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**Responsibility to Protect (R2P) as Justification of Use of Force: Human Rights
Protection through the Perspective of Just War Theory**

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by

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Abstract

The paper focuses on the issues of military action in cases of human rights protection in mass atrocities when a state fails to protect its own civilians. The pressure escalated with new a concept of Responsibility to Protect (R2P) created for the protection of civilians in mass atrocities but mostly assimilated with the use of force. Central to discussions of international politics and law determined with the use of force that reconfigured R2P can justify the use of military force by one country against another. The paper seeks to illustrate from the standpoints of the Just War Theory that contemporary mission of R2P for the protection of human rights rather warfare against the enemy.

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Introduction

Currently, the shape of the warfare changes over time but still the war has not disappeared. Certain types of wars like interstate wars have become less frequent whereas civil and intrastate wars have become more prevalent. For that, almost all current issues in international politics highlight the relationship between the concept of sovereignty and humanitarian intervention. These debate escalated in the 1990s as a result of increasing incidence of intrastate conflicts, and have advanced through the emergence of the so-called Responsibility to Protect concept. The Responsibility to Protect (R2P) has been indicated as a “new norm” of obligation in international politics.¹ Yet, it is rooted from the Hague Conventions of 1907 which contain the legal principles of law of humanity, the 1948 Genocide Convention, the two International Covenants on Human Rights (1966), the International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights.² Consequently, after the Rwandan Genocide, when the international community failed to respond to the gross violation of human rights, the Canadian government established the International Commission on

¹ Eric Heinze and James Pattison, "Humanitarian Intervention, the Responsibility to Protect, and Confused Legitimacy," *Human Rights and Human Welfare* 11 (2011): 17

² Permanent Court of Arbitration, The Hague (PCA), *1907 The Hague Convention for the Pacific Settlement of International Disputes*, 18 Oct 1907, The Hague, Netherlands, UKTS 6 (1971) Cmnd. 4575 /1 Bevans 577 / 2 AJIL Supp. 43 (1908), available at:

<http://cil.nus.edu.sg/rp/il/pdf/1907%20The%20Hague%20Convention%20for%20the%20Pacific%20Settlement%20of%20International%20Disputes-pdf.pdf> [accessed 16 January 2015]

UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations Treaty Series, vol. 1951, No. 1021, available at:

<https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf> [accessed 16 January 2015]

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at:

<https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> [accessed 16 January 2015]

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 3, available at:

<http://www.refworld.org/docid/3ae6b36c0.html> [accessed 16 January 2015]

Intervention and State Sovereignty (ICISS).³ Where ICISS noted primary step is directed on the shift from state's rights to control people within its territory to the responsibility to protect them. In case when the state is incapable or unwilling to protect its own civilians, the international community responsible to make appropriate measures to stop the grave violation of human rights. The primary responsibility is to prevent the war crimes, crimes against humanity, genocide, and ethnic cleansing.⁴ Principal actions are peaceful measures such as sanctions including coercive steps military intervention as a last resort but only where there are reasonable prospects of success. However, in international politics considerable attention is paid to the military intervention. Accordingly, in today's world R2P is apparent with the use of force, where the intention of states is not always a simple matter rather closely connected to international relations and the power of certain key powerful states. As a result, the use of the military force that is directed to prevent or to stop widespread atrocities has raised serious questions of whether the protection of civilians is in fact the primary concern of interveners.

Limitation

Consequently, the implications of this study are limited to the third pillar of Responsibility to Protect. The study concentrates on the deep analysis of the implementation of the third pillar of R2P as the 'last resort' and the impacts of the states use of force, intentions, implications, and the results of the military interventions. This research aims at providing an analysis of the relevance of norms in shaping the behavior of the states in International Politics. Nonetheless, through arguments that are still

³ International Commission on Intervention and State Sovereignty, Gareth J. Evans, and Mohamed Sahnoun, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre, 2001, p. 2

⁴ *Ibid.*, pp.13-15

motivated by the logic of realpolitik, critical assessment will be to promote human security above that of the states.

Accordingly, this paper specifically addresses the evolution of the legality of military intervention of the R2P's responsibility to react and determining the role of the states in global politics. The paper analyses the differences of the R2P from other similar previous approaches and examines whether R2P is a distinct approach to stop the grave atrocities or whether it reshapes a notion that has failed on many instances. These tensions demand deeper analysis to understand the main futures of the third pillar of R2P through addressing the following question: Is the Responsibility to Protect a modification of the language to justify the way of intervention? The hypothesis highlights the Responsibility to Protect has been employed to re-conceptualize the principle of sovereignty to justify the use of force by the powerful countries, in the name of protecting individual human beings from mass atrocity.

Theoretical framework

To examine which measures are the most effective in protection and promotion of the civilians in mass atrocities, two theoretical approaches will be applied. Namely, the Just War Theory and Realism.

Just War Theory

R2P is mostly based on the Just War Theory with the only remark to the protection of human rights. Just War Theory- is a moral theory based on the natural law and Christian theology. The essence of the Just War mostly was developed by Thomas Aquinas and Saint Augustine and is still referred to Christians today.⁵ The Just War

⁵ Michael Walzer, "The triumph of just war theory (and the dangers of success)," *Social Research* Vol. 69, No. 4 (2002): 925, accessed: 24/08/2012, <http://www.jstor.org/stable/40971584>

theory is not proposed to justify all wars but states that some wars under certain circumstances can morally be justified. As Thomas Augustine noted the criteria done for the purpose to reach the just cause in particular meant preventing harm to innocents.⁶ Consequently, Just War Theory has been applicable in recent decades in contemporary armed conflicts with moral criterion for humanitarian forceful interference, mainly the rights to go to war and how to conduct the war. In as much as, the primary criteria were divided into two types, *jus ad bellum*-the law before the war and *jus in bello*- the law during the war.

Jus ad bellum-a set of criteria before the war started, for instance, the rights authority, right intention, just means, just cause, reasonable success, and war must be the last resort.

Jus in bello- the criteria that are applicable during the war. For the purpose of the best consequences the criteria sets the principle of distinction where only combatants may be targeted, the principle of proportionality the proportionate use of force, prohibited weapons by international law must not be used, and prisoners of war must be treated well.⁷

Thus recently, the third type *jus post bellum* was developed that is mostly dealing with the reconstruction and the rule of law after the war.

Realism

The definitions of realism differs in details but this paper relies on Political Realism-Realpolitik, 'power politics' the theory of international relations that stresses on the analyses of the states that pursue power politics of the national interest. This theory referred to the power as main political action, does not matter domestic or foreign, states

⁶ David M. Mednicoff, "Humane wars? International law, Just War theory and contemporary armed humanitarian intervention," *Law, culture and the humanities* 2, no. 3 (2006): 379

⁷ *Ibid.*, pp.380-382

strive to maximize their power.⁸ The theory mostly developed by Machiavelli, Thomas Hobbes, and Rousseau. Where, Jack Donnelly noted that political realism in international politics stresses that states pursue a power politics of the national interest.⁹ Subsequently, Morgenthau argued that the Realism preserves that universal moral principles in practice cannot be applied to the actions of states.¹⁰ But, Donnelly stated that states sometimes comply with moral norms but only for the sake of their own interests and to escape from the costs of non-compliance. In foreign policy there are always multiple goals, where the spreading democracy, combating diseases, humanitarian interests are always costly but no political goals can be achieved without cost or sacrifice.¹¹ Therefore, state's primary interest is self-preservation that seek power, where the most important and consistent form of power is military power. The fact that states do good things in case; there is necessity to drive them, pursuing the costs and benefits of all relevant interests.

Literature review

The literature review has valuable contribution on the new settlements that argues the challenges of the doctrine of Responsibility to Protect. There are a number of critics on the implementation of R2P and its effectiveness.

