'Responsibility to Protect' and the
Failure to Prevent the Rise of the Islamic State

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Abstract

The massive atrocities and displacement caused by the rise of the Islamic State of Iraq and Syria (ISIS) is, in no way, different from the mass killings of 1990s in Africa, the Middle East and the Balkans. The lessons of the last decade of 20th century culminated in the Doctrine of 'Responsibility to Protect' (R2P). Yet the case of ISIS and its crimes show the intractability of the human nature and the faltering of global institutions — responsible for safeguarding the peace in the world. The persistence of the history of violence is evident that it is mere the change of location; rather than the change of law or evolution of global institutions, which matters and is a common reality. Against this backdrop, this study seeks to address the question of failure of global justice in the face of war crimes committed by ISIS in the Middle East. It will focus on both political and ethical dimensions of the global justice, and will explore as to why despite the global consensus on the Doctrine of R2P, the global community failed to address the causes, which led to the rise of IS and its atrocities lately. In addition, it assesses the political and ethical challenges, which the rise of ISIS brought forth for the implementation of R2P.

Keywords: Islamic State, ISIS, 'Responsibility to Protect,' State Responsibility, State Sovereignty, Military Intervention.

Introduction

The notion of 'Responsibility to Protect' (R2P) was neither a product of an isolated or detached thought processes nor the work of any benevolent world body. Rather, it took the shape out of ruins of the genocidal violence, which gripped the world community in 1990s, in some parts of Africa, the Middle East and the Balkans. During these times, hundreds of thousands of people were butchered, while the world community stood

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indifferent, and international institutions watched albeit helplessly. The lessons of these episodes of the genocidal violence were painful, and, in many ways, evident of the persistent gridlock in the United Nations (UN) — the prime institution responsible for world peace and security. Meanwhile, the North Atlantic Treaty Organization (NATO) intervention in Kosovo in 1999, without the approval of the United Nations Security Council (UNSC), brought forth the issue of failure of the world body. Against this backdrop, the work of International Commission on Intervention and State Sovereignty (ICISS), at the turn of the 21st century, gave way to the notional optimism to tackle the lethargy in the institutions, and culminated in the doctrine of the 'Responsibility to Protect,' also known as R2P.[1] The Commission gave mandate to the Security Council in implementing the doctrine. Meanwhile, it also warned about the consequences of failure of the Council in the face of the atrocities. In case of the Council failure, the Commission asserts that states 'may not rule out other means' to curb the massive killing.[2]

Overall, the Commission report sought to address the issues of massive killings outside the frame of inter-state wars. It reads out that a state failure or complicity in killing of its own peoples poses a threat for the international peace and security and thus, needs to be stemmed.[3]The main idea was to curb widespread violence, which involved minorities in weaker states. And the level of violence was, in no way, less than the genocidal. Its character was ethnic, sectarian and religious in most of the instances.

Later on, the adoption of R2P by the UN in its World Summit in 2005, transformed the conceptualization of the notion. International community took formal steps in regulating the issue as not a "Right to Intervene," but as a "Responsibility to Protect." [4] This development has placed the conception in a much advantageous position, at least in political and ethical terms. Also, for the first time, the focus shifted from

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[1] "The Responsibility to Protect," Report by International Commission on Intervention and State Sovereignty (ICISS), Ottawa, 2001, responsibilitytoprotect.org/ICISS%20Report.pdf

[2] CISS Report, p. xiii.

[3] Ibid., xii.

[4] Gareth Evans and Mohamed Sabnoun, "The Responsibility to Protect," *Foreign Affairs*, vol. 81, no. 6 (November/December 2002): 101; Halil R. Basaran, "Identifying the Responsibility to Protect," *Fletcher Forum of World Affairs*, vol. 38, no. 1 (Winter 2014): 196-7.

intervention to protection, and from merely a right to a duty to protect the less protected.[5] Despite the fact of its resounding launch and approval in international community and the world organisations; the questions remain about the true nature of the concept. The UN Secretary-General, in his report in 2012, noted that R2P provides political framework based on the fundamental principles of international law for preventing and responding to genocide, war crimes, ethnic cleansing, and crimes against humanity'.[6] Likewise, it is consensus among legal scholars that so far, R2P has not achieved the status of law inside both the treaty law and the customary international law; and therefore, at best it is merely a *norm* of international practice — aiming at best to seek global justice.[7]

Edward Luck, the former adviser to the UN Secretary General on R2P, emphasizes that the idea has evolved into 'a principle' of global justice system, as well. This is quite a steady and remarkable progress for the concept which is merely ten years old. Moreover, the spheres of global justice are becoming more and more testing for the international community and organisations — responsible for maintaining peace and dispensing justice. The efficacy of this principle cannot be judged solely on the basis of its implementation and outcomes as a policy tool. It is that

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[5] Ibid.

