FAILURE TO PROTECT IN SYRIA: WILL THE UN SECURITY COUNCIL INVOKE R2P EVER AGAIN?

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Introduction

The events in Syria since the beginning of the conflict in 2011 have been a source of concern for the international community. The ongoing civil war has caused many military and civilian casualties. Reports on the state of the country indicate that both government forces and rebels have committed both crimes against humanity and war crimes. What began as a crisis in March 2011, turned into a civil war between the Syrian government and armed opposition groups and has resulted in over 465,000 deaths. According to the UN Office for the Coordination of Humanitarian Affairs (UNOCHA), as of April 2017, there were more than 5 million Syrian refugees and at least 6.3 million internally displaced persons (IDPs). Over 13.5 million Syrians remain in dire need of humanitarian assistance, with 4.5 million people in inaccessible areas, including at least 419,900 people trapped in 10 besieged communities. Besides, Islamic State has been very effective in the country especially since 2014. The Islamic State took control of some land and equally committed war crimes and crimes against humanity. Therefore, Syria demonstrates a clear case of a state unable or unwilling to protect its own citizens; hence, enough ground to invoke Responsibility to Protect (R2P) to save civilian lives in Syria. However, it is difficult to assume that the international community has a solution to the problem. In this paper, the validity of the R2P and problems of its implementation in the Syrian case are discussed.

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Responsibility to Protect as an Emerging Norm

In order to talk about the lack of R2P action in Syria it is a good idea to know what R2P means, cases where it can be invoked, and some past examples. The most important impetus in the emergence of the R2P is crimes committed in the civil wars of Rwanda and Kosovo. The UN was too late to intervene in Rwanda to prevent human rights violations caused by civil war between Hutus and Tutsi population. Approximately 1 million people were killed at the end of the genocide and nearly 3 million people had to leave the country. Several studies cite the inaction of the international community on Rwandan genocide as “failure to protect” (Pattison, 2010: Wheeler, 2000). In addition, unauthorized intervention in Kosovo is also a reason for the emergence of R2P. The tensions in Kosovo became a war in June 1998 between Albanians and Serbians. Tito's death, Milosevic's election of president, removal of Kosovo's autonomy, establishment of Kosovo Liberation Army (KLA) and its actions; excessive use of force of Serbian police and Yugoslav army eventually caused NATO's intervention in the region (O'Donnell, 2014: 565). Security Council's hand was tied up because of Russia and China's veto, yet NATO powers conducted an independent action. This received many criticisms as being unlawful because there was no Security Council authorization. Besides, there was no reduction in the number of deaths after intervention. Therefore, it could be said that the Kosovo crisis flamed the debate on the concept of humanitarian intervention. This led to the UN’s decision to put the debate on more solid grounds and eventually introduced the R2P.

Institutionalization of Responsibility to Protect

In his Millennium Report of 2000, then Secretary-General Kofi Annan asked the following question “…if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?” (Annan, 2000: 48) and revealed a need for new search in order to stop human rights violations. Following this, an International Commission on Intervention and State Sovereignty (ICISS) was founded in 2001 through the efforts of Gareth Evans and Mohamed Sahnoun under the authority of the Canadian Government. Briefly, the Report of ICISS claimed that states have the primary responsibility to protect their own people. However, in the case of a population suffering harms as a result of a conflict, suppression by state
with the state unwilling or unable to stop it; the principle of non-intervention yields to the international responsibility to protect. Further, the Report identified three responsibilities of international community namely to prevent, to react and to rebuild (ICISS, 2001).

Three years later, in the Secretary General’s “Report of the High-level Panel on Threats, Challenges and Change” R2P was placed for the first time on the General Assembly’s agenda. In 2004, Annan mentioned R2P in his report “A more secure world: Our shared responsibility”, thus, the institutionalization of R2P as a norm started. Following this, in 2005, Annan in his next report, “In larger freedom: towards development, security and human rights for all” continued to talk about R2P. Support for the Secretary General and other R2P advocates grew thus, becoming a part of the 2005 UN Millennium Summit and a huge milestone for the emerging norm, R2P. Paragraph 138 of the UN World Summit Outcome Document (A/RES/60/1) mentioned the “sovereignty as responsibility” understanding. According to it, all states have the responsibility to protect their citizens (UNGA, 2005, 30). In addition, Paragraph 139 talks about prevention, not as a responsibility of individual state, but also as a responsibility of international community. Moreover, Paragraph 139 enables a justification of humanitarian military intervention in cases of atrocity crimes. (UNGA, 2005, 30). Yet, unlike ICISS Report 2005 World Summit Outcome limits the atrocity crimes that invoke R2P to ethnic cleansing, genocide, war crimes and crimes against humanity. Also paragraphs 138 and 139 concerns responsibility to prevent and to react; aspects of R2P, but not rebuild. It takes place separately under paragraphs 97 and 105. So, R2P that is known from 2001 ICISS Report was more spacious than 2005 World Summit Document’s. In fact, Thomas Weiss (2008: 750) calls R2P-lite to this revisited version especially since the reaction stage was left entirely in the hands of the Security Council. Irrespective of these, R2P legally became part of the UN, member states’ and the international community agenda after 2005.

