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OVERCOMING THE RWANDA FAILURE: THE IMPACT OF R2P ON THE PROTECTION OF CIVILIANS

Abstract

This paper discusses two norms that the United Nations led humanitarian interventions have been practicing since the 1990s: the Responsibility to Protect (R2P) and the Protection of Civilians. Both are very important agenda setters for future humanitarian interventions. The objective of this paper is to provide critical insights about how these two norms are applied on a limited scale during humanitarian interventions. The paper begins by reflecting on the failures of the United Nations in stopping and providing timely response during the genocide in Rwanda in 1993. It is argued that the causes of the Rwanda failure are the United Nations (UN), the United States (US), and the international community's inaction and unwillingness to spend resources to stop or prevent violent conflicts and/or gross violations of human rights in an impoverished region like Africa. These regions are of little value and pose little threat to the United States and other great powers. A human catastrophe in Rwanda or any other economically poor countries of the world seems distant to them, and would require long term engagement that the great powers think as would be a burden on them. They judge international prohibitions and take pivotal decisions of humanitarian interventions on a case by case basis when they think it is appropriate and necessary. Most often the great powers and/or the permanent members of the Security Council reflect their domestic decision makers' positions instead of the interests of justice, and often only uphold their national interests and other criteria. The paper then discusses the central challenges to operationalise the doctrine of Protection of Civilians – the very reason the concept of R2P was coined. Here the paper argues that the principle of R2P suffers from several important limitations when it aims at implementing the doctrine of Protection of Civilians. In the final section, the 2001 report on R2P of the International Commission on Intervention and State Sovereignty (ICISS), which was independently launched by the Canadian government, and the Outcome Document of the 2005 World Summit is analysed. It is suggested in the paper that many important recommendations of the ICISS were sidelined in the Outcome Document and this imposed limitations on the effectiveness of R2P's implementation. It is also argued that the primary causes of Rwanda failure were not reflected in these initiatives.

1. Introduction

The 1994 genocide in Rwanda epitomised the horrifying systematic killing¹ of innocent civilians and unspeakable violation of human rights because of collective

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¹ Having, showing or involving a system, method or plan.

inaction by the international community. Since then, there have been stormy debates within the United Nations (UN) and in the academia on how the international community can stop any such human catastrophe from taking place in the future. The Genocide Convention, the Universal Declaration of Human Rights, the Chapter VI, Chapter VII and Chapter VIII provisions of the UN Charter relating to humanitarian intervention and practice of peace operations had already been there. Despite that, the international community was reluctant to apply these mechanisms in Rwanda and even refrained themselves from characterising the systematic mass killings of Rwanda as genocide. Perhaps if we had a well defined set of norms and institutional structure for humanitarian intervention, the international community would have been able to stop the genocide in Rwanda, and prevent any such atrocities to happen in the future. From 1999 onwards, a significant number of doctrines, operational strategies, new mandates, and new norms have been coined in the UN with the objective to overcome the Rwanda failure. Among them, Responsibility to Protect and Protection of Civilians are two concepts that quickly pervaded the political discourse.

The two concepts together are envisioned as a mobiliser to awaken the world's conscience to avert, prevent, and stop mass killings. The concept of Responsibility to Protect or more commonly known as R2P though is still an ongoing debate and widely discussed topic of current times. But one has to admit that this concept is changing, redefining, and reconstituting the norms, laws and practices that constitute the relations between citizens and states. R2P is probably the most dramatic normative development in recent times. It challenges the UN's most sacrosanct principle of respecting territorial sovereignty and non-intervention enshrined in Article 2 (7) of the UN Charter, and makes states look through the human rights norms and laws. However, there are elements and issues in R2P as well as Protection of Civilians norms that require further research to improve global governance and make it more effective.

In the last couple of years, humanitarian intervention has received considerable attention of scholars on ethical, legal and political grounds. The issues of legitimacy and legality of humanitarian interventions have mainly been studied in international law and politics literatures. Though no one completely supported non-intervention, there were debates throughout the literature over if and why humanitarian interventions are justifiable, and questions were raised over the basic assumption of states pursuing their national interests. These issues were discussed in the works of Alex J Bellamy², Anne Orford³, Simon Caney⁴, Iain Attack⁵, Mohammed Ayoob⁶, David Chandler⁷ and

² Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, London: Polity, 2009; "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics and International Affairs*, Vol. 20, No. 2, 2006, pp. 143-169; and Alex J. Bellamy and Paul Williams (eds.), *Peace Operations and Global Order*, London: Routledge, 2005.

³ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge: Cambridge University Press, 2003.

⁴ Simon Caney, *Justice Beyond Borders: A Global Political Theory*, Oxford: Oxford University Press, 2005.

⁵ Iain Attack, "Ethical Objections to Humanitarian Intervention", *Security Dialogue*, Vol. 33, No. 3, 2002, pp. 279-92.

⁶ Mohammad Ayoob, "Humanitarian Intervention and State Sovereignty", *International Journal of Human Rights*, Vol. 6, No. 1, 2002, pp. 81-102.

⁷ David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention*, London: Pluto Press, 2002.

Simon Chesterman⁸. There is widespread support for the view, though not complete agreement among the academia, that humanitarian intervention can be justifiable in exceptional cases to tackle large-scale human suffering. Currently, the concern has shifted more towards who should undertake humanitarian intervention and when it is justifiable for them to do so; also whether humanitarian intervention is justifiable only when undertaken by a multinational force with the authorisation of the UN Security Council and in response to genocide or mass killing; or, whether it is permissible for a single state to undertake humanitarian intervention without the Security Council authorisation and in response to severe oppression; and finally, who is going to define or measure the severity of oppression.

