Examining of Relationship between Responsibility to Protect & Sovereignty of States in Light of Practice of International Community

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Abstract

With the end of the civil war and fading of military and ideological competitions of the superpowers and drastic changes in the international system, maintaining peace and security has been closely associated with the political, social economic and cultural structures of states and their behavior in observing the criteria of human rights. The Security Council as an organ, established for keeping Peace and Security has experienced great opposition to the sovereignty of states by using human rights rules as an alibi, and even has paved the way for military intervention. Normally, material breach of the human rights criteria and fundamental liberties can endanger the international peace and security. In this type of situations, the issue can be discussed in the Security Council with the request of the general assembly and the general secretary. IF the Security Council confirms a threat consequent to the material violation of human rights rules, it can enforce the required actions, regarding its obligations and authorities. The intervention of the Security Council as a representative of the international community with regard to taking decisions for humanitarian intervention in the context of the responsibility to protect and denying the absolute sovereignty of states on one hand and encouraging the states to guarantee the observance of civil rights of people and enabling them in the field of public welfare and even military intervention and protecting nations against tragedies such as genocide, crimes against humanity and war crimes, on the other hand are significant challenges. Although the responsibility to protect is practiced in the direction of legitimate intervention in the domestic affairs of sovereign nation – states with the objective of protecting humanitarian rules, actually after 2001, the chances for humanitarian measures have been decreased. In this article, we will examine this issue that from the beginning of the third millennium what effects, the concept of responsibility to protect has had by limiting the sovereignty of states and redefining it, aligned with the humanitarian intervention by the Security Council?

Keywords: humanitarian intervention, the responsibility to protect, sovereignty of states, humanitarian law criterion, the security council

1. Introduction

Studies of the Security Council's background in enforcing humanitarian obligations show that after the end of the cold war, there has been a growing increase in Security Council's resolutions and practices by providing interpretation of the concept of international security. These resolutions of the golden age of humanitarian interventions in the 90 the, has changed the balance of two normative values, namely, sovereignty and human rights, and were mostly issued in response to various factors such as domestic conflicts, emergence of grim crimes, the growth of human law movements and the rise of legitimacy of humanitarian norms Iraq, Somalia, Bosnia and Herzegovina, Rwanda, Haiti and Kosovo are among countries that have been subject to interventions.

With the beginning of the third millennium and the concept of responsibility to protect being laid out in the U.N, it was expected that, by resorting to protecting the fundamental rights of people and accountability of states, sovereignty of states will be more limited and legitimacy of humanitarian intervention will be elevated, but we have usually seen a gap between legality and legitimacy of decisions made by international institutions.

Examining the cases of Darfur, Sudan, Myanmar Srilanka, Libya and Syria with a glance at responses of the Security Council confirms this allegation.

2. The Responsibility to Protect and Legitimacy of Sovereignty in the Humanitarian Law Concept

The issue of responsibility to protect which has been supported by international law from the beginning of the third millennium, has been used to remove political, legal and practical obstacle to humanitarian intervention by presenting the concept of sovereignty as a responsibility (that was developed by Cohen in the 1990 th).

Tragedies leading to the deaths of 800/000 Tutsies in Rwanda and 7000 children in serebrenitsa were the results of these obstacles[1].

Actually the responsibility of protect attempts to create a connection between legality and legitimacy and thereby make humanitarian intervention possible in international law[2].

In order to solve this problem a mechanism must be foreseen ,so that some states would not be able to hinder various measures based on their interests and on the other hand some states cannot misuse humanitarian intervention and justify their acts.

Various arrangements in this area must be made with international consensus for protection of human rights by nations, and international discourse on this subject must be shifted from the right to intervene to the obligation to intervene.

It seems that protecting humanity and protecting sovereignty are both important, but the question is that which one should be given priority?

In this regard ,Kofi Annan states that((the charter of the United Nation was issued in the name of the peoples, not the governments of the united Nations … The charter protects the sovereignty of peoples. It was never meant as a license for governments to trample on human rights[3]. sovereignty implies responsibility, not just power)).

