



A critical examination of responsibility to protect in the realm of international law and human security from third world perspective

Vijay Kishor Tiwari¹, Surbhi Khyati²

¹ Assistant Professor (Law), The West Bengal National University of Juridical Sciences, Kolkata, West Bengal, India

² Ph.D, Department of International Relations, Jadavpur University, Kolkata, West Bengal, India

Abstract

The end of Cold War has given impetus to various humanitarian interventions and it has brought a tectonic shift in the security paradigm. The notion of security was, hitherto, understood in terms of security of the State. State - in which lied the sovereignty of its people - was perceived as the only legitimate representative of the collective will of its people and thus 'empowered' to pursue its national interest to safeguard its territory. Hence conventional security approach recognized the State as the 'natural' power and the sole unit of international dynamics and the only authority to use coercive force over its own people. Contemporary thinking on security, however, has seen a paradigm shift from this conventional approach and has pushed for human beings, rather than State, to become the central concern of security discourse. The idea of human security gave birth to the idea of 'Responsibility to Protect' as an emerging norm in international law, which is seen as a tool of recolonization by many Third world countries. The global community is still caught in the conundrum of protecting human lives from violent threats at one hand and the consequences of 'democratic imperialism' which is inherent in humanitarian interventions in the name of human rights. Though at the very outset, responsibility to protect seems 'innocuous' and a 'pious principle' to protect the human rights of those who are subjected to genocide and ethnic cleansing, many critics see it as 'spectre of colonialism' and hegemony in a new form and hence they are not ready to take it as a readymade panacea of human rights abuses. The new norm of 'Responsibility to protect' has received cynical responses from many human security experts and international lawyers.

This paper will attempt to examine Responsibility to Protect as an evolving norm in the realm of international law and its critique from the perspective of third-world countries. It will also examine the perils of imperialism which are often brought to third-world countries in the name of human security, democracy, peacebuilding, and the rule of law from the Third World Approach to International law'.

Keywords: law and human security, humanitarian interventions, democratic imperialism

Introduction

The last decade of the 20th century has seen some of the biggest humanitarian crises of humanity. It was felt that the UN Charter, which was drafted in the backdrop of World War II to protect humanity from the scourge of war, is proving inefficient to stop internal strife and ethnic conflicts within the territorial jurisdiction of a member state. There was an apparent collision between the idea of sovereignty and human security. The advocates of human security argued that States cannot take the alibi of sovereignty for human rights abuses. On the other hand, many third-world countries had this fear that in the name of securing human rights and human security, western countries might take away their sovereignty. Therefore, there was an apparent tension between the Purpose of the UN Charter as espoused in Article 1 of the Charter and Article 2(4) of the Charter.

The dismemberment of the USSR has presented a unique opportunity for the international community to see and interpret the UN Charter in a radical manner. The fall of the Berlin Wall has presented an opportunity for those presenting the ideas of liberalism, globalization, democracy, and rule of law as ultimate gospels for entire humanity despite cultural, political, anthropological, and linguistic differences among various nationalities. International law was presented as a cohesive bond to achieve a liberal monolithic world. However, to achieve this homogenous

world, it was argued by many scholars of international law that there is a need to see the question of intervention and sovereignty in a different manner in which the old model of West Phalian sovereignty must not play an obscurantist role. To provide any legitimate ground for intervention, the international community needed to see the UN Charter, its strengths and weaknesses in a new light. As often these interventions are done in the name of securing peace, establishing the rule of law and furthering the cause of democracy, and therefore, an honest appraisal of such interventions was needed on the basis of democratic deficit in the structure of international institutions such as the Security Council and by examining the legality of such interventions. These interventions required reasoned and legitimate justifications as well. The placid protectors of the international order must not fall short of giving these justifications. It must be asserted further that in the age of rights and justice, stability must not be given privilege over the question of justice.

Intervention and Sovereignty: Perpetual Enemies?

