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The Use of International Force to Prevent Atrocities through Responsibility to Protect and Provide Humanitarian Intervention

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ABSTRACT

The use of international force for preventing atrocities against humans and their rights has become ever more significant in today's world. The concept of such implementation has been around for a while now. It goes hand in hand with the concept of humanitarian intervention in as far as the historical origins of sovereignty and the reasons behind the shift to the use of the term responsibility to protect (R2P) is concerned. The evaluation of the progress of the concept of R2P from its unanimous endorsement in 2005 to its implementation in Libya in 2011, is of utmost importance when mapping out the development of the same. The role of United Nations Security Council (UNSC) in implementing R2P has been quite impactful as well. The General Assembly has helped refine the revolutionary concept, build a political understanding, and create support for the idea. This article attempts at highlighting the key moments that led to its establishment, its contribution to society and the lack there of.

I. INTRODUCTION TO THE PRINCIPLE OF RESPONSIBILITY TO PROTECT

The concept of responsibility to protect was first established to embody a commitment of political nature that aimed to abolish the absolute worst forms of persecution and violence. The obligations that existed between Nations required for a mode through which the gap between such obligations could be tethered to, under laws relating to international humanitarian and human rights. This was essential to address global atrocities that populations faced in the form of war crimes, genocide, ethnic cleansing and crimes against humanity, in general.

(A) Scope and limitations of the Responsibility to Protect

The report published by the Secretary-General's in 2009, namely, *Implementing the Responsibility to Protect*, stated, that the responsibility to protect applied, until and unless the member states decided otherwise, only to four specific crimes and violations, i.e. Genocide,

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war crimes, ethnic cleansing and crimes against humanity. It further explained the fact that if it were to extend and address other calamities, such as HIV/AIDS, climate change or the response to natural disasters, it would fail to zero down on the 2005 consensus.²

The UN Secretary-General has termed this focused approach as a "narrow but deep approach" to the Responsibility to Protect: A narrower application to the four crimes, but a rather deeper and aggressive approach to response, implemented a wider array of prevention and protection instruments available to Nations, the system of the UN, regional and sub-regional organisations as well as civil society.³

The Global Centre for the Responsibility to Protect (GCR2P) is an international non-governmental organisation that is responsible for research and advocacy related to the initiative. The organisation is based out of New York City, at the Graduate Center, CUNY, and has another office located in Geneva.⁴

II. BACKGROUND

R2P was borne, as a consequence, of failure to sufficiently respond to the catastrophe of the Rwandan genocide in 1994 and the Srebrenica genocide in the subsequent year, and saw gross human atrocities that the international community failed to prevent. The military intervention carried out by the NATO in Kosovo, in 1999, also came under heavy fire and was immensely criticised by many as a clear and gross violation of the prohibition of the use of force, as it was insisted and put forth that traditional notions of sovereignty were redefined. It led to a serious debate involving the international communities on the response to such circumstances and a need for a more systemic solution. The then Assistant Secretary-General at the UN Department for Peacekeeping Operations, Kofi Annan, realised its failure to respond. He presented the annual report to the UN General Assembly, in September 1999, described the prospects for human security and intervention in the next century and challenged the Member States to uphold and establish a common ground in recognising principles of the Charter, and taking action in the defence of humanity in general. He brought the same to attention in his 2000 Millennium Report. Annan wrote the report "We the Peoples" on the role that the United Nations had in the 21st Century. This report posed an extremely pressing issue upon the nature of the conditions of humanitarian intervention as an unacceptable assault on sovereignty. The world community, in the first place, had no answer as to how they were supposed to

² "United Nations Official Document". www.un.org.

³ Id.

⁴ About Us, Global Centre for the Responsibility to Protect, (Feb 12, 2021), <https://www.globalr2p.org/about/>

respond to situations in Rwanda or Srebrenica, against gross and systematic violations of human rights.⁵

Several of the R2P's critics claimed it to be a Western concept. However, it was the African Union (AU) that pioneered and introduced the idea that the international community had a responsibility to intervene in situations of crisis, if a state was failing to protect its population from mass atrocity crimes.⁶ In 2000, the AU, as per Article 4(h) of its Constitutive Act, embraced the right to intervene in a member state, and declared that the Union could intervene pursuant to a decision of the Assembly in respect of circumstances of grave nature, namely war crimes, genocide and crimes against humanity.⁷

