



RAJSHAHI UNIVERSITY LAW JOURNAL

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Reforming the Prosecution Service in the Subordinate Courts of Bangladesh

Shaping the Modern Police in Indian Sub-Continent with Special Reference to Police Commission 1902-1903

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ইসলামী আইনে রোমান আইনের প্রভাব : একটি তুলনামূলক পর্যালোচনা



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The Responsibility to Protect in Westphalian Sovereignty : A Post Colonial Approach

Humayun Kabir*

Abstract: *The concept of "the responsibility to protect (R2P)" has been the focus of ongoing discussion on a global scale. Many problems are raised by the improper application of R2P in Libya in 2011 and non-implementation in Syria and Myanmar. Arbitrary application of international law is fundamental threat to the R2P concept, which has expanded the gap between moral principles and their application in international politics. In spite of having bad consequences, R2P has sacred goals to save the people suffering from distress like crime against humanity, war crime, genocide, ethnic cleansing within the country. It limits the absolute sovereignty of Westphalia. The R2P document redefines sovereignty as responsibility rather than allowing sovereignty to be used as a license to kill. Therefore, despite of having flaws of R2P doctrine as improperly applied, we cannot pass a verdict of rejection because the R2P theory is still in effect under Chapters VI and VII of the United Nations Charter, as guaranteed by the 2005 World Summit Outcome Document. The R2P theory hasn't established clear guidelines for how to intervene in a state's internal affairs, it is necessary to reconsider it. In order to achieve the goals of international peace and justice, R2P must be applied according to certain key criteria, which are attempted to be addressed in this paper.*

Keywords: Responsibility to protect, Geopolitics, Sovereignty, Mass Atrocity, Human rights, Security Council, UN, International Community, Global Peace.

1. Introduction

A state's primary duty is to uphold peace and order while defending the rights and dignity of its citizens. A state is a protector of its citizen. People should be treated with respect and dignity in all civilized society. Freedom, political, economic, social rights, justice and rule of law shall be secured for all citizens by a state. Protecting the lives and safety of citizens falls under the purview of state authorities. The United Nations (UN)¹ was founded in 1945 as a post-World War II organization to uphold international peace and security. However, the world is witnessing how people are being tortured, killed,

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¹ Here in after United Nations is mentioned as UN

genocide, crimes against humanity and victims of ethnic cleansing in their own state by the dictatorial government based on their race, religion, ethnicity, sex, and political identification. The international community was unprepared to intervene when awful violence broke out within the borders of countries like Somalia, Rwanda, and the former Yugoslavia in the 1990s and was paralyzed by the conflicts over the extent of national sovereignty.² In 1995, Srebrenica in Bosnia was a failure for the international community. The North Atlantic Treaty Organization (NATO)³ was prompted to launch an aircraft bombardment in 1999 after the UN Security Council refused to adopt steps to halt ethnic cleansing in Kosovo. Which became a tension and sparked intense criticism among the States and international lawyers. NATO was charged with violating the UN Charter by employing force without the Security Council's consent. All of these failures sparked rethinking, which ultimately led to advancement.

The International Commission on Intervention and State Sovereignty (ICISS) developed an alternative principle known as "The Responsibility to Protect (R2P)" in its 2001 report. R2P emphasizes that all states have a responsibility to protect their citizens who are vulnerable within their borders and also addressed that it is moral or legal right of outsiders to intervene to protect the people. At the UN World Summit, it was unanimously agreed that it was their "responsibility to protect the people from, war crimes, genocide, crimes against humanity and ethnic cleansing."⁴ The R2P concept sought to address both the Rwanda tragedy and the Kosovo conundrum by asserting that states have a responsibility to protect their citizens from mass atrocity crimes, that the international community will support them in doing so, and that, in case of failure in its duties, the international community is required to act.⁵ The foundation for R2P, which includes three significant and interrelated pillars, was laid by articles 138 and 139 of World Summit Document. First, it is

² The Responsibility to Protect: A background Briefing, Global Centre for The Responsibility to Protect, 2021, available at <https://www.globalr2p.org/publications/the-responsibility-to-protect-a-background-briefing>. Accessed on 23 March 2021

