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HUMANITARIAN INTERVENTION AND THE **ROLE OF R2P IN INTERNATIONAL** **HUMAN RIGHTS**

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Global leaders have often condemned such heinous acts as genocide and ethnic cleansing. It was a collective effort, but the international community was unable to stop future calamities of the same scale. Humanitarian intervention as a practise was formed to minimise this threat, which had multiple fundamental flaws. The idea of responsibility to safeguard was finally created at the beginning of the twenty-first century thanks to the tireless efforts of UN Secretary General Kofi Annan and with the support of the majority of UN member states. The "duty to protect" is a concept developed to ensure that the international community will never again sit on its hands in the face of genocide or other grave abuses of human rights. Responsibility to Protect recognises that it is the responsibility of independent states to ensure the safety of their citizens. However, the international community of states has a duty to defend those populations against genocide, war crimes, ethnic cleansing, and crimes against humanity if a state is unable or unwilling to do so, or if it is itself the source of the threat.

OVERVIEW OF HUMANITARIAN INTERVENTION

A. Journey from Humanitarian Intervention to R2P

In the 1990s, the concept of humanitarian intervention arose in response to a clash between state sovereignty and the need for international action to effectively confront grave human rights violations such as genocide, ethnic cleansing, and war crimes. The non-intervention principle of the UN Charter and the responsibility of the international community to respond to gross violations of human rights were at the centre of the debate. Article 2(4) of the United Nations Charter prohibits any state from using or threatening to use force against another state in order to undermine its sovereignty or territorial integrity. According to Article 2(7) of the same document, the United Nations shall not be permitted to intervene in matters that are within the basic domestic

jurisdiction of any state. However, there are two notable exceptions to this norm that are explicitly recognised by the United Nations charter.¹ The first is the authority granted to the Security Council by chapter VII of the UN charter to approve the use of force to prevent an imminent and grave threat to international peace and security. Second, in the event of an armed attack, member states have the right to self-defence under Article 51.² There was debate on whether or not to take humanitarian action in both cases. Many people think that the international community should interfere more regularly, while others argue that it does not do so often enough.

Passivity was on full display during the genocide in Rwanda in 1994, when the Security Council dithered over taking action despite being aware of the situation and having UN personnel on the ground. It was due to inadequate preparation, bad execution, and an overuse of force that the United Nations' peacekeeping efforts in Somalia in 1992 and 1993 were a failure. In 1995, the international community missed another opportunity to prevent the massacre in Srebrenica. The morality of a military involvement in Kosovo (1999) was also heavily debated, adding to the polarisation over the subject. The legitimacy of the intervention itself, as well as the means used to achieve the desired results, have been called into doubt.⁶

These four incidents prompted serious debate on the proper response of the international community to egregious violations of human rights. The primary point of contention was whether or not the international community had the authority to meddle in the internal affairs of a state for humanitarian purposes. Recently, some have been questioning whether or not humanitarian assistance is being used correctly. Concerns have been voiced about how to tell humanitarian intervention from other sorts of intervention, how to limit the use of force, and other related issues. The lack of clarity in the humanitarian purpose was also a major source of concern.

B. International Commission on Intervention and State Sovereignty (ICISS)

General Assembly members' reactions to the secretary general's address were divided. The International Commission on Intervention and State Sovereignty was founded in response to his challenge, but only one country, Canada, accepted it. It was this commission that first adopted the term "Responsibility to Protect," the title of their report. This paper concludes that the State is

¹ Malcolm D. Evans, *International Law*, 505 (3rded. 2010).

² *Id.* at 506.

primarily responsible for ensuring the safety of its citizens. It also recognised the sovereign right of each nation to control its own internal affairs. The document continued by stating that the international community must take initiative and intervene if the state fails to provide adequate security for its citizens. This report recommended three parts as the basis for R2P.³

1. The Responsibility to Prevent
2. The Responsibility to React
3. The Responsibility to Rebuild

Under "The Responsibility to react," the report outlined four precautionary criteria that must be met prior to any military engagement. Intentionally ending a humanitarian disaster is the first and most important step. Second, it ought to be a fallback option when all other options have been tried. Thirdly, the military force deployed must be confined to the minimum amount necessary to achieve the goal, which in this case is the protection of civilians. Last but not least, there needs to be a good chance that taking action won't have negative results.⁴

C. High Level Panel on Threats, Challenges and Change:

The Secretary General's High Level Panel on Threats, Challenges, and Change gave the suggestions presented by the ICISS significant attention and support in 2004. This committee endorsed the "Responsibility to Protect" concept with substantial revisions from the original report. Additionally, it was decided that the Security Council must give its blessing before any such jurisdiction could be exercised.