One group of scholars is far from believing in the effectiveness of the R2P doctrine, claiming that it is perfectly written on paper and worthless in practice. For instance, Focarelli pointed out that R2P considered as a tool in order to get foreign policy gains supplemented together with moral or humanitarian considerations but in practice it is felt that states only contributing to their own values and interests. He argued that R2P

⁸ Jack Donnelly, *Realism and international relations*, (UK: Cambridge University Press, 2000), 9-10

⁹ Jack Donnelly, "The Realism," in *The theories of International relations*, 1st ed. (New York: Deakin University 1995), 30

¹⁰ Hans J. Morgenthau, "A realist theory of international politics," in *Realism Reader*, edited by Colin Elman and Michael Jensen, (New York: McGraw-Hill Publishing Company 1985)

¹¹ Jack Donnelly, "The Realism," in *The theories of International relations*, 1st ed. (New York: Deakin University 1995), 49-51

was prepared by the Western states in order to use it on a case-by-case basis when there is an advantage, pointing out the problem with politics than that of economy.¹² In addition to Focarelli, Jeremy Sarkin argued that R2P may be effective only in case of political support, otherwise the doctrine largely dependent on voluntary state compliance, even when there are massive violation of human rights.¹³ The same Alex Bellamy claimed that R2P has become part of the political language used to justify the actual or potential use of coercive force. Even there is no obvious failure to protect the civilians.¹⁴

Another group of scholars goes further by arguing that the problem lies with R2P's third pillar. Bruce Cronin appealed the examination of military campaigns that intended to protect civilians from mass atrocities in practice end up causing so many civilian casualties. Moreover, he highlighted that the mission of the Responsibility to Protect is to protect the civilians but that nowadays interveners go further and change the regimes.¹⁵ In addition, Pattison relied on an additional proposition which was presented by Brazilian president, the 'responsibility while protecting' was meant to take extra care of protecting civilians when using military force.¹⁶ As an outcome, even if R2P doctrine was mostly based on the Just War Theory, in practice there is no 'just cause' where military intervention causes greater harms on civilians. For this reason, Aloyo proposed

¹² Carlo Focarelli, "Ahead to the Past? Responsibility to Protect and the Global System," *Groningen Journal of International Law*, no. 1 (2012): 4

¹³ Jeremy Sarkin, "Is the Responsibility to Protect an Accepted Norm of International Law in the post-Libya Era? How its Third Pillar ought to be applied," *Groningen Journal of International Law*, vol. 1, no. 0 (2012):20-22

¹⁴ Alex J. Bellamy, "The responsibility to protect—five years on," *Ethics & International Affairs* 24, no. 2 (2010): 144

¹⁵ Bruce Cronin, "Killing Civilians in Order to Save Them: The Dark side of Humanitarian Intervention," *FLACSO-ISA Joint International Conference*, Buenos Aires, <http://web.isanet.org/Web/Conferences/FLACSOISA%20BuenosAires%202014/Archive/eba0454a-5aff-4d63-a9aa-a14242f5b29d.pdf> July 23 –25, 2014, pp.2-5

¹⁶ James Pattison, "The Ethics of 'Responsibility While Protecting': BRAZIL, The Responsibility to Protect, And Guidelines for Humanitarian Intervention," *Human rights & Human welfare* working paper no. 71 (April 2013): 3, accessed January 29, 2015, <https://www.du.edu/korbel/hrhw/workingpapers/2013/71-pattison-2013.pdf>.

to remove the last resort from the Just War Theory, claiming that it totally contradicts the principles of the Just War.¹⁷

Whereas authors such as Jose Cabrera maintained that R2P was driven by International Politics, he argued that R2P doctrine was basically driven by Realpolitik concerns rather than by a genuine anxiety to secure the civilians from grave danger. He stressed that the protection of human rights was largely challenged by the Cold War politics that prioritized international demand over justice.¹⁸ In addition, Paul O'Brien stressed that the decision of the Geneva Convention in 1949 to mandate the protection of civilians in war was an overwhelmingly a political step, just the same as it is political to mandate the redeployment of resources from the powerful to weaker. He also relied on Nicolas de Torrente belief that only in cases when humanitarian nongovernmental organizations (NGOs) can prove themselves politically neutral, unbiased and independent, then perhaps the victims will be saved.¹⁹

As a result, to address the humanitarian intervention highly for the protection of the civilians and to avoid the self-centered states, Jutta Brunnée and Stephen J. Toope maintained that when there is address of use of force, action should have to “maximize the possibility of achieving UN Security Council consensus,” and “minimize the possibility of individual UN Member States bypassing the Security Council.”²⁰ Whereas, through stressing to the UN Charter John C. Yoo underlined that the use of force legal

¹⁷ Eanom Aloyo, “The Last of Last Resort,” *The Hague Institute Working Paper Series*, no.1 (July 2014): 14, accessed January 29, 2015. <http://www.TheHagueInstitute.org/working-paper-1>

¹⁸ José Luengo Cabrera, “Human Security Discourse and Humanitarian Intervention,” *BRIAD Policy Paper*, (2011): 13-15

¹⁹ Paul O'Brien, "Politicized humanitarianism: A response to Nicolas de Torrente," *Harvard Human Rights Journal* vol. 17 (2004): 1-2

²⁰ Jutta Brunnée and Stephen J. Toope, "The Responsibility to Protect and the Use of Force: Building Legality?," *Global Responsibility to Protect* 2, no. 3 (2010): 5

when authorized by the UN Security Council everything else illegal.²¹ Hence, the paper analyses the concept R2P determining the role of the states in global politics.

Methodology

In order to examine a distinct approach of R2P to stop the grave atrocities, this paper based on both primary and secondary sources. The primary sources are legal sources such as the United Nations Charter, International Conventions, UN reports, and Resolutions and secondary the political science books, journal articles, publications, policy papers, news articles, statistics, and reports. Significant part of the findings relies on both Responsibility to Protect concept on paper analyzing the concept itself and in practice examining the researches that conducted, using the statistics to explore the number of people dead and victim civilians, and news articles to observe the intentions and positions of the states.

This paper is divided into three chapters. The first chapter provides overall background of the Responsibility to Protect, its tensions with state sovereignty and humanitarian intervention. The second chapter focuses on the legality of the third pillar of R2P. The third chapter is a relative approach of the third pillar that is based on the Just War Theory. It provides with the analysis in what cases the way of intervention can be justified and the implications of prioritizing politics over the human rights. Finally, the conclusion summarizes the findings of the study.

²¹ John Yoo, "Using force," *The University of Chicago Law Review* 71, (2004): 6-9, accessed March 21, 2015. <http://ssrn.com/abstract=530022>

Chapter 1- Defining the Responsibility to Protect

With the end of the conceptual Cold War the number of intrastate conflicts has increased. One of the prominent examples is the Rwandan Genocide in 1994, where the international community failed to prevent the genocide. According to the Human Rights Watch (HRW) around 800,000 Rwandans population died between April and July 1994.²² This event became one of the emerging issues in international politics to protect the civilians, which led to the creation of the new norm Responsibility to Protect (R2P). R2P is the norm that shifted the understanding of the state sovereignty from right to control to responsibility to protect its population from massacre and violations of human rights namely genocide, crimes against humanity, war crimes, and ethnic cleansing.²³ The responsibility to protect recognizes that the primary responsibility to prevent the above listed four crimes are under the state itself, if the state is powerless to fulfill this responsibility, or is itself the offender, that becomes the responsibility of the international community.²⁴ Nonetheless, R2P contradicts the common logic about the relationship between sovereignty and intervention. The problem lies with the international intervention partly in response to the state failures to protect its population. The major problem was the principle of state sovereignty that was also deeply protected in international law, in that “sovereign equality” recognized in Article 2.1 of the Charter, as well as the article 2.7 that prohibits United Nations intervention in the domestic matters of any state.²⁵ As an outcome of the increasing tensions between sovereignty and norms of human protection in December 2001 the Canadian government established the

²² Human Rights Watch, last modified 08/09/2014 <http://www.hrw.org/reports/1999/rwanda/Geno1-3-04.htm>

²³ Bjorn Moller, "Sovereignty and Non-Intervention versus "R2P," *Global Refugee Studies Displacement Debates* no. 2012-2, (2012): 13-14, accessed 12 February, 2015. <http://www.dps.aau.dk/forskningsenheder/global-refugee-studies/>

²⁴ International Commission on Intervention and State Sovereignty, Gareth J. Evans, and Mohamed Sahnoun, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre. 2001, p. 12-14

²⁵ United Nations, "Charter of the United Nations," 24 October 1945, art. 2.1 and 2.7, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 17 February 2015]

International Commission on Intervention and State Sovereignty (ICISS).²⁶ In 2001 ICISS released the report on 'Responsibility to Protect' to reformulate the meaning of the state sovereignty.

