

THE FAILURE OF RESPONSIBILITY TO PROTECT DOCTRINE AND COMPLICITY OF UNITED NATIONS

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ABSTRACT: *The Responsibility to Protect doctrine, (shortened as R2P) is basically a response to the dominating influence of state sovereignty in the face of global security challenges and the compelling need for intervention for human protection purposes. The concept was introduced in 2001 by the International Commission on Intervention and State Sovereignty (ICISS) as another option to humanitarian intervention which was often associated with controversy surrounding the principles of sovereignty and non-intervention norms. As an emerging doctrine, R2P reconceptualized the principle of sovereignty and redefined it as a responsibility rather than a right. In pursuit of this new intervention for human protection purposes, the R2P doctrine provides that every state is duty bound to protect her citizens against internal or external attacks. However, if a State fails to fulfill this natural responsibility either willfully or due to incapacity, the international Community would be required to assume the responsibility to protect the nationals of that country. The report of the R2P doctrine met with global endorsement at the 60th anniversary of the UN during the world summit in 2005. The Report was further ratified for implementation in 2009 by the UN General Assembly. However, the R2P doctrine thereafter suffered a huge set back due to disinclination of the UN Security Council to bring the doctrine to practical reality. This weakness manifested in the deliberate reluctance and indeed veiled refusal by the UN Security Council to exercise the authority entrusted to it by the UN Charter which invariably betrayed a decline in the authority and stature of the UN. As a result, the R2P model of intervention was prematurely consigned to the dust bin of history. It is therefore the contention of this paper that the United Nations through the instrumentality of the Security Council is culpable for denying the world the benefits of the R2P doctrine as a viable alternative to the much maligned humanitarian intervention. As a result of the failure by the UN to implement the R2P in conflict areas witnessing atrocity crimes, the world is currently facing a dilemma and stalemate in intervention for human protection purposes.*

KEY WORDS: responsibility to protect, sovereignty, United Nations, humanitarian intervention and atrocity crimes.

INTRODUCTION

Following the post-cold war era especially in the 1990s, humanitarian interventions in different theatres of conflicts across the world have been mired in one controversy or the other. It is either from the standpoint of violation of the UN non-intervention and sovereignty norms or application of excessive force or failure to act in the face of genocide and other mass atrocity crimes. According to the International Commission on Intervention and State Sovereignty, (2002), external military intervention for human protection purposes has been controversial both when

it has happened – as in Somalia, Bosnia and Kosovo- and when it has failed to happen as in Rwanda. NATO's intervention in Kosovo in 1999 brought the controversy to its most intense head. Security Council members were divided: the legal justification for military action without new Security Council authority was assaulted but largely unargued. Each of these well known humanitarian interventions with their limitations cast a pall on the integrity of the United Nations Security Council. The need to seek out a common ground for a reformed kind of humanitarian intervention became both compelling and imminent as passionately expressed by Annan when he stated that: 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.(UN report,2005) This remark underscored the frustration of the world community with the prevailing humanitarian intervention model, which is indexed mainly on the military approach. It was at this juncture that attempts were made to evolve a rather humane alternative to humanitarian intervention. Consequently the Responsibility to Protect Doctrine emerged as that viable alternative to humanitarian intervention which is defined as a military intervention in a state without approval of its authorities with the purpose of preventing wide spread suffering or death among the inhabitants. (Roberts, 1995) On the other hand, the responsibility to Protect Doctrine is intrinsically deliberate and persuasive. It overcomes the apparent barriers of norms of non-intervention and sovereignty by recognizing sovereignty as a responsibility and not a right. The idea of non-intervention is only valid as long as a state protects its citizens from internal and external attacks. Any deviation from this dictum by a state through incapacity or unwillingness to protect her population from any form of atrocity crime, attracts intervention from the international community. Here lies the soul of R2P. The doctrine was formulated within the framework and context of the UN. It really had no life of its own outside the UN authority. According to its formulators, the mandate was generally to build a broader understanding of problem of reconciling intervention for human protection purposes and sovereignty: more specifically it was to try to develop a global consensus on how to move from polemics and often paralysis-towards action within the international system, particularly through the UN, (ICISS, 2002). The architecture of the R2P floundered and collapsed as soon as the UN through its premier organ of the Security Council abdicated its responsibility to the responsibility to protect mandate. There is therefore no gainsaying that the deteriorating authority of the UN, coupled with negligence of the doctrine by the Security Council wrecked the possibilities of R2P and eventually signed its death knell as a most promising and yet untested intervention paradigm the world had ever conceived.

