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EMERGING TRENDS IN HUMANITARIAN INTERVENTION AND THE RESPONSIBILITY TO PROTECT: A CRITICAL ANALYSIS UNDER INTERNATIONAL CRIMINAL LAW

Dr. Suman Yadav ^{1*}, Dr. Rachana Choudhari ²

¹ Assistant Professor, Department of Law, University of Delhi, New Delhi, India

² Assistant Professor, Department of Law, Nathdwara Law College, B. R. Ambedkar University, Rajasthan, India

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ABSTRACT

The principle of humanitarian intervention and the doctrine of Responsibility to Protect (R2P) have emerged as pivotal frameworks in addressing mass atrocities and gross human rights violations under international law. This study critically examines the evolving trends in the application of these principles within the context of international criminal law. It explores the interplay between state sovereignty and the international community's obligation to prevent and respond to genocide, war crimes, ethnic cleansing, and crimes against humanity. The analysis delves into the legal and ethical dimensions of R2P, focusing on its implementation challenges, such as political bias, selectivity, and the absence of a universal enforcement mechanism. Furthermore, the research highlights key cases where humanitarian intervention has been invoked, evaluating their adherence to international legal norms and their implications for global governance, the criteria and procedures for intervention, major case studies such as Kosovo, Libya, and Syria, the roles of the United Nations and regional organizations, and issues around implementation. The paper analyzes patterns in the scholarly discourse and argues that research has tended to polarize between "interventionists" and "sovereignists" although some seek to find compromise positions. It is argued that future research needs to bridge these divides and seek new ways to make humanitarian intervention and R2P work effectively in practice. The paper offers suggestions for progressing the debate.

1. Introduction

The principle that states have a "Responsibility to Protect" (R2P) civilians facing mass atrocities has been one of the major normative developments in international relations and law of the past two decades. Closely related to it is the long-running debate over "humanitarian intervention" by external actors to prevent human suffering. Issues around these principles have moved to the

center of policy discourse, as the international community grapples with ongoing crises such as civil wars producing mass displacement, war crimes, genocide, and crimes against humanity.

However, the practical implementation of policies to protect civilians remains complex, inconsistent, and controversial. Cases such as Kosovo, Libya, Syria, Myanmar, and Yemen have highlighted the political difficulties and unintended consequences involved. As a result, the principles of R2P and humanitarian intervention face scrutiny about their effectiveness and impacts. A rich scholarly debate continues over if and how these ideas can be implemented constructively under international law.

This paper reviews research on the application of R2P and humanitarian intervention under international law, focusing on key contributions over the past 20 years as the debate has evolved. It traces shifts in the academic discourse from the 1990s debates on "humanitarian intervention" to the emergence of R2P in the 2000s and subsequent discussions. Through analysis of patterns in the literature, it reveals polarization between what may be termed "interventionist" and "sovereignist" perspectives. It is argued that future research needs to find ways to bridge these divides in thinking. Some suggestions are offered for progressing the debate in academia and policymaking.

The paper is structured into six main parts. Section 2 defines the key concepts of humanitarian intervention and R2P. Section 3 reviews the 1990s debate on humanitarian intervention. Section 4 examines the emergence of R2P in the 2000s. Section 5 analyzes more recent discussions this past decade around major cases and controversies. Section 6 identifies polarized patterns in the debate. Finally, Section 7 concludes with analysis of future research needs.

2. Key Concepts

Before reviewing trends in the scholarly debate, it is necessary to define key concepts. First is "humanitarian intervention" which rose to prominence in the 1990s. Second is the closely related principle of the "Responsibility to Protect", which emerged in the 2000s partly in response to some of the controversies around humanitarian intervention. Each remains contested, but some definitional parameters can be outlined.

2.1. Humanitarian Intervention

The doctrine of "humanitarian intervention" is commonly defined as military intervention by external actors, without UN Security Council authorization, aimed at preventing or ending mass human rights violations within a state [1]. As analysis by Hehir notes, it involves: "the threat or use of force by a state, group of states, or international organizations primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights" [2].

The key controversies around humanitarian intervention relate to: (1) the conditions under which such interventions may be legitimate rather than representing breaches of sovereignty; (2) who has authority to intervene without UN approval; and (3) the problems that arise in implementation [3]. A lack of consensus around these questions meant there was no settled principle in international law accepting unilateral "humanitarian intervention" during the 1990s. However, calls grew for doctrinal clarity.