1.1. The comparability between the concept of R2P and state sovereignty

The first step of the ICISS to implement R2P was a deliberate attempt to shift the meaning of state sovereignty. From the Westphalia period sovereignty meant the right of the state to control its own borders without any interference from outside bodies. Whereas, ICISS fundamentally outlines the primary obligations of responsibility of a state towards its own citizens, at the same time it links this to the exercise of legitimate sovereignty. This was the change of the Westphalia understanding of sovereignty that emphasizes control while R2P emphasizes responsibility of a state to ensure the security of its own citizens. For that, one of the central arguments of Ban Ki-Moon's report is that R2P is an "ally," not an adversary, of sovereignty.²⁷ The fact that R2P is not what opposes the sovereignty but instead it is an ally since the concept of the sovereignty changes from control to responsible sovereignty. This kind of understanding gives the contribution to the report that reframe the limits of the debate by shifting from "a right to intervene" to a "responsibility to protect."²⁸ This is the main involvement of outside states justification. The main point of the R2P by ICISS was that sovereignty not only

²⁶ International Commission on Intervention and State Sovereignty, Gareth J. Evans, and Mohamed Sahnoun, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre. 2001, p.2

²⁷ United Nations Secretary General Ban Ki-Moon's Report: "Implementing the Responsibility to Protect," UN General Assembly 63 session, agenda items 44 and 107, 12 January 2009, p. 7 available from: <http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=655> [SGRtoPEng.pdf](#)

²⁸ Eve Massingham, "Military intervention for humanitarian purposes: does the Responsibility to Protect doctrine advance the legality of the use of force for humanitarian ends?," *International Review of the Red Cross* 91, no. 876 (2009): 815

gives the state the right to “control” its affairs, it also obliged on the state primary “responsibility” for protecting the people within its borders. But if the State fails to protect people either through lack of ability or a lack of willingness the responsibility shifts to the broader international community. The Commission’s report stated that R2P has three specific responsibilities: responsibility to prevent, responsibility to react, and responsibility to rebuild.²⁹

According to the Commission, the responsibility to prevent is the most important element of R2P. The responsibility to prevent addresses the essence and immediate causes of conflicts within countries, in order to develop more strong early warning systems. The Commission recognized non-governmental organizations, such as the International Crisis Group (ICG), that are exclusively devoted to conflict analysis and providing early warnings to policy makers. For instance, political reform may involve capacity building assistance, facilitated negotiations, mediations, and international pressure from regional and international bodies or the individual states can bilaterally put the pressure. In terms of economic reform, ICISS specifically cites international trade reform and access to major markets for developing nations in addition to traditional development assistance.³⁰ Thus, addressing root causes of conflict may involve addressing economic deficit, strengthening legal institutions, political needs, and making structural reforms to the military.

The responsibility to react of R2P is the most challenging aspect for both practical understanding and in the terms of implementation because of the state’s noncompliance. Political and diplomatic sanctions are the first step of measures that can be taken to react to an emergency. The international community can threaten by posing sanctions, for

²⁹ International Commission on Intervention and State Sovereignty, Gareth J. Evans, and Mohamed Sahnoun, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre. 2001, p.17

³⁰ *Ibid.*, pp. 19-23

example, reducing World Bank support, or withdrawal of investment or posing political sanctions that include the withdrawal of diplomatic representation, bans on travel, or removal from regional international bodies. Sanctions can be a valuable tool to give a signal to the target nation. However, sanctions at these levels are very difficult to enforce and require broad international support. If all of these measures fail to stop the violence, ICISS recommends that military action should be taken, but only in extreme cases and when certain other criteria have been met.³¹ Since the military response is used in extreme cases, there are six criteria when considering the possibility of military intervention as only a few military actions would be justified. Therefore, firstly meet the just cause criteria. These cases include crimes defined in the 1948 Convention on the Prevention and Punishment of Genocide, crimes against humanity and war crimes as defined by the Geneva Conventions. Second, the right intention requires approval from the UN Security Council, which is designed to ensure collective intervention. Third is the last resort scenario, there must be no reasonable expectation that other measures, such as sanctions or diplomatic negotiations, could end the conflict. Fourth, the intervention must involve proportional means and follow all norms of humanitarian law. Fifth, there must be a reasonable belief among policymakers that intervention will succeed in ending suffering and perhaps more importantly will not enlarge the conflict. Finally, the question of right authority is so critical, in this case, the UN charter confirms that the UN “is unquestionably the principal institution for building, consolidating and using the authority of the international community.”³² Particularly the Security Council is the only international institution with the ability to legitimize the use of force. In the most extreme cases, the Security Council can authorize the use of military force to restore peace and

³¹ International Commission on Intervention and State Sovereignty, Gareth J. Evans, and Mohamed Sahnoun, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre. 2001, pp.19-22

³² *Ibid.*, pp. 31-35

security that stated in Article 42. In the report, the Commission is in completely no doubt that there is no appropriate body than the Security Council to deal with military intervention issues for human protection purposes.³³

The final responsibility is the responsibility to rebuild. Rebuilding is a difficult and time consuming process that requires significant funding including security, judicial processes, and humanitarian aids. R2P recognizes that without effective rebuilding measures such as establishment of the rule of law, an effective government, improvement of the regions from violent conflict will remain in offensive way.³⁴ This means that development and poverty reduction programs like education, health, water and food security projects, and also discrimination response programs like human security, peace building and refugee assistance projects, have to be one of the main part of the R2P. In view of that, R2P resulted to be recognized as the same as the humanitarian intervention. Some countries expressed uncertainty claiming that R2P is the same as humanitarian intervention that will destroy the national security of the state and the only difference is the change of the language that makes it more admissible way of intervention. Though, both state supporters and critics at last tried to distinguish the difference between humanitarian intervention and R2P.

1.2. Difference between humanitarian intervention and R2P

ICISS report emphases that humanitarian intervention was placed on the right of states to intervene, rather than on the protection of victims. R2P is about protection rather than intervention, the protection of the civilians against mass massacre. One of the prominent examples of humanitarian intervention is the Gulf War. The Iraq invasion of

³³ International Commission on Intervention and State Sovereignty, Gareth J. Evans, and Mohamed Sahnoun, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre. 2001,p. 49

³⁴ Ibid.,39-44

Kuwait violates the sovereignty under Article 2.4 of the UN Charter that all states should refrain from use of force against other country.³⁵ United Nations forces intervened in order to dismiss Iraq and prevent threats to international peace and security. As a result of the conflict, thousands of civilians were massacred, and refugees began to flow over the border into Iran and Turkey.³⁶ The action of the international community towards Iraq following their dismissal from Kuwait is justifiable humanitarian intervention under the Article 39 of the UN Charter. When the UN Security Council to define the existence of any threat to the peace or breach of the peace they make a decision of what measures shall be taken. Article 42 of the UN Charter which, allows the UN Security Council to take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.³⁷ In this case, they declared a refugee situation that happened as a result of an internal conflict a threat to international peace and security. Whilst these factors did not contribute to the consensus among many countries, meaning each state altered the meaning of the R2P.

1.3. Implementation of the R2P and Perception of International Community

R2P doctrine was formally introduced in 2001 but still does not represent a universal consensus on many of the fundamental principles and obligations outlined in the original R2P report. R2P report released by ICISS faced numerous criticisms that caused the disagreement between the members of the United Nation. Primarily, in New York for the High-level Plenary Meeting of the General Assembly, the 2005 World

³⁵ Andru E. Wall, "Was the 2003 Invasion of Iraq Legal," *International Law Studies Ser. US Naval War Col.* 86 (2010): 70

³⁶ Carole A. O'Leary, "The Kurds of Iraq: recent history, future prospects," *Middle East Review of International Affairs* 6, no. 4 (2002): 18-19

³⁷ United Nations, "Charter of the United Nations," 24 October 1945, art. 42, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 17 February 2015]

Summit, states raised the question on issues of consensus about the just cause, where the five Permanent Members of the UN Security Council should voluntarily give up their veto power. The main of disagreements were over two critical issues, of whether only the UN Security Council have to have a power of the armed force and whether the use of military force is justified for human protection purposes.³⁸ Starting with this time the report on R2P went to further pursuit by the General Assembly. Hence, in the World Summit there were no major developments and conclusions that lead to discussions on R2P till 2009, when Secretary- General Ban Ki-Moon released his report “Implementing the responsibility to protect.”³⁹ In the report Ban Ki-Moon proposes three pillars that make the stronger notion to the states sovereignty.⁴⁰

Pillar I is the state’s obligation to protect its own citizens, mostly follows the World Summit Outcome document under the paragraph 138, “Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.”⁴¹ The responsibility will not oppose the main principle of the sovereignty instead in terms of defining characteristic of sovereignty the respect of human rights is the vital element of responsible sovereignty. In this perspective, state’s responsibility can be understood in different ways, but in terms of the protection of its citizens, Ban Ki-Moon proposes that state can implement international humanitarian and human rights law in the domestic context, supporting the UN Human Rights Council, and signing the Rome Statute.⁴² The report mainly emphasizes on the civil society

³⁸ United Nations General Assembly, 59th Session. *Resolution of the High-level Plenary Meeting*. 15 September 2005 (05-51130 (E)) available from:

<http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>

³⁹ United Nations Secretary General Ban Ki-Moon’s Report: “*Implementing the Responsibility to Protect*,” UN General Assembly 63 session, agenda items 44 and 107, 12 January 2009, available from

<http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=655SGRtoPEng.pdf>

⁴⁰ *Ibid.*, p.2

⁴¹ *Ibid.*, p.10

⁴² *Ibid.*,p.12

organizations to help national leaders for better understanding of the responsibilities of the state. For instance, Advisory Service on International Humanitarian Law created by the International Committee of the Red Cross. The Advisory Service encourages states to ratify humanitarian conventions and promoting states in meeting their obligations under international humanitarian law. Especially, the Advisory Service interprets humanitarian law treaties and organizes regional seminars on implementation of humanitarian law.⁴³ These kinds of initiatives will help states to build their own competences, and to strengthen its ability to protect its own population.

