

Concept of Responsibility to Protect Criticism and Failures in Intervening Sovereignty

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Abstract

It is the norm of the international community to protect the individuals of sovereign nations from the menace of genocide, war crimes, ethnic cleansing, and crimes against humanity. The concept of the three-pillar doctrine of Responsibility to Protect (R2P) emerged in 2001 during the conflict between Rwanda and former Yugoslavia to promote the United Nations (UN) goal to protect the world from war scourge. Historically in 2011 UN Security Council put test of R2P to halt inhumane activities in Libya but, the intervention evolved in a regime change operation. R2P humanitarian intervention on prevention reckons on the willingness of five permanent members of the U.N Security Council (P-5). The regional actors and international organizations doubts its future after its controversial implementation in Libya, Syria, and Iraq. Firstly, this paper will examine the status of the doctrine of R2P embedded in international Law. Secondly, this research will investigate how the doctrine of R2P conflicts with state sovereignty. Thirdly, it will enquire whether R2P intervention in Syria and Libya was successful or not. Furthermore, this will attempt to portray the uncertain future of dream literature doctrine R2P in International Law. The researcher will adopt the doctrinal research methodology to conduct this study. For the collection of data researcher will rely on primary and secondary sources of international law, scholarly articles, UN documents, internet, and other relevant sources.

Keywords

Doctrine of R2P, Sovereignty, Intervention, International Law, UN

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1. Introduction

The Responsibility to Protect (R2P) is a complicated and “emerging norm”¹ of international law that seeks to provide a means for the international community to prevent mass atrocity crimes occurring within the boundaries of a sovereign state.² Since its emergence in 2001, in the wake of humanitarian tragedies in Bosnia, Rwanda, Kosovo, and Darfur, R2P has been hailed as a way of resolving what one commentator called the “problem from hell”³

1.1 Evolution of the Concept R2P

Responsibility to protect was developed in order to clarify what international community should do in the face of mass atrocities. In the 1990s, there were three cases where the international community’s response demonstrated lack of agreement as to what can and should be done. When genocide took place in Rwanda in

¹ The Secretary-General’s High-level Panel on Threats, Challenges, and Change, A More Secure World: Our Shared Responsibility, 203, U.N. Doc. A/59/565 (Dec. 2004) (describing the Responsibility to Protect as an “emerging norm”) [hereinafter A More Secure World]. See also S.C. Res. 1674, U.N. Doc. S/RES/1674 (Apr. 28, 2006) (“Reaffirm[ing] the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity[.]”). Notably, this resolution was ultimately supported by Russia and China, each of whom had initially expressed reservations about the implications of R2P for state sovereignty.

² The international community’s ultimate response to the Syria crisis will contribute to the shape of R2P.

³ SAMANTHA POWER, A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE (2003).



1994 the Security Council failed to act as it feared for the security of the UN peacekeepers there. The Council cut the peacekeeping force from 2558 troops to 270. Only after several weeks and murder of several hundred thousands, the Council authorized the deployment of a weak French military force. In 1995, under United Nations Protection Force's (UNPROFOR) watch, Serbs captured Srebrenica and murdered some eight thousand Bosnian Muslim men and boys. While the mission's mandate included deterring attacks against "safe areas", its resources were inadequate to defend vulnerable cities. Finally, in response to increasing violence against ethnic Albanians in Kosovo, the United States, United Kingdom and France sought authorization for a military force. However, they faced Russian and Chinese threats to veto resolutions including use of force. Eventually, they went ahead with the military intervention through NATO without the approval of the Security Council.⁴

As the international community seemed in disarray, Secretary-General Kofi Annan urged the international community to arrive at a consensus on how to approach these issues. He challenged the international community with his question: "...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?" In response to this challenge, in September 2000, the Government of Canada established the International Commission on Intervention and State Sovereignty (ICISS) in order to clarify the relationship between sovereignty and military intervention to halt atrocities.⁵

The International Committee on Intervention and State Sovereignty developed the concept of R2P during 2001. The Responsibility to Protect was unanimously adopted in 2005 at the UN World Summit, the largest gathering of Heads of State and Government in history. It is articulated in paragraphs 138⁶ and 139⁷ of the [World Summit Outcome Document](#) and is based on three pillars:

1. The responsibility of the state to protect its own population from mass atrocities.

⁴ Saira Mohamed, "Taking Stock of The Responsibility To Protect", Stanford Journal Of International Law, Vol. 63, June 2012, p. 66

⁵ Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect Ottawa, International Development Research Centre, 2001, p. vii

⁶ 138. 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.

⁷ 139. 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.

