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The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context

Article	Abstract
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INTRODUCTION

The responsibility to protect (R2P) concept is a developing norm and political principle to prevent and respond to four types of serious crimes, namely genocide, war crime, ethnic cleansing, and crime against humanity. This R2P concept emerges as a response to the lack of international

understanding on intervention as a form of protection of rights, which is frequently considered a violation of a country's sovereignty. Rather than from an international agreement or habit, this concept develops as the emergence of events in the 1990s, such as mass slaughters in Srebrenica, Rwanda, and Kosovo.

In 2000, the Canadian Government established an ad hoc commission named International Commission on Intervention and State Sovereignty (ICISS) in the UN General Assembly as a response to this concern and unease. This commission aimed to find solutions and reach consensus between countries in a debate regarding international intervention and state sovereignty. ICISS's main task was to draft a guideline on international intervention as an attempt to protect human rights, which included such aspects as legality, morality, operation, and politic.¹ In 2001, ICISS introduced the R2P concept to the world based on the result of its study.

This all began from the title of report published by the International Commission led by former Ministry of Foreign Affairs of Australia, Gareth Evans, and Aljazair diplomat, Mohamd Sahnoum. The report is intended to deal with complicated issues related to human rights violations. The report focuses on the responsibility of state to protect their own people. However, when a country fails (or refuse) to protect its own people, then the international community has the responsibility to do it.²

ICCS and the report are actually an extension of response to the speech of the then UN Secretary General, Koffi Annan, delivered before the UN General Assembly in 2000. At that time, Koffi Annan asked the international community to agree upon a basis for collective action of international community to intervene cruel mass crimes, such as: genocide, war crime, crime against humanity and ethnic cleansing. At least three humanity tragedies were the reasons for Koffi Annan to launch the campaign, namely: (1) the genocide in Rwanda 1994 that had killed nearly 1 million people; (2) the massacre of 8,000 civilians in Sebrenica in 1995; and (3) NATO's air strikes over Kosovo.³

It was ICISS's hope that this R2P would allow the international community to have the responsibility for certain countries to prevent humanitarian disasters, through a number of strategies, including development assistance, mediation, and negotiation. The prevention could also include more proactive steps, such as applying policies to address the root causes of civil conflicts. The responsibility to prevent is an international intervention model in mediating two conflicting parties or providing assistances by deploying peacekeeping forces. In other words, this attempt is directed to lessen the tension under a conflict situation that may escalate gradually to a worse one.⁴

When this program was introduced for the first time, some doubted this R2P concept since they were concerned that it might threaten the UN Charter and disrupt the UN Security Council's authority, and conflict with the traditional principles of territorial integrity and national sovereignty. In its development, this R2P concept was eventually accepted and adopted as a global principle in the 2005 UN World Summit. This acceptance was incorporated in the Resolution 60/1 2005 World Summit Outcome (known as UN General Assembly Resolution Number 60/1). In the process of

¹ ICISS, "The Responsibility to Protect, Report of The International Commission on Intervention and State Sovereignty" (Canada, 2001).

² Australian Red Cross, *International Humanitarian Law and Responsibility to Protect: A Handbook* (Carlton: VIC : ARC, 2011).

³ Umar Suryadi Bakry, *Hukum Humaniter Internasional Sebuah Pengantar*, 1st ed. (Jakarta: Prenanda Media Group, 2019).

⁴ Muhammad Zahrul Anam, "Humanitarian Intervantion: The Principle of Responsibility to Protect (R2P)," *JURNAL HUBUNGAN INTERNASIONAL* 4, no. 1 (2015): 1–11.

its adoption, the R2P principle was explained specifically as a form of protection for the world's people from such crimes as genocide, crime against humanity, war crime, and ethnic cleansing, also known as atrocity crimes. Articles 138 and 139 of UN General Assembly Resolution Number 60/1 states that the international intervention based on R2P principles should be implemented as per the provisions set forth in Chapters VI, VII, and VIII of UN Charter, all of the decisions of which should obtain approval from the UN Security Council.⁵

The main message to be conveyed based on ICISS's report is that the R2P concept has three responsibilities that need to be implemented. The *first* one is the responsibility to prevent mass extermination and other humanitarian crimes. This is the responsibility of both respective country and the international community to address the root cause of conflicts, such as poverty, competition for resources, and economic pressure. The *second* one is the responsibility to respond to a situation when mass murders, ethnic cleansing, or other humanitarian crimes are occurring or about to occur. This responsibility involves immediate and effective actions to protect the threatened population. The *third* one is the responsibility to build after mass murders and humanitarian crimes. Both the country and the international community share the responsibility to provide assistances to the survivors of genocide to allow them to recover, build their country, and achieve peace once the conflict ends.⁶

