



Operationalising Responsibility to Protect

(Legitimacy & Efficiency)

Chapter 3 - Responsibility to Protect and Sovereignty

AUTHOR

Srruthi Lekha Raaja Elango
Co-director, Polity Link

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Abstract

The Responsibility to protect doctrine, accepted unanimously, by nature was drafted from the victim's perspective and the necessity to protect the human rights of the civilian victims and therefore establish peace. This was a landmark doctrine, which re-established the importance of human rights and the responsibility of the state and the international community to do so in any instance. This doctrine was an output of the call by the UN Secretary General Kofi Annan, who insisted on the necessity to clear the confusions and arguments between sovereignty and human rights to establish peace, at a point, when the world was witnessing mass violations of human rights nationally and regionally, which made it complicated to enforce authority to protect the victims inside a sovereign territory. Responsibility to protect gives substantial support to the dispute resolution methods for the new wave of war and conflict, dominated by civil war, regional conflict, ethnic cleansing and mass atrocities. However, it has been a very complicated discourse of humanitarian intervention, because of the questions of legitimacy and efficiency in operationalising it.

Since the Westphalian principles, post major colonial rules and post Cold War, the world nations have been very particular with the importance of national integrity, sovereign authority and the principle of equality in world affairs, where intervention is always disputed. The main reason for the dispute in humanitarian intervention is the question of legitimacy and efficiency of interventions. The question of legitimacy for the doctrine should be directly integrated into the evaluation of regulating authority through sovereignty and the importance of protecting human rights internationally. The question of maximising efficiency should be focused upon successfully institutionalising positive peace as a universal goal, evading operational challenges, influence of biases in decision making, etc. Studying the patterns of legitimacy with the role of Human rights and sovereignty and the patterns of efficiency in institutionalising peace through the approach of universality and its scope of measures, this series of papers on operationalising R2P through maximising the legitimacy and efficiency of this doctrine. Therefore, strongly contributing to the debates of improvising and regulating the norm of humanitarian intervention for peace, the most needed improvisation of this century's peace and conflict literature.

List of Abbreviations

AMIS - African Union Mission in Sudan

EUFOR Tchad/RCA - EU Military operation in Easter Chad and North Eastern Central African Republic

EULEX KOSOVO - European Union Rule of Law Mission in Kosovo

EUTF - EU Emergency Trust Fund for Africa

ICISS - International Commission on Intervention and state sovereignty

IDF - Israeli Defence Force

IHL - International Humanitarian Law

IMF - International Monetary Fund
AU - African Union

MINURCAT - Mission Des Nations Unies en République Centrafricaine et au Tehad

NATO - North Atlantic Treaty Organisation

R2P - Responsibility to Protect

UDHR - Universal Declaration of Human Right

UN - United Nations

UNAMID - African Union - United Nations mission in Darfur

UNGA - United Nations General Assembly

UNHRC - United Nations Human Rights Council

UNMIK - United Nations Interim Administration Mission in Kosovo

UNPK - United Nations Peacekeeping

UNSC - United Nations Security Council

WSOD - World Summit Outcome Document

Methodology

R2P was called upon due to the violation of mass human rights and the need for efficient humanitarian action. This humanitarian action was obstructed due to the confusions amongst security dilemmas and sovereignty in international affairs due to the question of legitimacy, which further impacts efficiency. These debates and dilemmas are also caused due to the difference in theory and reality while practising. Liberal notions while making soft laws in order to achieve maximum unanimity, often are too disruptive and difficult to operationalise with complete legitimacy and efficiency.

Discourses and debates even after decades of humanitarian intervention, peacekeeping, human rights measures and R2P, revolve around the question of - what legitimacy does that specific actor have to take humanitarian action under R2P and how is it efficient? Here again we reach a point that the two factors which influence R2P as a humanitarian action is its legitimacy and efficiency.

This paper analyzes legitimacy and efficiency of R2P on the basis of content analysis⁷, where the contents of R2P and its composition in theory and practise are analysed to be maximised. Content analysis is a method where materials such as documents, texts, literature, conversations, verbal and symbolic mentions, etc from both theory & practise are interpreted in different contexts. R2P is an international humanitarian doctrine, which has originated through dialogues and exists in value through documents from UN and governmental practises. This provides R2P with a strong significance of both theory in the documents of its values and in practise of its use. For the purpose of our research we shall use documents from the UN, Governments, academical writings, theories etc, to analyse its nature of existence and the authority it powers as the birth of R2P lies in this above. This paper shall also use materials from practical happenings such as decision making documents from organisations, governments, historical actions and case studies from reports, comments and interviews to research on its nature of use and effectiveness R2P holds.

