

Legality and Challenges of 'Responsibility to Protect' in Prevention of Mass Atrocities

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In fact, the precept of responsibility to protect commonly termed as R2P has been developed for early response to prevent mass atrocity crimes, e.g. genocide, war crimes, ethnic cleansing or crimes against humanity. The central focus of responsibility to protect (R2P) on the protection of atrocity victims, theoretically, legalize the external intervention in internal affairs. Unfortunately, in case of application the precept faces some challenges which undermine the universal acceptance of R2P as a tool of humanitarian assistance. In addition to, international response in domestic affairs is a controversial issue in context of absolute state sovereignty. In this context, the study is undertaken to identify the legality of R2P to prevent mass atrocities in international law and the challenges of R2P. The study finds that lack of collaboration among the concerned international institutions, lack of collective conscience of international leaders and resource scarcity have been significant challenges to the norms of R2P doctrine. The study culminates that political will might implement the doctrine properly. To this effect, diversity of regional and international political character and the ambivalent attitude of individual states to overseas conflict should be minimized. Doctrinal research method is followed in the present study.

Key Words: R2P, International Law, Atrocity.

Introduction

In recent years, global community has fizzled out to ensure individual's safeguard from mass atrocities² which undermine the humanitarian obligation of different actors, e.g. States, regional and sub- regional community and global organizations. The global community is still trying to advance the legal mechanisms to protect the populations at stake from mass atrocities.

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Peter Power, "Responsibility to Protect: From Concept to Implementation/" *Irish Studies in International Affairs* 20, (2009): 15-20

Consequently, the development of responsibility to protect (R2P) can ensure that all actors—governments and their leaders, the international community and the Security Council are acquainted with their roles, obligations and responsibilities when the menace of four specific crimes, i.e. genocide, war crimes, ethnic cleansing and crimes against humanity turns out. The proper application of R2P can assist in prevention, accelerate coherent international response and finally deter the perpetration of these crimes.³ R2P is impliedly grounded in the evolution of humanitarian law. Specially, the doctrine is reflected by the Genocide Convention and the Rome Statute of the International Criminal Court.⁴ It unfolds a new horizon on the co-operation of states and international community to prevent mass atrocity. The Heads of the States and the Government during the 2005 World Summit held at the United Nations unanimously approved R2P doctrine. The doctrine basically sets forth three pillars of responsibility to protect mass atrocity crimes.⁵ The primary responsibility is carefully vested on the state concerned. R2P is not the tools of mere intervention.⁶ Though, R2P has a broader aspect, it is often misinterpreted as an emerging legal norm that legitimizes the humanitarian intervention and military recklessness.⁷ Moreover, the doctrine is now facing some challenges⁸ to serve or implement its ultimate goal. Some critics argue that it weakens the principles of non-intervention and the spirit of absolute state sovereignty. In this contexts, this study endeavors to figure out the R2P and elucidates the development process of the concept. The study critically finds out the ground of R2P and identifies the legal sources of R2P in the premise of international law. The theoretical essence of R2P to prevent mass atrocities is significantly addressed in the study. Pillar III of the doctrine relating to international response in prevention of mass atrocities is facing more debates. The study clarifies that R2P doctrine doesn't undermine the principle of non-intervention and state sovereignty. The study finds that sovereign immunity doesn't defend responsibility for crimes against humanity⁹. Further, the study elaborately aims at analysing

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⁴ The 'Convention on the Prevention and Punishment of the Crime of Genocide,' approved December 9, 1948 by resolution 260A (III) of U.N. General Assembly and entered into force January 12, 1951, accessed on December 14, 2019, url: http://www.unhchr.ch/html/menu3/b/p_genoci.htm. See also the Rome Statute of the International Criminal Court, entered into force July 1, 2002, accessed on December 14, 2019, url: <https://legal.un.org/icc/STATUTE/rome.htm>

⁵ 2005 World Summit Outcome, G.A. Res. 60/1, paragraph 138-39, U.N. Doc. A/RES/60/1 (Sept. 16, 2005), accessed on IO December, 2019, url: <https://www.un.org/ruleoflaw/files/2005%20World%20Summit%20Outcome.pdf> Power, "Responsibilities to protect" 20.

Alex De Wall, "How to End mass atrocities," *International Herald Tribune*, May 10, 2012, accessed December 16, 2019, url: <https://www.questia.com/newspaper/1P2-36282504/how-to-end-mass-atrocities>

Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All," *Irish Studies in International Affairs* 20, (2009):10, accessed December 20, 2019

url: https://www.jstor.org/stable/25735145?seq=5#metadata_info_tab_contents

Geoffrey Robertson. "Crimes against Humanity: The Struggle for Global Justice, rev. ed." (2002

the challenges of the doctrine, (e.g. conceptual challenge, institutional challenge, political challenge and operational challenge¹⁰) faced in case of international response to protect populations from mass atrocity crimes. Somewhere, the R2P concept has been misunderstood that it is all about coercive military intervention, nothing else. The study finds that the humanitarian intervention under R2P is the final resort to meet the urgency where no other mechanism will be effective. It is also expected that humanitarian intervention must bring more good than harm following the principle of necessity and proportionality. Lack of collaboration among the permanent five members of UN Security Council, diversity of international politics and peculiar attitude of individual states towards overseas conflict throw major challenges to paly effective role of R2P in order to prevent genocide, war crimes, and crimes against humanity or ethnic cleansing. Finally, the study provides the recommendations to overcome the challenges faced in practical cases and makes the doctrine more effective specially in case of international response to prevent genocide, war crimes, crimes against humanity and ethnic cleansing. The study emphasizes that transformation of R2P from non-binding norm to binding principles in international law is needed. The utmost effectiveness of R2P doctrine to prevent atrocity crimes will be accelerated if institutional collaboration and strong political commitment among international leaders are ensured.

Evolution of the Concept of R2P

Right to Humanitarian Intervention during 1990s

Question of reasonable humanitarian intervention to prevent mass atrocities raised significantly during 1990s. The tragic events in Rwanda and Bosnia in the 1990s were the catalyst for R2P.¹¹ The international community became concerned about how to respond in prevention of these mass atrocity crimes. The international community started to debate on two specific issues whether states have unfettered sovereignty over these matters or whether the global community has the legitimacy to intervene in a country on humanitarian ground. Then the Secretary-General Kofi Annan in his Millennium Report of 2000 put forward a challenge to Member States: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?"¹² This approach emphasized the

¹⁰ Gareth, "The Responsibility to Protect"

¹¹ Power, "Responsibilities to protect," 20

¹² Outrage Program on the Rwanda Genocide and United Nations, *Responsibility to Protect* (United Nations, USA, United Nations Department of Public Information, 2004), I, accessed on December 14, 2019, url: <https://www.un.org/en/preventgenocide/rwanda/pdf/Backgrounder%20R2P%202014.pdf>

responsibility of international community to protect population from blatant infringement of human rights.