EMERGENCE AND FAILURE OF R2P.

Although articulated by the International Commission on Intervention and State Sovereignty, (ICISS) in its current form, R2P has an eclectic history. According to Mikulascheck (2009) the political origins of R2P are in Africa: it was endorsed in the protocol relating to the mechanisms for conflict prevention, management, resolution, peace keeping and security signed by the Economic Community of West African States (ECOWAS) in 1999. Again the conceptual roots can be found in the 'sovereignty as responsibility' proposed by Donald Rot child, Francis M. Deng, I. William Zartman, Sadikiel Kimaro, and Terrence Lyons. In the same vein, Spain (2014) noted that state sovereignty approaches have been gradually supplanted by a human-being-oriented approach.....why protect civilians from belligerent violence and yet refrain from providing the same protection when armed violence has erupted within the territory of a sovereign state .Beyond these political and conceptual precedence, R2P emerged by reasons of its manifest destiny of an idea whose time has come. Following the rising security tension in

different parts of the world and the absence or miscarriage of humanitarian interventions, there arose an urgent need for a model to effectively manage the tide of global sense of insecurity cascading towards a ferment. The profound sense of revulsion at the failure of international community to act effectively in Rwanda and Bosnia, and the need for a broadly accepted new norm to guide the international response to mass atrocity crimes accentuated the emergence of R2P (Global Centre for R2P,2020). In a succinct manner, (Henry,2019) citing (Garwood-Governs,2013) and (Evans,2012) equally noted that R2P was an expression of international 'dismay' at the humanitarian atrocities of the 1990s and the ineffective international responses to halting them.

As a new intervention framework, R2P prioritized human lives above any other consideration. The basic principles according to the International Commission on Intervention and State Sovereignty (ICISS, 2002) stipulates that:

- (a) State sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself.
- (b) Where a population is suffering serious harm, as a result of internal war, insurgency repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to international responsibility to protect.

Beyond these core values, R2P devised three other forms of responsibilities to enhance and sustain the protection of rights and security of lives of common humanity. These include the responsibilities to prevent, react and rebuild. According to Kindiki (2007) firstly a 'responsibility to prevent' entailing a duty to address the root causes and direct causes of internal conflicts and other man made catastrophes. Secondly the 'responsibility to react': to respond to situations of serious humanitarian crises with appropriate measures, which may include coercive measures like sanctions and international protection, and in extreme case military intervention. Thirdly the 'responsibility to rebuild': to provide, particularly after a military intervention, full assistance with recovery, reconstruction with reconciliation. These provisions sets R2P apart as a unique intervention strategy predicated on the values of human rights and holistic considerations for human protection under occasions of atrocity crimes. One of the draw backs of humanitarian interventions is what follows after military operations. From the R2P perspective, intervention is not an activity but a process. It begins with concerted efforts to resolve the issues through negotiation or arbitration. When this phase fails, the reality of reaction becomes inevitable. However, at the end of it all, to demonstrate that the motivation was neither punitive nor a conquest, the third pillar of responsibility to rebuild comes into effect. Also encapsulated in this seminal doctrine of intervention are other constitutive components like the foundations, elements, and priorities in addition to laid down stringent conditions before military intervention could be undertaken with the authority of the Security Council. Spies and Dzimiri (2014) argued that the ICISS attempted to transcend the narrow argument about non-intervention versus right of intervention in the affairs of sovereign states by replacing the notion of "right" with that of "responsibility". R2P arrived the world stage with aplomb. It upturned some cold war era views and introduced new perspectives in intervention paradigms. It was with this euphoria according to Garrigues (2007) that in 2005 the world summit formally adopted the R2P at the highest level (UN Doc.2005). Subsequently, in January 2009, the Secretary General presented his report on implementing the R2P to the General Assembly which discussed the next steps in operationalizing R2P (UN Doc.2009) Finally on September 14, 2009, the General Assembly adopted its first resolution on the R2P by consensus . The R2P in the beginning was