[6] UN Secretary-General, "Responsibility to Protect: Timely and Decisive Response," Report of the Secretary-General, U.N. Doc. A/66/874-S/2012/578 (July 25, 2012), 59. Also, *see in* Edward C. Luck, "Sovereignty, Choice, and the Responsibility to Protect," *Global Responsibility to Protect*, vol. 1 (2009),13.

[7] William Burke-White, "Adoption of the Responsibility to Protect," in Jared Genser and Irvin Cotler (eds.), *The Responsibility to Protect* (New York: Oxford University Press, 2011), 17 and 34; and Thomas H. Lee, "The Law of War and the Responsibility to Protect Civilians," *Harvard International Law Journal*, vol. 55 (2014): 275-6. For a thorough treatment of this debate in its legal sense, *see* Basaran, "Identifying the Responsibility to Protect," 195-212; Monica Hakimi, "Toward a Legal Theory on the Responsibility to Protect," *Yale Journal of International Law*, vol. 39 (2014): 247-81; David Scheffer, "Atrocity Crimes Framing the Responsibility to Protect," *Case Western Reserve Journal of International Law*, vol. 40 (2007-2008): 111-35; Rachel Vanlandingham, "Politics or Law? The Dual Nature of Responsibility to Protect," *Denver Journal of International Law & Policy*, vol. 41, no. 1 (2012): 66; and Edward C. Luck, "The Responsibility to Protect: Growing Pains or Early Promise?" *Ethics & International Affairs*, vol. 24, issue no. 4 (Winter 2010): 349-65; and Jonah Eaton, "An Emerging Norm? Determining the Meaning and Legal Status of the Responsibility to Protect," *Michigan Journal of International Law*, vol. 32 (Summer, 2011): 765-804.

any policy is contingent on the functioning of politics in a given time.[8] The test of any policy in global institutions is always stringent, given the nature of international system, which is driven, most of the times, by national interests.

The question of the right authority is very important in streamlining the notion of R2P. Undoubtedly, the UNSC is a primary platform to authorize any military intervention, but can it be the last? The case of Kosovo Intervention in 1999 is instructive in this regard. The gridlock in the Security Council was causing loss of lives and hands of NATO were tied. In such a scenario, the role of regional organisations and the United Nations General Assembly (UNGA) can become crucial. The General Assembly adopted the "Uniting for Peace" procedure to grant legitimacy to different military interventions in 1950s: Korea in 1950, Egypt in 1956 and Congo in 1960.[9] Following this, NATO bypassed the Council and intervened in Kosovo to save thousands of lives. Meanwhile, actions of NATO raised questions about the effectiveness of R2P, and its application through the Security Council.

Against this backdrop, the primary focus is placed on the framework of R2P as a forcible military intervention, which is potentially threatening the lives of innocent people and undermining the global justice institutions. For this, the case of the Islamic State of Iraq and Syria (ISIS) is selected to investigate thoroughly, and square it off against the notion of the R2P. The study treats R2P as a policy measure, which is currently an additional tool to address the issues of crimes of war and crimes against humanity. It is not a law so far because it is neither a part of any treaty law nor of customary law. Furthermore, in studying the case of ISIS, the investigation will focus on both cause and effect of the failure of the global justice institutions.

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[8] Luck, "The Responsibility to Protect: Growing Pains or Early Promise?," 352-3; Mehrdad Payandeh, "With Great Power comes Great Responsibility? The Concept of the Responsibility to Protect within the Process of International Lawmaking," *Yale Journal of International Law*, vol. 35 (2010): 469-516.

[9] Evans and Sabnoun, "The Responsibility to Protect," 106-8; Diana Amneus, "Swedish State Practice 2004-5: The Responsibility to Protect," *Nordic Journal of International Law*, vol. 75 (2006): 313-14; Thomas H. Lee, "The Law of War and the Responsibility to Protect Civilians," *Harvard International Law Journal*, vol. 55 (2014): 285-6; Saira Mohamed, "Taking Stock of the Responsibility to Protect," *Stanford Journal of International Law*, vol. 48, no. 2 (2012): 325; and Alex Bellamy, "The Responsibility to Protect and the Problem of Military Intervention," *International Affairs*, vol. 84, no. 4 (2008): 615-639.

