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THE RESPONSIBILITY TO PROTECT

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Abstract

The responsibility to protect (R2P) is a relatively innovative, still emerging concept that entered the area of international public law a few years ago. After the international community failed to take action during the atrocities in Rwanda and former Yugoslavia, due to various motives, the concept emerged as an alternative to extend one's protection over another, but also to state's protection that must be exercised over its own population. The norm seeks to never permit an outbreak of mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. Under this norm, states fall under the obligation to exercise the protection that they can offer in order to assist the United Nations in establishing and settling peace and, simultaneously, accomplishing the protection of human rights. This paper seeks to elucidate the circumstances in which the application of the norm could be justified, as it may be subjected to abuses; its limits, considering the fact that an uncontrolled and vicious use may violate the principle of non-intervention, state's sovereignty and other international principles; but also, the controversies it triggers, oscillating between being a legal norm or a political principle.

Keywords: responsibility to protect, human rights, humanitarian intervention, genocide, United Nations, sovereignty

1 INTRODUCTION

The Responsibility to Protect introduces itself as an international norm that is encouraging states to take responsibility for protecting their populations at risk from international crimes such as ethnic cleansing, war crimes, crimes against humanity and genocide. It is based on the principle that sovereign states have an inherent responsibility to exercise protection over their citizens from such atrocities, while the international community bears the responsibility to support them in acting as requested. The responsibility to protect framework was adopted by the United Nations in 2005, and it has been widely accepted by the international community.

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The concept of responsibility to protect has been around since the early 2000s, but it gained traction after the conflict in Darfur in 2003. At the time, the failure of the international community to enforce precautions and take actions in a prompt manner to avert mass killings and displacement of civilians, led to a public outcry for action. This unfortunate event led to the creation of the International Commission on Intervention and State Sovereignty (ICISS). The newly created Commission was tasked with developing a framework for global action in cases of mass atrocities. The ICISS proposed the responsibility to protect norms in its 2001 report, which was then adopted by the United Nations in 2005. Since then, the concept has been used to encourage action in cases of human rights abuses and mass atrocities. It has been invoked in Bosnia, Libya, South Sudan, Syria, and elsewhere. It has also been used to encourage states to take action to protect their own citizens from potential abuses.

The responsibility to protect norms stands as a potent mechanism when it comes to prevention and response given to human rights abuses. It is an important reminder that states have a commitment to protect their societies from mass atrocities, as the international community has a correlative responsibility to support them in doing so. However, its effectiveness depends on states' willingness to act when necessary and to ensure that those responsible for atrocities are held accountable.

This paper seeks to elucidate the multispectral dimensions of the concept of the responsibility to protect, the circumstances in which the application of the norm could be justified, as it may be subjected to abuses; its limits, taking into account the fact that an uncontrolled and vicious use may violate the principle of non-intervention, state's sovereignty and other international principles; but also, the controversies it triggers, oscillating between being a legal norm or a political principle.

2 METHODOLOGY

From a methodological point of view, the realization of the work involved efforts to design a scientific investigative approach, which combined the systemic methodology and the analytical approach, by reporting on the theoretical and empirical framework of the research theme. In order to present a complete picture of the concept of the responsibility to protect, we have included an interdisciplinary legal approach, so that the current research

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represents an interweaving of general legal theory with fields such as history, international relations and political science, as well as axiology.

Theoretically, the paper was based on the longitudinal or evolutionary research of the concept of the responsibility to protect, analyzing the dynamics of considerations of the principles of non-intervention and the sovereignty of states in relation to it, the content and nature of the concept and its peculiarities and variations. Simultaneously, the controversies to which the principle is subject and their impact on its evolution were analyzed, through an analytical approach. Along with the theoretical approach, the practical applicability (or inapplicability) of the principle was highlighted, by providing concrete historical cases.

3 BODY

The establishment of The International Commission on Intervention and State Sovereignty took place in year 2000. It had the empowerment to examine the issues of sovereignty, intervention, and international responsibility in the context of the emerging doctrine of the responsibility to protect. The ICISS articulated its vision for the responsibility to protect in its 2001 report, The Responsibility to Protect [1]. The report outlines the responsibilities of the international community to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. The report also recommends that states, in order to protect their populations, should take appropriate actions, either through their own efforts or in cooperation with the international community.

