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RESPONSIBILITY TO PROTECT IN THE CONTEXT OF OPPOSITION TO VIOLATION OF HUMAN RIGHTS

The issues of the responsibility to protect and humanitarian intervention were investigated in this article. The authors also considered the evolution of the conceptions and studied the transformations of responsibilities of human rights violations. The main perspectives and different approaches also were investigated.

Key words: responsibility to protect, RtoP, R2P, humanitarian intervention, state sovereignty, human rights violation.

Problem statement. The issue of responsibility to protect has always been a topic one of the most controversial and ambiguous. The lack of the investigation of this issue is quite perceptible. The doctrine of the responsibility to protect has its new view on the state sovereignty. Thus, it causes many discussions in the scientific world. Let us quote Monica Serrano, the director of the Global Centre for the Responsibility to Protect: «While critics have claimed that the Responsibility to Protect (hereinafter — R2P) is a North-South polarizing issue and is therefore controversial, this is a deliberate misrepresentation in a rhetorical war led by a small minority of UN member states» [6].

Analysis of recent researches and publications. The works of many famous scientists and specialists in the sphere of responsibility to protect are dedicated to different aspects of this issue. They are James Pattison, Monica Serrano, Roger Cohen, Francis M. Deng, and others. One should mention that the lack of the investigations among the Ukrainian scientists is perceptible. But, nevertheless, there are researchers which should be named: L. Aleksidze, V. Denisov, G. Tunkin, Yu. Chaykovskyy and others.

Paper purpose. The goals of the article are: to define a place of the responsibility to protect doctrine in international community's means for the prevention and acting in a case of the large-scale human rights violations; to analyse the peculiarities and main rules under which the responsibility to protect is undertaking; to retrace the evolution of this conception; to try to predict the main perspectives in the international law, referring to the given doctrine.

Paper main body. The topicality of this subject is determined by the modern international relations, the more interdependent contacts among the world-wide authorities. One of the main aims of the United Nations is to maintain peacekeeping all around the world, but what be done in the case, when state sovereignty is used to cover the large-scale human rights violations. Article 2 of the Charter of the United Nations states: «All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations». This can be regarded as not as an absolute ban for weapon usage. What if the military ways of resolve the problem are used not against the territorial integrity or political independence of a state, but for a human rights protecting, in accordance with the Purposes of the United Nations [2]?

The conception of responsibility to protect («RtoP» or «R2P' terms are also used) shifted from the idea of state rights to intervene towards the conception of the right of suffering people to survive. Nevertheless, the humanitarian interventions were also often used by the third persons for their own goals. Thus, there is a threat that R2P could be just a new tool of neo-imperial interests. Scientists around the world are still investigating the question of the main differences and the essence of these two terms — «responsibility to protect» and «humanitarian intervention». J. Pattison states that: «...it is important to reiterate that (a) humanitarian intervention is only one part of the doctrine of the responsibility to protect, but that (b) it is a part of the responsibility to protect». He also suggests that humanitarian intervention is both broader and narrower than RtoP. On the other hand, humanitarian intervention broader because of the possibility of the usage in the case of the Security Council approved [4].

On the other hand, the doctrine of R2P includes more elements than just the military intervention. The report of the International Commission on Intervention and State Sovereignty (hereinafter — the ICISS) presented in December 2001 states: «The responsibility to protect embraces three specific responsibilities: (a) the responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk; (b) the responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; (c) the responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert» [7].

Kofi Annan's, former UN Secretary General, rose the problem of the actions of the international community in a case of the large-scale human rights violations at the United Nations General Assembly first time in 1999. He expressed the idea of the limits of the state sovereignty and the international community responsibility in the report «We the Peoples: the Role of the United Nations in the Twenty First Century» during the Millennium Assembly of

the United Nations: «…if humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of human rights? » [8]

James Pattison in his work «Humanitarian Intervention and the Responsibility to Protect» gives very clear meaning of the sovereignty: «… the principle of sovereignty emphasizes a state's freedom from external interference, so that it can pursue whatever policies it likes within its own boundaries. Although this notion of sovereignty as authority seemed to provide a legal and normative barrier that weaker states could use to fend off the interference of larger states, it presented the leaders of certain states with what was essentially a free hand to violate their citizens' human rights with impunity» [4].