The idea of sovereignty, as we know it today, is a product of upheaval in Christendom in the middle ages. It is an eventuality of the power struggle between the Holy Roman Empire and the Pope. Jean Bodin was the first philosopher to favor monarchy over Pope in his work *De Republica* in

1576. Similarly, Thomas Hobbes in *Leviathan* presented the idea of a sovereign who can control the masses and direct their action for the common good. For Hobbes, the sovereign's power must be absolute and without any limits to obviate the condition of society in nature which was, according to Hobbes, 'nasty, brutish and short.' However, such ideas of sovereignty failed to appreciate the new emerging situations of subsequent years. More importantly, this idea of sovereignty was a fit case for internal arrangement with a nation but, it did not have any response to the problems of international relations. Even in the 19th century, such an absolute idea of sovereignty has found supporters like John Austin. John Austin in *Province of Jurisprudence Defined* sovereignty in following ways-

'The superiority which is styled sovereignty, and the independent political society which if a *determinate* common superior, *not* in habit of obedience to a like superior, receive *habitual* obedience from the *bulk* of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent.'^[1] [Italics are in original].

However, such an absolute idea of sovereignty is out of sync with the realities of the present day. This idea of sovereignty is unworkable in the international arena. In mutual intercourse of various nations, such an absolute idea of sovereignty was never acted upon. The construction of superiority as 'might' is not a workable proposition in international relations. However, sovereignty is still a formidable concept of international relations as international law for its very articulation assumes the existence of states. To understand the idea of sovereignty, we need to trace the genealogy of sovereignty in the Treaty of Westphalia and other international events of significant consequences in the global domain.

It is being argued by a significant number of international lawyers and IR theorists that sovereignty and intervention are antithetical to each other. There's a consensus among IR scholars that the concept of nation-states and sovereignty are the outcomes of the Treaty of Westphalia which was concluded in 1648. Peace of Westphalia ended the Thirty Years of War and it created the modern concept of the nation-state. Treaty of Westphalia rested on two very important principles: '*rex est imperator in regno suo*' (the king will rule in his realm) and '*cuius regio, eius religio*' (the king will determine the religion of his realm). As the king was given the absolute command of his realm, it was construed that the sovereignty of the king demands and expects non-intervention from other kings. And therefore, the idea of non-intervention was implicit in the idea of Westphalian sovereignty. This idea of Westphalian sovereignty continues in modern international law in varied forms. According to Benno Teschke, The Peace of Westphalia is the 'foundational myth'^[2] This positivist understanding of sovereignty was crystallized in Article 2 (4) of the United Nations Charter, which refrains all members of the United Nations from the threat or use of force against the territorial integrity or political independence of any state.

However, the end of the Cold War and various humanitarian crises in the 1990s drew our attention to the need to travel beyond the strict positivist understanding of sovereignty and make a case for intervention when there is a threat of genocide, crimes against humanity, or war crimes. It was felt that though Article 2(4) of the UN Charter is sacrosanct,

it must not be a hurdle for the international community to intervene when there's a humanitarian crisis going on within the territorial limits of a nation-state. National sovereignty must not strangle human security. The privileged position of national security over human security too was questioned. This understanding presented a paradigm shift in security and sovereignty discourses. Rwandan crisis, the crisis in Sierra Leone, and the Kosovo crisis invited international reactions and calls for having new debates on intervention and sovereignty. United Nations failed to prevent some of the major humanitarian crises and UN Secretary-General did not mince words while expressing his disappointment on this abject failure of the international community to prevent such crises. He opined: "...[I]f 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 offend every precept of our common humanity"?'^[3]

These developments prompted the Government of Canada to commission the International Commission on Intervention and State Sovereignty [hereinafter ICISS] in the year 2000. The Commission was to explore the ways of reconciliation between intervention and sovereignty of the state.