The R2P concept is a notion that asserts that a sovereign country has the responsibility to protect its people from avoidable calamities, such as mass murder, rape, and famine. However, when the country has no power or is reluctant to perform this obligation, the responsibility should be assumed by the international community. The R2P concept consists of two basic principles, they are: (1) state sovereignty implies responsibility, and the main responsibility to protect the people lies in the state's hands, and (2) when a population suffers from a serious misery as a result of an internal war, rebellion, repression, or state failure, and the said country refuses or is unable to stop or prevent it, the non-intervention principle should be shifted to the international R2P principle.⁷

In principle, a country is an entity in an international law that obtains power from its people, thus the main objective of a country is to serve any interest and demand of the people. All countries have this main task as a representation of social contract between the governing and the governed parties. However, in reality, in serving its people some countries still prioritize the interests of a fragment of groups, with whom the government regime allies themselves. Some countries even take cruel actions towards its own people under a pretext to maintain the government regime's power.⁸

The humanitarian crisis eventually urges the international community to attempt protection of human rights to the people subjected to their own government's despotism. Historically, the issue of human rights protection from crime has been considered equally old as the birth of the

⁵ Amanda Gita Pattisina and Freidelino P. R. A. De Sousa, "Legalitas Intervensi Internasional Berdasarkan Prinsip Responsibility To Protect (R2P)," *JURNAL ILMU HUKUM: ALETHEA* 5, no. 2 (2022): 129–50, <https://doi.org/doi.org/10.24246>.

⁶ Norill and Eddy Mulyono, "Responsibility to Protect Sebagai Bentuk Perlindungan Hak Asasi Manusia Di ASEAN," *Lentera Hukum* 5, no. 1 (2018), <https://doi.org/10.19184/ejlh.v5i1.6258>.

⁷ ICISS, "The Responsibility to Protect, Report of The International Commission on Intervention and State Sovereignty."

⁸ Lalu Guna Nugraha, "Penerapan Prinsip Responsibility To Protect (RtoP) Sebagai Bentuk Perlindungan Penduduk Sipil Dalam Konflik Bersenjata" 35, no. 1 (2020): 78–87, <https://doi.org/10.29303/jatiswara.v34i1.227>.

United Nations (UN) and the Universal Declaration on Human Rights. The birth of idea to protect human rights could not be separated from the role and contribution of international law experts that affected the emergence and at the same time current development of human rights. Therefore, the international community promises a condition under which mankind all over the world can enjoy the freedom of speech and belief, as well as the freedom of fear.⁹

The human rights protection is an enforceable obligation (*conditio sine qua non*) for a state entity that has declared themselves as a democratic one. This is as set forth in the Vienna Declaration in 1993, where the human rights universality is currently a fact that the international community has accepted. Since then, human rights have had international dimension, in the sense that human rights have contained the substance of universal values. Therefore, it can be understood that a violation of human rights is an international issue, rather than merely an internal issue of a country.¹⁰

If the preventive measure fails, and the humanitarian calamity (violation of human rights) gets even more serious or keeps on going, the international community has the responsibility to react. This second responsibility involves a set of different responses up to intervening with non-consensus military. The responsibility to reach is the second choice to intervene the conflict that has escalated to a more dangerous condition to the innocent population. This allows the international community to take a military action. Hence, a humanitarian intervention, according to Pattison, is a part of responsibility aids in a protective attempt. In addition, the international community also needs to attempt other measures, before they get to military interventions, such as military, diplomatic, and economic incentive and sanction, and use of international criminal persecution, like a referral to the International Criminal Court.

The R2P concept in a narrower perspective emphasizes that it can be implemented, especially in countries failing to provide security during a conflict. This view seems to classify R2P as the last resort, where the international community is a bit passive in applying the R2P concept. This indirectly shows that the international community should respect sovereignty. A large-scale involvement of the international community in the conflict is carried out since it may spread to various root causes such as poverty, political repression, and resources distribution injustice. It is indisputable that individual countries have limited capacity to deal with these issues.¹¹

The third responsibility is the one to rebuild, i.e., the R2P concept in a narrower perspective highlights that R2P can be implemented in particular when the attempt to provide security during a conflict fails. This perspective seems to classify R2P also as a last resort to show that the international community should respect sovereignty. So far, the best way to ensure that civilians are protected and unharmed as a result of atrocity crime or undesired war consequences is a brief ceasefire.