**Case Examples**

After its introduction, debates started about what R2P could do and what it could not do. It could not appear as a binding international law norm, but some suggested that it could be recognized as a customary international law norm (Thakur and Weiss, 2009: 45). Clearly, as an emerging norm, R2P has some weaknesses and these weaknesses become more visible with the following examples. For instance, although French Foreign Minister suggested to invoke R2P for
Myanmar in 2008, the international community failed to prevent unlawful killing of civilians, mass displacement, rape, and the burning of villages in the country (GlobalR2P, 2017). Longstanding conflict between Rakhine Buddhists and Muslim Rohingyas led Myanmar's security forces to carry out “clearance operations” in Rakhine State. In return, Arakan Rohingya Salvation Army (ARSA) attacked government forces. There are reports showing grave human rights violations against Rohingya civilians. In fact, the Office of the High Commissioner for Human Rights (OHCHR) demonstrated that crimes against humanity are being committed in the country. On 11 September 2017, the UN High Commissioner for Human Rights said that actions taken by the Myanmar authorities represent a “textbook example of ethnic cleansing.” On 19 October 2017, the UN Special Advisers on the Prevention of Genocide and the Responsibility to Protect issued a joint statement and underlined the fact that “the government and the international community have failed to uphold their responsibility to protect the Rohingya population.” Therefore, Myanmar was a case of failure for international community.

Moreover, one of the most controversial responses of UN in its history was the Darfur case. Since 2003, the Sudanese government and Janjaweed militia conducted mass killings and ethnic cleansing in response to a rebellion of two groups in Darfur: the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM). Following the N’djamena Humanitarian Ceasefire Agreement, signed in April 2004, African Union (AU) sent the African Union Mission in Sudan (AMIS) that consisted of observers and protection forces to the country. UN Security Council (UNSC) mentioned its commitment to the sovereignty, independence and unity of Sudan with Resolution 1547 (2004) and United Nations Advance Mission in Sudan (UNAMIS) was established. With respect to Darfur, Resolution 1556 (2004) demanded the disarmament of the Janjaweed militias. Even so, UNSC did not name the situation as genocide because that would have required taking action (Waal, 2007: 1041). Several UNSC Resolutions issued on the situation in Darfur; determined the situation as a threat to international peace and security and to stability in the region and referred the case to the International Criminal Court (ICC). However, despite the ICC demonstrating evidence for massive massacres, forced displacement, thousands of deaths, destruction of food stocks and massive rape cases, the UN showed a great weakness and failed to invoke R2P to prevent civilian deaths (Keskin, 2009; Waal, 2007; Bellamy and Williams, 2006).
Conversely, the most explicitly referred case of R2P appears to be Libya. In 2011, a rebel movement began against Gaddafi who had governed the country for forty-two years. However, the rebels faced a violent suppression attempt. In response to Gaddafi’s threats to take action against the rebels which will directly result in civilian casualties, the UNSC adopted Resolution 1970 (2011) recalling the Libyan authorities’ responsibility to protect its population, imposing sanctions including travel ban and arms embargo. The UN Security Council Resolution (UNSCR) also referred the situation in Libya to the ICC. However, Gaddafi responded violently, and his forces killed dozens of protesters so developments in Libya required more severe measures (O’Donnell, 2014: 566). The UNSC then passed Resolution 1973 and applied a no-fly zone over Libya and also decided to establish safe areas and determined that the current situation in Libya constituted a threat to international peace and security. Moreover, Resolution 1973 (2011) referred to take all necessary measures, so this opened the way for authorization of military intervention. Subsequently, NATO lead intervention began. Gaddafi was removed from power and was killed by dissident groups on 20 October 2011. Ultimately, the civil war resulted with the victory of the National Transition Council of Libya. However, the post-Gaddafi era has been one marred with chaos and instability with three rival governments. R2P was invoked during the Libya operation. UNSC’s resolutions 1970 and 1973 authorized NATO for economic and military measures and Libya is often mentioned as an example of successful R2P implementation. However, it is argued by many that the manner in which the Libyan intervention was carried out and its aftermath is what has made the UN immobilized in the case of Syria (Cronogue, 2012: 145). From the R2P point of view, successes were achieved in the first and second stages, which were to prevent and to react. Detection of human rights violation, UN authorized NATO intervention without wasting time, and putting an end to persecution are the reasons for the success of this application. However, in the rebuild phase it could be said that NATO stretched the terms, went beyond the mandate of UN and violated the principle of national sovereignty (Brockmeier et all, 2016: 114).