2. The responsibility of the international community to assist states in fulfilling this duty.
3. The responsibility of the international community to intervene when states are manifestly failing to protect their populations.⁸

The ICISS report strikes a similar tone. In its synopsis, the report unequivocally states, “Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated.”⁹ Rather than simply serving as a vehicle to justify armed intervention, R2P was intended to limit the use of force, strengthen the international order, and provide guidelines for concerted international action to protect populations from mass atrocities.¹⁰ Conceptually, R2P’s doctrine was formulated to provide a continuum of responses which includes preventative efforts, non-coercive and coercive actions, and reconstructive measures in that sequence.¹¹ This rubric, informed by a zealous notion to prevent wide scale atrocity and anchored by the idea that the use of force would be a last resort, would be novel additions to the international *jus cogens* moving forward.¹²

1.2 R2P in the International Commission on Intervention and State Sovereignty Report

Sovereignty as responsibility was originally developed by Francis Deng, the UN’s Special Representative on Internally Displaced People (IDP) in 1993. Deng and his colleague Roberta Cohen argued that states had the primary role in protecting their populations, but there must be some higher international authority to which they will be accountable if they failed to carry out their duties.¹³ The International Commission on Intervention and State Sovereignty also characterized sovereignty as responsibility. According to the Commission, sovereignty involves a dual responsibility. Externally states are responsible to respect the sovereignty of other states. Internally, they are responsible to respect the dignity and basic rights of all the people within the state.¹⁴ Sovereignty as responsibility means that state authorities are responsible to protect the safety and lives of citizens and promotion of their welfare. This kind of thinking about sovereignty is a result of the ever-increasing impact of international human rights norms and the concept of human security.¹⁵ Responsibility to protect is distinguished from the concept of humanitarian intervention by its emphasis on the primary responsibility of the state to protect its own population. The concept brought the novel idea that the international community should assist states in fulfilling their responsibility. Thus, it placed armed intervention within a broader continuum of measures that could be taken in response to mass atrocities and genocide.¹⁶

⁸ <https://www.globalr2p.org/what-is-r2p/>

⁹ Gareth Evans et al., *The Responsibility to Protect* (Ottawa, CA: International Commission on Intervention and State Sovereignty, December 2001), xi, accessed 10 March 2023

¹⁰ Ibid

¹¹ Crossley, “Is R2P Still Controversial?”

¹² Dembinski and Reinold, *Libya and the Future of the Responsibility to Protect*.

¹³ Michael Newman, “Revisiting the ‘Responsibility to Protect’”, *The Political Quarterly*, Vol. 80, No. 1, January±March 2009, p. 93.

¹⁴ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 8

¹⁵ Ibid, p. 13.

¹⁶ Alex J. Bellamy, “The Responsibility to Protect - Five Years On”, *Ethics & International Affairs*, Vol. 24, No. 2, 2010, p 143.

As for the right authority, the Commission stated that it is the Security Council whose authorization must be sought for a military intervention.¹⁷ If Security Council fails or rejects to consider a proposal for intervention, an alternative is to seek support for military action from the General Assembly meeting in an Emergency Special Session under the established “Uniting for Peace” procedures. If the Security Council failed or rejected to deal with a catastrophe, another alternative to take action is a regional or sub-regional organization.¹⁸

While the R2P concept has been seen as a optimistic development in the arena of international relations, it has also faced condemnation and has experienced failures in its implementation, particularly in the context of sovereignty. Here are some of the criticisms and failures associated with the R2P principle.

2. LEGAL STATUS OF R2P IN INTERNATIONAL LAW

International lawyers and international relations scholars writing about R2P have achieved no consensus regarding its legal status.¹⁹ Matthews notes that “at the time of the publication of the R2P Report, experts on the Commission were clear: the international obligations of R2P are not part of what is considered ‘binding’ international law. Rather, R2P was described specifically as ‘the emerging guiding principle . . . grounded in a miscellany of legal foundations (human rights treaty provisions, the Genocide Convention, Geneva Conventions, International Criminal Court statute and the like), growing state practice--and the Security Council's own practice.’”²⁰

The ICISS did express the opinion that the Security Council could move R2P into the realm of customary international law if it regularly invoked the principle. Alternatively, R2P might become regional customary international law, if for example the Economic Community of West African States (ECOWAS) and its Cease-Fire Monitoring Group (ECOMOG) were to act consistently with the R2P-like provision of the Constitutive Act of the African Union (AU).²¹ In regard to the General Assembly resolution endorsing R2P in the context of the Millennium Summit Outcome Document, international lawyers differ as to whether or not the adoption of the principle stands as evidence of *opinio juris*.²²

R2P is merely a “desideratum;” others regularly use the term “norm”²³. Edward Luck, the United Nations Secretary-General’s Special Adviser, refers to R2P as a “political commitment”. Bellamy discuss about

¹⁷ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* P. 37.