There are gaps in the literature on the approach of states towards the notion of humanitarian intervention and implementation of the Responsibility to Protect within the UN framework. There are insufficient discussions on how or whether the notion of moral responsibility plays a role in the international community's responses to cases of humanitarian catastrophe. There are gaps in exploring capacity and capability issues, other than national interest, which are constraining states in taking action based on moral motives. This paper will try to focus on covering these gaps.

The Paper will examine the following two questions:

- Why did the UN and the international community fail to prevent or end the genocide in Rwanda?
- To what extent are the norm of Responsibility to Protect and the doctrine of Protection of Civilians impacting civilians in conflict areas and whether these norms have been effective in meeting the problems of the Rwanda failure?

The discussion will proceed in three parts: first, the reasons for the failure of the United Nations Assistance Mission for Rwanda (UNAMIR) to end genocide will be identified; second, how effective the Protection of Civilians doctrine was as a response to the reasons of failure identified in the first section will be discussed; and finally, the concept of Responsibility to Protect, how it is impacting protection of civilians in conflict areas, and whether it has been able to address the core problems identified in the first two sections will be discussed.

It will be argued in the paper that, the way the principle of R2P developed and now practiced by the community of states retains the same problems that existed at the very beginning of humanitarian interventions. The concept of R2P brought little change in the prevention of humanitarian crisis. It is doubtful whether this principle can stop future Rwanda-like situations. It is also doubtful whether this principle enhances civilian protection or encourages states to provide protection to its people

⁸ Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford: Oxford University Press, 2001.

or helps avert human rights violations. Powerful states still do not feel obliged to protect citizens of other states especially of the poorer regions. Even when they do agree to take action, humanitarian operations suffer from hundreds of problems related to funds, military personnel, cost and commitment for force application etc coming from the contributing states. It is argued in the paper that the principle of R2P fails to meet the very reason the principle was first initiated that is to create an obligation among states to carry a military operation to save or protect civilians of a distant state.

2. Background of the Genocide in Rwanda

Historically ethnic tension and bitterness existed between the minority Tutsi population (15 per cent) and the majority Hutus in Rwanda (around 85 per cent).⁹ The Tutsis constituted the pastoral monarchy and were favoured by both German and Belgian rulers during the colonial era. It was a German colony from 1884 to 1916. There were racial rankings in all social strata. German colonists considered the Tutsis superior to Hutus. The Tutsis enjoyed better jobs, key positions, and better education opportunities than Hutus.¹⁰ The Hutus had been categorised as brutish and innately inferior. These dichotomies were not real, rather imaginary. There were centuries of intermarriage between the Hutus and the Tutsis. The identity difference existed more in their minds than in their ethnic or kinship origin.¹¹ However, every Rwandan had very rigid or inflexible adherence to each of the two ethnic identities that were institutionalised since colonial times. Belgian colonists, when arrived in Rwanda in 1916, used to issue ethnic identity cards classifying people according to their ethnicity.¹² The Tutsi domination in the Rwandan society persisted until 1959.

In 1962, Rwanda became independent and a new Hutu leadership emerged. Tutsis were persecuted during that time and about 20,000 Tutsis fled to neighbouring countries in 1963, and then followed by many thousands more in 1966 and 1973.¹³ In 1990, soon after President Major General Juvenal Habyarimana, who came to power in 1973 after an army coup, announced plans to initiate multiparty electoral democracy, violence and hostilities broke out. According to UNHCR, in 1990, there were 900,000 Tutsis living in Uganda, Burundi, Zaire and Tanzania for fear of persecution and had been denied their right to return to their country of origin by the Rwandan government. About 7,000 members of Rwandese Patriotic Front (RPF) comprised of

⁹ "Rwanda: A Brief History of the Country", available at <http://www.un.org/en/preventgenocide/rwanda/education/rwandagenocide.shtml>, accessed on 29 December 2013.

¹⁰ "UNAMIR Background", the United Nations, available at <http://www.un.org/en/peacekeeping/missions/past/unamirFT.htm#HISTORICAL>, accessed on 29 December 2013.

¹¹ Mahmud Mamdani, "The Racialisation of the Hutu/Tutsi Difference Under Colonialism", in *When Victims become Killers: Colonialism, Nativism and Genocide in Rwanda*, New Jersey: Princeton University Press, 2001, pp. 76-102.

¹² "UNAMIR Background", the United Nations, *op. cit.*

¹³ *Ibid.*

the Tutsi refugees in Uganda launched attack across Rwanda-Uganda border at that time.¹⁴

A number of ceasefire agreements were followed after the outbreak of fighting in 1990 including the Arusha agreement of 22 July 1992 in the United Republic of Tanzania. The agreement called for the establishment of a 50 member Neutral Military Group 1 (NMOG1) by the Organisation of African Unity (OAU).¹⁵ The Arusha agreement aimed at the rapprochement between President Habyarimana's government, the civilian opposition and the RPF and five other political parties that formed the coalition government of April 1992 until a proper election could be held.¹⁶ However, the negotiation between the government and the RPF stopped because of outbreak of hostilities in the Northern part of Rwanda in February 1993. The extremist Hutu Coalition for the Defence of the Republic (CDR) strongly opposed sharing power with the RPF and difficulties started at the initial stage of signing the accords.¹⁷ Evidence showed that the Hutu extremists, unhappy with the power sharing arrangement with the RPF, were in fact planning to exterminate the Tutsis and the moderate Hutus who supported the accord.¹⁸ However, in the midst of all this, the UN Security Council passed Resolution 846 in June 1993 establishing the United Nations Observer Mission in Uganda-Rwanda (UNOMUR). It started working in August 1993 under the command of General Dallaire.¹⁹ When the Arusha agreement was signed, the Security Council established a United Nations Assistance Mission for Rwanda (UNAMIR) in October 1993 to monitor the agreement's implementation.²⁰ The UNOMUR came under the command of the new mission at that time.²¹

In early April 1994, President Habyarimana was killed when his plane was shot down. In Kigali, the presidential guards immediately started a campaign of retribution against opposition political party leaders, and soon started murdering them, both the Tutsis and the moderate Hutus. Early organisers of the murders were military officials, politicians and businessmen. Others joined soon. Encouraged by the presidential guards and radio propaganda, an unofficial militia group called *Interahamwe* (meaning those who attack together) was mobilised. The group comprised of about 30,000 Hutus.²² Soon the horror of genocide engulfed Rwanda. Beginning in Kigali the killing quickly spread to the rest of the country primarily targeting all men, women and children of the Tutsi minority and the moderate Hutus.

