

## International Regional Organizations and Responsibility to Protect Theory

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Responsibility to protect as an doctrine has opened its way in some UN Security Council's resolutions. A state has primary responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Manifest failure of a state to protect its populations from these crimes transfers responsibility to protect to international community. International community will apply R to P, through the United Nations.

Articles 33, 52, 53 and 54 of the UN Charter are regional organizations' basis actions for realization of R to P. Regional organizations will help the realization of R to P better than other international organizations because, they are closer to the conflicts that occur in their regions and they are more familiar with those regional issues. Thus, they can also exercise all parts of R to P i.e. responsibility to prevent, responsibility to react and responsibility to rebuild. In other words, mechanisms of regional arrangements for realization of responsibility to protect are a) use of pacific settlements b) military actions. Two aspects of R to P i.e. responsibility to prevent and responsibility to rebuild have a significant role for maintaining, meeting and restoring the peace. In fact, R to P is a practical solution to prevent "breach of peace" and to help "peace building".

**Keywords:** Regional Organizations, Responsibility to Protect, Peace, Responsibility to Prevent, Responsibility to Rebuild, UN Charter.



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# INTERNATIONAL REGIONAL ORGANIZATIONS AND RESPONSIBILITY TO PROTECT THEORY

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## INTRODUCTION

The concept of responsibility to protect is a new notion but some instruments state that it is a universal principle.<sup>(1)</sup> Protecting human rights and, in particular, population is subject of responsibility to protect. The root of responsibility to protect is 'humanitarian intervention' that has been developed since 19 century.

UN Charter has forbidden the use of force against another state. But in recent decades, the humanitarian interventions have been increased, in particular, in 1990s. Resistance with humanitarian intervention and

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lack of timely and decisive response to humanitarian crises caused UN Secretary General calls for international community to find a new way for resolving these crises.

R to P has three elements: responsibility to prevent, responsibility to react and responsibility to rebuild. The preventive aspect of R to P is the most important one.<sup>(2)</sup> Thus it can be said that the regional organizations, at least, can prevent states from committing genocide, cleansing ethnic, war crimes and crimes against humanity. But the third aspect of R to P has also the same importance because returning the peace takes a long time and IROs can help the peace building through the responsibility to rebuild.

This paper wants to answer this question: what are the mechanisms of regional organizations for realization of the peace through the responsibility to protect?

This essay has constituted two sections. At first some terms such as International Regional Organizations and Responsibility To Protect Theory: From Intervention to Protect will be defined and after that UN Charter and International Regional Organizations and the Mechanisms for Realization of R to P by the IROs will be considered.

## **I. OUTLINE OF DEFINITIONS**

### **A. INTERNATIONAL REGIONAL ORGANIZATIONS: A HISTORICAL ASSESSMENT**

The concept of co-operation transition between states was an initiative for emerging international organizations.<sup>(3)</sup> In other words, collaboration of states was turned into a multilateral co-operation. Strengthening the relationship between states and necessity of co-operations among them led to the constitution of regional and universal organizations. Regional organization "refers to a union of states or an

international based upon a collective treaty or a constitution and consistent with the purpose and principles of the UN, whose primary task is the maintenance of peace and security under the control and within the framework of the UN."<sup>(4)</sup>

Since foundation of UN, regional organizations have been growing both in numbers and scope for examples they work in many scopes from trade to counter- terrorism measures.<sup>(5)</sup> These organizations, therefore, have a great potential for solving the regional issues and also global threats.<sup>(6)</sup> For instance, The Economic Community of West African States (ECOWAS)<sup>(7)</sup> and the Organization of American States<sup>(8)</sup> are two important regional organizations for example ECOWAS helped to restore the peace and security by use of peaceful settlement and intervention in Liberia and Sierra Leone. Indeed, the regional organizations can act like an associate for meeting UN purposes and principles such as maintaining international peace and security.<sup>(9)</sup>

Some authors argued that: "indeed, many of the regional organizations that emerged after World War II, for instance, NATO the WTO, METO, ANZUS, were creatures of the Cold War contest and not created to fulfill the promise of Chapter VIII."<sup>(10)</sup> It seems it is not important how or why these organizations have been created but it is important that there are many regional organizations, for example, ECOWAS and OAS that can solve some regional disputes and help to maintain and restore the peace.

## **B. RESPONSIBILITY TO PROTECT THEORY: FROM INTERVENTION TO PROTECT**

The Cold War was finished, however it started a new challenge. The world was faced with some of the worst and most horrible civil wars. In these conflicts several thousands of innocent people had been massacred. "As new realities and challenges have emerged, so did the

new expectations for action and new standards of conduct in national and international affairs”<sup>(11)</sup> and also changing the international conditions caused some concepts of international law to be substituted with other new concepts. The principle of sovereignty, for example, was limited by humanitarian intervention or responsibility to protect.

