

## **From Humanitarian Intervention to the Responsibility to Protect (R2P)**

The inability of the international community to protect civilians under mass atrocities at several instances in the 1990s and controversies regarding unauthorized interventions signalled the urgency for an evolution in the idea and legitimacy of humanitarian intervention. Consequently giving rise to the doctrine of Responsibility to Protect (R2P) as a norm under the international law that assists the international community to protect populations against mass atrocities within the bounds of sovereign states.

### Humanitarian Intervention

Humanitarian intervention has no legal definition as such. It refers to “measures taken by outside parties to respond to crises involving serious harm to basic human rights, to protect the affected population from such harm, to remove the sources of that harm, and perhaps to punish those responsible for it in the past” (Jhonson 2015). A range of measures can be considered as a response to crises, interventionary measures such as legal, political and economic while, “its fundamental premise is that outside powers have the right to intervene, through military means, in other countries to protect people against atrocities” (Gierycz 2010).

Humanitarian intervention morally finds its ground in the idea of human rights that gained recognition during the European Enlightenment in the 17th century; it was also around this time that human rights came to be recognized as a part of natural law. “Early recognition of the doctrine of humanitarian intervention as acceptable in international relations is widely attributed to the works of the 17th century Dutch author Hugo Grotius, also known as the Father of International Law.”

However, “things changed after the Second World War when all uses of force were beginning to be outlawed – admittedly with major exceptions – except in the permissible pursuit of self-defence” (Jayakumar 2012). The UN charter rendered the use of military force as illegal under Article 2(4) as a matter of respecting the individual states’ territorial sovereignty and approved the use of force under Article 51 as a matter of collective self defence under threat to state sovereignty. Conflictingly, there exists no legal rule that enables humanitarian intervention to use force, unlike collective security and self defence measures. Thus finding humanitarian intervention in legal black holes and prone to misuse at the mercy of powerful states.

### Towards R2P

The end of the Cold War in 1990, the collapse of the Soviet Union, and better prospects of international cooperation accompanied by the outbreaks of intra-state armed conflicts in all parts of the world set the stage for calls for a “new world order” (Kurt 2006). “The first cases for practical application of the concept of humanitarian intervention involved Somalia and Bosnia, where crises in both countries commenced in 1992” (Gierycz 2010). The UN peacekeeping mission failed to restore peace in Somalia and later the massacre of Srebrenica in 1995 proved to be a major

setback to the UN's reputation. The Rwanda genocide of 1994 was another humiliating addition to the list failed UN peace-keeping missions leading to suspicion regarding the competency of the organization to protect civilians under intra-state armed conflicts.

The recurrence of intra-state conflicts, the associated mass killings and the growing urgency to understand obligations towards protecting human rights caused discomfort for the international community. These failures also reflected the complexities in the implementation of military force in a foreign state and deep political divide in the international community with regard to the same. Another shadow that loomed upon humanitarian intervention was that of the integrity of the internationally revered idea of state sovereignty and self-determination. "The tension created by the competing concerns of human rights and national sovereignty led to uncertainty about how far the international community could go to intervene in a sovereign state in the face of major human rights violations" (Williams, Ulbrick & Worboys 2012).

When NATO in 1999 responded to the mass atrocities committed in Kosovo by Serbia with military intervention under the idea of "right to humanitarian intervention", the world gave mixed reactions. The West applauded the efforts of NATO in Kosovo and justified it as an act humanitarian intervention while a large grouping of nations apart from UN, majorly dominated by third world nations, dismissed the act as being of "humanitarian imperialism" and pronounced it as a breach of state sovereignty.

The recurrent failure of the international community to protect populations in conflicts (in Rwanda, the Democratic Republic of Congo, former Yugoslavia, and Sudan) and the subsequent fear of unauthorized interventions (Kosovo), "led the U.N. Secretary-General Kofi Annan to intensify efforts to elaborate principles that would equally enable effective prevention of future atrocities against civilians and ensure respect for international principles of sovereignty and non-intervention in the domestic affairs of other states" (Gierycz 2010).