Radical Shift In Security Discourse And Its Impact On International Law

The life of *Leviathan* has hitherto been considered of prime importance as the traditional idea of sovereignty has been given a paramount status in our legal and security discourses. For the survival of the social contract, the security of *Leviathan* was considered a must. The state has exclusive control over the representation of its people and it has a monopoly over the collective will of the people. However, this approach of security faced a massive challenge in the backdrop of the Fall of the Berlin Wall. The new security approach was unveiled by the *Human Development Report*^[4] of UNDP in 1994. The idea of 'Human Security' is an intellectual progeny of the idea of 'Human Development'. Since the 1990s, United Nations Development Programme (UNDP) is publishing the Human Development Report. Through this document, UNDP is promoting the concept of 'human development'. Hitherto the human development has been conceived as 'a process of enlarging people's choices and capabilities.'^[5] This particular approach of 'human development' equates economic development with growth. An increase in per capita income is supposed to give rise to the living standard of the masses. Therefore, often developmental economics, the performance in the arena of development is being measured in terms of cumulative developmental products and other aligning indicators. However, this understanding of growth is myopic in many regards as growth sans development can happen in many ways. Moreover, per capita income may not necessarily result in an augmented living standard. As noted by The Human Development Report in 1990 that the primary objective of development is to benefit people and often, any mechanical consideration of growth eclipses this simple fact.

Human Development Reports have enumerated several indicators to evaluate development performances. These indicators include education, gender justice, health services, food security, etc. They help individual nation-states to

classify areas of attention. Human Development Reports have been the catalysts to define the idea of development in a 'people-centered' manner. One can claim without any hesitation that this 'people-centered' approach has now started shaping the ideas of security, too, which has resulted in conceptualizing the idea of 'Human Security'. Both ideas are complementary concepts as both are having the same referent object i.e. Humans. Therefore, it is not a surprise that in Human Development Report 1993 'Human Security' was referred to as 'one of the pillars of people-centered world order.' The end of the Cold War was a significant stimulus for this radical approach as it was thought that resources can be shifted from military expenditure to developmental projects and thereby a holistic view of human security can be sustained. According to Human Development Report 1994, the concept of security has to undergo a radical change and its focus must change from nation-states, arms race and territorial gains and security to human development, employment, and food security.^[6]

This report devotes an entire chapter on Human Security. According to this report, Human Security has four basic features-

1. Human Security must be taken as a universal concern that is relevant to everyone and everywhere.
2. Its contents are interdependent and they must be taken as a whole. Any threat to Human Security in one part of the world affects the entire humanity.
3. Human security can be ensured through early prevention (precautionary prevention) than later intervention.
4. It is 'human-centered.'^[7]

The definition of Human Security Covers 'safety from chronic threats such as hunger, disease and, repression' and it is wide enough to cover 'protection from sudden and hurtful disruptions in the patterns of daily life'^[8] In World Conference for Social Development 1995, it was proposed to discuss the concept of Human Security, but at that time, this concept had not gained momentum. The concept gained its momentum in the backdrop of the phenomenon of globalization and the end of the cold war. After the end of the cold war, it was realized that development and security must be conceived, taking people as a referent point. Gradually the concept of human security has also become one of the significant policy objectives across the modern liberal-bourgeois world.

This people-centric security approach is known as 'Human Security'. This change in the security discourse and the international community's concern for the security of human beings resulted in 'Responsibility to Protect' in the realm of international law.

Narrow and Broad Approaches to Human Security

Human security is slowly and steadily making inroads in security studies. Though there is a proliferation in reference to human security, this concept is still extremely fluid. Opinions are divided both at policy and academic level concerning the definition of the term 'Human Security.' Human security is defined primarily by narrow and broad approaches. The narrow approach, supported and inaugurated by the Canadian government, is guided by western liberal thought and based on two important aspects. Firstly, it defines human security in terms of safety from hunger, disease, and oppression. Secondly, it also tries to

cover protection from disruptions.

The Government of Canada supported the narrow approach of human security while criticizing the approach taken by UNDP in defining human security. According to the Canadian government, the definition provided by UNDP is too broad and ambitious. If we critically analyze the Canadian document on Human security, then we find that this document perceives human security only in terms of direct violence and ignores the effects of structural violence^[9].

Various human security scholars have criticized this narrow approach of human security and argued that there is no hierarchical preference in freedom from want and freedom from fear. To ensure the human dignity of every individual it is absolutely essential that human security must travel beyond securing human lives in a conflict situation. Commission on Human Security, supported by the Government of Japan, defines human security as protection for: 'the vital core of all human lives in ways that enhance human freedoms and human fulfillment.'^[10]

This report, however, does not enumerate the content of human security as it attempts to encompass the vital core of human life that has various cultural variations. These two understandings are specimens of the difference of perception about human security between Western Euro-centric and Third World approaches. However, many scholars reject this binary understanding. As Amitabh Acharya puts it:

'It is tempting to see the divergent perspectives on human security, such as those held by Japan and Canada, as symptomatic of a familiar schism between Western liberalism and "Asian values." But this would be misleading. Disagreements about human security are as much West-West and East-East as East-West. They reflect genuine differences on the philosophical and practical ground'^[11].