III. GRADUAL DEVELOPMENT

The International Commission on Intervention and State Sovereignty (ICISS), which was set up by the Government of Canada, took up the initiative and issued a report titled 'The Responsibility to Protect', in 2001. The inspiration for the concept was drawn from the idea of 'State sovereignty as a responsibility', put forth by Francis Deng. It provided that sovereignty was not just protection of state from outside interference or interruption. Rather, it had to be considered as a positive responsibility of the State for the welfare of their population and to provide adequate assistance. It was adjudged as the primary responsibility of the State. But, the responsibility of the State extended further than just that, to a concept known as 'residual responsibility', which was at the disposal of broader community of states, which was activated once a specific state was visibly unable to fulfill its own responsibilities, or was itself the actual perpetrator of atrocities in its own state. This concept was taken further by reports published by High Level Panel on Threats, Challenges and Change, and the Secretary-General, which were titled, 'A more secure world: our shared responsibility' and 'Larger Freedom: towards development, security and human rights for all', respectively. The principle that it endorsed was that of State sovereignty consisting of an obligation to protect the people of the State, and if in any case, it was unwilling or unable to do so, it was upon the international community to shift the burden of responsibility upon itself. An important issue to notice in both the reports that were published was that neither asserted to a basis of use of violence or force for the purposes of its recommendations, apart from an authorisation by the Security Council, as

⁵ Public documents, (Feb 13, 2021), <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000923.pdf>

⁶ Nordic Africa Institute, About us, (Feb 15, 2021), <http://www.nai.uu.se/publications/series/notes/978-91-7106-642-8.pdf>

⁷ "Constitutive Acts of the African Union". *Documents and speeches*. African Union Summit, South Africa 2002.

provided under Chapter VII of the Charter, as a means of last resort in the event of grave global crimes.⁸

IV. ADOPTING THE PRINCIPLE

The member States finally came together at the 2005 United Nations World Summit meeting, and the principle of responsibility to protect was finally committed to, by including it at the outcome document of that meeting. Paragraphs 138 and 139 of the document included the responsibility, as affirmed by the Heads of the State and Governments, to safeguard their own people from crimes of war, ethnic cleansing, genocide and other crimes against humanity in general. The principle, however, was not adopted in the original format that it was proposed to by the ICISS, but it managed to retain the fundamental aspects of dealing with violations committed against international human rights law and humanitarian law. The United Nations Charter was meant to be adhered to and cooperation extended by regional Organisations, to ensure proper functioning of the principle in action. Although included in the document, the paragraphs were also based on a series of underlying body of international legal obligations. These obligations had been in development through practice in several states and by case-laws in their respective and international courts and tribunals.

(A) Secretary-General's 2009 report

The UN Secretary-General Ban Ki-moon issued a report on 12 January 2009, titled '*implementing the Responsibility to Protect*', which was the first of its kind, in being a comprehensive document from the UN Secretariat on the R2P, that paved the way to turn the concept into policy. The report enabled for the discussion on the subject at the UN. A three-pillar approach to the R2P was proposed.

The three important and mutually-reinforcing pillars, as provided in the 2009 Report of the Secretary-General, based off of paragraphs 138 and 139 of the 2005 World Summit Outcome Document and the intergovernmental agreement to the principle:

1. Pillar I: The protection responsibilities of the state;
2. Pillar II: International assistance and capacity-building;
3. Pillar III: Timely and decisive response.⁹

⁸ Responsibility to protect, (Feb 7, 2021), <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

⁹ Id. At 2

According to the report published by the UN Secretary-General in 2012, these pillars were in no way sequential, but of equal importance. He further went on to describe the importance of the three pillars, stating that without them the concept would fail indefinitely. He insisted on implementation of the same in a manner entirely consistent with the purposes, principles, and provisions of the Charter.¹⁰

This approach was intended to rather reinforce, and not undermine state sovereignty. The 2009 report of the Secretary-General stated that this initiative would enable States to meet their absolute core responsibilities, as it intended to strengthen sovereignty, not chip it away. Further, it sought to help States to succeed, not just to react when they fail.¹¹

V. RELATIONSHIP BETWEEN 'R2P' AND 'HUMANITARIAN INTERVENTION'

The Responsibility to Protect is often wrongly described to be similarly associated to the humanitarian intervention in four significant manners. Firstly, humanitarian intervention solely and wholly refers to use of physical or military force, whereas, at the same time, the principle of responsibility to protect is, for the most part, a preventive principle that directs its emphasis to stem the risk of genocide, war crimes, ethnic cleansing or crimes against humanity. In the case of Responsibility to Protect, the use of force is a measure of last resort, when all other non-coercive measures fail, and only upon authorisation by the UN Security Council. This is in contradiction to the principles followed in the process of carrying out 'humanitarian intervention', which, is based on the use of force as an imperative method, without authorisation by the Security Council.

