



Relocating India's approach to sovereignty: Where does responsibility to protect stand?

Vijay Kumar¹, Dr. SR Subramanian², Dr KD Raju³

¹ Research Scholar, Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur, West Bengal, India.

² Assistant Professor, Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur, West Bengal, India

³ Professor, Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur, West Bengal, India

Abstract

The emerging concerns over human security issues across the globe, and inconsistent approach of the international community to address them have resulted into a new understanding of sovereignty. In other words, sovereignty which was once viewed as authority is increasingly perceived as responsibility towards its own people. The endorsement of this change in the form of Canadian ICISS report has signalled the arrival of the new norm of intervention. Since then, this new norm has received increased global attention with frequent calls for its invocation in many troubled spots of the world, be it the Libyan crisis or the Syrian conflict or the recent Rohingya refugee crisis. On the other hand, India traditionally had noninterventionist approach to sovereignty. In fact, declaration of '*panchsheel doctrine*' and the establishment of Non-Alignment Movement (NAM) soon after its political independence were clearly evident of this approach. Hence, India has fundamentally objected to the idea of 'R2P', though it has reluctantly accepted the first two pillars. In this connection, this paper, as a departure from the existing literature, rather than focussing on R2P using it as a prism, analyses the India's changing approach towards the conception of sovereignty.

Keywords: India, sovereignty, non-intervention, human security, responsibility to protect, United Nations

1. Introduction

Jurists *in perpetuum* had tried to address the jarring between sovereignty and morality of responding to human security in other countries and fear of western imperialism ^[1]. Humanitarian intervention, as has been put by Yogesh Tyagi, is a fragile alliance of two different concepts: human rights and intervention ^[2]. The concept of human rights is highly respectable whereas the act of intervention is highly problematic ^[3]. The common thread herein both the aspects is sovereignty. However, the concept of sovereignty has never been static. The Treaty of Westphalia, 1648 is the new era of defining the modern understanding of sovereignty and since then it has been ever evolving. The Charter of United Nations which works on premise of sovereign equality and non-interference in domestic issues has cemented the norm of sovereignty in international relations ^[4]. But this is not uncontested one. Authors like Louis Henkin have vehemently opposed the idea of sovereignty. He argued that "sovereignty of states in international relations is essentially a mistake, an

illegitimate offspring" ^[5].

The concept of sovereignty and non-interference in internal affairs does not imbue States with power to disregard the human rights. The then Secretary General of United Nations, Kofi Annan, posed a compelling question before the General Assembly in 1999 and again in 2000:

"...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?" ^[6].

This led to the establishment of International Commission on Intervention and State Sovereignty (ICISS) by Canada ^[7]. The Commission submitted its report in 2001 titling "Responsibility to Protect". The Commission argued for new understanding of 'sovereignty'. It elucidated the idea of "sovereignty as responsibility" contrary to previous understanding of "sovereignty as authority". The major development in this regard happened when United Nations General Assembly recognised the said idea, though narrower than the Commission's report, in its World Summit Outcome

¹ Authors like B.S Chimni (International Institutions Today: An Imperial Global State in the Making), Ramesh Thakur (The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect), Louis Henkin (That "S" Word: Sovereignty, and Globalization and Human Rights et cetera) and Gareth Evans (The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All), Alex Bellamy (Responsibility to Protect: The Global Efforts to End Mass atrocities) extensively write on the same.

² Tyagi Y K. The Concept of Humanitarian Intervention Revisited. Mich. J. Int'l L. (1995) 16 Pg. 883.

³ Ibid

⁴ Art. 2(1) of the U.N. Charter

⁵ Henkin Louis. That "S" Word: Sovereignty, and Globalization and Human Rights et cetera. Fordham Law Review (2006) 68 Pg 1.

⁶ ICISS Report (2001). The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty. Ottawa: The International Development Research Centre.

⁷ The Government of Canada, together with a group of major foundations, announced at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS).

Document 2005^[8]. The Document recognises four crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity wherein the primary responsibility lies with the concerned State for the protection of its citizens from those crimes. Simultaneously, international community was saddled with the duty to help and provide assistance to concerned States. In case those abovementioned steps omits to save the citizens from the crisis, the international community, through Security Council, shall act in accordance with the Chapter VII of the Charter (Article 39-51)^[9]. This is called as the three pillars of the responsibility to protect^[10].