“This notion of sovereignty as an authority, however, is no longer sacrosanct. As the notion of universal human rights has grown in standing in the international community, there has been an increasing shift to an alternative conception that views sovereignty as responsibility, the responsibility to uphold citizens’ human rights”.<sup>(12)</sup>

There are many humanitarian interventions during the cold war and as some authors believe the 1990s is the “decade of humanitarian intervention.”<sup>(13)</sup> Crises in Iraq, Bosnia, Rwanda, Kosovo and Somalia were the most important conflicts during 1990s. In these conflicts more than 5 million people were killed.<sup>(14)</sup> It can be said that these crises were the humanitarian disasters that international community were involved and international community, of course, could have acted better. The violations of human rights and humanitarian crises caused the UN and some states to interfere in these crises for saving people.<sup>(15)</sup> Some of these interferences and interventions were without any authorization of the UN Security Council, such as Kosovo or Liberia. However in both cases, the operations were confirmed by the UN Security Council afterwards.

Serious violations of human rights in the Kosovo crisis made a change in the context of humanitarian intervention in international law.<sup>(16)</sup> During the Kosovo conflict, UN, in particular the Security Council and European regional organizations could not decide how to solve this problem. “NATO’s intervention in Kosovo in 1999 brought the controversy to its most intense head. Security Council members were divided; the legal justification for military action without new Security Council authority was asserted but largely UN argued; the

moral or humanitarian justification for the action, which on the face of it was much stronger, was clouded by allegations that the intervention generated more carnage than it averted; and there were many criticisms of the way in which the NATO allies conducted the operation.”<sup>(17)</sup> Such challenges caused Kofi Annan former UN Secretary General to propose a new idea for saving the people.<sup>(18)</sup> Annan’s question created a new approach for changing the concept of humanitarian intervention.<sup>(19)</sup>

If states commit the mass violations of human rights, international community will have responsibility to humanitarian intervention.<sup>(20)</sup> Since nowadays sovereignty is not immunity for states.<sup>(21)</sup> Delay and timely non-intervention of UN and international community for humanitarian intervention in Rwanda and Kosovo and Srebrenica cases prepared the international environment for replacing humanitarian intervention with responsibility to protect.<sup>(22)</sup> In 1999 and 2000 “United Nations General Assembly and Secretary-General Kofi Annan made compelling pleas to the international community to try to find, once and for all, a new consensus on how to approach these issues, to “forge unity” around the basic questions of principle and process involved.”<sup>(23)</sup>

The Government of Canada constituted an independent International Commission on Intervention and State Sovereignty (ICISS) in response to the Secretary-General’s challenge.<sup>(24)</sup> The goal of this commission is “reconciling intervention for human protection purposes and sovereignty”. Nevertheless it is not forgotten that “the political origins of the responsibility to protect are in Africa because Six years before it was adopted by the UN General Assembly, the concept was endorsed in the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, signed by ECOWAS.”<sup>(25)</sup>

Indeed, the right to intervene changed into responsibility to

protect<sup>(26)</sup> and it can be said that responsibility to protect is a duty not just a right. Some scholars believe that the concept of responsibility to protect is narrower and boarder than humanitarian intervention at the same time.<sup>(27)</sup> It is narrower because R to P would be applied only against genocide, war crimes, ethnic cleansing and crimes against humanity and it is broader since responsibility to protect has three levels. These levels include responsibility to prevent, the responsibility to react, and the responsibility to rebuild.<sup>(28)</sup> In fact, these levels constitute central cores and elements of responsibility to protect. Before continuing the debate it is important to define the responsibility to protect.

“The inspiration for the responsibility to protect concept came from the work done by Francis Deng during the 1990s on conflict management in Africa.”<sup>(29)</sup> His idea implies to Sovereignty as Responsibility. Accordingly a state must provide certain standards for its citizens. If that state does not provide these standards “the ‘international community’ has a ‘responsibility’ to ensure that the state meets these standards and is in fact able and willing to guarantee protection to its citizens.”<sup>(30)</sup>

However, protection of human rights and humanitarian law has restricted the concept of state sovereignty. Therefore “Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>(31)</sup>

