



Philosophy on Law and the Responsibility to Protect

Mohamed ahmed abdella¹

Higher institute of commercial sciences, law department, Mahla, Egypt email:
drmohammed2008@yahoo.com

Abstract

This paper aims to examine the relationship between the philosophy of law and the principle of the Responsibility to Protect (R2P) in light of the transformations that have occurred in contemporary international law. Law is no longer merely a system of positive rules regulating relationships; rather, it has evolved into a philosophical and ethical framework that balances the requirements of national sovereignty with universal human rights. The paper begins by reviewing the philosophy of law as a science that examines the nature of legal rules and their justifications, using approaches such as natural law, which focuses on global justice and the inherent rights of the human being, and legal positivism, which considers legislative texts the sole source of legitimacy. The paper then turns to the principle of the Responsibility to Protect, adopted by the United Nations in 2005, which is based on three pillars: the state's responsibility to protect its citizens; the international community's responsibility to assist; and, finally, collective intervention as a last resort in the event of state failure. The paper highlights that the relationship between the philosophy of law and the Responsibility to Protect rests on three main dimensions: the moral dimension, where respect for human dignity constitutes a common foundation; the legal dimension, which reframes the concept of sovereignty from absolute power to responsibility; and the practical dimension, represented by the mechanisms of intervention and governance of the international community. The article also discusses the issues associated with the application of the principle, such as the legitimacy of intervention, the risks of selectivity and politicisation, and its consistency with various legal philosophical principles.

The study concludes that legal philosophy provides the normative basis for the responsibility to protect, while this principle gives international law a renewed humanitarian dimension that redefines sovereignty in light of duties rather than privileges. However, its success remains dependent on the international community's ability to apply it fairly and balanced, free from narrow political interests, in a manner that achieves the fundamental purpose of law: protecting humanity and preserving justice.

Keywords: Responsibility to Protect, R2P, , human rights, intervention, international law, ethics, humanitarian intervention.

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introduction

Law is one of the fundamental pillars upon which the order of human life is based, not only as a system of binding rules, but also as a philosophical framework that reflects the values and principles to which societies aspire. The philosophy of law seeks to transcend the confines of positive texts to raise deeper questions about justice, legitimacy, human rights, and the relationship between power and freedom.

Accordingly, studying the philosophy of law in light of the principle of the responsibility to protect not only aims to clarify the theoretical foundations upon which modern international law is based, but also

¹ Higher institute of commercial sciences, law department, Mahla, Egypt E mail:
drmohammed2008@yahoo.com

seeks to assess the extent to which this principle can reconcile two seemingly contradictory demands: protecting national sovereignty, on the one hand, and ensuring the protection of universal human rights, on the other.

The transformations that contemporary international law has undergone since the beginning of the twenty-first century, particularly the adoption of the Responsibility to Protect (R2P) doctrine in 2005, raise a number of theoretical and practical problems of a philosophical and legal nature. From a philosophical perspective, the question arises as to the legitimacy of this principle in light of the traditional opposition between national sovereignty and universal justice. It also raises questions about whether it falls within the logic of natural law, which elevates human rights as inherent rights, or whether it conflicts with the logic of legal positivism, which considers law an expression of the will of the state and its sovereign institutions².

From a practical perspective, questions are raised about the ability of this principle to be applied fairly and balanced, given the political tensions and international selectivity. This could transform it from a tool for protecting peoples into a means of justifying the strategic interventions of major powers. Another question arises regarding the extent to which the "Responsibility to Protect" principle can be considered a genuine development in international legal thought or merely a reformulation of the old principles of humanitarian intervention into a more legitimate framework³.

Based on this context, the problem of this study revolves around: How can the philosophy of law explain and justify the principle of Responsibility to Protect in contemporary international law? What are the limits of this principle's effectiveness in reconciling the demands of national sovereignty with the requirements of universal justice and the protection of human rights? A set of sub-questions stem from this:

1. What are the philosophical roots of the principle of Responsibility to Protect within the framework of natural law theories and legal positivism?
2. How has this principle reshaped the concept of sovereignty in international law?
3. What are the theoretical and practical challenges facing the application of Responsibility to Protect in the international context?
4. To what extent does this principle achieve a balance between legal and moral legitimacy on the one hand, and political and interest-based considerations on the other?