¹⁴ "Rwanda: A Brief History of the Country", *op. cit.*

¹⁵ "UNAMIR Background", *op. cit.*

¹⁶ "Rwanda: Who Is Killing; Who Is Dying; What Is To Be Done", *African Rights*, May 1994, p. 9, available at <http://www.francerwandagenocide.org/documents/WholsKillingMay1994.pdf>, accessed on 29 December 2013.

¹⁷ *Ibid.*

¹⁸ "Rwanda: A Brief History of the Country", *op. cit.*

¹⁹ "UNAMIR Background", *op. cit.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

3. The Failure of the UNAMIR

At the request of the governments of Uganda and Rwanda, the UN Security Council established the United Nations Observer Mission in Uganda and Rwanda (UNOMUR) in June 1993 to observe and prevent the Rwandese Patriotic Front (RPF)'s military use of the common border area between Uganda and Rwanda. After the Arusha agreement, the Security Council adopted Resolution 872 establishing the United Nations Assistance Mission for Rwanda (UNAMIR) to observe the agreement and provide assistance to the transitional government.

The UNAMIR had been given a very limited mandate,²³ though the situation on the ground demanded more. No intelligence data was gathered or provided about the precarious nature of the Arusha agreement to the UN Security Council or to Major General Dallaire who was leading the mission. Rwanda had already fallen back to violence when the UNAMIR went there, and the peace talks were about to stop at any moment because the extremist Hutus were opposing the talks. Before UNAMIR was established in 1993, several thousand Rwandans were already killed and 9,000 Rwandese were detained. The Hutu extremists rejected the peace agreement and set out to terrorise both the Tutsi and the Hutu politicians who supported the agreement. In short, as Samantha Power described, there was no peace to keep when the UN peace keepers arrived.²⁴

The UNAMIR was established initially for six months with a provision to be renewed by the Security Council. Without any real assessment, the mission was set up with 2,500 peacekeepers lightly armed with a mandate to monitor and implement the Arusha agreement and the mission was supposed to end after the national election which was scheduled to take place between October to December 1995. Despite that, General Dallaire did not know about the dangerous and violent situation in Rwanda and he made an estimate of a force of 5,000 simply to implement the Arusha agreement initially.²⁵ But when he was suggested that such a force would not be available, he asked for 2,500 in the written request. It took about five months to establish the mission.²⁶

Not only the mission was smaller than required, it was poorly equipped and lacked minimum force projection. Only 80 out of 300 vehicles were usable; only 400 Belgian peacekeepers were well armed;²⁷ there was constant shortage of logistics supply and was hard to find in one of the poorest countries of Africa; even more so, no help was coming from the UN headquarters. Samantha Power noted that General Dallaire was spending 70 per cent of his time battling over the UN logistics.²⁸ Overall,

²³ Samantha Power, "Bystanders to Genocide", *Atlantic Monthly*, September 2001, p. 5.

²⁴ *Ibid.*, p. 5.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*, p. 6.

²⁸ *Ibid.*

the mission was not capable of fighting against a genocide that was about to happen, not even to act in self defence.

During that time, the UN peacekeeping budget increased from US\$ 600 million to 3 billion dollars and 30 per cent of the funds was coming from the United States.²⁹ And in 1994, the United States had US\$ 900 million unpaid for regular UN and peacekeeping expenses.³⁰ About 70,000 peacekeepers were on 17 missions around the world. Rwanda had very little importance in view of all these.³¹

When General Dallaire came to know by a Hutu informant in January 1994 that local militias were arming rapidly, receiving training from the government, have had plans to kill all the Tutsis in Kigali, and even Belgian peacekeepers were targeted too so that the UN mission would come to a halt, General Dallaire informed the UN headquarters immediately. In his fax he asked for a permission to track the arms cache deploying his force.³² The UN headquarters did not pay attention to that, and did not try to realise the gravity of the problem. General Dallaire was told that the UNAMIR did not have mandate to take any action and he was suggested to inform what he had learnt from the informant to the Rwandan government.³³

Within 5 days after President Habyarimana was killed, by 11 April 1994, about 20,000 Tutsis were killed.³⁴ On 07 April Prime Minister Urilingiyimana and her family, who took refuge in the UN camp, had been killed along with 10 Belgian UN peacekeepers. Their bodies were brutally mutilated. Despite General Dallaire's repeated urge for reinforcement, the UN could not respond in face of political unwillingness among the Permanent-5 members of the UN Security Council to take robust action in the brutal ethnic civil war in Africa.

In view of such inaction and unwillingness to act, Belgium started to demand to withdraw its forces. The Department of Peace Keeping Operation (DPKO) came up with two options for the Security Council to consider: to keep the UNAMIR for about 3 more weeks without the Belgians or to immediately reduce the UNAMIR and maintain a symbolic UN presence.

²⁹ Brian Urquhart, "A UN Volunteer Force – Four Views", *The New York Review of Books*, 24 June 1993, available at <http://www.nybooks.com/articles/archives/1993/jun/24/a-un-volunteer-military-forcefour-views/>, accessed on 27 December 2013.

