

# *Analysis of the Application of the Responsibility to Protect in International Law*

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**Abstract:** Since the establishment of international organizations, international humanitarian intervention has been widely used in dealing with international disputes, until it was first introduced in written form in the World Summit Outcome in 2005, which emphasized the need to establish broader collective security and was endorsed by heads of State. However, in the process of applying the responsibility to protect, many problems have been shown, such as the problem of "inhumane" consequences caused by forceful intervention; the problem of deficiencies in the application procedure; the problem of ambiguity in the interpretation of the responsibility to protect, etc. This paper is based on the practice of the international community, and analyzes the solutions to the problems of the current situation in the light of typical cases. In the application of the responsibility to protect, the basic principles of international law should be taken into account, and in the process of interpretation, the concept of "three pillars" should be followed when the concept of the responsibility to protect was put forward, so as to prevent the expansion of interpretation. The procedure of the responsibility to protect should be optimized, with the establishment of a professional assessment body "ex-ante" to strike a balance between legitimacy and efficiency, the improvement of the monitoring mechanism "in the middle of the process" to ensure the smooth implementation of interference, and the improvement of the accountability mechanism "ex-post" to prevent interference from occurring. "Improve accountability mechanisms to prevent abuse of the right to intervene and ensure that all peaceful means have been exhausted before intervening by force, so as to promote the better application and development of the responsibility to protect in today's world.

**Keywords:** Responsibility to protect, Humanitarian intervention, Military intervention, International Humanitarian

## 1. Introduction

With the development of globalization, the integration of the world is not only reflected in the economic exchanges between countries, but also in the political and even ecological aspects, which are closely related. It is the responsibility of every country to safeguard the personal and property rights of its nationals, and the security and freedom of its nationals are even more incumbent on the State. However, in some war-prone regions, such as Libya and Iraq, can other international members ignore when their countries or governments are incapable of safeguarding the lives of their citizens? Thus, the concept of the State responsibility to protect was born, with the aim of avoiding large-scale

humanitarian violations and guaranteeing human security. It was first recognized in writing in the 2005 World Summit Outcome Document and has subsequently been widely applied in dealing with international conflicts. However, in the process of adapting the responsibility to protect, some drawbacks cannot be avoided. For example, in the war of Libya's Gaddafi, the Security Council adopted a resolution establishing a no-fly zone over Gaddafi, and Gaddafi's warplanes were shot down once they rose into the air, but does such behavior conflict with the original international custom, does it violate the principle of non-interference in internal affairs, is Gaddafi's national sovereignty violated, and is the use of military force for intervention Is the use of force to intervene reasonable and lawful? This paper discusses the problems in the application of the responsibility to protect, and provides opinions and references based on the current situation in the international community.

## **2. Status of the application of the responsibility to protect**

In response to the mass atrocities in Rwanda and the former Yugoslavia in the 1990s, State intervention and the International Sovereignty Commission (ISC) introduced the concept of the responsibility to protect in 2001, and in 2005, UN Secretary General Kofi emphasized the need for broader collective security, which was endorsed by Heads of State and established the Responsibility to Protect as an international norm aimed at ensuring that the international community always Stop Genocide, mass atrocities such as war crimes, ethnic cleansing, and crimes against humanity. The rules indicated that if a state fails to protect its people, the international community has the right to take action against it in the form of "humanitarian intervention" to better protect human rights. The responsibility to protect enables all States to participate in the international community's humanitarian protection efforts and to contribute to the protection of human rights worldwide. However, the widespread application of the responsibility to protect has been accompanied by a number of problems of a procedural nature, as well as of a purpose that is contrary to the original intent [1].

