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The *Russian Law Journal* is designed to encourage research especially in Russian law and legal systems of the countries of Eurasia. It covers recent legal developments in this region, but also those on an international and comparative level.

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HOW RUSSIAN INTERVENTION IN SYRIA REDEFINED THE RIGHT TO PROTECT IN ARMED CONFLICT

JOSEPH LUTTA,

High Court of Kenya (Eldoret, Kenya)

DOI: 10.17589/2309-8678-2018-6-2-4-38

The use of military force to forestall humanitarian crisis remains a controversial issue in international law. This strategy is considered antithetical to the sovereignty and territorial integrity of the host country. This legal quandary emanated in 1998 after NATO launched a series of airstrikes against the Yugoslavian forces under the doctrine of humanitarian intervention. This legal conundrum prompted the United Nations to craft comprehensive legal principles to determine the parameters of foreign interventions in armed conflict. The objective was realised in 2005 after the UN adopted the Right to Protect (R2P) as means of resolving humanitarian crisis. This doctrine intended to harmonise the foreign intervention in light of the shortcomings of unilateral humanitarian intervention. However, the abysmal failure in resolving the Libyan crisis exposed its soft underbelly as tool for perpetuating regime change against unpopular leaders. Subsequently, when Security Council proposed similar remedy for Syrian conflict, Russia strenuously objected and advocated for a political and diplomatic solution. This geopolitical gridlock prompted the divided council to adopt a different scenario in dealing with the Syrian conflict with the west supporting the rebels while Russia stood by Assad. This prompted Assad to appeal for assistance from Russia in counteracting ISIS and rebel forces that threatened to depose his government. In 2017 President Putin announced the success of the Russian intervention and called for peace talks among the various warring factions. As such Russia had realised the humanitarian objective behind R2P while respecting the sovereignty of Syria.

Keywords: Syria; Russia; armed conflict.

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Introduction

The political turmoil in Syria remains one of the most volatile and catastrophic phenomenon of the 21st century.¹ This appraisal is drawn from the horrific statistics which indicate the conflict has left close to 100,000 civilians dead while displacing almost 9 million with most of them seeking refuge in the Middle East and Europe.² In essence, this multifaceted conflict has fragmented the country along the fault

¹ Laurie R. Blank & Geoffrey S. Corn, *The Law of War's Essential Role in Containing Brutality: Syria's Painful Reminder*, Global Policy Essay (2013) (Jun. 5, 2018), available at <https://www.globalpolicyjournal.com/articles/conflict-and-security/law-wars-essential-role-containing-brutality-syrias-painful-reminder>.

² Azfer Ali Khan, *Can International Law Manage Refugee Crises?*, 5 Oxford University Undergraduate Law Journal 54 (2016).

lines of religion, ethnicity and to some degree geopolitical interests.³ On one hand, the government forces loyal to President Bashar al-Assad are battling the western supported rebels informally known as “Free Syria Movement” who are seeking to gain control of the country. Conversely, the ultra-fundamentalist Islamic State (used interchangeably with ISIS and Daesh) intends to establish a religious caliphate traversing the entire Middle East region.⁴ This terror group has committed countless of violence against the Yazidi women including sexual enslavement, honour killings and human trafficking.⁵ Furthermore, its adherents are accused of perpetrating religious cleansing against minority Christians and plundering their property and holy sites.⁶

Throughout the course of the conflict the west has vilified President Assad as the principal perpetrator of the atrocities besetting the country.⁷ This blanket condemnation prompted the North Atlantic Treaty Organisation (NATO) aligned states to shore up support for the rebels as strategy of expelling President Assad from office.⁸ The Arab league followed suit by slapping Syria with sanctions and demanding the immediate resignation of President Assad.⁹ However, this indictment is biased and inconclusive after the United Nations (hereinafter the UN) prepared a comprehensive report which incriminated both sides for the atrocities.¹⁰

On the opposite end of the spectrum Russian President Vladimir Putin has remained steadfast in supporting the regime. He has reiterated President Assad is the legitimate leader of Syria and should be involved in any dispute resolution mechanism.¹¹ Furthermore, Russia has vetoed any resolution by the Security Council (used interchangeably with the council) seeking to invoke military intervention in

³ Alex Schank, *Sectarianism and Transitional Justice in Syria: Resisting International Trials*, 45 Georgetown Journal of International Law 557, 559 (2014).