Responsibility of the Sovereign

Both legal and political foundations of the contemporary notion of the sovereign were laid down in Europe — during the period from the Middle Ages to the Medieval times. In the early days of its origin, the sovereign was an emperor, and then the institution transformed into a monarch or king, who reigns supreme, and his authority was absolute. But, this conception of absolute sovereignty, for the first time, was confronted and put to limits in the aftermath of the World War II, through the Nuremberg trials.[10] Moreover, the idea of sovereign further went through 'ideological regime change' at the end of the Cold War. Wherein, the then United Nations Secretary General, Boutros Boutros Ghali stressed in 1992, while outlining his famous report, *An Agenda for Peace* that the era of absolute sovereignty is over. He further elaborated that in an unfolding interdependent world, the need for domestic good governance is enormous for realizing the ideals of a peaceful and prosperous world.[11]

This transition gave way to a new thinking: the legitimacy of a sovereign government will be determined both by its conduct towards its citizens and towards the international community. Its failure in any of these coordinates may result into forcible coercive measures by the international community, at least in principle. Therefore, the sovereign is no more an absolute entity rather a subject of accountability, both for his domestic and international conduct.[12] This understanding of the legitimacy of the sovereign government stems from a long-standing principle that any political order, which applies laws discriminately against its own subjects, does not entail loyalty and obedience of its

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[10] Francis M. Deng, "From 'Sovereignty as Responsibility' to the 'Responsibility to Protect," *Global Responsibility to Protect*, vol. 2 (2010), 356. Also, *see in* Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington D.C.: Brookings Institution Press, 2008), 15-9.

[11] Boutros Boutros-Ghali, "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping," Report of the United Nations Secretary General, New York, 1992, 9.

[12] Francis M. Deng, "From 'Sovereignty as Responsibility' to the 'Responsibility to Protect," 354; and Dave O. Banjamin, "Prosecuting Crimes Against Humanity: The Revolution in International Criminal Law," in Sanford R. Silverburg, *International Law: Contemporary Issues and Future Developments* (Boulder: Westview Press, 2011), 15; Anne Orford, "Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect," *Michigan Journal of International Law*, vol. 30 (Spring, 2009), 1004.

subjects.[13]The transposition of this principle into the international arena resulted into the long and thorough discussions on state responsibility by the International Law Commission.

At the same time, the state sovereignty, as we know it today, is the product of the Treaty of Westphalia of 1648. This treaty gave birth to a nation-state and consolidated the political power of a state in the international system. Yet, it also resulted in making the sovereign in some states, an absolute and, at times, an unjust ruler. Later on, with the advent of international institutions like the League of Nations and the UN, this absolute sovereignty came into conflict with the ideals and roles of the world bodies. Therefore, we saw the emergence of legal instruments to curtail the absolutism in the notion of state sovereignty, and trim it with investing more and more power into the UN and its subsidiary bodies — responsible for global justice.[14]

In the similar vein, the Commission report was instructive in a fundamental way that, it termed the sovereignty as a byproduct of responsibility, and without responsibility, sovereignty cannot sustain. [15] Also, the Commission report asserted that the primary responsibility of each state demands the protection of its own citizens.[16] 'At the heart of this conceptual approach is a shift in thinking about the essence of sovereignty — from control to responsibility'.[17] This shift is necessary in both ensuring world peace, as well as, putting the bar on a sovereign in a state to fulfil its responsibility in realizing the world peace. And in the process, it is propelling the community of nation-states for not only safeguarding the order among themselves, but also guaranteeing freedom of their subjects.

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[13] Orford, "Rethinking the Significance of the Responsibility to Protect Concept," 30; Anne Orford, "What Kind of Law is This?" *London Review of Books Blog* (March 29, 2011), http://www.lrb.co.uk/blog/2011/03/29/anne-orford/what-kind-of-law-is-this/; and Luck, "Sovereignty, Choice, and the Responsibility to Protect," 13-14.

[14] For details, *see in* Anne Orford, "Rethinking the Significance of the Responsibility to Protect Concept," *American Society of International Law Proceedings* (2012), pp. 27-8; Basaran, "Identifying the Responsibility to Protect," 197-8.

[15] ICISS Report, xi.

[16] ICISS Report, xi.

[17] Gareth Evans and Mohamed Sabnoun, "The Responsibility to Protect," *Foreign Affairs*, vol. 81, no. 6 (November/December 2002): 101.

Herein, for the sake of conceptual discussion, we can say that the UN (the world government) and a sovereign (the domestic government) in a given state both seek the protection and well-being of the citizens.[18] Yet the question remains that in case of a conflict, between two authorities on ways and means of protection, which should be given priority and prevail. Here again, if this final authority resides with the UN, should it be again subject to any politics among the members of the Security Council. After all this is the body responsible for safeguarding world peace and security. To the contrary, an overwhelming dependence on the regional organisations or powerful states can, at times, jeopardize the authority of the UNSC, and powerful regional states can end up in pushing through their own narrowly defined agendas.[19] It happened in the cases of Russian Interventions in Crimea and East Ukraine. Russia, interestingly, invoked the principle of R2P to safeguard its citizens at the cost of disintegration of a sovereign state.