The government of Canada founded the international commission on intervention and state sovereignty, which issued its report with the title of the responsibility to protect in 2001. This report was an attempt for solving the tension between two competitors, namely sovereignty and human rights and reaching an international consensus with the aim of protecting peoples. Two determining incentives beyond production of ICISS were the desire for preventing situations like Kosovo which was created as a result of polarization of members of the Security Council, and preventing situations like Rwanda in which the world stood aside and watched the genocide unfold[4].

Naturally the universal attitude toward the recognized rights in the international relations may create norms on the responsibility of states to provide welfare of their people, when it involves the basic and vital responsibility of states to protect the peoples.

Today, the new concept of sovereignty involves the right of intervention, when the community of states decides to consider the responsibility to protect.
Thus, with the rise of the principle of human rights protection, the prohibition of foreign intervention has altered to humanitarian intervention[5].

The absolute right of sovereignty based on prohibition of foreign intervention has been declared unpractical by both advocates and opponents of "the responsibility to protect". The opponents claim that accountability of states to international community is a dangerous and a threat to the concrete right of sovereignty, and advocates of "the responsibility to protect" believe that sovereignty in its traditional sense is fruitless.

So, a balance between human rights, maintenance of peace and sovereignty was made by laying out "the responsibility to protect, and efforts for reconstructing a normative consensus in the 21th century, resulted in ratification of "the responsibility to protect" people against very disastrous crimes[6]. According to ICISS, the responsibility of action (particularly military action) is originally held by the Security Council. IF the Security

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[1] - Graham, cronogue, responsibility of protect: Syria the law, politics. And Future of humanitarian intervention post Libya, international humanitarian legal studies 3,2012 p125

[2] - Alexander, volsky, reconciling human rights and state sovereignty, justice and the law in humanitarian intervention, vol3, june, 2007, p.44

[3] - Kofi, Annan, intervention, Dichley foundation lecture XXXV, 1998, p.2

[4] - Alexy, Bellamy and Nicholas j. wheeler, humanitarian intervention in word politics, p.19

[5] - Luke, Glanville, Ellery stowell and the enduring dilemmas of humanitarian intervention, international studies review, vol 113, 2011, p.243-44

[6] - Miles, kahler, Ibid, pp. 20-25

Council is unable to fulfill its responsibility, some states may decide to take actions based on present rules that can have undesirable effects.

In cases where the majority of the Security Council members support intervention, but a collective measure is not taken because of veto ,ICISS may suggest that states seek political support by the General Assembly, and if it is not possible, this shall be done with the permission of regional organizations[7].

The responsibility of protect Focuses on three significant notions:

1) In the first instance, states are originally responsible to protect their citizens against human rights offences such as: genocide, crimes against humanity and war crimes.

2) International community has the responsibility to contribute in this regard and make sure that states fulfill their obligations.

3) Finally, if necessary, international community has a duty to take appropriate measures, even military intervention in order to protect people[8].

The report of the commission recommends the General Secretary to consider better progress in the responsibility to protect.

In 2004, Kofi Annan established a high level panel for examining the threats, challenges and change, presented the commission's report to the above panel.

The panel, along with confirming the responsibility to protect as a "rising norm" and affirming the mentioned discussions in the commission's report, with an outlook different from ICISS's report, merely affirmed the powers of the Security Council on use of force and mentioned the necessity of determining criteria for legitimate use of force as the last resort and stated that "the principle of non-interference in domestic affairs could not prevent crimes like genocide[9].

In 2005, in the world summit, the General Assembly ratified a document which a group of liberal – democratic states and NGO s were working on for reaching consensus on humanitarian actions and declared that all states have the responsibility to protect their peoples against genocide, war crimes, ethnic cleansing and crime against humanity.

This document also approved the responsibility of the Security Council in case of incompetency of governments to fulfill this duty[10].