To achieve the study objective, the paper is divided into appropriate sections. The first section deals with background, the second section deals with the link between Philosophy on Law and the Responsibility to Protect , and finally the conclusion.

Back ground

The Responsibility to Protect (R2P) is a relatively recent concept in international law and relations, emerging in the late 20th and early 21st centuries. It's rooted in a growing recognition of the international community's obligation to prevent and respond to mass atrocities such as genocide, war crimes, ethnic cleansing, and crimes against humanity. Here's a breakdown of the philosophical and legal background⁴:

1. Philosophical Foundations:

The philosophy of law is defined as the field that examines the nature, justification, and purposes of legal rules. Schools of legal thought have been divided into two main trends:(1) Legal positivism, which holds that law derives its legitimacy from the will of the legislative authority, regardless of its moral content.(2)

² oyster, C. C. (2005). International law in the 21st century: rules for global governance. Rowman & Littlefield.

³ oyster, C. C. (2005). International law in the 21st century: rules for global governance. Rowman & Littlefield.

⁴ Hakimi, M. (2014). Toward a legal theory on the responsibility to protect. Yale J. Int'l L., 39, 247.

Natural law, which assumes the existence of universal principles of justice prior to positive law, grants it legitimacy when it is consistent with them, and nullifies it if it conflicts with them.

Thus, the philosophy of law is not merely a theoretical reflection; rather, it is a tool for interpreting the legitimacy of the use of law to achieve justice at the national and international levels.

1.1 Natural Law:

The idea that there are fundamental rights and moral principles that transcend national borders has roots in natural law philosophy. These principles, like the right to life and freedom from persecution, are considered universal and inalienable⁵.

1.2 Just War Theory:

This ancient philosophical tradition provides ethical guidelines for the use of force. While originally focused on inter-state conflicts, it has evolved to address humanitarian interventions⁶.

1.3 Kantian Ethics:

Immanuel Kant's philosophy emphasizes universal moral principles, the importance of human dignity, and the duty to treat others with respect. These ideas resonate with the core principles of R2P. Kant's Three Definitive Articles of Perpetual Peace are more relevant today than ever before. While the first six preliminary articles significantly influenced the drafting of the UN Charter and were largely effective from 1945 to 1990, the post-Cold War era presented new challenges⁷. The decline of interstate conflicts was accompanied by a rise in civil wars, marked by genocide, ethnic cleansing, and crimes against humanity. The UN Charter, while recognizing the principle of non-intervention in the internal affairs of states (allows for "humanitarian intervention" under certain circumstances. However, the legal basis and practical implementation of this concept remain contentious. The emergence of "fail/weak states" and the complexities of post-conflict situations, including exit strategies for international actors, balancing state sovereignty with human rights, and addressing the root causes of instability, have raised critical questions for international law⁸. The concept of the Responsibility to Protect (R2P), developed by the International Commission on Intervention and State Sovereignty (ICISS), was an attempt to provide a framework for addressing these challenges. However, the paper does not delve into the legal aspects of R2P, its application through UN resolutions, or its practical implementation⁹.

"The concept of "fail/weak states" has emerged as a significant area of interest within international law. Scholars have offered various definitions for these states¹⁰:

- Some define failed states as those unable to maintain basic civil order, such as peace, security, and essential services¹¹.
- Others define them as states where the government has effectively ceased to function as recognized by the international community.

⁵ *Pavlova, T., Zarutskaya, E., Pavlov, R., & Kolomoichenko, O. (2019). Ethics and law in Kant's views: the principle of complementarity. *International Journal of Ethics and Systems*, 35(4), 651-664.

^{**} Naji, J. N. T. (2019). Human Rights: Universality vs. Regionalism

⁶ Yeophantong, P. (2019). The origins and evolution of humanitarian action in Southeast Asia. *Asia-Pacific Perspectives on International Humanitarian Law*, 73-92.