¹⁸ *Ibid*, p. 53.

¹⁹ Hall, B. Welling, and Nadira Khudayberdieva. "International Law and the Responsibility to Protect." *Oxford Research Encyclopedia of International Studies*. 22 Dec. 2017; Accessed 12 Oct. 2023.

²⁰ Matthews, M.W. (2008) Tracking the Emergence of a New International Norm: The Responsibility to Protect and the Crisis in Darfur. *Boston College International and Comparative Law Review* 31 (1), pp. 137-152

²¹ *The Responsibility to Protect: International Commission on Intervention and State Sovereignty*.

This site is the mother lode. In addition to the original ICISS Report, the site contains links to the research reports and bibliography that contributed to it as well as to a searchable bibliography of sources published after *The Responsibility to Protect* was published. At <http://www.iciss-ciise.gc.ca/>, accessed March 17, 2009.

²² Welsh, J.M. (2002) From Right to Responsibility: Humanitarian Intervention and International Society. *Global Governance* 8, pp. 503-521.

²³ Reinold, T. (2008) The Responsibility to Protect “An Emerging Norm of Customary International Law?” At http://www.allacademic.com/meta/p252328_index.html, accessed January 2009.

where and how R2P is regarded as a concept, a principle, or a norm and what difference the words make.²⁴ The legal status of R2P is ambiguous, but this itself is a sign of the times.²⁵

In place of a dichotomy, Hehir's discourse argues that R2P and humanitarian intervention should be undertaken by the rule of law. He believes: "The significance of R2P's lack of legal status and proposals for legal reform stems from the fact that without legal weight it is difficult to see what R2P actually contributes to the debate on humanitarian intervention ... the R2P we have today does not significantly reform the discredited system it was originally established to address."²⁶

3. CONFLICT WITH STATE SOVEREIGNTY

3.1 What is Sovereignty?

Sovereignty is the bedrock of international relations. The concept lays out basic rules for how countries are allowed to interact with one another. In principle, it means countries get to control what happens inside their borders and can't interfere in what happens elsewhere. This protects countries from being invaded over internal matters. But the concept of sovereignty doesn't play out perfectly in reality. There are limits to the control, a country can exercise over what happens inside its borders. In the case of grievous human rights abuses like genocide, many countries argue breaches of sovereignty should be allowed on humanitarian grounds. Meanwhile, dozens of countries around the globe choose to give up a degree of sovereignty to join organizations like the European Union and the World Trade Organization.²⁷

3.2 How R2P Encounter State Sovereignty

Traditionally, the promotion of Human Rights and the concept of state sovereignty have been fundamentally opposed. The rights of states and the 1648 Peace of Westphalia pitted against the right of the individual and the 1969 Universal Declaration of Human Rights. The very definition of sovereignty entitles states to non-intervention in their domestic affairs. The idea of *Universal* Human Rights and the protection of an individual within a state would appear to come into direct conflict with this very definition. As such, International Human Rights obligations are regularly seen as "eroding state sovereignty"²⁸

R2P is considered as a compromise between practice of humanitarian intervention and sovereignty. Its results can be assumed that it will would curtail sovereignty of the state. But there may be more to the relationship: Could these two concepts cooperate? Or should they contend? Can R2P will be able to redefine sovereignty without getting purge of it?

²⁴ Hall, B. Welling, and Nadira Khudayberdieva. "International Law and the Responsibility to Protect." *Oxford Research Encyclopedia of International Studies*. 22 Dec. 2017; Accessed 12 Oct. 2023. <https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-231>.

²⁵ Brunnee, J. & Toope, S. J. (2006) Norms, Institutions and UN Reform: The Responsibility to Protect. *Journal of International Law and International Relations* 2, 121-137

²⁶ Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (Basingstoke: Palgrave Macmillan, 2012), 85

²⁷ <https://world101.cfr.org/understanding-international-system/building-blocks/what-sovereignty>

²⁸ Ayoob, M. (2001). *Humanitarian Intervention and International Society*. (cover story). *Global Governance*, 7(3), 225. Retrieved from Business Source Complete database