like a breath of fresh air in a world community grappling with worsening security challenges. The UN as an institution was satisfied with the global acceptance that greeted the R2P. This was demonstrated at the aforementioned world summit when 150 Heads of States and Government resolved that: each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.....we accept that responsibility and will act in accordance with it. The international community, through the United Nations, also has the responsibility to help 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....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.(Garrigues,2009, citing Evans,2007).

This was classical global endorsement of the R2P. The doctrine continued to receive rave reviews and positive recommendations across ideological divides. For Spies and Dizimiri (2014), R2P is a continuous obligation on states and the community of states, one that requires vigilance and in some cases proactive efforts to protect humanity from avoidable catastrophe. Not long after, this litany of praises for R2P turned sour. The doctrine suddenly was subjected to a deluge of negative assessment at the ideological, political, legal and ethical platforms. It was an ironic descent from the Olympian heights of popular acclaim to the valley of denigration. According to Henry (2019), citing Bellamy (2010), R2P never really got going. As a doctrine, it died an embryonic death, and remains today largely unimplementable as a policy directive. The same indeterminacy that plagued humanitarian intervention, has continued to plague R2P. The failure of R2P just as with the sustained failure of humanitarian intervention before it was reducible to a single issue-an unwilling absence of political will.

The caustic criticisms of R2P came in quick torrents portraying it as an exercise in futility-a mere academic project fit for intellectual debate. Holmes (2020) contends that R2P is a mere aspiration, as opposed to a real principle of international norm or even lawits reality never live up to its high sounding principles: if it wanted to ,the Security Council could have intervened to stop genocide in Rwanda and elsewhere. The reasons it didn't are the same ones that will likely keep it from doing so elsewhere in the future. It may be necessary to stress that the R2P did not fail on its own term as an evolving intervention principle. It ran into troubled waters because the UN which inherited it was already a weakened institution. What it could not do with the seemingly discredited humanitarian intervention, it could also not carry out with the R2P despite the initial wide endorsement. As Steinberg,(2008) lamented, we have come a long way –but too many cases demonstrate how far we still have to go to bring R2P to the real world. In Darfur, the international community has blinked in the face of mass atrocities. We have tried to solve tragedy through half measures and quick fixes. We declined to send a UN protection force to Darfur. At UN, we passed resolution after resolution through the Security Council authorizing tough sanctions, a no fly zone, and International Criminal Court (ICC) indictments, but we never imposed them.

It needs to be reiterated that the doctrine of R2P is predicated on the dual relationship between individual states and the international community for its proper execution. However it eventually turned out that both pillars abandoned the R2P project to an uncertain fate. As Gore(2014) observed, a clear limitation of the R2P doctrine is its inability to effectively protect civilians from gross violations of human rights due to lack of tangible commitment from the international

community. There are also insinuations in certain quarters that R2P was over rated thereby taking the peculiarities of international political environment for granted through undue optimism. Certain questions remain unanswered: How can the UN avoid having R2P applied in an interventionist manner? How can smaller and less powerful states be protected from the manipulations of R2P for external interests? (Halliwell, 2016) It appears that the responsibility to protect may not have reckoned with the complexity of global power politics especially within the UN. While the UN major organs, namely, the General Assembly and the Security Council adopted the R2P as an article of promise, a school of thought insists that the doctrine is not legally a part of the UN Charter and therefore not binding on either the different states or the international community. Hehir (2019) argued that 'R2P' has not failed: Rather states "have failed to fulfill it". Yet, if state behavior impelled the emergence of R2P, but the behavior of states has not changed-though their rhetoric has, surely this constitutes evidence of the concept's failure. The perceived failure of the R2P is indeed traceable to the waning authority of the UN and betrayal by the international community; this has left the world undoubtedly on the tenter hooks of intervention quagmire.

