

LIMITS OF THE R2P PRINCIPLE: STUDYING THE CASE OF SYRIA

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ABSTRACT

Responsibility to Protect (“R2P”) was originally introduced in 2001 with a report by the International Commission on Intervention and State Sovereignty (“ICISS”). The principle behind R2P is that in cases where a State can’t protect its own civilians or is unwilling to do so, the international community is prepared to take action to protect civilians by force if necessary. It has proved to be effective in many cases- the hugest success story being Libya in 2011. Though this principle is celebrated worldwide, it is mired in controversies. Many believe that it was after the crisis in Syria that the concept of R2P was put to test. Taking into account the disagreement internationally over Syria, many have argued that R2P hasn’t changed as much as its supporters claim. In fact, some have gone ahead and termed R2P as “RIP”.¹

In this essay, the author discusses the concept of R2P as it is recognized internationally and discusses its evolution. The author reviews the ongoing Syrian crisis and how it highlights the failures of R2P as a principle. The author also assesses the possible solutions that are currently being discussed to ensure that the principle of R2P is able to achieve its fullest. Lastly, the author discusses whether R2P as a principle still matters or not.

¹ Ramesh Thakur & Thomas G. Weiss, *R2P: From Idea to Norm- and Action*, 1 *Global Resp. to Protect* 22-53 (2009).

INTRODUCTION

After the second World War ended in 1945; it was evident that the League of Nations, as an international organization, had failed to prevent another war from breaking out. It was in the aftermath of the Second World War that the United Nations (“UN”) took birth. Despite the League of Nations’ failure, the US presidents Franklin D. Roosevelt and Harry S. Truman firmly believed that it was only when the world acted collectively that another war could another be prevented.² Hence, the UN was born. The UN’s main document, the UN Charter, took note of the fact that the UN would not be able to accomplish its goals if a great power challenged it. Thus, it realized at the very start that if peace were to be achieved, it could only be achieved if all the Member States acted collectively.³

One of the chief, and perhaps the most crucial, aims of the United Nations is to ensure that international peace and security is maintained.⁴ Though, the United Nations has done commendable work, often times it hasn’t been able to control the mass atrocities that have taken place in many countries in the past 70 years. In the present-day international scenario, states now have started to believe in the existence of a “right to intervene” in situations where there are mass blatant violations of human rights taking place.⁵ There is a general consensus that it is no longer normal to kill civilians to form states. Also, it isn’t acceptable anymore to be silent observers of violations of human rights.⁶ The difficulty which then props up is that how a state can safeguard the interests of the masses hit by flagrant violations of human rights.⁷ This is where the principle of R2P comes into the picture. Described as “the most dramatic normative development of our time”,⁸ R2P puts in place a narrow framework in order to take the discourse away from the contentious use of force for supposed humanitarian purposes to the issue of protecting the citizens who become victims in the face of mass atrocities.⁹ After

² Simon Chesterman, Thomas M. Franck & David M. Malone, *Law and Practice of the United Nations* (Oxford Univ. Press, Inc. 2008).

³ *Ibid.*

⁴ U.N. Charter art. 1, para. 1.

⁵ *Cristina Gabriela Badescu, Humanitarian Intervention and the Responsibility to Protect* (Routledge 2011).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Supra Note 1.*

⁹ *Supra Note 5.*

the failures of the principle of humanitarian intervention in countries such as Rwanda, R2P was the shining ray of hope for many spectators.

Before moving on to briefly trace the evolution of R2P as a principle, it is imperative to note that world over, there has been a decline in the belief that human rights are simply domestic issues. It has been established time and again, after the atrocities have taken place (such as Rwanda), that protection of human rights is an internationally shared responsibility.¹⁰ The advantage of R2P is that, when backed by already set legitimacy criteria, it will definitely help states achieve a situation where interventions are consensual, rules-based and multilateral.¹¹ R2P is a more refined, and politically acceptable version of the principle of humanitarian intervention.¹² According to R2P, sovereignty entails responsibility.¹³ Sovereignty's definition is changing as time marches on. The notion of sovereignty as responsibility isn't something new. Progressively, it is becoming tougher for states to enjoy the privileges of being a sovereign if they don't live up to internationally accepted responsibilities, such as safeguarding the human rights of all that live within their territories.¹⁴

