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# An Appraisal of Responsibility to Protect as an Evolving Norm in International Law: A TWAIL Critique

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VIJAY KISHOR TIWARI<sup>1</sup>

## ABSTRACT

*'Responsibility to Protect' is evolving as a norm in International Law to protect the people from genocide, crimes against humanity, and war crimes. This norm results from the international response to various humanitarian crises in the 1990s and a paradigm shift in the security discourse after the dismemberment of the USSR. However, International Law has been used by the First World countries to further their imperial agenda, and it is a truism that the entire oeuvre of International Law is shaped by the colonial conquest. Therefore, this norm has received a skeptical response from Third World scholars as they see it as a threat to the sovereignty of Third World countries. This paper critically engages with Responsibility to Protect from the prism of TWAIL scholarship. For this purpose, I have deployed TWAIL as an epistemological category using its 'hermeneutics of suspicion' to examine the nature of 'Responsibility to Protect' and its effect on Third World sovereignty.*

**Keywords:** Responsibility to Protect, Third World, Imperialism, International Law, Human Security.

## I. INTRODUCTION

Be it the implosion of the USSR or the Rwandan crisis; the 1990s saw some watershed events that altered how the concept of 'security' was perceived by the international intelligentsia. The notion of security was, hitherto, understood in terms of the security of the state. State - in which lied the sovereignty of its people - was perceived as the *only* legitimate representative of the collective will of its people and thus 'empowered' to pursue its national interest to safeguard its territory. Hence conventional security approach recognised the state as the 'natural' power and the sole unit of international dynamics and the only authority to use coercive force over its own people.

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<sup>1</sup> Author is an Assistant Professor at The West Bengal National University of Juridical Sciences, India.

Contemporary thinking on security, however, has seen a paradigm shift from this conventional approach and has pushed for human beings, rather than the state, to become the central concern of security discourse. Introduced to an audience of international policymakers, academicians, and non-governmental organisations by UNDP's seminal Human Development Report in 1994, this new human-centric security approach has been termed 'Human Security'. The fluidity of the security paradigm and the newly found focus of the international community on the well-being and security of human beings ushered in the debate on 'Responsibility to Protect' in the realm of international law.

Throughout the 1990s, the comity of nations and the United Nations faced several humanitarian crises, including genocide, ethnic violence, and the mass exodus of the population. In some cases [Somalia and Sierra Leone], UN-sanctioned forces got moderate success in terms of humanitarian intervention, but in several other cases, the UN was unable to help such crises because of the unwillingness of member states to intervene. Humanitarian crises in Rwanda in 1994 and Srebrenica in 1995 present iconic failures of UN member-states to prevent large-scale killings. On the other hand, intervention by NATO in Kosovo and the US-led invasion of Iraq raised debates and doubts pertaining to humanitarian interventions. In 1999, Secretary-General Kofi Annan highlighted this failure of the UN and questioned the inaction of the Security Council in a 'veiled' language:

***"If the collective conscience of humanity ... cannot find the United Nations its greatest tribunal, there is a grave danger that it will look elsewhere for peace and justice."***<sup>2</sup>

In this backdrop, the Government of Canada commissioned the International Commission on Intervention and State Sovereignty [hereinafter ICISS] in September 2000. The mandate of this Commission was to reconcile the dilemma of intervention for the security of humans and their rights with the notion of sovereignty of the state.

## **II. EMERGENCE AND THE PHILOSOPHICAL ROOTS OF THE IDEA OF HUMAN SECURITY**

Since the end of the cold war, there have been several attempts to elongate the meaning of security. In these attempts, the primary focus was to understand security beyond the realm of national security. Human Security has emerged as the primary contender as opposed to the national security paradigm. Several nation-states have promoted the concept of 'Human

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<sup>2</sup> GARETH EVANS ET AL., *The Responsibility To Protect Report Of The International Commission On Intervention And State Sovereignty* 91 (2001), Available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (last visited January 19, 2022).

Security’ as their foreign policy instrument. Canada and Japan are the prominent nations among them. Human security is an umbrella term covering various areas of human rights discourse. Kofi Anan called it a ‘unifying discourse’.

If we primarily define security to eliminate fears, then we can construe it as a means to mitigate threats to basic survival. There can be several ways to conceive the idea of security, but every conceivable concept of security must base itself on three important points: What needs to be secured, identifying the nature of the threats from which security is needed, and the means through which security can be achieved.