### **2.1. Legitimacy deficiencies in the responsibility to protect**

In the case of Libya referred to above, the resolution established a no-fly zone in order to safeguard the human rights of the Libyan people. The implementation of the resolution was regulated by a coalition of 15 NATO countries, but in the course of the implementation of the mandate, i.e., aerial bombardment, civilian casualties were caused. NATO's actions were authorized by the Security Council, i.e., "legal," but in the course of implementation, innocent civilians were also implicated. Throughout the 1990s, the Council broadened its interpretation of the responsibility to protect, aiming to protect civilians by means of intervention [2]. But NATO's involvement in Kosovo turned the tables. Kosovo found that NATO's intervention did not meet the requirements of previous international law or customary international law, and even impinged on it, but was justified from the point of view of morality, i.e., human rights protection, and could be recognized by the international community. A situation arises where interference is illegal but legal. There are different arguments among international scholars about this, with supporters arguing that NATO's military intervention in Kosovo, although lacking legal authority, started from a point of view that was consistent with the protection of human rights as promoted by the international community, and that it was morally legitimized, as Kofi Annan claimed when he claimed that "the so-called humanitarian intervention has been rejected many times by its detractors, and that he is the centerpiece of those who insist on sovereignty. " [3]. Opponents do argue that it could become a means for powerful countries to intervene in the internal affairs of other countries in the name of humanitarianism.

## **2.2. Vagueness of the content of the responsibility to protect**

### **2.2.1. Provisions susceptible to wider interpretation in application**

The responsibility to protect has been recognized in the 2005 Outcome Document and has been refined and improved since 2009. Still, to this day there are no precise explanations or descriptions of the four atrocities in the document, namely, genocide, ethnic cleansing, war crimes and crimes against humanity, and there are no specific designations of circumstances, which makes the application of this provision susceptible to broader interpretations.

### **2.2.2. Difficulty in defining internal State power struggles and human rights violations**

Moreover, it is difficult to obtain evidence of human rights violations committed by national governments, and it is difficult to distinguish between military conflicts and human rights violations committed by national governments or political parties. The casualties caused by the struggle of a domestic regime do not fall within the scope of humanitarian intervention by the international community, and forced intervention may even impact the original basic principle of "non-interference in internal affairs", destroying the original international social order and easily causing more intense international conflicts [4]. Therefore, the resolution on whether the international community should intervene poses difficulties for the application of the responsibility to protect.

## **2.3. Necessary limits of military intervention**

The military intervention for the protection of human rights mentioned above has, to a certain extent, dealt a blow to the "perpetrators of violence" and protected the lives and freedoms of the people in the war zone, but have new casualties been caused in the course of the military intervention for the protection of human rights? The use of tougher sanctions. In February 1991, the US demanded Iraq to evacuate Kuwait within one week. Iraq indicated that it would be in a vulnerable position after the ceasefire and in order to ensure that it would not be attacked by Kuwait on its way to evacuate after the ceasefire, agreed to complete the evacuation within three weeks after the ceasefire, but this was rejected by the US government, and the US resorted to stronger forceful measures of intervention. [5]. Inevitably, under these circumstances, a large number of people were killed or injured, and the new war caused irreparable damage. The position of the United States coalition forces, however, was a humanitarian intervention for the protection of human rights, which was considered to have fulfilled its duty to maintain security and peace in the world. However, the international community has not provided a clear compensation program and held the perpetrators accountable for the casualties suffered by the innocent people in the war zone due to the forceful attacks. As Iraq had not reached an agreement with the United States Government on the timing of its withdrawal in the first place, had the United States Government subsequently intervened with more force than necessary? Will it evolve into military expansion?

## **2.4. Inadequate operational procedures for the responsibility to protect**

### **2.4.1. The Security Council often "deliberates without deciding"**

In international law, once a Security Council vote is adopted, the act of intervention is authorized, which means that the humanitarian intervention is legal and the international community can intervene accordingly. However, the adoption of Security Council resolutions often requires lengthy and heated discussions and is sometimes a matter of consideration of the loss of interests and games between countries, so the efficiency of the adoption of Security Council resolutions is not high [6]. When a disaster strikes, the first time to take measures can often minimize the damage, but because

of the way the Security Council resolution is adopted, sometimes it is not able to respond to the disaster in a timely and effective manner. This is the core problem of humanitarian intervention: the lack of self-interested motivation and will. This can lead to a failure to intervene internationally in a timely manner to minimize the damage caused by human rights violations at the site of a disaster.