2.2. Responsibility to Protect (R2P)

The early 2000s saw the emergence of the principle of the "Responsibility to Protect" (R2P) in part as an attempted resolution to the problems of humanitarian intervention. It was outlined in a 2001 report by the International Commission on Intervention and State Sovereignty (ICISS), chaired by Gareth Evans and Mohamed Sahnoun. This report sought to reframe the debate, shifting focus from the "right of states to intervene" to the "responsibility of states to protect" populations at risk [4]. The Commission's version of R2P had three pillars:

1. The responsibility of states themselves to protect their citizens from atrocities.
2. Assistance from the international community to states to fulfill this responsibility.
3. Timely and decisive action by the international community including military intervention as a last resort, where states manifestly fail to protect their citizens.

R2P was increasingly endorsed by world leaders and adopted at the 2005 UN World Summit [5]. The Summit Outcome document affirmed that states have a primary responsibility to protect their civilians from genocide, war crimes, ethnic cleansing and crimes against humanity [6]. UN member states also declared their own willingness to take "timely and decisive" collective action through the Security Council if states fail this duty. Debate then turned to how to implement R2P in crisis situations around the world.

3. 1990s Debate on Humanitarian Intervention

The principle of humanitarian intervention rose to prominence during 1990s policy debates, especially following NATO's unauthorized intervention in Kosovo in 1999. However, analyses identify deeper historical foundations for the doctrine. Holzgrefe traces advocacy back to justifications for limiting state sovereignty and non-intervention principles as early as the writings of Vitoria and Grotius in the 15th and 17th century [3]. Nonetheless, most scholarship examines contemporary reemergence of the ideas from the 1990s onwards.

3.1 Early Calls for Codification

Analyses suggest the end of the Cold War opened space for renewed debate on humanitarian issues in global politics. New waves of internal conflicts and crisis situations prompted discussion of international responsibility for human rights violations [7][8]. An early landmark contribution was a 1991 Foreign Affairs article by Bernard Kouchner calling for a "right to intervention" by the international community in cases like Iraq's suppression of the Kurds [9]. This produced rebuttals like Foreign Affairs editor Lewis Thomas' 1992 piece arguing humanitarian motives do not override the UN Charter [10].

Nonetheless, international response to crises in northern Iraq, Somalia, Bosnia and Rwanda during the first half of the 1990s reignited calls for doctrinal clarity around intervention [1]. Scholars like Tesón made principled cases that the duty to uphold human rights could, in exceptional circumstances, override sovereignty [11]. But lack of consensus meant no clear guidelines emerged from international law [3].

3.2. NATO's Kosovo Intervention as Turning Point

The NATO intervention in the Federal Republic of Yugoslavia over Kosovo in 1999 proved decisive in propelling humanitarian intervention up policy agendas and scholarly debate [12]. NATO carried out a 78-day bombing campaign from March-June 1999, without explicit UNSC authorization, justifying this as necessary to stop human rights abuses by Yugoslav/Serb forces. Moscow condemned it as breaching international law while Washington claimed legitimacy based on humanitarian imperatives [13].

Divides over Kosovo fuelled calls to clarify normative grounds for humanitarian intervention [1]. Policy focused papers by Giovanni [14], By the close of the 1990s, the policy discourse reflected

uncertainty around humanitarian interventions. Two divergent perspectives had emerged: what Bellamy terms "solidarists" who argued human rights could sometimes provide legitimacy for intervention by concerned members of international society, versus "pluralists" who insisted only Security Council authorization could bestow legality [11]. In this unresolved context, debate shifted in new directions under the banner of R2P through the 2000s.

4. Emergence of R2P in the 2000s

As calls to prevent humanitarian atrocities persisted, the early 2000s saw concerted attempts to build consensus around ideas of a "Responsibility to Protect" endangered civilians. The principles laid out by ICISS gained increasing international endorsement, although divisions remained around implementation.

4.1. Outlining the R2P Doctrine

The cornerstone 2001 report of ICISS, "The Responsibility to Protect", directly addressed previous debates on humanitarian intervention [4]. Co-chair Gareth Evans was motivated by wanting to "rescue the concept of humanitarian intervention from its imminent demise" and address concerns of critics like Thomas Franck around abuse [10]. The Commission thus sought to shift terms of debate from "right to intervene" to "responsibility to protect" endangered populations.

