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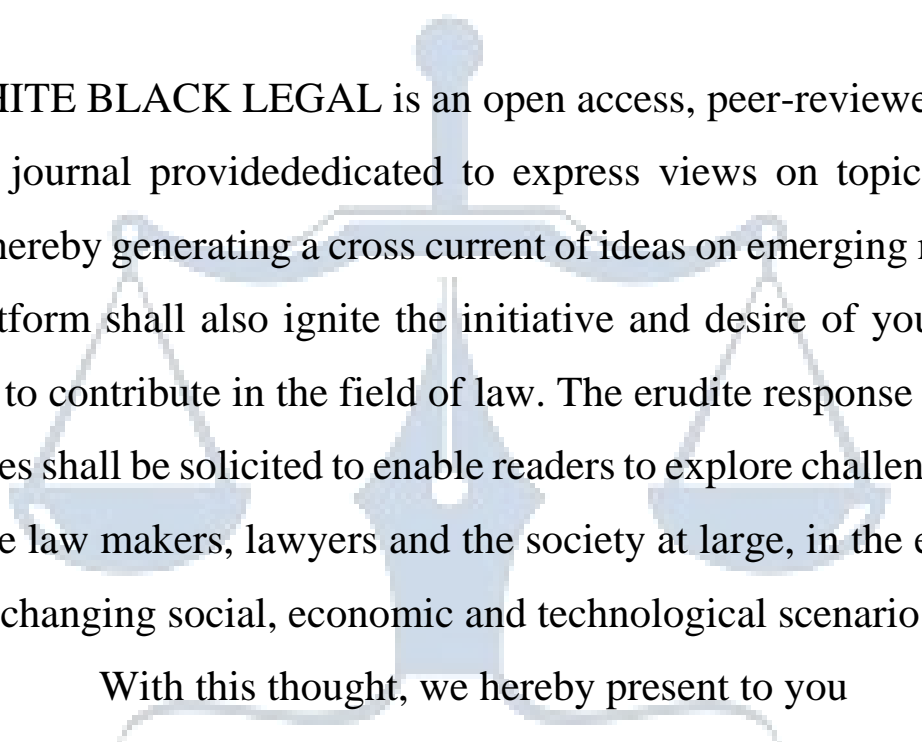


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With this thought, we hereby present to you

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L E G A L

# **“RESPONSIBILITY TO PROTECT (R2P) DOCTRINE AND ITS ALIGNMENT WITH INTERNATIONAL HUMANITARIAN LAW”**

AUTHORED BY - PARTH AGARWAL

**Keywords:** Community, Humanitarian Obligations, Sovereignty, Responsibility

## **ABSTRACT**

One of the fundamental duties of a sovereign nation is to defend its people against aggression and acts of violence. However, nations occasionally neglect to fulfil this obligation. In 2005, the United Nations (UN) members accepted a commitment known as the Responsibility to Protect (R2P). Genocide, ethnic cleansing, war crimes, and crimes against humanity are the four categories of crimes that this theory seeks to address. Although there were high expectations when the R2P was implemented, there have been complaints about its performance over time. Furthermore, implementation usually fails when the conditions that have been established are not met. In light of these circumstances, this article offers suggestions for fortifying international organisations in order to ensure that the Security Council's implementation of Responsibility to Protect (R2P) in the ensuing decades would effectively protect civilian populations from mass atrocity crimes. <sup>1</sup>

## **INTRODUCTION**

### **What is R2P Doctrine?**

A concept in international relations known as the "Responsibility to Protect" (R2P) theory highlights nations' obligations to defend their citizens against mass crimes including genocide, war crimes, ethnic cleansing, and crimes against humanity. It also emphasises how the international community must help governments carry out their obligation. This is a crucial idea that attempts to stop and deal with humanitarian emergencies.