Thus, there are many dangers in placing more responsibility on regional and powerful states because then they can, at times, become unjust in fulfilling the duty to intervene in other states. Therefore, only the failure of the UN should give rise to the prospects of any forcible actions by the regional powerful states to stop the ongoing atrocities. The framing of the conception of R2P in these terms provides the concept a 'normative significance', along with the allocation of primary jurisdiction to the United Nations.[20] In the process, the principle will have more deterrent effect, as well as, legitimacy.

Failure of the UNSC

The formation of the UN in 1945, on the one hand, gave way to the sovereignty of states while, on the other hand, it refuted the right of 'alien rule' in foreign lands.[21] With the passage of time, the UN continued to assert its authoritative position in the international system for the

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[18]Orford, "Rethinking the Significance of the Responsibility to Protect Concept," 29.
[19] Paul R. Williams, John T. Ulbrick and Jonathan Worboys, "Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis," *Case Western Reserve Journal of International Law*, vol. 45 (2012): 489; and Orford, "Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect,"999.
[20]Orford, "Rethinking the Significance of the Responsibility to Protect Concept," 30.
[21]Orford, "Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect," 993.

maintenance of peace and security. The adoption of the principle of 'Uniting for Peace', peacekeeping, and lately of R2P are among the most salient evidences of the steady evolution of the institution. Against this backdrop, the current UN Secretary General Ban Ki Moon, set a more passionate tone by declaring that he would 'spare no effort to operationalise R2P.[22] However, as evident, the issues of widespread horrific violence are becoming more and more daunting to address — in face of the broken politics inside the UNSC.

Therefore, it is argued that, although the UN adopted the doctrine of R2P yet it lacks the power and political will to put the noble 'norms of intervention' into practice, and force governments to follow it.[23] Despite that the notion remains an overwhelmingly popular point of discussion among the states, when it comes to dealing with the situations, involving mass killings of innocent civilians, in places like Syria and Iraq.[24] At the same time, the failure of the UNSC does not mean the failure of R2P because the Arab League, the European Union (EU), the United States and the UNGA condemned the Syrian President Bashar al-Assad's regime and asked him to stop the killing of civilians, and imposed various kinds of sanctions against it.[25]

Moreover, the failure of the UNSC is evident of the re-emergence of the Cold War attitude of the two political blocks: one led by the United States and its allies while the other one involves the Soviet Union and its allies. Herein, Russia has supreme interest of defending its allies, Syria and Iran in the Middle East, and this very justification for defence provides an opportunity for the Russians to get engaged in the region. Thus, they have not only blocked the Security Council but also raised the cost for the regional organization like the Arab League in intervening in the crisis. Such a situation of political stalemate brought unspeakable miseries for the people of Syria and Iraq. Moreover, it resulted into the rise of even more brutal and inhuman menace, ISIS, which does not listen

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[22] Quoted in Orford, "Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect," 1001.

[23] Saira Mohamed, "Syria, the United Nations, and the Responsibility to Protect," *American Society of International Law Proceedings* (2012), 223.

[24] Mohamed, "Taking Stock of the Responsibility to Protect," 330.

[25] Mohamed, "Syria, the United Nations, and the Responsibility to Protect," 225; and Paul R. Williams, John T. Ulbrick and Jonathan Worboys, "Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis," *Case Western Reserve Journal of International Law*, vol. 45 (2012), 496-7.

to anyone, and took the violence against civilians to a new level. Therefore, it can be argued that the failure of international community proved to be the principal cause of the rise of ISIS that brought with it the multiple challenges for the implementation of the R2P, even at a time, when the Security Council, in 2014, had passed a unanimous Resolution 2170, and called for bringing the leaders of ISIS to justice.[26] To the contrary, it is observed that the appeal of the UNSC did not go far in stemming the scale of violence committed by ISIS.

Rise of ISIS

The old maxim remains true that 'justice delayed is justice denied'. The rise of ISIS in some parts of Syria and Iraq, in the summer of 2014, is itself a horrible episode of the failure of the implementation of R2P in merely just over a decade's time after its adoption by the UN. The massive killing and displacement of civilian populations by the Assad regime in Syria, and utterly inhuman treatment of Sunni minority in Iraq by the Shia majority-led government in Baghdad, could not succeed in uniting the world community for peace this time. Assad regime bombarded its own people, for their demands of better participation in the governance, human rights and representative democracy. Meanwhile, the Nauri Al Maliki's government in Iraq, due to its mismanagement and widespread corruption, also pushed the unemployed and desperate youth in the lap of ISIS.[27] As a result, ISIS emerged in many parts of Iraq initially. Most of its members were former Baathists, who once fought against the US security forces in Fallujah and Ramadi.[28] Due to its global ideological appeal and *Jihadist* call, it attracted large numbers of foreign fighters as well. The estimates suggest that around 10,000 foreign fighters joined its ranks during the last two years.[29]