³⁰ *Ibid.*

³¹ Samantha Power, *op. cit.*

³² *Ibid.*, p. 6.

³³ *Ibid.*

³⁴ Organisation of African Unity, *Rwanda: the Preventable Genocide Report of the OAU's International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events*, 07 July 2000, available at <http://www.internetdiscovery.org/forthetruth/Rwanda-e/EN-14-CH.htm>, accessed on 10 January 2014.

By 19 April 1994, Human Rights Watch reported that about 100,000 Tutsis were slaughtered and for the first time used the word genocide.³⁵ Disregarding the news of genocide, the Security Council unanimously took Resolution 912³⁶ on 21 April 1994 stating that the UNAMIR would be reduced to 270 personnel and its mandate would limit likewise because of appalling large scale violence in Rwanda. Following this decision, the genocide in Rwanda went on unabated and in 4 months 800,000 had been systematically murdered, 250,000-500,000 women raped and 47,000 children orphaned.³⁷

There is allegation that the United States government deliberately avoided the use of the word genocide and because of that the UN Secretariat was hesitant to provide all the information about the genocide in Rwanda in front of the Security Council.³⁸ The United States had also been accused of and widely criticised for not stopping the genocide when it had all the means and equipment to do so. It is argued that the United States could have jammed the radio broadcasting in Rwanda which the killers were using to give instructions of killing.³⁹

The UN, the United States and the international community are still largely accused of the inertia to prevent such egregious violation of human rights. In March 1999, the Security Council authorised an independent inquiry to explore the reasons for the Rwanda failure. The inquiry concluded that lack of political will, resources, as well as errors of judgment was responsible for the UNAMIR's failure. Many scholarly publications⁴⁰ have explored the reasons for the UN inaction in Rwanda. One of the major reasons accounted for is the United States' unwillingness to send troops or at least provide fund for reinforcement. The Somalia syndrome was still very severe in the United States. The Clinton administration had just passed Presidential Decision Directive (PDD 25) which had imposed a long list of conditions on the engagement for peacekeeping. PDD 25 entailed that unless there was clear US interest at stake, clear threat to world peace and security, acceptable costs, congressional and public support, clear command and control management and exit strategy, the United States should not be involved in peace operations.⁴¹

³⁵ Samantha Power, *op. cit.*, p.16.

³⁶ Available at <http://www.un.org/en/peacekeeping/missions/past/unamirM.htm>, accessed on 10 January 2014.

³⁷ Samantha Power, *op. cit.*, pp. 17 and 32.

³⁸ *Ibid.*, p. 15.

³⁹ *Ibid.*, p. 24.

⁴⁰ There are books, such as, Mahmud Mamdani, *When Victims become Killers: Colonialism, Nativism and Genocide in Rwanda*, New Jersey: Princeton University Press, 2001; Frederik Grünfeld and Anke Huijboom, *The Failure to Prevent Genocide in Rwanda: the Role of Bystanders*, The Netherlands: Transnational Publishers, 2007; Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda*, Washington D.C.: The Brookings Institution, 1997 etc.

⁴¹ Samantha Power, *op. cit.*, p. 10.

There were deliberate efforts among policy makers in the US and also among UN officials to avoid using the word genocide in the case of Rwanda because this demanded the UN and the international community to take military action. Rwanda posed little threat to the United States or any other world powers. Therefore, anyone who had the capability to avert the genocide avoided engagement in the conflict.

4. Protection of Civilians

The failures of UN missions to provide protection in complex crises, such as Somalia, Rwanda and Srebrenica, raised questions and concerns about the fundamental principles and capabilities of UN peacekeeping operations and demonstrated that reform was urgently required. The first mission after the tragic events of mid 1990s was the UN peacekeeping operation in Sierra Leone, the UNAMSIL, authorised in 1999 with a mandate to protect civilians 'under imminent threat of physical violence'.⁴² Later on, some UN operations added on the mandate: "within the capabilities and within the areas of deployment".⁴³ By 2009, nearly 100,000 UN peacekeepers had been deployed on various missions with such mandates.⁴⁴

Many scholars and academicians have noted that there has been a normative shift regarding peace operations and humanitarian intervention where international community has assumed greater responsibility to protect and uphold the principles of the UN Charter and international law. Protection of civilians has become the centre of gravity of peace operations because of this normative shift and support for R2P.⁴⁵ It is realised that a UN operation will lose its support from the locals if it fails to address issues related to civilian protection and this in turn will undermine both legitimacy and credibility of a peacekeeping operation. At the same time, a political peace cannot be established when civilians are subject to violence and insecurity. In 1999, the UN Secretary General provided a report on the protection of civilians and later on the Security Council adopted Resolutions 1265 and 1296 that contained the concept of Protection of Civilians. The Brahimi report⁴⁶ and the Capstone doctrine provided further detailed reason and exploration of the concept at the operational level. It is widely acknowledged now that peacekeepers cannot and should not stand by and watch thousands of people killed simply because they did not have mandate to use force as it happened in Rwanda. At present, every Security Council resolution explicitly provides the mandate of protection of civilians where civilian lives are at stake.

⁴² Victoria Holt and Glyn Taylor with Max Kelly, "Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges", Independent Study commissioned by the United Nations Department of Peace Keeping Operations (DPKO) and Office for the Coordination of Humanitarian Affairs (OCHA), 17 November 2009, pp. 2-3.

⁴³ *Ibid.*

⁴⁴ *Ibid.*, p. 3.

⁴⁵ Ian Johnstone, "Dilemmas of Robust Peace Operations", *Annual Review of Global Peace Operations*, 2006, p. 2.

⁴⁶ Lakhdar Brahimi, "Report of the Panel on the United Nations Peace Operations", the United Nations, 2000.