COMPLCITY OF THE UNITED NATIONS.

There is growing apprehension in the global space that the United Nations Organization's stature and authority as the ultimate and dominant repository of international peace and security is increasingly on the decline since the turn of the 21st century. Established in 1945, after the League of Nations failed to prevent the 2nd world war, the UNO is the culmination of the ardent search and yearning for peace, security and development by the world comity of Nations.

In 1946, barely one year after its formation, one of the foremost founding fathers, Winston Churchill stated: a world organization has already been erected for the prime purpose of preventing war. We must make sure that its work is fruitful, that it is a reality and not a sham, that it is a force of action, and not merely a frothing of words, that it is a true temple of peace (Dowd, 2018) The United Nations Organization (UNO) was thus created in the wake of throes of the second world war, the monumental atrocities of the holocaust and the calamity of Hiroshima and Nagasaki. According to Kaarbo and Ray (2010) the UNO is a unique and comprehensive forum for collective security and world dialogue, serving not as a world government but as a clearing house for a worldwide network of human services on behalf of the people. The UN is a Body essentially predicated on the principles of peace and security of common humanity. As aptly captured in its Charter,(1945), "the peoples of the United Nations " determined to reaffirm faith in fundamental human rights, on dignity and worth of the human person, in the equal rights of men and women of Nations, large and small.....was created for the purpose of achieving international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to races, sex, language, or religion.

These lofty ideals had sustained and guided the UN for more than seven decades. Although the UN Charter consists of diverse range of functions, the peace and security component constitutes the preponderant duties of the Organization. As a result of this prime peculiarity, the UN is often associated with issues of conflict resolutions across the globe through the organ of the Security Council. Over the years, especially from the 1990s, the UN began to manifest traces of weakness, and dereliction in the execution of its historical mandate as enshrined in the Charter. The rising tide of despair with the UN's waning authority provoked a former UN Secretary General to warn that:" if the collective conscience of humanity cannot find in the UN its greatest

tribune, there is a grave danger that it will look elsewhere for peace and justice” (ICISS, 2005). The leading role of the UN as the custodian of peace and security in the world underscores her prestige and relevance. It therefore follows that any indication that this aspect of the UN’s function is not well carried out immediately generates fear and worry across the world. Abella (2010) asked: Is the UN the best we can do? The UN has spent years discussing reform, but I think the record now shows that it either cannot change, or it will not change. Nations debate; people die; Nations dissembles; people die. Nations defy; people die.