History of the Use of Force and An Appraisal of Contested Nature of Humanitarian Intervention

20th Century has witnessed a remarkable jurisprudential development in international law pertaining to the use of force. To understand the responsibility to protect holistically, we need to trace the development of laws pertaining to the use of force in the 20th century. Between the two world wars, there has been significant development in international law relating to the use of force. Treaty of Versailles, 1919 did not outlaw the use of force, but it restricted the right of the state to go to the war where an attempt to resolve an international dispute amicably has failed. The Covenants of the League of Nations, 1919 created the obligation to use peaceful means of settling the dispute. Any member of the League could have resorted to war only when a peaceful settlement could not have achieved by the procedure established under the Covenant. There was no general prohibition of war under this Covenant. Covenant advocated for reduced armaments. However, it acknowledged the need to maintain sufficient stock of armament for self-defense. The Covenant gave extreme importance to the territorial integrity of the member-states and discouraged the use of force against the territorial integrity of member-states. Thus, though the war was not outlawed completely by the Covenant, yet it had significantly stigmatized the use of force. Article 16 of the Covenant provided that '*Should any member of the League*

resort to war in disregard of its covenants under Article 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other members of the League.' Thus, resorting to war before exhausting all possible avenues for the peaceful settlement of the dispute was made an act of war against the League itself. In the Geneva Protocol 1924, the act of aggression was mentioned as an international crime in the Preamble.

Kellogg-Briand Pact (General Treaty for the Renunciation of War), which was signed in 1928 and ratified by 36 nation-states, was a significant achievement to outlaw war as a means of foreign policy and to settle disputes. Article 1 of this Pact renounced war as an instrument of the national policy of nation-states in their relations with each other. Article 2 of the Pact stated that *'the settlement or solution of all disputes and conflicts, of whatever nature or whatever origin they may be, which may arise among them, shall never be sought except by pacific means.'*

The United Nations Charter significantly changed the regime of use of force in international law. The use of force has been outlawed by the Charter under Article 2 (4). The Article provides, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any manner inconsistent with the Purposes of the United Nations."

There are two exceptions to this general rule:

1. The powers of the Security Council under Article 39 of the Charter
2. The provision for self-defence under Article 51.

The Concept of humanitarian intervention does not have a clear precise definition. It is not a static concept either. In medieval century Europe this concept was defined primarily from a Christian lens. Gradually it became a secular concept. However, the intervention has always been seen in opposition to sovereignty. There is a strong view among the IR theorists that any legitimate humanitarian intervention must reference human rights. Therefore, its scope cannot be widened loosely.

As the 1990s saw some gruesome humanitarian crisis, ICISS which was commissioned by the Government of Canada took this crucial task to harmonize the relationship between intervention and sovereignty. World summit, 2005 took R2P on its agenda and despite several objections, it was able to come out with an outcome document. It was stated that the international community has a responsibility to act when the state had 'manifestly failed' to protect its citizens. The just cause threshold was high. Paragraphs 138-139 of the World Summit Document are important in this regard.

Justifying the liquidation of the sovereignty of the nation-state during the humanitarian crisis will remain contested in a world that has seen the nasty effects of colonialism. It is no surprise that most of the Third World countries are deeply susceptible to this concept. These humanitarian interventions and their selective history have also been reasons for this suspicion. We must not miss a picture that the 'democratic deficit' in the composition of the Security Council and the entire structure of the UN and other world organizations raises this very valid question in the leaders of the global south. In this light, the entire exercise of ICISS was seen from subaltern countries with deep suspicion.