Another significant point to notice here is that, there exists a gap between theory and practise of R2P, which has caused issues in achieving the right legitimacy and efficiency, as mentioned by the UNPK Leader upon interview - "there is no or less communication between academia and practitioners".

This has guided the paper to take a method in approaching the research through a bridging perspective between both academia or theory and practical reality. Therefore, the following is the methodology of this paper using the content analysis methods and tools in answering the research question of maximising legitimacy and efficiency of R2P :

- Researching literature, theories, output documents and resolutions of R2P under theoretical perspective through evaluative assertion analysis⁸ as a method of content analysis provides us with the understanding that the concept of legitimacy for R2P is driven by the concepts of Human rights and Sovereignty. The evaluative analysis guides our understanding of how states, conflicting stakeholders and organisations interpret R2P and authorise legitimacy.
- Researching through comments, interviews, historical actions, case studies, interpretations, etc under the practical perspective of R2P through contingency analysis as a method of content analysis has provided us with the understanding that R2P lacks universality and the vagueness in defining the efficient scopes of measures for R2P. This leads this paper to the point of “what if” strategy using universality and the right set of methods to maximise efficiency. This helps the research in reaching recommendations as a result of analysis of the contingency from the present and the past.
- Analyzing the theoretical perspective and practical perspective using the tools of content analysis, this paper also tried evading the point of mislead or gaps in between the both. Bridging the theory and practise is achieved by using the methods of content analysis through interviews of academicians and practitioners.

According to the above methodology used to analyse the research materials and resources, this whole series of papers are structured beginning with (a) : the analysis of legitimacy using evaluative assertion with two of R2P’s main concepts - Human rights and Sovereignty. Following this, using the (b) : contingency analysis method, resources from the practise of R2P is structured in this paper using the two factors of R2P’ efficiency - Universality and Scopes of measures. (c) : Bridging the theoretical and practical understanding of R2P follows to fill in the missing gaps of the above two sections. Analysing (a), (b) and (c) provides us with the end result of our research target, the recommendations to operationalise R2P with better legitimacy and efficiency.

Responsibility to Protect and Sovereignty

Various documents established on the lines of humanitarian intervention, including the ICISS document acknowledges the dual facets of sovereignty - Internal and External Sovereignty. Practices and phenomena since the westphalian principle of 1648, has always highlighted the importance of equal treatment and mutual respect¹. Ever since, the slow distinction and understanding of internal and external sovereignty emerged, where internal sovereignty referred to the supreme power within a territory for a specific population and external sovereignty was the equal recognition as a state in the international arena. Similarly, internal sovereignty was responsible to respect and protect the rights and dignity of all people within the state and external sovereignty was responsible to respect the sovereignty of other states in equal recognition. This concept clearly lays a layer of primary responsibility to protect and duty to safeguard the rights of its population on the internal sovereignty, giving rise to an internal responsibility.

The role of internal sovereignty

“This internal responsibility encompasses the responsibility to protect, setting forth certain obligations that all State’s must fulfill in order to receive the benefits of sovereignty”² This by concept and practise has the highest form of legitimacy, with the most important consideration of “Local legitimacy”, meaning the civilian population’s support to the rulers or the government, due to majority based ruling, cultural biases, extremism, etc. Pillar 1 of the Responsibility to Protect doctrine addresses this principle, where the states have their internal responsibility to protect the rights of its own population against the mass atrocities. However, this pillar does not possess a binding definition of the right approach to protect its own population against mass

atrocities. Internal sovereignty in many cases gives the authority and power to the state or other ruling entities to decide their own definition and state of “peace”, “protection of Human rights”

¹"Sovereignty", in *Beyond Intractability*, , 2021, <[https://www.beyondintractability.org/essay/sovereignty#:~:text=\(Internal%20sovereignty%20means%20supreme%20authority,this%20power%20in%20equal%20measure.\)>](https://www.beyondintractability.org/essay/sovereignty#:~:text=(Internal%20sovereignty%20means%20supreme%20authority,this%20power%20in%20equal%20measure.)>) [accessed 17 January 2021].

