

RESPONSIBILITY TO PROTECT CONCEPT AND CONFLICT IN INTERNATIONAL LAW

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Šiame straipsnyje analizuojami tarptautinės teisės konfliktai, susiję su humanitarine intervencija: konfliktas dėl humanitarinės intervencijos ir naujosios Pareigos apsaugoti koncepcijos sampratos; konfliktas dėl teisinio humanitarinės intervencijos teisės reglamentavimo skirtumų universaliu ir regioniniu lygmeniu bei konfliktas dėl humanitarinės intervencijos kaip teisingo karo vertinimo šiuolaikinėje tarptautinėje teisėje. Daugiausia dėmesio skiriama naujajai Pareigos apsaugoti koncepcijai ir jos įtakai humanitarinės intervencijos teisėtumo bei humanitarinės intervencijos kaip teisingo karo vertinimui šiuolaikinėje tarptautinėje teisėje.

This article focuses on three conflicts surrounding humanitarian intervention: first of all, conflict in the concept of humanitarian intervention and new concept Responsibility to protect; then conflict in legal regulation of humanitarian intervention on universal and regional levels and finally conflict in legitimacy of humanitarian intervention. The Responsibility to protect concept and its implications for legality and legitimacy of humanitarian intervention in international law are the main object of the article.

Introduction

Effective response of international community to humanitarian crises has always been a considerable challenge for international community of states. One of the reasons for this could be indeterminacy surrounding humanitarian intervention. New concept of Responsibility to protect was directed at solving this indeterminacy surrounding status of humanitarian intervention in international law.

The aim of this article is to resolve the problem of humanitarian intervention in contemporary international law by splitting it into separate conflicts interrelated with international law. In this article it is

argued that Responsibility protect concept added to moral authority of humanitarian intervention, but international community still faces legal and political challenges in responding to humanitarian crises because of conflict in the concept, conflict in legal regulation and conflict in legitimacy of humanitarian intervention involved.

Problems in the Responsibility to protect context and different legal, political and moral issues of humanitarian intervention are widely discussed in the international doctrine, forums and conferences. Gareth Evans, Antonio Cassese and Nicholas Wheeler should be distinguished among authors keeping international law

doctrine updated on issues relating to humanitarian intervention. The new concept of Responsibility to protect enforced legal debate on humanitarian intervention among legal scholars in Lithuania also¹. Due to the lack of legal debate in Lithuania concerning humanitarian intervention and Responsibility to protect main resources of this article are international legal doctrine and reports of international commissions and organizations, such as International Commission on Intervention and State Sovereignty², Kosovo Commission³ or International Crisis Group.

The novelty of this article is that it focuses not only on humanitarian intervention or Responsibility to protect separately, but tries to solve the general problem of humanitarian intervention, its legality and legitimacy by splitting it into separate legal frameworks of the concept, legality and legitimacy. This new approach at the same time being innovative and challenging should let make conclusions enabling to understand political, legal and moral

¹ KATUOKA, Saulius; ČEPINSKYTĖ, Agnė. Response to large-scale atrocities: humanitarian intervention and Responsibility to protect. *Jurisprudence*, 2010, Vol. 3, No. 121, p. 157–175.

² Government of Canada announced at the General Assembly in September of the year 2000 the establishment of the International Commission on Intervention and State Sovereignty for dealing the whole range of questions – legal, moral, operational and political issues relating to humanitarian intervention.

³ The creation of Kosovo Commission was the initiative of the Prime Minister of Sweden, Mr Goran Persson. The Secretary-General of the United Nations, Mr. Kofi Annan, with whom he informally discussed the idea, endorsed the project. Given the sensitive nature of the initiative, members of the Commission were selected on the basis of known expertise and with due regard for the gender and geographical composition of the Commission.

perplexities implementing the concept of Responsibility to protect in cases of humanitarian crises.

Comparative legal research relies on primary international law sources that are UN Charter, Security Council resolutions and report of the International Commission on Intervention and State Sovereignty “Responsibility to protect”. Descriptive research method and overview of international law doctrine enable to establish legal context in which the new Responsibility to protect concept is to be evaluated. Systematic and logical approaches lead to drawing conclusions regarding Responsibility to protect concept in international law and challenges of its implementation.