#### **2.4.2. Difficulties in obtaining evidence for the application of the responsibility to protect**

In order to prevent the abuse of the responsibility to protect and to determine the legality of humanitarian intervention, it is necessary to go to the disaster area to collect evidence and ensure that the circumstances in which humanitarian intervention is applicable under the law do exist in the area before taking the necessary measures. However, the process of evidence collection and resolution is time-consuming and dangerous. At the end of the process, States need to analyze and discuss whether there is evidence of humanitarian destruction and whether the responsibility to protect applies, so the question arises as to how to intervene in a timely manner to minimize the damage.

### **3. Restrictions on humanitarian intervention under international law**

The responsibility to protect, which provides a framework for dealing with the four crimes, is an innovation in the protection of human rights and a new way of maintaining the international security order, emphasizing that every State has the responsibility to safeguard the human rights of its own nationals, and that if a State fails to fulfil its duty to safeguard, it is tantamount to abandoning the protection of the lives and freedoms of its own citizens, and that the international community takes the initiative in assuming the responsibility for safeguarding the lives and safety of its citizens. It encourages the international community and some major Powers to assume the responsibility of protecting the rights and interests of the people in troubled areas, while at the same time following certain laws and rules and procedures in the process of intervention in order to prevent excessive interference.

#### **3.1. To intervene in accordance with the basic principles of international law**

The basic principles of international law form the basis of international law, are recognized by all States, are of universal significance and have great political and legal significance. The concept of the responsibility to protect, on the other hand, is in partial conflict with the traditional basic principles of international law; for example, the humanitarian intervention advocated in the responsibility to protect is in conflict with the principle of non-interference in the internal affairs of States in international law. The use of force in the process of international intervention to achieve the purpose of protecting human rights is in conflict with the "principle of the prohibition of the use of force". In the author's opinion, with the development and progress of society, the weight of the moral dimension in the rules is a reflection of the improvement of human civilization, and the principle of non-interference in internal affairs and the principle of the prohibition of the use of force have provided for exceptions, such as Articles 39, 41 and 42 of the Charter of the United Nations, which stipulate that the United Nations Security Council has the right to authorize the member states to use force or non-forceful means to protect international peace and security in specific circumstances. The right to use force or non-forceful means to protect international peace and security. The Charter provides for two types of military action, namely, military action authorized by the United Nations and the right of self-defence of the injured State against aggression, as legitimate existences in international law. Their main purpose was related to the protection of human rights; therefore, in the application of the principle of protection, the importance of the basic principle should be taken into account, and they should be applied in strict accordance with the circumstances stipulated in international law, in order to prevent the application of excessive limits.

### **3.2. Strict limitations on the use of force in the application of the Principles**

Regardless of the international situation, for all countries, the use of force is bound to produce greater losses. The development of nuclear weapons in today's world has tended to be mature, with not a few countries in possession of nuclear weapons, and a variety of new types of chemical weapons research and lethality at the same time, but also on the ecological environment on which mankind relies for its survival to bring pressure on the use of force to cause wars that lead to the people's inability to live, and human rights in war zones are often unable to be safeguarded. As we have learned from past cases of international intervention by force, even intervention by force for the purpose of humanitarian protection cannot avoid causing casualties among the people in the place of war. Therefore, in the process of applying the principle, the main focus should be on negotiation, consultation, good offices and mediation, and before resorting to the use of force, it should be ensured that all peaceful means have been exhausted, and if it is determined that the use of force is necessary, it should be carried out in strict accordance with the authorization of the Security Council [7].