It has been collectively realized that states cannot be silent observers of mass human rights violations taking place in their own and other states' territories. It was realized that the principle of sovereignty doesn't limit you from taking action when atrocities are being committed in the territory of another state. The concept of upholding human rights is also equally, if not more, important. The principle of R2P comes in here and tries to strike a balance between the two strong and extreme ends of the spectrum: respecting a state's sovereignty and protecting human rights of global citizens.¹⁵

EVOLUTION OF R2P

At the 54th Session of the UN General Assembly in 1999, the then Secretary General, Kofi Annan, appealed to the Member States to ensure that "another Rwanda" doesn't take place and

¹⁰ *Ibid.*

¹¹ *Supra Note 1.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

to arrive at a consensus on the pressing issue of humanitarian intervention.¹⁶ Commentators and scholars took this event to be a turning point in the history of international human rights. This moment was perceived as the spark which led to a new order for the controversial debate of humanitarian intervention. What arose from this appeal of Annan was the principle of R2P.¹⁷

It was this speech of Annan that acted as the trigger for the Canadian government to establish the International Commission on Intervention and State Sovereignty (“ICISS”) in the year 2000. The ICISS’ report, published in 2001, laid down three major components of the R2P principle. They are as follows: the responsibility to prevent, to react and to rebuild.¹⁸ The report titled “The R2P” ran 90 pages long, along with a 400-page supplementary with the same title.¹⁹ It was this ICISS report which moulded the language of “humanitarian intervention” into a more victim-centric language of “responsibility to protect”. The result of this change in the language was that the emphasis, internationally, shifted from the intervening states to the civilians who were in extreme need of protection.²⁰ Interestingly, the Report also reiterated that the principle of R2P isn’t a new one, rather it stems from various already existing legal documents. The legal documents are the four Geneva Conventions, the Genocide Convention, the statute of the International Criminal Court, provisions of human rights treaties and the expanding state practice and the practice of the Security Council itself.²¹

Next, and possibly the most crucial point in the history of the R2P principle was the World Summit Outcome Document in September 2005. This document was published post the World Summit Outcome. This Summit was an important event as it observed the presence of all Member States of the UN and many other heads of state. In paragraphs 138 and 139 of the Document, the heads of state and the several governments lent their support and gave legitimacy to the principle of R2P.²² The relevant paragraphs of the document reiterated that it is not the state’s responsibility to protect its citizens, but the international community too has a secondary responsibility to protect the citizens of the state whose citizens need help.²³

¹⁶ *Supra Note 5.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

The World Summit Outcome Document is also important because it narrowed the application to the R2P to the four most atrocious and grave crimes: genocide, ethnic cleansing, war crimes and crimes against humanity.²⁴ This Summit was a turning point as it was at here that R2P was discussed at a universal platform for the first time.²⁵ Here, all the UN's Member States unanimously accepted that they shouldered the responsibility to protect their citizens from these four grave crimes mentioned above.²⁶ Along with being mentioned in the above places, R2P found mention in the UN Security Council's resolutions as well, for example, the first three ones being Resolutions 1674 (2006), 1706 (2006) and 1894 (2009).²⁷

Before moving on, it is vital to clear one misconception: that R2P is merely an excuse for military intervention to stop atrocities.²⁸ However, in reality, the doctrine at its core, as stated originally in the ICISS report, holds that an important part of state sovereignty is that states are held accountable for the lives and welfare of their people.²⁹ The doctrine is applicable in three instances, or it has three pillars. The first pillar is applied by the state itself, that is, it is applicable when the state fulfils its responsibility to protect its own citizens. The second pillar is applied when the state is willing to help its citizens and look after their essential needs, but is unable to do so.³⁰ It is in this situation that other states assist the state in need, to fulfill its basic obligations to its citizens.³¹ The third pillar, and the most controversial one, comes into play when the state is unwilling to look into the interests of its citizens. It is here that other states take action.³² Finally, as per pillar three, the state itself becomes the perpetrator of atrocities, willingly or unwillingly. Therefore, the responsibility shifts upon the shoulders of the international community to intervene and ensure that the citizens of the state are protected.³³

²⁴ UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, available at: <http://www.refworld.org/docid/44168a910.html> [accessed 1 May 2018]

²⁵ *Supra* Note 5.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Zack Beauchamp, *Syria's Crisis and the Future of R2P*, 2012 Foreign Pol'y (2012), <http://foreignpolicy.com/2012/03/16/syrias-crisis-and-the-future-of-r2p/>.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Supra* Note 1.