Unlike the case of Libya in 2011, the UNSC failed to authorize the use of force against Syrian regime in 2012. It can be argued that the Council remained content by only passing a resolution asking for political actions to push Assad government in Syria to stop mass killings of

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[26] United Nations Security Council Adopts Resolution 2170, August 15, 2015, http://www.un.org/press/en/2014/sc11520.doc.htm (emphasis in original)

[27] For graphic details of the corruption scandals and plundering of the resources, *see* Ken Silverstein, "The Stolen War, "*New Republic*, August 22, 2016, https://newrepublic.com/article/135682/stolen-war

[28] Michael P. Scharf, "How the War Against ISIS Changed International Law," *Faculty Publications*, 2016, 7, http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2637&context=faculty_publications

[29]Ibid.

innocent civilians, in areas under its jurisdiction.[30] Meanwhile, the other UN organs continued with the building of a case against Assad government on the basis of human rights violations and crimes against humanity. The United Nations Human Rights Council in August of 2012 established that the Assad regime is deliberately targeting the civilian populations, which is resulting in the killing of thousands of innocent civilians, and displacement of millions of the people. The Security Council termed these state actions as war crimes and crime against humanity[31]but did not move beyond these condemnations and labelling of actions as a cause of concern for the international community.

Further, international humanitarian and human rights organisations also meticulously catalogued the atrocities and human rights violations committed by the Assad regime in Syria and systematic marginalization of the minorities in Iraq. A report by the Amnesty International, in 2012, noted that the Assad regime is committing large scale atrocities and deliberately targeting the unarmed civilians. These crimes, effectively, amount to the crimes against humanity. [32] The massive violence and diminishing state authority in areas under its control created deep legitimacy and security chasm, inside both Syria and Iraq. Moreover, the campaigns of Syrian and Iraqi governments took the shape of a systematic elimination of the Sunni populations — creating a sense of victimization among the people belonging to the Sunni sect. This was a perfect time and fertile turf for ISIS to lay down its roots and erect a more violent regime in the territories which were mostly occupied by the Sunni Muslim populations in Syria and Iraq.[33]

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[30]Lee, "The Law of War and the Responsibility to Protect Civilians," pp. 302-3; and Williams, Ulbrick and Worboys, "Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis," 474-6.

[31] Independent International Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HCR/21/50 (Aug. 16,2012), 50 and 57, http://www. ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session2l/A-HRC-21-50_en.pdf (accessed 21 October 2015)

[32] Written Statement, "No more Impunity against Crimes against Humanity in Syria," Amnesty International, 2 December 2011, http://www.amnesty.org/en/library/asset/MDE24/083/201I */en/5ca30b30-247e-41* c6-ba8c4ec4a2b9d8fd/mde240832011.en.pdf

[33] Patrick Cockburn, *The Rise of Islamic State: ISIS and the New Sunni Revolution* (London, New York: Verso, 2015); Jessica Stern and J. M. Berger, *ISIS: The State of Terror* (New York: Harper Collins Publishers, 2015); and Michael Weiss and Hassan Hassan, *ISIS: Inside the Army of Terror* (New York: Regan Arts, 2015).

The whole trajectory of violence in Syria and Iraq underscore the point that the failure of the domestic justice system can take a deadly shift, if and when unaddressed by the global justice system. Also, the phenomena can have severe bearings for the global security. As it is evident that it is posing the enormous challenge of youth radicalisation and intermittent terrorist violence — even for the most developed states of the EU and the United States. Different reports by the security agencies in the mentioned states point towards the rising number of ISIS' sympathizers therein. [34] Furthermore, according to the United State intelligence estimates, around 3,400 persons have travelled from the western nations and joined ISIS in Syria and Iraq. [35] Against this backdrop, it can be argued that the rise of ISIS does not only mark control over territory in a certain part of a geographical zone but it is also emerging as a whole new enterprise of ideological, territorial, and violent manifestations around different continents.

Challenges of ISIS

As discussed above, the failure of the international community in implementing the norm of 'Responsibility to Protect' has given way to the menace of ISIS , which holds large swathes of territory and millions of people hostage, in some parts of Syria and Iraq. It is committing horrific atrocities and injustice against minorities. Also, it is targeting the cultural sites in Syria, which hold centuries of human cultural treasures within them. The reports of these atrocities and widespread violence are graphically compiled by both the public and private organisations. The following discussion will assess the scale of political and ethical challenges posed by the rise and actions of ISIS, for the international community as well as the norm of R2P

Political Challenges

The nature of international political system is innately grounded in the national interest of a state. It is because of the fact that a nation-state remains the unitary actor in the global system. Even though, this global

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[34] Muhammad Nurruzaman, "The Challenge of Islamic State," *Global Affairs*, vol. 1, issue 3 (2015), 297-304; Anita Peresin and Alberto Cervone, "The Western Muhajrit of ISIS," *Studies in Conflict &Terrorism*, vol. 38, issue 7 (2015), 495-509.