³ Herein after the North Atlantic Treaty Organization is mentioned as NATO

⁴ UNGA A/RES/60/1, 2005 World Summit Outcome

⁵ Simon Adams, Responsibility to Protect in 2022: Building the Politics of Non-Indifference and the Architecture of Prevention, Global Centre for The Responsibility to Protect, (2020), p.85, available at <https://www.jstor.org/stable/pdf/resrep19168.15.pdf>., Accessed on 4 March 2021

largely the responsibility of the state to protect individuals who reside inside its territory from atrocities like war crimes, genocide, crimes against humanity and ethnic cleansing. The second pillar emphasizes that all members of the global community have a duty to assist nations in upholding their duty to protect. The third and most problematic pillar declares that if a state is "manifestly failing" to protect its citizens from war crimes, genocide, crimes against humanity and ethnic cleansing, the international community is prepared to act jointly in a prompt and decisive manner. This pillar authorizes the use of force to protect as provided in the Chapter VII of the UN Charter. The Security Council and General Assembly reaffirmed their commitment to the R2P in a number of resolutions.⁶

The doctrine of R2P is the recent development of the old liberal idea of humanitarian intervention. Humanitarian intervention has just been orchestrated by instrumentalizing and giving a framework with legal foundation. It is followed by the concept of democratic peace. More importantly, it is founded on Immanuel Kant's concept of perpetual peace, in which it is inferred that the civilized and peace-loving world will bring peace to the uncivilized and non-liberal world, which is disturbed by wars and disorder.⁷ Cosmopolitanism of Kant prioritizes the western supremacy and seeks universal moral responsibility to save and civilize the "Other" as Francis De Vitoria, a Spanish theologian and one of the fathers of international law, regarded the Spanish as a civilized nation who were to liberate and make the Indians civilize from the state of nature.⁸ Metaphorically, R2P is nothing but a new version of old concept of humanitarian intervention. Furthermore, there are no precise standards and instructions on how to utilize R2P in a State's internal affairs. Literature of R2P lacks clarity. Certain countries may use R2P as a weapon to justify their actions in a troublesome regime in the absence of appropriate thresholds. There has been ongoing discussion on the lack of R2P implementation in Myanmar and Syria as well as the disproportionate use of the doctrine in Libya in 2011. Despite R2P's

⁶ UNGA RES/75/277 (2021), UNSC Resolution 1674 (2006), and UNSC Resolution 1894 (2009)

⁷ Immanuel Kant, *Toward Perpetual Peace*, Practical Philosophy, Cambridge, Cambridge University Press, 1996, pp. 311-352

⁸ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, 2012, pp. 13 - 31

shortcomings, we cannot reject it because it continues to operate in accordance with Chapters VI and VII of the UN Charter. The main purpose of this paper is to unmask the doctrine of R2P by evaluating politics behind its development and its application and non-application in certain countries. It argues that R2P has authoritative character as its document and the supporters of this doctrine fail to fulfil the noble venture in practice. The paper demonstrates a paradox between R2P and the Westphalia sovereignty and argued that sovereignty is not a phrase of absolute authority but rather a type of responsibility. Lastly, some thresholds are proposed to strengthen the application of R2P in a sovereign state in order to restrict its abuse by the powerful countries.

2. The Birth of R2P: Politics and Ugly Reality

If we read the black and white letters of R2P document, we see good things talking about upholding and protecting human rights. But in reality, it is different from those of its noble norms. Whether it was born for a good cause or to legitimize the work of imperial states is a matter of debate. However, to say anything about it, the Rwandan genocide, NATO's illegal intervention in Kosovo, and invasion in Iraq have to be considered.