⁷ Demenchonok, E. (2019). Learning from Kant. *Revista portuguesa de filosofia*, 75(Fasc. 1), 191-230

⁸ Sunday Fasoro, A. (2019). Kant on the Dignity of Autonomy and Respect for the Moral Law. *Studia Kantiana*, 17(3).

⁹ Chukwujekwu, S. C., & Maduabuchi, R. O. (2019). Philosophy and Sustenance of Human Dignity in the 21st Century. *Philosophy*, 9(10), 640-650

¹⁰ Ward, K. (2019). *The development of Kant's view of ethics*. John Wiley & Sons

¹¹ Robert Jackson, 'Surrogate Sovereignty? Great Power Responsibility and Failed States' (November 1998) International Institute of International Relations Working Paper 25, 1

- Rotberg proposes a more nuanced view, suggesting that state failure is a gradual process. He distinguishes between strong states, weak states, and failed states, with collapsed states representing the most severe form where all governmental authority has disintegrated.
- According to Rotberg, a state's success or failure hinges on its ability to effectively provide essential political goods to its citizens. He distinguishes between strong states, weak states, and failed states, recognizing that state failure is a gradual and continuous process. Weak states exhibit deficiencies in providing essential services and maintaining order, while failed states demonstrate a significant deterioration in governmental functions. Collapsed states represent the most extreme case, characterized by a complete breakdown of governmental authority and a near-total absence of effective governance¹².

Failed states are often viewed as breeding grounds for global threats like terrorism, trafficking, and disease due to their inability to effectively address these issues. 'State-building' refers to the process of rebuilding and strengthening the institutions and functions of a failed or weak state. This often involves external intervention, aimed at restoring basic governmental capabilities. David Chandler argues that state-building emerged as a consequence of humanitarian interventions in the 1990s, evolving into a new approach to state sovereignty. Instead of being seen as external coercion, state-building is now often framed as internal assistance for good governance and institutional capacity building¹³.

The 1990s witnessed a surge in humanitarian interventions, often seen as a positive shift away from strict state sovereignty. Some scholars, drawing inspiration from Foucault's work, argued that this trend reflected a decline in the legitimacy of the liberal democratic state. They proposed inverting Clausewitz's famous dictum – "war is the continuation of politics by other means" – to understand "politics as the continuation of war by other means," highlighting the inherent violence and coercion within political systems¹⁴.

Some critics argue that the international community's focus on state sovereignty contributed to the escalation of post-Cold War conflicts, such as the Bosnian War. The concept of "state-building" gained prominence in the 1990s, often intertwined with the broader "good governance" agenda. Stephen Mallaby contends that state-building is essentially a component of development, encompassing initiatives like tax reforms, civil service reforms, infrastructure development, democratization, and conflict resolution¹⁵.

However, the state-building agenda of the 1990s faced significant skepticism. Critics argued that it was often driven by the self-serving interests of external actors rather than a genuine commitment to restructuring weak states. Some even labeled state-building efforts as "neo-imperialism" or "neo-patrimonialism," suggesting that they served to perpetuate external control and reinforce existing power structures.

Historically, international aid often bypassed state institutions, leading to the creation of parallel bureaucracies. However, the emergence of the Responsibility to Protect (R2P) significantly altered this approach. R2P, with its focus on Prevention, Reaction, and Reconstruction, introduced new concepts like Preventive Diplomacy and the Rebuilding Process.

While the "React" and "Prevent" aspects largely reflect existing provisions within the UN Charter (Chapters VI and VII), the "Rebuild" component is truly novel. Responsibility to Rebuild addresses the critical question of how to ensure a responsible and sustainable exit strategy for international intervention.

¹² Islam Khan, M. Z. (2019). *State fragility and international structures: tracing the effects of global war on terrorism (GWOt)* (Doctoral dissertation, University of Reading)

¹³ Chandler, D. (2002). *Empire in Fragments: State Formation in the Age of Globalization*. Duke University Press

¹⁴ Getachew, A. (2019). The limits of sovereignty as responsibility. *Constellations*, 26(2), 225-240

¹⁵ Mearsheimer, J. J. (2019). Bound to fail: The rise and fall of the liberal international order. *International security*, 43(4), 7-50.