### Evolution of R2P

In response to Anan's call in 2001, the UN conducted extensive consultations around the globe to better understand the problems in reconciling intervention with state sovereignty. "The UN report addressed two of international law's most controversial questions: when could states use force to protect populations and which authorities would be competent to authorize it?" (Williams, Ulbrick & Worboys 2012). The report established a direct link between sovereignty and responsibility; it stated the protection of its population as the "primary responsibility" of the state thus coining the proposal of 'Responsibility to Protect'. It discussed the use of force by the international community in case of an inability of the state to prevent mass atrocities while authorizing the UN to sanction this use of force. The UN proposed that contrastingly from humanitarian intervention, R2P as a norm would put the interests and needs of the victims of mass atrocities ahead of the intervening powers.

The report put forward the idea of 'responsibility to protect' as a response, "to the very strong opposition expressed by humanitarian agencies, humanitarian organizations and humanitarian workers towards any militarization of the word "humanitarian."

In 2005, heads of states gathered at the UNGA for the World Summit to shape R2P. The Summit produced the World Summit Document (2005) in which paragraphs 138 and 139 enshrined the definition and **the three pillars of the R2P**. "Pillar I emphasizes a state's obligations to protect all populations within its own borders against four mass atrocity crimes: genocide, crimes against humanity, ethnic cleansing and war crimes; Pillar II outlines the international community's role in helping states to fulfil this obligation; Pillar III identifies the international community's responsibility to use appropriate diplomatic, humanitarian, peaceful or coercive means to protect civilian populations where a state manifestly fails to uphold its obligations"("The Responsibility to Protect").

#### a) Libya

"The March 2011, NATO led, intervention to prevent atrocity crimes being committed by the government of Libya against its own citizens marks the first major instance of Security Council practice under R2P's third pillar"(The Economist 2011). UNSC successfully passed two resolutions for the crisis prevailing in Libya in 2011. Resolution 1970 was passed in February, 2011 in order to peacefully resolve the crisis. The failure of Resolution 1970 and the exhaustion of all peaceful methods led the UNSC to pass Resolution 1973 in March, 2011 authorizing the use of force under the Third Pillar of R2P.

On the question of regime change, the R2P objective of military intervention should be the protection of a population, 'not defeat of a state' (Akbarzadeh & Saba 2018). The manner in which NATO brought down the Qaddafi regime was considered by many a violation of the mission's mandate, which was meant to focus solely on protecting civilians. "Only three days after airstrikes began, China, Russia, and India began calling for an immediate ceasefire, claiming that NATO had abused the terms of its mandate and was instead pushing for regime change" (Russo 2018).

NATO's intervention in Libya blurred the line between humanitarian assistance and made a number of countries uncomfortable and suspicious of the third pillar of R2P.

Viewing from the standpoint of R2P's implementation for the first time, Libyan experience gives us three important insights: **Firstly**, the Security Council Resolution 1973 reiterated "the responsibility of the Libyan authorities to protect the Libyan population" and reaffirmed that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians (Cohn 2011). Thus giving due consideration to pillar one and two of the R2P doctrine. **Secondly**, "the Security Council authorized intervention in Libya demonstrates international law's extension to allow the use of force in situations where atrocity crimes may occur or are imminent" (Williams, Ulbrick & Worboys 2012). **Thirdly**, the Libyan intervention proved

that the protection of the civilians under mass atrocities was of prime importance to the international community.

### b) Syria

The shadow of the Libyan experience looms upon the Syrian Crisis. “Many critics argued that NATO overstepped its mandate by launching a military campaign with the ultimate desire for regime change” (Nasser-Eddine 2012). “Since 2013 the Council has passed twenty five resolutions on humanitarian access, peace talks and chemical weapons in Syria” (“Syria” 2020). “Russia and China have jointly vetoed eight draft UNSC resolutions and Russia has independently vetoed a further six” (“Syria” 2020).

The inability of the UNSC to act in Syria during crucial times owing to a deadlock in the UNSC indicates the need for an evolution in R2P doctrine consequently authorizing regional and sub-regional organisations to use force to prevent mass atrocities.

### Conclusion

“R2P faces the same problems as previous humanitarian intervention tools – the lack of resources and political will” (Nasser-Eddine 2012). The Libyan experience leads to the advancement of R2P as a norm but also leads to confusion with regard to its implementation. This confusion is reflected in the inaction of the international community in the case of Syria which forces one to think if R2P is better off as a theoretical concept and has a less practical use.

The inability of the UNSC permanent members to form a common consensus under the third pillar of R2P will consequently marginalize it as a mechanism of humanitarian intervention. Though the use of force under the third pillar of R2P is an evolving concept under international law, the international community needs to free it from the complex web of power politics.