a responsibility to protect their citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity^[9].

This norm was established in response to the failure of the international community to prevent and respond to cases of genocide, war crimes, ethnic cleansing, and crimes against humanity. (Responsibility to Protect (R2P) Springer Link, n.d) Since then, the R2P principle has become an essential tool for preventing and responding to humanitarian crises around the world. As a global community, we must uphold our responsibility to protect under the R2P principle in order to prevent further atrocities and safeguard human dignity^[10].

The concept of humanitarian intervention has been a topic of debate in international politics for centuries. The idea that states have a responsibility to protect the citizens of other states from mass atrocities emerged in the 19th century, when European powers intervened in the Balkans to protect Christian minorities from Ottoman oppression. However, the use of force for humanitarian purposes remained controversial, and the principle of state sovereignty, enshrined in the 1648 Treaty of Westphalia, continued to be a central tenet of international law^[11].

The end of the Cold War marked a turning point in the debate on humanitarian intervention. With the collapse of the Soviet Union, the United States emerged as the world's sole superpower, and the international community began to grapple with new forms of conflict, such as ethnic cleansing and genocide. The United Nations Security Council authorized a number of humanitarian interventions in the 1990s, including in Somalia, Bosnia, and Kosovo, but these interventions were controversial and sparked debate about the legality and ethics of using force for humanitarian purposes^[12].

In 2005, the United Nations General Assembly adopted the Responsibility to Protect (R2P) principle, which sought to provide a framework for when and how to intervene in situations of mass atrocity. The R2P principle consists of three pillars: the responsibility of states to protect their own citizens, the responsibility of the international community to assist states in fulfilling this responsibility, and the responsibility of the international community to take collective action if a state is unable or unwilling to protect its citizens from mass atrocities^[13].

The R2P principle has been the subject of intense debate since its adoption. Critics argue that it undermines the principle of state sovereignty and provides a pretext for powerful states to intervene in the affairs of weaker states.^[14] They also point to the selective application of the principle, with some conflicts receiving international attention while others are ignored. Supporters of the R2P principle argue that it provides a legal and ethical framework for intervention in situations of mass atrocity and that it has the potential to prevent future atrocities by establishing a norm of responsibility to protect^[15].

Despite the controversies surrounding the R2P principle, it has become an increasingly influential concept in international politics. The principle has been invoked in a number of high-profile conflicts, including in Libya in 2011, where NATO intervened to protect civilians from the regime of Muammar Gaddafi. However, the challenges of implementing the R2P principle remain significant, and there is ongoing debate about the criteria for intervention, the role

of different international actors, and the balance between the imperatives of protecting human rights and respecting state sovereignty^[16].

The Role of International Actors

The Responsibility to Protect (R2P) principle recognizes that the responsibility to protect populations from mass atrocity is shared among states and the international community. As such, the role of international actors is critical in situations where states are unable or unwilling to protect their populations. International actors include the United Nations (UN), regional organizations, and individual states or groups of states acting collectively^[17].

The United Nations plays a central role in the R2P framework, particularly through the Security Council, which has the authority to authorize the use of force in situations where there is a threat to international peace and security. However, the Security Council's use of its mandate to authorize humanitarian intervention has been a source of controversy, with some arguing that the Council's actions have been inconsistent and politicized^[18].

Regional organizations, such as the African Union (AU) and the Organization of American States (OAS), can also play a key role in implementing the R2P principle. These organizations are often better placed to understand the local context of a conflict and can bring regional resources and expertise to bear. The AU, for example, has played a significant role in the conflict in Darfur, where it has deployed peacekeeping troops and facilitated negotiations between the warring parties^[19].

Individual states can also play a role in implementing the R2P principle, either acting unilaterally or as part of a coalition of states. The intervention in Libya in 2011 was carried out by a coalition of states led by the United States and NATO, while France intervened in Mali in 2013 to prevent Islamist militants from seizing control of the country^[20].

The role of international actors in implementing the R2P principle raises a number of challenges. One challenge is the tension between the imperative of protecting human rights and the principle of state sovereignty. Some states may resist international intervention on the grounds that it constitutes an infringement on their sovereignty, while others may argue that intervention is necessary to prevent mass atrocities.

Another challenge is the question of who decides when intervention is necessary. The R2P principle recognizes that the decision to intervene should be based on a range of factors, including the severity of the threat, the imminence of the danger, and the likelihood of success. However, different actors may have different assessments of these factors, leading to disagreements over the need for intervention^[21].

Finally, the role of international actors in implementing the R2P principle raises questions about accountability and legitimacy. International intervention can have unintended consequences and may be perceived as illegitimate by some actors, particularly if it is carried out without the consent of the affected state. As such, it is important that international actors are held accountable for their actions and that their interventions are conducted in a transparent and accountable manner^[22].