When the U.N accepted the responsibility to protect, many commentators thought it would strengthen the legal foundations of unilateral humanitarian intervention and claimed that the responsibility to protect had found a new legal; norm for legitimizing humanitarian intervention[11]. In 2009, the Secretary General declared the consensus of the world leaders on the concept of the responsibility to protect, according to clauses 138 and 139 of the ratified document of the world submit in 2005, and referred to essential elements and organs for implementing it.

Also in January 2009, in his report "implementing the responsibility to protect" Kofi Annan, accepted the role of international community in taking collective measures not as a right but as a responsibility[12].

The Security Council used the term "the responsibility to protect" for the first time in 2004, when it was dealing with Darfur case.

The responsibility to protect was confirmed by the general Assembly in 2005 (resolution 60/1) and 2009 (resolution 63/308) and also in the Security Council's resolutions (resolutions 1674 on April 24, 2006, 1706 on 31 August 2006 and 1894 on 11 November 2009).

On the same line, in 2007, international court of justice, in Bosnia and Herzegovina against Serbia and Montenegro case, using a broad interpretation and invoking to article one of convention on the prevention and punishment of the crime of genocide 1948 declared: "states are committed to use all tools as far as possible to

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[7] - ICISS, 2001, p.75

[8] - KOK- chotran, Humanitarian intervention as a duty, 2015, university of Pennsylvania, p.123

[9] - High – level panel on threats, challenges and change report, supranot 30,pp.63,207

[10]- G.A/Res.60/1,UN.DOC/A/RES/bo/1(oct.24,2004)

[11]- Heinz, Eric A, Humanitarian intervention, the responsibility to protect and confused legitimacy, human rights and human welfare, V6 l. 11,2001,p.23

[12] - United Nations (2009) implementing the responsibility to protect: Report of the secretary General. A/63/611, January 12, 2009

prevent genocide, and if a state fails to take all measures to prevent genocide, it shall be responsible[13].

Human rights organizations, accused the government and Janjaweed militia to organized attack to civilians who were suspected to support the rebels as a part of an intentional war strategy[14].

Te results if this conflict was ethnic cleansing and displacement of more than two million and death of more than four hundred thousand people[15].

The Security Council demonstrated its worry for the first time in its resolution ISS6 on July 2004 and asked the government of Sudan to dispatch its army, prevent breaches of human rights in Darfur area by militias and in the meantime disarm them and put the leaders of Janjaweed on trial[16].

Based on the report of international investigation commission of the U.N on Darfur which was published on January 25, 2005

The Security Council referred the situation to international criminal court, which at the result of it, president omaral Bashir was accused to war crimes and crimes against humanity and arrest warrant was issued on March 4 2009. International criminal court also accused him to genocide in 2010[17].

The Security Council referred to "the responsibility of all members of the united Nation to support their citizens and the responsibility of international community to cooperate in case that a state is not able to fulfill its responsibility, in resolution 1706 on August 31, 2006.

Perhaps it was in this resolution that the Security Council used the term "the responsibility to protect" and the world saw the official acceptance of the responsibility to protect and a change of the Security Council's discourse in sovereignty and humanitarian intervention[18].

Asked for compelling the government of Myanmar to accept international assistance by using military intervention, because they believed that the government of Myanmar is not able to protect its population.

The government of Myanmar disagreed with these ideas, but following the diplomatic efforts, the permission was issued.

The Question that may be raised is that: "is the responsibility to protect applicable to natural disasters[19].

3. Srilanka

The thirty – year civil war of srilanka ended when the srilankan military defeated the liberation Tigers of Tamil Eelam (LTTE) in 2009.

As srilankan Government forces advanced deep into a small area in northeast of that country, which had been under the control of LTTE, almost all the civilian population were displaced and used as human shield.

Many states leaded by Russia and china believe that government of Srilanka had the absolute autonomy against LTTe.

The diplomacy of srilanka was effective and thus the case of srilanka was not placed on the Security Council's agenda[20].

Just when the Tamilian civilians were in need of help, the military intervention was put aside, while it was expected that international community, by resorting to "the responsibility to protect" report; take necessary measures towards rebels who were internationally imperiled.