Using the concept of non-intervention, the panel argued, the state cannot commit serious violations of human rights. It further claimed that the Security Council should consider these acts to be threats to international peace and security under Article 24 of the UN Charter.⁵

In 2005, the Secretary-General delivered a report titled "*In Larger Freedom: Toward Development, Security, and Human Rights for All*," which puts an emphasis on responsibility to protect (R2P) by providing a more nuanced understanding of the ICISS Report by evaluating it in the context of human dignity and the rule of law. The report's focus was on helping the Security

³ Id.

⁴ Thibaut Jageneau, Faculteit Politieke En Sociale Wetenschappen, University Gent, "Interventionism and the Failing of R2P: Syria as a symbol of a Changing World Order," 21 (2017)

⁵ Id.

Council respond more effectively to humanitarian crises.⁶

INTRODUCTION TO RESPONSIBILITY TO PROTECT (R2P)

In a resolution passed in 2006, the Security Council for the first time officially recognised this doctrine, reiterating its dedication to shielding civilians during times of war (as stated in the World Summit Outcome Document). The formation of a High Level Mission to evaluate the situation in Darfur by the Human Rights Council is further evidence that the new doctrine has been accepted by the international community.⁷ At the 2005 United Nations World Summit, the member states came together for the first time, and the idea of responsibility to protect was ultimately affirmed by incorporating it in the meeting's result document. Paragraphs 138 and 139 of the treaty say that each party is responsible for protecting its own people against acts of war, ethnic cleansing, genocide, and other crimes against humanity. While the ICISS's initial proposal for the concept was ultimately rejected, the organisation was successful in ensuring that the essential elements for dealing with violations of international human rights law and humanitarian law were maintained. In order to secure the correct operation of the principle in practise, regional organisations were expected to abide by the United Nations Charter and extend cooperation. Paragraphs were included in the text, but they were also based on certain international legal obligations. These standards have been refined with input from a number of governments and the case law of various national and international courts and tribunals.

The Secretary-General issued a report in 2009 titled "Implementing the Responsibility to Protect: A Report by the Secretary-General" that elaborated on the conclusions reached in the 2005 World Summit Outcome Document. This research looked into the feasibility of mainstreaming responsibility to protect (R2P) inside the United Nations framework and as an international principle.

This article elaborated on the "Pillars" of the Responsibility to Protect framework. All of the pillars should be considered equally vital, and they do not need to be presented in any particular order. Secretary-General Ban's reports, like the World Summit Outcome and the ICISS report, gave the UN Security Council the exclusive authority to approve an intervention under the responsibility

⁶ The Secretary-General, Report of the Secretary-General, In Larger Freedom: Toward Development, Security and Human Rights for All, Para. 135, U.N. Doc. A/59/2005 (Mar. 21, 2005).

⁷ Id.

to protect.

First Pillar: *State responsibility includes protecting its inhabitants from genocide, war crimes, crimes against humanity, and ethnic cleansing. Some potential remedies include stepping up diplomatic efforts to settle potential disputes, implementing anti-corruption methods, swiftly prosecuting individuals who engage in violent behaviour, advocating for human rights, and establishing more effective governance.*

Second Pillar: *The international community has a responsibility to assist and support national governments as they fulfil their commitments. Foreign investment, technical aid, economic incentives, rapid police action, and broader capacity building are all examples of the kind of concrete, targeted aid that will be important in this situation.*

Third pillar: *The international community must be ready to take collective action in a prompt and decisive way in conformity with the UN charter if a state is clearly failing to protect its inhabitants. "Soft" coercion, such as international fact-finding missions, the deployment of peacekeepers, the imposition of a weapons embargo, the enforcement of diplomatic and financial sanctions, and the establishment of safe havens and no-fly zones, may be used to initially reinforce these strategies.*

If all else fails, the UN Security Council may give the green light for a military intervention. According to the report submitted by the UN Secretary-General in 2012, these tenets had no causal relationship with one another but were nonetheless crucial. He went on to elaborate on the significance of the three pillars, saying that the plan wouldn't work without them. He insisted on doing it in a way that adheres strictly to the Charter's principles.⁸

The goal of this method was to strengthen national authority, not weaken it. The initiative's goal was said to be to strengthen sovereignty rather than chip away at it in the 2009 report of the Secretary-General. In addition, it aimed to assist States in achieving success, rather than only responding to their failures.

