

“Responsibility to Protect by Military Means: Emerging Norms on Humanitarian Intervention?”

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This article is an

interdisciplinary study on the external ‘Responsibility to Protect’ (R2P) and international law. It focuses on the legal customary process on jus ad bellum by which states try to address the gap between the legitimacy and legality of humanitarian intervention to protect human security within a state against genocide, war crimes and crimes against humanity. The development of specific legal rights for the Security Council, regional organizations and ‘coalitions of the willing’ to protect by military means is examined through case studies of humanitarian interventions after the Cold War.

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Constructivist perspectives on security and norms are contrasted with legal positivist analyses of customary law, the applicable law on the use of force, and evolutionary interpretation and informal modification of treaties. Feminist theories and gender perspectives on human security, the R2P and humanitarian intervention are also integrated into the thesis.

The decisions to authorize humanitarian interventions in Bosnia, Somalia, Rwanda, East Timor and Darfur confirm an external R2P for the Security Council in the form of a lex lata right to protect by military means where states have manifestly failed to do so and where peaceful means are considered inadequate. Furthermore, a similar customary right for regional organizations may also be emerging, when the state concerned manifestly fails to protect, the Security Council is unable or unwilling to act and peaceful means found inadequate. Finally, support is found for a lex ferenda right of regional organizations, coalitions of the willing and individual states to intervene by military means in ‘exceptional circumstances’ in accordance with the theories on ex post facto or implied authority, or the principle of necessity, to protect people in humanitarian crises where the criteria of the R2P doctrine are met.

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