1. Conflict in the concept: humanitarian intervention and Responsibility to protect

Humanitarian intervention is considered to be the use of force having objective to stop widespread and massive human rights abuses without the consent of the state being responsible for the humanitarian crisis and is treated as responsibility to react in the Responsibility to protect context.

The main conflict involved in the concept of humanitarian intervention is whether intervention can ever be purely humanitarian and whether treated in the broader context of Responsibility to protect it can be taken as a totally new phenomenon in contemporary international law.

1.1. Humanitarian intervention

Some scholars insist that humanitarian intervention may include a spectrum of activity, from the distribution of food and

medicine to the attack and overthrow of a despotic government [3, p. 279]. But in the context of international law intervention should be considered as military interference into the affairs of a sovereign state. Thus humanitarian intervention should be understood only as the use of military force to stop a humanitarian crisis.

The main conflict that can be found in the essence of the humanitarian intervention concept is whether intervention by a state or a group of them can ever be purely humanitarian in its objectives and motivation. It is argued that states are self-interested and they will never intervene for purely humanitarian reasons.

When humanitarian intervention is authorized by the UN Security Council, humanitarian objectives of the intervention are usually stated in the UN Security Council resolution and all responsibility for the humanitarian feature of intervention rests on the shoulders of the UN Security Council. But when humanitarian intervention is not authorized by the UN Security Council humanitarian nature of intervention should be decided by humanitarian aims, humanitarian motives and humanitarian outcomes, each of them having different influence on the legitimacy of the intervention as such.

Concerning humanitarian aims, humanitarian intervention should be a short-term initiative, aimed only at stopping massive and ongoing human rights violations. Responsibility to protect concept endorsed the idea that traditional definition of humanitarian intervention should not include political actions to restore democracy. That means that regime change should not and

must not be an objective of humanitarian intervention [21, para 4.26]. Anyway, having in mind latest state practice in Libya makes it obvious that military intervention, its objectives and furthermore, outcomes can be considered humanitarian even though involving political aspects of regime change, because in the end humanitarian crisis was stopped and state responsibility for it invoked.

Humanitarian motives of the intervening state or its group are almost impossible to establish and that is the main reason why some scholars think that states should be allowed to act even if the primary motive is the destruction of a government that threatens the invading state's security, because an invasion solely motivated by humanitarian concerns is probably a fantasy, and in any case such a motive is indeterminable [3, p. 388]. It is also argued that humanitarian outcomes are able to affect the legitimacy of intervention because public considers that merely halting human rights violations is the main goal of the intervention [16, p. 46].

There are no doubts that success in achieving the stated goal of halting or preventing human rights violations obviously adds to the legitimacy of a particular humanitarian intervention because it is unacceptable for the intervention to create additional human rights violations, refugees and civilian casualties. But as it is almost impossible to be totally certain about humanitarian objectives even in the case of authorized humanitarian intervention, humanitarian aims as such should not be the only factor determining humanitarian nature of intervention. Proportionality of

humanitarian intervention is directly related with humanitarian objectives of intervention and should be taken into account while trying to prove that by UN Security Council unauthorized intervention is to be treated as humanitarian intervention implementing Responsibility to protect concept.

1.2. Responsibility to protect

Responsibility to protect as the new concept is believed to have first appeared in the report of the International Commission on Intervention and State Sovereignty called “Responsibility to protect” [21]. Adopted unanimously by heads of state and government at the 2005 UN World Summit and reaffirmed twice since by UN Security Council⁴, the principle of Responsibility to protect rests on three pillars: 1) primary responsibility of states to protect their own population from the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity; 2) the international community’s responsibility to assist a state to fulfill its Responsibility to protect; and 3) the international community’s responsibility to take timely and decisive action in accordance with the UN Charter (responsibility to react), in cases where the state has manifestly failed to protect its population from one of mentioned crimes.

There are no doubts that humanitarian intervention is part of the Responsibility to protect [11, p. 250], but it is presented in

⁴ Resolution No. 1674 (2005) and No. 1894 (2009). In relation to a specific humanitarian crisis UN Security Council referred to Responsibility to protect in the case of Darfur (resolution No. 1706 (2006)), Libya (resolution No. 1973 (2011)), Côte Ivoire (resolution No. 1975 (2011)).

the broader context, that is together with prevention of a humanitarian crisis and obligation to rebuild after intervening. The most important is that according to the new concept as long as humanitarian intervention (responsibility to react) is in compliance with criteria of Just war theory, it is considered to be in compliance with principles of state sovereignty and non-use of force in international law.