Although the U.N had been aware of the offences, but only a brief report was presented by the reporter[21], in which the negligence of the UN in protecting the civilians was condemned and this phrase was inserted in it indeed, resorting to the responsibility to strengthening the UN[22].

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[13] - ICJ, 2007, case concerning the application of the convention on the prevention and punishment of the crime of genocide (Bosnia and Herzegovina A. Serbia and Montenegro) p.430

[14] - Carrie, boot walling, human right norms, state sovereignty and humanitarian intervention, p.31

[15] - ICC doc, 2009, warrant of arrest for omar Ahmad al basher, ICC – 02/05 – 01/09 (4 March)

[16] - S/RES/1556

[17] - Carrie, Booth, Walling, ibid, p.31

[18] - Ibid, p.9

[19] - Holmes, john, Ibid, p.138

[20] - Holmes, John, Ibid, p,135

[21] - Petrie Report

[22] - Charles petrie, Report of the secretary generals, international panel on united nations, Action in srilanka, November 2012

On may 2012, when the government of srilanka and Tamil Tigers were both committing war crimes, international crisis Group did not even made mention of the responsibility to protect and merely focused on humanitarian law.

The story of srilanka demonstrated the end of humanitarian intervention, based on the plan of "the responsibility to protect", while protecting the civilians was the main pillar of "the responsibility to protect" which was confirmed by the U.N and is considered to be an obligation of international community against material violation of human rights.

In the same year (2009), the secretary General published a report, based on clauses 138 and 139 of the world summit outcome (WSO) statement in which he declared: "the concept of the responsibility to protect was unanimously approved by the word leaders[23]."

4. Libya

On February 2011, the wave of demonstrations that started in the Middle East from December 2010, reached Libiya. The demonstrations were peaceful but the libiyan regime responded with brutality. The situation rapidly turned into a war between the opponents and Qaddafi's regime[24].

Qaddafi believed that his broad use of force was justified as a legitimate measure, because its aim was maintenance of peace and order.

The Security Council issued resolution 1970 on February 26, 2011 unanimously recalling the Libyan authorities responsibility to protect its population, confirmed the responsibility of the security council based on the seventh chapter of the U.N charter to maintain international peace and security.

In that resolution, the government of Libya was called to stop violence immediately, respect human right and humanitarian law, and grant prompt access to the human rights watch and other monitoring institutions.

On March 17, 2011, with the aim of protecting the civilians, the Security Council passed resolution 1973 with ten positive votes against five abstained votes (including china, Russia, Brazil, India and Germany), issuing humanitarian intervention in order to prevent the violation of human rights in Libya.

That was a firm resolution, in which making a no fly zone was recommended and the responsibility of the Security Council was impliedly asserted in this regard[25].

Ultimately, following the recommendation by the Security Council U.N, France, U.K, Canada, Belgium, Denmark, Italy, Greece, Netherland, Norway, Romania, Spain, Turkey, U.A.E and Qatar, dispatched their troops to Libya and overthrew Qaddafi's regime.

A decade after the discourse of human rights was propounded in the Framework of the responsibility to protect; the Security Council issued the permission of military intervention against a member of the U.N that had committed crime against its population.

This intervention showed that the relation of sovereignty and human rights was redefined with evolving of Westphalia sovereignty into a popular sovereignty. The case of Libya also showed that invoking to "the responsibility to protect" can be successful and it could be utilized for justifying the military response, and humanitarian intervention cannot be contradictory to "the responsibility to protect", because the aim of both of them are protection of the innocents against the misuse of power[26].

5. Syria

Uprisings, called Arab spring which led to changes in countries like Tunisia, Yemen and Libya, created a web that reached Syria and caused uprisings against Asad dynasty. The starting point of the Syrian crisis was March 2011.

At that time the Syrian army is said to have lacked the experience in controlling riots, committed violence against people.

