

## 予習課題

国連における集団安全保障に関する基礎的理解が講義の前提となる。国際法を学んでいない者は、酒井啓亘ほか『国際法』第5編第2章第2節～第3節を読んでおくこと。

国家が主権を有することはどういうことを意味するか。これについて、1928年のパルマス等事件仲裁判断（オランダ／アメリカ合衆国、1928年）<sup>1</sup>が以下のような見解を示している。

**Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory. Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfil this duty. Territorial sovereignty cannot limit itself to its negative side, i.e. to excluding the activities of other States; for it serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum of protection of which international law is the guardian.**  
Island of Palmas (Netherlands/USA), 4 April 1928, [Reports of International Arbitral Awards, vol. II](#), p. 829, p. 839.

2005年のいわゆる[世界サミット](#)において、成果文書が[国連総会決議 60/1](#)として採択された。その一部で、次のようなことが述べられている。

### **Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity**

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

---

<sup>1</sup> この仲裁判断については、国際法の判例集を参照されたい。

139. The 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. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

その後、2009 年に、responsibility to protect の実施に関する国連事務総長報告が国連総会に提出された(U.N. Doc. A/63/677 参照：[国連文書の探し方](#))。

40. Undoubtedly, as has been said many times, the use of force should be considered a measure of last resort. With the host Government's consent, however, military units have been employed either for a range of non-coercive purposes, such as prevention, protection, peacekeeping and disarmament, or to counter armed groups that seek both to overthrow the Government by violent means and to intimidate the civilian population through random and widespread violence. **Non-state actors, as well as States, can commit egregious crimes relating to the responsibility to protect. When they do, collective international military assistance may be the surest way to support the State in meeting its obligations relating to the responsibility to protect and, in extreme cases, to restore its effective sovereignty.** At such times, the early, targeted and restrained use of international military assets and armed forces may be able to save lives and bring a measure of stability so that diplomacy, domestic political processes, healing and reconciliation can have time and space to operate. Consent-based peacekeeping, of course, is a United Nations innovation and strength, whereas the Organization has undertaken more coercive military operations less frequently and with more mixed results. The same could be said for regional and subregional organizations.

この報告書は[国連総会決議 63/308](#) で“take note”された。

2011 年のリビア内戦に際して、国連安全保障理事会は決議 1973 (2011)を採択し、リビアに対する武力行使を国連加盟国に授権した。その決議は、次のように述べている。

*The Security Council,*

*Recalling* its resolution 1970 (2011) of 26 February 2011,

*Deploring* the failure of the Libyan authorities to comply with resolution 1970 (2011),

*Expressing* grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties,

*Reiterating* the responsibility of the Libyan authorities to protect the Libyan population and *reaffirming* that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

[...]

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,

*Determining* that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

[...]

#### **Protection of civilians**

4. *Authorizes* Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and *requests* the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;

その後のリビアにおける事態の展開はご存じのとおりである<sup>2</sup>。さらに、安保理は、コートジボワールに関する[決議 1975 \(2011\)](#)<sup>3</sup>、南スーダンに関する[決議 1996 \(2011\)](#)、マリに関する[決議 2085 \(2012\)](#)<sup>4</sup>、中央アフリカ共和国に関する[決議 2149 \(2014\)](#)においても「保護する責任」に触れつつ武力行使を授権している。

他方、シリアについては、大規模の自国民殺害が政権によりなされていると報じられ

<sup>2</sup> 福富光久「リビア内戦と『保護する責任』」[国際問題](#) 605号 (2011年10月) 29頁。

<sup>3</sup> 佐藤章「コートジボワール紛争に見る『保護する責任』の課題」[アフリカレポート No. 51](#) (2013年) 1頁。

<sup>4</sup> 山本健太郎「フランスのマリ軍事介入」[法と政治 \(関西学院大学\)](#) 64巻2号 (2013年) 1頁。

ながらも、リビアと同様の対応はなされていない<sup>5</sup>。2014 年 5 月 22 日に、シリアの事態を国際刑事裁判所に付託する（参照、[国際刑事裁判所規程](#) 13 条(b)）安保理決議案がロシア・中国の拒否権により否決された際、決議案に賛成したいくつかの国の代表は「保護する責任」に言及しているにも拘わらず(U.N. Doc. S/PV.7180)。

このような拒否権行使に対処するために、2012 年 3 月に、コスタリカ・ヨルダン・リヒテンシュタイン・シンガポール・スイスの自称 Small Five は、“Improving the working methods of the Security Council”と題する国連総会決議案を提出した(U.N. Doc. A/66/L.42)。この講義との関係で注目すべきは、末尾のパラグラフ 19-21 である。

### Use of the veto

*The following measures are recommended for consideration by the permanent members of the Security Council:*

19. Explaining the reasons for resorting to a veto or declaring its intention to do so, in particular with regard to its consistency with the purposes and principles of the Charter of the United Nations and applicable international law. A copy of the explanation should be circulated as a separate Security Council document to all Members of the Organization.

20. Refraining from using a veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity.

21. Establishing a practice, in appropriate cases, of declaring, when casting a negative vote on a draft resolution before the Council, that such a negative vote shall not constitute a veto in the sense of Article 27, paragraph 3, of the Charter.

この総会決議案は結局提案国自身により同年 5 月に取り下げられた(U.N. Doc. A/66/PV.108)。しかし、2013 年 9 月には、拒否権を有するフランスの大統領により、拒否権行使に一定の制限を課す行動規範(code de bonne conduite)を作成すべきとの提案が国連総会においてなされ(U.N. Doc. A/68/PV.5)、フランスはかなり本気でこの計画を進めようとしているようである ([2014 年 3 月 19 日のフランス国連大使の声明](#) (フランス語のみ))。とはいえ、もちろん現段階では構想にとどまる。

現状では、国連憲章第 7 章下での安保理決議が得られない限り、シリアのような事態について領域国政府の同意なしに外国が現場で関与することは法的に不可能である。しかし、国家が何故に主権を有しているかを考える場合、再考の余地はありそうである。国家が自国民を殺害する場合、すなわち国家が「保護する責任」を放棄する場合、当該国家外の者は何をするのであろうか。あるいは、何もすべきでないのか。

<sup>5</sup> 溝渕正季「シリア危機はなぜ長期化しているのか？」[国際安全保障](#) 41 巻 4 号 (2014 年) 85 頁、阿部達也「シリアの化学兵器廃棄」[法学教室](#) 402 号 (2014 年) 82 頁、阿部達也「国際社会は何をなすべきか——『化学兵器のない世界』への課題」[中央公論](#) 128 巻 11 号 (2013 年) 110 頁。