An Examination of Responsibility to Protect from the Third World Prism

'Responsibility to Protect' doctrine (popularly known as R2P) was adopted unanimously in the 2005 World summit of the UN General Assembly. Its principles were reaffirmed by UNSC in Resolution no. 1674 of 2006. Further, UNGA agreed on a resolution to consider the principles (A/63/308, 7 Oct. 2009). Security Council again reaffirmed the responsibility to protect principles with Resolution no. 1894. There's also a significant development that the United Nations have established a Joint office for the Prevention of Genocide and the Responsibility to Protect. Though critics are writing the obituary of this doctrine from day one, the admirers are claiming some significant success of deploying R2P in a humanitarian crisis. The admirers of R2P point out that R2P prism was able to stop post-election atrocities in Kenya with the help of a robust diplomatic response. R2P was also deployed to avert humanitarian crisis in Libya and Côte d'Ivoire. But such usage of R2P remained a cause of concern for several states as NATO has exceeded its own mandate and the intervention swiftly changed its goal post from civilian protection to regime change. Intervention in Côte d'Ivoire is also not free from this blemish. It must be noted that the failure of the international community concerning Syria has further given a strong argument to those critics who are willing to write an obituary of R2P.

In the 'age of right' and 'human security', the United Nations must be seen protecting the people from gruesome crimes and enforcing the purposes and principles of the United Nations. In the post-cold war era, various organs of the UN are actively engaged in promoting principles of R2P. But there are some very significant international developments that might eclipse the rise and promotion of R2P. One such development was the election of Donald Trump as President of the USA in 2016. Another such development is the rise of China as a probable world hegemon replacing the reluctant USA as the world superpower. One must note that with the demise of the USSR, the new world order has emerged in which the USA as a sole superpower took an activist role in promoting democracy, human security, human rights, etc. This activist role was seen during the Clinton, George Bush Junior, and Obama administrations. Trump administration has radically altered the USA foreign policy and it is behaving like a 'reluctant hegemon' which prioritizes nationalism over globalism. The rise of China as a probable hegemon replacing the USA will produce seismic changes in the world order. An authoritarian regime as hegemon might not promote concepts like R2P and human security. But the effect of such international developments yet to be seen.

Despite these setbacks to the R2P the proponents and supporters insist that it is the most potent weapon to stop genocides and mass killings. However, for third-world scholars, the threat of recolonization is real, and therefore, R2P requires rigorous scrutiny.

However, it must be noted that there is no dispute on this basic fact among nations that states have the primary responsibility to protect their own from wild disruptions, genocide, and crimes against humanity. The contestation is about the ways to secure this laudable goal.

Advocates of R2P suggest that R2P is not unleashing a torrent of the new norm to undermine the sovereignty of nation-states. Rather R2P is well within the province of International Law. They point out that the World Summit

Outcome Document covers only four crimes- genocide, war crimes, ethnic cleansing, and crimes against humanity. All these crimes have attained the status of international crimes in international law since the Nuremberg trials. Further under customary international law states are obligated to punish and prevent genocide and crimes against humanity. R2P does not give any vagrant power to any state to act beyond the scope of the United Nations Charter. Use of force is permitted only in a limited sense under the legitimate authority of the Security Council.

Third World as a Political Force in Global Arena and Its Concerns against Humanitarian Interventions

To understand the concerns of the Third World, we need to understand what do we mean we use the term 'Third world'. According to Prof. Makau Mutua, the term 'Third world' refers to a geographic, political, historical, developmental, and racial paradigm. It is a term commonly used to refer to non-European, largely non-industrial, capital importing countries, most of which were colonial possessions of European powers. As a political force 'third world' traces its origins to the Bandung Conference of 1955, in which the first independent African and Asian sought to launch a political movement to counter western hegemony over global affairs^[12].

According to Prof. Upendra Baxi, 'the third world remains a *vehicle, vessel and visage* of global domination'.^[13] As the Third World remains a vehicle, vessel and, visage of global hegemony even in this decolonized world where the threat of recolonization is very much real we need to appreciate the concerns of subalterns with regard to humanitarian interventions in general and R2P in particular. Since R2P is the progeny of human security and human security is 'people-centered' closely linked with the idea of human rights we need to examine the anatomy of human rights from the third world perspective.