The norm of non-intervention is a defining feature of sovereignty and fundamental in international relations. The “intervention” is an exception to this norm. Article 2(4) of the Charter^[11], of United Nations is the testimony to this feature. In certain rare situations, Chapter VII of the Charter provides for resorting to collective force “to maintain or restore international peace and security”. The Security Council is vested with the responsibility to “determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41^[12], and 42^[13], [to] maintain or restore international peace and security”. Unfortunately, as observed by Thomas Frank^[14], and experiences^[15], shows, Security Council has failed in doing so. This is what actually, India argued before the United Nations that the measures under Chapter VII should only be taken in grave situations on a “case-by-case basis” but even a cursory glance at the reasons for non-action of the Security Council depicts the other realities. As argued by Hardeep Singh Puri that the indolence of the United Nations in cases of grave situations have not been due to “lack of warning, resources or the barrier of state sovereignty but because of strategic, political or economic considerations of those on whom the present international architecture had placed the onus to act”^[16], The Charter of the United Nations and even International Humanitarian Law allow States to use force for humanitarian purposes. In fact, Article 89 of Protocol I of 8 June 1977 Additional to the Geneva Conventions (Additional Protocol I), stipulates that “in situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in

cooperation with the United Nations and in conformity with the United Nations Charter”^[17]. However, these actions have always been based on several other aspects.

The failure of the League of Nations and the Second World War in 1940s insight the world leaders for creating more effective international organisation to “save the succeeding generation from scourge of war”. It was the time when ‘functionalism’ for the world peace was felt, and States parted their sovereignty for the creation of certain international bodies.^[18] India also actively participated in international events during that time period. It has been the founding member of the United Nations and the Bretton Woods systems.

The atrocities committed during the Second World War led to the inception of several international instruments for the protection of human rights.^[19] Though, the effectiveness of these instruments can be questioned that how far people got protected from the atrocities committed by their own State. The catastrophe which took place by virtue of mass-butcherings in the 1990s afterward, was unveiled due to advanced means of dissemination of information, shock the human conscience vastly.^[20] International community realised the need for collective actions against these atrocities which may occur in future. The idea of R2P is the manifestation of that alertness which was a blot on the traditional understanding of sovereignty. Seemingly, India and many other developing countries which got their freedom from colonial rule suspected the motive behind this idea. Mainly the application of ‘pillar III’ of R2P, among many developing countries like India, is seen as discriminatory.^[21] India knows, from its own past record that the decision to intervene in another country is mainly political and strategic, even though it may be argued as humanitarian assistance to save lives of people^[22].

For the purpose of this paper, India’s approach towards sovereignty has been divided into two parts: Pre-R2P attitude and Post-R2P attitude. The first part sifts through India’s policies and proficiencies chiefly post-independence besides influences of Pandit Jawaharlal Nehru’s foreign policies and its impact. The two major events – intervention in East Pakistan and Sri Lanka have been dealt in greater detail. The second part deals with the situations and approaches of India after the ICISS Report, 2001 and World Summit Outcome

⁸ U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

⁹ U.N. Charter Chapter VII – Action with respect to threats to the Peace, Breaches of the Peace, and Acts of Aggression.

¹⁰ The Three Pillars: 1. The State has the primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleaning. 2. The international community has a responsibility to assist States in fulfilling this responsibility. 3. If concerned State fails to protect its populations, the international community shall act collectively including use of force through the United Nations Security Council.

¹¹ Art. 2(4) of the U.N. Charter

¹² Ibid. Art. 41

¹³ Ibid. Art. 42

¹⁴ Frank T M. Who Killed Article 2(4) or: Changing Norms Governing the Use of Force by States. *AJIL* (1970) 64 Pg. 809.

¹⁵ Security Council did not act responsibly in many atrocities committed mainly in 1990’s afterward, eg. Rwanda, Bosnia-Herzegovina, Srebrenica, and Kosovo.

¹⁶ Statement by Ambassador Hardeep Singh Puri, Permanent Representative of India to the United Nations speaking at the General Assembly Plenary Meeting on Implementing the Responsibility to Protect, New York, July 24, 2009. Available at: http://responsibilitytoprotect.org/India_ENG.pdf

¹⁷ Art. 89 Geneva Convention (AP I), (June 8, 1977). Available at: <http://ihl-databases.icrc.org/ihl/INTRO/470>

¹⁸ See generally: Mitrany D. *A Working Peace System* (1966) Quadrangle Books, Chicago. See also, Klabbers J. *The EJIL Forward: The Transformation of International Organizations Law*. *The European Journal of Int’l Law* (2015) 26.