The power of authorization in the light of responsibility to react concept still rests on the shoulders of UN Security Council. And that means that the biggest challenge for international community while implementing Responsibility to protect was left the same as it was before introduction of the new concept: since NATO intervention in Kosovo in 1999, other than a small British deployment in Sierra Leone in 2000⁵ and a smaller essentially French one in eastern Congo in 2003⁶, there has been no substantial multinational effort to protect a people from their own government without UN Security Council authorization. And UN Security Council while authorizing humanitarian intervention relied on the Responsibility to protect only once up to

⁵ In February 1999, rebel forces concluded operation “No Living Thing” with the assault on the capital city, Freetown, of Sierra Leone. The insurgency, characterized by human rights abuses, destroyed the entire country. Years of international aid and intervention by numerous countries and organizations had done little to stem the violence or bring peace. The situation inside the country collapsed to the point where the United Kingdom ordered the deployment of armed force to conduct a non-combatant evacuation operation of British, EU, and commonwealth citizens within Sierra Leone.

⁶ French military has been sent to Bunia in the north-east of the Democratic Republic of Congo. It was intended to prepare the way for 1,000 French troops that would lead a United Nations force to halt the violent conflict in the region.

now. Security Council resolution No. 1973 authorized “all necessary means” against Libya to enforce a no-fly zone and to protect civilians [17, p. 3].

Even though report “Responsibility to protect” mentioned other possibilities to act when UN Security Council fails to act, the main problem is that Responsibility to protect has “soft-law” legal status: it rests on the moral and political consensus of the international community, but not on the international legal obligation as such. On the same hand, from time to time it was acknowledged that if international law relegates humanitarian intervention to the realm of politics, it risks abandoning its key responsibility to provide enforcement mechanisms for the protection of human rights, because the mechanism that should stop mass atrocities – UN Security Council under chapter VII of the UN Charter – usually is unable to do it just because of the same lack of political will⁷. And similar humanitarian crises, for example in Libya and Syria, in the end turn to be under different international legal treatment⁸.

Finally, these political and normative limitations of the use of force in humanitar-

⁷ This contention can be illustrated by the recent failure of the UN Security Council to agree on collective action concerning humanitarian crisis in Syria. On the 4th of February 2011 the Russian Federation and China vetoed a Security Council draft resolution that would have demanded that all parties in Syria — both Government forces and armed opposition groups — stop all violence and reprisals.

⁸ Human rights violations in Libya were considered as the threat to international peace and security and humanitarian intervention was authorized. Similar humanitarian crisis in Syria was not acknowledged by the Security Council as situation constituting threat to international peace and security and resolution on collective action was not passed.

ian crisis leave no choice for law-abiding subjects of international law but to infringe it while implementing moral obligation of Responsibility to protect in the most extreme forms of humanitarian crisis.

2. Conflict in legal regulation

Legal status of by the UN Security Council unauthorized humanitarian intervention is controversial because of equally important, but different core values of the international community involved in the first place and secondly, because of normative limitations of UN Charter which influence regional organizations’ possibilities to intervene into a humanitarian crisis without UN Security Council resolution.

2.1. Sovereignty versus protection of human rights

Sovereignty of one state in the international law guarantees protection from outside interference and is reflected in the UN Charter’s prohibition on the use of force. Supporters of humanitarian intervention offer a liberal account of state sovereignty in response to the non-interventionist arguments [4, p. 55]. It means that when a state abuses the rights of those living in it, it forfeits its domestic and international legitimacy, along with its claim to sovereignty and the protection of the non-intervention rule [18, p. 28]. That means that other states stop having duty to respect sovereignty of the responsible state, but at the same time start facing responsibility to protect vulnerable populations from massive human rights violations and that is the main idea of the Responsibility to protect concept.

Even though it is not possible to defend this new doctrine solely on the basis of principled commitment to human rights for a duty so broadly stated has potentially disastrous consequences for global stability [4, p. 56], international practice concerning the concept of Responsibility to protect makes it obvious that massive human rights violations are not to be ignored and left under the shelter of the sovereignty concept and its legal implications on the use of force⁹. That means that principle of state sovereignty yields to protection of human rights in the contemporary international law while invoking Responsibility to protect.