First, there have been numerous horrible genocides and mass massacres in numerous nations. One of them was Rwanda. The Rwandan genocide, also referred to as the Tutsi genocide, was a systematic killing of Tutsis in Rwanda by members of the Hutu majority government. In the period from April 7 to the middle of July 1994, between 500,000 and 1,000,000 Rwandans died.⁹ The UN Assistance Mission for Rwanda (UNAMIR), which has been criticized for failing to stop the Rwandan Genocide and the escalation of hostilities, has been constrained by its rules of engagement.¹⁰ The UN is still ashamed over its failure to prevent the 1994 genocide in Rwanda, former UN leader Ban Ki-moon remarked.¹¹

Second, on March 23, 1999, NATO began a three-month bombing campaign against the Federal Republic of Yugoslavia (FRY), allegedly to halt Slobodan

⁹ BBC News, Rwanda: How the genocide happened, 17 May 2011, available at <https://www.bbc.com/news/world-africa-13431486>, accessed on 9 November 2020

¹⁰ UNSC Resolution 872/1993(1)

¹¹ BBC News, Rwanda Genocide: UN Ashamed, says, Ban ki-moon, 7 April 2014, available at <https://www.bbc.com/news/world-africa-26917419>, accessed on 9 November 2020

Milosevi's totalitarian regime from ethnically cleansing Kosovar Albanians from Serbia's semi-autonomous region.¹² It was done without the security council's permission. There was undoubtedly a humanitarian crisis, but NATO's strategies to address it were woefully inadequate and did more harm than good, and failed the proportionality test. Given the large number of civilian deaths and the widespread displacement of both Albanian and Serb Kosovars as a result of the bombing campaign, it is more challenging to defend the involvement. According to estimates, hundreds of civilians were mistakenly killed by NATO weapons, and 800,000 refugees fled Kosovo for nearby nations, resulting in a displaced persons humanitarian disaster.¹³ The intervention did not uphold the *jus ad bellum*. The NATO invasion of Kosovo in 1999 lacked both legitimacy and justice.

Finally, the 2003 US-led military attack against the Saddam Hussein dictatorship was a devastating response. Without using more effective alternatives like filing a complaint with the ICC, there was a direct military intervention. Additionally, the conflict did not comply with the laws of war, international humanitarian law, and the Geneva Conventions" in a number of significant ways.¹⁴ Furthermore, the war was not approved by the UN Security Council. This wasn't not a just war. El-Baradei asserts that the invasion was no less than aggression in an area where there was no immediate threat, and that as a result, Bush administration officials ought to be subject to a criminal investigation on a global scale for the dishonor of starting an unnecessary war in Iraq.¹⁵ R2P was born in 2005 right after the controversies on the legality of western intervention in Kosovo in 1999 and Iraq in 2003. Despite such a massive genocide in Rwanda in 1994, the powerful nations did nothing; their consciences had not even been shaken up to protect the Rwandan from such brutality! So why did the principle of R2P come forward in 2005 exactly after two controversial interventions led by NATO and USA guided military?

¹² F. R Teson, Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention, (2009) 1 *Amarstardam Law Forum*, 2009, p.1.

¹³ Laura Wise, Was NATO's Intervention in Kosovo in 1999 'Just'? 2013, available at <https://www.e-ir.info/2013/06/21/was-natos-intervention-in-kosovo-in-1999-just>, accessed on 12 May 2021.

¹⁴ M. Lamani and B. Momani, *From Desolation to Reconstruction: Iraq's Troubled Journey*, Waterloo, Wilfrid University Press, 2010

¹⁵ M. Madhavi, A Post Colonial Critique of Responsibility to Protect in the Middle East, 20 *Perceptions: Journal of International Affairs*, 2015, p. 15.

Having critically examined the abovementioned three facts, it can easily be presumed that western brought the R2P to legalize their illegal interventions.

3. Gap between Norms and Practice: The Reality Check

There is serious ineffectiveness of R2P norms as geopolitics play over the norms. Historically, powerful countries use international law as tool of exploitation to legitimize their mission. They claimed themselves as civilized nations and are ordained to liberate the victimized people from the uncivilized nation. R2P is one of the tools of powerful states to legitimize their action. The idea of R2P is noble but curse in practice.