¹⁹ This was the period when trial was conducted against people responsible for committing the grave crimes through the London Charter or Nuremberg Charter. Several Conventions came into existence during that period for the protection of human rights, eg. Convention on the Prevention and Punishment of the Crime of Genocide 1948, Universal Declaration of Human Rights 1948, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, etc.

²⁰ Tragedies like Rwanda, Bosnia-Herzegovina, and Srebrenica shock the human conscience of the world community.

²¹ SD Muni, R2P – Perspective from India, (Oct. 21, 2013). Available at: <https://www.opendemocracy.net/openglobalrights/sd-muni/r2p-perspectives-from-india>

²² Ibid

Document, 2005. The paper makes a comparative analysis of India's approach towards sovereignty and non-intervention during Pre-R2P and Post-R2P era in the light of R2P.

2. Pre-R2P attitude

India, much before gaining independence, had made it clear that it is not going to side any power bloc. The Indian National Congress at its Haripur Session in 1938, passed a resolution stating; it was "urgently necessary for India to direct her own foreign policy as an independent nation, thereby keeping aloof from both imperialism and fascism and pursuing her path of freedom and peace"^[23]. Nehru as an 'internationalist' has been the major force in deciding the Indian foreign policy till date, concludes, the western imperialism was the root cause of the international conflicts^[24]. His key foreign policy was based on five key principles: mutual respect for each other's territorial integrity and sovereignty, mutual non-aggression, mutual non-interference, equality and mutual benefit, and peaceful co-existence. This "*panchsheel*" has been the guiding stone which India claimed as a "new and Asian contribution to" the world community. Not siding with any power bloc, the Non-Alignment Movement (NAM) was created and founded at the height of struggle against colonialism during the cold-war era. India under the leadership of Pandit Nehru played a pivotal role in that. Many African, Asian, Latin American and other regions of the world during their independence struggle joined the Movement. The NAM works on certain basic principles: respect for principles of the Charter of United Nations and International Law, sovereignty, human rights and non-interference in internal affairs of States.

As a newly liberated country, India was in protective-mode of the sovereignty and favoured the norm of non-intervention as its corollaries. Simultaneously, India has placed its confidence upon international organisations and referred its dispute to the United Nations on issue of Jammu and Kashmir.^[25] It had even displayed its support for laying the issue of apartheid before the United Nations in 1946^[26].

However, the major challenge came before India was to defend the intervention in East Pakistan (now Bangladesh) in 1971. This was the time when India had to exhibit the world community that how does it view the norm of sovereignty, non-intervention, and humanitarian issues. As some authors claim, the intervention was based on political and strategic design against arch-rival Pakistan. Cleverly, India while representing its position before the United Nations reaffirmed its role, confidence, and dedication towards the Charter as well as highlighting the atrocities committed by the Pakistani army in its eastern province against Bangla-speaking people, argued that due to the atrocities more than 10 million people infiltrated to India^[27]. This mass influx of uninvited guests created "social and political tensions" which disrupted the

economy and posed security threat thereby forging unprecedented situations. The then Permanent Representative of India to the United Nations, Samar Sen, asked the United Nations that has it "considered the unprecedented situation created by one Member of the United Nations for another Member?" He further makes it clear that India stood for total non-interference in domestic affairs, and tactically refrained from using the term "humanitarian intervention". He argued it was Pakistan which committed aggression against India and claimed the inherent right of self-defence against any such aggression^[28]. Hence, contrary to the allegation of intervention, India termed its action as right to self-defence. However, the Indian claim gets rebuttal from different sections of academia and intelligentsia.

The next major challenge came before India when it resorted to intervention in Sri Lanka in 1987. This intervention was "*sui generis*" in itself. The role of India in the Sri Lankan intervention, considering the close proximity – "cultural, historical, geographical, or otherwise - and because of political and strategic necessity"^[29]. had a different genesis. India, despite asserting its position in favour of territorial integrity of Sri Lanka, resorted to intervention in the wake of fuel, economic embargo and military offensive against Tamil populations in the month of June, 1987. Later on, a deal was brokered and signed by India and Sri Lanka for resolving the issues between Government and Tamils of Sri Lanka on 29 July 1987. Though, Sri Lanka did not raise the issue of intervention before the United Nations concerning its own human rights record but India's action was indeed an intervention^[30].

But what can be summed up after analysing these two major incidences is that India during Nehru stood against imperialism and advocated for non-alignment, moved to more "realist" or "militant Nehruvian" way^[31]. It was certainly a deviation from the foreign policy followed by Pandit Nehru.