⁴ Emin Daskin, *Justification of Violence by Terrorist Organisations: Comparing ISIS and PKK*, Journal of Intelligence and Terrorism Studies 1, 6 (2016).

⁵ Mah-Rukh Ali, *ISIS and Propaganda: How ISIS Exploits Women*, Reuters Institute for the Study of Journalism (2015) (Jun. 5, 2018), available at [http://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/Isis%2520and%2520Propaganda-%2520How%2520Isis%2520Exploits%2520W](http://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/Isis%2520and%2520Propaganda-%2520How%2520Isis%2520Exploits%2520Women.pdf)omen.pdf.

⁶ Michael Solomatin, *The Unjust War in the Syrian Arab Republic and the Protection of Syrian Churches as Cultural Property*, 6 Ave Maria International Law Journal Spring 88, 99 (2017).

⁷ Matthew C. Waxman, *Syria, Threats of Force, and Constitutional War Powers*, 123(6) Yale Law Journal 297 (2013).

⁸ Amos N. Guiora, *Intervention in Libya, Yes; Intervention in Syria, No: Deciphering the Obama Administration*, 44 Case Western Reserve Journal of International Law 251, 271 (2011).

⁹ Thilo Marauhn, *Sailing Close to the Wind: Human Rights Council Fact-Finding in Situations of Armed Conflict – The Case of Syria*, 43 California Western International Law Journal 402, 411 (2013).

¹⁰ Draft UN Resolution, UN Doc S/2012/77, 4 February 2012.

¹¹ Muditha Halliyade, *Syria – Another Drawback for R2P?: An Analysis of R2P’s Failure to Change International Law on Humanitarian Intervention*, 4(2) Indian Journal of Law & Social Equality 215, 215 (2016).

Syria for fear of regime change. President Putin drew a perfect comparison with Libya where NATO used humanitarian concerns as an excuse to dislodge Colonel Gaddafi from power only to leave behind a failed and fractured state.¹² Subsequently, Russia offered the regime military support in combating the rebels and jihadist who were determined to gain control of the country. This last resort measure has prompted the west to accuse Moscow of complicity to the alleged atrocities committed by the Assad regime.¹³

However, in September 2015 this conflict took a totally different turn after Russia became actively engaged in the conflict at the behest of the President Assad. The Russian armed forces launched a series of surgical air strikes and deployed ground troops to reinforce the government forces in countering the Islamic State.¹⁴ After two years of vigorous battles ISIS was ultimately neutralised thereby enabling the regime to regain significant control of the country. In December 2017 President Putin made a victory tour of Syria to commemorate the successful military campaign whereupon he announced the partial withdrawal of Russian troops from the county.¹⁵ Furthermore, he expressed his desire to mediate post-conflict reconciliation among the various factions in the country.¹⁶ Despite this self-evident triumph the west has viewed the Russian support with suspicion of protecting its economic and geopolitical interests in the region.¹⁷ Some analysts argue Russian support for the Assad regime is the precursor to the resumption of a “new cold war.”¹⁸ Nonetheless, these concerns seem antiquated since Russia has always advocated for a political and diplomatic solution to the conflict while strenuously opposing the use of force.¹⁹

¹² Jon Austin, *US and NATO Want Syria to Be the Next Libya – Claims Assad and Putin “GOOD Guys” of Conflict*, Express, 2 August 2017 (Jun. 5, 2018), available at <https://www.express.co.uk/news/weird/836154/Syria-War-Vladimir-Putin-Russia-President-Assad-good-guys-Nato>.

¹³ Derek Averre & Lance Davies, *Russia, Humanitarian Intervention and Responsibility to Protect: The Case of Syria*, 91(4) International Affairs 813, 814 (2015).

¹⁴ Marauhn 2013, at 414.

¹⁵ Nathan Hodge, *Putin Declares Victory in Surprise Stopover in Syria*, Wall Street Journal, 11 December 2017 (Jun. 5, 2018), available at <https://www.wsj.com/articles/putin-declares-victory-in-surprise-stopover-in-syria-1512994876>.