2.2. UN versus African Union

UN as the main international organization responsible for maintaining international peace and stability should be in the best political and technical position to ensure the effective protection of human rights and the maintenance of international peace and security. The importance of UN involvement in implementing Responsibility to protect concept because of their legal and operational resources is obvious.

⁹ The responsibility to prevent, one of the three elements said to be integral to the concept of Responsibility to protect, had been addressed by the International Court of Justice in the Genocide Case (Bosnia and Herzegovina v. Serbia and Montenegro). Concept of Responsibility to protect was used in the language of Security Council resolution No. 1973 (2011) authorizing humanitarian intervention in Libya. In the Secretary-General's report entitled "Early warning, assessment and the responsibility to protect" (No. A/64/864, 2010), the Special Adviser on the Responsibility to Protect is charged with the development and refinement of the Responsibility to Protect concept and with continuing a political dialogue with Member States on further steps toward implementation.

Even NATO after intervening in Kosovo had to resort to UN for legitimation and for reaching approval of deployment of an international civil administration and security force. Nevertheless, normative limits of UN Charter, vague legal status of the Responsibility to protect concept, question of resources and lack of member states' political will lead international community to inaction in dealing with humanitarian crises.

Despite all the mentioned drawbacks, creation of African Union (AU) reflected a normative shift regarding the role that a regional institution should assume in addressing humanitarian crises on the continent [12, p. 17]. AU prioritized a duty to protect against widespread and systematic human rights abuses over the principle of non-interference.

According to the article 4(h) of the AU Constitutive Act [1], having objective to protect human rights AU can intervene in the sovereign affairs of other member states in certain circumstances: war crimes, genocide, crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the member state of the AU upon the recommendation of the Peace and Security Council. That means that AU member states voluntarily entered into a regional agreement and passed some elements of its decision making handling humanitarian crises to the regional organization.

It is worth mentioning that this new legal framework for humanitarian intervention rests on the prior consent of member states given to use of force but not on the authorization of UN Security Council as

AU Constitutive Act does not mention it at all. This contention is illustrated by the fact that one of the AU's first interventions to Burundi¹⁰ was without UN Security Council authorization. UN Security Council kept silent on unauthorized AU's actions and it can give credence to the idea that authorization is not absolutely necessary. On the other hand, the AU mission in bringing peace and stability to Darfur has raised doubts in the international community about the organization's capacity to achieve its regional objectives. The integration of AU and UN forces in Darfur reinforces this idea and it turns to be obvious that regional organizations, such as ECOWAS or AU even though having legal framework for humanitarian intervention will not necessarily have the political will, resources or experiences to intervene. Moreover, particular aspects of their relationship to the target state may affect their suitability for the task.

Nevertheless, regional regulation of the right to humanitarian intervention is to be considered as significant step forward legality of humanitarian intervention not authorized by UN Security Council. Even though modern guarantee clauses¹¹ are far from perfect [6, p. 433], they have the advantage of being able to make a humanitarian intervention not just legitimate in the context of Responsibility to protect,

but also legal. On the other hand, formal permission of humanitarian intervention and sad realities of ongoing humanitarian crises in African continent still leave a lot of questions relating to adequacy of humanitarian action chosen.

3. Conflict in legitimacy

Legitimacy of any humanitarian intervention is evaluated taking into account the original decision to intervene, the conduct of the intervention and the outcome of the intervention [16, p. 46]. The division into these stages is important in identifying how different factors come to play a role in determining legitimacy as the intervention progresses.

Trying to resolve the indeterminacy surrounding the legality of unauthorized humanitarian intervention, question of its legitimacy is of vital importance, because even authorized humanitarian intervention can lose its legitimacy in the course of action. In the beginning, legitimacy depends on the legal evaluation of a humanitarian crisis and authorization of the UN Security Council. And in the end, legitimacy of humanitarian intervention depends on its compliance with the principle of proportionality in the use of force.

3.1. Moral obligation to act versus international legal obligation

According to Responsibility to protect concept, humanitarian crises in the world give rise to a moral imperative to react and some believe is strong enough to justify military action. Recently the Obama administration released the Presidential Study Directive on Mass Atrocities that defined preven-

¹⁰ In April, 2003 AU (South Africa, Ethiopia and Mozambique) deployed a peacekeeping force to monitor a ceasefire in Burundi.