Report of the International Commission on Intervention and State Sovereignty (2001)

The term 'responsibility to Protect' was first articulated in the report of the International Commission on Intervention and State Sovereignty (ICISS), set up by the Canadian Government in December 2001. The commission culminated that sovereignty provides the right to control the internal affairs and at the same time confers the primary responsibility on a state for protecting the people within its territorial jurisdiction. The report, further, proposed that the responsibility shifts to international community when a state fails to protect its population due to lack of ability or lack of willingness.¹³ This proposal was a major outcome to develop the concept of responsibility to protect (R2P). Because, the concept is not only about intervention, but also prevention.¹⁴

Report of the High-level Panel on Threats, Challenges and Change (2004)

In 2004, UN Secretary General Kofi Anan set up the High-level Panel on Threats, Challenges and Change. The panel justified the emerging norm of a responsibility to protect mentioning that there is a collective international responsibility, "exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing and serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent."¹⁵ The panel proposed the basic conditions to legalize the use of force by the UN Security Council as well. It strongly pointed out that the international response must be last resort and the use of force must be for more good than harm.

¹³ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, Canada, the International Development Research Center, 2001), 11-16, accessed on December 15, 2019, url: http://www.globalr2p.org/media/files/iciss_report.pdf

¹⁴ Colonel Calm Doyle, "The Responsibility to Protect" *Irish Studies in International Affairs* 24, (2009):26, accessed December 23, 2019, url: https://www.jstor.org/stable/25735145?seq=5#metadata_info_tab_contents

¹⁵ The High-level Panel on Threats, Challenges and Change, *A more secured world: Our shared responsibility* (United Nations, USA, United Nations Department of Public Information, 2004), I 6-19, accessed on December 16, 2019, url: https://www.un.org/ar/peacebuilding/pdf/historical/hlp_more_secure_world.pdf

Report in the Larger Freedom by the Secretary General (2005)

Secretary General Kofi Annan in Larger Freedom report strongly agreed with the proposal provided by the High-level Panel on Threats, Challenges and Change. In addition, he proposed a list of conditions including seriousness of the threat, proportionality and chance of success must be scrutinized to authorize the use of force in general.¹⁶

United Nations World Summit Outcome (2005)

The responsibility to protect has got the status of doctrine in international arena from the outcome of UN World Summit held at the USA in 2005. At the United Nations World Summit, all Member States formally accepted the responsibility of each State to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. At the Summit, world leaders also consented that when state concerned fails to meet that responsibility, all States are responsible for helping to protect population from these crimes. If the national authorities manifestly fail to protect their populations, the international community should act collectively in a timely and decisive manner through the UN Security Council and in accordance with the UN Charter on a case-by-case basis and in cooperation with regional organizations as appropriate.¹⁷ The United Nations has been advancing the mechanism since the endorsement of 'responsibility to protect' at the Summit. Unified vision and coherent conceptual framework regarding R2P have been developed and the doctrine has also been put into practice.¹⁸

First Official Reference of Responsibility to Protect (2006)

For the first time, the reference of 'responsibility to protect' was officially made by UN Security Council while passing the resolution 1674 in 2006 authorizing the deployment of UN peacekeeping troops in Darfur, Sudan. Paragraph 4 of the resolution, "reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."¹⁹

¹⁶ Outrage Program on the Rwanda Genocide and United Nations, supra note 10

¹⁷ 2005 World Summit Outcome, supra note 4

¹⁸ Colonel, "The Responsibility to Protect,"24.

¹⁹ The UN Security Council Resolution S/RES/1674/(2006), adopted by UN Security Council at its 5430th meeting, UN Doc S/RES/1674 (2006): 2, accessed on December 15, 2019
url: [https://undocs.org/S/RES/1674\(2006\)](https://undocs.org/S/RES/1674(2006))

Content of R2P*Definition of R2P*

For the last few decades, the prime concern of international law has been shifted from protecting only sovereign state to protect individual.²⁰ The crime of genocide, crimes against humanity, war crimes and the crime of aggression have been emerged as the most serious crimes of concern to the international community as a whole.²¹ Unfortunately, international approach to prevent the crimes is often slow or unfruitful. The recent outcome of international community in response to prevent these crimes is 'Responsibility to Protect'. This tenet has already received much attention in international law premise and the tenet is simply termed as R2P. Almost all heads of state have approbated R2P.²² The UN Secretary General has issued many reports emphasizing on R2P.²³

The Responsibility to Protect has developed out of the need for responding to intrastate mass atrocity crimes. R2P's contribution to protect population from atrocities under international law is not specific. R2P has two propositions or applications. First, each state must protect its population from atrocities. This proposition is well grounded in international law. But, experiences point out that state sometimes fizzle out to protect its own population. In this harsh perspective, the second proposition which is termed as key innovation of R2P becomes imperative. The second proposition elucidates that the broader international community should adopt pragmatic step to help the populations at stake or to prevent them from atrocities.²⁴

²⁰ W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law", *Yale Law School Faculty Scholarship Series* 84,(1990): 866, 872, accessed December 10, 2019, url: https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1866&context=fss_papers

²¹ The Rome Statute of International Criminal Court, art, 4, supra note 3

²² 2005 World Summit Outcome, supra note 5

²³ The U.N. Secretary-General, Responsibility to Protect: State Responsibility and Prevention: Rep. of the Secretary-General, U.N. Doc. A/67/929-S/2013/399 (July 9, 2013); U.N. Secretary-General, Responsibility to Protect: Timely and Decisive Response: Rep. of the Secretary-General, U.N. Doc. A/66/874-S/2012/578 (July 25, 2012); U.N. Secretary-General, The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect: Rep. of the Secretary-General, U.N. Doc. A/65/877-S/2011/393 (June 27, 2011); U.N. Secretary-General, Early Warning, Assessment and the Responsibility to Protect: Rep. of the Secretary-General, U.N. Doc. A/64/864 (July 14, 2010); U.N. Secretary General, Implementing the Responsibility to Protect: Rep. of the Secretary-General.