The idea of human rights owes its origin in the bourgeois liberal discourse of rights. Human rights are the limits placed on the state's power of coercion. The state has to guarantee its citizens basic human rights. However, this premise was within the province of municipal law for many centuries. Universal human rights and the system of international human rights have emerged only in the 20th century after the Second World War. The creation of a universal human rights system has been a long and complex phenomenon. It is pertinent to note that national movement against colonialism, fight for subaltern rights, anti-apartheid movements too played their significant role in shaping this universal human rights discourse. However, such struggles of colonial people have always been eclipsed by the 'Euro-Centric' nature of International law. In the aftermath of the First world war, when the League of Nation was created, its charter promised to 'form a sacred trust of civilization' to observe 'the well-being of native people'. Post- Second World War International law system was not based on equity and Mohammad Bedjaoui called this system 'scandalous'.^[14] Prof. Mutua^[15] has pointed out four reasons for this asymmetrical world order-

1. The inherent inequities in the structure of global governance.
2. The massive power difference between the Global North and Global South
3. Imbalance of power among nations in the global economy.

4. The military domination of the world by the United States of America.

It must be noted that at the time of the inauguration of the United Nations in 1945, various countries of the third world were reeling under colonial subjugation and they did not have any say in the formation of the United Nations and agenda or norm-setting of the human rights discourse. United Nations cannot be called a 'Just Institution' in a Rawlsian framework yet it took the exercise of formulating the Universal Declaration of Human Rights (UDHR) which is meant to provide the normative structure of universal human rights regime. The adoption of UDHR was an exercise with visible democratic deficit^[16] yet it claimed to be 'a common standard of achievement for all peoples and all nations.'^[17] Universal Declaration of Human Rights is proclaimed as the 'spiritual parent' of human rights movements and documents. Antonio Cassese rightly described it as the imposition of the western conception of human rights over the rest of the world. American Anthropological Association also noted its objection to craft the Universal Declaration of Human Rights in the following ways-

It noted 'The problem of drawing up a Declaration of Rights was relatively simple in the 18th century because it was not a matter of human rights, but of the rights of men within the framework of the sanctions laid by a single society... Today, the problem is complicated by the fact the Declaration must be world-wide applicability... It will not be convincing to the Indonesian, the African, the Indian, the Chinese if it lies on the same plane as the documents of an earlier period.'^[18]

The lived experience of Third World people tells them to be suspicious of any benevolent motive in the name of humanitarian intervention as they have gone through the painful experience of colonialism. There is a significant difference between third-world sovereignty and western sovereignty. Anghie points out that colonialism is at the very heart of the design of international law^[19]. International law is shaped and expanded with the help of colonial confrontation and conquests. According to him, for the civilizing mission of colonialism, the idea of cultural difference was propagated in which non-European societies were categorized as primitive^[20]. This constructed difference has been used to legitimize the colonial conquest. International Law lawyers have used this binary to formulate legal doctrines to justify the colonial project in legal terms. Anghie does not accept this hypothesis that the European model of sovereignty was established with the Treaty of Westphalia and it was gradually extended to non-European territories. He asserts that non-European territories were made impoverished of sovereignty through colonial encounters. Therefore, third world sovereignty is distinctive, vulnerable, and made dependent by international law. This troubled relationship between the third world and human rights cannot be simply examined in the binary of third world 'authoritarianism' and 'free world' of the western hemisphere. The third world has always been viewed as the appropriate province to promote the ideas of Human rights.^[21] The third world has always been seen as 'field of reception' in terms of knowledge production of human rights while the western world is considered as the 'field of origin'. This pedagogical understanding of human rights discourse resulted in an 'elitist historiography' of human rights which resulted in the exclusion of third world

experiments and contributions in the field. Scholars like Jack Donnelly and Rhoda Howard have claimed exclusive authority of the west over the authorship of human rights discourse. Jack Donnelly is of the view that the human rights discourse has evolved in response to the capitalist market system and there was a complete absence of human rights in pre-modern societies. Louis Hankin claims that 'international human rights derive from natural rights theories and systems, harking back through English, American and French constitutionalism to John Locke *et al.*, and earlier natural rights and natural law theories.^[22] Such an 'exclusionary historiography' of human rights produced the invisibilities of third world contribution in this discourse and the third world is being reduced to being a passive recipient of human rights.