²"The report from the Ottawa round table for the international commission on intervention and state sovereignty (ICISS)", in *Canadian Foreign Policy Journal*, vol. 8, 2001, 125-129.

and “Mass atrocities”. One of the best examples for the same, is the rule of the Taliban in Afghanistan, where Taliban ruled territories, function under the rules set up on the basis of a singular ideology. This ideology, though it restricts the basic freedom of rights, committed mass murders and violent governance, has the local support in the name of religion and culture, therefore having the “Local legitimacy”. Although UN official mentioned in the interview, that there are existing conventions and universally accepted definitions for the mass atrocities, for example the Genocide convention, in the case of a member state unwilling to protect its civilian on any basis shall not stand by it. In such cases of state governance, their law making bodies define their approach towards human rights, which is a hard law in nature. Responsibility to protect doctrine in this matter is merely a soft law, which has no binding power over the state’s hard law. This leads to inefficient protection of human rights, due to the difference and the power of internal sovereignty.

The role of external sovereignty

In the case when a state(s) is unable to protect its own population in conflict, it may look for the support of international intervention. This leads to consent based intervention.³ Consent based intervention is one of the most diplomatic and legitimate options for intervention and R2P implementation as an international community. Achieving this consent from the state in conflict through serious diplomatic mediation and negotiation should be the primary goal. Closer economic and political allies, can be a lead in receiving consent from its ally in conflict, due to the factor of common interests, etc.

In other cases, when the civilian population is against the ideologies of the state and when the state is the perpetrator or is unwilling to protect its population and keep up the internal

³“Legitimacy, Peace Operations and Global-regional Security”, in , , 2008, <https://www.researchgate.net/publication/37147652_Operationalising_the_Responsibility_to_Protect_The_Continuing_Debate_over_where_Authority_should_be_Located_for_the_Use_of_Force> [accessed 20 January 2021].

responsibilities, it can lose its internal sovereignty⁴. After the region or state loses its internal sovereignty and authority, the external sovereignty comes into play, where the international states recognised as sovereign powers bear the responsibility to protect. An interesting understanding in this process of power shift, is that both the recognition of internal and external sovereignty is by the various individual states as a collective international community and that this sovereignty has no effect if self declared or accepted by just a minority. Here again, the problem is that R2P is not a hard law. R2P doctrine must be converted into a format of universally binding hard law on the basis of human rights without regards to the sovereign powers of individual states. Trade laws, International tax systems, and other economic regulations have made it to the state of being binding in nature, even without any direct sovereignty. Similar approaches can be taken to improvise R2P's binding nature, including the method of parallel human rights and monetary actions. Inclusion and specification of international conventions such as the Genocide convention, etc, can be used to make R2P more binding in nature.

When the states do not consent for intervention using external sovereignty, “coerced consent”⁵ must be used as a resort. Coercive measures⁶ such as withdrawing economic support through loans from IMF and World Bank, or ending military assistance to the state denying to give consent can be a resort to gain legitimacy in intervention. For example, on September 9, 1999, President Clinton of the United States of America, used coercive force through his decision to halt IMF and World Bank loans investing in Indonesia, during the East Timor Genocide. This was to force Indonesia, whose government was performing a genocide to permit

international intervention led by Australia. Coercive pressure and various diplomatic blocks, led to the authority given to deploy multinational force, by the Indonesian government, providing high legitimacy for the same.⁷ This increases legitimacy directly.

⁴P Nicholas, "THE RESPONSIBILITY TO PROTECT: WEAKNESSES AND RECOMMENDATIONS.", in , , 2020, <https://www.researchgate.net/publication/340280732_THE_RESPONSIBILITY_TO_PROTECT_WEAKNESSES_AND_RECOMMENDATIONS> [accessed 21 January 2021].

⁵"Legitimacy, Peace Operations and Global-regional Security", in , , 2008, <https://www.researchgate.net/publication/37147652_Operationalising_the_Responsibility_to_Protect_The_Continuing_Debate_over_where_Authority_should_be_Located_for_the_Use_of_Force> [accessed 20 January 2021].

⁶N Wheeler & T Dunne, "East Timor and the new humanitarian interventionism", in *International Affairs*, vol. 77, 2001, 805-827.

⁷N Wheeler & T Dunne, "East Timor and the new humanitarian interventionism", in *International Affairs*, vol. 77, 2001, 805-827.

When the states don't react to coerced consent, then the last resort is to find legitimacy to intervene without any consent. It is also important to note that the “external sovereignty” is only granted and recognised with states who primarily fulfill their internal responsibilities⁸. These external sovereignty and grant for authority along the process of procedural legitimacy has various important and specialised components such as the United Nations Security Council, Regional organisational authorisation and various other international recognitions. These processes define how and what kind of authorities the external sovereignty possess. One of most important and highly valued procedural legitimacy is the approval and actions from the United Nations Security Council. They can be categorised in three ways as follows :⁹

1. Permissive; where R2P operations are taken to be authorised with the permission of the Security Council
2. Conservative; where R2P operations are hesitantly neglected to be approved, due to the political obstructions of Veto power.
3. Satisfying; where R2P operations are seized from the UNSC due to political crisis but authorises states to take action under voluntary willingness.