## **II. CONTRIBUTION OF INTERNATIONAL REGIONAL ORGANIZATIONS TO REALIZATION OF R TO P**

The International Regional Organizations have a significant political, economical and military role around the world. They, therefore, may play an important role for implementing rules in international law. The ICCIS, for this reason, believes that one of “the foundation of the

responsibility to protect, as a guiding principle for the international community of states lies in: ..... the developing practice of states, regional organizations and the Security Council itself.”<sup>(32)</sup>

Responsibility to protect is a new concept, although it has not been accepted as a comprehensive rule but it can be said “While there is not yet a sufficiently strong basis to claim the emergence of a new principle of customary international law, growing state and regional organization practice as well as Security Council precedent suggest an emerging guiding principle – which in the Commission’s view could properly be termed” the responsibility to protect.”<sup>(33)</sup> The practice of regional organizations, therefore, can help to realize R to P.

These organizations, at least, in context of the maintenance of international peace and security, have a constructive role. UN Security Council has implied this role in resolution 1631.<sup>(34)</sup> The Security Council affirms that these organizations can contribute in conflicts for prevention or peacekeeping<sup>(35)</sup> since IROs help to realize R to P better than other international organizations because, they are closer to the conflicts and they are more familiar with those regional issues.<sup>(36)</sup> Thus, they can as well exercise all parts of R to P i.e. responsibility to prevent, responsibility to react and responsibility to rebuild.

### **A. UN CHARTER AND INTERNATIONAL REGIONAL ORGANIZATIONS**

UN Charter has recognized regional organizations and arrangements as the entities that can help the maintenance of international peace and security. In other words, “The architects of the United Nations accorded a prominent place to regional arrangements in their vision of the new world body.”<sup>(37)</sup> But this prominent place is limited to maintain international peace and security.

Nothing precludes the existence of regional arrangement under art 52(1) of the UN Charter. In general, “art 52 regulates the relationship

between regional arrangements or agencies for the settlement of local disputes and the UN.”<sup>(38)</sup> But their activities shall be consistent with purposes and principles of the UN Charter and these activities should also be appropriate for regional action.

Indeed, Art. 52(1) expresses the existence of regional organizations for dealing with such matters relating to the maintenance of international peace and security and in Paragraphs 2 and 3 determine scope of their jurisdiction. According to these two Paragraphs, regional arrangements and agencies will use the pacific settlement of disputes such as: negotiation, inquiry, mediation, conciliation, arbitration, and judicial settlement.<sup>(39)</sup> In other words, this article “envisions a relatively robust role for regional arrangements in peacefully settling disputes among their member states.”<sup>(40)</sup> Nevertheless, this article does not ignore the role of Security Council. According to art 52 (3) “The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.” Therefore, if the peaceful efforts of regional arrangements do not lead to a useful solution, they should refer the issue to Security Council. Thus, it is not necessary for a regional organization to obtain the authorization of Security Council when it resorts to pacific settlement of local disputes.

Article 53, also provides responsibility of the Security Council and regional arrangements or agencies in the maintenance of international peace and security. Art 53 indicates Security Council’s control over any regional enforcement action<sup>(41)</sup> but as Ugo Villani has argued art 53 does not grant a new power to Security Council and it does not broaden its authority and its power remains under arts 41 and 42 of the Charter.<sup>(42)</sup> Therefore, any regional arrangement shall obtain the permission of Security Council if it wants to use the force because

“the Charter recognizes only three exceptions by which the use of force can be legal. Specifically, any nation or group of nations may use force in individual or collective self-defense in response to an armed attack<sup>(43)</sup>; the Security Council may use force in exercise of its Chapter VII powers<sup>(44)</sup>; and the Council may authorize the use of force by a regional organization under Chapter VIII.”<sup>(45)</sup> It can be said that the jurisdiction of the regional organization is a secondary responsibility for using force because these arrangements cannot use force without Security Council’s authorization. But these organizations increasingly tend toward primary responsibility for maintenance of peace, security, and stability in their regions.<sup>(46)</sup> The participation and operation of regional organizations in the maintenance of international peace and security such as ECOWAS in Liberia, NATO and western European Union (WEU) in former Yugoslavia and OAS in Haiti imply this regional trend.<sup>(47)</sup>

Other aspect of this article is that the Security Council shall utilize regional organizations for exercising its primary responsibility for the maintenance of international peace and security according to art 24 of the UN Charter.<sup>(48)</sup> “To utilize regional arrangements or regional agencies, means to utilize the states parties to a regional arrangement and hence members of a regional organization either directly, or indirectly in utilizing the agency constituted by a regional arrangement.”<sup>(49)</sup>