Pillar II is the international community's responsibilities to deliver assistance and capacity building. The report offers that the international community can assist in the form of technical assistance or aid. But, in most of the cases the government by itself can be an offender, so that international community can make clear the consequences that government can face, such as the long term development of the country as investments and foreign aid will be withdrawn. Moreover, the international community could make warning signs of compelling future violence. Finally, it is important to note that the use of force as a last option by the international community under R2P in extreme cases is not only to protect civilian population, but also to restore state's own ability to exercise its sovereignty effectively.⁴⁴ Thus, the intervention does not mean that the international community would replays a state's sovereignty, but rather it will encourage states to fulfill their responsibility to protect.

Pillar III is the most controversial one, yet the conclusion is not made by Ban Ki-Moon, since the international community ought to respond when there is R2P need timely

⁴³ United Nations Secretary General Ban Ki-Moon's Report: *"Implementing the Responsibility to Protect,"* UN General Assembly 63 session, agenda items 44 and 107, 12 January 2009, p.13, available from <http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=655SGRtoPEng.pdf>

⁴⁴ *Ibid.*, pp. 15-20

and decisive response.⁴⁵ The third pillar based on the actions taken by the United Nation. According to the report, the international community under the third pillar has a responsibility to use appropriate measures to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. But mostly, Pan Ki-Moon devoted his section to the discussion of peaceful alternatives.⁴⁶ In accordance with the UN Charter report, the primary actions are the non-violent measures that play pivotal roles in investigations and fact-finding missions and to ensure the accountability of impunity. In case when a state refuses to accept prevention and assistance from the international community, the violent measures could be authorized by the Security Council. But the international communities such as the United Nations, regional, sub regional or even the national decision makers have to remain focused on saving the lives of people through “timely and decisive” action.⁴⁷ However, Anan noted that the major issue with the third pillar receives the most attention the use of military force that could be used when the all peaceful measures are exhausted but frequently misapplied and abused. As an outcome, the legality of the use of the military force for protecting the civilians is of particular concern under R2P concept.

⁴⁵ United Nations Secretary General Ban Ki-Moon’s Report: *“Implementing the Responsibility to Protect,”* UN General Assembly 63 session, agenda items 44 and 107, 12 January 2009, p.22, available from <http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=655SGRtoPEng.pdf>

⁴⁶ Ibid., p.23

⁴⁷ Ibid., pp.23-24

Chapter 2-Implementation and Impact of the third pillar of R2P

The crucial part of the R2P doctrine is the military intervention, the last resort of the third pillar. With the re-conceptualization of the state sovereignty the understanding of non-intervention by international order became less significant, which led to the evolution of the legality of military intervention for protecting the human abuse of the responsibility to react. The third pillar became one of the most contentious issues in international politics, justifying intervention for the protection of civilians, even with the permission of the UN Security Council, makes the issue no less controversial. Hence, the main dispute of the R2P doctrine lays on powerful countries exclusive emphases on military intervention. The third pillar of the R2P focuses on the international community's responsibility to take timely and decisive action to prevent precisely four crimes which are genocide, ethnic cleansing, war crimes, and crimes against humanity in circumstances when a state is unable or unwilling to defend its own population. But, the problem is the threat of R2P becoming another instrument in the hands of the powerful states that act for the sake of their own interest where, Chomsky argued that the any policy about humanitarian intervention has to account for the fact that states will act only in their own interest.⁴⁸ In a sense that, as states interest are governed by the desire for power and security, the R2P is abused, meaning that politics is essentially about power of decision-making process through which policy makers deal with resources and power. Afterwards, R2P is not interested in making it legal concept because it will have a binding force that leads to political struggle in foreign policy gains of the powerful countries. Thus, R2P was created as a new norm for the protection the mass violation of human rights but the contradiction of the third pillar with the UN Carter and unilateral interventions remain highly under pressure.

⁴⁸ Noam Chomsky, "Humanitarian intervention," *Boston Review*, December 1993, accessed March 17, 2015, <http://www.chomsky.info/articles/199401--02.htm>

2.1. Third pillar contradiction with the UN Charter

The current legal framework of the military intervention was legislated after the Second World War in the United Nations Charter. The main purpose was to limit and to control the use of armed force. Accordingly, the use of armed force has been in clear violation of international laws and principles. Unfortunately, the limits on the use of armed force that are set at the UN Charter, Geneva Conventions, and multilateral and unilateral treaties are not always respected, where states and legal scholars have long proposed additional exceptions in order to further their national interests. According to Focarelli, global competition is simply a direct result of the global political competition between all prospective and actual powers, which seeks to control as many people as possible, since power is directly proportional to the number of people controlled.⁴⁹ Consequently, globalization is a process that has a greater possibility of interference in internal affairs which led to the formation of R2P. Where the only alteration of the R2P from the older concept of humanitarian intervention is the emphasis on international community's intervention even using armed force in case state fails to protect its own population. However, the major puzzle of R2P is not only legality but also its contradiction with the UN Charter. Conversely, powerful states using R2P to justify their action, where O'Brien highlighted that the "decision in 1949 to mandate legally of the protection of civilians in war was a profoundly political step, just as it is political to mandate the redistribution of resources from the powerful to the marginalized, or from one country's taxpayers to save lives in another."⁵⁰ As a result, R2P would strengthen certain stronger states and weaken other weaker states because even if, ICISS highlighted in case a state failed in its protective obligation, only collective military action could be

⁴⁹ Carlo Focarelli, "Ahead to the Past? Responsibility to Protect and the Global System," *Groningen Journal of International Law*, no. 1 (2012): 8

⁵⁰ Paul O'Brien, "Politicized humanitarianism: A response to Nicolas de Torrente," *Harvard Human Rights Journal* vol. 17 (2004): 1-2

authorized internationally to protect victims within a sovereign state but in practice states intervening unilaterally. To monitor decisions on military action, the ICISS outlined a ‘just cause threshold,’ a set of ‘precautionary principles,’ and criteria for ‘right authority.’⁵¹ Though, the Commission identified the UN Security Council as the most appropriate body. Thus, the legality of the third pillar of the R2P highly disputed with collective security actions.

The legal framework of the use of armed force in contemporary international law is a central provision in the UN Charter. It is the Charter that provides the legal framework for the use of armed and provides some exceptions to the prohibition of the use of armed force. Where Article 103 of the Charter provides that:

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”⁵²

Respectively, Charter underlines the hierarchy of sources that stands above is the UN Charter and regulates in detail the legitimacy of the use of force that can claim universal acceptability. While Article 2(4) was one of the most fundamental articles that prohibit using force against each other:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”⁵³

⁵¹ Jutta Brunnée and Stephen J. Toope, "The Responsibility to Protect and the Use of Force: Building Legality?," *Global Responsibility to Protect* 2, no. 3 (2010): 4

⁵² United Nations, "Charter of the United Nations," 24 October 1945, art. 103, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 20 March 2015]

⁵³ United Nations, "Charter of the United Nations," 24 October 1945, art. 2.4, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 20 March 2015]

Primary emphasis was made to the values and purposes of the international system, and the protection of state sovereignty and territorial integrity of individual state. Where later with the creation of the R2P it was changed to "common sovereignty" by entrusting states with the primary responsibility to protect populations with the support of concerted international action, including, the last resort, the use of force to restore responsible sovereignty. However, R2P abused praising simply the political value, not necessarily human protection, as Mona Rishmawi has argued, "R2P can be useful as a concept only if it can rally political support for human rights protection."⁵⁴ In addition, Focarelli pointed out that "the human rights require states that are able, in addition to willing, to protect them, and possible only in a global economic system, which places human rights, rather than power and profit at center stage."⁵⁵ In compliance to Article 2.4, Article 2.7 stresses the principle of sovereign equality of the each member states:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."⁵⁶