¹⁶ Raf Sanchez, *Bashar Al-Assad Thanks Putin for “Saving Our Country” as Russian Leader Prepares for Talks on Ending Syrian War*, The Telegraph, 21 November 2017 (Jun. 5, 2018), available at <https://www.telegraph.co.uk/news/2017/11/21/bashar-al-assad-says-ready-syria-peace-talks-rare-meeting-vladimir/>.

¹⁷ Caitlyn A. Buckley, *Learning from Libya, Acting in Syria*, 5(2) Journal of Strategic Security 82, 83 (2012).

¹⁸ *Russia, Syria, and the “New Cold War,”* Journal of Middle Eastern Politics and Policy, 18 December 2016 (Jun. 5, 2018), available at <http://jmepp.hkspublications.org/2016/12/18/syria-russia-new-cold-war/>.

¹⁹ Reuters Staff, *Russia Says Opposes Any Resolution Threatening Force Against Syria*, 22 September 2013 (Jun. 5, 2018), available at <https://www.reuters.com/article/syria-crisis-russia/russia-says-opposes-any-resolution-threatening-force-against-syria-idUSL5N0H10A020130922>.

Looking at the bigger picture Russian intervention in Syria falls well within the ambit of the Right to Protect (used interchangeably with R2P) under international humanitarian law. This amorphous policy formulated in 2005 maps out the terrains of foreign humanitarian assistance during armed conflicts.²⁰ Secondly, Russian intervention safeguarded Syria's sovereignty since it was undertaken at the behest of President Assad who is the *de facto* leader of the country.²¹ In stark contrast the western countries decision to support the rebels was initiated in flippant disregard of principle of international law that prohibits illegal use of force against a sovereign state.²² As the ICJ held in *Nicaragua v. USA* and *DRC v. Uganda* funding of armed resistance is tantamount to infringing upon a country's sovereignty and territorial integrity.²³ As I shall argue the approach by NATO raises serious legitimate issues regarding the culpability of the Syrian rebels as active participants in the conflict.

This brief historical antecedent forms the focal point of this manuscript. Broadly speaking I argue the Russian military support of the Assad regime falls well within the scope of the Right to Protect. In contradistinction the western approach of supporting the rebels is blotted with serious legal ramifications in both international and humanitarian laws. This manuscript is divided into five major segments. The first portion underscores an elaborate discussion of the historical development of the doctrine of the Right to Protect (R2P). It outlines the legal position of this doctrine in light of the ever changing dynamics of the international law. The second segment shall discuss the Syrian conflict. This portion forms the main focus of this paper by expounding on the international humanitarian issues about the conflict. The third portion shall encompass a comprehensive discussion of the Russian intervention in Syria. Furthermore, it will give a brief synopsis of Putin's ascension to power and how his foreign policy transformed the geopolitical landscape. The fourth portion shall flesh out the fundamental distinction between the Russian and Western intervention in Syria. Moreover, this segment shall discuss the jurisprudence on this subject matter as enunciated by the International Court of Justice (ICJ).²⁴ The fifth portion shall entail a general overview of the problem together with some concluding remarks from the author.

²⁰ Tomas Königs et al., *Responsibility to Protect: Implementing a Global Norm Towards Peace and Security*, 29(76) *Utrecht Journal of International and European Law* 109, 110 (2013).

²¹ Samuel Mercier, *The Legality of Russian Airstrike in Syria and "Intervention by Invitation,"* E-International Relations, 29 April 2016 (Jun. 5, 2018), available at <http://www.e-ir.info/2016/04/29/the-legality-of-russian-airstrikes-in-syria-and-intervention-by-invitation/>.

²² Julian E. Barnes et al., *Obama Proposes \$500 Million to Aid Syrian Rebels*, *The Wall Street Journal*, 26 June 2014 (Jun. 5, 2018), available at <https://www.wsj.com/articles/obama-proposes-500-million-to-aid-syrian-rebels-1403813486>.

²³ Alexis Goh & Steven Freeland, *The International Court of Justice and Recent Orders on Provisional Measures*, 11 *Australian Journal of International Law* 47, 48 (2004).