According to the ICISS, the leading responsibility to protect populations from human rights abuses belongs to the state, as well as to the international community. Though, the international community should only intervene when the state is unwilling or unable to act according to its obligations and commitments. The report also calls for a strengthened system of international norm-setting to ensure that states respect and protect their citizens' rights. The ICISS also recommends that states should take measures to prevent and mitigate the risk of genocide, war crimes, ethnic cleansing, and crimes against humanity. This includes measures such as conflict prevention, peacebuilding, and post-conflict reconstruction. Finally, the ICISS recommends to the international community to contribute, assist and support states in their efforts to protect their populations from human rights abuses.

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International law is being challenged by a multitude of new actors and networks that do not fit within the traditional Westphalian system. [2] The need for the international community to evolve more effective global security is driven by an increasingly interconnected and interdependent world. Events in one part of the world can quickly have an impact on another. Therefore, it is important for countries to come together and work together to address global security issues, such as terrorism, the proliferation of weapons of mass destruction, cyber security, and transnational organized crime. Global security is not just about protecting the nation state, but about protecting the global community. This means developing and implementing effective international mechanisms to prevent and address security threats, and to promote global peace, stability, and prosperity.

Throughout the 20th and early 21st centuries, states have largely failed to live up to their responsibilities as signatories to the UN Charter [3], the Universal Declaration of Human Rights [4]. When civilians were oppressed by their rulers, the situation was rarely effectively managed, despite declarations by individual states, but also by representatives of the international community, that such crimes must never be allowed to happen again. It was not until 2001, under the shadow of the shameful inaction during the Rwandan genocide and considering the perceived success of the 1999 intervention in Kosovo, that the international community was finally able to produce a comprehensive framework of policy instruments to guide states in preventing mass atrocities. In April 2006, the Security Council issued the initial explicit reference to the responsibility to protect in resolution 1674 on the protection of civilians in armed conflict [5]. In August 2006, the Security Council referenced that decision while promulgating Resolution 1706 [6] authorizing the deployment of UN peacekeeping forces in Darfur, Sudan.

The Rwanda conflict was a civil war that took place in the African nation of Rwanda between 1990 and 1994. It was fought between the Hutu-dominated government and the Tutsi-led Rwandan Patriotic Front (RPF). The conflict was sparked by ethnic tensions between the two groups, which had been simmering for decades. The conflict began in 1990, when the RPF launched a series of attacks on the Hutu-led government. The government responded by launching a counter-insurgency campaign, which included the targeting of civilians. This led to an escalation of violence, which eventually resulted in the 1994 Rwandan Genocide. During the genocide, an estimated 800,000 to 1

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million Tutsis and moderate Hutus were killed by Hutu extremists. In the wake of the genocide, the RPF took control of the country and formed a new government. The country has been under the rule of the RPF since 1994, but it remains fragile and vulnerable to further violence. In addition, the legacy of the genocide continues to haunt the country, and many of the perpetrators have yet to be brought to justice. It is generally agreed that the international community failed in its responsibility to intervene in the genocide in Rwanda. The United Nations was perhaps best equipped to intervene in Rwanda, in the context of the presence in the area, still in the early phase, of the UN Forces, although not in sufficient numbers, still, the rigidity of the system stood in the way. Simultaneously, real strategies and policies were available to avert, or somewhat mitigate, the ensuing genocide. However, the Security Council did not approve the undertaking of the necessary measures. This represented a great failure of will and civic courage at an international level. In this context, the responsibility to protect has conquered a solid ground of action. Responsibility to protect, as a protective tool, attempted to act on both the Rwanda and Kosovo tragedies, asserting that the state has an inherent obligation to protect its citizens from mass atrocity crimes; that the international community will provide support in this regard; and that, where the state clearly fails in its obligations, the international community is obliged to act.