Human security changes the idea of security significantly as it privileges human beings over nation-states in our security discourse. The idea of human security is premised on the assertion against the constricted approach of the national security paradigm. The realist approach in International relations gives paramount importance to the protection of the *Leviathan* and its sovereignty. This realist approach takes three assumptions:

*First*, the state is seen as both the key actor in international relations and as the legitimate representative of the nation’s collective will. *Second*, the primary responsibility of state leaders is to ensure the survival of their state in an anarchic international system. *Third*, the defense of the realm may occasionally necessitate the suspension of civil liberties.<sup>3</sup>

However, the Rwandan Crisis, Crisis in Sierra Leone, and the events which have unfolded after the 9/11 attacks have shown that the national security paradigm which has dominated the security discourse in the 20<sup>th</sup> Century has fallen short in providing security to the people. Privileging national security over the security of humans with a national territory has resulted in not addressing the security concerns of ordinary persons.

The various crisis in the 1990s has given a chance to various security scholars to approach the idea of security from a different perspective in which the individual and not the state was taken as the main reference point. The human security scholars brought a seismic shift in the understanding of security. They agreed that the protection of human lives should be given priority over the protection of the state.

#### **(A) Defining Human Security: Narrow and Broad Approaches**

While there’s an agreement among various Human security scholars that human lives should be given priority over the security of the state, there is no agreement on the question as to what are threats from which humans need protection. This difference has led to two different

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<sup>3</sup> GIORGIO SHANI, PROTECTING HUMAN SECURITY IN A POST 9/11 WORLD: CRITICAL AND GLOBAL INSIGHTS 4 (Giorgio Shani et al. eds., 1<sup>st</sup> ed. 2007).

approaches, narrow and broad, of human security, which are significantly different in their nuances. However, both approaches seek to draw our attention to the result of security policies over ordinary citizens. The narrow approach defines human security in terms of the ‘absence of threats’ to individuals. This approach defines Human security in a negative term. This approach was piloted by the Canadian Government, and it seeks its philosophical justification from the western liberal tradition. In this approach, the individual is viewed as ‘unencumbered’, abstracted from the social and cultural mores of his/her/their community.<sup>4</sup>

Though *Human Security Report*<sup>5</sup> grounded itself on the western bourgeois conception of the rights, which defines human security primarily as ‘absence of the violent threats’ to human lives, the subsequent developments in this area have elongated the scope and definition of the term ‘human security’. The Commission on Human Security, which was headed by Prof. Amartya Sen and Sadako Ogata, has taken a broad approach to human security, which is based on three limbs, namely, freedom from want, freedom from fear, and freedom to take action from one’s own behalf.<sup>6</sup> This report, which was funded by the Japanese Government, has taken into account the idea of ‘human development’<sup>7</sup> in its fold. The concept of human development was promoted by the United Nations Development Programme (UNDP). Human Development was centred around the idea of enlarging ‘people’s choices’ and ‘capabilities.’<sup>8</sup> This ‘people-centric’ approach to human development was the primary catalyst to give birth to this broad approach to human security.

This new approach in security studies to define security from the perspective of human development has facilitated the convergence of various ideas in the Human Development Report. This report has explained human security in the four following characteristics:

- 1) It has defined human security as a universal concern.
- 2) A Threat to human security anywhere should be perceived to threaten human security everywhere.
- 3) There must be an attempt for early prevention of any threat to human security than late intervention.
- 4) It must be centred around people.<sup>9</sup>

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<sup>4</sup> *Id at 5*

<sup>5</sup> *Id at 5*

<sup>6</sup> *Id at 5*

<sup>7</sup> *Id at 5*

<sup>8</sup> 14 BARBARA VON TIGERSTROM, HUMAN SECURITY AND INTERNATIONAL LAW: PROSPECTS AND PROBLEMS 14 (1 ed. 2007).

<sup>9</sup> *As cited in* 14 BARBARA VON TIGERSTROM, HUMAN SECURITY AND INTERNATIONAL LAW: PROSPECTS AND PROBLEMS 16 (1 ed. 2007).