Though the doctrine of Protection of Civilians has become accepted and established now, putting the doctrine into practice is encountering many challenges and dilemmas because the UN peacekeeping missions increasingly have become more complex, multidimensional and robust. In addition, there is often lack of guidelines about the mandate of UN missions about exactly in what circumstances to use military force on the ground that often creates confused and ad hoc execution of the mandate. There is no clear knowledge of how to protect civilians or vulnerable population on the ground in a violent conflict where the society is ethnically fractious.

The Capstone doctrine brought into light the increasingly blurry boundaries among the concepts of conflict prevention, peacekeeping, peace enforcement and peace building that make it very difficult to determine distinctions among them on the ground. The report argued that peace operations were usually not limited to only one type of activity. It is argued in the report that the definitions of these terms were different and required different kind of engagement from the international community and international organisations.⁴⁷ In addition, a distinction now is made between 'robust' peacekeeping and peace enforcement. Peace enforcement means use of military force at the strategic or international level with the authorisation of the UN Security Council because Article 2 (4) of the UN Charter prohibits the UN member states to use force against any other state.⁴⁸ In robust peacekeeping, use of force is allowed when the host authorities or the conflicting parties give consent on that.

Since peace operations involve more than one task and are multidimensional in actions, it is difficult to label them according to the categories described above.⁴⁹ Further adding to the complexities are more conditions enumerated as guidelines and principles in the Capstone doctrine. The peace operations are deployed with the consent of all the conflicting parties and the host government at the local level so that peacekeepers can have freedom of action to carry out their mandate. Peacekeepers are also supposed to carry out their responsibility with impartiality meaning that they do not hold any prejudice or favour to any conflicting party and carry out the operation without discriminating any individual.⁵⁰ At the same time, peacekeepers are supposed to prevent militias, criminal gangs, or spoilers, or whoever works against the peace process thinking it is undermining their power and interest, or try

⁴⁷ Department of United Nations Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines*, 2008, pp.17-19. Conflict prevention means application of structural or diplomatic means so that a dispute, or tension within a state, or between states do not escalate into violent conflict or war. Peacemaking means deployment of diplomatic means to bring parties in a conflict to the negotiating table for peace agreement. Such an initiative could be undertaken by the UN, governments, non-governmental groups, or even a prominent personality. Peacekeeping takes place to assist and observe conflicting parties to implement peace agreements or ceasefire agreements when fighting has been halted. And peace enforcement takes place when the UN Security Council decides that there is need to deploy coercive military measures to restore international peace and security and also when a conflict situation has arisen that threatens peace, and there is a possibility of breach of peace or act of aggression.

⁴⁸ *Ibid.*, p.19.

⁴⁹ *Ibid.*, pp.18-19.

⁵⁰ *Ibid.*, pp. 21-23.

to breakdown the peace initiative, or pose a threat to civilian population. However, peacekeepers are supposed to use force only with the Security Council authorisation in self-defence and defence of the mandate meaning that peacekeepers deter any party or individual who would disrupt the peace process, protect civilians from physical attacks and assist to maintain law and order. In addition, peacekeepers are supposed to have consent of the host government to use force in case of robust peace operation. But if the operation is for enforcement, then peacekeepers will be able to act under Chapter VII of the UN Charter and with the authorisation of the Security Council.⁵¹

All these complex conditions make actions of the peacekeepers very limited, complex and difficult in situations of violent conflicts. If peacekeepers are given the mandate to use force only in self defence and defence of the mandate, with consent from the parties in conflict and upholding impartiality, then how they are going to act if they get information of an imminent attack on civilians, as did General Dallaire in Rwanda five months before the genocide; and how to deal with such a vulnerable situation if or when peacekeepers do not hold mandate for pre-emptive attack. When they do use force, they inevitably risk taking sides and becoming a party to the conflict and jeopardising the whole peace process. If force is used as a last resort, spoilers also have the temptation to resort to violence. If peacekeepers use pre-emptive force, then there is a possibility that the conflict might escalate to an unmanageable range. In Rwanda, 10 Belgian peacekeepers were targeted and eventually killed because the spoilers wanted Belgium to withdraw their forces making the UN mission completely ineffective. The problem with spoilers has not changed. Often this is creating a blurry line between robust peacekeeping and war fighting. The UN forces deployed in Eastern Congo periodically required proactive use of force and a combat stance to defeat an opposition force.

Protection of civilians mandate simply does not help or it becomes ineffective in conflict zones which are partly pacified, or when the peace process is not supported by all conflicting parties, or when the conflicting parties fall back into violence when the peace process breaks down. In addition, there is a gap between the expectation of the local population and the UN's capacity in terms of personnel, resources and logistics. Mandate without capacity simply just fails to meet expectations. At times, it has been called 'the impossible mandate'⁵² for the UN peacekeeping missions owing to the mismatch of resources for and expectations of protection of civilians by the UN peacekeepers. The United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) was simply insufficient in scope for an area four times the size of Western Europe. And finally, though Somalia syndrome is no longer there, powerful countries still are not showing willingness to contribute troops in peacekeeping, and are rather more involved in unilateral efforts or coalitions of the willing countries, such as,

⁵¹ *Ibid.*, pp. 21-23.

⁵² Victoria Holt and Tobias Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations*, Washington D.C.: The Henry L. Stimson Center, 2006.

the US led War on Terror against the Taliban of Afghanistan and the US invasion of Iraq in 2003.

The dilemmas and difficulties of the application of the concept of Protection of Civilians bring forth the question whether there has been any change in the situation that existed before the Rwanda genocide and whether the concept has made peace operations more effective. This leads this paper to discuss the emergence of the Responsibility to Protect norm and its impact on protection of civilians in view of inherent problems of peacekeeping and humanitarian intervention in Rwanda in the next section.