[35] Robert Windrem, "ISIS by the Numbers: Foreign Fighter Total Keeps Growing," February 28, 2015, http://www.nbcnews.com/storyline/isis-terror/isis-numbers-foreign-fighter-total-keeps-growing-n314731

system has evolved and become mature enough to implant its own principles and values in order to sustain itself. Yet, as British historian Edward Carr judiciously illustrated back in 1939 that generally international principles cannot gain normative force; because these are most of the times, unconscious reflection of the national policy of the great powers, at any given time in history.[36] Despite this well-established fact of international politics, the proponents of the existence of international community and global norms of justice believe that steady progress has been made. Anne Orford maintains that if we focus on the *de facto* nature of the 'Responsibility to Protect' then the notion 'implicitly asserts that not only international community exists, but also that its authority to govern, at least in situations of civil war and repression, is superior to that of a state.'[37] Therefore, one can argue that the 'Responsibility to Protect' has achieved a status of norm inside the vocabulary and discourse of international politics.[38] In the last ten years, the international community has remained engaged with the idea in addressing the situations of mass murders and crime against humanity than any time in the past human history. Moreover, the turn is also instructive, in a meaningful way, that for the first time, leaders and governments are held responsible, at least in theory so far, for their failure to protect their peoples.

On the contrary, a keen look into the functional principles of the R2P suggests that it tends to give priority to certain kinds of the institutions over others and, in a way, can lead towards the investment of extreme authority into some institutions. This is not good for the implementation of the noble concepts like R2P.[39] Hence, the politics in the Security Council trump at the cost of loss of precious human lives and erosion of the legitimacy of the global justice institutions. The cases of Libya and Syria suggest that a preferentially biased treatment of these two cases at the UNSC speak much about the politics of the national interests of the

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[36] Edward H. Carr, *The Twenty Years Crisis 1919-1939* (London: Macmillan, 1939), 111.
[37] Orford, "Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect," 1003.
[38] Monica Serrano, "Implementing the Responsibility to Protect: The Power of R2P Talk," *Global Responsibility to Protect*, vol. 2 (2010), 175.
[39] Orford, "Rethinking the Significance of the Responsibility to Protect Concept," 30.

great powers.[40] As in the case of Libya, the Russians did not have any core interest whereas the United States and its allied European states wanted to uphold the global justice norms. To the contrary, in the case of Syria, the Russians have core national security interest, and the United States and its allies are wary of costs of direct intervention. It is also important to note that the political differences in the UNSC have been translating into on-ground military disagreements in Syria. Both the US and the Russia are supporting opposing sides in the conflict and, thus, continue to make the conflict resolution difficult. Such a scenario is contracting the space for political manoeuvring in the region and the result is stalemate, causing more sufferings, bloodshed and displacement.

Therefore, it is needed to treat the issue of violation of international norms to grant protection to the civilians from mass killings irrespective of the costs and benefits, while realizing the duty to protect. Similarly, the norm of 'Responsibility to Protect' must be upheld as a duty not as an opportunity to protect.[41] In the case of Syria and Iraq, although Sunni dominated regional states backed military intervention to curb the massive killings of civilians, yet the Iranian government did not agree to any military solution to the problem.[42] These internal regional divisions led to the cost-benefit analysis of the United States and its NATO allies, and ultimately, they decided not to intervene fully rather settled for half-hearted attempts to stem the violence.

Further, the NATO intervention in Libya under the UNSC Resolution 1973 raised few questions about the mandate of the Resolution and its actual effect on the ground: where in regime change was out of mandate, according to the reading of the Resolution, at least in its literal sense.[43] However, the question arises as to what to do of a regime, which itself is engaging in carrying out mass atrocities of its citizens. It is obvious in such circumstances that the protection of civilians cannot be ensured without forcing the very political regime which is responsible for

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[40] Mohamed, "Syria, the United Nations, and the Responsibility to Protect," 226; and Saira Mohamed, "Taking Stock of the Responsibility to Protect," *Stanford Journal of International Law*, vol. 48, no. 2 (2012), 320.

[41] Mohamed, "Taking Stock of the Responsibility to Protect," 337.

[42] Rachel Vanlandingham, "Politics or Law ? The Dual Nature of Responsibility to Protect," *Denver Journal of International Law and Policy*, vol. 41, no. 1 (2012), 66.