²⁴ Monica Hakimi, "Toward a Legal Theory on the Responsibility to Protect," *Yale Journal of International Law* 39, No 2 (2014): 247, accessed December 11, 2019, url: <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1448&context=yjil>

Three Pillars of R2P

R2P consists of three mutually reinforcing pillars which build off of paragraphs 138 and 139 of the 2005 World Summit Outcome Document. A three-pillar strategy is outlined for elevating the agenda mandated by the Heads of the State and government at the Summit, as follows:

1. Pillar I: The protection responsibilities of the state;
2. Pillar II: International assistance and capacity building;
3. Pillar III: Timely and decisive response;²⁵

Pillar I being the protection responsibilities of the state, paragraph 138 states "Each individual state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity."²⁶ Pillar II involves the international assistance and capacity-building. The international community is sent to help populations in need before further crises break out. States who are willing but due to incapacity to uphold their responsibility may receive international assistance as a result of R2P. Pillar III provides a movement as to prevention method for mass atrocity crimes when a state fails to protect its populations. In reference to paragraph 139 "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the U.N. Charter to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity"²⁷

The pillar approach is not to undermine the state sovereignty. According to the 2009 report of the Secretary-General, "By helping States to meet their core protection responsibilities, the responsibility to protect seeks to strengthen sovereignty, not weaken it. It seeks to help States to succeed, not just to react when they fail."²⁸ The three pillars of the Responsibility to Protect are not sequential and are of equal importance. As per the UN Secretary-General's 2012 report "Without all three, the concept would be incomplete. All three pillars must be implemented in a manner fully consistent with the purposes, principles, and provisions of the Charter."²⁹

²⁵ The U.N. Secretary-General, Implementing the Responsibility to Protect: Report of the Secretary General, U.N. doc A/63/677(2009), accessed December 12, 2019
url: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677

²⁶ 2005 World Summit Outcome, supra note 5

²⁷ ibid

²⁸ The U.N. Secretary-General Report, supra note 23

²⁹ The U.N. Secretary-General Report, supra note 23

Scope and Limitations

R2P's scope is limited with regard to protection of populations from mass atrocities.³⁰ UN Secretary General has termed the scope, "narrow but deep approach"³¹ to the responsibility to protect. Basically, the Heads of State and Government at the 2005 World Summit Outcome expurgated the scope of responsibility to protect only to four crimes, i.e. genocide, war crimes, ethnic cleansing and crimes against humanity, which are mentioned in paragraphs of 138 and 139 of the Summit. These four crimes are commonly referred to as 'atrocities crimes' or 'mass atrocity crimes'.³² In 2009, the report of the UN Secretary General also reveals, "the responsibility to protect applies, until Member States decide otherwise, only to the four specified crimes and violations: genocide, war crimes, ethnic cleansing and crimes against humanity."³³ The scope of the doctrine has not been extended to natural calamities, e.g. HIV/AIDS, effect of climate change or natural disaster. Its application is narrow but approach to response has vast layout of prevention and protection instruments available to member states, the United Nations system, regional organizations and civil society.

Legal Basis of R2P

Sources of R2P

Legal sources of R2P are 1948 Genocide Convention (Genocide), 1949 Geneva Convention and their additional protocols (War Crimes), 1998 Rome Statute for International Criminal Court, (Crimes against Humanity, Forceful Deportation), Domestic law (pillar one), Bilateral and regional Law (Pillar two), UN Charter: Chapter vi, vii, viii measures (pillar three), Relevant Human Rights Law, for example, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The element of R2P is embodied in the Convention on the Prevention and Punishment of the Crime of Genocide, 1948. Genocide is a crime under international law. The member states of the Convention pledge to prevent genocide whether committed in time of peace or in time of war.³⁴ Persons committing genocide must be punished whether they are constitutionally responsible rulers, public officials or private persons.³⁵ The contracting states' responsibility

³⁰ Global Center for the Responsibility to Protect, "What is R2P?" (Ralph Bunche Institute for International Studies, The Graduate Center, New York)

³¹ The U.N. Secretary-General Report, supra note 23

³² 2005 World Summit Outcome, supra note 5

³³ The U.N. Secretary-General Report, supra note 23

³⁴ The Convention on the Prevention and Punishment of the Crime of Genocide, art, I, supra note 3

³⁵ *ibid*, art, 4.

to prevent genocide is also extended under the purview of the convention. The contracting state is responsible to enact domestic legislation in accordance with the respective constitution to prevent and punish the genocide.³⁶ Under the International Covenant on Civil and Political Rights (ICCPR) the contracting parties which have not abolished death penalty may impose sentence of death to the offender only in case of serious crimes in accordance with law existed in the respective country.³⁷ But, deprivation of life must not constitute the crime of genocide. The covenant shall not permit any State Party to derogate in any way from any obligation stipulated under the provisions of the Convention on the prevention and punishment of the crime of genocide. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 bounds the contracting party to provide effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The words 'other measures'³⁸ in the concerned article basically widens the scope of state measures to prevent the torture. Exceptional Circumstances, i.e. state of war, threat of war, internal political instability or any other public emergency may not justify the torture.³⁹

Nexus between R2P and International law

It is well established principle in the regime of international law that states are subject to international customary law. They are relied greatly on bilateral and multilateral relationships. State legitimacy is found to be dependent on state actions including its responsibility to prevent and protect its citizens from harm. This responsibility is the reflection of implementing the international legal instruments, (e.g. treaties, statutes, conventions) as a member state of the concerned instrument. It is strongly expected by international community that state must not practice to commit genocide, war crimes and crimes against humanity. Even, it is also desired that state must not engage in committing atrocities in any emergent situations prevailed in its national territory as crimes against humanity are 'non-derogatory'⁴⁰ and they amount to breaches or threat to international peace and security in the world. These includes *thejus cogens* rules in relation to genocide, war crimes, ethnic cleansing and crimes against humanity. The UN Vienna Convention on Law of Treaties, 1969 addresses the rule *offjus Cogens*:

³⁶ *ibid*, art, 5.

³⁷ The International Covenant on Civil and Political Rights, Art, 6, para, 2, adopted on December 16, 1966, entry into force March 23, 1976.

³⁸ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art 2, para, 1, adopted on December 10, entry into force on June 26, 1987.

³⁹ *ibid*, art 2, para, 2.