R2P considered as “bridges the divide between intervention and sovereignty”²⁹, while the main problem for humanitarian intervention was the definition of sovereignty.³⁰ R2P was successful because it managed to find an appropriate way to incorporate new ideas without discarding the old. One of the members of the ICISS commission, praises R2P for the same reason. He claims that although requiring a different “exercise” of sovereignty, R2P doesn’t change its “status”.³¹ Looking at the problem from a different angle, non-intervention, in some circumstances R2P contradicts self-determination, another aspect of sovereignty.³² “Sovereignty as responsibility” paradigm, sovereignty is tight to a number of responsibilities towards outsiders as well as insiders, which means in consequence that the role of the state as a representative of its population is limited by its simultaneous responsibilities towards other populations. Consequently, R2P has negative effects for the sovereignty of the intervening state itself. “To suppress the sovereign supremacy of any state is to suppress its people’s right to unfettered representative government”³³. Assumption that interests of foreign nationals should be put ahead of the wellbeing of the state’s own citizens and soldiers.³⁴ In order to avoid the harm done to the domestic population of intervening states, understands this as justification to stand aside and a reason why states do not always have the capability to carry out R2P.³⁵ To conclude, this debate is rich on arguments across the spectrum. The argument of many of R2P’s supporters remains that R2P doesn’t reduce sovereignty, it only gives it a new form, one which is assumed more appropriate for its time. Meanwhile, others argue that weakening sovereignty should be the normative goal. Yet others point out that R2P’s impact is only superficial, and it doesn’t bring any substantial change to the international system. Most authors agree that there is some potential impact of R2P on the classical view of sovereignty. Not so much because it limits sovereignty in legal or practical terms, but because it views it through new lenses. Some arguments suggest that R2P impacts the concept of sovereignty in an enough profound way, by addressing the question of its source. Unquestionably, this problematic has already been the subject of much research. Still, the impact of R2P on the deeper roots of sovereignty could, in my view, be researched further as it influences the whole idea of sovereignty and its consequences.³⁶

3.3 Criticisms On Selective Application

Solicitation of the concept R2P depends on the consent of United Nation Security Council (UNSC) and Permanent members of UN.

²⁹ Cilliers, J., Gumede, S., & Mbadlanyana, T. (2009). Africa and the “Responsibility to Protect”: What role for the ICC? *Irish Studies in International Affairs*, 20, p. 57

³⁰ Hilpold, P. (2012). Intervening in the Name of Humanity: R2P and the Power of Ideas. *Journal of Conflict and Security Law*, 17(1), 49–79.

³¹ Thakur, R. (2011). Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism. *Security Challenges*, 7(4), 13–25.

³² Glanville, L. (2013a). The Myth of “Traditional” Sovereignty. *International Studies Quarterly*, 57(1), 79–90.

³³ Cunliffe, P. (2016). From ISIS to ICISS: A critical return to the Responsibility to Protect report. *Cooperation and Conflict*, 51(2), 233–247

³⁴ Welsh, J., & Thielking, C., & MacFarlane, S. N. (2002). The Responsibility to Protect: Assessing the Report of the International Commission on Intervention and State Sovereignty. *International Journal*, 57(4), 489–512

³⁵ Glanville, L. (2016). Does R2P matter? Interpreting the impact of a norm. *Cooperation and Conflict*, 51(2), 184–199.

³⁶ FOUSKOVÁ, VANDA. "R2P, a Concept to Challenge State Sovereignty?."

First, there was the language we used – the ‘responsibility to protect’ being much less inherently abrasive than the ‘right to intervene’. Second, there was our emphasis on multiple actors sharing that responsibility, not just the big military players. Third, there was our emphasis on multiple layers of response – on preventive strategies, not just reactive ones, and on a whole continuum of reaction measures, not just military ones but including diplomatic isolation, and sanctions and embargoes, and threats of International Criminal Court prosecution. And fourth, there was our insistence that the bar for any military intervention be set very high, with legality dependent on Security Council endorsement, and legitimacy dependent on satisfying clear prudential criteria, including proportionality and doing, on balance, more good than harm.³⁷

Retired Major General Margaret H. Woodward and Lieutenant Colonel Phillip G. Morrison recently wrote in *Joint Force Quarterly* that R2P represents a “revolution in global politics and the role of the United Nations (UN) as a global leadership body.” For that reason, they say, we must “find new ways to harness violence in the pursuit of our [U.S.] objectives.”³⁸

4. Ineffectiveness in Preventing Atrocities: Cases of Syria, Libya and Mayanamar

4.1. Libya

The 2011 NATO led intervention to Libya remains the most important, and most referenced case of R2P in use. In reaction to what was widely seen as imminent threat to civilian population by the Gaddafi regime, the UNSC issued resolution 1973, which permitted measures for the protection of civilians, regardless of the position of Libyan authorities.³⁹