THE SYRIAN CRISIS

The Syrian Arab Republic (“Syria”) is the prime example to look at if one wants to look at how an international norm can fail to live up its expectations. It is no secret that the principle of R2P has completely been unable to control the ever-escalating crisis situation in Syria. At this juncture, it is right to briefly look at the series of events that have unfolded in Syria since 2011. Since 2000, Syria has been run under the iron-fist of President Bashar-al Assad. In 2011, due to his oppressive policies, an uprising started to brew in Syria. The uprising which was initially just peaceful protests, soon took a violent turn. Shortly after, the state of Syria found itself in utter chaos and turmoil as mass atrocities were committed by all parties possible. Though the capital city of Damascus was the epicenter of the protests, the protests soon spread to the city of Aleppo in 2012. As the protests only grew, the Assad government took unprecedented measures to please the public. For instance, his government lifted the 48-year old state of emergency which was in place in Syria.³⁴ By mid of March 2011 the crisis in Syria was soon the center of attention regionally as well as internationally.³⁵

The current statistics of the Syrian crisis paint a sad picture. As of February 2018, as per the reports of the UN Office for the Coordination of Humanitarian Affairs (“OCHA”), there are 5.6 million refugees from Syria and around 6.1 million internally displaced persons (this is the hugest number of persons displaced due to a conflict ever).³⁶ Furthermore, there are more than 13.1 million Syrians currently who urgently require humanitarian assistance.³⁷ For the last six years and more, the Human Rights Council’s (“HRC”) mandated Commission of Inquiry (“CoI”) has furnished reports that crimes against humanity and war crimes have been committed by the Syrian government as a part of policy of state.³⁸

³⁴ Syrian Civil War Fast Facts, CNN, available at <http://edition.cnn.com/2013/08/27/world/meast/syria-civil-war-fast-facts/index.html>.

³⁵ Dr. Muditha Halliyade, *Syria - Another Drawback for R2P: An Analysis of R2P's Failure to Change International Law on Humanitarian Intervention*, 4 Ind. J. of L. & Soc. Equality (2016).

³⁶ Syria: Global Centre for the Responsibility to Protect, <http://www.globalr2p.org/regions/syria>.

³⁷ *Ibid.*

³⁸ *Ibid.*

Despite the horrifying statistics, till date, this humanitarian crisis hasn't become any less. There are no signs which point towards the fact that the crisis will be under control any time soon.³⁹ It is unfortunate to note that the international community hasn't played any role in mitigating the crisis; in fact, it even failed to take even timely action to be able to react to the crisis properly.⁴⁰ Furthermore, keeping in mind the dirty international politics at play, the probability of fruitful cooperation internationally seems rather dull currently.

The UN has attempted to curb the situation, but hasn't achieved anything. For instance, the UN Security Council has since 2013, passed 23 resolutions in total on subjects such as chemical weapons, humanitarian access and peace talks in Syria.⁴¹ Plenty of the resolutions are in regard to the responsibility to protect of the government, however, not one of the resolutions has been implemented *in toto*.⁴²

HAS R2P BEEN APPLIED TO THE SYRIAN CRISIS?

The crisis in Syria makes one think that why can't the principle of R2P which was such a success in Libya, be applied to Syria? However, because of the uniqueness of the Syrian crisis, the application of R2P sounds good only on paper. This is because the crisis is mired in multiple problems. These problems make one question the validity and legitimacy of the principle of R2P. Established by the Secretary General of the UN, The Independent International Commission on Inquiry on Syria in its report stated that the Syrian government had failed to uphold its duty of responsibility to protect its population.⁴³ It also found that the gross violation of human rights that had occurred in Syria, were committed at the hands of not only the government, but also armed anti-government groups.⁴⁴ These happenings called for talks on R2P and the responsibility of the Syrian government to prevent and react to the atrocities.⁴⁵

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

Since the Assad government failed to take any proactive steps to safeguard its citizens, the international community stepped up to extend helping hands to the Syrian public.⁴⁶

Though many states labelled the Syrian crisis as an internal matter, the events were such that it was impossible to simply call it a domestic matter.⁴⁷ For instance, the violence in Syria started to make its way across the border into the territory of Turkey. Also, the crisis of the Syrian refugees became a matter of international concern by late 2011.⁴⁸ Hence, all the more, it was established that the Syrian crisis was no mere domestic matter, but something much larger and graver with serious consequences.