But the modern international law tends to place the human rights in the first place in the security policy of the international community, while the role of state sovereignty looks like forgotten.

In the response of the Kofi Annan's question, the government of Canada in 2000 established the International Commission on Intervention and State Sovereignty. R2P was clarified by the 2001 Report of the ICISS. The responsibility to protect means that a state has a responsibility to protect its people against massive human rights violations, such as starvation, mass murder and rape. If a state is unable to handle a situation, the international community ought to guard the people from the sufferings [5].

All UN Members States in 2005 embraced R2P and issued «2005 World Summit outcome document». J. Pattison states that this agreement was a watershed moment for humanitarian intervention. The adaptation of the principle in Paragraph 139 defines that: «The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means ... to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity». But in a case if the peaceful means would be inadequate, the international community can exercise the collective actions through the Security Council [1].

Based on the previous document, Ban Ki-moon, Secretary General, issued «Implementing the Responsibility to Protect» in 2009, which determined three pillars of the responsibility to protect: «Each individual State has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity». The second pillar includes the commitment of states to assist the willing, but weak states to exercise their responsibility to protect. The third one refers to the failed or unwilling states to protect their population [3].

The report «The Role of Regional and Sub-Regional Arrangements» in 2011 also discussed some key issues of the problem. The report deals with the main questions of the cooperation of the regional and sub-regional organizations and the international community in the sphere of the responsibilities, stated in the 2009 Secretary General's report. The regional and sub-regional organizations can contribute to the state governments by: connecting global standards to local and national action; responding to the spillover effects of

national crises; training and awareness-raising programs around conflict prevention; encouraging governments to fulfill obligations; establishing regional norms; identifying and resolving existing conflicts with early and quiet diplomacy; promoting international and regional justice, etc [3].

In the sphere of the international assistance to member states (the essence of the second pillar) given organizations contribute: facilitating security sector reform and strengthening of the rule of law; sharing information and building capacity for crisis analysis; developing regional military and civilian capacity, etc [3].

According to the third pillar (responding to mass atrocity prevention and protection) the regional and sub-regional arrangements can contribute by: timely sharing of information and preventing incitement in collaboration; adding criteria to mass atrocities to regional and sub-regional organization membership; peacekeeping and military assets; local and national cooperation with the International Criminal Court, etc [3].

R2P reminds another theory, issued in the 1949 by the Fourth Geneva Convention — the Protection of Civilians (hereinafter — PoC). They both are aimed at the redressing human-induced atrocities. However, PoC is used during the armed conflict situations, while R2P was created for both war and peace times. It must be mentioned that R2P is used for such crimes as: genocide, crimes against humanity, war crimes and ethnic cleansing. The patch was applied to the UN missions, such as in Afghanistan, Central African Republic, Cote d'Ivore, etc [5].

The Security Council's main tools to fight with mass human rights violations include economic, political, transport sanctions, and then, just as an extreme step, military forces might be used. The problem is to define this extreme case, the line between the usage of the non-military tools and the military ones.

There are the main principles to be followed to justify the military intervention for people rights protection. The first thing to be understood is the usage just in case of extraordinary measures. That means that civilians must face large-scale loss of life, actual or anticipated.

Besides, one of the precautionary principles is the «right intention». The main purpose is to stop human suffering. By the way, another thing should be mentioned here: practically the «right intense» could be mixed with special interests of the countries and according to the ICISS report, «supported by regional opinion and the victims concerned» [4].

Military intervention is the «last resort» — that means that it is used in case when all the non-military tools have been exercised and in the state that all the lesser measures would not have succeeded.

Only the «proportional means» should be used. Of course, the magnitude, duration and intensity of reciprocal measures should be commensurate with the source of the problem. Moreover, the military intervention should be aimed at the people security.

And «reasonable prospects» includes: «reasonable chance of success in halting or averting the suffering which has justified the intervention, with

the consequences of action not likely to be worse than the consequences of inaction» [1].

Nevertheless, this mechanism doesn't exclude double standards, caused by the veto-power of five permanent members of the Security Council.