4.1.1 Intervention Problems

The obvious problems with the intervention into Libya are that firstly the situation did not constitute war crimes because it did not come within the framework of the Geneva Convention as an organised two party group freely carrying arms. It started as a political uprising against the state. The civilians and the state were not two separate parties to a conflict at this point in time. Secondly the situation did not constitute genocide, as it could not be said that there was evidence at the time that showed genocide had been committed. And thirdly even though the members of the General Assembly had unanimously agreed to R2P in 2005 they had agreed to further consider it in terms of not implementing it into international customary law. The norm at this point did not constitute a general norm in international law, therefore it could not constitute a legal intervention.⁴⁰

4.1.2 Protection or Operation Regime Change

When the ingredients of three pillar doctrine R2P i.e genocide and war crime were not present there, then why NATO forces intervene in the internal issue of state? Intervention of P-5 countries means for regime change operation. Regime change was the ultimate motive of the intervening forces in Libya. He supports this argument by citing the leading states’ unwillingness to deliberate about a solution that would include Gaddafi. He also brings to attention France’s highly suspicious involvement in arming the rebels despite arms embargo.⁴¹ NATO forces intervention was for the purposes of regime change rather than protection of

³⁷ R2P: The Dream and the Reality <https://www.globalr2p.org/publications/r2p-the-dream-and-the-reality/>

³⁸ Kim R. Holmes, *The Weakness of the Responsibility to Protect as an International Norm*

³⁹ FOUSKOVÁ, VANDA. "R2P, a Concept to Challenge State Sovereignty?."

⁴⁰ Judson, Anne-Marie. "Where is R2P grounded in International law?." PhD diss., University of Otago, 2012. Page 121

⁴¹ Nuruzzaman, M. (2013). The “Responsibility to Protect” Doctrine: Revived in Libya, Buried in Syria. *Insight Turkey*, 15(2), 57– 66.

civilians, or maybe even at the price of this stated goal.⁴² That was disrespect to national sovereignty of Libya and blatant calls for regime change.⁴³ If regime change became the primary goal during the intervention, as it seems it did, the intervention would no longer be justified, regime change can be expected to lead to much larger loss of life, regional destabilization and so on. Besides it can't be justified as a measure of last resort in this case.⁴⁴ Therefore, the arguments used for justifying an R2P intervention become inaccurate in the case of intervention with the goal of regime change.⁴⁵

NATO also committed war crimes in Libya, thus instead of making the situation better, it doubled the suffering.⁴⁶ Kuperman also questions whether the degree of use of force by NATO and allies was appropriate. He mentions that we should acknowledge that NATO bombing campaign caused more deaths than had occurred as a result of Gaddafi regime's crackdown, with the difference being as much as seven-times as big.⁴⁷ To add to NATO's failures, Nuruzzaman points out that implementation of the responsibility to rebuild in Libya is ostensibly lagging behind.⁴⁸ Similarly, Kuperman complains about the unconsolidated state of post-conflict rebuilding. Already in 2013, he shows chaos taking seed in the post-intervention Libya⁴⁹ As demonstrated, the intervention in Libya and its outcome remain divisive. The veracity of claims about atrocities committed by Gaddafi's regime is questioned, as well as the justification for the intervention. Regardless of the disagreement about how bad the intervention was, there is enough consensus on the point that the resulting regime change was unjustified and violated both the UN mandate and Libyan sovereignty.⁵⁰

4.2 Syria

By mid-March 2011, the worsening crisis in the Syrian Arab Republic ("Syria") had rapidly become the centre of regional and international attention.⁵¹ The Syrian conflict has been widely discussed as another test case for the R2P principle in international law. From the initial stages of the crisis, there were serious claims that mass atrocities were carried out in Syria.⁵² Still, we witness mass-exodus of civilians from Syria on a daily basis. Growing concerns about the deteriorating security situation in Syria brought R2P into the debates

⁴² Kuperman, A. J., (2013). Lessons from Libya: How not to intervene. Belfer Center for Science and International Affairs.

⁴³ Shubin, V. (2013). 2011: Africa, Libya, NATO and the R2P as Projection of Power. *Journal of African Union Studies*, 2(3/4), 137–163. <https://www.jstor.org/stable/26893592>

⁴⁴ Pattison, James. "The ethics of humanitarian intervention in Libya." *Ethics & International Affairs* 25, no. 3 (2011): 271-277.

⁴⁵ FOUSKOVÁ, VANDA. "R2P, a Concept to Challenge State Sovereignty?."

⁴⁶ Nuruzzaman, M. (2013). The "Responsibility to Protect" Doctrine: Revived in Libya, Buried in Syria. *Insight Turkey*, 15(2), 57– 66.