²⁴ A. Mark Weisburd, *The International Court of Justice and the Concept of State Practice*, 31(2) *University of Pennsylvania Journal of International Law* 295, 297 (2009).

1. General Background on the Right to Protect (R2P)

1.1. The Pre-Unilateral Humanitarian Intervention Era

By and large, international law enshrines the norms governing the relationship among nation states. This unique framework is largely attributed to Hugo Grotius who popularised the term *jus gentium* (laws of the nation) which envisages a community nations posited within a common legal order.²⁵ This notion was later codified in 1648 when European powers signed the treaty of Westphalia thereby ending the thirty years war.²⁶ This futuristic document laid the foundation for modern precepts of sovereignty and statehood by defining territorial integrity and state autonomy.²⁷ Despite these tremendous steps interstate relationships were inundated with legal loopholes and frictions that erupted into World War I in 1914.²⁸ After the war the allied victors envisioned a new world order governed by the League of Nations.²⁹ However, this supranational organisation failed to realise its objective after Europe relapsed into a diabolical arms race and annexations which triggered the outbreak of World War II.³⁰ Similarly, the ultimate defeat of the axis powers reshaped the international legal order after the allies lobbied for the formation of the United Nations (hereinafter the UN).³¹ This global body succeeded the defunct League of Nations in overseeing the relationship among the member states.³² This led to the promulgation of the United Nations Charter in 1945 which delineated the boundaries on the use of force by the member states.³³ Pursuant to Arts. 2(4) and 51 of the charter the use of force is restricted to the purpose of self-defense.³⁴ By narrowing this scope, the framers of the charter intended to safeguard the territorial integrity of the member states

²⁵ Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106(8) Yale Law Journal 2559, 2605 (1997).

²⁶ Leo Gross, *The Peace of Westphalia, 1648–1948*, 42(1) American Journal of International Law 20, 22 (1948).

²⁷ Daud Hassan, *The Rise of the Territorial State and the Treaty of Westphalia*, 9 Yearbook of New Zealand Jurisprudence 62, 63 (2006).

²⁸ Talbot C. Imlay, *The Origins of the First World War*, 49(4) The Historical Journal 1253, 1255 (2006).

²⁹ Anne Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87(2) American Journal of International Law 205, 210 (1993).

³⁰ Robert J. Delahunty & John C. Yoo, *Peace Through Law – The Failure of a Noble Experiment*, 106 Michigan Law Journal 923, 926 (2007).

³¹ John Humphrey, *The Main Functions of the United Nations in the Year 2000 A.D.*, 17(1) McGill Law Journal 219, 220 (2000).

³² Leland M. Goodrich, *From the League of Nations to United Nations*, 1(1) International Organization 3, 9 (1947).

³³ Charter of the United Nations and Statute of the International Court of Justice (San Francisco 1945) (Jun. 5, 2018), available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

³⁴ David K. Linnan, *Self-Defense, Necessity and U.N. Collective Security: United States and Other Views*, 1 Duke Journal of Comparative & International Law 57, 66 (1991).

from needless infringement by powerful and aggressive countries.³⁵ Eugene Rostow noted these dual provisions crystallised the use of force strictly for the purpose of self-defense as part of customary international law.³⁶ In addition to these clauses, the obligation to preserve international peace and stability was bestowed upon the Security Council which comprised of the former allies powers during the war.³⁷

Aside from the UN Charter, the global human rights regime underwent a metamorphosis after the adoption of the Convention on the Prevention of Genocide and the Geneva Conventions on the Laws of War.³⁸ The spirit behind these futuristic documents was to prevent the recurrence of mass atrocities reminiscent of World War II.³⁹ From another perspective, some scholars argue this legal change obligated third parties to avert genocide and other mass forms of mass atrocities.⁴⁰ The previous regime placed no legal obligation on foreign states to intervene during such scenarios thereby opening the leeway for autocrats to commit mass atrocities against helpless civilians the most striking example being the holocaust.⁴¹

In spite of this transformative concrete framework and institutions there was a resurgence of incursions and barbarism as several UN members flouted the charter in pursuit of their geopolitical interests. A case in point was the Belgian invasion of the Republic of Congo (Kinshasa) after the secession of the mineral rich Katanga region.⁴² At face value Belgium justified its decision as means of preventing the ethnic cleansing and persecution of its civilians residing in Katanga. However, this humanitarian measure morphed into a full blown civil war pitting the Western backed Katanga against the Soviet supported African nationalist government led by Patrice Lumumba.⁴³ Thereafter, this trend was replicated in three countries; India (East Pakistan) in 1971, Tanzania (Uganda) in 1978 and Vietnam (Kampuchea) in

³⁵ Richard B. Lillich, *Intervention to Protect Human Rights*, 15(2) McGill Law Journal 205, 208 (1969).