Thus, the CHS report focuses on protecting the well-being of the people and the elementary rights they enjoy. The very objective of human security is, thus, to protect the vital core of human lives in ways that enhance human freedoms and human fulfilment.<sup>10</sup> This broad vision to human security gives fundamental justification to humanitarian interventions in the name of ‘Responsibility to Protect’ or otherwise for the sake of ensuring larger freedoms<sup>11</sup> or removing unfreedoms for those who are under tyrannical regimes or facing violent threats.

### **(B) History of Humanitarian Intervention and Emergence of Responsibility to Protect**

The concept of ‘humanitarian intervention’ is a hazy concept that has not evolved with strict clarity. Many reasons can be attributed to this lack of clarity. Different scholars from different disciplines have viewed and perceived it in many ways. In 18<sup>th</sup> Century Europe, ‘humanitarian intervention’ was seen from the religious lens as it was assumed in terms of God or Christ. In successive centuries, this concept was gradually secularised, and today, humanitarian intervention is primarily seen to be concerned with human rights and welfare, taking humanity as a whole. In this way, any ‘humanitarian intervention’ must have a reference to human rights. In praxis, however, certain actions that are termed as ‘humanitarian interventions’ have been done to combat the certain limited type of crisis. It is often against atrocities like genocide, crimes against humanity, or tyrannical regimes. Any mortality arising out of the pandemic or climate crisis is not a fit case for humanitarian intervention in a true sense. Humanitarian interventions can be loosely understood as follows-

- 1) If an intervention is done within a territorial limit of a foreign state with an intention to shape and affect certain events with respect to save human lives or to protect human rights, then such intervention can be termed humanitarian intervention.
- 2) It is a coercive action meant to force the Government of a particular state to accept certain conditions or mend its ways to prevent atrocities, mass-scale violation of human rights, or other such humanitarian crisis. Though humanitarian intervention is a coercive action, it does not always involve the use of force.

Humanitarian intervention breaks the ‘conventional pattern of international relations. It must be said that humanitarian intervention should be used as the last resort in international law even though it is perfectly within the province of international law as the sovereignty of a nation must not be disturbed lightly.

After the end of the cold war, there was a proliferation of humanitarian intervention. However,

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<sup>10</sup> *Supra* note 4 at 5

<sup>11</sup> *Id* at 6

the historicity of humanitarian intervention is a contested question. Scholars from different ideological spectrums have unanimously denied humanitarian intervention as a historical phenomenon.<sup>12</sup>

However, it cannot be denied that after the cold war, we have witnessed a newfound interest in the idea of humanitarian intervention. This interest in this idea at the policy and academic levels has rejuvenated the interest in studying the history of humanitarian interventions. It must be noted that The Independent Commission on Intervention and State Sovereignty (ICISS) has recognised the historical, political, and legal context of the history of humanitarian interventions. Thus, Responsibility to Protect is not a new idea. It is well established that states have an obligation to protect their citizens from mass atrocities. According to the Global Centre, for Responsibility to Protect, R2P has just added a collective responsibility to act against genocide, war crimes, and crimes against humanity.<sup>13</sup> The emergence of responsibility to protect has to be understood in light of the idea of 'liberal interventionism', which has emerged in the 1990s.

The end of the cold war has produced a euphoria that since the polarisation of the world along with ideological grounds has ended, the politics of international relations can be nourished with moral and ethical considerations. In the western world, many commentators, foreign policy experts, and academicians saw it as an opportunity to use the diplomatic and military power of Western countries to protect human rights and fundamental freedoms. There was an acceptance for such an idea of intervention by the end of the 20<sup>th</sup> Century, but it remained the highly contested norm. Despite the objections of many countries as they saw it as a 'Trojan Horse' against the idea of sovereignty, the advocates of liberal interventionism have maintained that sometimes the use of force is necessary to end crimes that are threats to humanity.

The world saw several humanitarian exigencies in the aftermath of the fall of the Berlin wall. Several humanitarian crises emerged in former Yugoslavia, Kosovo, Somalia, and other parts of the world. In the backdrop of these crises, the call for interventions to protect human rights had increased. A consensus has emerged that the idea of humanitarian intervention cannot remain a moribund concept. UN General Secretary, Javier Perez de Cuellar, claimed that a significant shift is being seen in public opinion about humanitarian interventions as the defense of the oppressed should prevail over frontiers and legal documents. The Rwandan carnage is a

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<sup>12</sup> For example, according to Michael Ignatieff the concept of humanitarian intervention was originated in 1991. It was then shaped by the events of Bosnian genocide. Chomsky, on the other hand, considers 1960's and 80's as the starting point of intervention but he too considers 1990's a main referent decade for humanitarian intervention.