Thirdly, the report included concrete recommendations to state and non-state actors in order to

⁸ "Responsibility to Protect: Timely and decisive response: Report of the Secretary-General (2012)"

advance these pillars. Furthermore, it asked the General Assembly to reconsider its approach to enforcing the responsibility to protect.

ANALYSIS OF THE RELEVANCY OF R2P IN INTERNATIONAL HUMAN RIGHTS

The discussions at the General Assembly in 2009 and the World Summit in 2005 helped to create and develop the bounds of the Responsibility to Protect (R2P) doctrine, which is now well-known in international law. The ultimate burden of care for its residents rests on the shoulders of the sovereign nation. R2P is also limited in its ability to address the most severe human rights abuses. The international community takes responsibility for a humanitarian disaster only when a sovereign state fails to do so. For starters, the international community can help the crisis-stricken country prepare better for future catastrophes. If this strategy is proved to be ineffective, the world community will have the primary responsibility for protecting against or avoiding the disaster. Coercive measures may be used on a case-by-case basis, and in extreme cases, the world community may authorise a military intervention. There can be no unilateral interference. Restoring the nation's peace and security after the intervention is a responsibility shared by the international community.

In December 2007 and into January 2008, Kenya was rocked by a surge of ethnic violence. Unrest ensued after a heated presidential election, which Mwai Kibaki eventually won. About 1,000 people lost their lives, and over half a million residents had to flee their homes as a result of the widespread and systematic violence that this sparked.

Rapid intervention from the outside world was required to solve the problem. As early as January 2008, France's minister for foreign and European affairs urged with the UN Security Council to intervene "in the name of the obligation to protect" to prevent a dreadful ethnic war from breaking out. After the parties to the conflict agreed on January 10, 2008 to allow the UN Secretary-General to serve as the African Union Chief Mediator, a power-sharing agreement was ratified. This approach was heralded as "an example of diplomatic action under the 'Responsibility to Protect' principles."⁹

⁹ "Ballots to Bullets: Organised Political Violence and Kenya's Crisis of Governance: The Response of International Actors". (Feb 12, 2021), *hrw.org*.

After the 2011 post-election violence in Ivory Coast, the Security Council issued resolution 1975 condemning the grave abuses of human rights committed by supporters of both the outgoing and incoming presidents. One of the primary responsibilities of nations is to ensure the safety of their citizens, and this issue was addressed in the aforementioned resolution. The UN Operation in Ivory Coast (UNOCI) was given permission to use "all necessary means to preserve life and property" and was given support for the swift transition of power to the President."¹⁰

In 2011, the Security Council initially approved a military action in Libya, a move that reaffirmed the Responsibility to Protect (R2P) principles. The civilian population of Libya was the target of many attacks by the Libyan regime. The world community was reminded of the Rwandan tragedy by Muammar Gaddafi's behaviour and statements.¹¹ On February 26, 2011, the Security Council unanimously adopted resolution 1970, which made direct reference to R2P.

Ten years of conflict have passed with no let-up in the Syrian Arab Republic. Five million Syrians have fled their country and another seven million have been displaced within their own country as a direct result of the conflict. The ISSG was formed to lessen the suffering of the Syrian people as a result of the ongoing conflict.¹² The United Nations, the European Union, the League of Arab States, and other governments unanimously recognised the critical necessity to convene to consider the dire situation at hand. Therefore, it was desired to guarantee a state-wide ceasefire and the full execution of UN Security Council Resolution 2254, which led to an increase in the delivery of humanitarian aid. Humanitarian aid only partially reached the impacted communities despite multiple attempts and resolutions established to uphold responsibility to protect.¹³

There have been numerous reports of mass atrocities committed against people as a result of the armed conflict in Yemen. As pro-government forces and regional military took up arms against Houthi rebels, violence erupted, giving rise to these atrocities. The government of Yemen is still very weak and unable to fulfil its duty of protection, hence it needs help from other countries.¹⁴

¹⁰ Presidential Elections. UNOCI Resources – United Nations Operation in Côte d'Ivoire

¹¹ 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.

