



Operationalising Responsibility to Protect

(Legitimacy & Efficiency)

Chapter 1 - Introduction, History and Background of R2P

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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.

1. Introduction to Responsibility to Protect

After centuries of international wars and especially the cold war, wide instances and a dynamic pattern of civil war and internal instabilities saw a quick surge. Internal commotions caused by internal perpetrators became the talk of the international security agendas as the impact of internal/regional unrest affected the whole world. On the other hand, the international community could hardly act legitimately and legally due to the restrictions in the international law uprooted with the basic respect of national sovereignty in reacting to civil wars and internal perpetrators .

Years of conflict in Rwanda¹ and Bosnia-Herzegovina² was left unattended without proper approach to upbringing peace, where the United Nations failed to act in taking the right and necessary decisions to prevent the Genocide. In Kosovo³ , during the paralysed phase of the UNSC, NATO intervened to prevent ethnic cleansing, which raised arguments of the breach of international law and of the national sovereignty of Serbia.

Then United Nations secretary general “ Kofi Annan addressed the general assembly in 1999 and challenged the member states to reevaluate their understanding about sovereignty.”⁴ His address was solely based on the argument of the level of legitimacy in national sovereignty when the very basic human rights were violated. Followed by this, the ICISS, sponsored by the Canadian government in 2000 was established to research and investigate possible solutions to resolve the

argument of the importance between Human rights and Sovereignty. One of the most difficult dilemmas in world affairs took around 10 conferences to arrive at possible solutions and

¹"BBC NEWS | World | Africa | Heavy shelling in Burundi capital", in *News.bbc.co.uk*, , 2008, <<http://news.bbc.co.uk/2/hi/africa/7354005.stm>> [accessed 8 January 2021].

²"Case Law of the International Criminal Tribunal for the Former Yugoslavia: LISTING OF CASES INCLUDED", in *Hrw.org*, <<https://www.hrw.org/reports/2004/ij/icty/2.htm>> [accessed 10 January 2021].

³Independent International Commission on Kosovo (2000), *Independent International Commission on Kosovo (2000)*, in , Oxford University Press, 2000, p. 2, <<http://reliefweb.int/sites/reliefweb.int/files/resources/6D26FF88119644CFC1256989005CD392-thekosovoreport.pdf>> [accessed 12 December 2020].

⁴ Koffi Annan, 1999 Speech to the General Assembly, Secretary-General address to the UN General Assembly, New York, NY, September 20, 1999

perspectives. The responsibility to Protect⁵, an international norm, which focuses on enforcing the responsibility by the national, regional and international actors to protect the civilians from four mass atrocities, namely - Genocide, War Crimes, Crimes against humanity and Ethnic cleansing. The R2P has three main pillars, on the basis of function, procedure and legitimate intervention as follows⁶ :

Pillar 1 - “Every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing”

This states that national governments bear the main and primary responsibility to protect it’s population from these mass atrocities.

Pillar 2 - “The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility.” This states that the international community has the responsibility to assist and help the states, if the state is unable to protect it’s population due to any reasons including economical, political, social or resource based issues.

Pillar 3 - “ If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.” This states that in places where the states fail or are unwilling to protect its population or is the internal perpetrator itself causing damage and destruction to its own population, then the international community should act to protect the population from the mass atrocities.

R2P’s pillars 1 and 2, are not very complicated in nature, they are simple, straight and guided by binding laws. For the **Pillar 3 of R2P**’s coercive measures of humanitarian intervention and international pressure such as sanctions, embargoes and in extreme cases - military intervention,

the United Nations Security Council is required to authorise and legitimise the action. R2P however lacks answers for alternatives in achieving legitimacy and efficiency when blocks in decision making and failure in R2P operations arise. There have been various debates on it’s

⁵“What is R2P? - Global Centre for the Responsibility to Protect”, in *Global Centre for the Responsibility to Protect*, 2021, <<https://www.globalr2p.org/what-is-r2p/>> [accessed 5 December 2020].

⁶ Resolution adopted by the General Assembly on 16 September 2005 [without reference to a Main Committee (A/60/L.1)] 60/1. 2005 World Summit Outcome. The United Nations, General Assembly.

discourses and how it could be made efficient with higher legitimacy - Will regional legitimacy be sustainable and substantial in case of UNSC failure? Will coalitions and alliances make better efficiency in implementing R2P? Why are countries behaving in different frequencies of interests for different issues? And so on. Countries have performed better in few conflicts and committed grave mistakes due to several reasons in others, above which the worst is when these countries are puzzled about the measures they should take for a conflict because of blocked legitimacy and inefficient operationalisation.

