RESPONSIBILITY TO PROTECT:
RWANDA AND INTERNATIONAL LAW

Abstract

The international community has been undercut in its unified status under membership to the United Nations regarding its ability to effectively respond to situations that fall within its sphere of obligation. In short, the UN is stymied in their ability to respond to violations that they should be able to address. One reason is the lack of ability to achieve unity in defining the types of situations that they should respond to. The Responsibility to Protect (R2P) protocol was developed to fill this void in action, providing a set of circumstances in which the United Nations can and should intervene. This paper addresses the development of the R2P protocol. First an overview of international law is provided, with insight into what areas international law is generally recognized to address, including methods, means, and shortcomings. The discussion moves on to examining the United Nations, specifically looking at the ability of the UN to address human rights violations. The country of Rwanda is offered as a case study, discussing challenges of international law as it relates to Rwanda, and how the Responsibility to Protect protocol addresses those challenges. In this context, the development of the R2P protocol is examined, with a background, and current implications. A conclusion is offered to highlight the main points of this research paper and synthesize the topics.

Keywords: United Nations, Rwanda Genocide, Challenges
“Genocide in Africa has not received the same attention that genocide in Europe or genocide in Turkey or genocide in other part of the world. There is still this kind of basic discrimination against the African people and the African problems”.

Boutros Boutros-Ghali

International law generally refers to the laws that sovereign nations adopt to indicate how they will relate to each other in legal matters. Problems arise in that nations tend to adopt those laws that are most favorable to their nation, while choosing to ignore those laws that may seem too restrictive (Shaw, 2003).

Sovereign states are assumed to be of equal status, and international law commonly stems from those rules and writings that states agree to follow. Common sources of international law are treaties, judicial decisions and writings of international courts, and international custom. Problems with implementing international law relate primarily to the prerogative of states whether or not to adopt and to adhere to international laws (Weissbrodt, & de la Vega, 2007).

Target areas of international law have focused on the law of the sea (piracy), crimes against humanity (slavery, torture, and genocide), war and crimes of war, and apartheid (Weissbrodt & de la Vega, 2007, pp. 27-58). A state may choose to adopt a rule as law, or not, which may or may not impact its relationship with other sovereign nations in any one target area. As the goal of the laws relating to target areas is to reduce and/or ameliorate the negative consequences associated with commissions of those egregious acts, whether or not a state chooses to adopt a law may or may not actually accomplish the goal of the law. Therefore, prima facie, the outcome of the law essentially depends upon the willingness of the respective states to adopt, implement, and enforce the law (Shaw, 2003).

Without an enforcement agency with real powers (military force, ability to force economic sanctions, extradition and imprisonment capabilities), the ability to ensure the feasibility of any given international law is somewhat arbitrary.

1. The United Nations

The United Nations was established in 1945 following the dissolution of the failed League of Nations. Its function is to facilitate relations among member states in areas of law, security, human rights, and economic relations. There are five primary organs of the United Nations: the International Court of Justice, the Secretariat, the UN Security Council, the Economic and Social

Additionally, there are several supporting agencies within the United Nations, such as the World Health Organization, the International Monetary Fund, the World Bank, and the World Food Program. There are other agencies that deal with economics, labor, science, atomic energy, agriculture, maritime issues, aviation, telecommunication, and more, within the UN (Ross, 2003).

The UN is an international body, composed of 192 member states, all of which are required to be sovereign states. All member states join with the obligation to engage in the charter of the UN, including the advancement of world peace (United Nations).

While the General Assembly meets and agrees on various resolutions, they do not have military or police powers, and so cannot force or enforce the rule of law. Rather, they can and do bring the weight of international opinion upon nations that are in violation of certain laws, especially those concerning violations of human rights. The United Nations does not maintain a military in any capacity, and does not hold any military or police assets they can draw upon. In issues requiring intervention, the Secretary-General may engage in diplomatic efforts with and/or between warring factions, in order to facilitate peace. The Security Council can further engage a peacekeeping force to follow up on resolutions to peace. However, without enforceable military might, the UN is primarily a world moderator, with limited powers of authority. It relies upon the goodwill of its respective member states to adhere to the charter of the United Nations (Ross, 2003).

In issues of genocide, this is particularly problematic, as in the case of the Rwandan Genocide of 1994. People were tortuously murdered, and there was precious little time to wait for a UN resolution to stop the machete falling upon the child’s limbs. In such tragic circumstances, the necessity of a binding and enforceable solution that is timely and efficient is of utmost necessity.