5. The Responsibility to Protect

In the aftermath of the conscience shocking atrocities and genocide in Somalia (1993), Rwanda (1994) and Srebrenica (1995), and in face of incomplete, unreliable and often counterproductive international response, there were stormy debates over the issue of continuing resonance of the concept of sovereignty and non-intervention. An essential need was realised amongst everyone to think about and comprehensively reassess devices and approaches that would help avert such human catastrophe. In 2000, the UN Secretary General Kofi Annan made a plea to the General Assembly to respond to situations like Rwanda, Srebrenica or any other future gross and systematic violations of human rights anywhere else, even though humanitarian intervention is an unacceptable assault on sovereignty.⁵³

After a decade has passed since the Rwanda failure, world leaders reached a consensus about the Responsibility to Protect at the 2005 World Summit. At the Summit, the member states included R2P in the Outcome Document and placed them in Paragraphs 138 and 139.⁵⁴ In April 2006, the UN Security Council reaffirmed the provisions of Paragraphs 138 and 139 in Resolution 1674 on the Protection of Civilians in Armed Conflict. The Outcome Document described R2P as having three pillars. The first one says that the responsibility to protect from genocide, war crimes, ethnic cleansing, and crimes against humanity, and from their incitement lies on the state.⁵⁵ Secondly, the responsibility lies on the international community to assist states in meeting their obligations to protect their population.⁵⁶ Thirdly, the responsibility to protect lies on the UN member states to respond in a timely and decisive manner when a state manifestly fails to provide such protection.⁵⁷

⁵³ Aidan Hehir, "The Responsibility to Protect: Sound and Fury Signifying Nothing?", *International Relations*, Vol. 24, No. 2, 2010, pp. 218-239.

⁵⁴ Alex J. Bellamy, 2006, *op. cit.*, pp.143-169.

⁵⁵ Edward C. Luck, "The United Nations and the Responsibility to Protect", *Policy Analysis Brief*, The Stanley Foundation, Iowa, 2008, p. 1.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

It was mentioned at the beginning of the paper that the concept of R2P brought some little changes which are seen in both the first and second pillars that the Outcome Document brought forth. The customary international laws, humanitarian laws and treaty laws, such as the Genocide Convention, the Geneva Convention, the Rome Statute, the Torture Convention, already set forth some standards for states and imposed obligation on states to follow those standards to protect their population from genocide, war crimes, crimes against humanity and ethnic cleansing. The Outcome Document of 2005 brought it in written form that imposed an obligation on all states to uphold their responsibility to protect and end impunity of state leaders by saying that the international community will assist states to uphold their responsibility.

Interestingly, after the Rwanda genocide, when there was a lot of discussions going on about R2P, Belgium caught global attention as it declared its individual responsibility for human rights atrocities and to protect people even if they are located in another state. Belgium enacted a statute in 1993 that gave the Belgian Court the jurisdiction to try and convict accomplices to human rights atrocities even if the convicted were from other countries.⁵⁸ In 2001, the Belgian Court tried two Rwandan nuns and two Rwandan men for participation in the genocide in Rwanda.⁵⁹ From 2000-2002, it took criminal complaints against Israeli Prime Minister Ariel Sharon, Cuban President Fidel Castro, Iraqi President Saddam Hussein, former Foreign Minister of Democratic Republic of Congo Abuldaye Yerodia and former Iranian President Hashemi Rafsanjani.⁶⁰ Then in 2003, 7 Iraqi families brought charges of war crimes against former American President George H. W. Bush, former Secretary of Defense Dick Cheney, and the Secretary of State Colin Powell.⁶¹ The United States reacted furiously against these convictions saying that Belgium was not respecting the sovereignty of other countries and almost immediately retaliated by threatening Belgium of taking away its status of a diplomatic capital and the host state for North Atlantic Treaty Organisation (NATO). Belgium quickly changed its Statute regarding universal jurisdiction in 2003 under American pressure and the Belgian Court is now enabled to hear cases on genocide, war crimes and crimes against humanity but only when the convicted and/or the victims are Belgian citizens.⁶² This incident brought forth an entirely new debate on how to implement the norms of R2P when application of universal jurisdiction is so problematic in front of the power politics of the great powers.

Implementation of the third pillar of R2P is even more problematic. Before the Outcome Document came, the Canadian government supported by Chicago's

⁵⁸ Steven R. Ratner, "Belgium's War Crimes Statute: A Postmortem", *American Journal of International Law*, Vol. 97, No. 4, October 2003, pp. 888-897.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

MacArthur Foundation, generated an independent commission named the International Commission on Intervention and State Sovereignty (ICISS) to provide better clarification and understanding of R2P. The commission produced a report in 2001 titled *The Responsibility to Protect*.⁶³ The ICISS report had three objectives⁶⁴:

- to build a broader understanding of the problem of intervention for human protection and sovereignty, and to establish clearer rules, procedures and criteria for determining whether, when and how to intervene;
- to provide politically credible doctrine not to be rejected by either north or south, the Permanent-5 members of the Security Council, or any other major international constituency;
- and to make a compelling message to motivate action and mobilise support when a situation demands such a response so that future Rwanda or Kosovo be prevented.

In its attempt to set out the concept of Responsibility to Protect, the ICISS tried to interpret state sovereignty as responsibility stating that sovereignty is not only territorial freedom but also recognition of a people's equal worth and dignity, a protection of their unique identities and their right to shape and determine destiny. Article 2.1 of the UN Charter recognises this, and the principle that all states are equally sovereign under international law.