<sup>13</sup> D.J.B. TRIM & BRENDAN SIMMS, *HUMANITARIAN INTERVENTION: A HISTORY* 9 (Simms et al. 1<sup>st</sup> ed., 2007)

specimen in which delayed international response resulted in the killings of millions of people. Rwandan Genocide has underlined the need for proactive humanitarian intervention when there is an early warning sign of any such carnage which is about to happen. This important lesson from Rwanda worked as a catalyst in speeding the process of the emergence of 'Responsibility to Protect'. The Canadian Government sponsored an independent 'International Commission on Intervention and State Sovereignty' which had prepared an elaborated report in which the idea of 'Responsibility to Protect' was discussed for the first time. According to this new emerging idea, state sovereignty can be trumped for the good of 'humanity'.<sup>14</sup> This idea was resisted by India and other third world countries along with China and Russia.

R2P was on the agenda of the 2005 World Summit as it was included in the report of the Secretary General's High-Level Panel. This High-Level panel had suggested in 2004 that 'R2P is an emerging norm' Kofi Annan accepted this panel's recommendation. He was of the view that the Security Council would be the sole authority for taking any decision of armed intervention under the R2P principle. However, he had reiterated that the primary responsibility lies with the host state. World Community, under the leadership of the Security Council, will intervene only when the host state is unwilling or unable to protect its population. R2P proved to be very controversial. There was an immediate demand for a high just cause threshold for any such intervention. There were several contested and controversial issues, which are enumerated as followings-

- 1) There was a disagreement on making the Security Council the sole authority for intervention.
- 2) A massive disagreement arose about the guiding principles of R2P.
- 3) Many Third World nations have maintained that it's a new charter of western interference in the name of protection of human rights.

China announced its deep reservations about R2P, and Russia maintained that the UN is already equipped to deal with such humanitarian emergencies.

This immediate revolt against the adoption of the World Summit Document should catch our attention. This revolt, especially from Third World Countries, notably India, has strong roots in the colonial history of International law and fear of militant, democratic imperialism, which has resulted in regime change wars. Therefore, the adoption of this outcome document resulted in 'buyer's remorse' for several Third World Countries. After six months of rigorous debate, the Security Council could adopt Resolution no.1674 'reaffirming' principles' of the World

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<sup>14</sup> *Supra* note 4 at 2



Summit Outcome document. Between 2006 and 2009 Security Council referred to R2P only in the case of Darfur in Resolution no. 1706 of 2006, but it did not mention R2P in subsequent resolutions on Darfur. In 2007, UN General Secretary Ban Ki-Moon appointed Edward Luce as his special adviser on R2P, but UNGA's Budget Committee rejected this appointment. General Secretary again received a lukewarm response from the Committee in 2008 when many committee members took a very narrow interpretation of the World Summit Outcome Document and claimed that the 2005 agreement is merely a commitment by UNGA to further deliberate R2P. Luck was appointed when Secretary-General used his powers to appoint advisers. India massively challenged the idea of R2P. India's Permanent Representative Nirupam Sen challenged the legal status and the moral foundation of this doctrine. The USA had also presented its reservation against it. John Bolton argued the R2P draft must be redrafted to make it clear that the responsibility of other countries is not of the same character as the responsibility of the host state. He also insisted that Security Council is not legally obliged to adhere to R2P. The USA also insisted that that outcome document must erase references about Millennium Development Goal (MDG). Bolton's objections were overruled by Secretary of State, Condoleezza Rice.

Despite these massive objections, the draft was accepted in a revised form. It was clearly stated that the international community would get to act only when the host state had 'manifestly failed' to protect its citizens. Thus, the bar for just cause threshold was increased manifold. Paragraphs 138-139 of the final text of the World Summit Document are important in this regard. They proclaimed that:

Para 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>15</sup>

Para 139. "The international community, through the United Nations, also has a responsibility to use appropriate diplomatic, humanitarian, and other peaceful means, in accordance with Chapter VI and VIII of the Charter of United Nations, to help protect populations from a war crime, ethnic cleansing, and crimes against humanity. In this context, we are prepared to take

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<sup>15</sup> G.A. Res. 60 (I), World Summit Outcome Document (Sep.16,2005) Available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_60\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf) (last visited Jul 24, 2021).