Secondly, we observe the principle embedded in the Responsibility to Protect as firmly rooted in existing international law, especially laws relating to sovereignty, peace and security, human rights, and armed conflict.¹²

Third, even though, humanitarian interventions have been justified in the past on numerous occasions, R2P mainly focuses only on the four mass atrocities. Risk genocide, war crimes and crimes against humanity have been defined in international law and codified in the *Rome Statute of the International Criminal Court*, the treaty by which the International Criminal Court was established. Ethnic cleansing, has not been defined under the scope of international law, but the UN described it as a policy crafted and designed especially by one ethnic group to

¹⁰ "Responsibility to Protect: Timely and decisive response: Report of the Secretary-General (2012)"

¹¹ Id. At 2

¹² Brill Nijhoff, *The Responsibility to Protect and International Law*, (Feb 9, 2021), [brill.com](https://www.brill.com).

eradicate another, by means of violence, carrying out murderous campaigns, residing in certain specified geographic areas.¹³

Lastly, humanitarian intervention assumes a "right to intervene". Although both principles agree that sovereignty cannot be absolute, the doctrine of R2P focuses not on the right of states to intervene but on a responsibility to protect populations at higher risk than the rest.¹⁴ A new and fresh perspective evolved to recognise the essence of sovereignty, deviating from issues of "control" and emphasising "responsibility" to the civilian population and the international community in general.

VI. R2P IN PRACTICE

Kenya was gravely affected by a wave of ethnic violence that began in December 2007 to January 2008. The same was triggered by a disputed presidential election, whereby Mwai Kibaki won the elections and was sworn in as president a couple of hours later. This triggered a widespread and systematic violence that resulted in approximately 1,000 deaths and over 500,000 civilians were displaced.

External intervention was almost an immediate response to the crisis. An appeal to the UN Security Council was made by the French Foreign and European Affairs Minister in January 2008 to react "in the name of the responsibility to protect" before a deadly ethnic conflict broke out. On 10 January 2008, UN Secretary-General was allowed by the conflicting parties to act as the African Union Chief Mediator, which consequentially led to the signing of a power-sharing agreement. This reaction was heavily appreciated as "a model of diplomatic action under the 'Responsibility to Protect' principles".¹⁵

In 2011, in wake of the post-election violence against the population of Ivory Coast, the Security Council adopted resolution 1975, that condemned gross human rights violations committed by supporters of both the ex-President and the newly elected President. The primary responsibility of states to protect civilians was addressed through this resolution cited. It supported immediate transfer of power to the President, and reassured that the United Nations Operation in Ivory Coast (UNOCI) could and should use "all necessary means to protect life and property."¹⁶

¹³ LETTER DATED 24 MAY 1994 FROM THE SECRETARY-GENERAL TO THE PRESIDENT OF THE SECURITY COUNCIL, (Feb 11, 2021), https://www.un.org/ga/search/view_doc.asp?symbol=S/1994/674

¹⁴ GSDRC (2013). International legal frameworks for humanitarian action

¹⁵ "Ballots to Bullets: Organised Political Violence and Kenya's Crisis of Governance: The Response of International Actors". (Feb 12, 2021), *hrw.org*.

¹⁶ Presidential Elections. UNOCI Resources – United Nations Operation in Côte d'Ivoire

Libya, in 2011, was the first time when the Security Council authorised a military intervention reinforcing the principles laid down in R2P. Systematic attacks were carried out against the civilian population by the Libyan regime. The situation and language used by Muammar Gaddafi reminded the international community of the genocide that took place in Rwanda.¹⁷ The resolution 1970 was unanimously adopted by the Security Council on 26 February 2011, making explicit reference to the R2P.

Over the last decade, the State of Syria has been in constant conflict. The war over in Syria has directly killed approximately 500,000 people, generated 5 million refugees, and internally displaced 7 million people. The International Syria Support Group (ISSG), was created with the objective of helping restrict the population of Syria being subject to mass cruelty.¹⁸ The UN, European Union, the League of Arab States, and other countries agreed on the desperate need to meet to discuss the devastating situation at stake. As a result, the full implementation of UN Security Council Resolution 2254, which resulted in increased delivery of humanitarian aid, as well as a nationwide cessation of hostilities, was aimed to be ensured. Several efforts were made and the resolutions adopted to help uphold R2P, since humanitarian aid only had limited success in reaching the affected populations.¹⁹

The armed conflict in Yemen resulted in many civilians facing mass atrocity crimes. These crimes arose out of the violence between pro-government forces and regional military as they took the fight against the Houthi rebels. The Yemeni government remains quite unstable and unable to uphold its responsibility to protect and is in dire need of support from other member states.²⁰

VII. CRITICISM

R2P and certain implementations of it have come under criticism by some states,

(A) Infringement on national sovereignty

One of the growing concerns that surround R2P has been that it infringes upon national sovereignty.²¹ This specific concern was rebutted by the Secretary General through the report published under *Implementing the Responsibility to Protect*. The first two pillars that have been addressed in the report provides that the state has the responsibility to protect its population

¹⁷ Sarah Brockmeier, Oliver Stuenkel & Marcos Tourinho (2016) The Impact of the Libya Intervention Debates on Norms of Protection, *Global Society*, 30:1, 113-133, DOI, (Feb 12, 2021), doi.org.