In addition to a country's main role in preventing crimes, the R2P concept suggests that the international community has the obligation to support the country to build their capacity in preventing crimes. When a country is unable or reluctant to protect its people, or even involved in the crime itself, the international community has responsibility to take an appropriate, firm, and timely measure as per the predetermined priority, including non-violent and violent measures as the last resort. Despite not having a binding legal power, the R2P concept is based on existing legal

⁹ Yuniarti, Frentika Wahyu Retnowatik, and Etha Pasan, "Pelaksanaan Prinsip Responsibility To Protect PBB Dalam Penanganan Krisis Kemanusiaan Di Afrika (Republik Afrika Tengah, Sudan & Nigeria)," *Jurnal Sosial-Politika* 2, no. 1 (2021): 17–30, <https://doi.org/10.54144/jsp.v2i1.28>.

¹⁰ Sujatmiko Andrey, *Hukum HAM Dan Hukum Humaniter* (Jakarta: Raja Grafindo Persada, 2016).

¹¹ Anam, "Humanitarian Intervantion: The Principle of Responsibility to Protect (R2P)," 1–11.

principles and normative frameworks, with an emphasis on re-interpretation of state sovereignty which includes not only a country's rights, but also its obligations to protect its people.¹²

The discussion on state responsibility to react, particularly in regard to military intervention, will receive extensive debate from the international community since the intervention concept will conflict the sovereignty one. Therefore, the international law sets some criteria on military intervention, since the absence of limitations might otherwise result in armed conflicts between countries. It is these R2P concept and international humanitarian law that underlie and at the same time limit the military intervention for human rights protection reason.

The international humanitarian law (IHL) sets forth that the military interest principle only allows the use of power to a certain extent and type to achieve a lawful conflict goal, namely the complete or partial control of enemies within the shortest period of time as possible at the least expense of lives and resources as possible. However, this principle does not allow any measure prohibited by IHL. The humanitarian principle prohibits any measure that leads to any unnecessary suffering, injury or damage to achieve a lawful conflict goal.¹³

This research aims to analyze the R2P concept as an attempt to protect human rights in an international humanitarian law context. The application of R2P concept is indeed urgently required to make the international community aware of their people's human rights and invite them to protect it. Human rights violation is one of cruelties that has shaken the conscience of mankind, threatens the peace and safety that the international community has been concerned with.

During my tracking, the author only found some previous studies that discuss the R2P concept. One of them is an article entitled "*Legalitas Intervensi Internasional Berdasarkan Prinsip Responsibility to Protect (R2P)*" (The Legality of International Intervention based on R2P Principle) by Amanda Gita Pattisina and Freidelino P. R. A. de Sousa in *Jurnal Ilmu Hukum: Alethea*.¹⁴ The article covers the legal bases of international intervention based on R2P principle and its correlation with state sovereignty and human rights protection. The analysis suggests that international intervention based on R2P principle is not a violation of state sovereignty, rather it is the international community's responsibility to protect the human rights of the country's people from serious crimes such as genocide, war crime, ethnic cleansing, and crime against humanity.

Another study entitled "*Prinsip Responsibility To Protect (R2P) dalam Konflik Israel-Palestina: Bagaimana Sikap Indonesia?*" (The R2P Principle in Israel-Palestine Conflict: Where Indonesia Stands) by Setyo Widagdo and Rika Kurniaty¹⁵ in *Jurnal Arena Hukum*. The article discusses the possibility of applying R2P principle in the conflict in Gaza Strip between Israel and Palestine, and where Indonesia stands in regard to the principle. R2P is an alternative humanitarian intervention to protect mankind from genocide, ethnic cleansing, and war crime against humanity. When a country fails to protect its people in an intra-country conflict, the international community may take over the responsibility using preventive measure and troops to prevent the conflict from escalating. It is important for Indonesia to consistently support the implementation of R2P as a political and moral

¹² Setyo Widagdo and Rika Kurniaty, "Prinsip Responsibility To Protect (R2p) Dalam Konflik Israel- Palestina: Bagaimana Sikap Indonesia?," *Jurnal Arena Hukum* 14, no. 2 (2021): 314–27, <https://doi.org/10.21776/ub.arenahukum.2021.01402.6>.

¹³ "International humanitarian law Menjawab Pertanyaan Anda" (Indonesia ICISS, n.d.).

¹⁴ Pattisina and De Sousa, "Legalitas Intervensi Internasional Berdasarkan Prinsip Responsibility To Protect (R2P)."

¹⁵ Widagdo and Kurniaty, "Prinsip Responsibility To Protect (R2p) Dalam Konflik Israel- Palestina: Bagaimana Sikap Indonesia?"

commitment in protecting individuals from mass atrocity measures. This concept is also relevant to find a resolution to Israel-Palestine conflict that considers the interests and concerns of both parties.