Relatively, the prohibition to use armed force should have to be considered something more than merely a treaty norm. As René Vark added, the prohibition to use armed force is also characterized as *ius cogens* norm of international law, *ius cogens* norms represent the overriding norms of international law that must be respected at any time without any

⁵⁴ Mona Rishmawi, *The Responsibility to Protect and Protection of Civilians: The Human Rights Story*. (Favorita Papers, 2010), 87.PDF e-book

⁵⁵ Carlo Focarelli, "Ahead to the Past? Responsibility to Protect and the Global System," *Groningen Journal of International Law*, no. 1 (2012): 7

⁵⁶ United Nations, "Charter of the United Nations," 24 October 1945, art. 2.7, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 20 March 2015]

excuse.⁵⁷ Hence, there are the exceptions to the prohibition of the use of force preserved in chapter VII of the UN Charter. This is the case when a state protects itself by using force in case it is subjected to an armed attack but the attack should have to be imminent, Article 51 of the UN Charter:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”⁵⁸

Consequently, states may exercise collective self-defense in case when a state identifies itself as the victim of an armed attack and a state issues a request for assistance from other state.⁵⁹ However, in most of the cases, Article 51 misused, since after 9/11 in 2001 the United States justified its invasion to Iraq, Afghanistan, and Kosovo as a self-defense, declaring that these strikes were a necessary response to the threat of further terrorist attacks against U.S. personnel and facilities. These interventions were intended to prevent and deter before additional attacks or terrorist threat would happen.⁶⁰ While article stated that justification is available only if an attack is imminent but in case of U.S. the attack was not imminent but rather U.S wanted to prevent attacks or terrorist threat before,

⁵⁷ René Vark, "The Legal Framework of the Use of Armed Force Revisited," *Baltic Security and Defense Review* 15, no. 1 (2013): 60

⁵⁸ United Nations, "Charter of the United Nations," 24 October 1945, art. 51, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 20 March 2015]

⁵⁹ René Vark, "The Legal Framework of the Use of Armed Force Revisited," *Baltic Security and Defense Review* 15, no. 1 (2013): 76

⁶⁰ John Yoo, "Using force," *The University of Chicago Law Review* 71, (2004): 7-10, accessed March 21, 2015. <http://ssrn.com/abstract=530022>

claiming the threat before it reaches our borders meaning it is not known whether attack would happen or not.

Furthermore, only Chapter VII of the UN Charter enables the Security Council to use armed forces in order maintain or restore international peace as long as not vetoed by any of the five permanent members of the Security Council. Article 39 the Security Council:

“To determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures shall be taken”.⁶¹

Where in addition, Article 41 which include non-military measures or ensue to Article 42 which allows the Council:

“To take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”⁶²

In this case, as Jean D’Aspremont outlined that the use of force is illegal except when authorized by the UN Security Council or when used in self-defense.⁶³ The Security Council is the main body that authorizes any intervention. However, the UN Security Council as the main institution responsible for authorizing the use of force remains a highly politicized institution. Relatively, the conditions of the protection of human rights in grave danger remain under the veto power. As a result, states frequently intervening unilaterally that have long been the problem in worldwide politics. Since unilateralism develops the power of key powerful states so that they reduce the capabilities of vulnerable states.

⁶¹ United Nations, “*Charter of the United Nations*,” 24 October 1945, art. 39, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 20 March 2015]

⁶² *Ibid.*, art. 42

⁶³ Jean d'Aspremont, "Mapping the concepts behind the contemporary liberalization of the use of force in international law," *University of Pennsylvania journal of international law* 31, no. 4 (2010): 26-27

2.2. Unilateral Interventions

Besides, under Chapter VII of the UN Charter as was mentioned coercive military action have to be authorized for 'extreme cases' only by the Security Council or by regional or sub regional provisions under Article 53 of the Charter, with the prior authorization of the Security Council.⁶⁴ However, powerful states like United States, Russia, and United Kingdom unilaterally exercising humanitarian interventions and R2P concept. Where, both ICISS and the High-level Panel had left open the possibility of unilateral action. Hence, most of the R2P critics claim that the R2P is a dangerous and imperialist doctrine that threatens national sovereignty and political autonomy of the weak states.⁶⁵ In addition, Barry M. Benjamin pointed out that intervention using a military force is for the nation's own gain, not for the protection of human rights but it seems predominantly for the protection of human rights.⁶⁶ The fact that, currently R2P has become part of the political phenomenon in worldwide to justify conducts. Thus, the UN Human Rights Commission has done little to improve a less politicized human rights process. As such, third pillar of R2P identifies a state primary bearer of the responsibility to protect population; if not only collective action should be taken timely and decisive manner as the last resort after all peaceful means are exhausted. But, the third pillar remains misused authorizing unilateral military actions. For instance, Russia intervention towards Georgia, U.S. and U.K. towards Iraq. The Russian government claimed that its military operations in Georgia in August 2008 were conducted for humanitarian purposes to protect the civilians in grave danger. The Russian officials have described Georgia's actions against populations in South Ossetia as genocide. Where, Foreign Minister Sergei

⁶⁴ United Nations, "Charter of the United Nations," 24 October 1945, art. 53, 1 UNTS XVI, available at: <http://www.un.org/en/documents/charter/> [accessed 26 March 2015]

⁶⁵ Alex J. Bellamy, "The responsibility to protect—five years on," *Ethics & International Affairs* 24, no. 2 (2010): 144

⁶⁶ Barry M. Benjamin, "Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities," *Fordham International Law Journal* 16, no.1 (1992): 122-123

Lavrov argued that Russia's use of force was an exercise of its responsibility to protect, referring to the settlement used by NATO member states during the humanitarian intervention in Kosovo and the responsibility to protect.⁶⁷ UN Member States in the General Assembly 2005 World Summit Outcome Document argued that R2P is misapplied in case of South Ossetia, in a sense it was beyond the scope of the R2P norm. R2P applied as the last resort where Russia did not exhaust all the peaceful measures. The necessity and legitimacy of any military action purportedly undertaken to protect populations from mass atrocities only through the UN Security Council, where Russia did not refer to the UN Security Council.⁶⁸

The responsibility to protect is not as a basis to justify unilateral force but as a reminder that the longstanding principles of international human rights should be advocated. Accordingly, political officials of the United States and United Kingdom had justified their invasion into Iraq in 2003, due to Iraq's connections to al-Qaeda and liberation of the Iraqi people from Saddam Hussein's dictatorial rule.⁶⁹ Iraq invasion for the R2P movement makes these questions particularly not relevant even Cristina Badescu and Thomas Weiss surprised with the U.S. and U.K claim, arguing that 'the invasion of Iraq had nothing to do with the responsibility to protect'.⁷⁰ The 2003 invasion of Iraq by the US and UK does not represent a real case of humanitarian intervention under the principles of R2P, as it did not meet the criteria under ICISS Report. The military intervention does not meet the basic R2P four crimes, peaceful measures were not

⁶⁷ Sevinj Amirova, *Russian-Georgian War: Implications of Unilateral Interventionist Policy and Conditions under Responsibility to Protect*, (VDM Publishing, 2011), 34-36 PDF e-book

⁶⁸ Global Responsibility to Protect, "The Georgia-Russia Crisis and the Responsibility to Protect: Background note, August 19, 2008

⁶⁹ Jeremy Moses, Babak Bahador, and Tessa Wright, "The Iraq War and the Responsibility to Protect: Uses, Abuses and Consequences for the Future of Humanitarian Intervention," *Journal of Intervention and State building* 5, no. 4 (2011): 351, accessed April 2, 2015, doi:10.1080/17502977.2011.595606

⁷⁰ Cristina G. Badescu and Thomas G. Weiss, "Misrepresenting R2P and Advancing Norms: An Alternative Spiral?," *International Studies Perspectives* 11, no. 4 (2010): 349

exhausted before the consideration of military force, and the R2P restricts the use of force by the UN Security Council under chapter VII of the UN Charter, the invasion itself was illegal unilaterally or by coalition. The same incident was Kosovo where it was not taken by regional organization (NATO), was collective in nature. But the concept was misused because even if, the regional organization had taken an action to intervene, ICISS Report underlines that regional organization can intervene prior authorization of the UN Security Council under Article 53 of the Charter. Whilst the unilateral intervention is one of the prominent concerns which demonstrate that there is no such a pure R2P interventions based on the of Just War theory.

