FROM HUMANITARIAN INTERVENTION TO RESPONSIBILITY TO PROTECT: EVOLUTION OF A CONCEPT

Okoh ThankGod Emeka

Theory and History of International Relations Chair
People's Friendship University of Russia
Miklukho-Maklaya str., 10a, Moscow, Russia, 117198

The question of bringing peace and security through coercion to people at risk of extermination has remained a controversial topic in international relations. The author critically analyzed the evolutionary development of the concept of Humanitarian Intervention to its present form, known today as Responsibility to Protect.

Key words: Humanitarian Intervention, Responsibility to Protect, international relations, coercive action, peace and security, genocide.

The question of when, if ever, it is appropriate for states to take coercive — and in particular military — action, against another state for the purpose of protecting people at risk in that other state is not new to international relations. From the Assyrians in ancient Israel and the Romans in Carthage to the Belgians in the Congo and the Turks in Armenia, history is a bloody and barbaric tale [18]. It is therefore not surprising that states all through history have tried at one point or the other to interfere in the affairs of other states, at times for good reasons at the other times for all the wrong reasons.

It is believed that the concept of humanitarian intervention arose from the early European philosophy; this particular concept can be traced to the classical writers on international law, particularly in their discussions on just wars and the later emergence of just war theory. Early legal philosophers like Hugo Grotius, Emer de Vattel, and Samuel Pufendorf upheld more or less vaguely the natural right of each people to resort to arms against the tyranny of a neighboring state [10. P. 6].

Hugo Grotius provided an early endorsement of what was in reality a right of humanitarian intervention when he wrote: "the right to make war may be conceded against a king who openly shows himself the enemy of the whole people... for the will to govern and the will to destroy cannot coexist in the same person" [9. I. P. 157—158].

However stating that the idea of humanitarian intervention started with Grotius may not be completely right taking into consideration that Grotius himself traced it back to ancient Greece and Rome with reference to Aristotle and Seneca as well as examples of Roman emperors using or threatening to use force against the Persians in order to compel them to stop their persecutions of Christians on account of religion. He also mentioned St. Augustine and Pope Innocent in support of the principle that war was justified against rulers who brutalized their subjects [9. II. P. 504—506, 518]. On his own part Gentili while acknowledging sovereignty as a strong pillar holding the relationship among committee of nations made case for the right to external intervention when he noted: 'Look you, if men clearly sin against the laws of nature and of man-

kind, I believe that anyone whatsoever may check such men by force of arms [9]. Though it is a rule established by the laws of nature and of social order, and a rule confirmed by all the records of history, that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere. Yet where a Busiris, a Phalaris or a Thracian Diomede provoke their people to despair and resistance by unheard of cruelties, having themselves abandoned all the laws of nature, they lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations [8. P. 187—189].

Grotius equally recognized that the institute of justified intervention for protecting the rights of the oppressed could be abused for other purposes, however he insisted that the possibility of abuse does not mean that such right should not exist. On the other hand, Suárez found that it was necessary to restrict considerably the doctrine of humanitarian intervention in order to prevent abuse and the spread of disorder, he notwithstanding equally accepted a limited right of humanitarian intervention in circumstances in which the slaughter of innocent people and similar wrongs take place [6. P. 826].

It was not however, until XIX century that a more comprehensive doctrine of humanitarian intervention imaged, at first in connection with Europe Oriental policies used to provide a kind of moral and semblance of legal validity for the repeated interventions in the Ottoman Empire. Moreover, from the time of the Reformation, European powers often used force or diplomatic pressure against each other to protect like-minded religious minorities from persecution [11. P. 91, 92, 103]. Thus, as noted by Manouchehr Ganji, the greater part of the history of humanitarian intervention is the history of intervention on behalf of persecuted religious minorities [17. P. 17]. Such interventions, however, were not just a reflection of religious solidarity or the belief that non-Christian societies were inferior. Rather, the legitimacy that was ascribed to them in international law and the political philosophy of international society was derived from the doctrines of natural law, natural rights and just war, and its immediate point of reference was the concern for humanity. Since these sources of international law were heavily influenced by Christianity, it would certainly be wrong to say that the rights and duties derived from these standards were religiously unbiased. On the contrary, the importance of divine law is highly evident in for instance the late medieval philosophy and jurisprudence of Francisco de Vitoria, Francisco Suárez, Alberico Gentili and Hugo Grotius, who were all inspired by the scholastic tradition founded by St. Augustine and St. Thomas Aquinas, although in various degrees.