³⁶ Eugene V. Rostow, *The Legality of the International Use of Force by and from States*, 10 Yale Journal of International Law 286, 286 (1985).

³⁷ Ian Hurd, *The UN Security Council and the International Rule of Law*, 7(3) Chinese Journal of International Politics 361 (2014).

³⁸ Convention on the Prevention and Punishment of the Crime of Genocide, adopted by resolution 260 (III) A of the United Nations General Assembly on 9 December 1948; Geneva Conventions of the Laws of War, 12 August 1949.

³⁹ Henry T. King Jr. et al., *Origins of the Genocide Convention*, 40(1) Case Western Reserve Journal of International Law 13, 17 (2007).

⁴⁰ Eyal Mayroz, *The Legal Duty to "Prevent": After the Onset of "Genocide,"* 14(1) Journal of Genocide Research 79, 81 (2012).

⁴¹ Daniel Levy & Natan Sznaider, *The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights*, 3(2) Journal of Human Rights 143, 145 (2004).

⁴² Jonathan J. Cole, *The Congo Question: Conflicting Visions of Independence*, 43(1) Emporia State Research Studies 26, 33 (2006).

⁴³ Nicole Hobbs, *The UN and the Congo Crisis of 1960*, Harvey M. Applebaum '59 Award, Paper 6 (2014).

1978 all of whom intended to oust callous regimes.⁴⁴ To some degree these actions were reminiscent of Hitler's invasion of Sudetenland in former Czechoslovakia and Poland under the pretext of liberating the ethnic Germans from persecution.⁴⁵ This worrisome state of affairs prompted the famed international scholar Thomas Franck to pose the serious question "who killed Article 2(4) of the UN Charter?"⁴⁶ Despite the perpetual discussion on this emotive subject the global community failed to reach a consensus on how to reconcile dynamics of international law with the demands of humanitarian protection thereby leaving a glaring lacuna on this subject matter.

1.2. Unilateral Humanitarian Intervention

The last decades of the 20th century are classified as one of the grotesque periods in human history.⁴⁷ This description stems from the waves of civil wars and ethnic conflicts that engulfed the global south countries.⁴⁸ This conundrum reached the climax after the Rwandan genocide of 1994 and Yugoslavian conflict that dominated the better part of this epoch.⁴⁹ This worrisome trend prompted some western countries to lobby for the right to intervene during internal conflict as means of averting humanitarian crisis.⁵⁰ In 1998 this humanitarian concern impelled NATO unilaterally pierced the veil of sovereignty and launch a series of airstrikes against Yugoslavia under the banner of "humanitarian intervention." As David Robertson notes humanitarian intervention is

a doctrine under which one or more state may take action inside the territory of another state in order to protect those who are experiencing serious human rights persecution, up to and including attempts at genocide.⁵¹

⁴⁴ Nadia Banteka, *Dangerous Liaisons: The Responsibility to Protect and a Reform of the U.N. Security Council*, 54 Columbia Journal of Transnational Law 382 (2016).

⁴⁵ Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, 100(1) American Journal of International Law 107, 113 (2006).

⁴⁶ Thomas M. Franck, *Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States*, 64(5) American Journal of International Law 809, 810 (1970).

⁴⁷ Adam Roberts, *The Laws of War: Problems of Implementation in Contemporary Conflicts*, 6(11) Duke Journal of Comparative & International Law 11, 41 (1995).

⁴⁸ Andreas Wenger & Simon J.A. Mason, *The Civilisation of Armed Conflict: Trends and Implications*, 90(872) International Review of the Red Cross 835, 841 (2008).