### **3.3. Enhancing the weight of the responsibility to protect in international law**

#### **3.3.1. Explanation of the three pillars and the principles to be followed in their application**

In 2012, Brazilian President Rousseff proposed the concept of Responsibility while Protecting (RwP), and Brazil believes that the three pillars have the same meaning in the context of R2P. In 2012, Brazilian President Rousseff proposed the concept of Responsibility while Protecting (RwP), and the Brazilian side believes that the three pillars should be strictly prioritized in their application. The introduction of the RwP concept, which has been endorsed by the majority of the international community, has curbed the abuse of the responsibility to protect to a certain extent, and the concept emphasizes the responsibility to protect while assuming responsibility, which enhances the legitimacy of forceful intervention on the basis of the responsibility to protect [8].

In international law, the concept of the responsibility to protect has been characterized by the "three pillars", which are specific interpretations of the responsibility within the concept of the responsibility to protect. The three pillars provide for four types of protection against mass atrocities, confer on the international community the responsibility to protect, and require the international community to take the necessary action in accordance with the Charter of the U.N. [9].

Moreover, in the application of the principle of protection, coercive measures should be taken in strict compliance with the principle of proportionality, and coercive measures should not exceed the necessary limits, so as to avoid the imposition of excessive limits that may lead to more intense conflicts and more serious consequences [10]. At the same time, it was important to ensure that the responsibility to protect was implemented within the framework of humanitarian law and the law of armed conflict; although the principle of protection was different from previous sources of international law, the right of intervention should not be expanded arbitrarily in the process of its application, and its application should be lawful; otherwise, it would encourage hegemony. The essence of the responsibility to protect was to uphold justice, safeguard human rights and avoid humanitarian violations, but if it became a tool for some Powers to interfere in the internal affairs of other countries, it would run counter to the essence of the responsibility to protect, create a situation in which the developed countries were pitted against the developing countries in the international community, and run counter to the starting point of human rights protection.

#### **3.3.2. Avoiding an expansive interpretation of the responsibility to protect**

The application of the responsibility to protect is not simply a matter of adherence to the basic principles of international law, but is derived and developed on the basis of the basic principles in

response to the international situation, reflecting international humanitarian concern, and therefore stubborn adherence to the basic principles will not be conducive to the better application and development of the responsibility to protect. However, in order to promote the continued deepening of the responsibility to protect, it is also necessary to clarify and specify the dimensional criteria for its implementation, so as to prevent unreasonable interference as a result of expansive interpretations in the course of its application, and even more so to prevent it from being maliciously manipulated and interpreted by some hegemonic countries, which would violate the sovereignty of other countries and carry out colonization in the name of humanitarian intervention, thus defeating the original purpose of the responsibility to protect.

#### **4. Criteria for implementation of the responsibility to protect**

##### **4.1. Clarifying the criteria for activation of the responsibility to protect**

With regard to the subjects exercising their rights, before humanitarian intervention is carried out, due process should be followed, i.e., resolutions should be adopted by the Security Council before international organizations have the right to intervene in other countries as necessary, and there should be no private intervention between countries in the internal affairs of other countries without the approval of the Security Council. As for the motives for the exercise of the responsibility to protect, the responsibility to protect aims to alleviate or end humanitarian disasters, and should be based on the perspective of protecting human rights and maintaining the neutrality of its position; the self-interested motives of the countries in the decision-making process may easily cause humanitarian intervention to go beyond the necessary limits, and the lack of will of the countries will negatively weaken the function of the responsibility to protect, and fail to fulfill the international community's obligation of safeguarding human rights in a timely manner [11]. Therefore, the author believes that Security Council members should raise awareness of their responsibility to intervene in humanitarian affairs and recognize the importance of maintaining world peace and security, while at the same time respecting national sovereignty and preventing hegemony and armed expansion in the name of the responsibility to protect.