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 the relevant regional organisations 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.....”<sup>16</sup>

According to Alex J. Bellamy, The R2P, which emerged from the 2005 World Summit, had the following contents<sup>17</sup> -

- 1) World Summit Document is a formal recognition of the sovereign’s responsibility towards its own population.
- 2) It emphasises a commitment to institutional capacity building and inculcates behaviours that are necessary to prevent mass atrocities.
- 3) It affirms the authority of the Security Council to intervene if it deems fit to do so.

### **III. RESPONSIBILITY TO PROTECT AND SOVEREIGNTY: A TRAIL APPRAISAL**

‘Responsibility to protect’ comes with a lexicon of human rights and human security; therefore, one might wonder as to how can there be any objection to such a principle. However, this principle has been opposed not only by regimes in subaltern countries but also by scholars and civil society members. A western observer might wonder about such opposition and may not get the truth and might construe it as a love for authoritarianism and lack of agency to articulate and assert one’s own human rights in the global south. Such observation shows a deep-seated bias of the western world and a lack of lived experiences of the Third world with respect to colonialism. ‘The most of the world’<sup>18</sup> has a common thread of solidarity, i.e. lived experiences of brutal colonialism. One must not forget that even colonialism was conceived in terms of the ‘saviour complex’ of the western countries. Even after the completion of the process of decolonisation, there have been several precedents where regime-change wars have been forced upon unfriendly nations and regimes by the West in the leadership of the USA. Prof. Chimni has succinctly put it: ‘The threat of recolonisation is haunting the Third World’.<sup>19</sup>

#### **(A) Third World and Its Relevance in the 21<sup>st</sup> Century**

For many western commentators, ‘the third world’ is anachronistic today.<sup>20</sup> Many believe that

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<sup>16</sup> *Id* at 30

<sup>17</sup> ALEX J. BELLAMY, GLOBAL POLITICS AND THE RESPONSIBILITY TO PROTECT: FROM WORDS TO DEEDS 24 (1 ed. 2011).

<sup>18</sup> Prof. Partha Chatterjee has used the phrase ‘most of the world’ for the third world.

<sup>19</sup> Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT COMMUNITY LAW REV 3–27 (2006).

<sup>20</sup> *Id* at 24

the 'third world' was the coinage of the cold war era, and the end of the cold war era has resulted in the demise of many categories and labels which were products of that era. However, people and scholars of the third world have seen this tendency in many western scholars as an attempt to erase their shared history of anti-colonialism. They have also perceived it as an attempt to maintain western hegemony through the principle vehicle of international law.

Defining the 'Third World' is not an easy task, for it is not a homogenous category. It is a set of various heterogeneous categories of different cultures, histories, economies, and lived experiences. Further, the 'Third World' should not be seen as a mere constellation of Asian, African, and Latin American nations as putting them under a geographical category will not arrest the spirit of the 'Third world'. Vijay Prasad points this out quite succinctly when he says that ***"Third World was not a place. It was a project. ...people of Asia, Africa, Latin America longed for human dignity above all else but also necessities of life.....The 'Third World' comprised these hopes and institutions produced to carry them forward."***<sup>21</sup> Partha Chatterjee has given the nomenclature of 'most of the world', which is comprehensive enough to cover various interests in the 'third world'. In 1952, a French journalist, Alfred Sauvy, came with the term 'Third World' while providing the division of the world into the First, Second, and Third Worlds. The First world was constitutive of Western nations, the USA, and countries of western Europe, and they have taken free-market philosophy to guide their actions. They have also formed a military alliance, NATO, against the 'spectre of communism'. The Second World had embraced socialist economics and created the Warsaw Pact against military threats of the West. Sandwiched between these two worlds with imperial ambitions, there was a 'Third world' representing the people of Asia, Africa, and Latin America who have a shared history of the colonial yoke. Sauvy explained this classification of the entire world into three categories with the help of classification of three estates, namely- the clergy, the nobility, and the commoner. First and Second Worlds represent clergy and nobility while 'third world' represents 'Third estate', i.e. the commoner.<sup>22</sup> Prof. P.K. Menon has delineated the following characteristics of Third world countries<sup>23</sup>:

- 1) They have a common and shared history of colonialism
- 2) They are not economically advanced countries, unlike the other two blocs

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<sup>21</sup> VIJAY PRASHAD, INTRODUCTION TO THE DARKER NATIONS: A PEOPLE'S HISTORY OF THE THIRD WORLD (2007).