⁴⁷ Kuperman, A. J., (2013). Lessons from Libya: How not to intervene. Belfer Center for Science and International Affairs.

⁴⁸ Nuruzzaman, M. (2013). The "Responsibility to Protect" Doctrine: Revived in Libya, Buried in Syria. *Insight Turkey*, 15(2), 57– 66.

⁴⁹ Kuperman, A. J., (2013). Lessons from Libya: How not to intervene. Belfer Center for Science and International Affairs.

⁵⁰ FOUSKOVÁ, VANDA. "R2P, a Concept to Challenge State Sovereignty?."

⁵¹ E.g., Peter Wilkinson, Syria: How Will Year-Old Conflict Play Out?, CNN (Mar. 15, 2012, 9:12 PM), <http://www.cnn.com/2012/03/15/world/meast/syria-what-next>.

⁵² See The Crisis in Syria, INT'L COALITION FOR RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria> (last visited Mar. 27, 2016).

within the international community.⁵³ This crisis highlighted the controversy on whether a state can use force for humanitarian purposes without Security Council authorization, a long-standing international legal question that did not arise in the Darfur, Libya, or Côte d'Ivoire crises. The use of force to effect regime change in Libya and Côte d'Ivoire also undermined the United Nations (UN) taking effective action in Syria.⁵⁴

As the crisis in Syria was unfolding, the Security Council first discussed the situation during a meeting on Israel-Palestine negotiations on April 21, 2011—soon after the Security Council's actions on R2P in Libya and Côte d'Ivoire in March 2011.⁵⁵ The Member States of the Security Council ("Member States") considered issuing a press statement as proposed by the European Union (EU). However, the statement, which stressed the Syrian government's responsibility to prevent violence against their own people could not be issued because there was no agreement among the Member States. In particular, Russia and Lebanon objected, stating that such a press statement would be undue interference into the internal affairs of Syria.⁵⁶ In response to mounting international unease about the deteriorating human rights situation in Syria, the Human Rights Council held a special session on April 29, 2011, and adopted Resolution 16/1.⁵⁷ The Member States that resisted the resolution argued that the Syrian crisis was an internal matter and the Security Council should not dictate the nature of any reform program that the Syrian government should undertake.⁵⁸ These Member States absolutely refused any external military intervention in Syria.⁵⁹

4.3. Myanmar

In August 2017, one of the most severe human rights catastrophes of our time played out as the Myanmar military committed mass atrocities against the Rohingya minority, forcing more than 700,000 Rohingya to flee the country. The horrific crimes against the Rohingya were committed in a period in which Myanmar had opened up to the outside world – yet outside actors did little to prevent the atrocities.⁶⁰ In 2010, a report by the Irish Centre for Human Rights warned that crimes against humanity were being committed against the Rohingya.⁶¹ The starkest warnings of mass atrocity crimes were issued in 2015, when several watchdogs

⁵³ Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, Seventeenth Special Session, U.N. Doc. A/HRC/S-17/2/Add.1, at 1, 8 (Nov. 23, 2011) [hereinafter Rep. of the Independent International Commission of Inquiry].

⁵⁴ Dr., Muditha Halliyade. "Syria - Another Drawback for R2P?: An Analysis of R2P's Failure to Change International Law on Humanitarian Intervention." (2016).

⁵⁵ U.N. SCOR, 66th Sess., 6520th mtg., U.N. Doc. S/PV.6520 (Apr. 21, 2011).

⁵⁶ Neil MacFarquhar, Push in U.N. for Criticism of Syria is Rejected, N.Y. TIMES (Apr. 27, 2011), http://www.nytimes.com/2011/04/28/world/middleeast/28nations.html?_r=0.

⁵⁷ Human Rights Council Res. S-16/1, U.N. Doc. A/HRC/RES/S-16/1 (Apr. 29, 2011).

⁵⁸ Dan Bilefsky, New Move to Condemn Syria in U.N., N.Y. TIMES (June 8, 2011), http://www.nytimes.com/2011/06/09/world/middleeast/09nations.html?_r=0; UN Deadlocked Over Draft Syria Resolution, as Crackdown Continues, Radio Free Eur. Radio Liberty (June 14, 2011 11:13 AM GMT).