⁴⁹ Jane Stromseth, *Pursuing Accountability for Atrocities after Conflict: What Impact on Building the Rule of Law?*, 38 Georgetown Journal of International Law 251, 267 (2007).

⁵⁰ Dabiru Sridhar Patnaik, *International Law and Responsibility to Protect: South Asian Perspective*, Doshisha Global Studies Journal 173, 176 (2013).

⁵¹ David Robertson, *A Dictionary of Human Rights* 119 (2nd ed., London: Europe Publications, 2004).

Despite the benevolent objectives behind the military campaign, this decision raised the critical issue of whether the NATO was justified to use force against a sovereign state.⁵² Consequently, the aggrieved government of Federal Republic of Yugoslavia filed a memorial with the International Court of Justice (ICJ) against NATO which states a case later known as *Legality of Use of Force*.⁵³ The applicant applied for temporary halt of the airstrikes arguing they were illegal and calamitous under Art. 9 of the Genocide Convention.⁵⁴ In its cautious and one-dimensional verdict the court expressed “deep concerns” about the humanitarian tragedies in the region which raised “serious issues” of international law.

However, the thrust of the decision revolved around the preliminary objection raised by NATO states which questioned the plaintiff’s legal standing. The majority judges argued Serbia and Montenegro lacked the *locus standi* to lodge the matter since they failed to meet the threshold of a UN member state as envisaged in Art. 35 of the ICJ Charter.⁵⁵ Ensuing from this substantive technicality the court resolved that the applicant lacked the capacity to institute the proceedings and their case was summarily dismissed. Nonetheless, the applicants had a strong case since Arts. 2(4) and 51 of the UN Charter proscribes the use of force beyond the purview of self-defense contrary to NATO’s actions.⁵⁶ Furthermore, the court failed to issue legal guidelines on foreign intervention thereby de-escalating the dire humanitarian situation in the region and did not restore certainty on this subject matter for posterity purposes.⁵⁷ From another perspective, by failing to seal this legal lacuna the court opened the floodgates for individual member states to interpret the charter in accordance to their personal objectives.⁵⁸ This legal quandary was exposed after the U.S. led invasion of Iraq to depose Iraqi strongman Saddam Hussein who was accused of possessing Weapons of Mass Destruction and sponsoring terrorist organisations including Al-Qaeda.⁵⁹ This legal pitfall spurred the call to reform the

⁵² Daniel H. Joyner, *The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm*, 13 European Journal of International Law 597, 600 (2002).

⁵³ *Yugoslavia v. NATO*, 1999 I.C.J. 916.

⁵⁴ Convention on the Prevention and Punishment of the Crime of Genocide, adopted by resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

⁵⁵ Article 35(1) of the Statute states that Courts shall be opened to the states to the present Statute.

⁵⁶ Ian Hurd, *Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World*, 25(3) Ethics & International Affairs 293, 301 (2011).

⁵⁷ Christine Gray, *The Use and Abuse of the International Court of Justice: Cases Concerning the Use of Force after Nicaragua*, 14(5) European Journal of International Law 867, 870 (2013).

⁵⁸ Goodman 2006, at 108.

⁵⁹ Jordan J. Paust, *Use of Armed Force Against Terrorists in Afghanistan, Iraq, and Beyond*, 35(3) Cornell Journal of International Law 533, 540 (2012); Judith Miller, *Comments on the Use of Force in Afghanistan*, 35(3) Cornell Journal of International Law 605, 605 (2012).

doctrine of humanitarian intervention for being susceptible to manipulation by individual countries.⁶⁰

1.3. The Right to Protect

This origin of this principle is attributed to the emphatic speech by former UN Secretary General Kofi Annan as published in the UN Millennium Report of 2001.⁶¹ He stated in part:

If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?⁶²

Secretary Annan's concern exposed the inextricable conflict between sovereignty and the use of force in protecting fundamental rights and freedom.⁶³ In hindsight, the framers of the UN Charter envisaged Arts. 2(4) and 51 as limiting the use of force to purposes of self-defense.⁶⁴ Therefore, expanding this scope to encompass humanitarian interventions would trigger a paradigmatic shift in the international legal order. In order to harmonise this process the UN convened an *ad hoc* committee on the International Commission on Intervention and State Sovereignty (ICISS). This committee was comprised of seasoned experts in international humanitarian law who prepared a report that recommended a novel doctrine called the "Responsibility to Protect."⁶⁵ This proposal was deeply anchored in the laxity and reticence of the global community in addressing the genocides in former Yugoslavia and Rwanda.⁶⁶