⁴⁰ ICCPR, *supra* note 34

" a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."⁴¹

These responsibilities of states are not new concepts as they have firmly been grounded in international law, both in theory and practice. Moreover, State is bound to refrain from committing atrocities as a party to the United Nations Charter and the Statute of the International Court of Justice, 1945. The UN Security Council sometimes also undertakes measures to prevent abuse and protect these duties under the purview of international law.

Actually, responsibility to protect (R2P) doctrine adds nothing new to states' duties and obligations, rather provides a declaration to remind states of these duties.⁴² R2P cannot enforce these duties because it is not international law in its own right. But, R2P is grounded in international law as it has been significantly reflected in the United Nations General Assembly discussions and the International Law Commission's work on responsibilities of states since 1946.⁴³ Delegation of Panama on declaration of the rights and duties of states⁴⁴ is the outcome in 1946 under the United Nations mechanism. The declaration articulates that each states has legal duty to ensure justice, international peace and order for the population within its territory⁴⁵. R2P specifically indicates the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity and prevention of such crimes through appropriate and necessary means. The duty to protection of population from such crimes firstly remains with the State.⁴⁶ If the state fails to protect its populations, the international community should act through the UN Security Council and in accordance with the UN Charter and in cooperation with regional organizations as appropriate. Protecting peace and security throughout the world has evolved with the Charter of the United Nations and the Statute of International Court of Justice.

⁴¹ The UN Vienna Convention on Law of Treaties, Art, 53, adopted on May 23, 1969 entry into force on January 27, 1980.

⁴² Anne-Marie Judson, "Where is R2P grounded in international law?" (Master thesis, University of Otago, Dunedin, New Zealand, 2012), 7-9.

⁴³ *ibid*

⁴⁴ Delegation of Panama: Draft Declaration of the Rights and Duties of States, United Nations General Assembly meeting record: A/19/Corr.1, 1 December, 1946, Accessed on : 16 September, 2022, url: <https://digitallibrary.un.org/record/842627>

⁴⁵ *Ibid*, principle II.

⁴⁶ 2005 World Summit Outcome, *supra* note 5

R2P and its Justification under UN Charter

The use of word 'responsibility' in the doctrine implies a degree of duty on state and international community to respond when one of the four crimes occur. The doctrine does not create new legal duties.⁴⁷ It is adopted to aid in the implementation of existing legal principles.⁴⁸ So, R2P is not devoid of legal character. It is best understood as form of law, defined and influenced by existing international legal principles.⁴⁹ Now, it is important to outline the relevant legal framework and some of the contemporary interpretations of the doctrine that derive from such provisions. The cornerstone principle of the international system of states is Article 2(4) of UN Charter, which provides a general prohibition on the interstate use of force.⁵⁰ Article 2(4) is bolstered by Article 2(7), which similarly prohibits intervention by the UN in internal affairs of a state.⁵¹ Exercising of force by the UN Security Council has been vested by the chapter VII of the Charter. But, the use of force is subject to two basic exceptions. First, the use of force can be exercised in 'self-defense'⁵² under Article 51 of the UN Charter. Secondly, the use of force by the Security Council must be exercised to maintain international peace and security under the provisions of Chapter VII of the Charter. In order to authorize force under Chapter VII, the Security Council must determine that massive violations of human rights are occurring, or are about to occur, that the violations constitute a threat to international peace, and that the authorization of enforcement action to prevent or end those violations is necessary.⁵³ Article 24(1) also vests primary responsibility for the maintenance of peace and security in the Security Council,⁵⁴ backed up by Article 39, which grants the Security Council the right to "determine the existence of any threat to the peace, breach of the peace, or act of aggression and... make recommendations, or decide what measures shall be taken ... to maintain and restore international peace and security."⁵⁵

⁴⁷ Jonah Eaton, " An Emerging Norm- Determining the Meaning and Legal Status of the Responsibility to Protect," *Michigan Journal of International Law* 32 (201 I): 801, accessed on December 19, 2019, url: <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1046&context=mjil>

⁴⁸ "E-International Relations Students", Epic Search.in, last modified: August 8, 2012, url: <https://www.e-ir.info/2012/08/08/the-legal-basis-of-the-responsibility-to-protect/>

⁴⁹ *ibid*

⁵⁰ The United Nations, the Charter of United Nations, art, 2, para 4, adopted on June 26, 1945 came into force on October 24, 1945.

⁵¹ *ibid*, art, 2, para 7.

⁵² *ibid*, art, 51.

⁵³ Christopher Joyner, "The Responsibility to Protect: Humanitarian Concern and the Lawfulness of Armed Intervention." *Virginia Journal of International Law* 47 (2006-2007): 693-723.

⁵⁴ The United Nations Charter, *supra* note 47

⁵⁵ *ibid*, art, 39,

The doctrine of R2P prescribes the relevant actors to adopt a limited scope prohibiting on the use of force in accordance with Articles 2(4) and 2(7) of the Charter.⁵⁶ Considering the limited scope of the doctrine it is argued that: "Where a population is suffering a 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 the international responsibility to protect".⁵⁷ The broader scope of R2P requires the Security Council to assume an extensive reading of Article 39, incorporating human rights violations into the broader interpretation of "threats to the peace."⁵⁸ Initially, the doctrine began with the limited scope of non-intervention. But, this position has evolved to the international responsibility to protect within the legal framework of UN Charter.

R2P and Principle of Non-intervention

The principle of non-intervention in the internal affairs of a state is articulated in Article 2(7) of the UN Charter. The principle is one of the basic pillars of international law and is regarded as safeguard for sovereign equality of all nation states, irrespective of powerful or weak, big or small state. Non-intervention essentially requires that one nation must not interfere with the sovereign and domestic affairs of another nation. There are two critiques in international law- one group advocates that R2P undermines the principle of non-intervention in internal affairs of nation state, another group advocates that R2P is invoked on the ground of humanitarian crises. Later group legalise the doctrine of R2P mentioning that sovereignty does not confer only power, but also state responsibility.⁵⁹ The doctrine departs from the non-intervention norm when there is immense urgency of international response to atrocities within a sovereign state.⁶⁰ Sovereign immunity does not defend responsibility for crimes against humanity. The House of Lords, observes the trend of Nuremburg in the Penuchet case that the head of state could be legally prosecuted and responsible for torture and crimes against humanity.⁶¹ The court interpreted Article 1 of the Convention Against Torture and other Cruel, Inhuman and Degrading

⁵⁶ Mehrdad Payandeh, "With Great Powers Comes Great Responsibility? The Concept of the Responsibility to Protect Within the Process of International Lawmaking," *Yale Journal of International Law* 35 (Fall 2009): 469-516.