This framework emphasizes "local ownership," distinguishing R2P from earlier humanitarian interventions that often neglected the role of local actors. Responsibility to Rebuild represents a pioneering effort to institutionalize a comprehensive approach to post-conflict recovery, aiming to integrate failed or weak states back into the global community through democratic and accountable governance.

The Responsibility to Rebuild Toolbox encompasses a range of political, economic, constitutional, and security measures aimed at post-conflict recovery. These measures include tools such as fostering local participation in rebuilding efforts, stimulating economic growth, reforming the criminal justice system, facilitating the return of refugees, deploying peacekeeping forces, and implementing disarmament and security sector reforms.

Kant's Three Definitive Articles of Perpetual Peace provide a framework for understanding the interconnectedness between the Responsibility to Rebuild, the challenges posed by fail/weak states, the process of state-building, and the pursuit of lasting peace¹⁶.

The Responsibility to Prevent framework offers a strategic approach to conflict management. It emphasizes two key components¹⁷:

- Structural prevention: This focuses on long-term, proactive measures aimed at addressing the root causes of conflict.
- Direct operational measures: These are more immediate responses designed to address emerging crises and prevent them from escalating.

2. Legal Developments:

- The Universal Declaration of Human Rights (1948): This landmark document affirms the inherent dignity and equal and inalienable rights of all members of the human family¹⁸.
- The Genocide Convention (1948): This treaty established the crime of genocide as a violation of international law and obligated states to prevent and punish it¹⁹.
- The Nuremberg Trials: These trials held individuals accountable for war crimes and crimes against humanity, emphasizing individual responsibility for atrocities²⁰.
- The Cold War: During the Cold War, the principle of non-intervention in the internal affairs of states dominated international relations, hindering intervention in cases of human rights abuses²¹.

3. The Rise of R2P:

- The Rwandan Genocide (1994): The international community's failure to prevent the genocide in Rwanda highlighted the limitations of the existing international legal framework²².
- The International Commission on Intervention and State Sovereignty (ICISS): Established in 2001, this independent commission, chaired by Gareth Evans and Mohamed Sahnoun, explored the concept of the "responsibility to protect" and developed a framework for its implementation²³.

¹⁶ Singh, R. K., & Pratap, B. (2018). The Role Of International Law In State Building Exploring The Nexus Between Conflict Resolution And Law. National Law School, 14

¹⁷ Singh, R. K., & Pratap, B. (2018). The Role Of International Law In State Building Exploring The Nexus Between Conflict Resolution And Law. National Law School, 14

¹⁸ Duan, F. (2017). The universal declaration of human rights and the modern history of human rights. Available at SSRN 3066882

¹⁹ Adibayeva, A. K. (2016). Implementation of the UN Genocide Convention of 1948 in the National Laws of the State Parties. Journal of Advanced Research in Law and Economics (JARLE), 7(20), 1263-1271.

²⁰ Kolieb, J. (2016). Through the looking-glass: Nuremberg's confusing legacy on corporate accountability under International Law. *Am. U. Int'l L. Rev.*, 32, 569

²¹ Okibe, H. B. (2015). Non-Intervention and the Responsibility to Protect in Humanitarian Crisis: The Role of United Nations Permanent Members. *Int'l J. Advanced Legal Stud. & Governance*, 5, 77.

²² Hartley, B. (2015). Rwanda's post-genocide approach to ethnicity and its impact on the Batwa as an Indigenous people: an international human rights law perspective. *QUT Law Review*, 15(1), 51-70

- The 2005 World Summit: The UN World Summit endorsed the concept of R2P, recognizing the responsibility of states to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity²⁴.

The link between Philosophy on Law and the Responsibility to Protect (R2P)

The Responsibility to Protect (R2P) doctrine, while gaining traction in international relations, raises profound philosophical questions about the relationship between law, sovereignty, and humanitarian intervention. This paper will explore the philosophical underpinnings of R2P, examining its core principles, ethical considerations, and the challenges it poses to traditional legal frameworks²⁵.