India's contemporary approach towards sovereignty and intervention, in the light of R2P, can be traced mainly after the 1990s, having two major interventions in 1971 and 1987, again went back to the previous attitude due to apparent reasons. As has been rightly pointed out by Jaganathan and Kurtz:

"Throughout the 1990s, India remained unconvinced of the rationale for humanitarian intervention. There are several reasons for this circumspection. Primarily, India perceived humanitarian intervention as an infringement of sovereignty and viewed the utility of the use of force in international affairs as very limited. Also, India continued to be sceptical of Western intervention in the light of failed promises and high selectivity in Somalia,

²⁸ Ibid

²⁹ Tyagi, *supra* note 2, at 895.

³⁰ Ibid

³¹ The change in approach can be seen when Indo-Soviet Treaty of Peace, Friendship and Cooperation, 1971 and Indo-Bangladesh Treaty of Friendship and Cooperation, 1972 were signed. In 1988, India sent its troops to Maldives against the coup on the request of the President Maumoon Abdul Gayoom under the name of '*operation cactus*' and forces returned as soon as the situation got under-control. In other international interventions, India responded based on political, strategic and other considerations.

²³ Eekelen Van W F. Indian Foreign Policy and the Border Dispute with China. (1964) Martinus Nijhoff. Pg 2.

²⁴ Bloomfield Alan. India and Responsibility to Protect (2016) Routledge Pg 3.

²⁵ U.N. Doc. S/628 (Jan. 2, 1948).

²⁶ Ganguly Sumit. India and Responsibility to Protect. International Relations (2016) 30 Pg 363.

²⁷ U. N. Doc. S/10445 (Dec. 12, 1971).

the Balkans and Rwanda. Lastly, India wanted to avoid becoming the target of international criticism, owing to human rights violations in its own territory, especially in Jammu and Kashmir^[32].

India from her own past experiences^[33], knows the humanitarian intervention is taken into account considering several other factors. Similarly, the voting pattern of India on issues relating to sanctions or Chapter VII actions before Security Council has been based on certain other considerations at play^[34]. India being non-permanent member voted in favour of resolution 82 for the withdrawal of North Korean forces in 1950 but abstained from voting for resolution 84 for military help under unified command of the United States of America^[35]. Contrary to that, India supported the sanctions against the illegal regime of South Rhodesia which committed inhumane execution against people and accepted the role of the United Kingdom in self-determination and independence in 1968^[36]. It also supported the resolution 314, 1972 for the continuation of Chapter VII actions taken under the resolution 253. In 1977, India again being the non-permanent member of the Security Council, voted in favour of resolution 411 condemning the aggression committed by South Rhodesia against Mozambique^[37].

A dubious approach of India could be traced down during the Gulf Crisis-I. India, whilst not being non-permanent member of Security Council abided^[38], by the Resolution^[39], that imposes sanctions upon Iraq, though reluctantly^[40]. However, it abstained from voting against/favour of Security Council resolution 688, when it became non-permanent member, condemning the suppression of Iraqi population by the Saddam Hussain's government which caused refugee crisis before the international community and "threatened peace and security in the region". Stating out the reasons of abstention representative of India argued that:

"[W]e should at all times keep in mind the need to respect the sovereignty and territorial integrity of States

³² Jaganathan M M and Kurtz G. Singing the Tune of Sovereignty? India and the Responsibility to Protect. 14 Conflict Security and Development (2014) 14 Pg 466.

³³ Actions against Pakistan in 1971 and against Sri Lanka in 1986.

³⁴ So far India has been elected as the non-permanent member seven times (1950-1951, 1967-1968, 1972-1973, 1977-1978, 1984-1985, 1991-1992, and 2011-2012). Available at: <http://www.un.org/en/sc/members/elected.asp>

³⁵ India supported the Security Council Resolution 82 which calls for the end of hostilities and withdrawal of North Korean forces from the Republic of Korea, but abstained from voting for resolution 84 which calls for sending the military help under the unified command of United States of America.

³⁶ India voted in favour of Security Council Resolution 253, 1968 for putting several sanctions against illegal regime in Rhodesia.

³⁷ Security Council Resolution 411, 1977 was passed against the illegal racist minority regime of South Rhodesia for aggression against Mozambique.

³⁸ U.N. Doc. S/21602 (Aug. 23, 1990). Permanent Representative of India to the United Nations expressed the willingness that ' [the] Government of India has taken and will be taking the necessary steps towards implementing the provisions of the resolution [UNSC Res 661]'.

³⁹ A series of Security Council Resolutions were passed during the First Gulf Crisis. Resolution 661 were passed to put several sanctions against Iraq.