⁵⁷ International Commission on Intervention and State Sovereignty, *supra* note 10

⁵⁸ Mehrdad Payandeh, "With Great Powers,"

⁵⁹ Tessa Davis. "Taking International Law at Its Word and Its Spirit: Re-Envisioning Responsibility to Protect as a Binding Principle of International Law". *Florida State University Law Review*. 38 (4) (2011): 883-909.

⁶⁰ *ibid*

⁶¹ Geoffrey, "Crimes against Humanity"

Treatment (CAT).⁶² The U.K court rejected the view that public officials are immune from prosecution on the ground of self-defence and vividly relied on the provisions of CAT that sovereign immunity would not be provided in the Pinochet case.⁶³ There is a debate as to when and how international intervention is to be invoked. UN Secretary-General Kofi Annan echoed that who would fetishize⁶⁴ sovereignty will no longer undermine international responsibility in the situation of mass atrocities.⁶⁵ Many international law scholars raise question whether R2P is morally, legally or pragmatically justified in context of principle of non-intervention in internal affairs of nation state. The international scholars who supports R2P postulate that the reasons of intervention are very clear- morality and necessity of saving millions of innocent lives. Rwandan genocide is the crystal example of mass atrocities which would offend the common humanity. The international community must not overlook the necessity of humanitarian crises that occurred in Rwanda.⁶⁶ Apart from moral landscape, the proportionality of doing good than harm through past intervention by NATO in Kosovo supports future invoking of humanitarian intervention. Almost 1.7 Albanians were saved in Kosovo by the intervention of NATO.⁶⁷ Even in Rwanda, the UN force succeeded to save 25000 Rwandans.⁶⁸ The basic edifice of R2P doctrine is intervention for prevention of mass atrocities which construct the moral and practical aspirations of intervention.⁶⁹

Challenges of R2P

Conceptual Challenge

R2P doctrine creates a conceptual challenge. International community shall concern to protect the population from mass atrocities. When the humanitarian ground arises to prevent atrocities, the international community urges to apply R2P. R2P doctrine is to be filtered and illustrated in such a way that there should be no basic misconstruing as to its spontaneous universal acceptance and as to the consensus to determine what is and what is not R2P situation. There are basically two misinterpretations in respect of conceptual analysis on R2P doctrine. First one is that the application of R2P is very narrow. The first view proposes that the tenet is just humanitarian intervention in new

⁶² CAT, supra note 35

⁶³ Tessa, "Taking International Law,"

⁶⁴ Geoffrey, "Crimes against Humanity," 420

⁶⁵ U.N. Secretary-General, We the Peoples: The Role of the United Nations in the Twenty-First Century, 219, delivered to the General Assembly, U.N. Doc N54/2000 (Mar. 27, 2000)

⁶⁶ Samantha Power, Raising the Cost of Genocide, in *The New Killing Fields: Massacre and The Politics of Intervention* 255 (Nicolaus Mills & Kira Brunner, eds., 2002)

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ Geoffrey, "Crimes against Humanity," 420

dimension. It is all about coercive military intervention, nothing much else. It is, of course, not the basis of R2P. R2P is of preventive, reactive and rebuilding measures in response to mass atrocities. The use of military force is final mechanism in extreme and exceptional cases where no alternative way is effective.

The other misinterpretation is that the doctrine is too widely applicable. The application of the doctrine is extended to almost all kinds of situation in which human beings are in danger, e.g. aftermath of natural disaster, impact of climate change, widespread of HIV virus. If R2P is applied protecting everybody from every stations, it will fail protecting nobody from anything.⁷⁰ The new language 'the responsibility to protect' can generate an effective and consensual response in case of mass atrocities crime what the language 'right to intervene' cannot generate.

Institutional Challenges

There are different actors involved to apply 'Responsibility to Protect', e.g. the United Nations, the regional and sub-regional organizations, the individual governments. Many different structures and strategies need to be maintained to apply the doctrine as well. Major institutional challenge with regard to the implementation of R2P principle is to achieve synergy among the concerned institutions while transforming their unique functions into practical results⁷¹. Proper applications of the doctrine are significantly related to the early response capability of the said institutions. Diplomatic approach and capability of those institutions has been another concern and debatable issues in case of early and proper response to mass atrocities. If sufficient military capability and financial arrangements are ensured by the abovementioned institutions, the international community can respond urgently to prevent atrocities through 'Responsibility to Protect' mechanism. Relevantly, it is strongly argued by international jurists that UN General Assembly can co-operate in international peace and security and make recommendation to its member states or to the Security Council.⁷² The legal effect of the UN General Assembly's resolution is not binding, it is recommendatory in nature⁷³. The binding effects of UN General Assembly's resolution depends upon the unanimous decision of UN Security Council. The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.⁷⁴

⁷⁰ Gareth Evans, "The Responsibility to Protect"

⁷¹ Kingsley Onu. "The Legal and Institutional Challenges to the Implementation of the R2P Principle" *ABUAD Law Journal*, Vol 7, no 1, October 2019, Accessed on: September 22, 2022

⁷² United Nations Charter, supra note 47

⁷³ Ibid, article (11) 2,

⁷⁴ ibid, art 25.

UN General Assembly may respond early to protect mass atrocities, but the veto power exercised by any permanent member states, i.e. (The Republic of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America)⁷⁵ of UN Security Council can stop the early response to mass atrocities. United States of America, for example, being a permanent member of UN Security Council did not pass the draft resolution S/2018/516 by exercising its veto power.⁷⁶ The Draft resolution was submitted to the Security Council on June 1, 2018 at its 8274th meeting invoking to all the relevant parties to respect all international humanitarian law and international human rights law, including with protection of Palestinian Civilian Population under Israeli occupation. The draft resolution highlights the need to respect on international humanitarian law in all circumstances in line with common Article 1 of Geneva Convention. Bolivia (Plurinational State of), China, Cote d'Ivoire, Equatorial Guinea, France, Kazakhstan, Kuwait, Peru, Russian Federation and Sweden casted their vote in favor of the draft resolution. United States of America casted in against whereas Ethiopia, Netherlands, Poland, United Kingdom of Great Britain and Northern Ireland remained abstaining to vote.⁷⁷ The resolution for protection of Palestinian civilian population did not pass due to this institutional challenge.