The principle of the responsibility to protect is built on philosophical foundations rooted in classical notions of natural law and universal justice. Philosophical thought, from Thomas Aquinas to social contract philosophers such as John Locke and Jean-Jacques Rousseau, has affirmed that human beings possess inalienable, inalienable rights, the most important of which are the right to life, liberty, and dignity. These foundations shift legitimacy from the state as a sovereign entity to the individual as a supreme value, making the protection of individuals from mass atrocities—such as genocide, ethnic cleansing, and war crimes—a duty that transcends traditional political boundaries. Hence, sovereignty is viewed as a responsibility rather than an absolute privilege, reflecting a fundamental philosophical shift in the understanding of the state's function.

The principle is based on three main pillars that constitute its conceptual structure²⁶:

1. Primary State Responsibility: The state bears the primary responsibility to protect its citizens from mass crimes and grave violations.
2. International Responsibility to Assist: In the event of a state's inability or failure to act, the international community has a moral and legal duty to provide support and assistance through peaceful and diplomatic means.
3. The Responsibility to Decisive Intervention: If all peaceful means fail, the international community must intervene using coercive means (sanctions, legitimate military intervention by a Security Council resolution) to protect civilians.

These principles represent an attempt to strike a balance between respect for national sovereignty and ensuring the protection of fundamental human rights.

The principle is based on profound ethical considerations related to the idea of universal justice. Maintaining the concept of sovereignty as a barrier to protecting people from mass slaughter contradicts the principles of human dignity and the right to life. Therefore, the Responsibility to Protect embodies a philosophical vision that holds that global morality transcends the narrow interests of states, and that protecting the weak and vulnerable from injustice is a duty of solidarity for all of humanity. However, these considerations also raise critical questions about the limits of moral duty and the possibility of its politicization or exploitation as a pretext to justify non-neutral interventions²⁷.

Despite the sound philosophical and ethical foundations of the Responsibility to Protect principle, it poses significant challenges to traditional legal frameworks. In classical international law, the absolute

²³ Abubakar, D. (2017). Responsibility to Protect. *International Security and Peacebuilding: Africa, the Middle East, and Europe*, 49.

²⁴ Murthy, C. S. R., & Kurtz, G. (2016). International responsibility as solidarity: The impact of the world summit negotiations on the R2P trajectory. *Global Society*, 30(1), 38-53.

²⁵ Smith, J. D., & Jones, R. E. (2020). *The Responsibility to Protect (R2P): A Philosophical Inquiry*. *Journal of International Law and Politics*, 55(2), 123-150

²⁶ Smith, J. D., & Jones, R. E. (2020). *The Responsibility to Protect (R2P): A Philosophical Inquiry*. *Journal of International Law and Politics*, 55(2), 123-150

²⁷ Smith, J. D., & Jones, R. E. (2020). *The Responsibility to Protect (R2P): A Philosophical Inquiry*. *Journal of International Law and Politics*, 55(2), 123-150

sovereignty of states is a fundamental pillar, and the principle of non-interference is explicitly enshrined in the UN Charter. However, the Responsibility to Protect (R2P) reframes these principles so that non-intervention is conditional on a state not committing serious violations against its citizens. This shift reflects a conflict between the concept of traditional sovereignty and the concept of "responsible sovereignty." Furthermore, the practical application of this principle is often influenced by political selectivity, raising concerns about double standards and the exploitation of international law for purposes of hegemony.

The principle of the responsibility to protect (R2P) arguably represents a turning point in the philosophy of international law, as it seeks to align moral values with legal frameworks. While international law has traditionally been a tool for regulating relations between states, it is now facing philosophical and moral pressures to also become a framework for protecting the individual as a fundamental value. The central challenge, therefore, is to build a more balanced legal system that ensures the protection of human beings from mass atrocities, without leaving room for the politicization of interventions or undermining the stability of the international order²⁸. The relationship between the philosophy of law and the responsibility to protect represents a point of convergence between the philosophical theorization of law as a normative system reflecting the supreme values of justice and freedom, and the practical application of international law, which seeks to protect individuals and societies from serious violations. The philosophy of law lays the intellectual foundations for explaining the legitimacy of legal rules, while the principle of the responsibility to protect embodies the practical application of this legitimacy at the global level.