As crises and conflicts rage in different parts of the world with dire security implications, the UN reacts with uncharacteristic cold passivity. Rwanda in 1994 represents the full horror of inaction and refusal of the Security Council to take necessary steps to avoid genocide. Somalia in 1992/1993 is considered to be another fail of the UN as were Srebrenica in 1995 when the tragic fail of the UN to prevent genocide raised serious debate about intervention for human protection purposes (Gagro, 2014) The UN system failure also warranted NATO to unilaterally intervene in Kosovo without Security Council authorization. This exercise was coordinated by the United States which regards the UN as an anachronistic failure(O’connel,2008) It may well be noted here that most problems of the UN with humanitarian interventions is traceable to the intransigence within the Security Council veto wielding permanent members made up of the US, UK, France, Russia and China. Through the instrumentality of veto power, these permanent members constitute themselves into what can be described as ‘dictatorship’ of the Security Council exercising the ‘imperialism’ of veto. Evidently, they have become impediments to the progress of the UN, making decisions on global security a matter of when it suits their individual strategic interests. Since the five permanent members are not a monolith, with each protecting and promoting its vital interests, many decisions and resolutions on critical security issues are vetoed one way or the other. Ayoob (2002) lamented that recourse to the UN Security Council for authorization or endorsement is inadequate as a measure for determining international political will. In the same vein Clough (2005) observed that the veto power of the permanent members gives those five countries a unique power to protect and promote their national interests at the expense of the global interest.. This casts a pall of disorientation on the UN especially as it relates to intervention for human protection purposes. The Security Council has virtually hijacked its parent body. It has rendered it supine and distorted its peace and security mandate despite the fact that the UN was the Institution the world set up to implement “Never Again”. Its historical tutor was the Holocaust, yet it seems hardly to be an eager pupil. What has never supposed to happen again, has. Again and again.(Abella,2010)The rising profile of the permanent members of the UN Security Council is juxtaposed with the diminishing stature of the parent Body-the UNO. It does not seem to stand to reason but it is the true situation of affairs. The International Commission on Intervention and State Sovereignty (ICISS) while drafting the seminal report on the Responsibility to Protect Doctrine recognized the premier position of the Security Council and pleaded thus: the security council should take into account in all its deliberations, that if it fails to discharge its responsibility to protect in conscience shocking situations, crying out for action, concerned states may not rule out other means to meet the gravity of and urgency of that situation-and that the stature and credibility of the UN may suffer thereby. In normal circumstances this remark should have been primarily addressed to the UN for the attention of the Security Council if need be. The undue recognition and overwhelming authority being ascribed to this organ of the UN if not checked may result to global anarchy as a prelude to implosion of the UN as an institution. The carnage in Syria, conflicts in Libya and Yemen are all symptomatic of the internal struggle for veto supremacy within the Security Council. One of the main reasons the Responsibility to protect has not and may never record the

desired and envisaged impact is that the Security Council does not seem to attached sufficient merit to the doctrine from the prism of their strategic interests. Although domesticated within the UN framework, the doctrine has not received the anticipated support from the only organ that can give it the necessary boost to succeed-the Security Council. It is again indicative of the precarious foreboding and inevitable reliance on the Security Council that the ICISS in its document pleaded with the permanent five to agree not to apply veto power in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support. In other words the ICISS is suggesting to the Security Council permanent members to use veto to thwart other pressing international security issues as long as their interest were deemed to be involved. This confirms the notion that the Security Council determines what happens in the UN system through the manipulation of veto power. Macfarlane and Weiss (2002) had argued that military operations under Chapter 7 of the UN Charter are agreed on the basis of a calculus of shared interests or 'of trade-offs' among the five permanent members of the Security Council. In June 1994 for example, desperate interests resulted in separate Council's decisions to authorize interventions by the French in Rwanda, the Americans in Haiti and Russians in Georgia each of the three permanent members traded its vote for the favored intervention of the other in return for support of its own favored operation. In other words, decisions to intervene even when taken for ostensibly humanitarian purposes and within the framework of the UN Security Council were subject to bargaining among the major powers that engaged in 'quid pro quo' to enhance their respective strategic and economic interests in their spheres of influence.

It is an anti climax that the R2P suffered its defeat in the hands of UN's multifaceted weaknesses. One outstanding handicap of the UN system is excessive bureaucratization of its processes. The Organization is a beehive of activities which combine to undermine effective and timely response to grave security challenges. The decision making process is often weighed down by administrative and procedural bottlenecks. Domingo (2007) argued that bureaucratization has made a dent in the framework of the UN, slowing its ability to respond to the many crises that have plagued humanity throughout the twentieth and twenty first centuries.....the UN has become incapable of reducing the risk of conflicts, a sort of secondary actor in the global events that shape the politics of the third millennium. Consequently, the R2P initiative after the euphoria of 2005 endorsement and ratification for implementation in 2009, was technically abandoned to the whims and caprices of the Security Council and the vagaries of *real politic* of powerful states who occasionally invoke the doctrine to legitimize their ulterior motives. Apart from the Libyan experiment and other isolated places, the UN never took a major bold step to actualize the R2P. The complicity of the UN to the R2P debacle is an outright negation of its core founding values. Silvano (2019) affirms that given the current range and intensity of crises around the world, many feel compelled to say that R2P has failed. There is a range of situations today where populations are at the risk of the R2P crimes, or where such crimes are ongoing. These crises are taking place against a backdrop of retreating internationalism, diminishing respect for international humanitarian and human rights law, political disunity in key decision making bodies such as the Security Council, and a level of defeatism about promoting ambitious agendas like protection.