[43] Ved P. Nanda, "The Arab Spring, the Responsibility to Protect, and U.S. Foreign Policy—Some Preliminary Thoughts," *Denver Journal of International Law& Policy*, vol. 41, no. 1 (2012),23.

committing such atrocities. But then there are dangers that politics will part ways with the justice, in the long run, and those states, which are always wary of the intentions of the western states will further adopt a radical position.

Likewise, the issues of setting the priorities right also continue to hinder any progress in fight against ISIS. A large number of people fighting alongside ISIS have travelled from the western states. The western states seem reluctant to go after ISIS whole-heartedly because of the fears of a blowback. Sympathizers of ISIS, who are still residing in the western states, may start attacks against the respective states. For example, it is reported that attacks in France, Belgium and the United States, in recent times, were allegedly carried out by the people influenced by the ISIS' ideology. Thus, the challenge of ISIS has put the conception of R2P in double jeopardy: domestic as well as global. Therefore, the words of Deputy Secretary General of the United Nations, spoken during the World Summit in 2005, continue to resonate, , 'the failure of the international community to protect the vulnerable has been a product of complacency on the part of those who endorse the responsibility to protect, and not from those who have reservations about it.'[44]

That is why, there is need to emphasize that states should move towards regionalizing the conception of R2P, for its effective implementation. In this regard, regional organisations like the EU , Arab League, African Union, and Association of South East Asian Nations (ASEAN) can play an important role and take the responsibility for safeguarding regional peace and security.[45] Yet, there are chances that the

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[44] Press Release, Louise Frechette, U.N. Deputy Secretary General, "We Must Be Pragmatic and Visionary" To Reach Agreement on Major UN Reform at September Summit, U.N. Doc. DSG/SM/257 (May 20, 2005). Also, see in Neville F. Dastoor, "The Responsibility to Refine: The Need for a Security Council Committee on the Responsibility to Protect," *Harvard Human Rights Journal*, vol. 22 (2009), 26-7.

[45] For a detailed treatment of this idea, *see* Kristin M. Haugevik, "Regionalising the Responsibility to Protect: Possibilities, Capabilities and Actualities," *Global Responsibility to Protect*, vol. 1 (2009), 346-363; Edward C. Luck, "The Responsibility to Protect: The First Decade," *Global Responsibility to Protect*, vol. 3 (2011), 387-399; Anne-Marie Slaughter, "A Regional Responsibility to Protect," May 1, 2014, http://www.globalpolicyjournal.com/blog/01/05/2014/regional-responsibility-protect; and Jennifer M. Welsh and Maria Banda, "International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?" *Global Responsibility to Protect*, vol. 2 (2010), 222-23.

persuasion of narrowly defined national interests by the regional states can also impede any progress of the implementation of R2P. Even then, this is the course worth-taking as, ultimately, these will be regional states, which will bear the major brunt of security challenges arising out of any failed adherence to the norm of R2P. As in the case of ISIS, regional states, like Jordan, Turkey, Egypt, Saudi Arabia and Lebanon, are paying major price of timely and resolute inaction.

Overall, the challenge of ISIS has ripped apart the ideal ofR2P, and its effectiveness. The cost of floating the idea on informal institutional arrangements is overwhelming. According to Michael Walzer, the informal regimes or arrangements of guarantor and protectorate did not function well in the international arena. In any multilateral campaign, different states will not find it politically conducive to carry out social and political re-engineering in the intervened-state.[46] Undoubtedly, the military campaign against the ISIS will be a long-drawn war as, according to a United States military general, it can take up to 20 years to destroy ISIS completely. Therefore, the question arises that in such a short-term bleak scenario, with no prospects of success, who will commit financial and material resources to take on the generational threat posed by ISIS. [47] Therefore, the broken politics has given way to a unique security challenge, which seems getting severe with the passage of time and spreading beyond its centre of gravity.

Ethical Challenges

The euphoria created by R2Pin its hey-days, adequately, gripped the concise of the western world. As it has emerged as a new and effective tool, at least in principle, to address the challenges of mass murder and crimes against humanity, its status inside the normative sphere could not evolve much during the last fifteen years. The reason behind it is its status as a legal instrument, both inside treaty law and customary law, is not yet formally established.[48] The document which was the outcome of the World Summit in 2005 shied away from formulating any specific

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[46] Michael Walzer, "The Argument about Humanitarian Intervention," *Dissent* (Winter 2002): 29-37.