¹¹ "Guarantee" clause in international law means treaty clauses offering a legal basis for the use of military force against a treaty signatory, though the use of force pursuant to a guarantee clause is subject to jus cogens norms of international law [6, p. 418].

tion of mass atrocities as a core moral responsibility of the United States [24]. The Clinton Administration believed in the same responsibility also and proclaimed that intervention in Kosovo was the only hope of survival for many ethnic Albans [8, p. 440]. Taking into account that intervention in Kosovo was not authorized by the UN Security Council, the question that should be answered in this place is whether moral concerns can outweigh the UN Security Council's authority or respect for Yugoslavia's national sovereignty.

UN Charter system is explicitly clear that every use of force, except self-defense is to be authorized by the UN Security Council in advance. Even some scholars think that international authorization is preferable, but is not a prerequisite for moral legitimacy [9, p. 65] it is the most important prerequisite for international legality. And that is the only reason why imperfect moral obligation does not serve the interests of global stability, international law, or humanitarianism [4, p. 60].

Subjective evaluation of humanitarian crisis without any clear criteria being established in international law, subjective decision making on the type of humanitarian action to be adopted and in the worst case, unauthorized humanitarian intervention should always be considered incompatible with the foundations of international law. On the other hand, suitability of UN Security Council for handling humanitarian crises in the framework of Just War theory can also be questioned. It can be considered as "institutionally ill equipped" to authorize use of force in the face of humanitarian crises because of "moral arbi-

trariness of the veto" [4, p. 57]. Nevertheless the new concept of Responsibility to protect, which sometimes is considered as reflecting Just war theory in contemporary international law, also acknowledges the primary responsibility of UN Security Council for authorizing humanitarian interventions.

But the new concept of Responsibility to protect also stresses the role of UN General Assembly and regional organizations in the case of Security Council's inaction. These suggestions, according to the International Commission on Intervention and State Sovereignty, should prevent failures of Security Council to act in the face of genocide similar to one in Rwanda. Nevertheless state practice makes it clear that despite the fact that waiting for international authorization might have disastrous consequences states are not ready to uphold humanitarian intervention not authorized by the UN Security Council without reservations because it is still the most important evidence of political and legal consensus on the humanitarian intervention.

3.2. Massive human rights violations versus genocide

The concept of Responsibility to protect entails that occurrence of mass atrocities in one country is capable of imposing on the international community a moral imperative to intervene forcibly that trumps its traditional duty of non-intervention under the UN Charter system. Leaving aside all the issues of legality in the context of the UN Charter, international practice of international organizations and state practice make it obvious that international commu-

nity in most cases try to qualify humanitarian crises as international crimes¹². But precise threshold of human rights abuses and their qualification under international criminal law still remain one of the most controversial questions in humanitarian crises.

There are no doubts that violations of prohibitions on genocide and crimes against humanity in the international law more easily trigger international concerns than do other human rights norms, such as the right to humanitarian assistance, and that is because mentioned norms enjoy the status of *Jus cogens*. Nevertheless despite the fact that the crime of genocide is well established in international law by the Genocide Convention [2], the biggest problem that arises while qualifying genocide in the international criminal law is the most important obligatory element to be proved, that is the intent to destroy in whole or in part the group as such. This intent is an aggravated criminal intention or *dolus specialis*: it implies that the perpetrator consciously desired the prohibited acts he committed to result in the destruction, in whole or in part, of the group as such, and knew that his acts would destroy in whole or in part, the group as such [20, para 491].

Problems of qualification of the genocide crime in international law are well re-

flected in the report of the Darfur Commission [20]. The report stated that the intent of the attackers was not to destroy an ethnic group as such, or part of the group. Instead, the intention was to murder all those men they considered as rebels, as well as forcibly expel the whole population so as to vacate the villages and prevent rebels from hiding among, or getting support from, the local population [20, para 514]. Thus nevertheless that the Darfur Commission had collected substantial and reliable material which tended to show the occurrence of systematic killing of civilians belonging to particular tribes, international community was expecting legal qualification of the genocide crime and was not eager to handle crimes against humanity in Darfur without labelling humanitarian crisis as genocide.

Requirement to qualify humanitarian crisis before humanitarian intervention can occur is challenging not only because of the high legal standard set for genocide and crimes against humanity in the international law, but also because the extent and range of human rights violations may not be apparent until foreign troops or international bodies are on the ground collecting evidence and what counts as “large scale” will always be a matter of context [5, p. 12].