Chapter 3-Third pillar of R2P compared to Just War Theory

The Responsibility to Protect was considered to be as an emerging ‘new’ norm for the purpose of protecting human rights from the mass atrocities. But, as was already indicated states are not interested making it legal because R2P is good for global powers to justify their illegitimate military intervention.⁷¹ Accordingly, R2P is mostly based on the existing norms and theories with remark to the protection of the human rights which is good excuse. R2P have an origin from the Just War theory. The Just War theory is not proposed to justify wars but to prevent the wars, the fact that war except in certain limited circumstances is wrong. The purpose was to inspire states to find additional ways of resolving conflicts and prevent wars.⁷² The same as R2P concept, the Just War theory have the conditions that divides into three parts: jus ad bellum –the justice of resorting to war, jus in bello –just conduct in war, and jus post bellum –justice at the end of war, the same as the R2P: responsibility to react, to prevent, and to rebuild.⁷³ Hence, the focus will be to the jus ad bellum and the third pillar of R2P. Where, Just War theory specifically jus ad bellum still contains at so called the “new” doctrine of R2P, as demonstrated when comparing criteria of Jus ad Bellum: the right authority, just cause, right intent, last resort, proportional means, and reasonable prospects.

Roughly speaking, the responsibility to react is to respond to situations of human need with appropriate measures, which include economic sanctions, diplomatic sanction and international prosecution, only in extreme cases military intervention. But more importantly R2P oriented with humanitarian intervention or the use of force. In this case,

⁷¹ Mohammed Ayoob, "Humanitarian intervention and state sovereignty," *The International Journal of Human Rights* 6, no. 1 (2002): 9

⁷² Eve Massingham, "Military intervention for humanitarian purposes: does the Responsibility to Protect doctrine advance the legality of the use of force for humanitarian ends?," *International Review of the Red Cross* 91, no. 876 (2009): 817-818

⁷³ Cecile Fabre, "Cosmopolitanism, just war theory and legitimate authority," *International Affairs* 84, no. 5 (2008): 963-965

Satvinder Juss highlighted that “It is one thing to intervene because the country in question is unstable and unable to provide protection to its citizens. It is quite another thing to enforce stability and provide protection for the citizens of that country, having once intervened.”⁷⁴ Relatively, it is important to look through the Just War theory and R2P in order to differentiate between intervention and protection. Where there is a threshold criterion: whether the just cause of the R2P military intervention is encountered.

3.1. Third pillar and ‘Just War’ Theory

The main criterion is the “just cause” where R2P apprehend large scale loss of life, meaning four above listed crimes. While in practice states in order to justify their actions go further to the preservation of weapons of mass destruction and terrorism that is not invoked at R2P doctrine. Following is the right authority that refers to the legitimate body to authorize any such intervention. Before United Nation, the right authority considered to be any sovereign state but later it changed to Security Council. Chapter VII fully empowers the Security Council to deal with every kind of threat that States may confront. R2P does not recommend unilateral action but leaves it vulnerable, in case failure of the Security Council Article 54 of the UN Charter allows regional organizations to intervene but only prior authorization of the Security Council to stop the mass atrocities. Accordingly, in order to avoid the self-interested countries the three authorities were suggested to make collective decisions, the Security Council, regional organizations, and the General Assembly that can authorize the use of force by a two-thirds majority.⁷⁵ Where, in practice unilateral actions inevitable. Furthermore, third

⁷⁴ Singh Satvinder Juss, *International migration and global justice*, (Ashgate Publishing, Ltd., 2006), p. 112

⁷⁵ Eve Massingham, "Military intervention for humanitarian purposes: does the Responsibility to Protect doctrine advance the legality of the use of force for humanitarian ends?," *International Review of the Red Cross* 91, no. 876 (2009): 807-809

criterion is right intention, meaning primary purpose of the intervention must be to stop or to prevent human suffering but not regime overthrow or any other material gain. Besides, the more vital one, is the intervention must be the last resort, following the exhaustion of all reasonable and probable alternatives means to resolving the conflict. As was mentioned in reality it is not always exhausted all the peaceful means. Nonetheless, there are lots of measures, for instance, the Security Council, General Secretary, General Assembly, and Human Rights Council can appoint fact finding missions and commission on inquiry, to investigate and report assumed international law violations. Early warning mechanisms within the UN and regional organizations that assist for government to uphold their failing responsibility to protect and together with General Assembly can establish and enforce existing membership criteria that related to violation of human rights and mass atrocities.⁷⁶ Respectively, targeted diplomatic sanctions of asset freezes, trade and arms embargoes, and travel bans can ensure Member States to respect and act in accordance with R2P or even civil society may help through withdrawing their direct investments. If not, international involvement in preventive diplomacy may initiate dialogue and prepare regional or UN mediation efforts or good offices. Bilateral sanction or diplomatic pressure of individual states and the International Criminal Court can prevent the impunity and identify perpetrators.⁷⁷ In this case “last resort” refers rare and extreme cases and capable of having a real chance of protecting civilians which is also another important criteria reasonable prospects. Meaning, military intervention can be justified only when a state can foresee a probability of success in resolving the conflict through war and lastly proportionate, meaning intervention will do more good than harm.

⁷⁶ International Commission on Intervention and State Sovereignty, Gareth J. Evans, and Mohamed Sahnoun, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre. 2001, pp. 19-22

⁷⁷ *Ibid.*, pp. 21-23

These are the circumstances of the Just War theory that is indicated at the R2P doctrine, where certain military use can be acceptable when all conditions are met.

3.2. Can war ever be Just?-not all people are protected-military intervention causes far greater harms on innocents

The military intervention as defined must be aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens. Where, the right authority, just cause, right intent, last resort, proportional means, and reasonable prospects are important criteria to differentiate between protection and intervention. However, another vital puzzle of the third pillar as McMahan stated that last resort “means that war must, in the circumstances, be necessary for the achievement of the just cause.”⁷⁸ In a sense that, yet the practice of military intervention over the past two decades has raised serious tension of whether the protection of civilians is in fact the main anxiety of the interveners, and whether the intervention does in fact produce harm. The fact that military interventions have left a significant number of civilians dead or injured and damage of civilian objects during humanitarian operations. Subsequently, raises a new question why military campaigns designed to protect civilians from widespread atrocities produce so many civilian losses and end up destroying so many civilian objects. In this case, the problem of the armed force not only with intervention but also with protection while intervened, meaning damaging civilians in order to defend them. For that, the problems related with protections go beyond the question of sovereignty and responsibility but importantly with the means and methods in enforcing the protection norm.

⁷⁸ Jeff McMahan, "Just cause for war," *Ethics & International Affairs* 19, no. 03 (2005): 1-2

Consequently, it is essential to take into account the problem with Responsibility While Protecting (RwP) which took considerable attention in 66th Session of the General Assembly in September 2011 by Brazilian president Dilma Rousseff.⁷⁹ This is important contribution to the responsibility to react of the third pillar. Since, Pattison argues that in most of the cases R2P third pillar allegedly focusing on regime change rather than on the protection of civilians.⁸⁰ Relatively, arms to rebels generally cause too much harm to civilians and civilian infrastructure. For that, RwP underlines the need for those undertaking humanitarian intervention consider take extra care when using military force to protect civilians. However, some Western critics argued that RwP is morally problematic and it may turn into obstacles to timely and decisive protection of R2P where others added that RwP is nothing new.⁸¹ As a result, Pattison maintained that in most of the cases the use of force always brings with the risk of causing civilian casualties that justified as unintended and the fact that it is exercised with the aim of protecting civilians does not make the guarantee unintended disruption. As an outcome, use of force can make a political solution more difficult to achieve.⁸² For that, the ICRC preserved the principle of proportionality stresses that the incidental loss of civilian life, injury, or damage to civilian objects detected for military advantage is prohibited.⁸³ Subsequently, other than that of six criteria, the three principles of just war needed which are the principles of distinction to distinguish between civilians and combatants when launching

⁷⁹ James Pattison, "The Ethics of 'Responsibility While Protecting': BRAZIL, The Responsibility To Protect, And Guidelines For Humanitarian Intervention," *Human rights & Human welfare* working paper no. 71 (April 2013): 3, accessed January 29, 2015. <https://www.du.edu/korbel/hrhw/workingpapers/2013/71-pattison-2013.pdf>.