Now, as also mentioned in the above paragraphs, there have been diplomatic measures taken by the international community to help halt the Syrian crisis and reverse its damage. However, these measures haven't done any good. Nations like Russia and China have continuously stuck to the belief that the Syrian crisis is a domestic issue and that the only way to resolve the civil war is to negotiate with the Assad government.⁴⁹ On the other hand, nations such as US, UK and France call Assad as the sole reason for the situation in Syria.⁵⁰ These nations call for a regime change, one way or another. Hence, there have been disagreements between the powerful nations as to what is the right solution for Syria.⁵¹ It is these disagreements which make it all the more difficult to apply R2P to Syria. If there won't be any consensus regarding what the situation even is, how can the principle of R2P, which is already narrow in scope be successfully applied to the situation? The answer is: no, it cannot. Until and unless the states come to a consensus on how exactly to view the Syrian crisis, R2P principle cannot be successfully applied to the crisis.

Countries such as the US, the UK and France have condemned the crisis in Syria, however, not once have they mentioned the word "R2P". Hence, we can see that the kind of state practice that major international players have adopted points towards the fact that there is more acknowledgement of principles such as sovereignty, principles of non-intervention and

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

integrity, as opposed to R2P.⁵² Also, it is crucial to know that the prime reason why the mass atrocities aren't coming to an end, is because of the lack of action by the UN Security Council.⁵³ There is never any consensus between some Member States. This results in the Security Council not being able to take proper action to stop the atrocities.

LIMITS OF R2P AS EVIDENCED FROM THE SYRIAN CRISIS

Several critics of R2P claim that the norm is history repeating itself, with the Western states, under the garb of bearing the “white man's burden”, asserting their power over the weaker under-developed and developing states.⁵⁴ Though, the author doesn't believe in this, it is extremely hard to deny this proposition as well when one looks at the state of affairs in Syria. The big players such as Russia, China, the US, the UK and the France have been battling each other and opposing each other's ideologies while trying to deal with the Syrian crisis. The author believes that this has become an ego battle, if nothing else.

It is sad to note that though, the UN is the perfect platform to arrive at a consensus about which principles and ideas would be the most efficient and effective in resolving issues faced world-over, the exercise often becomes futile with powerful states dissenting and with coalitions forming of the not-so-powerful states. Either way, this results into no action being taken, or agreements taking place but between a select few.⁵⁵ Unfortunately, in the case of Syria, the principle of R2P has met the same fate. No fruitful action has been taken, with the resolutions on Syria getting vetoed by Russia and China.

There are several limitations of the principle of R2P which have been highlighted by its inapplicability to the Syrian crisis. The author has culled out three major limitations of the principle of R2P. Firstly, after the 2005 World Summit Outcome Document, its scope was substantially reduced. As mentioned in the previous sections, post this Summit, R2P was to be applicable only in situations when the four gravest crimes were committed: war crimes,

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Supra Note 1.*

⁵⁵ *Ibid.*

genocide, ethnic cleansing and crimes against humanity. R2P doesn't come into play in times of simple armed conflict or in situations of natural disasters occurring. Hence, this has severely limited the scope of R2P in Syria as there hasn't been consensus between states as to what exactly are the nature of crimes that are being committed in Syria.

Secondly, the concept is very "statist". This can be explained by merely looking at the three pillars of R2P. The focus is only on what *states* can do; there is no mention of non-state actors and how they can be of help. This needs to be remedied. An example of how non-state actors can come into play is the Boko Haram tragedy.⁵⁶ It is unfortunate to note that Nigeria and the international community didn't do anything to help the situation.⁵⁷ Change was seen only when parents of the girls organized themselves to start taking action to save their daughters from Boko Haram.⁵⁸ Here, we see the pivotal role non-state actors can play in situations of mass atrocities being committed. The author believes that the rest of the civil society should, too, play an active role in dealing with human rights violations. In Syria too, only once when other actors too start to play an active role, will the situation come under control. It is clear that solely handing the responsibility to states can lead to an impasse. Hence, there is all the more reason for other players to step in and try and control the crisis in Syria.