<sup>22</sup> As cited in SUNDHYA PAHUJA, DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY 261 (1 ed. 2011).

<sup>23</sup> P K Menon, *THIRD WORLD PERSPECTIVES ON INTERNATIONAL LAW AND ITS TEACHING*, 21 THE KOREAN JOURNAL OF COMPARATIVE LAW 37 (1993).

- 3) They have attained their freedom not only to an armed and political struggle against domination but also to a torrent of ideas taken from western countries such as the nation-state, sovereignty, self-determination, etc.

### **(B) The Question of Sovereignty and R2P**

Many international lawyers and international relation theorists have argued that the doctrine of R2P is Janus faced, which has a pernicious effect on the sovereignty of the third world nations, which hold negative and vulnerable sovereignty. However, those who profess the idea of ‘international community’ and humanitarian intervention find the idea of sovereignty unnecessarily static and an obsolete dogma. However, no one has been able to banish this idea completely in the field of international relations. In fact, the recent rise of cultural nationalism in various parts of the globe and the Trump Presidency and his repudiation of globalism over nationalism have marked ‘the Second coming’ of religion and sovereignty. International law has always been very sensitive to the idea of sovereignty as the International Court of Justice in the Corfu Channel case declared: “Between independent states, respect for territorial sovereignty is an essential foundation of international relations.”<sup>24</sup> Similarly, Article 2, paragraphs 1 and 7, and Article 78 place huge importance on the idea of sovereignty. The International Law Commission in ‘Draft Declaration on Rights and Duties of States’ stated: “Every State has a right to independence and hence to exercise freely without the dictation of any other state, all its legal powers, including the choice of its own government.”<sup>25</sup> Thus, we see that sovereignty is still the heart and soul of international relations, and it will continue to remain so as long as the biggest eventuality of Westphalia, i.e. nation-states, are in existence as a political and juridical category.

### **(C) Interventions, Imperial Threats and the Question of Third World Sovereignty**

The Peace of Westphalia gave coherence to the idea of sovereignty for European states. However, in Third World states, it comes as an accident that augmented the contestations among various cultures. It has created the division of barbaric-civilised and modern-premodern nations. In a western prism, the idea of sovereignty is considered given for Europe while non-European territories lack the articulation of sovereignty, and therefore, this idea is superimposed on them through the process of colonialism. The third world remains the intimate ‘other’ in the field of international relations and law, which still requires the crutches of the universality of international law for its survival maintained through humanitarian interventions.

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<sup>24</sup> RAM PRAKASH ANAND, *INTERNATIONAL LAW AND THE DEVELOPING COUNTRIES: CONFRONTATION OR COOPERATION?* 72 (1986).

<sup>25</sup> *Id* at 73

The increased use of the UNSC is also a signifier in this direction. It has taken multiple roles of ensuring democracy, good governance, the rule of law, rebuilding the society after the intervention, etc., beyond its scope of the primary responsibility of 'maintenance of international peace and security'. One cannot resist pointing out that even though UNSC has amassed a wide power by giving a lexical interpretation to its power as enumerated in the UN Charter, the democratic deficit is writ large in its configuration. We need clear scrutiny of the role of UNSC and western powers in some great examples of interventions after the end of the cold war; as Anghie pointed out that imperialism has now become a focal point of our analysis following the events of 9/11 and 'War on Terror'. He has been able to point out that imperialism never ceased to be a major governing principle of the international system'.<sup>26</sup> In fact, there is now a vigorous tendency to provide unapologetic augments in favour of imperialism. The 1990s and the first decade of the 21<sup>st</sup> Century have seen the new language and torchbearers of liberal interventionism. The end of the bipolar world and the emergence of the liberal peace project have helped the articulation and execution of the various humanitarian intervention. ICISS report has given the thematic coherency to the idea of humanitarian intervention with the vocabulary of Responsibility to Protect. However, one cannot help but notice the fact that the global response to human rights abuses remained selective, and therefore, it remains controversial to this date. The Clinton administration in the USA and the Labor Regime under the British Prime Minister Tony Blair have started interventions for the ideals of human rights and democracy.<sup>27</sup> Clinton administration prescribed a National Security Strategy, which had given huge significance to expanding market democracies. It has four following major points-