Though the ICISS acknowledges Article 2.4 that prohibits all states from threatening or using force against the territorial integrity or political independence of any state, and also Article 2.7 that prohibits the UN to intervene in matters within the jurisdiction of any state with the exception of application of Chapter VII, it argues that when there is a just cause like a population suffers serious harm, mass killing or ethnic cleansing because of internal war, insurgency, repression or state failure, and when the state in question is unwilling or unable to halt or avert the situation, the principle of non-intervention yields to the international responsibility to protect. The Responsibility to Protect norm upholds three basic responsibilities: the responsibility to prevent, the responsibility to react and the responsibility to rebuild.⁶⁵

The military intervention must meet four precautionary principles: right intention, last resort, proportional means and reasonable prospects.⁶⁶ According to

⁶³ Gareth Evans et. al., *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty*, The International Development Research Center, Canada, 2001, available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, accessed on 12 January 2014.

⁶⁴ *Ibid.*, pp. 2-3.

⁶⁵ *Ibid.*, p. XI. According to the ICISS report, the responsibility to prevent means addressing the root and direct causes of conflict; responsibility to react means responding with appropriate coercive measures, such as sanctions, international prosecution, and/or military intervention; and responsibility to rebuild means giving full assistance for reconstruction, rehabilitation and reconciliation in post conflict situations.

⁶⁶ *Ibid.*, p. XII. According to the ICISS report, right intention means that the purpose of the intervention must be to stop or prevent human suffering. There could be various motives though behind the intervention

the ICISS, the 'right authority' to act robustly to a crisis is the international community and the Security Council, and an obligation exists on the part of all member states of the UN not to use force unilaterally without the UN sanction. The ICISS criticised the Security Council's record on humanitarian intervention and use of the veto power of the Permanent-5, and suggested a 'code of conduct' whereby 'a permanent member, in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct the passage of what would otherwise be a majority resolution'.⁶⁷ Though all humanitarian intervention should seek the Security Council authorisation, the ICISS further suggested that alternative sources of authority, such as the consideration of the matter by the General Assembly in Emergency Special Session under the Uniting for Peace resolution and action within the area of jurisdiction by regional or sub-regional organisations under Chapter VIII of the Charter, should not be completely discounted.

By defining the circumstances in which the Security Council should assume responsibility for preventing, halting and rebuilding after a humanitarian emergency, and placing limits on the use of the veto, the commission aimed to make it more difficult for the Security Council members to escape their responsibilities. It assumed that a common benchmark for intervention would make it difficult for any Permanent-5 members to publicly avert from its responsibility to act in humanitarian crisis and also would enable the UN members and domestic people to insist the Permanent-5 to take on their responsibilities.

In case of any 'abuse' or in circumstances when Security Council would reject a proposal or would be paralysed to take any effective action in reasonable time, the ICISS, in its recommendations, left the possibility for 'unauthorised' action open by saying that: "the Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation",⁶⁸ though there will be risks that such an intervention might be carried out without the right reasons or the right commitment. The ICISS further made a plea to the Security Council to act by saying that if concerning state or states themselves would carry out such an intervention successfully with wide spread public support and by fully observing the criteria and reasons stated by the ICISS following Security Council's inaction, then this would seriously undermine the credibility of the United Nations.⁶⁹ All these recommendations of the ICISS were aimed at creating a mechanism that would create an obligation on the international community to act effectively in face of humanitarian emergencies and prevent a future Rwanda.

effort. Last resort means military intervention is justified only when all non-military options have been explored and failed. Proportional means that there must be a minimum necessary capability to carry out human protection objective. Reasonable prospects means a reasonable chance of success.

⁶⁷ *Ibid.*, pp. XII-XIII.

⁶⁸ *Ibid.*, p. XIII.

⁶⁹ *Ibid.*, p. XII.

Alex J. Bellamy noted in 2009 that R2P had been “changed in important respects from the way it was originally conceived by the ICISS”⁷⁰, and the most innovative aspects of the ICISS report had been gradually abandoned. Concessions were made in three major areas:

First, the ICISS’ proposal that the Permanent-5 should agree not to use their vetoes and the creation of the ‘code of conduct’ was discarded. The notion of legitimate intervention without explicit Security Council approval was also sidestepped.

Second, the just cause threshold included in the Outcome Document limited the criteria for intervention only to ‘genocide, war crimes, ethnic cleansing and crimes against humanity’.

Third, while the ICISS stated that the responsibility to protect transfers from the state to the international community when the host state was deemed ‘unable or unwilling’ to exercise its responsibilities, in the Outcome Document this was amended to cases where the host state was guilty of a ‘manifest failure’. This change in the language raised the threshold for international action and further limited the scope of R2P.

The two major initiatives proffered by adherents of R2P – that of securing a commitment from the Security Council members an obligation to act whenever necessary and the agreement to remove the veto – were not incorporated into the Outcome Document. Rather the endorsement of the basic tenets of R2P was made conditional on the restatement of the Security Council’s primacy. The consensus reached was achieved by conceding key aspects of the original variant of R2P proposed by the ICISS. According to Thomas J. Weiss, the Outcome Document is ‘a step-backward ... R2P lite’.⁷¹

The just cause threshold included in the Outcome Document actually restricted the instances when the Security Council could legitimately intervene. The Security Council’s practice in the 1990s had substantially broadened its remit to act under Chapter VII. With authority being once again vested in the Security Council and the criteria for intervention limited to ‘genocide, war crimes, ethnic cleansing and crimes against humanity’, the scope for intervention was restricted when compared to Chapter VII action in the 1990s.⁷²

R2P received mixed reaction from the international community. It was favourably received by Canada, the UK and Germany. In addition, Argentina, Australia, Colombia, Croatia, New Zealand, Norway, Peru, the Republic of Ireland, Rwanda, South

⁷⁰ Alex Bellamy, 2009, *op. cit.*, p. 195.