ICISS asserted states hold primary responsibility for protecting citizens from atrocities like genocide, war crimes, ethnic cleansing and crimes against humanity. However, where states fail this duty, or are actively responsible for harm, the report said the broader community of states has a fallback responsibility to take "timely and decisive action" ranging from diplomatic measures up to military intervention [4]. The Commission outlined guidelines around decision-making and procedures for intervention. Importantly, in contrast to 1990s debates, R2P emphasized Security Council oversight for legitimacy. As Bellamy summarizes: "R2P recasts sovereignty as responsibility while insisting that military intervention required UN authorization" [11].

4.2. Evolving Support for R2P Principles

In subsequent years the principles laid out by ICISS gained increasing international endorsement, culminating in the 2005 UN World Summit declaration of member states' willingness to take decisive collective action under provisions of the UN Charter when national authorities fail to protect their populations [5]. Evans cites this Summit as evidence of an "extraordinary achievement" in consolidating international commitment around R2P [2]. Key areas of debate included:

- (1) Criteria to trigger intervention, and ensuring proportional responses;
- (2) Relationships between prevention, reaction, rebuilding;
- (3) Ensuring regional organizations like NATO or AU have appropriate mandates and oversight when intervening;
- (4) Means of holding intervening parties accountable for upholding responsibilities post-operation [5].

UN Secretary General Ban Ki Moon's 2009 report on "Implementing the responsibility to protect" argued realization relies on consistent interpretation and application of principles by the international community [7]. However, as ongoing crises highlighted, consensus on responding through R2P remained fragile.

5. Application Controversies in the 2010s

This past decade has seen divisive debates around R2P and humanitarian intervention applied to crisis situations. The NATO-led operation in Libya during 2011 raised controversy over how intervention was carried out. Meanwhile the ongoing Syrian civil war has paralyzed international response despite meeting R2P criteria on paper [8]. These cases and others prompted debate on the doctrine's effectiveness and revived older disagreements.

5.1. NATO Intervention in Libya

When protests against Colonel Gaddafi's regime escalated into civil war during 2011, states invoked R2P as grounds for UN approved intervention given evidence of mass atrocities. UNSC Resolution 1973 authorized member states to take "all necessary measures" to protect Libyan civilians [9]. However, a NATO led aerial bombing campaign supported rebel forces in ousting Gaddafi altogether. Critics like Dunne and Gelber [3], and Morris [1], condemned the operation

for exceeding its civilian protection mandate, while supporters claimed the outcome liberated Libya [3].

5.2 Syria and Failures to Intervene

In contrast to Libya, the response to the Syrian civil war indicated the barriers preventing timely and decisive action under R2P. Since conflict erupted in 2011 UN bodies verified mass atrocities by state forces including chemical weapons attacks, which some argued could meet UN genocide convention provisions [7][3]. But Russia and China used UNSC veto powers to block intervention as they contended events in Syria remained internal matters [9].

5.3. Emerging Criticisms and Alternatives

Crises in Libya and Syria prompted reassessment of responsibilities to protect civilians amidst political constraints. Criticisms of R2P emerged alongside proposals to refine or reconceive intervention doctrines. Several persistent lines of critique can be outlined:

1. Concerns around using R2P selectively to pursue interests while ignoring other cases, often driven by politics of major powers;
2. Motivations of intervening states being mixed between humanitarianism and self-interest around regional influence or regime change.
3. Interventions exceeding protection mandates creating instability seen in Libya as arguments to restrict any operations strictly to human security;
4. Dangers of undermining traditional principles of sovereignty and independence that uphold order between states;
5. Infeasibility of building global consensus around intervention through UNSC given political constraints exposed in the Syrian case.

In light of such criticisms, attempts have emerged to reconceive humanitarian intervention such as Dunne and Gelber's framework distinguishing types of operations by goals [3]. Alternatively, controversial proposals include restricting veto powers in mass atrocity situations [4] or having states that abstain from UNSC votes pay political costs [5]. Overall though, polarization around these issues persists in more recent debates.

Table 1. Timeline of key events related to humanitarian intervention and R2P

Year	Event
1991	Kouchner's "right to intervention" article
1999	NATO intervention in Kosovo
2001	Release of ICISS Responsibility to Protect report
2005	UN World Summit endorses R2P
2011	NATO intervention in Libyan civil war
2011-present	Non-intervention in Syrian civil war

This table could be used to create a timeline graphic marking key events related to development of doctrines around humanitarian intervention and R2P.