⁴⁰ U.N. Doc. S/21711 (Sept. 5, 1990). the Permanent Representative of India to the United Nations expresses the concern/inability in carrying out the obligations of Resolution 661 because of special economic problems arising due to implementation of the said resolution.

– including, in this case, of Iraq. This is a cardinal principle in international relations that deserves to be reiterated in the Council"^[41].

Similarly, India displayed a possessive approach to sovereignty during Yugoslavian crisis. Though, India voted in favour of resolution^[42], which imposed sanctions on Yugoslavia but with a disclaimer of sovereignty was endorsed. Indian representative argued that:

"[I]nternal conflicts are for the State concerned to address, with assistance from its friends or well-wishers, if it so desires. The [Security] Council's intervention becomes legitimate and acceptable only when any conflict it faces has serious implication for international peace and security. The wisdom of such an approach deserves emphasis, because it has implications for the Council's reputation and efficacy."^[43]

In this crisis, India considered that the Yugoslavia's internal situation would implicate the peace and security of the region. However, when a resolution^[44], was forwarded before the Council for the armed intervention, India abstained on two count: that the intervention should be carried out under the unified command of the United Nations^[45], and it also doubted the motive of the western powers^[46].

Considering the voting behaviour of India in the Security Council following inferences can be drawn: First, India still persist with the traditional and comparatively conservative understanding of sovereignty. Second, it still does not give more profound status to human rights. Third, it gives the cautious go-ahead to actions under Chapter VII in extreme situations. However, India has supported Resolutions imposing sanctions in the past decisions based upon other considerations. But armed intervention that to under the unified command of any individual State makes her uncomfortable. India also view that the inaction in those crisis is not due to sovereignty. As India while criticising the inaction of international community during Rwanda crisis, expressed that the inaction was not because of the hindrance of sovereignty but due to "lack of political will and more importantly, the absence of strategic interests"^[47]. India stated the selective intervention of NATO in Kosovo without approval from the Security Council as 'completely illegal' and argued:

"We are of the firm conviction that the resolution of this crisis [Kosovo] can only be through peaceful means, through consultation and dialogue, and not through either confrontation or any military action, unilateral or otherwise. In this regard we wish to reaffirm commitments to the United Nations Charter, which

⁴¹ U.N. Doc. S/PV. 2982 (April 5, 1991) at 62-63.

⁴² U.N. Doc. S/RES/713 (Sept. 25, 1991).

⁴³ U.N. Doc. S/PV. 3009 (Sept. 25, 1991).

⁴⁴ U.N. Doc. S/RES/770 (Aug. 13, 1992).

⁴⁵ U.N. Doc. S/PV. 3106 (Aug. 13, 1992).

⁴⁶ Choedon Y. India on Humanitarian Intervention and Responsibility to Protect: Shifting Nuances. *India Quarterly* (2017) 73 Pg 436.

⁴⁷ Jaganathan and Kurtz, *supra* note 32, at 467.

clearly stipulates that no enforcement actions shall be undertaken under regional arrangements without the authorization of the Security Council”^[48].

India’s position on Charter VII actions especially the armed intervention is preliminary based on the sovereignty and territorial integrity. Similarly, India’s continuous and active involvement towards the deployment of the peacekeeping forces for keeping sacrosanct the objectives of the UN Charter is preconditioned on the respect of sovereignty. As Krishnasamy has observed India’s key approaches for the deployment of peacekeeping forces are: (i) peacekeeping operation shall be undertaken with the consent of the host state under the aegis of the United Nations as this is a peaceful third-party intervention; (ii) a clear distinction between peacekeeping operations and other activities of the United Nations, including “coercive peacekeeping” and humanitarian assistance, should be maintained^[49]. Despite voting in favour of Security Council’s resolution 79, India did not deploy its troops in US-led Unified International Task Force (UNITAF) because it did not meet the condition of “request and consent” of the host state. It deployed its troops as a part of UN Operation in Somalia (UNOSOM II) only after a ground survey and study by two Indian delegates who visited Somalia early in 1993 that the consent of the host state cannot be obtained^[50].

3. Post R2P attitude

In the 1990s’ afterwards world community has seen severe and heinous forms of atrocities being committed across the globe. The international community realised the need for having a global mechanism for prevention of these kinds of conscience-shocking tragedies in future. This ‘internationalisation of the human conscience’ induces the Canadian government for establishing the International Commission on Intervention and State Sovereignty (ICISS). The major development and recognition of this concern came when the international community has shown the political commitment by including genocide, war crimes, ethnic cleansing and crimes against humanity in its para 138 and 139 of the World Summit Outcome Document, 2005^[51], under the auspices of United Nations General Assembly^[52]. These two events has been already discussed in the “Introduction” section of the paper. It is interesting to analyse the Indian responses to this new-norm-in-the-making at the United Nations level.