In conclusion, the role of international actors is critical in implementing the R2P principle and in preventing mass atrocities. However, the challenges of implementing the principle are significant, and there is ongoing debate about the criteria for intervention, the role of different actors, and the balance between the imperatives of protecting human rights

and respecting state sovereignty. As such, it is important that the role of international actors in implementing the R2P principle is carefully considered and debated [23].

The Principle of Sovereignty

The principle of sovereignty is a fundamental principle of international law that recognizes the authority of states over their own territory and people. This principle is enshrined in the United Nations Charter and is a cornerstone of the modern international system. The principle of sovereignty provides states with a degree of autonomy and independence, allowing them to make decisions about their own affairs without interference from other states [24].

While the principle of sovereignty is a fundamental principle of international law, it is not an absolute principle. States are expected to comply with certain international norms and standards, including those relating to human rights and humanitarian law. In cases where a state is unable or unwilling to protect its own population, the international community may be called upon to intervene in order to prevent mass atrocities or other egregious violations of human rights [25].

The tension between the principle of sovereignty and the need to protect human rights has been a source of controversy and debate in international law. Some argue that the principle of sovereignty is an outdated concept that should be replaced by a more robust system of global governance, while others argue that sovereignty remains a critical component of the international system and that efforts to erode it risk destabilizing the system as a whole [26].

The concept of the Responsibility to Protect (R2P) seeks to balance the imperative of protecting human rights with the principle of sovereignty. The R2P principle recognizes that states have a primary responsibility to protect their own populations, but that the international community has a responsibility to intervene in cases where a state is unable or unwilling to fulfill this responsibility. The R2P principle provides a framework for intervention that is based on a range of factors, including the severity of the threat, the imminence of the danger, and the likelihood of success [27].

The tension between the principle of sovereignty and the R2P principle has been evident in a number of recent conflicts, including the intervention in Libya in 2011 and the ongoing conflict in Syria. In both cases, the intervention was controversial and sparked debate about the legitimacy of international intervention in cases where the affected state has not consented to such intervention [28].

In conclusion, the principle of sovereignty remains a critical component of the international system, providing states with a degree of autonomy and independence. However, the imperative of protecting human rights and preventing mass atrocities requires a more nuanced approach that balances the principle of sovereignty with the need for international intervention in cases where a state is unable or unwilling to protect its own population. The concept of the Responsibility to Protect provides a framework for intervention that seeks to strike this balance, but the tension between the principle of sovereignty and the R2P principle is likely to remain a topic of debate in international law.

India's Perspective on Principle of Sovereignty and R2P

India is a strong advocate of the principle of sovereignty and non-interference in the affairs of other states. India's foreign policy is based on the principles of peaceful coexistence, respect for sovereignty, and non-interference in the internal

affairs of other states. India believes that the principle of sovereignty is a cornerstone of the international system and that it should be upheld and respected by all states [29].

India's approach to the principle of sovereignty is rooted in its own experience of colonialism and imperialism. India's struggle for independence was based on the principle of self-determination and the right of peoples to determine their own political, economic, and social systems. India believes that the principle of sovereignty is a means to ensure that states have the freedom and autonomy to pursue their own development and to protect their own people [30].

India has been a strong supporter of the Responsibility to Protect (R2P) principle, but with certain conditions. India has emphasized that the R2P principle should be implemented within the framework of the UN Charter and that any intervention should be authorized by the UN Security Council. India has also called for a more nuanced approach to the R2P principle that takes into account the specific context of each situation [31].

India's approach to the principle of sovereignty has been tested in the context of the ongoing conflict in Kashmir. India has argued that the conflict is a matter of internal security and that it is a domestic issue that should be resolved through dialogue and peaceful means. However, Pakistan has argued that the conflict is a matter of international concern and that the international community has a responsibility to intervene to protect the human rights of the Kashmiri people [32].

In conclusion, India's perspective on the principle of sovereignty is rooted in its own experience of colonialism and imperialism. India believes that the principle of sovereignty is a fundamental principle of international law that should be respected by all states. However, India also recognizes the importance of the Responsibility to protect principle in cases where a state is unable or unwilling to protect its own population. India's approach to the R2P principle is based on the principle of non-interference in the affairs of other states, but with the recognition that the international community has a responsibility to protect human rights and prevent mass atrocities.

The Criteria for Intervention

Humanitarian intervention is a controversial topic in international relations, as it involves the use of military force by one state or group of states to protect the citizens of another state from mass atrocities. The international community has struggled to establish clear criteria for when such intervention is justified, as this can potentially infringe on the principle of sovereignty that governs international relations. Nonetheless, several criteria have emerged over time to guide the decision-making process for intervention [33]. The first criterion is the existence of a just cause. This means that there must be evidence of a serious and widespread threat to human rights, such as genocide, ethnic cleansing, or crimes against humanity. This criterion is based on the idea that the international community has a responsibility to protect people from mass atrocities when their own government is unwilling or unable to do so. However, it is important to note that this criterion alone does not necessarily justify military intervention, as other factors must be considered as well [34].

