



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE EROSION OF STATE SOVEREIGNTY IN THE FACE OF HUMANITARIAN INTERVENTION: ANALYZING THE LEGAL IMPLICATIONS OF THE RESPONSIBILITY TO PROTECT (R2P) DOCTRINE**

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## **Abstract:**

In the realm of Public International law, state sovereignty plays a crucial role in maintaining global peace and order. However, inter-state disputes like Palestine-Israel and civil disputes like Myanmar and Yemen have often highlighted the vacuum in the intricacies of balancing such sovereigns. By analyzing case studies and recent developments, the research evaluates the efficacy of R2P in balancing state sovereignty with the need for humanitarian intervention.

The paper highlights the contribution of distinct doctrines with special emphasis on the Responsibility to Protect principle introduced by the International Commission on Intervention and State Sovereignty (ICISS) to prevent atrocities like genocide on the state population. The paper also examines the implication of implementing the theoretical principles of international law in the contemporary world and the devoid legal framework surrounding R2P.

Through the means of doctrinal research based on versatile literature focusing on international law, the research draws conclusions on the effectiveness and the limitations of the R2P as a tool for intervention. Ultimately the paper provides a critical assessment of the role of R2P in the past and its future relevance in addressing humanitarian crises.

**Keywords:** State sovereignty, R2P Doctrine, International Law, Humanitarian Intervention

## **1. Introduction**

The paper discusses the relationship between various doctrines governing and stimulating the mechanism for international law. Focusing on the doctrine of state sovereignty, this paper draws connections to the concept of humanitarian intervention and the application of the Responsibility to Protect the Doctrine.

Since the Doctrine of State Sovereignty highlights a state's ability to take discretionary actions to protect its population, it is now a common notion that this principle is observing a decline in its implementation in the contemporary world, especially regarding matters including violations of International Humanitarian laws.

Another commonly heard and read concept in this context is humanitarian intervention, where the international communities and stakeholders are given the power to use military intervention in another state's territory to curb and stop any humanitarian crisis, such as genocide, war crimes, etc. This concept further relates to the Doctrine of Responsibility to Protect, commonly referred to as the R2P Doctrine.

With such contradicting principles, it is often observed by scholars that the doctrine of R2P has led to an erosion of state sovereignty. However, contemporary matters like the Gaza conflict showcase different views and opinions. This paper discusses such doctrine in brief, followed by a practical study of the Gaza conflict, underscoring the weaknesses in the practical implication of the R2P doctrine.

## **2. Overview of State Sovereignty in International Law**

Following Austin's outlook on law, the law often involves three core elements, the first being a command issued by some sovereign authority, the second a sovereign authority that everybody agrees to and the third sanctioning. Emphasizing the third element, Sanctions are often argued as paramount validators for a law, they act as a measure for deterrence and further stimulate the purpose of protecting the ends of justice and eradicating crimes. This definition given by Austin, can hence be regarded as a crucial jurisprudential framework for all descriptions of laws, including International Law.

However, when it comes to the sphere of International Law, implementation of such

jurisprudential concepts and doctrines can often turn out to be more difficult than expected. This section introduces one of such areas in International Laws, where sanctions play a pivotal role in safeguarding people from mass atrocities like genocide, war crimes etc. This involves the study of the concept of state sovereignty and its relationship with the notion of Humanitarian Intervention through the means of R2P doctrine.

The Doctrine of State Sovereignty found its emergence in the early 17th century, resulting from the ratification of the Treaty of Westphalia in 1698. This treaty not only highlighted the end of the Thirty-Year War in Europe but also gave birth to the principle of territorial sovereignty which is now a cornerstone for public international law. Further, this treaty also underscored the key concept of recognition of states and hence acts as a crucial legal framework behind major contemporary notions of sovereignty.

Territorial sovereignty highlights a State's undivided right over its territory without any external interference. This gives a state's stakeholders absolute authority over their populations and holds them responsible for protecting and enhancing their resources. However, this pivotal doctrine is commonly argued while discussing globalization, humanitarian interventions, and contemporary conflicts between States, and many drawbacks and vacuums are observed in its implementation.

### **3. The Rise of Humanitarian Crises and the Role of Intervention**

When it comes to instances of grave human rights violations, the three major root causes that can be identified for such atrocities are-

- (1) State Collapse- This happens when a State fails to perform its duty to maintain domestic peace and harmony, which further leads to escalated violence, causing human rights abuses. One such example is the Libya Post, 2011 where, due to the collapse of the State authority, there were instances of war crimes and human rights violations.
- (2) Ethnic Conflicts- Another reason for discord among ethnic groups is different beliefs and practices. For instance, Sudan's Darfur region had to experience mass killings and serious government actions against a specific ethnic group due to such ethnic conflicts.
- (3) Natural Disasters - In addition to the consequences of state actions and human interventions, natural disasters can also create vulnerable situations, leading to humanitarian crises and violations of human rights.

In all the above situations, it is often assumed and expected that the international community would bring a helping hand to curb such States' predicament. Such efforts by external States and authorities are often termed "Humanitarian intervention". Specific to the theories of International Law, Humanitarian Intervention is often related to unconsented military intervention by other states in the territory of the aggrieved state aiming to prevent or end widespread violations of human rights.