The then India’s permanent representative to the United Nations, Nirupam Sen, opposed the inclusion of the “norm” in the Outcome. The left-leaning diplomat, as argued by some, launched an “eleventh hour assault” on the “emerging concept” while questioning the legal foundations and of name

itself^[53]. India was highly sceptical to include R2P as it perceived it as “humanitarian intervention by another name”^[54]. Jaganathan and Kurtz have perfectly narrated the whole episode in their work how Sen, without any brief from the government, negotiated on the issue. Sen accepted that the intervention could be justified in case of atrocity crimes, but criterion for the same should be very high. He further reminded the importance of consent of the concerned government, if possible or at least confidence of regional organisation. He emphasised the need for the structural-change that is required in the United Nations. He also requested the permanent members of the Security Council to refrain from using the veto power where General Assembly had determined the use of R2P, but, as he stated, “not a single flag went up, not from Canada, not even from Switzerland”. After this incident, Sen spoke, “our position [has] really hardened”^[55]. Though, India did not hinder the final Outcome, however, the application of the R2P got narrowed down to four specific crimes: genocide, war crimes, ethnic cleansing and crimes against humanity comparing to ICISS Report wherein the R2P had wider scope of application.

Significant development can be seen in 2009 when Hardeep Singh Puri, new Permanent Representative to the United Nations, while speaking at the Plenary Meeting on Implementing the Responsibility to Protect, reaffirmed India’s position though in soften way. He reminded the negotiating history of inclusion of R2P in the World Summit Outcome Document 2005 “was a cautious go-ahead” only for the four specific crimes. He warned of “attempts to disingenuously use [of] responsibility to protect at the highest levels in the international community!”^[56]. As could be seen from the Myanmar issue 2008, when French Foreign Minister favoured R2P for forceful delivery of international aid during cyclone *nargis*. India relying on its soft-stance and back-door-diplomacy supplied the aid and assistance to the Myanmar.

The critical phase of R2P came in after Libyan crisis. It was litmus-test not only for India but the global community also. The future of R2P could not remain the same afterward. India being a non-permanent member of the Security Council voted in support of the Resolution 1970^[57]. Labelling sanctions including arms embargo, travel ban and asset freeze but it refrained from backing Resolution 1973^[58], which authorizes the international community “to take all necessary measures...to protect civilians and civilian populated areas under threat of attack” and objected declaring the no-fly zone like it did in 1991 during Gulf War – I. Indian representative speaking at the General Assembly argued that “almost all aspects of Resolution 1973...were violated not to protect civilians...but to change the regime”^[59]. The position was

⁴⁸ U.N. Doc. S/PV. 3988 (March 24, 1999) at 15. India along with Belarus and Germany requested to participate in this Security Council meeting.

⁴⁹ Krishnasamy K. A Case for India’s ‘Leadership’ in the United Nations Policy. 47 International Studies (2010) 47 Pg 228.

⁵⁰ Ibid at 229.

⁵¹ U.N. Doc. A/RES/60/1 (Oct. 24, 2005)

⁵² This was the first time when the United Nations uses the terminology ‘responsibility to protect’. However, the scope of application of the term were restricted to four crimes only unlike the ICISS Report.

⁵³ Hall Ian. Tilting at Windmills? The Indian Debate over the R2P after UNSC Resolution 1973. 5 Global Responsibility to Protect (2013) 5 Pg 93.

⁵⁴ Jaganathan and Kurtz, *supra* note 32, at 469.

⁵⁵ Ibid at 470.

⁵⁶ Statement by Ambassador Hardeep Singh Puri, Permanent Representative of India to the United Nations at the General Assembly Plenary Meeting on Implementing the Responsibility to Protect, New York, 24 July, 2009. (April 10, 2018), http://www.responsibilitytoprotect.org/India_ENG.pdf

⁵⁷ U.N. Doc. S/RES/1970 (Feb. 26, 2011).

⁵⁸ U.N. Doc. S/RES/1973 (March 17, 2011).