In Rwanda, UN representatives were present in the area before the massacres broke out and gave clear warnings about the possible unsatisfactory course of events. In Serbia, genocide took place under the watch – literally – of UN peacekeeping forces. When the North Atlantic Treaty Organization (NATO) forces intervened in Kosovo to prevent widespread death and destruction, they were accused of breaching the UN Charter by using force without the Security Council approval. [7]

After the experience in Kosovo, international community found itself at a crossroad that raised large-scale debates and controversies concerning international intervention. Several attempts were made in the aftermath of Kosovo to identify a legal rationale for the action. Efforts were also made to determine whether developments in Kosovo amounted to acceptance of ‘humanitarian intervention’ as a legal form of action. [8] The Kosovo conflict and the responsibility to protect is a complex issue that has been debated for many years. The Kosovo conflict was a conflict between the Kosovo

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Liberation Army (KLA) and the forces of the Federal Republic of Yugoslavia (FRY) in the late 1990s. The conflict began in 1998 and lasted until 1999, when NATO intervened with airstrikes. The NATO intervention was seen as a breach of international law but was justified by the international community based on the idea of the Responsibility to Protect. While the NATO intervention was successful in ending the conflict, the issue of responsibility to protect is still being debated. Critics argue that the intervention was illegal and that it violated international law by not obtaining permission from the United Nations Security Council. Supporters argue that the intervention was necessary to protect civilians.

The genocide in Yugoslavia was a mass killing of ethnic minorities, primarily Bosnian Muslims, which occurred from 1992 to 1995 during the Bosnian War. It was carried out by the Serb forces of the Yugoslav People's Army and several paramilitary groups, including the Serbian Radical Party. The majority of the killings took place in Bosnia and Herzegovina, though some also occurred in Croatia and Kosovo. The killings were motivated by a desire to create a "Greater Serbia" by purging all non-Serb populations from the region. The conflict began in the summer of 1992 and quickly escalated into a full-scale genocide, with the Serbian forces using rape, torture, and mass executions to terrorize Bosnian Muslim civilians. By the time the war ended in late 1995, an estimated 100,000 people had been killed and more than 2 million had been displaced. Many of the victims were civilians, including women, children, and the elderly. The atrocities committed during the Yugoslav genocide were some of the most brutal in modern history. The United Nations failed to respond to warnings of impending violence in the region and, when the conflict began, did not provide adequate protection to the Bosnian Muslims. Additionally, the international community did not impose sanctions on the Bosnian Serb leadership and did not adequately enforce the arms embargo in place during the conflict. In the aftermath of the genocide in Yugoslavia, the international community has taken steps to strengthen its commitment to preventing similar atrocities in the future. The United Nations declared the genocide a crime against humanity and war crimes tribunal was set up in The Hague to prosecute the perpetrators. In recent years, the International Criminal Tribunal for the former Yugoslavia has handed down sentences to some of those responsible for the genocide.

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In the light of the events of that period, in March 2000, in what became known as the Millennium Report, Kofi Annan asked a question whose valences exceeded the dimension of what could be considered admissible within the framework of the international community: “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?”.

The concept of responsibility to protect is itself an available mechanism of protection. It demands to the states the immediate action to safeguard their populations against severe violations of human rights such as massacres, ethnic cleansing, and breaches of women's rights in accordance with the "human security" concept. The responsibility to protect has a basic structure that consists of three pillars of equal value. The first pillar (pillar I) is focused on the inherent responsibility of each State to protect its populations. The second pillar (pillar II) indicates the responsibility of the international community to assist States and facilitate actions of protection of their populations. The third (pillar III) establishes the responsibility to protect that rests with the international community when a State is manifestly failing to protect its population.

The primary responsibility of any government is to protect its citizens and uphold the rule of law. In some cases, a government may decide to intervene militarily to protect its citizens or to prevent other governments from committing human rights abuses or other atrocities. Only the UN Security Council can authorize military intervention, and only according to the following criteria [9]: 1) All diplomatic, political, and economic options for conflict resolution must be addressed (“last resort”). 2) The "seriousness of threat" must next be examined to establish whether the use of force is necessary. 3) The intervention must be appropriate to the degree of the threat and may not have other intentions (“proper purpose”). 4) Robust peacekeeping missions must be properly equipped to achieve their assigned objective (“proportional means”). 5) Military operations may not have worse consequences than failure by the international community to intervene (“balances of consequences”).

The quandary of how to manage and respond to humanitarian disasters and large-scale human rights abuses has increasingly come to the most noticeable position of political and academic controversy over the last years. The

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approach of responsibility to protect has been highly contested since its inception and outlines visible inconsistencies in practice. The notion expressly alludes to the non-governmental idea of "human security". Nevertheless, the UN Security Council, whose five permanent members up until now perceive security not as human security but as national security, have the empowerment to decide on military interventions. At this particular time, they have always acted according to national interests and not according to how intensely a population is being attacked. [10] Critics of the concept argue that it is an infringement on state sovereignty and a form of neo-colonialism, as it gives the international community the power to intervene in the internal affairs of a state. Supporters of the concept argue that it provides a moral obligation for the international community to protect vulnerable populations from mass atrocities.