⁸⁰ James Pattison, "The Ethics Of 'Responsibility While Protecting': BRAZIL, The Responsibility To Protect, And Guidelines For Humanitarian Intervention," *Human rights & Human welfare* working paper no. 71 (April 2013): 1-2, accessed January 29, 2015. <https://www.du.edu/korbel/hrhw/workingpapers/2013/71-pattison-2013.pdf>.

⁸¹ *Ibid.*, p2

⁸² *Ibid.*, p.5

⁸³ ICRC, Customary IHL Database, available at <http://www.icrc.org/customary-ihl/eng/docs/home> (accessed April 4, 2015).

attacks, military necessity meaning restricting targets only to those that make an effective contribution to military action and proportionality are significant principles of just war.

Proportionality

Accordingly, the principle of proportionality means a war should outweigh the relevant harms; it imposes through comparisons between various violent options and choosing the policy that will harm the fewest number of innocents.⁸⁴ Through the primary purpose is the protection of the population from mass atrocities, and military intervention must demonstrate through their actions that the operation is not a war to defeat an enemy but rather an operation to protect populations from being persecuted or killed. Hence, proportionality forbids options that would cause more harm to innocents even if, the harms were inflicted nonviolently and even if attacking forces select weapons, strategies, and targets that best avoid or most reduce harm to civilians. However, in practice civilians are dying while protecting them, the fact that this is the tension where primary purpose of the R2P is the protection of the civilians where civilians are suffering for the military advantage. As Henry Shue observed, ‘it is undeniably excessive to inflict very large civilian losses for the sake of a very small military advantage.’⁸⁵ Therefore, ideally, the establishment of the defensive shield for potential victims, establishment of buffer zones between combatants, establishment of safe areas with adequate military protection, no-fly zones, and evacuation of populations from danger zones to safe areas are needed.⁸⁶ However, these activities will not guarantee that civilians will not be harmed during protection operations. Where, US forces killed far more Iraqi civilians than any other

⁸⁴ Eanom Aloyo, “The Last of Last Resort,” *The Hague Institute Working Paper Series*, no.1 (July 2014): 10, accessed April 4, 2015. <http://www.TheHagueInstitute.org/working-paper-1>

⁸⁵ Henry Shue. "Proportionality in War," *The Encyclopedia of War*, (Gordon Martel ed., 2012)

⁸⁶ Bruce Cronin, “Killing Civilians in Order to Save Them: The Dark side of Humanitarian Intervention,” *FLACSO-ISA Joint International Conference*, Buenos Aires, <http://web.isanet.org/Web/Conferences/FLACSOISA%20BuenosAires%202014/Archive/eba0454a-5aff-4d63-a9aa-a14242f5b29d.pdf> July 23 –25, 2014, p.11

members of the US-led coalition, including various Iraqi military forces acting with or independently of them. 15,060 (13%) of all documented civilian deaths were reported as being directly caused by the US-led coalition.⁸⁷ From the 4,040 civilian victims of US-led coalition armies, 1,201 (29%) were children.⁸⁸ As a result, coalition forces were blamed for 35 percent the most violent deaths; militias were liable for 32 percent. The other 21 percent were unknown, criminals 11 percent and Iraqi forces only one percent.⁸⁹ Furthermore, the Libya case that considered being the US success claimed by US Peace Delegation to Libya that NATO had dropped over 30,000 bombs on Libya, with an average of "two civilians killed in each attack." Thus, Thomas C. Mountain, an independent journalist has estimated that some 60,000 Libyan civilians had been killed by NATO air strikes alone by the end of August, as a result in 17 days more than 2,000 residents of the city of Sirte were killed from NATO air strikes.⁹⁰ Consequently, NATO's tension with human protection and military advantage often to the damage civilians where, as noted, military advantage must be balanced against probable civilian losses not exceed the advantage gained from attack.

Distinction

In this sense, a principle of distinction or nondiscrimination is also important part while protecting. Meaning soldiers or combatants or those who are liable to defensive harm but not civilians can be intentionally targeted in war, the same as military object can be a target not civilian objects. Consequently, Winkler argued that even those who impose non-targeted economic sanctions, as imposed against Iraq are not a distinction

⁸⁷ Iraq Body Count, "Iraqi deaths from violence 2003–2011," *Analysis and overview from Iraq Body Count (IBC)*, (published 2 Jan 2012), <https://www.iraqbodycount.org/analysis/numbers/2011/>

⁸⁸ Iraq Body Count, "Iraqi deaths from violence 2003–2011," *Analysis and overview from Iraq Body Count (IBC)*, (published 2 Jan 2012), <https://www.iraqbodycount.org/analysis/numbers/2011/>

⁸⁹ *Ibid.*,

⁹⁰ Thomas C. Mountain, "Biggest success? NATO proud of Libya of which killed thousands," *RT global news*, last modified October 28, 2011, <http://rt.com/news/nato-libya-operation-success-999/>

between liable or the target and innocent individuals.⁹¹ The fact that economic sanction must also be targeted but not to civilians as happened in Iraq, where, Joy Gordon estimates that the Iraq sanctions likely killed between 200,000 and 500,000 people, many of whom were children.⁹² For that, distinction is a vital so that interveners only intentionally target combatants or those who are liable to defensive harm. While in practice, as Supreme Allied Commander Wesley Clark, together with political leaders authorized a broader range of targets that involved higher risk to civilians. As a result, according to the International Committee of the Red Cross (ICRC), only 40% of attack focused on the Serbian military or air defenses, whereas the majority included factories, infrastructure, oil and petroleum, roads, bridges, railways and communications where 70% of which were primarily civilian objects.⁹³ The same Human Rights Watch (HRW) documented, from ninety separate NATO attacks thirty-three occurred on densely-populated urban areas. Where, six attacks in the major cities of Belgrade, Nis, and Vranje and two or three incidents each in Aleksinac, Cacak, Novi Sad, Surdulica, and Valjevo.⁹⁴ However, only two incidents involved pilot error or intelligence failure and none of these as was verified was used as human shields of Serbian authorities.⁹⁵ Respectively, targets but unrelated to protecting civilians in Kosovo not only accounted for a large number of civilians deaths and injuries, but also for the destruction of high number of civilian objects necessary to the survival of the population. Additionally, in Libyan intervention New York Times investigators found significant damage to civilian infrastructure, homes, and businesses where no military target could be identified. For instance, the major case of civilian casualties from a NATO airstrike took place on 8th of August in the town of

⁹¹ Adam Winkler, "Just sanctions," *Human Rights Quarterly* 21, no. 1 (1999): 147

⁹² Joy Gordon, *Invisible war: the United States and the Iraq sanctions*, (Harvard University Press, 2010), 11

⁹³ Amnesty International, "NATO/Federal Republic of Yugoslavia: 'Collateral Damage' or Unlawful Killings? Violations of the Laws of War by NATO During Operation Allied Force," *Amnesty International Index*, EUR 70/18/00 (June 2000), p. 2.

⁹⁴ William Arkin, "Civilian Deaths in the NATO Air Campaign," Vol. 12, no. 1, Human Rights Watch, 2000, p.5

⁹⁵ *Ibid.*, pp.25-26

Majer, where the U.N. Commission found that NATO bombing killed 34 civilians and injured 38. Later the primary airstrike killed sixteen civilians and hit by a following attack huge number of people, killing other eighteen.⁹⁶ As a result, it is highly questionable whether the last resort is for protection or intervention.

Necessity

The third is the principle of military necessity, where only destructive or harmful actions that are required to achieve a just aim are permissible but unnecessary sufferings are not permissible. The action must be the least harmful, at the same time the prospects of achieving a just end should have to be more likely to achieve. But, in reality when counting the dead bodies, it is highly questionable the need for the military necessity. In this case, as noted by the Jennifer Moore that the humanitarian principle as noted above prohibits targeting the civilians but the problem is that it does not sanction the decision to launch a military campaign responding to such attack. The law governs its conduct rather than initiation.⁹⁷ For that, necessity is controversial in R2P because it has to be motivated to protect civilians for nonlethal forms of assistance and military intervention must be calculated but if the level of the risks on civilians raises that is the violation of the R2P. As Jennifer Moore noted, R2P is not a form of punishment, for that, US intervention in Syria resulted with greater civilian suffering that engaged with inhumane intervention.⁹⁸ Military necessity commits the lifesaving form.