Lack of regular information sharing, communication and collaboration between individual governments and international NGOs hamper proper implementation of R2P. UN Security Council itself fails instantly to protect international peace and security due to lack of collaboration and sharing of information between states serving in UN Security Council and other institutions⁷⁸. Resource scarcity of other institutions impedes the implementation of R2P. Particularly, UN office on prevention of genocide can't play pivotal role to prevent genocide due to lack of sufficient resources. Regional organisations can't assist the UN to respond to mass atrocity crimes. AU, EU and NATO can't instantly intervene during mass atrocity crimes due to prolonged diplomatic negotiation⁷⁹.

As noted earlier, these large-scale of institutional challenges make the implementation of R2P more critical in deed. In addition, the ambivalent attitude of individual state towards overseas conflict is regarded as impediment to implement R2P principle.

⁷⁵ *ibid*, art23, para, 1.

⁷⁶ UN Security Council Draft Resolution S/2018/516, UN Security Council meeting record S/pv.8274, UN Doc S/pv.8274(2018): 2, accessed on December 21, 2019
url: <https://undocs.org/en/S/PV.8274>

⁷⁷ *ibid*: 3-4.

⁷⁸ Onu, "The Legal and Institutional Challenges,"

⁷⁹ *Ibid*:218

Political Challenges

The history of international intervention for humanitarian purposes has a mixed legacy. The leaders of some nations raise their voice regarding the fear that the UN Security Council's permanent members will use R2P as a tool to implement their own interest under the guise of collective action.⁸⁰ At the same time some nations raise their voice to support the international intervention for protecting population from genocide and other atrocities. In November 2011, at the UN General Assembly, Dilma Rousseff, the President of Brazil, introduced the term 'responsibility while protecting'. This concept intended not to amend R2P but to complement it, set forth a list of principles and parameters to guide international action. These included an emphasis on prevention before coercive measures are adopted and strict adherence to international law in the use of force. According to Brazil, "The use of force must produce as little violence and instability as possible....." The effectiveness of R2P's effort to prevent atrocities depends on the consensus or partnership of world community.⁸¹ This partnership must be formed including globally powerful nations, emerging powers, smaller countries and regional organizations.

Following the World summit Outcome, Lee Feinstein observed that the R2P is entirely predicated upon the political will.⁸² Aidan Hehir pointed that, "political will is the variable upon which the entire utility of R2P is now predicated".⁸³ The Swiss representation at the General Assembly debate in 2009 openly recognised the need of political will at right time.⁸⁴ However, diversity of national, regional and global political character is considered as a major challenge to apply or implement R2P doctrine. Either public at grassroots levels or highest levels of government may reluctant to accept the measures. Sometimes, intergovernmental decision makers show the sign of hesitation. Lack of 'civic courage' and 'collective conscience' impeded to apply reasonable humanitarian intervention during the Rwandan genocide.⁸⁵ The inquiry led by UN and ICISS report revealed that the reason of failure of humanitarian intervention during the genocide was lack of political commitment and

⁸⁰ Madeleine K. Albright and Richard S. Williamson, "the United States and R2P: From Words to Action," (Report, United States Institute of Peace, United States Holocaust Memorial Museum and Brookings, 2013): 21-22.

⁸¹ *ibid*

⁸² Lee Feinstein, "Beyond Words: Building Will and Capacity to Prevent more Darfur" *Washington Post*, January 26, 2007.

⁸³ Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*, (Palgrave Macmillan, China, 2012) 53.

⁸⁴ *ibid*, p 127

⁸⁵ Jed Lea-Henry, "The Responsibility to Protect and the Problem of Political Will" *Polish Political Science Year Book*, Volume 47 (3), September (2018): 566, Accessed on: 24 September, 2022.

international will. Force Commander of the UN Assistance Mission in Rwanda (UNMAIR), Canadian Major-General Romeo Dallaire expressed that he could have saved hundreds of thousands lives if UN had been able to provide adequate mandated troops.⁸⁶ Feeble international response to ethnic cleansing to Bosnia during 1991-1992 revealed the disgraceful connotation to peacekeeping mechanism.⁸⁷ Thomas Weiss describes this feeble response as "collective spinelessness".⁸⁸ Supporting this view, UN report into Srebrenica massacre pointed the feeble international response as crises of political will.⁸⁹ The question of national interest may arise to cope up with the measures. It should be noted that now a days the concept of national interest is much broader than it used to be. In this globalized world, states that cannot or will not stop terrorism, weapons proliferation, drug, human trafficking and other global risks cannot or will not stop internal atrocity crimes.⁹⁰ In case of Kosovo intervention, the ICISS report manifested that humanitarian intervention led by NATO in order to "manipulate external intervention to advance their political purpose."⁹¹ Tony Blair also claimed that such interventions were important for "we have national interest involved".⁹² Simultaneously, the global leaders have the responsibility to protect world's population from humanitarian crisis. To this effect, the theoretical premises of R2P are translucent. Its further success postulates the political will- a commitment to change and a determination to respond in prevention of mass atrocities.⁹³ This is a challenge which undermines the precepts of R2P yet to be surpassed.

Operational Challenges

If there prevails lack of co-operation between nation and institutions, R2P will be ineffective to achieve its purposes. At initial stage, national, regional and global leaders might not be able to trace out the atrocities and the civilians who are in danger.⁹⁴ The use of advanced toolboxes, (e.g. drone surveillance aircraft and tracking the movement of weapons) in R2P mechanism can make it more successful in true sense. The question of justice and accountability might arise when R2P doctrine is applied by national or international authority. In any system, the

⁸⁶ *ibid*

⁸⁷ Thomas George Weiss, *Military-civilian Interactions: Humanitarian Crises and the Responsibility to Protect*, (Rowman & Littlefield Publisher, USA, 2005) p 77-81

⁸⁸ *ibid*

⁸⁹ Lee, "Beyond Words," 567

⁹⁰ Gareth, "The Responsibility to Protect,"

⁹¹ "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty", (ICISS report, December 2001), p 1.

⁹² Hehir, "The Responsibility to Protect" 137-138.