In this respect, the powers of the United Nations failed miserably to protect the people of Rwanda. As no other member nations engaged directly with Rwanda to stop the atrocities, the more general human rights question comes down to the point of the collective responsibility of the human race’s responsibility to each other.

2. The Rwandan Genocide

The Rwandan Genocide of 1994 involved the mass killing of approximately 800,000 people of the Tutsi ethnic group by the majority Hutu ethnic group, between April and July of 1994. The two ethnic groups had a history of tension and warring, yet as of 1993 were protected by a peace accord with an end date of 1994. This was a well-planned genocide, involving discussions at the cabinet level, with carefully orchestrated assassinations and armed engagements aimed at
fostering and reigniting resentments among the Hutu to exterminate the Tutsi minority (Sarkin, & Fowler, 2010).

There was intelligence linked to a potential genocide. This intel was given to the Canadian Lieutenant General Romeo Dallaire, who was the Commander of the United Nations force in Rwanda, by an informant involved in developing the Hutu extermination plan of the Tutsis. The intelligence was dated January of 1994, well before the killing and eventual genocide. On April 6, 1994, the then-President Habyarimana’s plane was shot down, killing him and Burundi President Ntarymira, and other officials. The presidents were returning from Tanzania following discussions on how to address the ongoing ethnic conflict, with pressure on Habyarimana to implement the Arusha Accords as part of a power-sharing brokered deal with the Rwanda Political Front, a Tutsi faction. There were strong sentiments against the accord, and this is implicated in the assassination and killing that followed. Following Habyarimana’s assassination, members of the Hutu government and extremist Hutu militia groups engaged in a killing spree of Rwandan Tutsi civilians. In 100 days, nearly 800,000 people were killed (Barnett, 2002).

The United Nations considered the situation in Rwanda too risky to get involved, and so did nothing to stop the bloodshed. The rest of the international community seemed to abandon Rwanda. During this violent time, members of the Tutsi ethnic group were raped, tortured, and slaughtered. The rivers ran red with blood (Melvern, 2004).

The Rwandan Patriotic Front, a Tutsi-led party that was previously engaged in the conflict leading up the Arusha Accord, regrouped their forces and took control of the capital city of Kigali. Millions of Hutus and those involved in the genocide, afraid of RPF retaliation, fled the country. The RPF is still in power as of 2010, and while ethnic tensions still exist, Rwanda as a country is held up as a model of progress and stability following the great violence and political upheaval it had experienced (Beswick, 2010).

The United Nations has been widely criticized for its inaction in the Rwandan Genocide. People lose confidence in the authority of the international UN body to intervene in such outstanding circumstances requiring quick and decisive action.

Responsibility to Protect

The failure of the United Nations to take effective action during the Rwandan Genocide prompted the then-Secretary General Kofi Annan to ask the international community when it should intervene in circumstances relating to protecting populations. When does the international community have a responsibility to act? (Sarkin, & Fowler, 2010)

In September of 2000, the Canadian government established the International Commission on Intervention and State Sovereignty. In 2001, they released the report ‘The
Responsibility to Protect.’ The basic idea is that sovereignty is not a right, it is a responsibility, and the international community has a responsibility to prevent and intervene in situations involving mass killings. The report goes on to state that diplomatic measures are a first resort, followed by engagements of a more coercive nature, and that military action is a last resort (ICISS, 2000).

In 2005 the United Nations hosted the World Summit in New York City. In the Outcome Document of the World Summit, world leaders embraced the Responsibility to Protect protocol, formalizing the General Assembly support of the modern concept of R2P (United Nations, 2005). The current understanding of the Responsibility to Protect is that it is not a law, rather, it is a set of norms to guide nations in instances where international intervention may be necessary (Stahn, 2007).

Tenets in the norms are:

1. The state has a responsibility to prevent its population against four types of crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing.

2. If the state cannot protect its population, the international community may intervene by building the states early warning capacities, such as through mediation, negotiation, and other measures.

3. If early warning capacities are not enough, the international community has a responsibility to intervene with military measures (Bellamy, 2009).

Nations in Africa have embraced the R2P concept, and it is part of the Constitutive Act of the African Union, comprised of the member states of the Organization of African Unity (Organization of African Unity, 2000). Rwanda and Burundi are part of the OAU.