To conclude it should be acknowledged that human rights violations differ in every humanitarian crisis and the mere existence of massive human rights violations, but not the “label” of international crime or exact number of victims, should be the crucial legitimating factor at the stage of deciding to intervene.

¹² In the case of humanitarian crisis in Darfur, it was stated that situation did not amount to genocide. While authorizing humanitarian intervention in Libya, UN Security Council stated that widespread and systematic attacks in Libya against the civilian population may amount to crimes against humanity. It is worth mentioning that in Syrian humanitarian crisis UN General Assembly mentioned widespread and systematic human rights violations without referring to an international crime.

3.3. Proportionality

As it was already mentioned, purpose of humanitarian intervention should be humanitarian and this requirement is directly related to the means involved in the intervention. Armed force employed must be proportionate and necessary to reach the aim of stopping humanitarian crisis. Furthermore, a state or multilateral organization intervening in another state on humanitarian grounds must conduct the intervention in accordance with international humanitarian law.

The way in which the intervening party conducts the intervention may serve either to reinforce or undermine the stated justifications for the intervention. For example, the manner in which in which NATO conducted the bombing campaign against the Federal Republic of Yugoslavia caused some to speculate about NATO's other motives for the intervention. 500 confirmed civilian deaths resulted from NATO's bombing campaign [19, para 53] and around 6000 civilians were wounded [7, p. 264]. During the 78-day air war, not a single American soldier or pilot died [13, p. 188]. Accidents resulted in serious damage to 20 hospitals, 190 schools, a refugee camp, a refugee convoy, public housing projects, and the Chinese embassy in Belgrade [19, para 95]. High altitude tactic weaken the claim of humanitarianism to the extent that it appears to value the lives of the NATO combatants more than those of the civilian population in Kosovo and Serbia [23, p. 181]. This demonstrates that a legitimate decision to intervene might later lose legitimacy due to the manner in which the intervention is conducted.

Although ground troops would not necessarily have reduced the amount of civilian damage, the number of civilian casualties, or the duration of war, public perception typically regarded ground troops as necessary to vindicate NATO's humanitarian motive [16, p. 56].

Taking into consideration proportionality of NATO's mission in Libya, it must be mentioned that 26 000 flights and 9 700 attack flight missions [10] were organized above Libya. During air strikes civilian deaths and the destruction of civilian infrastructure are inevitable, very costly and cannot be simply dismissed as collateral damage [14]. In the Security Council resolutions No. 1970 and No. 1973 the language of community's Responsibility to protect vulnerable civilians was used, but as The International Crisis Group recently concluded, "civilians are figuring in large numbers as victims of the war, both as casualties and refugees, while the leading Western governments supporting NATO's campaign make no secret of the fact that their goal is regime change" [23]. That means that if the primary objective of humanitarian intervention in Libya was stopping humanitarian crisis, then doubts concerning proportionality of means chosen and legitimacy of the whole humanitarian intervention as such can arise.

Examples of state practice illustrate that proportionality of humanitarian intervention adds to its legitimacy despite the fact that it was or was not authorized by the UN Security Council. That means that authorization of UN Security Council is not the only one criterion for legitimacy of humanitarian intervention in international

law¹³. That means that proportionate humanitarian intervention that was not authorized by the UN Security Council could be considered as legitimate use of force in the context of new Responsibility to protect concept.

Conclusions

1. The conceptual development of the Responsibility to protect enabled innovative approach towards principles of the non-use of force and respect for state sovereignty in international law and introduced clear responsibility of one state and international community as a whole for a humanitarian crisis.
2. The focus on ethical rather than legal Responsibility to protect concept determines legitimate status of humanitarian intervention as a just war in contemporary international law.
3. Even though Responsibility to protect is still to be implemented in the normative limits of UN Charter, right of humanitarian intervention can be regu-

¹³ NATO's intervention in Kosovo even if it was not authorized by the UN Security Council was also considered legitimate by the Kosovo Commission [22].

LITERATURE

Legal acts

1. Constitutive Act of African Union. [Interactive] Access through internet: <http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm#Article4> [Accessed 2011 11 20]

2. Convention on the Prevention and Punishment of the Crime of Genocide [Interactive, Accessed 2011 11 20]. Access through internet: <<http://www.preventgenocide.org/law/convention/text.htm>>.

lated through regional legal initiatives and lack of political will at the UN level can be substituted by regional efforts to stop humanitarian crises.