R2P is one of the prominent measures in the **field of humanitarian intervention** and also raises several concerns about its implementation through the right form of legitimacy. This paper therefore shall try resolving this puzzle from the humanitarian intervention perspective in international affairs and global politics to maximise the legitimacy of R2P. This will be done through analysing both the understanding of Legitimacy in the context of human rights, sovereignty, universality and the scope of measures. The **final outcome** of this analysis **for this series of papers is to provide recommendations** through various **findings for maximising legitimacy and efficiency in operationalising R2P.**

2. History and Background of Responsibility to Protect

Followed by the call of former UN Secretary General Kofi Annan, The ICISS was only able to catch hold of the ethics in politics and governance with humanity, when Francis Chen and Roberta Cohen⁷, took the “victim’s perspective” to first formulate the idea of “Responsibility to Protect” based on the output from nearly a dozen conferences. The victim’s perspective

prioritises Human rights and highlights the importance of national sovereignty in protecting the same. If the national powers are unable or unwilling to protect human rights, then the international community can support or intervene respectively to save the victims of the mass atrocities, therefore the state in conflict, losing the power of national sovereignty.

⁷P Stoett, "Responsibility to Protect: The Global Effort to End Mass Atrocities, Alex J. Bellamy, Cambridge: Polity Press, 2009pp. 249", in *Canadian Journal of Political Science*, vol. 43, 2010, 35–66.

The document however was worked in a way to favour the space for the nation's interests where the only legitimate R2P intervention was limited to "Large scale loss of life" and "large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."⁸ The open part for interpretation lies where the lack of definition of the word or measurement of "Large scales" exist. The document enforces on the practise of Just war where right intervention shall only be the last resort with proportional means and with reasonable guiding principles. The document also recognises the United Nations Security Council to have the authority to practise and implement actions on the lines of the Responsibility to protect doctrine to intervene for the sake of protecting human rights. If the UNSC, fails to come to consensus and act due to any political or structural reasons, the document recognises other sources of legitimacy which are procedural including the United Nations General Assembly and other regional authorities⁹.

The document as it had provided opportunities for national sovereignty to still hold its authority until the saturation point was hit, the international community had several opinions on the proposal of the document. The United States of America objected to all restrictions which were being placed on the necessity of the use of force. All the Veto powers repelled strongly against the suggestion on the exception of the use of veto power in any circumstances. The coalition of the Non Alignment Movement, represented by the Republic of India, raised it's argument that such a norm would be unnecessary where there are so many more resorts already in place with

regards to humanitarian crises. However, as the African Union¹⁰ had made Humanitarian intervention permissible in their 2000 constitutive act, the African states were supportive to R2P, despite their vulnerable experiences with the past imperialism and colonialism.

⁸ Gareth Evans and Mohamed Sahnoun, Report of the International Convention on Intervention and Sovereignty, <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed, December 7 2020)

⁹M Salleh & U Duguri, "The Legitimacy of "Responsibility to Protect" (R2p) in International Relations: A Conceptual Review", in *International Journal of Academic Research in Business and Social Sciences*, vol. 9, 2019.

¹⁰ C Wyse, "The African Union's Right of Humanitarian Intervention as Collective Self-Defense", in *Chicago Unbound*, , 2021, <<https://chicagounbound.uchicago.edu/cjil/vol19/iss1/9/>> [accessed 9 December 2020].

Even after a series of criticism for R2P, it still thrived into discussion and highlight as Kofi Annan put R2P on the agenda of his 2004 High level Panel on threats, which focused on the preparations for the 2005 World Outcome Summit¹¹. This committee with Gareth Evans, worked hard to enforce the outputs of the ICISS document. However, modifications were inevitable, especially the one with the power of Veto¹². The committee proposed an indicative voting procedure for the veto power, instead of limiting them. The indicative voting required vetoes to be publicly declared with a valid explanation. This was put in place, because of the fact that the P5's international reputation played a very important role in their world affairs, and that the obligation to explain their veto decision to the world, would put them in pressure to take the most rational, human and globally benefiting decision.

Eventually as it stands in history, the Responsibility to protect doctrine's initial idea originated in the 2001 report of the International Commission on Intervention and state sovereignty. This principle was modified and administratively formulated through various conferences, debates and in committees to be adopted in the General Assembly of the World Summit Outcome Document (WSOD) of 2005. This was later affirmed by the UNSC in the resolution 1674 in 2006 followed by which the United Nations General Assembly released its first specific R2P Resolutions in the year 2009 (A/RES/63/108).

¹¹ Gareth Evans and Mohamed Sahnoun, Report of the International Convention on Intervention and Sovereignty, <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed, December 7 2020)

¹² R Alford et al., "Designing Social Inquiry: Scientific Inference in Qualitative Research.", in *Contemporary Sociology*, vol. 24, 1995, 424.