Thirdly, and perhaps the most relevant in the case of Syria, is the outdated membership of the Security Council and the inadequacies attached with it. One criticism of the Security Council has been that there was no action and opposition to the events that transpired in Syria because of the paralysis of the Security Council. Whenever, the members would try to pass any resolutions regarding the situation in Syria, Russia and China, backed by developing nations such as India and Brazil for instance, would stop it from happening. In fact, Russia and China have together vetoed six draft resolutions of the Security Council and additionally, Russia has also vetoed five resolutions.⁵⁹

⁵⁶ Vesselin Popovski & Benjamin Maiangwa, *Boko Haram's Attacks and the People's Response: A 'fourth Pillar' of the Responsibility to Protect?*, 25 Afr. Security Rev., Apr. 06, 2016 at (2016).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Supra Note 36.*

CONCLUSION

Though, the author agrees that R2P as a principle has several limitations, it is important to note that R2P was never supposed to be an overarching principle in the first place. R2P maybe narrow in scope, but is very deep in resource.⁶⁰ It will be naïve to expect the principle of R2P to resolve all issues that exist today; it can't- and isn't designed- to solve everything. There are plenty of other human rights machineries to deal with everything else that the principle of R2P doesn't cover. The United Nations is extremely large and R2P is only one of its many aspects. It is at the end of the day, a limited concept. R2P is not the answer to all evils; it wasn't designed to be a "panacea".⁶¹ There is no denying that it has saved lives. But, it will be unwise to over-expect from R2P. Even when it comes to the Security Council, it cannot be expected to resolve all issues that we currently face. No doubt that it is the chief organ of the largest international organization in the world to look after peace and security matters. However, we need to look at other branches of the UN as well, and not only the UN, need we to expect from other regional and international human rights organizations to step up.

Even though R2P has its fair share of limitations, as is clear from the Syrian crisis, it cannot be denied that it is an extremely crucial principle nevertheless. One or two failures cannot change the fact that it is because of R2P being on place every day, that 7 billion people on our planet live peacefully. With a few exceptions, all the governments of states responsibly protect their citizens and uphold their obligations towards their citizens. Therefore, taking the Syrian example, the lesson shouldn't be that R2P should be thrown aside and Syria should be left in its current state of affairs. We must remember that more people die because of lack of intervention and not because there is intervention.

Just recently, the US, France and the UK justified their air strikes in Syria by concentrating on the need to ensure that the international ban against the use of chemical weapons remains in play, and to damage Assad's chemical weapons collection and to ensure no further chemical

⁶⁰ Vesselin Popovski, *The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but Not Twins'*, 7 *Security Challenges* (2011).

⁶¹ *Syria and the Problem of 'responsibility to Protect'*, 2013 *The Guardian*, Aug. 27, 2013 at (2013), available at <https://www.theguardian.com/world/2013/aug/27/syria-problem-responsibility-to-protect>.

weapons' attack takes place on civilians of Syria.⁶² This all the more points towards the fact that we need the principle of R2P in place, in order to ensure that such blatant violation of human rights by the powerful states doesn't take place.

The author believes that what is required is a strong political will of the states. Resources which all states have should also be judiciously utilized by them to help uplift Syria. The true challenge then becomes convincing other states that it's in their interest to intervene the downtrodden states. In this regard, another way to implement R2P effectively is to get the developing nation states such as Brazil and India involved in the correct manner.⁶³ Their focus should be on building norms and developing global governance institutions, rather than looking to expand themselves as superpowers. These developing nations can play a proactive role in executing the R2P principle efficiently.⁶⁴

Hence, though R2P is a good principle to have in place, it cannot be sole solution to the crisis in Syria. Other international and regional instruments and organizations too need to be actively utilized if Syria has to be restored to its peaceful state.

⁶² Mark Weller, *Syria Air Strikes: Were They Legal?*, 2018 BBC, Apr. 14, 2018 at (2018), available at <http://www.bbc.com/news/world-middle-east-43766556>.

⁶³ *Ibid.*

⁶⁴ *Ibid.*