4. UN Security Council authorization provides political and legal consensus concerning humanitarian intervention and adds to its legality in international law, but authorized humanitarian intervention can lose its legitimacy in the course of action.
5. The conflict in authorized objective of humanitarian intervention and its proportionality undermines the legitimacy of humanitarian intervention in the international arena.
6. Lack of clarity about when humanitarian intervention is legal and legitimate without UN Security Council authorization will result in further inaction dealing with humanitarian crises. In order inaction of the international community is prevented the biggest challenge for the international community in the 21st century that has to be met is the integrity of the moral and legal positions in the context of Responsibility to protect and its implementation.

Special literature

3. BURMESTER, Byron F. On humanitarian intervention: the new world order and wars to preserve human rights. *Utah Law Review*, 1994, Vol. 1, p. 269–323.

4. DE SOUSA, Marco. Humanitarian intervention and the Responsibility to protect: bridging the moral/legal divide. *University College London Review*, 2010, Vol. 16, p. 51–74.

5. EVANS, Gareth J. *The responsibility to protect ending mass atrocity crimes once and for all*. The Brookings Institution: Washington, 2009.

6. HARRELL, Peter E. Modern-day “guarantee clauses” and the legal authority of multinational organizations to authorize the use of military force. *Yale Journal of International Law*, 2008, Vol. 33, No. 2, p. 417–446.

7. JUDAH, Tim. *Kosovo: war and revenge*. London: Yale University Press, 2000.

8. KEMPSTER, Norman. Crises in Yugoslavia, leaders and scholars clash over legality, *L.A. Times*, March 26, 1999 at A26 cited in Klinton W. Alexander, NATO’s intervention in Kosovo: the legal case for violating Yugoslavia’s national sovereignty in the absence of Security Council approval. *Houston Journal of International Law*, 2000, Vol. 22, p. 403–449.

9. NARDIN, Terry. The moral basis of humanitarian intervention. *Ethics & International Affairs*, 2002, Vol. 16, No. 1, p. 57–70.

10. NATO misijos Libijoje statistika [Interactive, Accessed 2011 11 20]. Access through internet: <<http://www.delfi.lt/news/daily/world/nato-misijos-libijoje-statistika.d?id=51187549>>.

11. PATTISON, James. *Humanitarian intervention and the Responsibility to protect: who should intervene?* Oxford university press: Oxford, 2010.

12. SARKIN, Jeremy. The role of the United Nations, the African Union and Africa’s sub-regional organizations in dealing with Africa’s human rights problems: connecting humanitarian intervention and responsibility to protect. *Journal of African Law*, 2009, Vol. 53, No. 1, p. 1–33.

13. SCHROEDER, Emily. The Kosovo crisis: Humanitarian imperative versus international law. *Fletcher Forum of World Affairs*, 2004, Vol. 28, p. 179–197.

14. SIEBERT, John. *Libya and R2P: the failure of bombing raids to protect vulnerable civilians* [Interactive, Accessed 2011 11 23]. Access through internet: <<http://www.ploughshares.ca/sites/default/files/Briefing%202011-02.pdf>>.

15. The Gilder Lehrman Institute of American History. *Humanitarianism and military intervention: NATO in Kosovo* [Interactive, Accessed 2011 11 20].

Access through internet: <<http://www.digitalhistory.uh.edu/historyonline/kosovo.cfm>>.

16. VOON, Tania. Closing the gap between legitimacy and legality of humanitarian intervention: lessons from East Timor and Kosovo. *University of California Journal of International Law and Foreign Affairs*, 2002, Vol. 7, p. 31–58.

17. WEISS, Thomas G. RtoP alive and well after Libya. *Ethics & International Law*, 2011, Vol. 25, No. 3, p. 1–6.

18. WHEELER, Nicholas. *Saving strangers: humanitarian intervention in international society*. Oxford university press: Oxford, 2000.

Practical material

19. Final report to the Prosecutor by the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia, 2000 [Interactive, Accessed 2011 11 24]. Access through internet: <http://www.icty.org/xi/file/About/OTP/otp_report_nato_bombing_en.pdf>.

20. International Commission of Inquiry on Darfur, Report to Secretary General, 2005 [Interactive, Accessed 2011 11 24]. Access through internet: <http://www.un.org/News/dh/sudan/com_inq_darfur.pdf>.