Another article is written by Norilla and Eddy Mulyono¹⁶ in Jurnal Lentera Hukum entitled “*Responsibility to Protect* sebagai Bentuk Perlindungan Hak Asasi Manusia di ASEAN” (R2P as a Protection of Human Rights in ASEAN). This article primarily discusses the ways and reasons for applying R2P principle in ASEAN region. Based on this research, it is concluded that R2P can be applied in ASEAN through ASEAN Summit in two ways, namely establishing a peacekeeping force and amending the non-intervention principle in ASEAN Charter. The peacekeeping force will be the R2P implementing board, and the amendment to the non-intervention principle provides exception for intervention to protect human rights. The application of R2P in ASEAN is based on three reasons, namely the UN’s authority over regional organizations, ASEAN’s obligation as the UN members, and the role of ASEAN Summit as an arena to fight for R2P. The decision on this application is significantly affected by political factors.

This research is based on the theories of war rule principles in the international humanitarian law used as to limit the use of weapons in an armed conflict, which made it different from previous studies. Using these theories was important since the application of military intervention as a last resort of R2P concept was highly possible when armed conflicts occur. In this case, the UN member states should put human rights protection first over other political goals.

RESEARCH METHODS

This is normative legal research based on the international law framework. As normative research based on legal scientific logic from normative facet, this research used 2 approaches, namely conceptual approach which referred to the international law principles acknowledged by the international community and comparative approach which was used to obtain information and compare to 2 international law concepts (R2P and International humanitarian law).¹⁷ Some of the objectives of legal research are to discover the extent to which the legal rules match the legal norms, the command and prohibition norms match the legal principles and the action of an individual match the legal norms and principles.¹⁸ Using these approaches, conclusions could then be inductively drawn through legal interpretation that produced general provisions as the final product of the research, while answering what had been the problems in this research.

ANALYSIS AND DISCUSSION

Scope of R2P Concept in International Law

Since ICISS report, the R2P concept has been popular and welcomed widely by the international community. For example, during the World Summit 2005, the world’s biggest meeting between heads of states and heads of governments in the history, the United States General Assembly unanimously adopted the responsibility to protect the population from genocide, war crime, crime against humanity and ethnic cleansing. Since then, the R2P concept keeps on developing and

¹⁶ Norill and Mulyono, “Responsibility to Protect Sebagai Bentuk Perlindungan Hak Asasi Manusia Di ASEAN.”

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenanda Media Group, 2014).

¹⁸ Marzuki, 47.

drawing attentions. In his report in 2009 to the General Assembly, the Secretary General of United Nations, Ban Kim Moon noted that R2P has three important elements, namely:¹⁹

1. R2P should be viewed as the “an ally of sovereignty, not an adversary” and that was done by fulfilling the responsibility to protect the country’s population as part of strengthening their own sovereignty.
2. R2P should remain narrow in nature, i.e., that the responsibility to protect was focused on four international crimes (genocide, war crime, crime against humanity, and ethnic cleansing) and must not be extended to include less significant crimes or other humanitarian calamities.
3. R2P should have a limited scope. In this case, the Secretary General of the United Nations referred to various support measures and responses that could be used to fulfil R2P.

Several years after the World Summit 2005 resolution on the R2P concept, a number of progresses had been achieved. The UN Secretary General, Ban-ki Moon, tried to explain the R2P concept by emphasizing three pillars to apply this principle. These three pillars are:²⁰

1. A country’s responsibility to protect its own people from genocide, war crimes, ethnic cleansing and crimes against humanity, and from any measure that leads to these crimes;
2. The international community’s commitment to assist countries in fulfilling their responsibility;
3. The responsibility of each UN member state to respond collectively, timely, and firmly to a country’s failure to give such protection.

The three pillars are equally strong and important. However, the most important dimension of R2P concept has something to do with the attempt to prevent genocide and various other humanitarian crimes. The international community’s expectation is for the world to never witness genocide, war crimes, and crimes against humanity or ethnic cleansing ever again.²¹

While the R2P concept is considered an ally of sovereignty, some of the international communities remain cautious that the R2P principles might erode the state sovereignty. Therefore, the Secretary General of the United Nations before its General Assembly asserted that in order to prevent the R2P principle from being misused for inappropriate purposes, the United Nations needed to develop strategies, standards, processes, tools and practices to implement R2P. Since then, the R2P concept has increasingly firmly institutionalized and accepted as the new norm in international relations, side by side with other norms that have been deeply implanted such as sovereignty and non-intervention principle.

The things that many consider as the foundations of the R2P concept implementation, serving as the guidelines for the international community consisting of sovereign countries, include:²²

1. The obligations inherent in the sovereignty concept;

¹⁹ Australian Red Cross, *International Humanitarian Law and Responsibility to Protect: A Handbook*.