⁵⁹ Statement by H. E. Ambassador H. S Puri, Permanent Representative of India to the United Nations, An Informal Interactive Dialogue on the Report

preserved by Dr. Manmohan Singh, the then Prime Minister of India, who during UNGA 66th Session enunciated that the “observance of the rule of law is as important in international affairs as it is within countries. Societies cannot be restored from outside through military force”^[60]. He further stresses upon the duty of the governments towards its citizens in creating the “conditions that enables them to freely determine their pathways to development” and the international community shall play the constructive role in “the process of transition and institution building”. He cautioned that if “prescriptions have to be imposed from outside [it] is fraught with danger”.

Almost at the same time period, international community faced another humanitarian crisis in Syria. Aftermaths of Libyan intervention certainly brought forth more harm than good and ergo giving “a bad name” to R2P^[61]. The Libyan interventions’ nightmare continued in the case of Syrian crisis. India assumed non-permanent membership to the Security Council during 2011-2012 when three draft resolutions were presented on Syrian crisis^[62]. All of those draft resolutions were vetoed by China and Russia due to concern over sovereignty and non-interference^[63]. However, India’s voting approach due to several other considerations remained inconsistent.

The first draft resolution^[64], was presented by France, Germany, and United Kingdom(UK) on 4 October 2011. Among all BRICS (Brazil, Russia, India, China, and South Africa) countries Brazil, India, and South Africa abstained from voting. China and Russia vetoed the draft resolution. India justified its abstention by arguing that the present resolution did not “accommodate our concern about the threat of sanctions” and urged the international community to “facilitate engagement of the Syrian Government and the opposition in a Syrian-led inclusive political process, and not complicate the situation by threats of sanctions, regime change, et cetera”^[65]. The Indian representative made a very calculated statement that:

“We recognize the responsibility of all States to respect the fundamental rights of their people, address their grievances through administrative, political, economic and other measures. At the same time, States also have the obligation to protect their citizens from armed groups and militants. While the right of people to protest peacefully is to be respected, States cannot but take appropriate action when militant groups – heavily

of the Secretary General on Responsibility to Protect: Timely and Decisive Action. at the 66th Session of General Assembly, 2011 (April 10, 2018), <http://responsibilitytoprotect.org/India.pdf>

⁶⁰ United Nations General Assembly Speech by Dr. Manmohan Singh, Prime Minister of India at Sixty-six Session. <https://www.indiatoday.in/world/americas/story/manmohan-singh-speech-at-unga-141916-2011-09-24>

⁶¹ Murthy C S R. India’s Approach to the Protection of Civilians in Armed Conflicts. NOREF Policy Brief, at 3 (November 2012). <https://noref.no/Publications/Themes/Global-trends/India-s-approach-to-the-protection-of-civilians-in-armed-conflicts>

⁶² U.N. Docs. S/2011/612 (Oct. 4, 2011); S/2012/77 (Feb. 4, 2012); and S/2012/538 (July 19, 2012).

⁶³ Dunne T and Teitt S. Contested Intervention: China, India, and Responsibility to Protect. *Global Governance* (2015) 21 Pg 382.

⁶⁴ U.N. Doc. S/2011/612 (Oct. 4, 2011).

⁶⁵ U.N. Doc. S/PV. 6627 (Oct 4, 2011).

armed – resort to violence against State authority and infrastructure.”^[66].

The concerns and basis of India’s argument could be understood considering its own domestic realities. Subsequently, after failure of first draft, on 4 February 2012, second draft resolution^[67], was forwarded by several countries including League of Arab States. Though, this draft was also vetoed by China and Russia, India voted in favour of the resolution on the count of role of League of Arab States and deployment of the observer mission^[68]. However, this changed attitude of India in favour of the draft resolution could be seen from other aspects as well^[69].

On 19 July 2012, third draft resolution^[70], was also blocked by China and Russia. However, notwithstanding the threat of sanctions if demands are not fulfilled by Syria, India voted in favour of the draft resolution^[71]. This unusual voting pattern as argued elsewhere came under the United States’ pressure^[72]. Syrian crisis has remained the boiling pot in front of international community. The recent^[73], alleged use of chemical weapons by the Bashar al-Assad government and in response to that a missiles attack were launched under the leadership of United States has aggravated the situations^[74]. This is another example of utter failure of the United Nations and puts question mark on the credibility of the R2P as well.