In a world of unequal power and resources, sovereignty represents for many states the best line of defense, protecting their unique identity and their freedom, recognizing their dignity. Sovereign equality is enshrined as a principle of international law in numerous documents, primarily in the UN Charter. It can be defined as the set of state rights related to the solution of its internal problems and its external relations, in compliance with the principles and norms of international law. The principle of state sovereignty is a legal principle that recognizes and respects the independence and autonomy of all states. Simultaneously, it establishes the right to interfere in the internal affairs of a state cannot, under any circumstances, be subject to the claims of another state. The internal affairs of a state pertain to its inherent and inalienable autonomy, sovereignty and independence. The responsibility to protect has called into question the genuine structure of the international arena, placing at the disposal of the world community a divergent perception of state sovereignty. It does not violate nor supersede the principle of state sovereignty, but instead seeks to balance it with the responsibility of states to protect their citizens from any forms of danger and it provides a framework for international action. In cases where states are not able, powerless or, on the contrary, unwilling or evasive to protect their citizens, the international community may acquire a responsibility to intervene to exercise protection over the citizens of that state. This intervention is done through diplomatic and political means (sanctions) or using military force.

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The condition of acquiring and maintaining the sovereignty of a state is closely related to the obligation to respect and honor the sovereignty of other states. Sovereignty implies a dual responsibility: externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. [11] This is how the principle of non-intervention emerged, which over time acquired customary value, acquiring over time the quality of an imperative norm of international law, unanimously recognized by states in their relations, being enshrined in the UN Charter as a fundamental principle of international law.

Using the concept to justify an intervention that is not motivated by the desire to help the victims of oppression or human rights violations, but by questionable desires or dominion over the state in crisis must not happen if the doctrine is to retain any respectability. If it this would happen, it would completely undermine the legitimacy of the principle and would either lead to its demise or at least to a degree of cautiousness in its application up to the point where it is of limited use. [12] The principle of non-intervention is a fundamental principle of international law which requires that states respect the sovereignty and territorial integrity of other states. The principle was enshrined in almost all important documents of the international public law. The principle is present in the provisions the Montevideo Convention [13], in the United Nations Charter, and in the text of regional, multilateral or bilateral treaties. And the constitutive plan of regional organizations, as in the case of the Organization of American States [14], the African Union [15] or the Pact of the League of Arab States [16], referred to the rule of non-interference in the internal affairs of other states. The resolutions of the United Nations Organization issued between 1965-1980, strengthened the principle of non-interference in the internal affairs of other states, and brought important clarifications regarding its content.

According to this principle, no state or group of states has the right to intervene directly or indirectly, for whatever reason, in the internal or external affairs of any other state. Based on this principle, which derives from the exclusive character of territorial sovereignty, direct or indirect intervention as well as threats in various forms against the personality of a state or against its political, economic and cultural elements are prohibited. A state may not resort to economic, political or other measures, or encourage such measures, to coerce another state or to subordinate the exercise of its

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sovereign rights and obtain from it advantages of any kind. It is a basic principle of international relations and prohibits the use of force or coercion to interfere in the domestic affairs of another state. Non-intervention does not, however, mean that states cannot take any action to protect other states from serious human rights abuses. The two concepts of responsibility to protect and non-intervention are complementary. While non-intervention prohibits the use of force or coercion to interfere in the domestic affairs of another state, responsibility to protect allows for the international community to intervene in cases of severe and systemic human rights abuses. The concept allows for such intervention to be taken in order to protect populations, while upholding the principle of non-intervention by only intervening with the consent of the affected state or with the authorization of the UN Security Council.

The idea that should represent the epicentre of the existence and applicability of international principles takes shape in the fact that, once the problem of violating human rights in any serious form is raised, the area of action of the principles loses ground. The protection of human rights takes precedence over the belief that the principles of international law apply fully and unconditionally to all circumstances. Available international protection mechanisms, such as the responsibility to protect, represent the practical translation of the international community's commitment to protect the human being at risk, and any impediment to these actions, whether legal or conceptual, should be properly treated.