The idea was presented as a legal concept by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, and four years later, in 2005, all UN member states unanimously

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<sup>1</sup> The Responsibility to Protect Doctrine: Expectations and Reality, available at:

[https://www.researchgate.net/publication/339796738\\_The\\_Responsibility\\_to\\_Protect\\_Doctrine\\_Expectations\\_and\\_Reality](https://www.researchgate.net/publication/339796738_The_Responsibility_to_Protect_Doctrine_Expectations_and_Reality) (visited on: 2<sup>nd</sup> May, 2024)

supported it. The Responsibility to Protect (R2P) philosophy, which is often considered to consist of three components, or "pillars," argues that populations should be safeguarded against four mass atrocity crimes (genocide, war crimes, ethnic cleansing, and crimes against humanity, but these are not defined).

These were delineated in a UN Secretary-General report from 2009, and a UN background briefing on the idea summarises them as follows:

The international community must support and encourage States in carrying out their primary responsibility to protect populations from crimes such as genocide, war crimes, crimes against humanity, and ethnic cleansing, as well as from their incitement.

The international community must also use appropriate diplomatic, humanitarian, and other means to protect populations from these crimes.<sup>2</sup>

According to the UN Charter, the international community must be ready to act collectively to safeguard civilians if a State is blatantly failing to do so.

### **History/Evolution**

The phrase "responsibility to protect" (R2P) was initially used in the December 2001 report of the Canadian government-established International Commission on Intervention and State Sovereignty (ICISS). In response to Kofi Annan's inquiry into the appropriate time for international intervention for humanitarian reasons, the Commission was established.<sup>3</sup>

Additionally, it gave the State the primary "responsibility" for defending the citizens living inside its boundaries. It was suggested that the onus of accountability should transfer to the larger international community in cases where a State is unable or unwilling to defend its citizens.

### **The development of the responsibility to protect (R2P) doctrine**

By the close of the 20th century, the idea that explicit guidelines for humanitarian action were essential emerged. Then-Secretary-General Kofi Annan challenged member states in his Millennium Report of 2000, recalling the Security Council's inaction in Rwanda and the former Yugoslavia and asking, "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic human rights violations that offend every precept of our common humanity?"<sup>4</sup>

Specific instances were designated as catalysts for the obligation to safeguard emerging threats.

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<sup>2</sup> The 'Responsibility to Protect' and the Application of this International Norm by the UK and the UN, available at: <https://lordslibrary.parliament.uk/research-briefings/lln-2015-0020/> (visited on: 3<sup>rd</sup> May, 2024)

<sup>3</sup> The Responsibility to Protect, available at: <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20R2P%202014.pdf> (visited on: 3<sup>rd</sup> May, 2024)

<sup>4</sup> Millennium Declaration, available at: <https://www.un.org/en/development/devagenda/millennium.shtml> (visited on: 3<sup>rd</sup> May, 2024)



Rwanda in 1994 is a prime example of the horrifying consequences of the Security Council's passivity and failure to act in order to prevent genocide. Both the UN's catastrophic failure to stop genocide in Somalia in 1992–1993 and Srebrenica in 1995 are seen as further UN failures that sparked significant discussion regarding intervention for the goal of human protection.

The International Commission on Intervention and State Sovereignty (ICISS) published the report "Responsibility to protect" in December 2001. The report promotes the "new idea" of state sovereignty and calls for stronger measures to prevent systematic violations of human rights and to hold states and the international community more accountable. A two-dimensional understanding of responsibility lies at the heart of the idea: a) the state's primary role, which is to protect its citizens from atrocities; and b) the international community's role, which is to prevent and respond to massive violations of human rights when the state is unwilling or unable to carry out this mission.

### **Three pillars of the Responsibility to Protect**

As stated in the 2009 Report of the Secretary-General on the matter, the Responsibility to Protect is based on three significant and mutually supporting pillars that expand upon paragraphs 138 and 139 of the 2005 World Summit Outcome Document and the intergovernmental agreement to the principle:

Pillar I: The state's obligations to protect its citizens - "It is the duty of every state to safeguard its citizens against acts of genocide, war crimes, ethnic cleansing, and crimes against humanity."