As a strategic organ of the UN, the Security Council is expected to advance and sustain the ideals of the UN. On the contrary, the Security Council has turned out a destabilizing factor in the UN system. This has negatively impacted in the overall security architecture of the world and

equally contributed to frustrating the success of R2P. According to Domingo (2009) the United Nations Security Council (UNSC) is the embodiment of hegemonic powers' sovereignty. This is the dialectic confrontation between sovereignty and consensus, between power and authority. By all accounts the UNSC holds the ace in the intervention portfolio of the UN. The eventual failure of R2P was borne out of mainly two factors as this analysis attempts to establish: firstly is the manifest weakness and disarticulated state of the UN as an institution. The UN is an organization in a state of crisis, unsure of its future, mired in scandal, suffering from a lack of direction, and morally ambiguous in outlook. It is a world body that is increasingly ill-equipped for the demands of the 21st century.(Gardiner,2007). Secondly, the internal ideological and strategic interests wrangling and struggles amongst and between the five veto wielding powers of the Security Council. These five permanent members have turned the Security Council into an arena of a new form of 'Cold War' by other means. R2P was therefore caught in the web of a system and a sub-system almost working at cross purposes to realize the mission of intervention for human protection purposes. It is in this regard that Garrigues (2007) noted that the Security Council has not always found room for agreement on response to R2P situations. In the case of Syria, in 2012, the Security Council voted on a draft resolution which called on the Syrian Government to cease violence against civilians and withdraw its armed forces. Thirteen of the Council members voted in favour of the text, but China and Russia exercised their vetoes, and therefore blocked the adoption of the resolution.

It is certainly obvious that the induced failure of R2P is a calamitous reminder of the collapse of the League of Nations which ignited the 2nd world war in 1939. Since the doctrine was disregarded as a threshold of intervention, there has been no alternative intervention paradigm to manage the crises of atrocity crimes in some parts of the global system. There is simply no consistently proven objective justification to have discredited the R2P. The subdued anarchy in the UN which inexorably gave vent to the proliferation of insurrections, insurgencies and separatist movements across several countries and continents is responsible for the fate of R2P. Given the profound creative effort and quality of articulation of the R2P, there is an urgent and compelling need for the world community through a reformed UNO, to reclaim the initial spirit of acceptance of the R2P beyond lip service and make it work. We need to find ways of expanding the political base within the Security Council for 'timely and decisive collective action'. One place to start is to seek the commitment by Council members that they will not block any action aimed at addressing the risk of genocide, war crimes, ethnic cleansing and crimes against humanity (Gardiner, 2018) Any departure from this consideration may spell doom for global peace and security.

CONCLUSION

The Responsibility to protect doctrine is unarguably a noble concept. It was conceived at a most auspicious period of the metamorphosis from humanitarian intervention to intervention for human protection purposes. It marked a watershed in the trajectory of interventions in the face of global security challenges in the early 1990s. Given the profundity and breath of its contents, the relevance to emerging security threats, the international community immediately embraced it as a wholesome novel template to address the hitherto controversial issue of humanitarian intervention. However the project was unfortunately mismanaged by the UN, through the Security Council, with the result that the R2P doctrine was induced to fail. It therefore obvious that R2P was a victim of a weak and failing Organization. This paper contends that unless and

until the R2P is reclaimed and returned by a reformed and rejuvenated UNO, the prospects of intervention for human protection purposes would remain unrealizable- a mirage.

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