Conclusion

In this backdrop, third-world countries fear that the R2P is another term for recolonization in the name of human security and humanitarian intervention. It serves the purpose of P-5 members and their allies. ICISS report has provided the academic and policy justification for humanitarian interventions by crafting the idea of Responsibility to Protect. However, even R2P is being selectively used. It has been used in Libya for regime change but this doctrine failed to protect people in Syria. Subaltern Countries have pointed out that regime change must never be part of the toolkit of humanitarian intervention. There is some legitimacy in their apprehensions. Regime change has always been on the western agenda whenever there is an intervention in the name of human rights. The possibility of Weaponizing human rights against the sovereignty of a feeble nation is a very real possibility. Even in the 21st century, many nations hold only 'negative sovereignty'. Therefore, even if a larger consensus emerges among nation-states that the global community under the aegis of the Security Council can intervene during a humanitarian crisis, the use of force will remain contested. The legitimacy question will continue to haunt responsibility to protect as the effect of colonialism is still felt in the erstwhile colonies.

References

1. John Austin. *The Province of Jurisprudence Determined*, 1832, 24.
2. Dr. Giorgio Shani, *De-Secularising Critical Theory: Religion, International Relations and the "Myth of 1648"*, in *Interrogating Religion into International Relationship*, Available at https://www.academia.edu/2621968/De_secularizing_Critical_Theory_Religion_International_Relations_and_the_Myth_of_1648. (accessed on April 19, 2021), 2006.
3. Kofi A Annan. *We the peoples: the role of the United Nations in the 21st century*, 2000, 48.
4. The concept of human security as explained by Human Development Report is people-centred. It is concerned with how people live and breathe in a society, how freely they exercise their choices, how much access they have to the market and other social opportunities- as whether they live in conflict or in peace, available at http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf (Accessed on April 25), 2021.
5. Human development report 1990. Published for the United Nations (New York) Development Programme, (United Nations ed., 1990) 10, Available at http://hdr.undp.org/sites/default/files/reports/219/hdr_1990_en_complete_nostats.pdf (last visited April 19), 2021.
6. *Supra* note 4
7. See Generally Human development report, UNDP ed., 1994.
8. *Id* at 22
9. Giorgio Shani, Makoto Sato & Mustapha Kamal Pasha, *Protecting Human Security in a Post 9/11 World: Critical and Global Insights* 1 ed, 2007, 4.
10. *Id* at 5
11. Amitav Acharya, *Human Security: East versus West*, 56 *International Journal*, 2001, 442.
12. As cited in Makau Mutua, *Savages, Victims and Saviors: The Metaphor of Human Rights*, 42 *Harvard International Law Journal*, 2001, 206.
13. Upendra Baxi, *What May the "Third World" Expect from International Law?* 27 *Third World Quarterly*, 2006:713:713-725.
14. As cited in Makau Mutua, *Standard Setting in Human Rights: Critique and Prognosis*, 29 *Human Rights Quarterly*, 2007, 547-630.
15. *Id* at 553.
16. At the time of adoption of UDHR, it was adopted by 48 states while 8 states decided to abstain. The total membership of UN at that time was 56.
17. Preamble, *Universal Declaration of Human Rights*, Available at https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf last visited April 23, 2021.
18. As cited in Makau Mutua, *Standard Setting in Human Rights: Critique and Prognosis*, 29 *Human Rights Quarterly*, 2007:554:547-630.
19. Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* 1 ed, 2005, 110.
20. *Id* at 1-8
21. Balakrishna Raj gopal puts it: 'Human right discourse has generally treated the Third World as object, as domain or terrain of deployment of its universal imperatives. Indeed, the very term "human rights violations" evokes image of Third World violence- dictators, ethnic violence and female genital mutilations- whereas First World violence is commonly referred as "civil rights violations. At least, in this sense, "human rights" have traditionally never been universal.
22. As cited in Bala Krishnan Raja gopal, *International Law from Below: Development, Social Movements and Third World Resistance* 1 ed, 2003, 175.