Pillar II: International aid and capacity-building: Governments agree to support one another in carrying out their respective protective obligations

Pillar III: Prompt and decisive collective action - States must to act collectively to safeguard the populace if they are "manifestly failing" in their protection obligations.<sup>5</sup>

In the 2012 report of the UN Secretary-General, it was stated that the three pillars of the Responsibility to Protect are equally important and do not follow a sequential order. "The idea wouldn't be complete without all three. The three pillars must be put into practice in a way that is entirely compliant with the goals, tenets, and clauses of the Charter." The goal of the pillared method is to support state sovereignty rather than weaken it. According to the Secretary-General's 2009 report, "The duty to protect aims to promote sovereignty, not diminish it, by assisting States in meeting their primary protection obligations. Instead of only reacting when a state fails, it aims to assist it in succeeding."<sup>6</sup>

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<sup>5</sup> Norm Robustness and the Responsibility to Protect, available at: <https://academic.oup.com/jogss/article/4/1/53/5347912?login=false> , (visited on: 3<sup>rd</sup> May, 2024)

<sup>6</sup> United Nations Official Document, available at: [www.un.org](http://www.un.org) , (visited on: 4<sup>th</sup> May, 2024)

## **The UNSC's Function and the Need to Preserve**

According to the Responsibility to Protect concept, the Security Council is seen as "the critical body ultimately responsible for discharging the international response."<sup>7</sup> Starting with the wording of the World Summit Outcome Document on R2P and the Council's mission under the U.N. Charter, subsection A discusses the Security Council's role in operationalizing R2P. The Security Council's function is interpreted by Secretary-General Ban Ki-Moon as described in his 2009 report, *Implementing the Responsibility to Protect*, which is covered in subsection B. This conversation lays the groundwork for understanding why the Security Council's involvement in R2P is crucial to its effective execution.

One of the main features of R2P is that the mandate is implemented in a "deep but narrow" way. That is to say, although the application of R2P is limited to crimes involving mass atrocities, it is comprehensive in that it makes use of a wide range of U.N. system powers to address these violations, including Security Council action. This covers a broad spectrum of implementation tools, such as: preventive measures, such as institution-building, diplomatic efforts, monitoring and warning systems for mass atrocity crimes; protective measures, such as refugee camps for escaping populations; coercive measures, such as targeted individual sanctions on travel and finance; and post-hoc measures, which address mass atrocity crimes by establishing international commissions of inquiry, referring cases to the International Criminal Court (ICC) for prosecution, and supporting local efforts for truth and reconciliation.

## **CONCLUSION**

Since the first R2P negotiations in 2001 and the actual introduction of R2P into the U.N. system in 2005, a lot has transpired. The concept of Responsibility to Protect (R2P) emerged from the international community's inability to act when governments in Rwanda, Bosnia, and Kosovo committed widespread and organised atrocities against their own citizens in the 1990s. R2P was created and ratified with the intention of formalising current obligations under international law and offering a stronger defence against future atrocity crimes.

The evolution of the idea demonstrates the existence of radically divergent interpretations of the duty to protect. The 2004 High-Level Panel Report, which was approved in principle by the Secretary-General in 2005, differs significantly from the 2001 ICISS Report in terms of the concept's specifics. An even more limited consensus is reflected in the 2005 World Summit Outcome Document. Although the notion is broadly acknowledged, its individual implications are

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<sup>7</sup> The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement, available at: [https://cjil.uchicago.edu/print-archive/united-nations-security-councils-implementation-responsibility-protect-review-past#footnote18\\_hitxq7f](https://cjil.uchicago.edu/print-archive/united-nations-security-councils-implementation-responsibility-protect-review-past#footnote18_hitxq7f) (visited on: 2<sup>nd</sup> May, 2024)

not.

Regretfully, we frequently witness atrocity acts as a direct result of nations' refusal to implement preventative measures. It is possible to argue that countries like Côte d'Ivoire, the Congo, Sri Lanka, Sudan, and most recently the Syrian Arab Republic were avoidable if the principle of the duty to protect had been properly applied.



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<sup>8</sup> The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement, available at: <https://cjl.uchicago.edu/print-archive/united-nations-security-councils-implementation-responsibility-protect-review-past> (available at: 4<sup>th</sup> May, 2024)