The General Assembly practically couldn't be regarded as a body executing the authority for military intervention. The researchers point out that just the program «Uniting for Peace» includes the idea of General Assembly two thirds majority, which able to make the Security Council to rethink about its position [4].

Sanction for military intervention is issued by the Security Council or regional organization with the Security Council's confirmation. Post-factum authorization would also be exercised.

The Security Council, as one of the main bodies of the UN, can exercise the authority to intervene as collective actions, agreed with the UN. Unilateral intervention can't be regarded as a legal. The matter is in the question of the permanent members' agreement not using their veto-power [4].

In addition, experts also warn that if the realization of «R2P» conception will be successful, the UN statute will face the need of serious changes.

In 2004, the UN Secretary-General appointed the first Special Adviser on the Prevention of Genocide. In 2008 a Special Adviser on the Responsibility to Protect was also appointed. In 2010 Secretary-General established a joint office for genocide prevention and the responsibility to protect. On 12 July 2013, Secretary-General Ban Ki-Moon announced the appointment of Dr. Jennifer Welsh as the new Special Adviser on the Responsibility to Protect.

In practice, the first case of usage of R2P was exercised in 2006 authorizing the deployment of UN peacekeeping troops to Darfur, Sudan. Then it was used in Libya, in Сфте D'Ivoire, Yemen, South Sudan in 2011. There was an attempt to use it towards Syria, but the case faced with Russia-China vetoes [5].

Conclusions. To sum up, it should be mentioned that the responsibility to protect is an attempt of the international community to regard the human rights protection not as an excuse for humanitarian intervention, but as a chance for people to survive. In general, military intervention, which can be called by the Secretary-General or regional organization with the approval of the Secretary General, should be used just in case of the extreme steps, when all the non-military ways had been used. Besides, there are such precautionary principles: right intense, last resort and proportional means.

The world practice of the usage of R2P shows that the development of this conception in spite of the critics finds its place during large-scale human rights violations. However, it should be taken into account that world's states may apply sometimes not altruistic interests at all. Thus, the researchers even express their ideas about the development of the cosmopolitan UN force under the rule of the independent democratic cosmopolitan institutions, the reforms and strengthening of the regional organizations. And the development of the issue and the filling of the gaps in the responsibility to protect doctrine by the highest ranks world leaders are also extremely important.

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ОБОВ'ЯЗОК ЗАХИЩАТИ В КОНТЕКСТІ ПРОТИДІЇ ПОРУШЕННЯМ ПРАВ ЛЮДИНИ

Резюме

Статтю присвячено питанню про обов'язок захищати, його еволюції протягом останніх років у сфері міжнародного права. Автори досліджують проблему використання цієї доктрини у випадках масового порушення прав людини. Вони розглядають різні погляди науковців щодо проблеми. Також досліджуються головні елементи та правила, за якими застосовується обов'язок захищати. Більше того, автори визначили головні відмінності між термінами «обов'язок захищати» та «гуманітарна інтервенція». Також розглянуто найбільш поширені ідеї щодо майбутнього концепції.

Ключові слова: обов'язок захищати, відповідальність за захист, гуманітарна інтервенція, державний суверенітет, порушення прав людини.

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ОБЯЗАННОСТЬ ЗАЩИЩАТЬ В КОНТЕКСТЕ ПРОТИВОДЕЙСТВИЯ НАРУШЕНИЯМ ПРАВ ЧЕЛОВЕКА

Резюме

Статья посвящается вопросу об обязанности защищать, ее эволюции на протяжении последних лет в сфере международного права. Авторы исследуют проблему использования этой доктрины в случаях массового нарушения прав человека. Они рассматривают разные взгляды ученых по поводу проблемы. Также исследуются главные элементы и правила, в соответствии которыми применяется обязанность защищать. Более того, авторы определили главные отличия между терминами «обязанность защищать» и «гуманитарная интервенция». Также рассмотрены наиболее распространенные идеи по поводу будущего концепции.

Ключевые слова: обязанность защищать, ответственность за защиту, гуманитарная интервенция, государственный суверенитет, нарушение прав человека.