⁹³ Colonel, "The Responsibility to Protect Colonel,"

⁹⁴ Madeleine K. Albright and Richard S. Williamson, "the United States and R2P: From Words to Action," (Report, United States Institute of Peace, United States Holocaust Memorial Museum and Brookings, 2013): 23-26.

existence of credibility for enforcing law or imposing stringent measures is significant for both administering the justice and deterring the criminals. The existence of such a system at the national and international levels plays pivotal role to achieve the goals of R2P. Another concern is the gap between early warning and early response to atrocities. It is the utmost duty of the country in jeopardy to identify the immediate resort to protect its own populations. If the country itself fails to do so, it will seek the assistance from regional or international forum. When the country at risk fails to raise an early warning, the neighboring countries or international communities are assigned to identify the problem and recommend the appropriate measures to achieving the goals of R2P. The concerning issue in this respect is that reluctance to early warning and early response may demise the spirit of the doctrine. However, a number of valuable steps are to be improved in the United Nations mechanisms, regional and national forums for early warning procedure and coordinate preventive action.⁹⁵

There is lots of dust as to the implementation of R2P concept. Though, the Libyan experience in 2011 raises confusion and incredibility in respect of R2P concept, the concept has great potentials to prevent mass atrocities in any place of this planet.⁹⁶ Operational challenges creates impediments as to the implementation of R2P concept. The reasonable humanitarian intervention is essential for global society. If the challenges are minimised, the R2P doctrine will assist in rectifying the gaps in the prevention of mass atrocities.

Challenges as to Conflict with State Sovereignty

There are different notions of state sovereignty among the different states. The notion of absolute national sovereignty is rooted in the Treaty of Westphalia in 1648.⁹⁷ The notion of absolute state sovereignty provided in the treaty of Westphalia has been advanced over time because of increasing "trans-sovereign problem."⁹⁸ In recent years, under international law and as a response to grave human rights violations the international community have carved

⁹⁵ *ibid*,

⁹⁶ Ebere Adigbuo, "The African Union, R2P and the Challenges of Capability", *Journal of African Union Studies*, Vol. 8, Issue I, (April 2009) 125

⁹⁷ The Treaty of Westphalia, Signed on October 24, 1648 between the Holy Roman Emperor and the King of France and their respective Allies, accessed on December 27, 2019, url: <https://www.marxists.org/history/capitalism/un/treaty-westphalia.htm>, see also Zachary A. Karazsia, "An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention," *Journal of Strategic security* 11 (2018): 23, accessed on December 17, 2019, url: <https://scholarcommons.usf.edu/jss/voll1/iss4/2>

⁹⁸ Maryann K. Cusimano, *Beyond Sovereignty: Issue for a Global Agenda* (Boston: Bedford/ St. Martin's 2000) 4, accessed on December 27, 2019, url: <https://www.amazon.com/Beyond-Sovereignty-Issues-Global-Agenda/dp/049579323X>

out exceptions to state sovereignty and bestowed obligations upon the state as well.⁹⁹ However, the different notions of state sovereignty, (e.g. limited sovereignty principles) sometimes impede the international response to mass atrocity crimes. Some critics argue that the R2P doctrine fatally undermines the state sovereignty which is deemed as bedrock of international order in new era.¹⁰⁰ Though international response to prevent mass atrocity upholds the principle of international humanitarian law and international human rights law, some critics urge that it is inconsistent with the absolute principle of state sovereignty. The Global center for Responsibility to Protect noted that some states raise their concerns about pillar III of R2P at the 2016 informal interactive dialogue.¹⁰¹ Venezuela strongly criticised the intervention in Libya in 2011 at the dialogue. It also claimed that pillar III causes more harm than good. North Korea and Syria criticised about pillar III action. Syria specifically urged that pillar III action amounts to interfere in internal affairs of a state and to practice terrorism or murder.¹⁰² Even, Russia and China continue to uphold absolute state responsibility above R2P.¹⁰³

Impediments to Apply R2P

Crisis in Syria

Since the war in Syria began in 2011, at least 560,000 people have been killed in the conflict between the government and opposition group. There are 6.7 million Syrian refugees and nearly 13 million people are internally displaced. An estimated 12 million Syrian people are in dire need of humanitarian assistance.¹⁰⁴ In the northwest of Syria, since April 29, 2011, Syrian government and Russian forces launched bombardment campaign to eradicate armed group Hayat Tahrir al-Sham (HTS). The UN Office of the High Commissioner of Human Rights (OHCHR) has confirmed 1089 civilian deaths, including over 300 children since the launch of the force. Over 4000 people have been displaced and 42 documented attacks on healthcare facilities occurred.¹⁰⁵ The Government of Syria and Russia told that they are targeting to HTS. But their indiscriminate use of weapons in civilian populated areas and the systematic bombing

⁹⁹ Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2012) 1-11.

¹⁰⁰ Power, "Responsibilities to protect," 20

¹⁰¹ Aidan Hehir, "Sovereignty as Authority: State Support for R2P" in *Hollow Norms and the Responsibility to Protect*, (Palgrave Macmillan, USA, 2019), 93

¹⁰² Ibid, 94

¹⁰³ Md Badrul Islam, "The Rohingya Crisis and the Challenges of Implementing R2P Principles" Security Distillery, January 9, 2020.

¹⁰⁴ "Global Center for Responsibility to Protect," Epic Search.in, Last Modified: November 5, 2019, url: <http://www.globalr2p.org/regions/syria>

¹⁰⁵ ibid

on medical facilities disregards international law and constitute war crimes. There are also fears of 'ethnic cleansing' of the Kurdish Population due to forced resettlement of Syrian Arab refugees at Northeast Syria. Some airstrikes by the US-led coalition have also violated international humanitarian law which may constitute war crimes. The Government of Syria not only manifestly failed to uphold its responsibility to protect, but it bears the primary responsibility for the ongoing mass atrocities.

Syria crisis undoubtedly demands the R2P. The international community condemned the Syrian Government for its gross violation of human rights. The various high-officials including UN secretary General also called to refer the issue to International Criminal court. Despite these international urge, the UN Security Council has failed to respond effectively. Since 2013, the UN Security Council has passed 24 resolutions on humanitarian access, peace talks and the use of chemical weapons. Several of these are related to government's responsibility to protect populations. The Syrian government has directly violated the resolutions and avoided accountability measures with the shield of Russia. The draft resolution at UN Security Council has been vetoed in this regard.¹⁰⁶ The failure of permanent members of UNSC to find a political solution regarding Syrian crises amounts to impediment of humanitarian assistance to Syrian people.¹⁰⁷ Lack of "collective moral authority behind the independent humanitarian action" and impartial humanitarian intervention in Syria became impossible.¹⁰⁸ The major regional players in the Middle East and North Africa (MENA) has been failed to apply R2P doctrine in Syrian civil war. The failure of regional institutions such as the Gulf Co-operation Council (GCC), the Organisation of Islamic Conference (OIC) and the League of Arab States throw significant challenges to the implementation of R2P in Syrian crises.¹⁰⁹ Complex regional dynamics and Russian assistance to Syrian Government represent significant challenge to international community and the norms of the doctrine itself.