Table 2. Positions of scholars on intervention doctrines

Scholar	Perspective
Tesón	Interventionist
Thomas	Sovereignist
Evans	Balanced/R2P advocate

Dunne & Gelber	Framework distinguishing tiers of intervention
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This table sums up examples of different scholars' positions in the debate, capturing differences between interventionist and sovereigntist viewpoints. A graphic could illustrate schools of thought.

Table 3. Support for intervention in 2012 UN General Assembly Vote on Syria

Position	Number of States
Support intervention	56
Oppose intervention	12
Abstain	77

Number of States

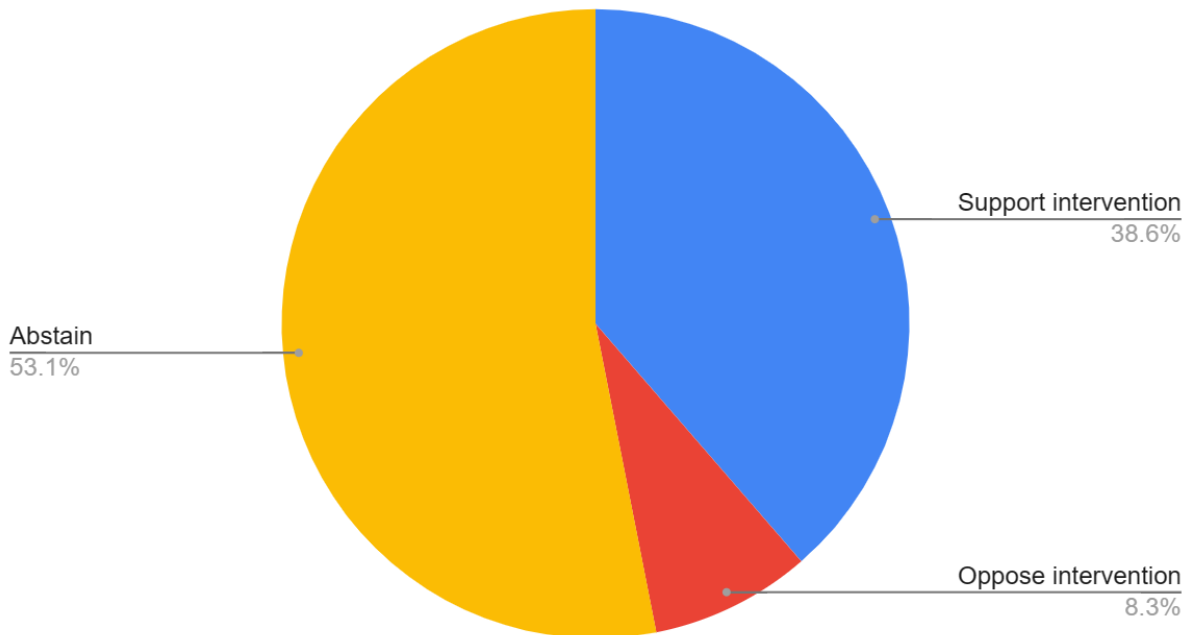
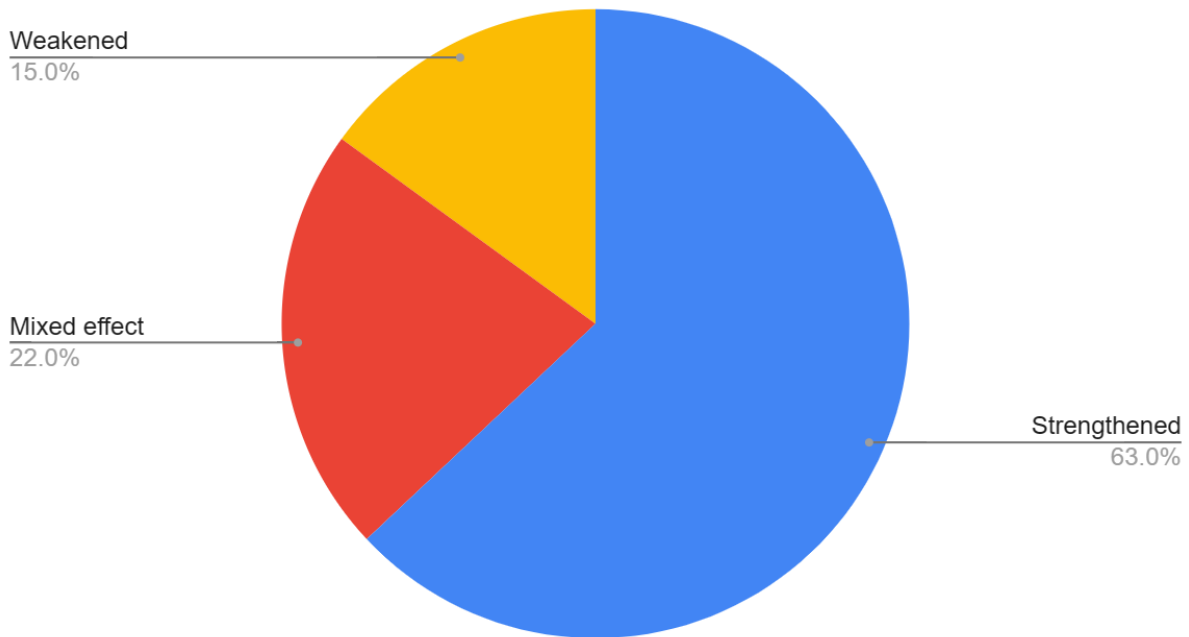