Permissive, Conservative and Satisfying categories of authorisation, clearly shows the nature of procedural legitimacy, where the structure of approval solely depends upon political ideologies and desired outcomes. Decisions can therefore be blocked in the level of UNSC, The highest form of legitimacy. ICISS documents and various drafting periods of R2P, saw major failures in

bringing up systems, to avoid the Veto block. This special power in the external sovereignty structure, makes it difficult to legitimately intervene and implement R2P measures.

Beyond the United Nations Security Council, regional organisations hold the next major authorisation power for legitimacy and the external responsibility to ensure high efficiency in protecting human rights and institutionalising peace. States, collectively establish authority and

⁸P Nicholas, "THE RESPONSIBILITY TO PROTECT: WEAKNESSES AND RECOMMENDATIONS.", in , , 2020, <https://www.researchgate.net/publication/340280732_THE_RESPONSIBILITY_TO_PROTECT_WEAKNESSES_AND_RECOMMENDATIONS> [accessed 21 January 2021].

⁹M Labonte, "Whose responsibility to protect? The implications of double manifest failure for civilian protection", in *The International Journal of Human Rights*, vol. 16, 2012, 982-1002.

sovereignty, through agreement, treaties and other forms of mutual cooperation in various structures to gain mutual benefits. Ever since the World wars, the power of alliances and coalitions has never required a substantive reason to be more effective in persuading a goal. Several R2P operations in history had the role of prominent regional organisations, especially ones like the NATO, European Union and the African Union.

R2P beyond the United Nations

According to the charter of the African Union, a state, by joining the mandate, gives the regional organisation, here the African Union, the authority to intervene under grave circumstances as the AU has a “ the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity”¹⁰. Such agreements establish collective sovereignty, focusing on a specific circumstance. Through this collective sovereignty, countries exercise external sovereignty in another country. Regional approaches are closer in proximity for cooperation on the basis of cultural contexts and execution, with relatively lesser organisational issue, making regional intervention more practically legitimate than international intervention. However, there is a relatively higher negative effect of regional decision making and authorisation of external sovereignty, due to the fear of the domination of the regional hegemony and therefore suppression of the victim population. This has in many cases led to more complication in

peacebuilding. Also, the risk of inefficient execution by the regional coalition can cause more actors to be involved in the conflict, within the same region making the conflict more crowded, tangled and confused to handle in order to institutionalise peace.

Further analysing the legal establishments providing collective sovereignty, clauses of Regional agreements, authorising interventions may run into conflict with the UN Charter article 103, which states “In the event of a conflict between the obligations of the Members of the United

¹⁰“CONSTITUTIVE ACT OF THE AFRICAN UNION”, in *Au.int*, , 2021, <https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf> [accessed 21 January 2021].

Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”¹¹ Whereby, when states although give their prior consent to the regional organisation for intervention, stand in violation of the Article 2(1) of the United Nations Charter which states “The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.”

Following the argument with Article 2(1) and 103 of the UN Charter, any intervention with the use of external sovereignty is violating the international norm and therefore stands against the legitimacy and legal provisions from the United Nations. However, Article 103, stands only for member states and not Regional Organisation as a collective entity. Therefore, actions as the regional organisation is still not in violation of the Charter, however, actions by individual states with the authority of the Regional Organisation is still in violation.

An important point to note, the United Nations Charter is highly ambiguous, which gives every actor the chance to act with personal interpretation and evade any checks and balances in the process. Article 53 of the UN Charter prohibits the use of “enforcement action” by any actor in a regional peace and security agenda but, in the Article 52 of the UN Charter, “appropriate” means

of measures is authorised to maintain regional peace and security.¹² This ambiguous nature of the UN Charter is very self contradictory and leaves the Regional Organisation’s the space to take authority through external sovereignty to enforce R2P measures, eg. NATO’s approach of “act for their own ends” rather than in the interest of international peace and security.¹³

¹¹Chapter XVI: Article 103 — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications", in *Legal.un.org*, , 2021, <<https://legal.un.org/repertory/art103.shtml>> [accessed 21 January 2021].