⁷¹ Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action*, New York: Polity, 2007, p. 177.

⁷² Aidan Hehir, “The Responsibility to Protect: Sound and Fury Signifying Nothing?,” *International Relations*, 2010, pp. 218-239.

Korea, Sweden and Tanzania all expressed broad support.⁷³ East Asian countries were 'more cautious' in their response. But strikingly, the UN Security Council was quite negative. The United States was concerned with two issues: publicly committing to R2P might compel it to deploy its forces in ways that were inimical to its perceived national interests; and that the just cause thresholds and precautionary principles would limit its flexibility in deciding when and where to use force to protect the common good,⁷⁴ while China and Russia opposed any diminution of the Security Council's monopoly on the legitimisation of the use of force.

The primary cause of the collective inaction or ineffective action in Rwanda was lack of political will. The United States and also other major powers in the Security Council were not willing to send forces to Rwanda. The ICISS recommendations on the R2P concept were directed toward persuading states to assume their responsibility to provide protection to civilians when such human catastrophe would take place, particularly those states that had the capability to act. But from the very onset of the report, the ICISS did not identify the lack of political will as the root cause for inaction and incomplete action in humanitarian situations in places which were less important to great powers. Instead, the foundational principle was directed toward bridging the gap between traditional concept of sovereignty and humanitarian intervention. But sovereignty considerations never determine (during the genocide in Rwanda as well) whether or not states carry out humanitarian intervention. Political will has been the imperative to assume responsibility for protection of imperilled people by the Security Council members. Humanitarian intervention will not take place if members of the Security Council do not feel obliged to intervene, whether for humanitarian reasons or self interest. The failure of the ICISS report to acknowledge this raises the question whether R2P is the right response and also an effective response to overcome the problems that lead to the failure in Rwanda.

With the objective of avoiding future Rwanda like catastrophes and creating a norm of Responsibility to Protect, the ICISS report in fact stated that if a state failed to meet its own responsibilities, the responsibility to protect automatically would transfer to the international community, but it failed to provide any detail on how this responsibility could be actualised. No concrete reforms were suggested that would compel the Security Council to act. It suggested a voluntary code of conduct in the use of veto by the permanent members of the Security Council in matters of grave humanitarian concern which leaves one to wonder about its effectiveness. Even worse, the code of conduct was dropped off from the Outcome Document of 2005 due to lack of consensus.

The ICISS proposal of strengthening the capacity of states to legitimately act outside of the Security Council was very ambiguous as on one hand it argued that there should be a right unauthorised intervention when there would be a grave

⁷³ *Ibid.*

⁷⁴ *Ibid.*

humanitarian crisis. On the other hand, it said that this undermined the UN's credibility, without further clearly explaining what should be done. There is grave consequence if any state wants to utilise this to conquer another state; especially this is a concern after the United States' Iraq invasion. The ICISS report was not clear about who is or who are going to define that the just cause threshold and other criteria for humanitarian action were met in case of such unauthorised intervention. In any event, the ICISS did not succeed to ensure the incorporation of right of a state or the international community as a whole to intervene in humanitarian crises following politicised Security Council's inaction in the Outcome Document due to lack of consensus.

In the Outcome Document, reaction to a crisis is not a fall-back responsibility of the international community as was suggested by the ICISS. In all events, primacy of authority was given to the Security Council, and it was decided that collective action would be on a case-by-case basis, and no reference was made to the criteria for intervention leaving it on the judgment or the political will of the Security Council members. This again raises a question then what new did the R2P norm as negotiated in the Outcome Document and subsequently adopted in Resolution 1674 give us. Does R2P then have any impact at all on protection of civilians in catastrophic situations? The Security Council was taking many decisions applying Chapter VII criteria in order to meet the demands for humanitarian intervention when the catastrophic collective inertia in the face of genocide in Rwanda happened. The Security Council during the 1993 genocide of Rwanda was not willing to provide a robust mandate or reinforce the UN mission there.

6. Conclusion

The entire critique of the practice of R2P is not about questioning the necessity of R2P or humanitarian intervention as such. It is about the incoherent and rather ad hoc applicability of the norm that is preventing it from becoming international law. The R2P as adopted in Resolution 1674 does not make it clear how this norm could be better implemented to stop mass killings, genocide or large numbers of innocent civilians in future. It is not clear whether the R2P norm has been able to create any obligation on those states which are reluctant to accept and take upon the responsibility to stop gross human rights violations and whether R2P is able to dissipate this reluctance. The adoption of the R2P norm did not bring any substantive change (either legal or institutional regarding who is going to intervene) to address the dilemma of humanitarian intervention caused by a highly politicised Security Council, and therefore, it is not possible to comprehend the actual level of commitment from the Security Council members even when they accept the responsibility to protect and take vows to act in accordance, or to take collective action timely and decisively. This is because the Outcome Document does not answer the fundamental question of what should happen if the Security Council is unable or unwilling to authorise the use of

force to prevent or end a humanitarian tragedy, and who then ultimately has the responsibility to protect.

In order to make R2P a must obligation that states cannot avoid, there should be serious discussion and public commitment among the great powers, members of the UN Security Council and the General Assembly about setting clear standards and criteria of carrying out a humanitarian intervention. There should also be a discussion so that the Security Council members come to a consensus that they develop a universal standard on when a humanitarian intervention including military operation must be carried out. The Security Council members would also require to agree and make a commitment or rule that they would not be able to use veto whenever there is a humanitarian crisis and they do not judge each humanitarian crisis case specifically on ad hoc basis. In order to make humanitarian interventions, there should also be more concentration on the capacity building of the peace missions of the UN; a mechanism should be developed for early warning to prevent humanitarian crises and conflicts; and there should be preparedness on the part of the UN for responding timely and decisively to these humanitarian crises.

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