Responsibility to protect does not yet enjoy the status of a norm of customary international law, but it is based on existing legal foundations, including the Genocide Convention [17], entailing historical implications with wide resonance and pronounced impact. A norm of international conduct is one that has gained broad acceptance among states, and there could be no better demonstration of that acceptance in the case of responsibility to protectthan the unanimously adopted language of the 2005 World Summit Outcome Document. Once a norm has gained not only formal acceptance but also widespread use, it may become part of "customary international law". In essence, the concept of the responsibility to protect has no legal basis, so it is not binding on the parties. However, individually, without other legal and conceptual implications, its existence is inconceivable. Through its evolution and content, the concept presents itself as being inextricably linked to the

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fundamental principles of international law, being rather a practical translation of their real applicability, than something that would contradict it. The conscious commitment of the international community to protect the human being and to respect human rights, according to the decalogue of the principles of international law, represents the central rationale for the legitimacy of the responsibility to protect. The principles of international law that seem to represent an obstacle to the practical applicability of the responsibility to protect (principles as non-intervention or the sovereignty of states), do not themselves present an absolute rigidity that would justify their prior applicability in relation to the principle of the protection of human rights. In fact, namely the principle of the protection of human rights, which is the object of action of the responsibility to protect, represents the admissible exception from the principles that contradict the concept, in cases when the question of the protection of violated human rights arises. The uncharted concept of the responsibility to protect refers to essential issues involving the obligation to grant protection against genocide, war crimes, ethnic cleansing and crimes against humanity. These obligations define forceful and persuasive rules and principles of international humanitarian law treaties and customary international law.

4 CONCLUSIONS

This paper elucidated the conceptual aspects of the responsibility to protect in its all dimensions, using various theoretical approaches and practical exemplification of the concept. It presents a brief history with a significant impact on the evolution of the concept, providing a set of definitions, conditions and its limitations. As it is a powerful international tool, it is inevitably connected to the entire international network, including the fundamental international principles, not being limited to them, but acting in accordance with them and, at the same time, extending their area of action, thus displaying its multidimensionality. As it shows problems when it comes to its legal base, it triggers controversies and arguments within the academical and political community, as it is improbable for an international actor to act through it with an entirely altruistic intention. For example, Russian authorities invoked responsibility to protect to justify military intervention into neighboring Georgia, in 2008. The basis of this action and affirmation consisted of a delusive idea that the invasion aimed to prevent a genocide in South Ossetia. This attempt to use responsibility to protect to

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legitimize their action failed since there was no proof of any such massacre and Russia was unable to depend on China for support. Nevertheless, although failing, this attempt by Russia reveals the fact that non-Western regimes may also conceal overtly political aims behind neutral terminology.

As a matter of fact, current international law rejects the legitimacy of autonomous humanitarian intervention, and ongoing conflicts highlight the difficulty of obtaining legitimacy based on the outcomes. However, neither current conflicts nor international law completely abnegates the desire for a legal and acceptable humanitarian intervention under a newly formed responsibility to protect. Still, in its ideal version, being applied correctly, it is undeniably a concept that has a lot of potential, which aims to do good, to protect the human being.

The responsibility to protect is, overall, a global commitment to prevent and protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. As a relatively new concept, the future of the concept is uncertain, though it has been gaining more and more attention and support in recent years. One thing that is clear – the current ongoing Ukrainian war has highlighted the necessity of responsibility to protect in responding to mass atrocities and protecting vulnerable populations. The war has highlighted the inadequacies of international responses to mass atrocities, particularly in the face of competing interests. Moving forward, it will be important to strengthen the global commitment to the responsibility to protect and ensure that states are held accountable for their actions in preventing and protecting populations from mass atrocities. Another key development for the future of responsibility to protect is the continued emphasis on the role of civil society and non-governmental organizations. Non-governmental organizations have a key role to play in advocating for the implementation of responsibility to protect, and in ensuring that states are held accountable for their actions. They can also provide critical support to vulnerable populations and help ensure that their voices are heard and their rights respected. Finally, the importance of sustained international commitment to the prevention of mass atrocities cannot be underestimated. This means that states must be willing to take a leadership role in promoting responsibility to protect, and that the international community must be willing to support and reward such efforts. Overall, the future of responsibility to protect is uncertain, but with continued

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global commitment and support, there is hope that it will be successful in helping to protect vulnerable populations and prevent mass atrocities.

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