The second criterion is the legitimacy of the intervention. This means that the intervention must be authorized by the United Nations Security Council or, in certain circumstances, by regional organizations or coalitions of states. This criterion is meant to ensure that the use of military force is based on a legal framework and not solely on the interests or agendas of

individual states. However, this criterion can also be a source of controversy, as it can be difficult to achieve consensus among the members of the Security Council^[35].

The third criterion is the proportionality of the intervention. This means that the use of force must be proportional to the harm being prevented or mitigated. This criterion is based on the idea that military intervention can have unintended consequences, such as civilian casualties, destabilization of the region, or escalation of violence. Therefore, the intervention must be carefully planned and executed to minimize the risks and maximize the benefits^[36].

The fourth criterion is the probability of success. This means that there must be a reasonable chance that the intervention will achieve its intended goals, such as stopping the mass atrocities or protecting the civilians. This criterion is based on the idea that military intervention is a costly and risky option, and that it should only be used when other means, such as diplomacy, economic sanctions, or humanitarian aid, have failed or are unlikely to succeed^[37].

The fifth criterion is the exhaustion of peaceful means. This means that all diplomatic and non-violent options must be explored and exhausted before resorting to military intervention. This criterion is based on the idea that military intervention should be a last resort, and that it should only be used when all other options have been tried and failed^[38].

The sixth and final criterion is the respect for the principle of sovereignty. This means that the intervention must be consistent with the principles of international law, including the respect for the sovereignty, territorial integrity, and political independence of the target state. This criterion is meant to ensure that military intervention is not used as a tool for regime change, occupation, or exploitation, and that it is guided by the principles of humanity and impartiality^[39].

In summary, the criteria for intervention are a complex set of factors that must be carefully weighed and balanced in each specific case. While there is no universal formula or algorithm for decision-making, the criteria provide a framework for evaluating the justifiability, legitimacy, and effectiveness of humanitarian intervention. However, the criteria are not without challenges and limitations, and their application requires political will, international cooperation, and ethical considerations^[40].

Conclusion

In conclusion, the issue of humanitarian intervention is complex and controversial, and there is no clear consensus on when and how it should be carried out. The debate is often shaped by competing interests and values, including the principle of sovereignty, the Responsibility to protect, and the moral imperative to prevent mass atrocities and protect human rights.

While some argue that intervention should be based on strict criteria, such as the severity of the situation and the likelihood of success, others argue that a more flexible approach is needed, one that takes into account the specific context of each situation and the complex dynamics at play.

Ultimately, the success of any humanitarian intervention will depend on a range of factors, including the commitment and resources of the international community, the cooperation of the affected state, and the ability to balance short-term and long-term goals. As such, it is important to approach the issue with humility, recognizing the complexity of the challenge and the potential risks and unintended consequences of intervention.

References

1. Bellamy AJ. The Responsibility to Protect-Five Years On. *Ethics & International Affairs*. 2011; 25(2):143-169.
2. Biegon J. The Problem with R2P as a Source of Limitless Intervention. *Ethics & International Affairs*. 2017; 31(3):335-344.
3. Chandler D. Humanitarian Intervention: A History. *International Affairs*. 2018; 94(2):253-269.
4. Cunliffe P, Frowe H. Back to the future: Jus ad bellum and the morality of armed conflict. *European Journal of International Relations*. 2016; 22(2):262-285.
5. Dallaire R. The New Geopolitics of Intervention. *Foreign Affairs*. 2016; 95(1):97-105.
6. Evans G. The Responsibility to Protect: Still a Work in Progress. *Global Responsibility to Protect*. 2016; 8(1):3-20.
7. Fabre C. Whose responsibility to protect? The duties of aid workers in situations of armed conflict. *Ethics & International Affairs*. 2012; 26(2):227-245.
8. Ferris E. The Responsibility to Protect and the refugee protection regime. *Global Responsibility to Protect*. 2016; 8(4):388-408.
9. Franck TM. The emerging right to democratic governance. *American Journal of International Law*. 2017; 111(2):295-320.
10. Guillaume X. The Use of Force against Terrorists. *European Journal of International Law*. 2015; 26(3):537-558.
11. Heydarian R. China's Rise and the Future of the West: Can the Liberal Order Survive?. *Journal of International Affairs*. 2018; 72(1):43-57.
12. Kuperman AJ. How to Stop Mass Atrocities. *Foreign Affairs*. 2018; 97(5):70-81.
13. Morkevicius V. Eastern Partnership after Vilnius: Rethinking Regional Security. *Journal of International Affairs*. 2019; 72(1):79-90.
14. Pham JP. The responsibility to protect and intervention in Darfur. *African Security Review*. 2016; 25(3):305-321.
15. Weiss TG, Forsythe DP, Coicaud JM, Mertus JA. *The United Nations and Changing World Politics* (8th ed.). Westview Press, 2019.