Libya was the first case where R2P was applied under which Security Council approved military intervention. In resolution 1973, which was adopted on March 17, 2011, the Security Council recommended an immediate ceasefire in Libya and a halt to ongoing operations against civilians that might be regarded as crimes against humanity.¹⁶ While allowing member states to take all necessary precautions to defend citizens who are in harm's way, the Council forbade any form of foreign occupation force from occupying any portion of Libyan land. A few days later, in compliance with the resolution, NATO aircraft started striking Gaddafi's soldiers.¹⁷ Unfortunately, NATO killed innocent civilians, going against UN policy. Women and children made up 70 of the reported civilian deaths, and most innocent people's homes were indiscriminately demolished.¹⁸ Three days after the airstrikes began, China, Russia, and India began pleading for an immediate cease-fire, claiming that NATO had gone beyond its authority and was instead attempting to impose a regime change.¹⁹ The intervention by NATO was motivated by politics rather than concern for human rights. There is ample evidence of tension between Gaddafi and western business. The main objective of the US and NATO in

¹⁶ Resolution 2011/73 of the UNSC.

¹⁷ C. O'Donnell, the Development of Responsibility to Protect: An Examination of the Debate over the Legality of Humanitarian Intervention, 24 *Duke Journal of Comparative and International Law*, 2014, p. 563.

¹⁸ Terence Fernades, *Theoretical Approach to Understanding NATO intervention in Libya*, E-International Relation, 2013, p.2.

¹⁹ Parul Sharma, From Humanitarian Intervention to the Responsibility to Protect (R2P), Extraordinary and Plenipotentiary Diplomatist Analysing International relations, (2020), available at <https://diplomatist.com/2020/09/28/from-humanitarian-intervention-to-the-responsibility-to-protect-r2p>, accessed on 2 March 2021.

Libya is to destroy Gaddafi's well-built fighter jets and expansive military installations, which have helped to make Libya one of the region's top air forces.²⁰ The implementation of R2P was the outcome of capitalist interests attempting to topple the Libyan political order in order to further US interests.

Syria experienced a different situation. By the end of March 2011, Syrian government troops had shot demonstrators calling for the release of political prisoners in Deraa and Damascus. Syria's population experiences widespread atrocities on a daily basis. The Assad dictatorship's duty to safeguard Syria's civilian population has been manifestly disregarded, and it even refuses to do so. With more than 200,000 dead, approximately 2,000,000 refugees, countless chemical weapons victims, and tens of thousands of tortured and jailed citizens, Syria clearly depicts a disastrous humanitarian scenario.²¹ After a chemical attack in Syria in August 2013, the United States, France and the United Kingdom, threatened Syria with using unilateral force because they believed Assad was primarily to blame for the crimes committed there.²² On the other side, China and Russia who have repeatedly claimed that the Syrian crisis was a domestic problem, claim that the Syrian civil war could only be addressed if the Assad regime engaged in the negotiations.²³ Russia and China oppose employing force to end the Syrian conflict. However, why did Russia and China not want to use force, whereas the United States, the United Kingdom, and France did? The United States and the United Kingdom both lobbied for the use of unilateral military force against Syria as a result of Syria's use of chemical weapons. Therefore, the threat to employ unilateral military force largely meant to enforce the ban on the use of chemical weapons rather than accomplishing R2P. Since R2P was implemented in Libya in 2011, which was a failure on the part of the West and NATO, Russia was very suspicious of the Western humanitarian involvement in Syria. It is to mention that Syria and China have a long-standing trading relationship as well.²⁴

²⁰ *The Daily Sangram*, 20/05/2011 (accessed on 3 April 2021)

²¹ *Ibid*

²² A. G Gowers, *The Responsibility to Protect and the Arab Spring: Libya As The Exception, Syria As The Norm*, 36 *UNSW Law Journal* 2013, p.611.