¹² "Central African Republic: Sectarian Atrocities Escalate – Human Rights Watch", (Feb 11, 2021), *hrw.org*.

¹³ "Populations at Risk: Global Centre for the Responsibility to Protect", (Feb 12, 2021), *www.globalr2p.org*.

¹⁴ "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*.

NEED FOR CHANGE IN CONCEPTS PROMOTING HUMAN RIGHTS REGIME

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

A. Infringement on national sovereignty

There is growing concern that R2P undermines national sovereignty. The Secretary-General addressed this specific worry in the report titled *Implementing the Responsibility to Protect*. According to the study's first two pillars, governments must safeguard their citizens against mass atrocities, and if they fail to do so, other nations must intervene to ensure that their inhabitants are safe. Some say that the international community should only step in when it has hard evidence that mass crimes are being perpetrated within a state or are being committed by the state itself, or when the state is no longer fulfilling its obligations as a sovereign. In this setting, responsibility to protect works better as a tool for bolstering national control.¹⁵

On March 19, 2011, the responsibility of the Libyan government was reaffirmed in Resolution 1973, which was approved by the Security Council. It was reaffirmed that parties to armed conflicts bore the primary responsibility for ensuring that all practicable measures had been taken to protect civilians.¹⁶

Since the only problem that was fixed was by using the required force to strike Libya, the Libyan case was seen as damaging to R2P's reputation. Some further alleged that the no-fly zone was implemented unfairly, while others asserted that people were armed. As a means to just bring about a change in administration, the intervention was seen by its detractors as serving neither the purpose nor the spirit of the philosophy. This tragic event threw doubt on the future of R2P and made the international community sceptical of the planned UN action in Syria that same year.¹⁷

B. Military intervention

Military intervention has been questioned under the third pillar of R2P, and remains quite

¹⁵ Ban Ki-moon, *Implementing the Responsibility to Protect*, p. 7-8

¹⁶ "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".

¹⁷ "R2P, R.I.P." *New York Times*. (8 November 2011)

controversial till date.¹⁸ It has been argued that intervention through military 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.¹⁹

CASE STUDIES AND EXAMPLES: AN ANALYSIS OF THE LIBYA MILITARY INTERVENTION CASE

Fighting between the Libyan government and rebel groups in 2011 raised concerns among foreign actors about the potential for widespread civilian fatalities. Muammar Gaddafi, the Libyan colonel, referred to his opponents in the city of Benghazi as "cockroaches" during the uprising that began there in February 2011. He declared that the demonstrators will be "hunted down door to door and executed" and issued a warning to that effect. The revolt against Gaddafi's rule began in February 2011, shortly after revolutionary developments had taken place in neighbouring Tunisia and Egypt. Gaddafi, in contrast to the autocrats in those nations, has declared war on the Libyan rebellion. Rapidly, Gaddafi began killing demonstrators and threatening further violence. More "cockroaches," in Gaddafi's words, were about to meet their end.²⁰

Gaddafi's remarks caused widespread panic around the globe. The regime's military apparatus made immediate threats to carry out atrocities and massacres. As of February 25th, the Human Rights Council had suggested to the General Assembly that Libya be removed from the Security Council. A fact-finding team was also constituted to investigate into the Libyan incidents. The Security Council fiercely condemned these assaults on humanity and declared that the world community would not repeat its blunders.

The Security Council encouraged the Libyan government to honour its obligation to protect its population in a statement to the media. In addition, by Resolution S-15/1 of the Security Council, Libya was expelled from the General Assembly on March 1. Libya was removed from the Arab

¹⁸ Seybolt, Taylor B. (2007). Humanitarian military intervention: the conditions for success and failure. New York, NY: Oxford University Press Inc. p. 2.

¹⁹ "Responsibility to Protect: The 'Real' Debate on R2P – STWR – Share The World's Resources", (Feb 12, 2021), *stwr.org*.

²⁰ Spencer Zifcak, The Responsibility to Protect after Libya and Syria, 13(1) Melbourne Journal of International Law 59, 64 (2012).

League as well. In response to Resolution 1970, the United Nations Security Council implemented a number of restrictive measures. Important officials of the Libyan administration were prevented from leaving the country, an arms embargo was implemented, their foreign assets were blocked, and a 120-day review of the effectiveness of the measures was required. On the other side, the Libyan government asked that this line of action be halted until the claims were established.