²⁰ “Implementing the Responsibility to Protect : Report of the Secretary-General” (General Assembly UN, 2009).

²¹ Rahadyan Fajar Harris, Farabi As-Sabili, and Inaz Indra Nugroho, “Urgensi Penerapan Responsibility To Protect Guna Menangani Pemerkosaan Sistematis Dalam Konflik Bersenjata Internasional,” *IPMHI Law Journal* 1, no. 2 (2021): 225–41, <https://doi.org/doi.org/10.15294/ipmhi.v1i2.53510>.

²² Santa Marelda Saragih, “Responsibility To Protect : Suatu Responsibility Dalam State sovereignty,” *Jurnal Hubungan Internasional* 2, no. 1 (2011): 204–19, <https://doi.org/10.4324/9781351278805-13>.

2. The responsibility of the UN Security Council as set forth in Article 24 of UN Charter to maintain the international peace and security;
3. The specific legal obligations set forth in the human rights declarations, covenants, international agreement, international humanitarian laws and national laws;
4. The developing practices that countries, regional organizations and UN Security Council carry out.

This R2P concept is a legally binding norm, and in principle it is based on the existing international laws. It is considered a norm since R2P is a binding guideline or parameter to take a measure or a stand in international community relations. Thus, it is expected that the enforcement of this concept can prevent conflict of interests or disruptions to human's interests and security from occurring to allow the manifestation of harmony and order.²³

A country's responsibilities in the face of genocide have been stated in the Genocide Convention 1951, which asked the country to take responsibility for preventing and punishing genocide crime. When faced with war crimes, a country is required to respect and ensure the respect to the international humanitarian law (IHL) referred to in the Geneva Conventions 1949 and their Additional Protocols. These obligations are relevant with the responsibility for war crimes based on the R2P concept.

As for crimes against humanity, while it is an international crime well recognized and lengthily defined in the Rome Statute 1998, the provisions have no separate convention or agreement that defines the country's responsibility for the crime. For ethnic cleansing, it is registered as a separate crime based on this R2P and has no separate legal position in international law or it exists in a grey area since its emergence.²⁴

The implementation of IHL is not the sole responsibility of a country. Rather it is also the responsibility of other entities that may involve in an armed conflict such as non-state armed groups and individuals. Meanwhile, the ones assuming the responsibility for implementing the R2P concept are merely countries. This ranges from the responsibility to protect the people in their own jurisdiction and territorial areas to protecting other countries' people on the basis of humanity. This can be carried out in four ways, they are:

1. encouraging countries to fulfill their responsibility;
2. helping them fulfill this responsibility;
3. helping them build their capacity to protect; and
4. helping countries under a pressure before the crisis and conflict break.

When a country fails to protect its people from the four international crimes (reasons for implementing R2P) or in fact commits the crimes themselves, the international community then should immediately and firmly respond to it, starting from using peaceful measures such as diplomatic, economic, and humanitarian measures as well as other peaceful measures. If these peaceful measures do not suffice, the international community should get themselves prepared for

²³ Ines Thioren Situmorang., "Implementasi Konsep Responsibility to Protect (RtoP) Oleh Dewan Keamanan PBB Dalam Krisis Kemanusiaan Di Libya" (Yogyakarta, UGM, n.d.).

²⁴ Bakry, *International humanitarian law Sebuah Pengantar*.

a stronger action, including taking a joint measure to apply some pressure as set forth in the UN Charter Chapter VII.

The ongoing debate shows that the R2P on the basis of humanity is still controversial. The most frequently highlighted criticism is the frequent use of military force that the strong countries often abuse to pressure the freedom and independence of weaker countries. Despite the many controversies that this R2P still has, some international law experts argue that it can still be implemented as long as it meets the following requirements:²⁵

1. the humanity intervention should be based on a clear reason and goal, namely to protect human rights;
2. it should be implemented by considering the proportionality requirement, and should never be excessive; and
3. it should be based on clear rules to avoid any exploitation by any country towards the territory they occupy.

Therefore, in international law it is important to note that R2P is a norm or principle that states that sovereignty is not a privilege, rather it is a responsibility, or simply “sovereignty as responsibility.” Thus, the R2P concept prioritizes the country’s obligations, both at national and global levels as a state member of the international community in an attempt to protect every individual under its control. A sovereign government assumes at least 3 (three) responsibilities, namely:²⁶

1. It is responsible for performing its function to protect the safety and life of its citizens, and ensure their well-being;
2. It is responsible for its people and the international community through its membership in the UN;
3. The administrator of a government is responsible for the measures and policies it takes.