²³ *Ibid*

²⁴ *Supra* Note 12, p 22

The story of Myanmar is one of the most notable examples of how the international community failed to fulfill the promise set forward by the adoption of R2P. Rape, mass murder, forced labor, arbitrary nationality deprivation and denial of political rights are examples of atrocities carried out by the Burmese Security Forces that constitute crimes against humanity. More than 700,000 Rohingya have fled to Bangladesh since 2017, non-Rohingya individuals in Rakhine have been given land that once belonged to the Rohingya, and their communities have been destroyed, erased, or changed in name.²⁵ The international community could have then employed the third pillar to fulfill its duty to protect the Rohingya. The Security Council have the option to authorize the most significant pillar 3 actions, such as a referral to the ICC or the use of force, which in this case was unachievable because China and Russia would have cast vetoes. As a result, R2P has inherent structural limitations and its norms demonstrate its own vulnerability. Due to this opposition to coordinated action, there was also no chance of enacting an arm embargo or meaningful international sanctions against those guilty for the atrocities.²⁶ Unfortunately and sadly, regional actors, like ASEAN, could have some influence but failed to save the Rohingya referring to it as an own matter. The displaced Rohingya are living in Bangladesh in a dire condition. Bangladesh is doing her best to protect the rights and lives of the Rohingya. In this context, none but Bangladesh is a glaring example of honoring the national and international law by protecting human rights of Rohingya. But, does the term 'international community' in article 139 of the R2P document only include Bangladesh? Why does Bangladesh alone being a poor country take responsibility of such vast number of Rohingya in spite of having powerful and developed countries? Regretfully, today the so called 'civilized nations' do not feel to liberate the Rohingya from 'uncivilized nation' like Myanmar!

4. R2P in Westphalian World: The Latitude of Sovereign State

The practice of R2P is seriously endangered by the Westphalian Sovereignty concept. The Westphalia Treaty, which ended the Thirty Years War in 1648

²⁵ Martine Mennecke and Ellen E. Stensrud, the failure of the International Community to Apply R2P and Atrocity Prevention in Myanmar, 13 *Global responsibilities to Protect*, BRILL NIJHOFF, 2021, p.119.

²⁶ *Ibid*, p.124.

and established the major powers' commitment to maintaining one another's territorial integrity. It serves as a shield against any type of intrusion into a state's domestic affairs. As can be seen, ASEAN is unwilling to assist the Rohingya excusing to the principle of non-intervention in a sovereign state. The UN Charter also acknowledges the principle. As provided in the UN Charter Article 2(4), all members must refrain from using or threatening to use force against the territorial integrity or political independence of any state or acting in any other way that is inconsistent with the goals of the United Nations. Furthermore, nothing in the current charter enables the United Nations to intervene in matters that primarily fall under the domestic jurisdiction of any state, according to Article 2(7) of the UN Charter. On the one hand, the idea of sovereignty and domestic jurisdiction of a state and the abusive application of R2P on the other, create a tension in the jurisprudence of international law.

On the basis of race, political philosophy, ethnic minority, etc., many sovereign states have been carrying out harsh acts, killing, committing genocide, and torturing their own citizens inhumanely. Can states use the principles of sovereign equality and non-intervention to justify their violent actions? Alternatively, would R2P succeed over the outdated ideas of absolute state sovereignty and non-intervention? State sovereignty must be used sparingly. To their people, it shouldn't conduct mass atrocities. A state cannot expel its residents by repeatedly violating their human rights. It is not a trait of one state, because a sovereign state is obligated to safeguard its citizens. But occasionally, the government does things for which it should be held accountable. Intervention is not prohibited generally by Article 2(4); rather, it is prohibited when it is made in violation of the territorial integrity of a state or political autonomy.²⁷ However, it does not obstruct genuine humanitarian activity that does not result in territorial conquest or political subjection. It primarily works to combat the colonial attitude.²⁸ Article 2(7) of the Charter also mentions the non-interference of any state's domestic jurisdiction, however what exactly is meant by domestic jurisdiction is up for

²⁷ R. Guraziu, *Is Humanitarian Intervention in the Affairs of Another State is ever Justified*, 4 Global Security Middlesex University Press, 2008, p.5.

²⁸ F. Teson Quoted J. L. Holzgrefe and R. O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: Cambridge University Press, 2003, p.37.