At a glance this R2P stands on three major pillars as tools of averting civilian atrocities during armed conflict.⁶⁷ The first is the *responsibility to prevent* which entails

⁶⁰ Peter Hilpold, *Humanitarian Intervention: Is There a Need for a Legal Reappraisal?*, 12(3) European Journal of International Law 437 (2001).

⁶¹ United Nations General Assembly, *We the Peoples: The Role of the United Nations in the Twenty-First Century*, Report of the Secretary-General, 27 March 2000 (Jun. 5, 2018), available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000923.pdf>.

⁶² *Id.* at 35, para. 217.

⁶³ Sandra Fabijanić Gagro, *The Responsibility to Protect (R2P) Doctrine*, III(1) International Journal of Social Sciences 61, 63 (2014).

⁶⁴ *Id.* Arts. 2(4) and 51 of the UN Charter.

⁶⁵ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Report (December 2001) (Jun. 5, 2018), available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

⁶⁶ Alex J. Bellamy, *Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, 20(2) Ethics & International Affairs 143, 148 (2006).

⁶⁷ Gabija Grigaitė, *Responsibility to Protect Concept and Conflict in International Law*, 83 Teise 174, 177 (2012).

tackling the root causes that may culminate in internal conflict.⁶⁸ This requirement intends to strike a balance between state sovereignty and humanitarian concerns by engaging the relevant stakeholders in redressing the dispute. This mechanism intended to cure the shortcoming of humanitarian intervention which solely relied on the unilateral use of force in redressing gross human rights abuses. Conversely, the *responsibility to react* empowers countries to respond to humanitarian concerns through various means including sanctions, international prosecution but resorting to military intervention only as the last option.⁶⁹ This proposal intended to offer viable options other than force in resolving armed conflict. Finally, the *responsibility to rebuild* underscores the duty to reconstruct countries torn apart by armed conflict through infrastructural development and post-conflict reconciliation.⁷⁰

In addition to these principal obligations R2P stands on precautionary principles on the use of force. Ramesh Thakur one of the foremost authorities in this subject and an ICISS committee member explains the use of force should be the last resort and not the tool of choice when confronting human rights atrocities.⁷¹ Therefore, these supplementary principles intend to protect the sanctity and integrity of R2P as a benign remedy to armed conflict. First is *right intention principle* which stipulates the primary obligation of the intervening state is to halt human suffering. Second is the *last resort principle* which limits the use of military force as the measure of last resort. The third *principle of proportional force* prescribes the proportionate force at par with the nature and degree of the conflict. Finally, *reasonable prospects principle* which provides there for a proper assessment on the use of force to ensure that the consequences of the action does not outweigh the ultimate consequences of inaction.⁷² The commission further recommended the permanent members of the Security Council to craft the guidelines of enforcing the doctrine.⁷³ This resolution was subsequently adopted at the UN summit in 2005 but the divided Security Council failed to delineate the concrete boundaries on the implementation of the principle.⁷⁴

Noteworthy, R2P is distinguishable from humanitarian intervention since its overarching objective is to protect civilians vulnerable to the atrocities of armed conflict

⁶⁸ Grigaité 2012.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Ramesh Thakur, *R2P after Libya and Syria: Engaging Emerging Powers*, 36(2) Washington Quarterly 61, 73 (2013).

⁷² Mitsuhsa Fukutomi, *Humanitarian Intervention in Libya: Is It Causing Internal War?*, 45(2) Hitotsubashi Journal of Law and Politics 23, 26 (2017).

⁷³ Herbert Hirsch, *The Responsibility to Protect and Preventing Genocide in the Twenty-First Century*, 1(2) Journal of African Conflicts and Peace Studies 68, 73 (2009).

⁷⁴ Scott Straus, *Rwanda and Darfur: A Comparative Analysis*, 1(1) Genocide Studies and Prevention: An International Journal 41, 44 (2006).

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