Under Article 51 of the United Nations Charter, a military intervention can be carried out for self-defence purpose, either individually and collectively, when an armed attack occurs. The self-defence of a country can be implemented by requesting assistance to other countries to deal with or avoid a crisis that causes mankind to suffer. In this way, the countries requested for assistance can carry out the military intervention as a collective self-defence.²⁷ In the said article, it is stated that a country may ask for support from others, i.e., from the international community to help it address a crisis. This self-defence, be it individually or collectively, can be done on one term, namely the concerned country should inform this self-defence to the Security Council of the United Nations.

²⁵ Atip Latifatulhayat, “Perang Irak Dan Hukum Internasional,” *UNPAD Journal of International Law* 3, no. 1 (2004).

²⁶ Rahayu, “Eksistensi Prinsip ‘Responsibility To Protect,’” *MMH* 41, no. 1 (January 2012): 128–36, <https://doi.org/10.14710/mmh.41.1.2012.128-136>.

²⁷ Dewi Agha Putri and Hasan Sidik, “Responsibility to Protect Dalam Kasus Genosida Oleh ISIL Terhadap Yazidi-Irak Melalui Intervensi Militer Amerika Serikat,” *Jurnal ICMES* 4, no. 1 (2020): 46–63, <https://doi.org/10.35748/jurnalicmes.v4i1.65>.

Correlation between Responsibility to Protect and International Humanitarian Law in a Military Intervention

In ICISS's Report, especially in the lengthy discussion of responsibility to react, it is emphasized the use of just-war theory criteria to allow the reaction in the form of a military intervention can be said adequate. The just-war theory (*bellum iustum*) is a military ethical doctrine deriving from the Roman Catholic philosophy. This doctrine has long been studied by theologians, moralists, ethicists, and international policymakers, the essence of which suggests that any conflict, violence or use of military power should meet the philosophical, religious, and political criteria.²⁸ Furthermore, the ICISS's Report also sets the criteria regarding the use of military intervention on the basis of R2P towards a sovereign country, namely:²⁹

1. The action should have a just cause as a mass crime has occurred;
2. The intention is right in the form of an attempt to stop mankind suffering;
3. It is a last resort since peaceful ways of either diplomatic or non-military nature fail;
4. It is based on a legitimate authority under the mandate of the UN Security Council;
5. It uses a proportional means, meaning it is non-excessive in terms of both the means and goals as per the international humanitarian law; and
6. The military intervention is done with a reasonable prospect of success to stop the crime and mass suffering.

In this modern era, the just-war theory principles are revisited by a number of international relations experts, such as Michael Walzer and Michael Farrel. In his *Modern Just-War Theory*, Farrel mentions four criteria that can justify a country or other international relations actors to engage in war or military intervention, namely: *just cause*, *last resort*, *reasonable prospect of success*, and the *right authority*.³⁰ Meanwhile in his "*Just and Unjust Wars*", Walzer suggests two characters that serve as an argument why an actor decides to wage a war or to make a military intervention, namely *jus ad bellum* (when one has to engage in a war) and *jus in bello* (how one has to engage in a war).³¹

In another note, Walzer explains that the justifications of an intervention can be classified into three. The *first* one is an international institution, meaning that an intervention can be said legal if it obtains the mandate from this international institution. The *second* justification is that it is at the request of a legitimate representative of the country to be intervened to maintain their position in the face of threats and attacks, both internally and externally. Finally, the *third* one is humanity reason. In this light, an intervention is made aiming to save human lives from the violence committed by either the government or rebellion movement or as a result of anarchy within the country.³²

Based on this perspective of Walzer, it can be understood that a military intervention by an international relations actor can be justified if it meets the moral criteria of *jus ad bellum* and

²⁸ Bakry, *International humanitarian law Sebuah Pengantar*.

²⁹ ICISS, "The Responsibility to Protect, Report of The International Commission on Intervention and State Sovereignty."

³⁰ Michael Farrel, *Modern Just War Theory: A Guide to Research* (United Kingdom: Scarecrow Press Inc, 2013).

³¹ Michael Walzer, *Just and Unjust Wars: A Moral Argument With Historical Illustrations* (New York: Basic Books, 2006).