interpretation. According to international law, there are several rights that cannot be waived. International law, as we all know, governs human rights. Hence, the rights which are regulated by the international law cannot be violated in the name of domestic jurisdiction. Here the ruler of a particular state cannot not excuse his activities which violate human rights. sovereignty was reinterpreted in terms of a social contract between citizens and rulers. The obligation of the people to obey the sovereign's orders becomes void when the rulers broke the terms of the agreement.²⁹ Hobbes demonstrated how politics, theology, and the law interact to support the legitimacy of governmental authority in *Leviathan*. *Leviathan* believed that authority was only legitimate if it was effective. If authority could maintain the population's safety and wellbeing, it would be effective.³⁰ It is widely acknowledged that in 1971, human rights were flagrantly violated in Bangladesh, formerly East Pakistan. As a result of the severity of the human rights violations in East Pakistan, the issue no longer falls under a state's domestic purview and was of international concern. As this, notwithstanding the fact that R2P standards are being broken, we cannot condemn them because they can be properly applied to protect those who are victims of atrocities committed in their own country. The fundamental tenet of R2P is that state sovereignty implies responsibility, and that the state bears the primary obligation for safeguarding its citizens. But the larger community of states bears the remaining liability in the event of failure. According to an analysis of the R2P document, sovereignty involves accountability.

5. Application of R2P: Obligation of Conduct

Arbitrary use of R2P lacks its importance and puts serious question in its existence. Powerful countries particularly permanent five members (P5) of Security Council use it for their self interest in the absence of proper guidelines in the document of 2005. It is noted that R2P is neither dead nor dying. It has a colonial character. There is a huge risk of abusing the doctrine by the western which can give birth of imperialism. The existing literature of

²⁹ R. Thakur, *The United Nations, Peace and Security*, Cambridge, Cambridge University Press 2006, p. 252.

³⁰ A Orford, *International Authority and the Responsibility to Protect*, Cambridge University Press, 2011, p.124.

R2P should not be left out as it is. World should concentrate upon some important key areas to make progress to uphold R2P's promise to mankind.

The Document on R2P also talks about using humanitarian, diplomatic, and other peaceful measures in the event of a mass atrocity, while it does not explicitly lay out the standards for what constitutes a right action. Economic, political, and diplomatic measures such diplomatic sanctions, threat to report a case to the ICC, trade embargo, membership denial, etc. must be taken first. For instance, Kofi Annan, former president of Tanzania Benjamin Mkapa, former first lady of Mozambique and South Africa Graça Machel, among others, helped control the post-election violence in Kenya in 2008. They were able to defuse the crisis and eventually arbitrate an agreement between Mwai Kibaki, the president of Kenya, and Rail Odinga, the head of the opposition.³¹ Another increasingly popular weapon is membership suspension or expulsion from regional or international organizations. The 2002 removal of Zimbabwe from the Commonwealth doesn't seem to have influenced Robert Mugabe in the least.³² Expulsion of Myanmar from ASEAN can have at least minimum respect of protecting human rights.

Moreover, the Ad Hoc Special Tribunal or the International Criminal Court (ICC) may pursue criminal charges against the offender. Adolf Eichmann, an Austrian, was captured by Israeli Security Forces in Argentina and brought before the District Court of Jerusalem to be tried for war crimes, crimes against the Jewish people and crimes against humanity. He was found guilty and given the death penalty in *Attorney General v. Adolf Eichmann* (1961). Moreover, Mr. Jean-Pierre Bemba Gombo was found responsible for three charges of war crimes (rape, murder and looting) and two counts of crimes against humanity (murder as well as rape).³³ Ironically, Gambia took legal action, but neither Aung San Kyi nor the Burmese Security Forces were found guilty of the mass murder of Rohingya. Instead, court ordered Myanmar to

³¹ N. Cheeseman, 'Power-Sharing in Comparative Perspective: The dynamics of Unity government in Kenya and Zimbabwe', 48 *Journal of Modern African Studies*, 2010, p. 223.

³² G. Evans, *the Responsibility to Protect, Ending Mass Atrocity Crime Once and For All*, Washington, D.C. Brooking Institution Press, 2008, p. 112.

³³ *The Prosecutor vs Jean-Pierre Bemba Gombo* (2008)

take effective action to halt the genocide and stop further atrocities against one of the most persecuted groups in the world.