⁵⁹ Id

⁶⁰ Mennecke, Martin, and Ellen E. Stensrud. "The Failure of the International Community to Apply R2P and Atrocity Prevention in Myanmar", *Global Responsibility to Protect* 13, 2-3 (2021): 111-130, doi: <https://doi.org/10.1163/1875-984X-13020013>

⁶¹ Irish Centre for Human Rights, 'Crimes against Humanity in Western Burma: The Situation of the Rohingyas', 2010.

warned that there was an imminent risk of genocide against the Rohingya.⁶² This is the more striking, as R2P concerns the responsibility of states, individually and collectively, and not the role of the UN Secretariat. For the future of atrocity prevention – regarding Myanmar and beyond – it seems crucial to examine how it was possible that so many governments and other actors were deeply engaged with Myanmar but ended up as bystanders to what survivors described as what ‘felt like the last day of this world’.⁶³

With the situation worsening for the Rohingya and in particular after the beginning of the new atrocities on 25 August 2017, the logic of R2P stipulates that the international community should exercise its responsibility to enforce protection of the Rohingya through pillar 3.⁶⁴ At this point, however, the R2P norm shows its own vulnerability, as the most decisive pillar 3 measures, such as a referral to the icc or an intervention by force, only can be authorised by the Security Council which in this situation was unrealistic, as China would have vetoed any pillar 3 measures. China’s resistance to coordinated action also meant that there was no prospect to adopt an arms embargo or effective global sanctions against those responsible for the atrocities. In addition, regional actors who arguably could have had some influence over Myanmar, such as Indonesia or asean, failed to overcome the principle of non-intervention.⁶⁵ This meant that effective pillar 3 measures to protect the Rohingya from genocidal violence were never on the table. Instead, the focus shifted to humanitarian aid for the survivors of the atrocity crimes and post-facto accountability efforts.⁶⁶ The combination of mass atrocities and lack or failure of international intervention has previously led critics to discard R2P as dead.⁶⁷

5. FUTURE OF DREAM DOCTRINE R2P

R2P does not add anything new to the already existing laws that are in place for the protection of civilians. The responsibility of states to protect their citizens from harm is strongly grounded in international law. States are still bound by these duties in international law to prevent and protect. They are also bound to the Charter that stops states interfering in the internal affairs of other states.⁶⁸

⁶² Penny Green, Thomas MacManus, and Alicia de la Cour Venning, ‘Countdown to Annihilation: Genocide in Myanmar’, International State Crime Initiative, September 2015; Alina Lindblom et al., ‘Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State? A Legal Analysis’, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, October 2015; “‘They Want Us All to Go Away’: Early Warning Signs of Genocide in Burma”, Simon-Skjodt Center for the Prevention of Genocide, United States Holocaust Memorial Museum, May 2015.

⁶³ See UN Independent International Fact-Finding Mission on Myanmar (unffmm), *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, A/hrc/39/crp.2, 17 September 2018, p. 177 (*unffmm Report*).

⁶⁴ Ban Ki-moon, *Implementing the Responsibility to Protect*, 2009. See the contributions by Claire Q. Smith and Susannah G. Williams, ‘Why Indonesia Adopted “Quiet Diplomacy” over R2P in the Rohingya Crisis: The Roles of Islamic Humanitarianism, Civil-Military Relations, and asean’, and Noel M. Morada, ‘asean and Rakhine Crisis: Balancing Non-Interference, Accountability, and Strategic Interests in Responding to Atrocities in Myanmar’, to this special issue.

⁶⁵ See the contributions by Claire Q. Smith and Susannah G. Williams, ‘Why Indonesia Adopted “Quiet Diplomacy” over R2P in the Rohingya Crisis: The Roles of Islamic Humanitarianism, Civil-Military Relations, and asean’, and Noel M. Morada, ‘asean and Rakhine Crisis: Balancing Non-Interference, Accountability, and Strategic Interests in Responding to Atrocities in Myanmar’, to this special issue.

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⁶⁷ See David Rieff, ‘R2P, R.I.P.’, *New York Times*, 7 November 2011.

⁶⁸ Judson, Anne-Marie. “Where is R2P grounded in International law?.” PhD diss., University of Otago, 2012. P 122

If R2P were to be fully realized and implemented in line with the Libyan precedent, then R2P “requires intervention in a much larger number of cases, in this way corroding the norm of state sovereignty and undermining the present normative international order.”⁶⁹ Furthermore, Libya set the bar so relatively low that virtually every instance of anarchy and tyranny, or even the potential of, represents an opportunity for the IC to ignore the preventative tenants of R2P and violate the sovereignty of states. Thus, R2P threatens to “undermine, confuse, and potentially destabilize the existing normative framework structuring the international relations of states.”⁷⁰

In addition to the issue of sovereignty, R2P raises other substantial issues that neither the ICISS report nor the 2005 World Summit document provides guidance for. Gareth Evans, a former cochair for the ICISS and president of the International Crisis Group, notes that neither publication quantifies what is “large scale,” to what extent peaceful options must be pursued, and how to ensure proportionality.⁷¹