In the first half of the twentieth century, the conception of a right of humanitarian intervention continued to attract the support of the leading authorities of international law, among them Lassa Oppenheim who argued: “Should a state venture to treat its own subjects or a part thereof with such cruelty as would stagger humanity, public opinion of rest of the world would call upon the Powers to exercise intervention” [14. P. 347]. Hersch Lauterpacht simply stated that “the exclusiveness of domestic jurisdiction stops where outrage upon humanity begins” [16].

Nevertheless, it is a disputed fact as to whether any right to a humanitarian intervention existed prior to World War One (WWI) or in the pre-1945 era. Many examp-

les of state practice in the 19th century have been given [5] and some argue that the right existed [12. P. 388]. However, many specialists of international relations don't speak about right but doctrine and conclude that even if any such doctrine has been existed, it did not survive after WWI. After WWI the rule concerning the use of force was going through a process of transformation that culminated in the strong renunciation of its use in the UN Charter after World War Two. The end of World War Two (WWII) and the establishment of the United Nations (UN) was a fundamental landmark in the system of collective security. By the end of WWII, at the conference in San Francisco, the UN Charter, as a basic document of the world order, was signed on 26 June 1945. The Charter includes a general provision on the prohibition of use of force in Article 2(4) that reads: 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.

At times, the wording of the provision has led to disputes about its interpretation, especially concerning the extent to which the use of force that is not "against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations", is allowed. Sovereignty is one of the strong pillars of the United Nations charter. However, Sovereignty is like Lego: it is a relatively simple idea but you can build almost anything with it, large or small, as long as you follow the rules. Sovereignty is not a monolithic concept. As a historical phenomenon, it has evolved through some catalytic moments or 'revolutions'. As a socially constructed norm, it has thus to respond to changing historical circumstances. Even though some commentators have suggested such a reading of the provision, states have rarely relied upon it [15].

In the context of humanitarian intervention one argument could be that the use of force for halting or preventing widespread or systematic violations of fundamental human rights is not inconsistent with the purposes of the UN. On the contrary, its aim instead is to fulfill one of the purposes of the UN: promoting and encouraging respect for human rights and for fundamental freedoms [20]. Nevertheless, the largely prevailing interpretation of the Article is that it prohibits all use of force except for the two exceptions present in the Charter: self-defense (Article 51) and actions by the Security Council (Article 42). This conclusion is reached by the teleological and historical interpretation of the provision and is reiterated by the state practice.

However, the mood had begun to shift in other areas of international law. The rapid rise of the international human rights movement and the conclusion of multilateral human rights treaties (for example, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, both of which were concluded in 1966) gave rise to emerging claims that state sovereignty involved rights, as well as responsibilities. In the 1990s, with the end of the Cold War, the vogue for intra-state peace building took hold. The number of interventions authorized by a newly invigorated UN Security Council increased dramatically. The decision of the Security Council to depart from previous practice — by declaring that civil wars and internal strife could be regarded as threats to international peace and

security — had a major impact on what situations might justify a response in the form of a legitimate intervention. Once a situation was deemed by the Security Council to be a threat to international peace and security, it could use its powers to order "enforcement action", which includes armed interventions, under Chapter VII of the Charter. As more and more interventions were ordered, it became clear that state sovereignty and non-intervention were far from inviolable, irrespective of what the Charter's formal terms stated.

Inevitably, this new 'interventionism' on the part of the UN and international community spawned a corresponding debate on the changing limits of state sovereignty and nonintervention. In 1992 the then UN Secretary General Boutros Boutros-Ghali wrote: "time of absolute and exclusive sovereignty...has passed; its theory was never matched by reality" [7]. At the time, Boutros-Ghali's sentiments were indicative of guarded but widespread optimism that respect for state sovereignty would no longer be used as a cloak for states to hide behind while they abused their citizens. Indeed, many believed that the apparently increasing willingness of the Security Council to authorize interventions to deal with internal humanitarian crises was a harbinger of a new dawn in multilateral protection.

The evolution away from the discourse of *humanitarian intervention*, which had been so divisive, and toward the embrace of the new concept of *the responsibility to protect* has been a fascinating piece of intellectual history in its own right. The Responsibility to Protect is an emerging doctrine designed to provide an international framework of protection for civilians facing mass atrocities. It was developed initially by an independent panel of experts named the International Commission on Intervention and State Sovereignty (ICISS) in 2001 and later endorsed by world leaders at a UN Summit in 2005.