21. International Commission on Intervention and State sovereignty, Report “Responsibility to protect”, 2001 [Interactive, Accessed 2011 11 24]. Access through internet: <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>.

22. Independent International Commission on Kosovo, Kosovo report. Oxford university press: Oxford, 2000.

23. International Crisis group, Popular protest in north Africa and the middle east (v): making sense of Libya, 2011 [Interactive, Accessed 2011 11 23]. Access through internet: <<http://www.crisisgroup.org/en/regions/middle-east-north-africa/north-africa/libya.aspx>>.

24. Presidential Study Directive on Mass Atrocities [Interactive, Accessed 2011 11 23]. Access through internet: <<http://www.whitehouse.gov/the-press-office/2011/08/04/presidential-study-directive-mass-atrocities>>.

PAREIGOS APSAUGOTI KONCEPCIJA IR KONFLIKTAS TARPTAUTINĖJE TEISĖJE

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S a n t r a u k a

Pasaulyje vykstančios humanitarinės krizės visada buvo ir yra vienas iš didžiausių iššūkių tarptautinei valstybių bendrijai. Tai gali būti aiškinama tuo, kad humanitarinė intervencija yra ir buvo susijusi su neišsprendžiamais konfliktais tarptautinėje teisėje. Siekiant pakeisti ilgą laiką egzistavusį įsitikinimą, kad humanitarinė intervencija yra nesuderinama su valstybės suvereniteto apsaugos ir ginkluotos jėgos panaudojimo principais, į šiuolaikinę tarptautinę teisę buvo įvesta naujoji Pareigos apsaugoti koncepcija.

Pareigos apsaugoti koncepcija yra suprantama kaip valstybės, kurios teritorijoje vyksta humanitarinė krizė, atsakomybė už humanitarinės krizės nutraukimą, o jei ši valstybė nenori ar negali to padaryti, šią atsakomybę turėtų prisiimti visa tarptautinė bendrija. Nepaisant to, kad ši naujoji koncepcija gali būti įgyvendinama remiantis JT chartijos nustatyta tvarka, t. y. tik su JT Saugumo Tarybos sankcija, Pareigos apsaugoti koncepcija „pritempė“ humanitarinę intervenciją prie teisingo karo, nors iš esmės jos ir nepakeitė.

Tai reiškia, kad neišsprendžiami konfliktai, susiję su humanitarine intervencija ir tarptautinės bendrijos reakcija laiku į humanitarines krizes ir toliau išliko. Valstybės vis dar nėra pasirengusios imtis vienašališko, t. y. Saugumo Tarybos nesankcionuoto, ginkluotos jėgos panaudojimo, nors ir turėdamos moralinį įsipareigojimą veikti pagal Pareigos apsau-

goti koncepciją. Šios problemos išskaidymas į atskirus konfliktus, t. y. humanitarinės intervencijos ir Pareigos apsaugoti sampratos konfliktą, konfliktas dėl teisinio humanitarinės intervencijos teisės reguliavimo ir konfliktas dėl humanitarinės intervencijos kaip teisingo karo vertinimo leidžia atskleisti humanitarinės intervencijos statuso ypatumus šiuolaikinėje tarptautinėje teisėje.

Pareigos apsaugoti koncepcijos pagrindinis tikslas buvo išspręsti šiuos konfliktus, susijusius su humanitarinės intervencijos ir jos teisėtumo vertinimu šiuolaikinėje tarptautinėje teisėje. Nekyla abejonių, kad ši koncepcija paskatino tarptautinės teisės teoretikų atsinaujinusias diskusijas dėl humanitarinės intervencijos reiškinio šiuolaikinėje tarptautinėje teisėje ir leido Afrikos regiono organizacijoms imtis atskiro humanitarinės intervencijos teisės reglamentavimo. Tačiau reikia pripažinti, kad Pareigos apsaugoti koncepcija teisinio humanitarinės intervencijos statuso iš esmės nepakeitė: ji ir toliau turi būti sankcionuojama JT Saugumo Tarybos. Be to, nevienodas Pareigos apsaugoti koncepcijos taikymas panašių humanitarinių krizių atvejais ir vis dar esamos abejonės dėl JT Saugumo Tarybos nesankcionuotos humanitarinės intervencijos teisėtumo leidžia daryti išvadą, kad tarptautinei bendrijai siekiant nutraukti pasaulyje vykstančias humanitarines krizes vis dar kyla nemažai iššūkių.

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