4. Nutshell

Though intervention is not prohibited under international law *per se*, however, such actions shall be carried out in furtherance of the objectives and principles of the Charter of United Nations. The recent mass-exodus of Rohingya populations^[75] Has put immense pressure on the international community to respond, but the lessons from Libya and Syria averts from resorting to R2P. The United Nations Human Rights Commissioner, Zeid Ra’ad al-Husein described the situation as a “textbook example of ethnic cleaning”. The Secretary-General, Antonio Guterres requested the Security Council to intervene in a humanitarian crisis. However, members of the Security Council expresses their concern and called for restrain, but intervention was not considered. India did not accounted the events based on the allegations of ethnic-cleansing. The Prime Minister Narendra Modi who was on a visit to Myanmar made a statement on 6 September 2017

⁶⁶ Ibid at 6.

⁶⁷ U.N. Doc. S/2012/77 (Feb. 4, 2012).

⁶⁸ U.N. Doc. S/PV. 6711 (Feb. 4, 2012).

⁶⁹ Yeshe, *supra* note 46 at 444.

⁷⁰ U.N. Doc. S/2012/538 (July 19, 2012). The draft was moved by France, Germany, Portugal, UK, and USA.

⁷¹ U.N. Doc. S/PV. 6810 (July 19, 2012).

⁷² Yeshe, *supra* note 46, at 444.

⁷³ On 7 April 2018, news broke out that major chemical attack took place in Douma, Syria. <https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity>

⁷⁴ On 13 April 2018, USA UK and France launched a precision missile attack on Syrian chemical weapons facilities. <https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity>

⁷⁵ Rohingya issue is a long-pending difference among two religious communities in Myanmar. The recent crisis started soon after the attack by Rohingya militants on Myanmar army on 25 August 2017. Myanmar army launched an operation against the Rohingya population which led to large influx of refugees to neighbouring country Bangladesh.

that the attack of militants is a security threat and argued that “all [the] stakeholders can[should] work together towards finding a solution which respects the unity and territorial integrity of Myanmar”. After much-criticised implementation of R2P in Libya, R2P in general and Pillar III in particular has become not-so-popular norm for the human security. R2P *quo vadis?* While the international community got distressed due to the Myanmar military offensive against Rohingya and termed it as genocide but nothing significant has happened at the United Nations level in terms of R2P. Since the initial objection to R2P *in toto*, gradually India accepted the Pillar I and II of the R2P. However, this acceptance is based only on the recognised international principles of sovereignty and humanitarian intervention as a last resort. From time to time India has highlighted the problem attached to R2P and defects in the United Nations structure^[76].

5. Conclusion

The emergence of R2P as a new norm for the security of people has been very contentious one. The R2P challenges the prevailing understanding of sovereignty and non-intervention. The R2P primarily envisages the need for the protection of human rights beyond the territorial limits. The impact of violations of human rights in this globalised world affects every member of the international community one way or the other. Hence, this emerging norm of R2P penetrated into two internationally recognised principles of sovereignty and non-intervention. Whereas the concept of protection of human rights across the globe is the most respected ambition of the international community, the rule is adherence to the norm of sovereignty while intervention is an exception. Bringing compatibility amongst these three principles (sovereignty, intervention, and R2P) is a bigger challenge before the world community.

On the other hand, India still sees the human security through the prism of sovereignty. In view of this qualified-adaptation, acceptance and recognition of the value of human security, India's stance regarding non-intervention and R2P has not been concrete one. One may say that it accepts only those elements of R2P which are compatible to the norm of sovereignty. It is submitted that this stance of emaciated human-security is inconsistent with India's record of fight against colonialism and racial discrimination. Though, India has become an influential international actor as argued elsewhere, at times it is not conducting itself as a responsible power – at least not yet.

However the concerns of India and many other developing countries is that the R2P, in the name of humanitarian intervention, can be used for the other ulterior purposes. This

assertion proved to be sound and legitimate when R2P was argued in 2004 during attack on Iraq, after the failed attempt of other justifications. Another instance of R2P misuse is the statement made by the French Foreign Minister in 2008 to the effect that France will supply the international aid and assistance to Myanmar which was shattered by cyclone *nergis*. The Libyan crisis is yet another example of R2P misuse when the norm was used for the regime change. The premature action against Muammar Gaddafi/Qaddafi's regime without exhausting other means had brought a bad name to the norm and did more harm than good.

It is summarised that India's gradual change in attitude and the reluctant acceptance of pillar I and II of R2P is a welcome step. However, resort to pillar III of R2P, especially, the armed intervention that too, without proper exhaustion of other options of Chapter VII makes India uncomfortable. Perhaps, this is the reason why India has supported the Brazilian proposal of “*responsibility while protecting*”. The success of R2P can be realised only when the legitimate apprehension of possible misuse as a tool in the hand of some powerful countries is addressed.

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