Prior to the establishment of ICISS, academics, lawyers and policymakers had focused clearly on whether it was ever legitimate to intervene in another state's affairs. ICISS chose to take a different approach. Instead of looking at the longstanding, circular and hotly contested debate over whether a 'right to intervene' existed, the Commission tried to find a new way of talking about protection against grave atrocities. As stated by Gareth Evans, the President of *the International Crisis Group*, "we sought to turn the whole weary debate about the right to intervene on its head, and to re-characterize it not as an argument about the 'right' of state to anything, but rather about their 'responsibility' — one to protect people at grave risk: the relevant perspective we argued, was not that of prospective interveners but those needing support. The searchlight was swung back where it always should be: the need to protect communities from mass killing and ethnic cleansing, women from systematic rape and children from starvation" [7].

The Responsibility to Protect is a three-fold duty:

A. *The responsibility to prevent*: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

B. *The responsibility to react*: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

C. *The responsibility to rebuild*: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert [13].

This three-fold duty falls by default to the state concerned but should be assumed by the international community whenever there is a "manifest failure" of the state to discharge its responsibilities to its citizens. There is considerable debate over the status and scope of the Responsibility to Protect. On balance, most observers and states believe that it remains a political commitment and has not yet acquired legal force.

The ICISS placed a lot of infancies on the three dimensional character of Responsibility to protect, primarily to draw away the over concentration on the use of military force as it has always been with humanitarian intervention. The ICISS stated that military action should only be considered in "extreme and exceptional cases" which it defined as "cases of violence which...genuinely shock the conscience of mankind or which present a clear and present danger to international security" [13. P. 31]. ICISS in its report did not attempt to provide a blanket approach rather it suggested a case-by-case evaluation before deciding on possible action. To assist in this process, the Commission espoused a series of principles which it stated should determine when and how military force was used.

The first of these was that there must be 'Just Cause'. In order for this threshold to be satisfied there would have to be a large scale loss of life or ethnic cleansing, either actual or imminent. Even when the just cause threshold had been crossed by 'conscience shocking' acts, intervention was to be guided by four cautionary standards: right intention, last resort, proportional means and reasonable prospects. Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing that lesser measures would not have succeeded. The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective. And there must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction [19. P. 258].

On the issue who should have the right to intervene, the commission clearly favoured UN or more correctly the Security Council of the United Nations, stating that there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter [13. P. xii].

One visible deficiency of ICISS report is that while it succeeded in garnering popular support by avoiding the crucial issue of addressing whether an intervention which was not authorized by the Security Council could ever be regarded as legal it created an amorphous concept meaning vastly different things to different people. Although NGOs and civil society enthusiastically embraced the work and conclusions of ICISS, the references to Responsibility to protect and the idea that the Iraq inva-

sion was based on protecting Iraqis against the tyranny of Saddam Hussein has been described as “devastating to the responsibility-to-protect agenda because it served to increase concerns that R2P would be used to further erode the sovereignty of smaller, developing countries [21. P. 18]. However as the situation in Darfur deteriorated, civil organizations have intensified efforts to reinvigorate the principle of responsibility to protect demanding further international action on Darfur based on the responsibility to protect framework.

While the principle of responsibility to protect has its own deficiencies it however provided bases for future actions, and a reference to future works both by international relation experts, diplomats and scholars of international law. Humanitarian intervention has gradually graduated to responsibility to protect in accordance with 21st century realities and as human race develops so shall the concept evolve.

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ОТ ГУМАНИТАРНОЙ ИНТЕРВЕНЦИИ К ОТВЕТСТВЕННОСТИ ПО ЗАЩИТЕ: ЭВОЛЮЦИЯ КОНЦЕПЦИИ

Окох Санкгод Эмека

Кафедра теории и истории международных отношений
Российский университет дружбы народов
ул. Миклухо-Маклая, 10а, Москва, Россия, 117198

Вопрос о защите находящихся в опасности людей путем принудительных действий со стороны международного сообщества остается спорной темой в международных отношениях. Автор сделал попытку проанализировать развитие концепции гуманитарной интервенции вплоть до ее современного вида, так называемой «ответственности по защите».

Ключевые слова: гуманитарная интервенция, ответственность по защите, международные отношения, принудительные действия, мир и безопасность, геноцид.