Although there is no such legal framework backing such State action, the UN Charter entails various provisions regarding such action protecting human rights. Hence, the two featured components of Humanitarian intervention that can be underscored are-

- (a) Use of Military Force
- (b) Will of the States and International Community to take such external actions

These two components are not only crucial to the concept but often encompass arguments both in favor and against its use. These arguments emerge from historical instances like the Rwanda Genocide and the Intervention of the British military in the Sierra Leone conflict, where on one end, the unwillingness of the community in the Rwanda conflict led to atrocities in the State of Rwanda, having an estimated death toll of around 80,000 Tutsis and Moderate Hutus but in the latter instance, the intervention by the British Military was applauded as it helped in preventing atrocities and restored order.

#### **4. Introduction to Responsibility to Protect (R2P) Doctrine:**

##### **History and Emergence**

The Responsibility to Protect Doctrine highlights the significant efforts put in by the international community trying to balance the two concepts of state sovereignty and humanitarian intervention. The Doctrine was first mentioned in the report by the International Commission on Intervention and State Sovereignty in 2001 in response to the collapse of the human rights framework in the Rwanda genocide. Further, the Doctrine was given international acknowledgement in the 2005 UN World Summit, where the State delegations took an oath to protect the States from such atrocities and take willing measures to prevent the same. However, even after such acknowledgement, the principle of state responsibility is still a non-binding doctrine having no specific legal framework or institution in the realm of public international law

To further enumerate upon the principles as enshrined in the doctrine can be studied through the following three pillars-

- (a) The protection responsibility of the state
- (b) International Assistance and capacity building
- (c) Timely and decisive collective response

Through the means of this Doctrine, a holistic approach to preventing, resolving and protecting the international community and the state populations from instances of war crimes, ethnic cleansing and a crime against humanity can be highlighted. This approach further aims to strike a balance between state responsibility and state sovereignty, upholding the paramount importance of protecting human rights.

The Doctrine also observed continuous criticism when it comes to the effectiveness and the practical implementation of the legal principles and concepts. These areas include the following basis for criticism-

- (a) Selectivity in application- keeping in mind the global economic conditions, this selectivity and discretion of the States in intervening in such crimes is often based on personal and political interests, ignoring the predicament of the civilians and the need to protect the victims of such war crimes.
- (b) Secondly, Institutional limitations and political will become another hindrance to the smooth implementation of the doctrine. The sole dependence on the United Nations Security Council for the authorization of military actions and lack of geopolitical considerations often delay the intervention, hindering timely actions.

To further dive deeper into such implications behind the practical implementation of the R2P Doctrine, the next section of the paper discusses the gap while drawing an analysis of the practicality of the doctrine in the contemporary world.

## **5. Practical Implementation of R2P: Insights from the Gaza Conflict:**

The main objective of the R2P Doctrine, as highlighted in the above sections is to maintain a balance between the implantation of state sovereignty principles and respond to human atrocities like the one in Gaza.

In the present day, the Gaza conflict has been one of the most talked about matters in the realm of international conflicts and affairs. Although the conflict has its history since the 1050s and the occurrences of the Oslo Accords, the Hamas attack on the area in 2024 started a war which

led to the death and injury of many civilians and innocents present in the disturbed territories. These military actions have been the cause of grave atrocities like war crimes, claims of genocide and even terrorism by both parties involved. The mortality rate has been crossed over 20,000, and there has been still no hope for the innocents to be rescued. In such circumstances, the international community faces a sudden burden and a huge responsibility to take action and be the last and the only hope for such innocent lives.

However, the interfaces of policymaking, international law, and state sovereignty have delayed this hope to the extent that no action has been taken by any stakeholder. This conflict has not only raised questions about a state's responsibility to protect its citizens but also sparked a thousand questions about the practical implementation of the R2P doctrine. Scholars have highlighted and pointed out several weaknesses in the doctrine, which are present in the current conflict as well.

Beginning with selectivity and political will, the implementation of the R2P Doctrine is highly based on the states involved and the consensus of the international community as a whole. Because of globalization and geopolitical interests and benefits, states often refrain from any such intervention action in their own interest and protect themselves from future repercussions. This will act as a major loophole in the implementation of the Doctrine. It not only fails to provide any aid but also fails to achieve the overall objective behind the doctrine.

Secondly, they depend on the United Nations Security Council as the only struttred body dealing with such atrocities and conflicts. This not only overburdens the council but also leads to overlaps in the objectives, causing failed attempts at conflict resolution and humanitarian aid. Although the UNSC has been putting extra effort and focus with regard to eradicating such cases of mass atrocities, the lack of proper and separate institutions for R2P is another weakness in the doctrine.

Thirdly, the Doctrine is highly focused on military intervention by third parties into the territories of states observing such conflicts. However, some situations not only call for military actions but rather show a high need for intervention to proceed with refuge, rehabilitation and other resources for the innocents and the injured. The notion of military intervention represents the “reaction” pillar of the doctrine, but it fails to rebuild and reform or even protect the hurt and injured.

In conclusion, there exists a deficiency in appropriate sanctions. Even when a state's accountability is substantiated and the violations are recognized by the authorities, the international legal framework encompasses limited repercussions, such as individual criminal liability, universal jurisdiction, and economic sanctions. Clearly, these legal measures are not exclusively intended for actions involving atrocities on the magnitude witnessed in Gaza. This deficiency within the criminal system signifies a serious threat to the international community as a whole.

## **6. Conclusion:**

In conclusion, this paper reveals significant complexities and ongoing discord between the implications of the R2P Doctrine and the protection of a State's sovereignty in recent conflicts like the one between Israel and Palestine. The two principles, although having a strong foundation, still showcase a shortfall when it comes to contemporary international relations, and hence, the reforms along the lines of establishing better institutional and legislative infrastructure with regard to the implementation of the R2P Doctrine and stimulating competency enhancement efforts by the States can be suggested for a better and smooth relation between the two.

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