- 1) It insisted on strengthening market democracies.
- 2) It placed a greater significance to consolidate new democracies and markets.
- 3) It pledged to liberate the states which are hostile to democracy.
- 4) It also pledged to help democracy and market economies in regions of humanitarian concern.<sup>28</sup>

These approaches of USA President Bill Clinton and British Prime Minister Tony Blair have provided legitimacy to the imperial articulation of international law couched in the language of human rights. The presence of a 'hegemon' in international relations has been considered given and natural for the stability of the global order. Neo-realist theoreticians of International relations, the anarchy in the world order works as a constraining factor on the freedom of action

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<sup>26</sup> ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 273 (1 ed. 2005).

<sup>27</sup> *Supra* note 14 at 372.

<sup>28</sup> *Id* at 372.

of powerful nations which force them to act as hegemon.<sup>29</sup> In the pre-9/11 era, after the completion of the process of decolonisation, there was a significant change in the attitude of western commentators as they did not embrace the language of colonialism to justify the actions of western nations. But this attitude changed completely after the events of 9/11 and the invasion of Iraq. Embarking upon a new civilising mission, this new democratic imperialism took its lesson from the old colonial model. Robert Cooper gave the idea of ‘defensive imperialism’ in which he propagated that if pre-modern states become intolerable for established modern nations, then modern nation-state must resort to ‘defensive imperialism’<sup>30</sup>. Michael Ignatieff has accepted more openly that the entire ‘War on Terror’ is an imperial exercise. He advocated that certain global problems (problems of ‘failed states’, terrorism, and human rights abuses in third world countries) can only be solved through the panacea of imperialism<sup>31</sup>. The primary argument of these scholars is that the liberal peace model needs to be extended in non-democratic countries in order to preserve the liberal democratic model. This model can be extended through inspiration where people of non-democratic regimes will be inspired to fight for their emancipation. Once this process is complete, then the process of capitalist market restructuring will be carried out. In case if this scheme fails, then there is a legitimate ground for intervention. This is precisely the coercive mechanism of ‘civilising mission’.

#### IV. CONCLUSION

As it has been established by Third world scholars that colonialism is at the very heart of the design of international law. International law is shaped and expanded with the help of colonial confrontation and conquests. These civilising missions were meant to bring non-European societies under the umbrella of the ‘universal civilisation of Europe’. As Antony Anghie explained that in order to justify such civilising missions, the idea of cultural difference was propagated in which non-European societies were categorised as primitive. Even sovereignty was defined in accordance with a certain set of cultural practices to the exclusion of others. Racial discrimination and cultural subjugation are the effects of this notion of sovereignty. Seemingly innocuous concepts like ‘Responsibility to Protect’ have given us a reason to critically examine the history of the emergence of sovereignty as a juridical and political concept, its crafting colonialism, its application in ‘most of the world’. It will be pertinent to

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<sup>29</sup> *Supra* note 4 at 18.

<sup>30</sup> As cited in ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 279(1 ed. 2005).

<sup>31</sup> *Supra* note 4 at 19

examine why subaltern nations hold this alien concept so dear and how humanitarian interventions, promotion of democracy, and good governance make their sovereignty extremely vulnerable. Recent humanitarian interventions have shown the tendency to change their colour in regime change wars which have shown pernicious and destabilising tendencies. Third world nations have a strong charge sheet against western powers. Activist western interventions, their effect on the sovereignty of the third world nation, and the impact of democratic imperialism make peoples and nations of the third world very vulnerable. Their agency of self-determination is robbed in daylight in the name of exalted ideas. If R2P has to succeed and get legitimacy, then it must assure the peoples of the Third (and Fourth) world that it is not a 'trojan horse' and will not be used selectively to achieve certain political motives. The global community must think seriously to obviate the democratic deficit in the Security Council as it has the sole authority to intervene in the name of Responsibility to Protect. We do not want to suggest any nihilistic idea that prevents the global community from acting when there is the threat of genocide or crimes against humanity; rather, we suggest that without reforms in the United Nations or the language of humanitarian intervention, there will always be suspicion in the minds of peoples of the Third world as hitherto humanitarian interventions have been used to secure political goals of the First World. Responsibility to Protect must not be a redecorated colonialism wrapped in the exalted language of human rights.

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