The reports of violence, committed by the government forces and militias against the Syrian people by international institutions such as the Security Council, Amnesty international and fact finding commission implied a material violation of human rights in Syria, including killing, displacement, and broad detention of

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[23] - The secretary – general. Report of the secretary – general implementing the responsibility to protect. UN.DOC.A/63 Jan 12.2009

[24] - Carrie, Both walling, ibid, p 33.

[25] - S/RES 1973

[26] - Holmes, john, ibid, p.143-4

population.

On February 4, 2012, the Security Council, put a resolution on its agenda calling for end of asad's regime but was vetoed by Russia and china.

On April 14, 2012, the Security Council, passed resolution 2042, while asserting maintenance of sovereignty independence, unity and territorial integrity of Syria, condemned the broad violation of human rights and asked the Syrian regime to implement propositions of special envoy of the U.N and Arab league.

The Security Council's efforts in the Syrian case led to passing resolutions: 2043 (April 2012) 2118 (September 27, 2013), 2139 (February 22, 2014), 2165 (July 18,2014), 2170 (August 18, 2014), (December 17,2014), 2209 (March 6, 2015), 2178 (September 22, 2014), 2199 (February 12, 2015), 2235 (November 20, 2015) 2245 (2015), 2249 (2015) 2254 (December 18,2015), 2258 (December 22,2015) 2268 (February 26 2016). The above resolutions asserted condemning material Violation of human rights, cooperation of neighboring states of Syria and other countries in humanitarian assistance, democratic transfer of power, comprehensive dialogue of the government and opponents establishing an institution for transfer of power implementation of ceasefire, annihilation of chemical weapons, and issuance of permission for effective operations by UNSMIS forces, not supporting terrorist forces Known as ISIL ANF and other groups and individuals related to Alqaeda, Calling the conflicting parties to facilitate sending of humanitarian assistance to population, providing necessary situation for safe and voluntary returning of Syrian refugees to their residence and reconstruction of damaged areas unfortunately the security council was not able to take proper decisions because Russia and china have strong military and commercial ties with Syria Russia is the main provider of arms to Syria and china is the biggest non – Arab country that has invested in the Syrian economy.

These factors caused a double standard that one can sees secret and hypocritical motives behind it and can restrict interventions under the title of "the responsibility to protect[27]". In the case of Libya, the Security Council recalled the Libyan authorities their responsibility to protect the Libyan people, but in the case of Syria, there was no mention of the responsibility to protect.

There is no doubt that invoking to this responsibility and its implementation by the Security Council is a completely political decision that is actualized by unanimous consent of the permanent members of the Security Council[28].

The Libyan case and humanitarian intervention in that country, comparing to the case of Syria, implied that the theory of humanitarian intervention especially in its more organized form can be abused by great powers for ensuring political interests, geopolitical aims and regime change[29].

6. A Critique of the Responsibility to Protect

At the beginning of 2001, the prospect of a world in which "humanitarian intervention" puts an end to crimes such as genocide was strengthened by as set of documents titled as "the responsibility to protect[30], but in practice, one can see a decrease in humanitarian intervention[31].

It can be argued that after the world summit in 2005 ,the trend has changed in this respect ,many state members have attempted to repudiate their obligations or have been unwilling to support further executive efforts[32].

As long as sovereignty considerations are main obstacles to reach a community, the political will, would be the Achilles, heel of great powers in the Security Council and, international community in general.

Not foreseeing a specific mechanism for implementation of the responsibility to protect has created two basic problems.

1) Military intervention involves high costs and considering the public opinion it restricts states in implementation of the responsibility to protect.

2) Because a mechanism has not been designed for compelling states to follow international regulations, and also

[27] - Holmes, John, Ibid, p. 144

[28] - Moradi, Abdollah, The Syrian crisis, possibility and impossibility of humanitarian intervention, foreign policy quarterly, 27 th year, No 2, 2012, p.527

[29] - rezaei, Mohammad Taghi, etalia, the legal basis

[30] - of intervention in Syria in the framework of new doctrines the theory of the responsibility to protect strategic studies of globalization quarterly, bth year No 15, 2014, pp216-213

[31] - Yams, Kurth, Humanitarian intervention after Iraq: legal idea VS. military relations 2006, p.88

different interpretations of humanitarian law, national interest and security consideration, these obligations may not be implemented.