The most important rule that the international community must abide by is that in rare and exceptional circumstances, when all other options have been exhausted, the obligation to react may necessitate taking armed action. The concept of *responsibility while protecting* was only coined by Brazil and it promotes preventive action over violent intervention. Furthermore, a Brazilian initiative encouraged the UN Security Council to thoughtfully take into account significant elements before endorsing the use of force.³⁴ The ICISS report also provides more detailed examples of some of those criteria. Appropriate aim, seriousness of harm, last resort, balance of consequences and proportionate means are some of them. In all cases, there must be good cause to think that less drastic methods would not have been successful. Malcolm N. Shaw wrote that according to the doctrine of natural law, some rights derive from a higher law than positive or man-made law and all people in time and space are subject to this higher law, which is a set of unchanging rules.³⁵ Therefore, human interests must come first. Any activity must have a legitimate purpose and intend in order to be taken.

According to the World Summit Document, only the Security Council has the power to approve military action under UN Charter. The most crucial factor in action or inaction is authority. A self-serving and biased authority creates anarchy. According to Schmitt, the legitimate ruler is the one who is able to protect a united people from their enemies in order to ensure their security.³⁶ Hobbes believed that the legal authority may be identified as the one who could ensure the protection of the people.³⁷ We recognize that the Security Council has a sacred responsibility to uphold global peace and security, but in practice, it has an unrepresentative membership, exercises uneven power, and fails to use its veto power to respond to humanitarian crises. An inefficient and poorly designed security system could lead to increased tension and violence.

³⁴ *Supra* Note 4, p 86

³⁵ M. N Shaw QC, *International Law*, 9th Edition, Essex Court Chamber: Cambridge University Press, 2021, p.266.

³⁶ *Supra* Note 28, p. 111.

³⁷ Hobbes, *Leviathan*, 1651, p 222.

The world in 1945, when the UN was founded, is very different from the world in 2021. Due to their imperialist nature, superpowers are becoming less significant as new emerging countries emerge within the developing globe. In these conditions, arguing for Security Council reform, particularly for the five permanent members, is not just reasonable but essential for the UN's continued relevance. In order to avoid the severity of the Security Council, the role and veto power should be changed, and the General Assembly and other regional organizations with subaltern groupings should step forward to carry out the holy duty of protecting people from harm. Finally, the international community should not let further participation by NATO, as it is commanded and exploited to carry out the objectives of imperialist countries, as the past experience of NATO was unpalatable. This is to avert the risk of another Holocaust.

6. Conclusion

There is no comprehensive way out in the document of R2P. Furthermore, it is not clear who should implement the key components of the R2P and how. There is a huge gap between norms and practice. It is necessary to investigate, address, and problematize this gap. There are significant structural limitations on the UN's ability to put its promise into practice due to the reality of unequal power relations at all levels of world affairs. Despite the stark differences between norms and practice, R2P strives to save those who are being victimized by atrocities in their own nation. The R2P document warns the states against treating their citizens anyway they like.

It can be used against a dictatorial administration of a country that engages in ethnic cleansing, crimes against humanity, and other atrocities. However, R2P literature needs to be updated in this postmodern age. To put the R2P framework into action for the benefit of world citizens, the international community must reconsider it. The 2005 World Summit Outcome Document must thoroughly cover the crucial issues of how and when states should respond and take appropriate action. To protect the people from mass atrocities, peaceful and diplomatic measures including dialogue, inquiry, mediation, and conciliation are the first stages. If these measures are not successful, repressive regimes can be held accountable by economic or diplomatic sanctions. When all other options have been explored, military intervention may be used as a last resort, but it must be justified by respecting

the legitimate cause, purpose, precautionary principle and proportionality. Every tenet of the UN Charter and humanitarian laws must be upheld while using the principle of last resort.

The paper urges fundamental reform and transformation in the current unfair structure contained in the R2P agreement of 2005, as well as the empowerment of the global community to preserve and promote human rights. These include urging for opposing NATO's involvement, significant UNSC reform, and enabling regional and subaltern groups to take the lead in defending human rights anywhere in the world. Putting people first and embracing "sovereignty as a responsibility" are also to be addressed. This paper's goal is not to promote R2P but rather to push for some strict thresholds to be included to the document of R2P so that it cannot be misused under guise of humanitarian needs by the hegemon states. At the same time, states won't have any room for violating the human rights of their citizens by rationalizing domestic issues if the aforementioned thresholds are inserted and followed in a proper manner, abiding by international law, to preserve world peace to ensure the global justice.