Inaction on Syria

Bashar al-Assad, who took over power in 2000 after his father Hafez al-Assad, was expected to come with reforms. In fact, Perthes (2004) mentions that Bashar al-Assad was determined to modernize authoritarianism. However, he failed to spread political and economic reforms across the general Syrian community. Alawite minority mostly benefited from the reforms. Therefore,
remaining parts of the country, especially non-Alawite people, started to grumble (Hoeling, 2015: 27). This situation was dragged by the thought of the Arab Spring and a rebel movement started against Assad regime. However, the demonstrations that started peacefully intensified as they faced harsh reaction from government forces. At the end of March 2011, the conflict began in Syria between the army of Bashar al-Assad and the rebels including National Council of Syria and Free Syrian Army. Rising tensions led to serious human rights violations. There are evidence indicating the use of chemical weapons. Pursuant to mass atrocities in Syria, United Nations Human Rights Council (UNHRC) established an independent International Commission of Inquiry (CoI) in 2011 to investigate human rights violations in Syria. According to CoI’s report presented to the Council in Geneva on 28 November 2011, crimes against humanity had been committed in different locations in the Syrian Arab Republic including arbitrary arrest, enforced disappearance, torture, sexual violence, as well as violations of children’s rights (UNGA, 2011: 8). Following reports continued to expose government forces committing gross violations of human rights and war crimes. In fact, 2014 CoI report showed evidence of the usage of chlorine gas, an illegal weapon by government forces (UNGA, 2014: 19). Besides, 2015 CoI report stressed the lack of action and emphasized that there was the need for concerted and sustained international action to find a political solution to the conflict otherwise grave violations of human rights would continue.

On October 2011, states brought a draft resolution to the UN Security Council to condemn human rights violations in Syria. This was to encourage Syrian authorities to put an end in using force against civilians, and to be careful about human rights including respecting freedom of expression and release of all political prisoners and peaceful demonstrators. However, it turned out to be a failed resolution because Russia and China vetoed it. Besides, Brazil, India, Lebanon, and South Africa used abstention votes. As part of efforts to search for a solution, former Secretary-General Kofi Annan was appointed to Joint Special Envoy for the UN and the League of Arab States on 23 February 2012. He set forth a six point peace plan. It included commitment by all parties to work with the Envoy, stopping armed violence and working with the UN to protect the civilians and to stabilize the country, to make sure that everyone and every region received humanitarian assistance, ensuring that unjustly detained persons were released, ensuring the free movement and non-discriminatory visa policy for journalists across the country and being respectful of the freedom of association (Annan, 2012).
With Resolution 2043 (2012) UNSC condemned human rights violations that were being committed by Syrian authorities and established the United Nations Supervision Mission in Syria (UNSMIS). UNSMIS operations focused in and around Aleppo, Damascus, Deir-Ezzour, Hama, Homs, Idlib, Deraa and Tartus. The mandate of the Mission was determined as, to monitor a cessation of armed violence in all its forms by all parties and to monitor and support the full implementation of the Envoy’s six-point proposal (UNSC, 2012). However, because of the failure to stop violence and increasing hostilities the Mission suspended its normal operations on 15 June 2012 and eventually, UNSMIS mandate ended on 19 August 2012. When the number of deaths increased, tens of thousands of civilians were displaced and seeking refuge in neighboring countries. Annan was subsequently disturbed by the absence of political solidarity within UN to find a solution to the crisis and resigned from his post. Lakhdar Brahimi was appointed to be the next Joint Arab League-United Nations Special Representative for Syria. Yet, he was also unable to negotiate to end the violence (ICRtoP, 2017) and resigned on 13 May 2014. In July 2014, Staffan de Mistura was chosen to replace Lakhdar Brahimi as the international mediator seeking an end to Syria's civil war. However, he would serve only as a UN envoy, not the joint UN-Arab League envoy. With resolution 2191 (2014) UNSC expressed its full support for Mr. Staffan de Mistura who is still at post at the time of writing.