Because no sanction has been devised for non intervention, and intervention has different obstacles in various situations, thus the responsibility to protect is not implemented similarly the responsibility to protect has effected sovereignty and provided a new interpretation of sovereignty[33].

This concept has approved the normative sovereignty and its responsibility to prevent gross crimes and this implies a situation that Stahn calls "complementary trap" some, like Evans believe that the first pillar of the responsibility to protect asserts that sovereignty is undisputable and the doctrine of responsibility accepts the traditional concept of sovereignty, thus state's sovereignty is conditioned to protection of citizens against gross crimes[34].

So it can be argued that states' responsibility origins from certain legal obligations, and if state can notOr do not want to prevent threats against its people, the non – intervention principle is suppressed by international responsibility[35].

The most significant normative change is that civilians must not be killed arbitrarily, and for this objective, the sovereignty of states may be undermined legitimizing intervention and focusing on justice is an aim that has been done by making the document of the responsibility to protect aligned with management of universal order.

The responsibility to protect demonstrates the capacity of a plan which based on it, the Security Council must be accountable to a supreme authority, namely morality, and states must adjust themselves with that too[36].

The responsibility to protect is a concept that attempts to make a relation between international community and sovereignty.

The points is that, action is not anyone's right but is an obligation and responsibility that must not be in the framework of "intervention" but rather its frame of reference should be "protection".

International community must both illegalize crimes against human rights and improve the motivation of states for protecting civilians[37].

The increasing growth of international organizations and intuitions, reciprocal dependence, globalization of values and norms, has led the commission to this idea that making revisions to the concept of sovereignty is essential.

Thus, distinct features of ICISS are as follows: making balance, supremacy, independence, comprehensiveness, innovation, and political realism[38].

Conclusion sovereignty has been corroded by growth of humanitarian law. In other words, following gross human tragedies during the 20th century and after that nation to the conclusion that respecting human rights must be the basis of peace and international security.

Until the end the cold war, sovereignty had a close association with none – intervention, and the realistic interpretation was prevailing.

Following the end of the cold war the world saw gross violations of human rights. On the other hand moralistic and global discourse challenged the absolute power of states and asserting their responsibility, allowed humanitarian intervention under certain circumstances. The practice of the Security Council during the last decade of the 20th century in some countries was the result of this trend and broad interpretation of international peace and security.

In the new millennium, this idea was expressed that while the sovereign state is the predominate form of political organization and it may be contradictory to human rights in some situations, none of them must be suspended, but rather both of them must be balanced in favor of humanity.

States must accept protecting human rights as their responsibility and if a state fails to fulfill its obligation, its

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[33]- Graham, Cronogue, Responsibility to protect: Syria, the law, politics and future humanitarian intervention post Libya, international humanitarian legal studies 3, 2012. P.156

[34] - Miles, Kahley, Ibid, p.29

[35] - graham, cronogue, Ibid, pp.129-130

[36] - Stephen, Hopgood, op cit, p.190

[37] - Stephen, Hopgood, op cit, pp.186-187

[38] - R. AMESH, Thakur. Outlook: intervention, sovereignty and the responsibility to protect: experience from ICISS, security dialogue, No3 Vol 33,2002,pp.326-326

sovereignty may be suspended temporarily in this sence the Security Council is allowed to intervene on behalf of international community. The precedence of the Security Council shows that military interventions for humanitarian causes have been diminished and their political will does not match with moralistic views.

Ultimately it is the motivation for intervention or non – intervention with its real or nominal objectives which makes significant decisions in the national level rather than the international level. Also considerations of national interest among members of the Security Council, is undeniable. Thus universal criteria must be product for all cases and legitimacy and credibility of humanitarian intervention can be based on it.

Under such conditions by creating a relationship between sovereignty and observance of humanitarian law, balance of peace, order, stability, justice and morality will be viable.

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