³² Jerry Indrawan, "Intervensi Kemanusiaan Ke Libya: Refleksi Politik," *Konfrontasi: Jurnal Kultural, Ekonomi Dan Perubahan Sosial* 5, no. 1 (2018): 10–17, <https://doi.org/10.33258/konfrontasi2.v7i1.20>.

jus in bello. *Jus ad bellum* is a condition or criterion needed to wage a war or make a military intervention, consisting of:

1. *Jus cause*, meaning that a war or military intervention into a country should be done when the country has actually been under a humanitarian disaster. In this context, the prerequisite for a war or military intervention to be allowed is measured from the “a large-scale loss of life” or “a large-scale ethnic cleansing” reality.
2. *Jus intention* or right intention, meaning that a war or military intervention should be based on the right intention, i.e., the main objective is to halt or avert human suffering, regardless of any other motive that the intervening country possibly have.
3. *Jus authority*, meaning that the decision on the need to wage a war or take a military intervention should be made by *the right authority*.
4. *Last resort* or *final resort*, meaning that a war or military intervention is morally allowed “only and if only” no other effective means are available to halt human suffering. This war and military intervention are a last resort when various non-military options to solve the humanitarian disaster have been explored.

In addition, based on the *jus in bello* principle, what serve as parameters of the conditions or criteria needed to wage a war and make a military intervention are:

1. *Proportionality*, meaning that the scale, duration and intensity of the planned military intervention, as well as the means used should be proportional, using only the minimum power needed. The extent of military power allowed for use should be measurable to the occurring humanitarian emergency degree (*just cause*) and should be limited by the right intension to save humanity (*just/right intention*).
2. *Discrimination*, meaning that the military intervention or war should be capable of separating civilians from armed forces (combatants and non-combatants). In this case, the civilians must never be the military attack target.
3. *Responsibility*, meaning that the intervening country should not be held responsible for the side effects of its military activity as long as they meet the three criteria, namely: its military action should have the intention of producing a good consequence, with no malice, and the goodness that this intervention generates should be greater than the damage it causes.
4. *Reasonable prospect*, meaning that in engaging in the war or military intervention, there has to be an adequate reasonable prospect of success in halting or averting suffering.

Under a peaceful circumstance at national level, the protection of human rights depends of course on the political will of a country, rather than on what other countries and international organizations want, or even the application of international law instruments. This is because each country will use its sovereignty completely to determine every policy in managing their country. International organizations such the UN or international human rights law instruments surely have the limitations to be able to force their power and authority.

In human rights context, this political will is manifested in its political statement by ratifying the international human rights instrument which is then implemented through a national legislation. The progress of weapon technology has a negative effect on both human and environment as a

result of wars or military interventions. Protecting human rights is set forth in the international law instruments, including R2P and international humanitarian law, which aims to protect human rights with humanitarian principles. The main objective of protecting human rights is to prevent abuse of power and arbitrariness by certain parties.

As the international human rights are enforced, the obligations that countries should respect have been set forth. Through international human rights agreement, the governments of these countries promise to set domestic (national) measures and laws in their constitutions in harmony with the existing human rights agreements. In general, three obligations should be assumed by these countries in regard to the protection of their people's human rights, they are:³³

1. The obligation to respect, meaning that these countries should refrain themselves from intervening or limiting the exercise of human rights;
2. The obligation to protect requires these countries to protect both individuals and groups under their jurisdictions from human rights violations;
3. The obligation to fulfill, meaning that these countries need to take positive measures in facilitating those enjoying the human rights.

From legal perspective, the R2P as adopted in the UN General Assembly Resolution No. A/60/I, especially Paragraphs 138 and 139, are recommendatory in nature. This means it has no binding legal power despite the fairly important political and moral contents they have in creating new international norms. Actually, the R2P concept only provides a framework for the use of various existing and available means to prevent mass atrocity. This means that R2P does not really create a new obligation for countries since it merely refers to the state obligations as set forth in the existing international law instruments, such as the international humanitarian law (IHL) and international human rights law.³⁴

From this elaboration, the R2P concept is indeed only officially inaugurated in the UN General Assembly Resolution 2005. Yet, in actuality, the concept has had its legal basis in the Universal Declaration of Human Rights (UDHR) 1948. While it is merely a declaration, UDHR is acceptable to all countries since the provisions within it derive from the international habits. This is in accordance with Article 38 paragraph (1) of International Court of Justice (ICJ) that states that international habits are one of international law sources. It is these international habits referred to in UDHR that serve as the basis that R2P is acceptable to all countries since it has something to do with human rights. In the historical aspects, the protection of human rights had been implemented since long ago, such as the reasons behind Magna Charta or French Revolution. Thus, it can be said this concept is born thanks to the international habit, especially in the protection of human rights.³⁵

The R2P concept simply a part of a greater agenda of IHL to protect civilians during an armed conflict, since it particularly focuses its attention on the protection of population from genocide, war crimes, ethnic cleansing and crime against humanity, as well as severe violation of international humanitarian law and human rights. According to Helen Durham and Phope Wynn-Pope, when comparing IHL and R2P, it is important to note two issues, they are:³⁶

³³ Bakry, *International humanitarian law Sebuah Pengantar*.