Further degrading R2P is in the way the ICISS selectively invokes the concept. For example, if Libya was the litmus test, why not intervene in Syria, Yemen, Myanmar, or Haiti? Each of these examples are either on par with the situation in Libya leading up to NATO’s intervention or worse. The answer of course is that neither of these reside within the intersection of the national interest and political will of the Global North.⁷² Argumentation for optimism about the future of R2P I would make is that, for all the division and paralysis over Libya and Syria, it is possible to see the beginning of a new dynamic in the Security Council that would enable the consensus that matters most – how to react in the Council on the hardest of cases – to be re-created in the future. The ice was broken in this respect by Brazil in late 2011 with its proposal that that the idea be accepted of *supplementing* R2P, not replacing it, with a complementary set of principles and procedures which it has labelled “responsibility while protecting” or “RWP”. There were two core elements of the proposal. First, that there should be a set of prudential criteria fully debated and taken into account before the Security Council mandated any use of military force. And second, that there should be some kind of enhanced monitoring and review processes which would enable such mandates to be seriously debated by all Council members during their implementation phase, with a view to ensuring so far as possible that consensus is maintained throughout the course of an operation.⁷³

CONCLUSION

The Doctrine of Responsibility to Protect (R2P) denotes a significant development in international relations, put emphasis on the need to address mass atrocities. However, it is not without its shortcomings. R2P's tensions with legal status in International law, sovereignty, failure of selective application, and instances of ineffectiveness have steered to ongoing debates within the international community.

⁶⁹ Robert A. Pape, “The New Standard for Humanitarian Intervention,” *The Atlantic* (website), 4 April 2011, accessed 10 March 2023, <https://www.theatlantic.com/international/archive/2011/04/the-new-standard-for-humanitarian-intervention/73361/>.

⁷⁰ Crossley, “Is R2P Still Controversial?”

⁷¹ Gareth Evans, “The Responsibility to Protect,” *NATO Review*, 1 December 2002, accessed 10 March 2023, <https://www.nato.int/docu/review/articles/2002/12/01/the-responsibility-to-protect/index.html>.

⁷² Serrato, Capt Pat. “The Responsibility to (Selectively) Protect.” *MILITARY REVIEW* (2023).

⁷³ Evans, Gareth. “After Syria: the future of the Responsibility to Protect.” *ST Lee Lecture, Institute for Advanced Study, Princeton* 12 (2014).

To address these criticisms and failures, it is crucial to establish clear guidelines for R2P interventions, ensure transparency, and prioritize multilateral decision-making processes. Additionally, the international society should be committed to addressing the reasons of mass atrocities, including conflict prevention and diplomacy.

R2P, while imperfect, remains a significant framework for addressing mass atrocities and protecting vulnerable populations. Its continuous evolution and refinement are essential for striking a balance between humanitarian goals and respect for state sovereignty in an increasingly interconnected world. R2P weakens the state sovereignty, surrender of one will allow the others' intervention. Practical implementation and the actual balance achieved in any given situation can be complex and contentious, often depending on the specific circumstances and the perspectives of the P-5 states and the UN Security council.

While evaluating the success of R2P interventions in Syria, Libya and Myanmar is perplexing, as the status quo in Libya, Syria and Myanmar have progressed and continue to evolve over time. The interventions effectiveness can be restrained in terms of the imminent goals (e.g., protecting civilians) and the enduring consequences, including stability, peace, and the overall welfare of the affected populations. In all of these cases, there are opinions on both sides, assessment every so often depends on one's perspective and criteria for success. Some of the scholars argue that the interventions were necessary to prevent mass atrocities, while the contention of other is negative and argue that they contributed to prolonged instability and conflict. Ultimately, these interventions remain focuses of ongoing debate and analysis within the international community and among scholars and policymakers.

When weighing unilateral action in the prevention of atrocities, against consensus seeking that paralyzes' R2P, it is preferable to bias on the side of allowing action. Let the international community judge accordingly, choosing to collectively admonish the intervener if required. Misuse of the principle does not invalidate its importance. The risk of preventing intervention is greater than the risk of perversion as the employment of R2P requires legitimacy, not consensus.⁷⁴ The forthcoming of R2P centre's on the ability of the international community to learn from the failures of past and adapt to new strategies to protect civilians. The future of the dream doctrine R2P is subject to the "yes" of Veto powers, weather this doctrine will protect the civilians or became weapon of change in states' condition according to the will of these states. The International community needs to ponder on this issue.

⁷⁴ Serrato, Capt Pat. "The Responsibility to (Selectively) Protect." *MILITARY REVIEW* (2023).

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