Any use of chemical weapons is a breach of international law under 1925 Geneva Protocol or Chemical Weapons Convention (CWC) that entered into force on 29 April 1997. Yet, there is precise evidence of use of chemical weapons in the Ghouta area of Damascus in 2013 and this has brought the Syrian conflict into a new dimension. According to United Nations inspectors, government forces killed over 1,400 people with this attack. Ban Ki-moon on 16 September 2013 stated that the attack was an action of war crime and a grave violation of the 1925 Protocol and other rules of customary international law. With Resolution 2118 (2013), UNSC tasked the Organization for the Prohibition of Chemical Weapons (OPCW) for the purpose of “destruction of the Syrian Arab Republic’s chemical weapons program.” Assad regime said they complied with the Resolution 2118 and destroyed most of their chemical weapons facilities. Yet, according to reports of the Human Rights Watch Syrian airstrikes continued to target civilian areas including homes, markets, schools, and hospitals, using wide-area explosives, barrel bombs, cluster munitions, and flammable incendiary weapons (HRW, 2017). Besides, according to Amnesty International (2017:
government forces cut civilians’ access to medical care and basic humanitarian needs and starvation was being used as a war tactic to plague the civilians in Eastern Ghouta, Mouadhamiyah al-Sham, Madaya, Daraya and eastern Aleppo. In addition, Organization for the Prohibition of Chemical Weapons Fact-Finding Mission (OPCW FFM) released 16 reports since 2014. Especially their latest report dated 29 June 2017 (S/1510/2017) has specified that sarin or a sarin-like substance found in their field research pointed to the use of chemical weapons. UNSC Resolution 2209 (2015) and Resolution 2235 (2015) expressed the concern of UN to the use of toxic chemicals as a weapon while stating their support on the work of OPCW. Yet, on 24 October 2017, Russia vetoed a resolution that would have renewed the mandate of the OPCW-JIM.

Moreover, the presence of ISIS in the country made the situation worse. This terrorist group is also held responsible for violations of human rights, attacking certain groups and carrying out ethnic cleansing. The US-led coalition including Turkey, Britain, Germany, France, Italy, Spain, Hungary, Australia, Saudi Arabia, Egypt, Jordan, Lebanon, Qatar, and Bahrain conducted airstrikes against ISIS militants in Syria for the first time on 22 September 2014 (ICRtoP, 2017) and since then they have been fighting to clear the country of this terrorist group. Besides, since September 2015 Russian airstrikes have targeted opposition forces although Russia claims that the operations focus on the ISIS (GlobalR2P, 2017). In connection with this, there are people who argue that this fight helps Assad to buy some time (Bellamy, 2014). Because recent events showed that Assad forces took back their territories, including Ar-Raqqa and Deir-Ezzour, from ISIS who were weakened with airstrikes. Although the power of the ISIS has been weakened recently, it still is a major threat for the country and region at large. Based on the 2015 Secretary-General Report of Ban Ki-moon, non-state armed groups are representing a powerful new threat to established international norms. Therefore, actions of ISIS could be another solid reason to invoke R2P.

Conclusion

International community’s inaction in Syria has boosted the discussions about R2P. Rieff (2011) and Thakur (2013) said RIP to R2P after the inaction in Syria. In addition, Murray (2013: 228) said that R2P is noble, yet it is understandable to deny the reality of R2P. On the other hand, Bellamy (2012: 21) underlines that R2P has never been more alive and relevant. Besides, he discusses that nobody can deny that the U.S. airstrikes support R2P because “the time for perfect solutions is
long past” and “the fate of many depends on the international community’s resolve in dealing with the ISIS threat (Bellamy, 2014).” Gholiagha (2015: 1087) mentions that in order to prevent “future Rwandas and future Kosovos” the international community should see R2P as a starter of relevant debates. Weiss (2014: 17) discusses that it would be wrong to say that R2P has died in spite of ongoing human rights violations in Syria. Consequently, even though there are people who lost their hope on this emerging norm, others believe that it can turn out to be a functioning norm with some changes especially if the problem of veto gets out of hand. In other words, it is arguable whether the reason for R2P inaction is R2P’s ineffectiveness or the UN system. Within the R2P framework, in its current situation, it is too late for the prevention stage for Syria, but the reaction stage can help Syrians if UN forces implement this emerging norm successfully.
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