³⁴ Husni Laili Putri, "Responsibility to Protect Sebagai Doktrin Atau Norma Yang Berkembang Dalam Hukum Internasional," *KANUN: Jurnal Ilmu Hukum* 65 (2015): 151–71.

³⁵ Norill and Mulyono, "Responsibility to Protect Sebagai Bentuk Perlindungan Hak Asasi Manusia Di ASEAN," 16.

³⁶ Angus Francis, Vesselin Popovski, and Charles Sampford, *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (Tokyo: United Nations University Press, 2012), 176.

1. R2P itself is not a legal concept, rather it obtains its authority from the existing international law bodies, such as conventions for prevention and punishment of Genocide, Roman Statute on International Criminal Law;
2. R2P only focuses on protecting the vulnerable populations from four crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. This means that naturally the scope of R2P is narrow, and it cannot be viewed as a replacement for most protections offered by IHL and other international law bodies.

Despite their differences, IHL and R2P share some commonalities, interrelatedness, and relevance to each other. As has been commonly known, both IHL and R2P are part of the international regime intended to protect mankind from human rights violations and reduce human suffering. This applies particularly during an armed conflict. IHL and R2P have the same legal bases, with both requiring countries to uphold the specific obligations previously existing under IHL and human rights laws. Numerous measures that countries need to fulfill their obligations in respecting and ensuring the respect to IHL are also what are needed to prevent R2P crimes.

In the report of UN Secretary General, Ban Kim Moon, in 2009 on the implementation of R2P, the steps to support countries' obligations to protect their people at risk to R2P crimes have been elaborated, including:³⁷

1. Encouraging countries to protect their own people by finding technical assistances from the UN, neighboring countries, regional and international organizations, specialized NGOs or independent experts;
2. Helping them fulfill the responsibility through training, learning, and education programs, particularly those targeting important actors in the society such as police, armed forces, judicial body and legislator, public or confidential persuasion, capacity building, and working together with regional and sub-regional organizations.

The main contact between IHL and R2P lies in war crimes. Such crimes as genocide and crimes against humanity may occur during a war without having to consider the armed conflict benchmark needed in IHL. However, war crimes are directly related to R2P since it requires an armed conflict benchmark. The situation included in IHL, yet not included in R2P is the protection of civilians threatened by an unplanned mass atrocity as the armed conflict escalates. Meanwhile, the situation included in R2P, yet not included in IHL, is the threat from a planned mass atrocity beyond an armed conflict.

The R2P concept and IHL has a specific relevance in two aspects. The *first* aspect is the capacity to prevent war crimes and its relation with General Article 1 of Geneva Convention and Pillars 1 and 2 of Three-Pillar Framework conveyed by Ban Ki-Moon regarding with R2P. The *second* aspect is the capacity to collectively respond to war crimes set forth in Ban Ki-Moon's three-pillar formulation in Article 89 of Additional Protocol 1 of Geneva Conventions. Thus, R2P seems more like a helpful political means and policy, benefitting from elements of the existing IHL and international criminal law, yet it "calls for" a set of measures focusing on protecting the human rights of civilians. The international criminal regime has also developed well, ranging from genocide to crimes against humanity, both of which are important elements sitting next to each

³⁷ Bakry, *International humanitarian law Sebuah Pengantar*.

other with R2P and IHL. Therefore, the R2P concept and IHL are expected to run in synergy and support and strengthen each other in realizing the protection of civilian's human rights.

CONCLUSION

The R2P concept is an international norm aiming to protect mankind from serious crimes such as genocide, war crimes, ethnic cleansing, and crimes against humanity. R2P has three pillars that involve state responsibility, international community, and timely and firm measures in protecting the threatened population. Even if it is not a legal formulation, R2P has been accepted as an obligation of legal significance by most UN state members. While its use still faces some challenges, the implementation of R2P is expected to encourage countries to fulfil their responsibility and obligation to protect the human rights. In the context of conflict and violation of human rights, R2P serves as one alternative way that the international community need to implement. Meanwhile, the international humanitarian law (IHL) serves the purpose of compromising the basic principles of humanity and military needs. Despite the fact that IHL does not explicitly prohibit military intervention to protect the human rights, this R2P concept remains relevant and valuable in IHL context. R2P provides a clear framework in protecting the human rights and prevent mass atrocity. To effectively implement R2P, it is important to have a better understanding of the elements of R2P and IHL, and how they can work in synergy while considering their respective different approaches. The right integration between R2P and IHL serves as the first important step in an attempt to protect the human rights for civilians. Using these steps, the international community will be enabled to take effective measures to prevent and address mass atrocity and protect the human rights under a conflict situation.

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