¹⁸ "Central African Republic: Sectarian Atrocities Escalate – Human Rights Watch", (Feb 11, 2021), *hrw.org*.

¹⁹ "Populations at Risk: Global Centre for the Responsibility to Protect", (Feb 12, 2021), *www.globalr2p.org*.

²⁰ "Yemen: Global Centre for the Responsibility to Protect", (Feb 15, 2021), *www.globalr2p.org*.

²¹ Moran, Rick; Horowitz, David, editor, "Libya and the Soros Doctrine". *FrontPage Magazine*.

from mass atrocities and upon failure to do so, international community must step in to assist states carry put its responsibility. It is claimed that only on specific occasions where the international community must intervene in the affairs of a state without its consent is when it observes mass atrocities occurring, or being committed by the state itself, and where state is no longer upholding its responsibilities as a sovereign. R2P, in this sense, can be better understood as reinforcing sovereignty.²²

The Security Council approved Resolution 1973, on March 19, 2011, wherein the responsibility of the Libyan government was reiterated. Parties to armed conflicts were reaffirmed of the fact that they were the ones with the primary responsibility to ensure feasible steps had been taken to protect civilians.²³

However, it was observed that the Libyan case had given R2P a bad reputation because the only aspect of resolution of interest was use of necessary means to bomb Libya. It was further alleged that the civilians were supplied with arms and that the no-fly zone had been implemented only selectively.²⁴ Critics suggested that the intervention was only used as a means to carry out a change in regime, extending and undermining the purpose of the doctrine. This abysmal experience yielded an aura of global skepticism concerning proposed UN intervention in Syria the same year, putting the future of R2P in question.²⁵

(B) Military intervention

Military intervention has been questioned under the third pillar of R2P, and remains quite controversial till date.²⁶ It has been argued that intervention through militarily on states should not be allowed, because to do so would be an infringement upon the State's sovereignty. The counter-argument was that it is an essential facet of R2P, and is only ever enforced as a last resort to stop mass atrocities. This has asked for a more specific criteria to be defined and developed to determine when the Security Council should authorise military intervention.²⁷

VIII. CONCLUSION

The responsibility to prevent mass atrocities articulated in R2P is firmly rooted in

²² Ban Ki-moon, Implementing the Responsibility to Protect, p. 7-8

²³ "Security Council Approves 'No-fly Zone' over Libya, authorising 'all necessary measures' to protect civilians, by vote of 10 in favour with 5 abstentions. (Includes the full text of resolution 1973)". *Security Council SC/10200*. United Nations, Department of Public Information, News and Media Division, New York, NY. (March 17, 2011).

²⁴ "Selective Use of R2P to Secure Regime Change: India".

²⁵ "R2P, R.I.P." *New York Times*. (8 November 2011)

²⁶ Seybolt, Taylor B. (2007). *Humanitarian military intervention: the conditions for success and failure*. New York, NY: Oxford University Press Inc. p. 2.

²⁷ "Responsibility to Protect: The 'Real' Debate on R2P – STWR – Share The World's Resources", (Feb 12, 2021), *stwr.org*.

international law, with respect to the duty that states have to protect individuals within their own territory. Thus, pillar one of R2P represents a continuing obligation upon states, at all times. In fact, the duty to protect established under international human rights law, is in reality the mirror image of the duty to prevent. It is functionally a duty to prevent human rights violations. States are obligated to respect human rights and to take reasonable steps to ensure that non-state actors do not infringe upon the fundamental rights others. R2P builds on these internal obligations establishing states' responsibility to assist other states with their obligations. The obligation of states to prevent/ protect populations from mass atrocities committed by another state or outside its borders is not as clear under international law. Nor was it expressly agreed to by the member states in the Summit Outcome Document, having only committed to assist states with their obligations to protect. The due diligence standard – to take reasonable measures to prevent violations in so far as possible in international practice, reflects a nascent, yet developing trend in international law toward the acceptance of a positive obligation to prevent mass atrocities under certain circumstances. R2P itself is an important part of this developing trend, harnessing the general notion of the duty to protect/prevent and crystallising its application to the prevention of mass atrocities. It is another step in the development of the principle underlying the Genocide Convention, namely that states may no longer stand idly by when faced with crimes that shock the conscience of the mankind.