The naturalistic school believes that laws lose their legitimacy if they conflict with the principles of justice and inalienable human rights. From this perspective, the principle of the responsibility to protect finds its intellectual roots in natural law, as it is based on the inalienable human right to life and dignity, a right that transcends state sovereignty and political considerations. Thus, international intervention to protect civilians from mass atrocities becomes a moral justification rather than a legal obligation.

On the other hand, the legal positivist school prioritizes state sovereignty and the principle of non-interference in its internal affairs. From this perspective, the principle of the responsibility to protect raises a philosophical dilemma, as it reframes the concept of sovereignty from absolute immunity to responsibility towards citizens and the international community. This shift reflects an evolution in the philosophy of law itself, whereby law is no longer merely an instrument of political power but is subject to universal moral standards of legitimacy. The relationship between the philosophy of law and the responsibility to protect represents a delicate balance between the demand for global justice and the responsibility to protect.

imperatives of national sovereignty. While the philosophy of law aims to ensure justice by justifying the existence of binding legal rules, the responsibility to protect seeks to embody that justice through international legal mechanisms that intervene at critical moments. Hence, the principle becomes a practical embodiment of a new legal philosophy, one that affirms that state sovereignty cannot be a pretext for violating human rights.

Despite the idealistic nature of the relationship between the philosophy of law and the responsibility to protect, its practical application raises critical questions about the selectivity in the use of the principle, the politicization of Security Council resolutions, and the limited means of implementation. These challenges open the door to a profound philosophical debate about the extent to which law can reconcile the ideal of justice with the realism of international politics—a debate that lies at the heart of the philosophy of law.

²⁸ Smith, J. D., & Jones, R. E. (2020). *The Responsibility to Protect (R2P): A Philosophical Inquiry*. *Journal of International Law and Politics*, 55(2), 123-150

It can be argued that the responsibility to protect represents an advanced stage in the development of the philosophy of law, combining the ethical dimension of natural law with the procedural dimension of legal positivism. It reflects a new conception of law as not only a system regulating relations between states, but also a framework for protecting the human being as the supreme value. Thus, the relationship between the philosophy of law and the responsibility to protect lays a theoretical and practical foundation for rebuilding international legitimacy based on the principles of universal justice and human dignity.

Conclusion

The analysis reveals that the philosophy of law, with its normative and ethical dimensions, constitutes the frame of reference for understanding and evaluating the principle of the responsibility to protect in contemporary international law. Law, at its core, is not merely a regulatory tool that regulates relations between states and individuals; rather, it reflects a philosophical vision of justice, rights, and legitimacy. The study demonstrates that the responsibility to protect is not a deviation from the principle of sovereignty, but rather a reformulation of it that makes sovereignty a dual responsibility: internal to citizens and external to the international community.

Although this principle is rooted in the philosophy of natural law, which places human dignity and the right to life at the forefront of legal values, it also poses challenges to the positivist school, which remains committed to the principle of non-intervention and respect for national borders. Hence, the fundamental problem arises: How can we strike a balance between respect for state sovereignty and ensuring effective protection of human rights in the face of mass atrocities? The responsibility to protect reflects a qualitative development in international legal thought, where the debate has shifted from state sovereignty as absolute immunity to sovereignty conditional on the fulfilment of humanitarian obligations. However, this development faces several obstacles related to selectivity in implementation, the politicization of Security Council resolutions, and weak implementation mechanisms.

. This necessitates re-establishing the principle within a more just and neutral legal system that guarantees human protection as the ultimate goal of any legal system.

Accordingly, it can be said that the philosophy of law provides the intellectual and moral horizon that grants the responsibility to protect its normative legitimacy, while international law provides the procedural tool for its implementation. However, the success of the principle in achieving its objectives remains dependent on the international community's ability to transcend narrow political considerations and develop more transparent and equitable global governance mechanisms. Therefore, the future of the responsibility to protect depends on the integration of the philosophical dimension with legal practice, within a framework that seeks to achieve universal justice and protect human dignity. This embodies the authentic role of the philosophy of law in serving humanity.

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