⁹⁶ United Nations Human Rights Council, "*Report of the International Commission of Inquiry on Libya*," UN Human Rights 19 session, agenda item 4, 8 March 2012, available from <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf> p.16

⁹⁷ Jennifer Moore, "Punitive military strikes on Syria risk an inhumane intervention," *LSE American Politics and Policy (USAPP) Blog* (2013), 1-2

⁹⁸ *Ibid.*, pp.1-2

3.3. R2P, as an emerging norm of international politics - prioritizing politics over human rights

As the same as state sovereignty and non-intervention, UN principles emphasized the importance of human rights as expressed in UN Charter. After the Second World War human rights became one of the vital issues in International Relations. Since that different universal and regional mechanisms have been implemented for the protection of human rights. Consequently, serious violation of human rights became a matter of international concern where human rights and international security has become the basic reason of unauthorized interventions. Meanwhile, the R2P was implemented for the protection of the human rights has become a tool for the interference by the strong in the affairs of the fragile state. As Robert Meister pointed out that "... the human rights culture to be established in the twenty-first century is a continuation, by more benign means, of the counterrevolutionary project of the twentieth—to assure that beneficiaries of past oppression will largely be permitted to keep the unjustly produced enrichment they presently enjoy.”⁹⁹ In addition Miguel d'Escoto described R2P as “redecorated colonialism” “to justify arbitrary and selective interventions against the weakest states.”¹⁰⁰ Point is that R2P is an emerging new norm but mostly based on the existing theories that empower powerful states potentially allowing them to justify self-driven motivations in the designation of protecting the civilians. Unauthorized intervention or even Security Council is an unrepresentative body as Morgenthau’s stated international politics is a “struggle for power”, competitive to mobilize the resources.¹⁰¹ Where,

⁹⁹DeLaet L. Debra, “After Evil: A Politics of Human Rights Robert Meister,” *A Multidisciplinary Journal of World Affairs* 1, (2011): 80

¹⁰⁰ United Nations General Assembly 97th Session, agenda items 44 and 107, “*Statement by the General Assembly President Miguel D'Escoto Brockmann at the Opening of the Thematic Dialogue of the General Assembly on the Responsibility to Protect*,” July 23, 2009, available from <http://www.un.org/ga/president/63/statements/openingr2p230709.shtml>

¹⁰¹ Hans J. Morgenthau, *Politics among Nations, The Struggle for Power and Peace*, 17th ed. (New York: McGraw-Hill, 1955)

Makinda emphasized that of course it saves the lives but it is not done primarily for the protection of human rights.¹⁰² Practically, Human Security Discourse (HSD) advocates that states are motivated by realpolitik deliberations rather than by a sincere anxiety for the safety of civilian's grave atrocities.¹⁰³ Since, there is R2P norm as a universal doctrine but states picking and choosing which state to intervene. For example, international community made no commitment toward Chechnya whereas; in Kosovo even military intervention was deployed. Despite the fact that the civil casualties in Chechnya were far greater than in Kosovo. As a result, this demonstrated that states will not risk economic resources and military costs to save outsiders lives unless there are vital economic or geo-strategic interests and an intervention is justified on the basis of the protection of civilians.

R2P can be described as a political term as Paul O'Brien stressed that the resolution in 1949 to mandate the legality of the protection of civilians in war was crucially a political step, as same as it is political to mandate the relocation of resources from the powerful to weaker.¹⁰⁴ Where ICISS emphasis on six Just War theory criteria must meet before military intervention are highly under consideration and in reality, mechanism do not work as a civilian protection mission but rather like a war that fights against the enemy. Thus, the politicians should still have to justify their actions by showing how their policies meet the other just war theory precepts and while policy-makers resorting to the unjust use of force more often causing a greater number of harms to innocents. Whereas, R2P used just war theory requiring a collective powers response in order to avoid unilateral intervention by states seeking to advance their status as global

¹⁰²Samuel M. Makinda, "REVIEW ESSAY: Human Rights, Humanitarianism, and Transformation in the Global Community," (2001)

¹⁰³ José Luengo Cabrera, "Human Security Discourse and Humanitarian Intervention," *BRIAD Policy Paper*, (2011): 13

¹⁰⁴ Paul O'Brien, "Politicized humanitarianism: A response to Nicolas de Torrente," *Harvard Human Rights Journal* vol. 17 (2004): 1-2

or regional power which is totally ignored. Where Nicolas De Torrente pointed, “If humanitarian nongovernmental organizations (NGOs) can prove themselves politically neutral, impartial and independent, then perhaps belligerents will once again allow them to save lives and relieve humanitarian suffering.”¹⁰⁵ Thus, it is not to argue that R2P norm is incorrect but rather there is not such a thing as pure R2P intervention. As a result, it is highly questionable if states will ever intervene in situations where there is no national or political interest. Consequently, an intervention is always political and it always has political incentives.

¹⁰⁵ Paul O’Brien, “Politicized humanitarianism: A response to Nicolas de Torrente,” *Harvard Human Rights Journal* vol. 17 (2004): 1

Conclusion

The study aimed on the deep analysis of the implementation of R2P which is the new norm for the protection of human rights in grave atrocities. The principal responsibility of R2P is to prevent the war crimes, crimes against humanity, genocide, and ethnic cleansing. But, only in case the state is unable or reluctant to protect its own civilians, the international community responsible to make appropriate measures to stop the grave violation of human rights. Where the primary actions under R2P are the peaceful and non-violent measures, the coercive steps such as military intervention used only as the last resort and only where there are reasonable prospects of success. However, in today's world the use of the military force gets the extensive attention since the intention of states is not always a simple matter rather in the realm of the international politics closely associated with the status and power of certain key powerful states. Consequently, the study concentrated to the third pillar of the R2P the last resort. The research aimed analyzing the evolution of the legality of military intervention determining the role of the states in global politics. The paper examines the alterations of the R2P from other similar previous approaches and studies of whether R2P is a distinct approach to stop the grave atrocities or whether remake of the notions that have failed on many occasions. Where the hypothesis stressed on the restructurings of R2P to defend the use of force by powerful countries and it is not the nature of states to act solely on humanitarian grounds.

Two theories were used to test the hypothesis the Just War theory and Political Realism. The Just War theory is a moral theory based where the essence of the R2P come from the Just War theory. The theory is not offered to justify wars but proposed condition that some wars under certain circumstances can morally be justified. Second is the Realism the theory of international relations that stresses on the analyses of the states that pursue power politics of the national interest.

The findings advocate that the promotion of the R2P has led to shift the understanding of state sovereignty and the principles of the non-intervention. The notion of the sovereignty that has been recognized universally by the UN Charter became less significant, which led to the evolution of the legality of military intervention for protecting the human abuse under R2P. But, from the perspectives of the realpolitik it is not the nature of the state to merely intervene for humanitarian purposes as Donnelly stated that states sometimes comply with moral norms but only for the sake of their own interests and to escape from the costs of non-compliance.¹⁰⁶ As a result, states have always several purposes and no political goals can be achieved without cost. However, this is not to maintain that the R2P concept itself is wrong or invalid, rather R2P became an instrument in the hands of the powerful states to further their national interest. Even though, under Chapter VII of the UN Charter mentioned coercive military action have to be authorized for 'extreme cases' only by the UN Security Council, however, powerful states such as United States, Russia, and United Kingdom unilaterally exercising interventions in the name of the R2P concept. Whilst the UN Security Council by itself by nature a political body where power and geopolitical interests play a central role. Through, an intervention is constantly a political act with political consequences, and there is no such a pure R2P interventions based on the of Just War theory.

The fact that R2P has an origin from the Just War theory for the purpose of protecting the civilians in mass atrocities, the exclusive focus was made to the military interventions. Due to the number of people dead as a result of intervention, it is demonstrated that the use of the military force that is directed to prevent or to stop widespread atrocities is in fact not the primary concern of interveners. Since, R2P recognized only for above listed crime but in practice states go further to change the

¹⁰⁶ Jack Donnelly, "The Realism," In *The theories of International relations*, 1st ed, (New York: Deakin University 1995), 49-51

regime, exploring a suspected terrorism, and preservation of weapons of mass destruction. As a consequence, the mission of the R2P that is directed at preventing or ending widespread and grave violations of the fundamental human rights ends up causing so many civilians life and destroying the civilian objects that are needed for their survival. Based on the Just War theory, analysis illustrated that the criteria of Just War at all not followed by states. States remain picking and choosing which state to intervene as in case of Kosovo and Chechnya. The commitments even military one was made towards Kosovo, despite the fact that the civil casualties in Chechnya were far greater than in Kosovo.

To sum up, R2P concept used just war theory requiring protecting the civilians which is totally ignored, since states seeking to advance their status as global or regional power. Politicians still needed to justify their actions by showing how their policies meet with just war theory precepts while the outcome demonstrates unjust use of force that often causing a greater number of harms to innocents. As long as states are guided by the logic of the realpolitik, the human security will remain worthless.

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