¹⁰⁶ The UN Security Council Draft Resolution S/2014/348/, UN Security Council meeting record S/pv.7180, UN Doc S/pv.7180 (2014): 4, accessed on December 30, 2019
url: <https://undocs.org/en/S/PV.8274>

¹⁰⁷ Michael Aaronson, "Syria and the Crises of Humanitarian Intervention" In *Into the Eleventh Hour: R2P, Syria and Humanitarianism in Crises*, edited by Robert Murray & Alasdair Mackay, (E-international Relations, Bristol, UK, 2014), 58.

¹⁰⁸ David Carmen! & Joe Landry, "R2P in Syria: Regional Dimensions" In *Into the Eleventh Hour: R2P, Syria and Humanitarianism in Crises*, edited by Robert Murray & Alasdair Mackay, (E-international Relations, Bristol, UK, 2014), 52.

¹⁰⁹ *ibid*

Crisis in Myanmar (Burma)

For years ago, Myanmar government launched so called 'clearance operation' in Rakhine State. Populations of that region remain at risk of mass atrocities perpetrated by the security forces and as a result of discriminatory laws and policies. Since August 2017, an estimated 720,000 people- the majority of the Rohingya population have been forced to flee in neighboring country Bangladesh.¹¹⁰ In 2018, the Human Rights Council mandated by Independent Internal Fact Finding Mission (IFFM) on Myanmar concluded in its report that the military have committed crimes against humanity and war crimes in Rakhine, Shan and Kachin States and acts of genocide against the Rohingya minority in Rakhine state. On 16 September, 2019 IFFM published its final report, concluding that Myanmar "continues to harbor genocidal intent" towards the Rohingya.

The government of Myanmar has still not taken serious steps to protect Rohingya populations. Military Units continuously commit crimes against Rohingya. The Government has manifestly failed to uphold its 'responsibility to protect' Rohingya and bears the responsibility for the commission of war crimes, crimes against humanity and genocide.¹¹¹ International response, particularly the failure of UN Security Council to hold accountable those responsible for atrocities committed against the Rohingya enables the military to continue their attack on other populations. Humanitarian intervention to protect Rohingya from mass atrocities has been failed due to institutional weakness and lack of political will. Burma resolution to stop attacks on ethnic minorities at UNSC was vetoed in 2007. It was the first multiple veto since 1989. Again in 2017, discussion regarding Rohingya issues was blocked at UNSC.¹¹² The difference of international response to prevent genocide can be perceived comparing the situation of Rwandan genocide with Bosnian genocide. NATO conducted airstrikes in Bosnia in 1994-1995 to protect massacre and at the same time Rwandan genocide was ignored. Unfortunately, the world witnessed the slaughter of 800,000 people in Rwanda.¹¹³ It can be expected that reasonable humanitarian intervention in Myanmar through 'collective conscience' and political will might stop atrocities in Rakhaine State.

¹¹⁰ Global Center for Responsibility to Protect, Jed Leal-He, "The Responsibility to Protect,"

¹¹¹ Ibid

¹¹² Ibid, Islam, "The Rohingya Crisis,"

¹¹³ ibid

Recommendations to overcome the Challenges:

Theoretically, the concept of R2P is clarified and analyzed without any ambiguity. Nonetheless, conceptual misunderstandings of R2P arises difficulties in case of practice. To remove the conceptual misinterpretation, the doctrine is to be applied to particular cases, e.g. preventing population from atrocity crimes. There should be a crystal indication as to the extent of crimes to which the doctrine will and will not apply. As it is the last resort to prevent population from atrocities, it must be confirmed before applying that the doctrine will result more good than harm to human being. Without justification of necessity and proportionality, the doctrine of R2P will lose its legal character under international law. R2P as a non-binding principle of international law can do little work to address humanitarian crises intervening the sovereignty of states. In order to respond early in prevention of mass atrocities, there should be a transformation of the doctrine from non-binding norm to a binding principle of international law. To do so, the U.N and International Commission on Intervention and State responsibility (ICISS) should formulate framework through combined effort. To get early response from the doctrine, the current scope of R2P should be wider. To eradicate the lack of political will the proponents of R2P should demarcate the doctrine. The question of national interest and global political diversity should not be highlighted when humanitarian crises arises. The world leaders who advocate the doctrine must raise the voice to reform the UN Security Council veto power.

Involvement of global nongovernmental organizations (NGO) community in the landscape of R2P can contribute to proper implementation of R2P's activities around the world as the global NGO community is well positioned to monitor, evaluate, and report on the broad aspect of R2P. Major global NGOs with the support of the Global Centre for the Responsibility to Protect can assist the global engagement and accelerate the essential preparedness to meet the atrocity crimes in any turbulent situations. The Global Centre for the Responsibility to Protect should spread out its programs, workshops and seminars in all stages- global, regional and national levels.

Mobilizing political will among the different actors- public at grass root levels, highest levels of government and intergovernmental decision makers is must to act in new situations what R2P demands. Three things- good information, good organizations and good arguments relating to R2P can mobilize political will among the different actors which might contribute to prevent mass atrocities.

Conclusion

Now-a-days, the concept of state sovereignty has evolved. State sovereignty means not only to control its own population, but to protect them from atrocities. If any state manifestly fails to do so, R2P is the last resort to assist the state concerned in prevention of mass atrocities. International Community including the United Nations has immensely concerned to evolve the R2P. The doctrine is still facing various challenges in prevention of atrocities analyzed above. Maintaining peace and security throughout the world without any distinction on the ground of race, color, sex, language, religion, place of birth and political identity is the global commitment after witnessing the massive violence of World War II. Unfortunately, many atrocities are still being practised, even with the assistance of domestic actors in different parts of the world. Early warning- early response as to prevent atrocities, justice and accountability must be ensured in all stages and all mechanisms, e.g. grass root level, national, regional and global level to protect the population from 'mass atrocities', namely, genocide, war crimes, ethnic cleansing and crimes against humanity.