Additionally, Rwanda is part of the East African Community, an organization that links the governments of Rwanda, Tanzania, Burundi, Kenya, and Uganda. Since the atrocities of 1994, R2P and the role of sovereign states and the international community has been one of recognition of the failing to act, and responsibility to act in instances involving mass atrocities of people. Rwanda has become a model of progress, with economic and political stability, and membership to international and African unions, embracing the Responsibility to Protect.

3. Challenges and Implications

There are important factors to consider in the previous discussion. International law is a framework for sovereign nations to relate to each other in mutually understood fashions that have grounds in reason and rationality. The United Nations is an international body comprised of sovereign member states who have agreed to abide by UN charters. The challenge of getting any
one sovereign nation to adhere to a UN resolution/treaty/judicial decision or writing (which may or may not be considered international law), is that it is ultimately the individual prerogative of any member state to actually follow through on its obligation to follow the UN charter, and adhere to international laws. The UN does not have a military force, though through its Security Council, it can operationalize a peacekeeping force (Sambanis, 2008).

The Rwandan Genocide illustrates the lack of authority of the UN to intervene in the atrocities that were occurring, though there was previous intelligence that could have served as an early warning system for mediation and other diplomatic options. The international community likewise turned a blind eye on the struggles of the victims, with no clear support or alliance that was willing to step forward and put an end to the killings. Such a lack of authority on part of the international community and the United Nations as an international peace-keeping body speaks to a fundamental deficit in responsibility (Stahn, 2007).

The Responsibility to Protect protocol came out of the tremendous failings of the UN and the international community to intervene in the Rwandan Genocide. Sovereign states have a responsibility to protect their populations, and if they cannot, the international community can step in through utilizing preventive measures, or if necessary, military force, to stop atrocities (Evans, 2009).

Since 1994 and the Rwandan Genocide, not only has the UN and other nations adopted the R2P protocol, the African Union has also adopted the R2P protocol into their constitution. Furthermore, the East African Community, which includes Rwanda, is moving toward a federalization of its member states.

Challenges of international law in such a setting may potentially follow two paths: either the federalization and unionization of the African states into larger regional entities will result in a more stable political, economic, and social climate thereby reducing historical conflicts and the need for international intervention, or strife and corruption will manifest in a new level of power struggle whereby the international community will be faced with dealing with those larger, more powerful regional entities and hence face greater challenges in intervening in national affairs where populations are threatened by internal events (Beswick, 2010).

4. Conclusion

The Responsibility to Protect protocol may have been a necessary progression resulting from the lack of authority of the United Nations to intervene in instances of mass atrocities and the inactivity and unwillingness of the international community to get involved in situations like the Rwandan Genocide. Humanity has an obligation to itself, and R2P is one normalization of that responsibility that governments take on when they choose to become part of the international
community. There is an inherent danger of having a world military force, which may be one reason why the United Nations does not have that kind of centralized power. It is potentially an area of great abuse. However, as the world develops and governments engage in international relations, issues of internal affairs of distinct countries are no longer a private matter. The R2P protocol is one such norm that enables the active intervention of the international community in protecting people from genocide, torture, slavery, and other human rights violations. Challenges for the future of Rwanda, international law, and R2P revolve mainly around how Africa develops itself internally in terms of political structure. Old conflicts may die a hard death, and even federalization measures may be rife with problems. However, larger regional, centralized governments may be a natural outcome of ethnic conflicts, with tools like R2P being just that, tools to enable progress toward a safer and more stable social and political environment.

Bibliography


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Apstrakt

Međunarodna zajednica je potkopana u svom jedinstvenom statusu pod članstvom Ujedinjenih nacija u vezi svoje sposobnosti da efikasno odgovori na situacije koje spadaju u sferu obaveza. Ukratko, Ujedinjene nacije su osujećene u njihovoj sposobnosti da reaguje na kršenja koja bi trebale da budu u stanju da reše. Jedan od razloga je nedostatak sposobnosti da se postigne jedinstvo u definisanju vrste situacija u kojima bi trebalo da reaguju. Ovaj rad bavi se razvojem R2P (Response to Protect) protokola. Ruanda je ponuđena kao studija slučaja diskutujući o izazovima međunarodnog prava koje se odnosi na Ruandu.

Ključne reči: Ujedinjene nacije, Genocid u Ruandi, Izazovi