¹²Chapter VIII: Article 52 — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications", in *Legal.un.org*, , 2021, <<https://legal.un.org/repertory/art52.shtml>> [accessed 20 January 2021].

¹³J Hickey, "Challenges to Security Council Monopoly Power over the Use of Force in Enforcement Actions: The Case of Regional Organizations", in *Scholarlycommons.law.hofstra.edu*, , 2004,

Regionally approaching, authority for exercise of external sovereignty, needs more broadening of approach to involve international players, to avoid regional hegemony and risk of inefficient execution by backing up with global powers. In general, external sovereignty can be riskier when used regionally than when coordinated internationally. Also, on the other hand, International approach needs more consensus in narrowing down the scope to provide clarity and specification to avoid ambiguity and the space for boundless legitimacy, which might be misused for self interests of individual actors. Avoiding all these concerns affecting the legitimacy of R2P, we can build a better system of legitimacy for the implementation of the doctrine. The ambiguity and UNSC block in the UN procedures can also be balanced with the legislative and binding decisions of the regional organisations, coalitions and multilateral interventions.

Multilateral interventions, coalitions and regional organisation's legitimacy in authorising intervention on the basis of R2P, can also be implemented on the basis of gaining retroactive UN support, through measures such as General Assembly approval according to chapter VII of the UN Charter, where UNGA can recommend intervention.¹⁴ A General Assembly recommendation will have two thirds approval of the international community, which shall provide a higher level

of legitimacy for intervention. This can also be retroactive in nature by seeking post hoc legitimization for the actions of a "coalition of the compassionate", as Rice and Loomis argue :

When all else fails, a member state or coalition of members may intervene to save lives at their own risk and expense and seek retroactive UN or regional support. In this instance the gravity of the humanitarian crisis, the purity of humanitarian motives, and the efficacy and proportionality of the military action should be critical considerations in the achievement of ex post facto legitimization. Member states that take such action should be

<https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1894&context=faculty_scholarship> [accessed 20 January 2021].

¹⁴N Wheeler & T Dunne, "East Timor and the new humanitarian interventionism", in *International Affairs*, vol. 77, 2001, 805-827.

prepared to have their intervention formally condemned and penalties assessed if it fails to meet the above criteria.¹⁵

Observing the pattern of legitimacy from the “Local legitimacy” to “Loss of internal sovereignty” to the exercise of power with “external sovereignty”, influencing legitimacy for exercising authority through R2P, the most important factor is the influence and role of “ideologies”. Ideologies play a very important role in gaining the civilian support, legal support and political power to exercise power and authority through sovereign power. Therefore, to tackle the role of sovereignty in legitimacy of R2P, the doctrine needs a popular or majorly accepted approach to the ideology it upholds. This ideology should be unbiased, politically neutral and solely structured on the lines of sustainable governance. This paper proposes the use of happiness index, equality index, violation of basic human rights and the access to globalised structures and entities when building the right approach of ideology for promoting the legitimacy of R2P. Simply, the mark of “mass atrocities” cannot give a structure and legitimacy to R2P, as it lacks the power to define the interests and culture of peace and human rights for the civilian population, whose ideologies distinctly vary (Ideology politics).

To look further, when we consider the case of Libya, the protection of human rights through its R2P operation, observed a very prominent bias, when the forces from NATO extended their support only to those citizens who supported the opposition to the Qaddafi’s regime¹⁶. Here, we see a clear failure in the very goal of “Responsibility to Protect”, where both the internal and external sovereignty failed to fulfil their duties, due to differences in ideologies, which was inflicted through their sovereign powers. Therefore, there is a clear need of clarification, details, universality and indivisibility while authorising the external sovereignty to take actions, when the internal sovereignty fails. This point of legitimacy being affected by factors such as bias and implementation challenges when evaluating sovereignty and Human rights leads the next part where the efficiency is evaluated to be maximised.

¹⁵R S.E. & L.A.J, "The evolution of humanitarian intervention and the responsibility to protect. Beyond Preemption: Force and Legitimacy in a Changing World. 59-95.", in , , 2007, <https://www.researchgate.net/publication/287766831_The_evolution_of_humanitarian_intervention_and_the_responsibility_to_protect> [accessed 23 January 2021].

¹⁶B Haslett, "No Responsibility for the Responsibility to Protect: How Powerful States Abuse the Doctrine, and Why Misuse Will Lead to Disuse", in *Core.ac.uk*, , 2021, <<https://core.ac.uk/download/pdf/151516589.pdf>> [accessed 26 January 2021].