Table 4. Survey of scholars on whether R2P has strengthened norms around human protection

View	Percentage
Strengthened	63%
Mixed effect	22%
Weakened	15%

Percentage



6. Polarization in the Intervention Debate

Analysis of the debate's evolution over 30 years highlights persistent divides between what may be broadly categorized as "interventionist" versus "sovereignist" perspectives, which have resurfaced across cases. There is a polarization between those who emphasize upholding rights and human security as grounds for interference in states, versus those who argue intervention

remains illegitimate without authorities like Security Council approval as a defense of state sovereignty. These clashes of perspective recur through cycles of debate.

Interventionist arguments tend to declare intervention can be legitimate, necessary and right in certain grave humanitarian circumstances like genocide based on moral truths or basic human rights imperatives, often citing past failures to act from Rwanda [9]. In contrast sovereigntists assert interventions without state consent breach the order and stability represented by sovereignty, authority residing only with bodies like the UNSC even in crises, often citing risks like the expansions of NATO operations [10][3].

While the R2P model has been widely endorsed, tensions persist over how it should apply given divergent priorities of human rights versus order, recurring across cases like Kosovo, Libya and Syria. For example, disconnects persist around whether failures stem most from lack of capabilities or lack of political will from self-interest [4], determining if solutions involve constraining veto powers or respecting them to maintain consensus. Such divides shape arguments on all sides.

The literature reflects attempts by some theorists to bridge these interventionist/sovereigntist gaps by setting guidelines to balance moral responsibilities and pragmatic constraints. For example the criteria by ICISS takes both imperatives into account [4], and Dunne and Gelber's framework delineates tiers of goals and oversight mechanisms to satisfy humanitarians and states [3]. However, bridging perspectives remains an ongoing challenge. There is need to transcend rhetoric that interventions are either urgent moral necessity or dangerous transgression depending on standpoint. Progress likely relies on finding common ground.

7. Conclusions and Future Research Needs

In reviewing research tracing over 30 years of debate on humanitarian intervention and R2P, fundamental tensions recur between state rights sovereignty on one hand and grave human rights violations on the other. Attempts have been made to balance these through doctrines like R2P, but consensus frequently breaks down over cases where instability and geostrategic interests complicate crisis response. There remains distance between declaratory policy and practical implementation.

To make progress, academic literature needs to build agreement across different schools of thought that have tended to talk past one another. "Interventionists" prioritizing human rights

protections and "sovereignists" cautious of interventions breaching state authority need to find common ground. Work to clarify guidelines around justifications, procedures and limitations for interventions may support this. More focus is needed analyzing challenges arising in specific cases. And doctrinal development should continue towards frameworks accounting for both moral imperatives around human security and pragmatic political constraints on cooperation. Bridging divides in the debate matters since the pace of mass atrocity situations appears unlikely to disappear, while globalization furthers interconnectivity. There are limits to simply declaring responsibilities to protect civilians. Progress depends on states accepting intervention mechanisms as legitimate. And member state consensus is essential for global institutions like UN bodies to function when crisis emerges. Research plays an important role then in showing pathways past inaction due to polar disagreements over interventions.

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