##### **4.2. Meet the conditions for armed intervention**

It has been made clear in the above discussion that the use of armed intervention should ensure that all peaceful means are exhausted and that the use of armed intervention should be cautious. Therefore, in the author's view, the implementation of armed intervention, both from a moral point of view and from the point of view of international law, must meet three conditions: first, it must be established that other remedies have been exhausted and have failed before the armed intervention is carried out. Secondly, it must be possible to demonstrate clearly before the intervention is carried out that it will bring the violation to an end and safeguard human rights. Third, the cost of the intervention should be proportional to the harm caused by the violating State, and the intervention should not exceed the harm caused by the violating State, i.e. the principle of proportionality. Fourthly, it should be ensured that the decision to intervene was taken in such a way as to minimize the damage to the international social order and international stability.

##### **4.3. Optimizing procedures for the responsibility to project implementation**

###### **4.3.1. Establishment of a professional assessment mechanism**

A highly controversial aspect of the application of the responsibility to protect is the definition of whether humanitarian intervention is justified, i.e., whether the country's problems require

international intervention, and this issue has led to a heated clash of scholars from various countries [12]. In the author's view, a special international assessment organization or body should be established. In the past, the decision-making mode of the Security Council is generally a voting resolution made by countries on behalf of their national interests, so it is often difficult to achieve a truly neutral position in the application of the responsibility to protect decision-making, which will reflect the national self-interested motives are particularly obvious, thus leading to the final decision-making unfair, if the establishment of a specialized assessment body in the United Nations, to be able to make a more accurate and objective judgment of the international situation, is conducive to the unity of the application of the responsibility to protect, and can also avoid the need for international intervention. The establishment of a specialized assessment body in the United Nations would enable a more accurate and objective judgment of the international situation and help to protect the uniformity of the application of responsibility, as well as preventing the big powers from acting according to their own interests or objectives. Moreover, such a body would be able to investigate and collect evidence from a neutral standpoint in the first instance as to whether or not large-scale human rights violations existed in the area where the incident had occurred, and to define them in accordance with uniform criteria in order to determine whether or not international intervention was needed in that area, thus striking a balance between the legitimacy of the decision-making process and its efficiency.

#### **4.3.2. Establishment of appropriate oversight and accountability mechanisms**

In the application of the responsibility to protect, the Security Council should not be limited to the authorization of decision-making, but should also play a supervisory role in the process of decision-making, preventing, on the one hand, the authorizing State or organization from aggravating the damage caused by its passive attitude in the course of the intervention, and, on the other hand, preventing the unauthorized actions of some Powers from turning into a new threat of force. In the event that international intervention results in more serious human rights violations in the place where it is carried out, the Security Council should revoke the authorization in a timely manner, prevent the continuation of the damage, hold the subject of the violation accountable, and order it to compensate the violating State accordingly. Therefore, in order to prevent the abuse of the right to humanitarian intervention, it is necessary to improve the monitoring mechanism during the implementation of the responsibility to protect and the accountability mechanism in the event that damage is caused after implementation, so as to ensure the legitimacy of the application of the responsibility to protect.

## **5. Conclusion**

With the development of the international political economy and the promotion of humanitarianism, the existence and application of the responsibility to protect is inevitable, but in the intense collision of scholars from various countries, extremism should be avoided, and the current problems in the application of the responsibility to protect should not be overstated and only the shortcomings of the responsibility to protect should be seen, nor should the humanitarian intervention function of the responsibility to protect be expanded, thus contributing to the flames of hegemonism or the threat of force. In the implementation of the responsibility to protect, it should be derived and developed on the basis of the basic principles of international law. The concept of the responsibility to protect in international law should be reasonably interpreted, expansion and limitation should be avoided, a sound mechanism for assessment, monitoring and accountability should be established, and the use of forceful intervention should be prudent. As experience is summarized and analysed, the responsibility to protect will also become increasingly mature. States should actively play their role

in the international community and contribute their wisdom and strength to the maintenance of security and stability in the international order.

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