Referring to peaceful settlement and resorting to regional agencies or arrangements is a duty and legally binding for the parties to any dispute and Security Council.<sup>(50)</sup> For example, in connection with the question of Western Sahara, the Council, in resolution 658 (1990), called on the two parties to cooperate fully with the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity in their efforts aimed at an early settlement. In connection with the situation in Liberia, the members of the Council,

by a presidential statement dated on 22 January 1991 (S/22133), called on the parties to cooperate with the ECOWAS to restore peace. In connection with the situation in the former Yugoslavia, the Council, by resolutions 749 (1992), 752 (1992) and 764 (1992), called on the parties to cooperate with the efforts of the European Union to bring about a negotiable political solution.<sup>(51)</sup> Article 33 clearly accepts free choice of means. Thus both Security Council and parties of dispute can choose each of peaceful settlement. Free choice of means may be directly derived from the principle of sovereign equality.<sup>(52)</sup>

Finally article 54 of the UN Charter states that: “the Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.”

In short, relationship between UN Charter and International Regional Organizations is based on collaboration and co-operation. “Chapter VIII of the Charter is devoted to the peace and security roles of regional arrangements, while Chapter VI, Article 33(1) speaks of “resorting to regional agencies or arrangements” as an option for parties to a dispute, and Chapter VII, Article 47(4) notes that the Military Staff Committee “after consultations with appropriate regional agencies, may establish regional sub-committees.” Chapters IX and X on economic and social matters, however, make no reference to regional arrangements, thus failing to anticipate the growth of regional instruments and capacities for addressing economic and social developments, as well as peace and security.”<sup>(53)</sup>

## **B. THE MECHANISMS FOR REALIZATION OF R TO P BY THE IROS**

Analyzing paragraphs 138 and 139 of 2005 World Summit Outcome and shows that the primary responsibility to protect of populations

from genocide, war crimes, ethnic cleansing and crimes against humanity has been conferred to the state.<sup>(54)</sup> If national authorities manifestly fail to protect their populations from these four crimes then the responsibility to protect will transfer to international community.

Meeting these goals depends on cooperation. As the Secretary General believes collaboration between Member States, regional and sub-regional arrangements, civil society and the private sector is based on realization of international assistance and thereupon R to P. Role of regional organizations, in this stage, is very prominent because they can operate as a mediator or middle-level mediators that link the national governments and global international organizations to each other.<sup>(55)</sup>

According to Art 33 (1) of UN Charter resorting to the regional agencies or arrangements as a peaceful way, inter alia, is a proper means for meeting this collaboration. Because “politically, it has become increasingly evident that the views of neighboring States and regional bodies may be taken into account by members of the Security Council when determining which course of action to take in particular situations. .... States and the civil society groups that are closer to the events .....and may be more directly affected by the consequences of action taken or not taken, and may be critical to the implementation of decisions taken in New York. Timely and decisive response is most likely when inter-governmental bodies at both the global and regional levels favor similar courses of action. In such cases, decision-making at each level reinforces the political legitimacy of the other.”<sup>(56)</sup>

Thus, political, economic, cultural and historical relationships between a state and a regional organization are a significant factor for implementation and realization of responsibility to protect. Art 33(1) of UN Charter, however, follows a preventive diplomacy by local and regional initiatives, which can be complemented or supplemented by global efforts by the United Nations, as needed. These arrangements,

therefore, can encourage governments to implement their international obligations and resolve sources of friction within their societies before they lead to violence or mass atrocity.<sup>(57)</sup>

Pursuant to paragraph 139 world summit outcome, international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. International community, in particular, UN Security Council, may utilize regional organizations for realizing R to P. In other words, Security Council can implement R to P by use of art 52 of the UN Charter.

Regional arrangements can resort to pacific means for preventing the mass crimes. For example, the African Commission on Human and Peoples' Rights recalls the principles of constitutive Act of the African Union and the Protocol establishing the Peace and Security Council, according to them, the African Union shall intervene in a member State of the African Union to prevent in situations of genocide, war crimes and crimes against humanity.<sup>(58)</sup> Thus, one of the mechanisms that regional organization can use for realizing R to P and responsibility to prevent is the provisions of Article 33(1) and 52 of UN Charter.

In the recent years, both UN and some regional organization have tried to establish a mechanism for conflict prevention. For example in 1993, organization of African Unity established a mechanism for conflict prevention, management, and settlement, with support of external donors and also ECOWAS created a mechanism for conflict prevention, management, resolution, peace and security in 2000. The Organization for Security and Co-operation in Europe (OSCE) has developed a number of innovative internal mechanisms and practices designed to prevent conflict in Europe.<sup>(59)</sup> For this reason, the