The Security Council for the first time authorised aggressive military involvement in a sovereign state without the approval of that state's ruling authorities with Resolution 1973. Next, a group of countries formed by the North Atlantic Treaty Organization were given authorisation to use force. NATO was also intended to ensure that a no-fly zone was set up to safeguard the local populace. Because they defended the principle of not interference in the internal affairs of sovereign states, certain countries, especially China and Russia, were passionately opposed to it.

The combined naval and aviation troops of 14 NATO members and 4 partner nations aimed to safeguard people. France and Britain flew 40 percent of the sorties, and other countries contributed by upholding the no-fly zone and the arms embargo at sea. Russia has condemned the "disproportionate use of force" that led to the deaths of Gaddafi's youngest son and three of his grandchildren on May 1. Whether or not NATO should have used force was a topic of discussion. Does the United Nations' mandate for "civil protection" include the destruction of infrastructure, fuel storage sites, and electrical grids?

At long last, in August 2011, the conflict was mostly concluded thanks to NATO's aid and the bravery of the Libyan people on the ground. A UN support mission was established in Libya, and the National Transitional Council was recognised as the country's legitimate representative there. The "obligation to protect" had been carried out by the world community, but the "responsibility to reconstruct" remained a duty and a daunting task. Because this intervention was the first military action taken with the goal of protecting civilians from egregious human rights abuses by their own national government, it represented a turning point in the implementation of this philosophy. The entire doctrine would have disintegrated if this intervention had failed.

IMPLICATIONS AND RECOMMENDATIONS

Responsibility to Protect is replacing the controversial concept of humanitarian intervention. After this earlier ideology failed to avert tragedies like Rwanda and Kosovo, the notion of R2P was established with the support of many world leaders and other enlightened members of the

international community.

There were several challenges in developing the responsibility to protect (R2P) concept, but the successful military intervention in Libya in 2011 that was authorised by the Security Council under R2P acted as a litmus test for the third pillar approach. The Libyan intervention, however, made it abundantly clear that significant work remains to determine the nature and bounds of military strategy and tactics in the carrying out of a Pillar 3 operation.

At roughly the same time, inhabitants of another country were in dire need of international support and protection. As was explained in the preceding chapter, the international community failed in its responsibility to protect Syrian nationals and in its duty to prevent. Members of the UN Security Council and the international community were unable to reach a consensus on how to proceed with regards to Syria. As a result of this, many people no longer trust in the original ideas and principles behind R2P.

CONCLUSION

Whether or not R2P was successful in preventing future tragedies like those in Kosovo and Rwanda, as indicated by the ICISS, is controversial. The lack of a genuine, realistic solution to the phrase "never again" has led to the failure of the attempt to replace the word "humanitarian intervention" with "sovereignty as responsibility" in the vocabulary of international affairs. According to Kahtryn Kersavage (2014) of the US Department of State's Iraq Program Office: *"It is counterproductive to call R2P a success or failure. [...] This does not mean the ultimate failure of R2P, or even that a reinterpretation of the norm is needed. Instead, we must continue work on developing operational and strategic guidelines."*

Regarding the obligation that nations have to protect people on their own territory, the responsibility to prevent mass atrocities (R2P) is solidly grounded in international law. Therefore, the first pillar of R2P constitutes an ongoing duty on the part of states at all times. In actuality, the need to protect created by international human rights law is the polar opposite of the obligation to prevent. To protect human rights is a moral and legal imperative. A state has a responsibility to protect its citizens' human rights and to take reasonable measures to deter violations of those rights by non-state actors. R2P expands on these internal commitments by giving states the responsibility to help other states fulfil their commitments. The obligations of nations under international law to safeguard their citizens from genocide and other forms of mass violence committed by other states

or non-state actors are not entirely clear. In the Summit Outcome Document, the member states did not formally agree to it either; they merely pledged to support states in carrying out their commitments to protect. The due diligence norm, which requires parties to take reasonable steps to prevent violations insofar as is practicable, indicates an emerging trend in international law toward the establishment of a positive obligation to prevent mass crimes in specific situations. R2P, which crystallises the duty to protect/prevent concept and applies it to the prevention of mass atrocities, is a significant component of this emerging trend. The guiding principle of the Genocide Convention is being advanced by this change; governments may no longer remain mute in the face of atrocities that shock humanity's conscience.