[47] Dan De Luce, "Is the U.S. Ready for an Endless War Against the Islamic State?," *Foreign Policy*, August 27, 2015, http://foreignpolicy.com/2015/08/27/is-the-u-s-ready-for-an-endless-war-against-the-islamic-state

[48] Gareth Evans, "From Humanitarian Intervention to the Responsibility to Protect," *Wisconsin International Law Journal*, vol. 24, no. 3 (2006-2007), 713.

threshold and criteria to implement the 'Responsibility to Protect.' It rather restricted to adopt a case by case approach.[49] Such a treatment of the issue at a global forum, which is based on the idea of protection of human rights and world peace and security, raises many ethical questions.

It is argued that, by choosing not to adopt certain principles to implement the 'Responsibility to Protect', the UN left the fate of this noble idea in the hands of inexpediently calculative major powers, and extremely divided regional organisations. To the contrary, it is observed that ISIS is not ready to adhere or listen to any international legal instrument — designed to address crimes against humanity and to quell genocidal violence against minorities. [50] Whereas, the coalition of international and regional states is not taking all-out measures to stop the brutalities of the ISIS,rather largely, depending on proxies and aerial bombardment. These measures are falling short of expectations, so far, and the challenge to eliminate the category of terrorism unleashed by ISIS becoming daunting.

Further, the fight against ISIS poses unique dilemma for the powerful western states, which could make difference with strong militaries. Currently, they are not facing any direct and overwhelming challenge to their sovereignty and their core national interests are not threatened in Syria and Iraq. Therefore, they seem hesitant to go after ISIS to curb its terrorist activities. Meanwhile, the fight against ISIS can indirectly result into strengthening the control of Assad regime in Syria. The regime, through its brutal handling of the peaceful civilian demonstrations since March 2011, has contributed immensely in the genesis and flourishing of ISIS. Therefore, the downgrading and destruction of ISIS can exponentially strengthen the Assad regime's hold in Syria. The fight poses a challenge of selection of the right target, and it gets even serious in the absence of any major formidable force, which can retake the territory from both the Assad regime and ISIS in case of their defeat.

Moreover, the extensive use of social media by IS to post videos of beheadings and promotional messages pose serious ethical dilemma for the international community, which is available on internet and social

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[49] Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, pp. 105-6; and Basaran, "Identifying the Responsibility to Protect," 204.
[50] These legal instruments are part of International Criminal Law, International Humanitarian Law, International Human Rights Law, etc.

media. On the one hand, the use of social media by ISS is proving an effective propaganda tool to terrorize the international community, and, on the other, through promotional videos, it is attracting new recruits.[51]To the contrary, the international community is finding it hard to prevent use of social media by the ISIS, and even if it can manage to stop it, there arises the issue of sustenance of consistent local support for a military campaign against the atrocities committed by ISIS .In the same manner, denying access to ISIS to social media can also raise questions about the principles of freedom of expression in the western world.

Conclusion

To sum up, one can safely conclude that, in an era marked by the horrific violence perpetrated by ISIS, the need for transposing the political norm of R2P into the legal reality is overwhelming. We have seen that the violence, involving failing states has the potential to destabilize the world order. The engagement with R2Pin the form of a legal obligation will essentially make the deterrent impact of the idea more palpable and the journey of global justice smoother.[52] In the same manner, states should come into terms with the multi-layered conception of sovereignty in order to contribute responsibly towards world peace and security. Some states cannot choose to stick to the narrow and archaic conceptions of sovereignty at the cost of peace, both internal and external security.[53]

To the contrary, without any effective implementation mechanism to make difference on the ground, the noble ideal of R2P is rapidly becoming a global campaign of responsibility to protest. That is, to protest the violations of human rights and crimes against humanity, but not to strive for the actions to stop them. Such an attitude on the part of global powers is contributing to the reinforcing of regional rivalries. Rising Shia-Sunni tensions in the Middle East is a case in point. Similarly, due to intra-regional connectivity, breakdown of security order in one region affects the security of the other. Terrorist attacks in Europe, the Middle East, and the US exemplify this trend. Thus, international community needs to find more effective ways to implement this idea. It is

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[51] Haroro J. Ingram, "Three Traits of the Islamic State's Information Warfare," *The RUSI Journal*, vol. 159, issue 6 (2014): 4-11.
[52]Hakimi, "Toward a Legal Theory on the Responsibility to Protect," 280-1.
[53] Luck, "Sovereignty, Choice, and the Responsibility to Protect," 21.

crucial to stem the dangerous trends of massive human sufferings in the Middle East, which is already sending disastrous ripples across the globe, in the form of massive displacements and refugee crisis, with a potential to unsettle the domestic orders in multiple states. Meanwhile, there are ample chances that the cost of failure of R2P in Syria and Iraq will force the powerful states to shun the politics of pursuing national interests only in the global arena, and will pave the way for timely collective action in future situations — paralleling to the contemporary challenge of ISIS in the Middle East. Hence, the future of security will depend much on the nature of engagement between states and the treatment of the ideal of R2P.