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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

BEYOND RHETORIC: WHY THE RESPONSIBILITY TO PROTECT FAILED IN THE ROHINGYA CRISIS

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Abstract

The Responsibility to Protect (R2P) was adopted and signed as a policy in order to prevent and stop genocide, crimes against humanity, war crimes, ethnic cleansing in instances where states fail to defend their citizens. The status quo of Rohingya people in Myanmar can be considered one of the most dramatic modern problems of the specified framework. Despite all the records of the high-scale atrocities, mass displacement, and systematic persecution, however, there has been a weak and piecemeal international reaction. The paper will use the Rohingya crisis as an example of an R2P test case and argue that the failure of the doctrine in this case is an institutional, rather than a normative, problem.

Five sections of the analysis are provided. It will address the issue of the legal reality of R2P by first questioning the legal status of R2P as a binding law, an emerging norm, or a political commitment, and critically operating with leading doctrinal accounts which conceptualise R2P as transformative and non-justiciable. Second, it ascertains the legal characterisation of the violence in Rakhine State as the one, which crosses the boundaries of the crimes against humanity, ethnic cleansing, and the probable genocide, which otherwise qualifies the triggering requirements of collective protection. Third, it sets the central causes of inaction with focus laid on structural constraints within the United Nations Security Council, non-intervention principle within the regional organisations, and poor enforceability of international court systems. Fourth, it dwells more on its consequences to sovereignty, sense of collective responsibility, and future opportunities of significant atrocity prevention.

The article concludes that R2P cannot be given up, rather it needs to be re-conceptualised. Lacking reforms that address the stalemate of veto and strengthen preventive power along with demystifying sovereignty and protection, R2P remains an aspiration rather than a promise of

implementation. The effectiveness of the international responsibility would not be based on the normative approval as much as the creation of the enforceable and politically robust protection measures, as the case of the Rohingya crisis demonstrated.

I. Introduction

The failure to solve mass atrocity offenses in sovereign governments has been able to expose the inherent limitations in the capacity of the international legal order to negotiate humanitarian demands with the principles of sovereignty and non-intervention. The international community response to mass violence in Somalia, Rwanda and Srebrenica in the 90's decade demonstrated failure not only to be functioning effectively but also lack of the clarity of normality and legitimacy of humanitarian intervention.[1] These crises have demonstrated how inefficient an international system that viewed sovereignty as an absolute was in the protection of its own people even when it was demonstrably weak.[2] Herein lies the occasion where the concept of Responsibility to protect (R2P) came in being in a bid to redefine the idea of sovereignty as a conditional right, rather than an unquestioning right.

R2P had made a conceptual change in international law by indicating that the primeval duty of states to protect their populations against genocide, crimes against humanity, war crimes, and ethnic cleansing was their own business, with the international community assuming one of such responsibility when it failed to do so.[3] R2P was conceived by the consensus of the 2005 World Summit to transcend the controversial and selective practice of humanitarian intervention, stating a systematic preventive mechanism, assistance and response in general.[4] Nevertheless, despite its normative attractiveness, R2P has failed to transform moral commitment into a unified legal and institutional act particularly when they are politically sensitive.[5]

[1] Osiemo Obed Nyabicha, *Humanitarian Intervention and Conflict Situation in Somalia, 1992–2015* (PhD thesis, Kenyatta University 2022).
[2] Ibid.
[3] **Ibnu Mardiyanto,** 'The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context' (2023) 6(1) *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*.
[4] Peter Hilpold, 'R2P and Humanitarian Intervention in a Historical Perspective' (2015) Responsibility to Protect (R2P) 60.
[5] Nicole Deitelhoff, 'Is the R2P failing? The controversy about norm justification and norm application of the responsibility to protect' (2019) 11 (2) Global Responsibility to Protect 149-171.

The situation of Rohingya people in Myanmar can be regarded as one of the initial crises of the R2P model.[6] Mass displacement, institutional discrimination and multiple claims of murders, sex crimes and village demolitions have greatly been reported and internationalisation of the situation characterised the situation as genocide, possibly, ethnic cleansing.[7] Even though such claims are severe, national responsibility systems and global actions have been failing to prevent the abuse and offer any good defence to the targeted group.[8] This failure casts severe questions on the operations and legal capability of R2P as a potent means of prevention of atrocities.

In this paper, it will be argued that the Rohingya crisis demonstrates that there exists a significant discrepancy between the normativity of R2P and the institutionalisation of the normativity through enforceability. Rather than considering R2P as a political promise, the article pays attention to the question of whether and to what extent R2P can be construed as the establishment of a legal accountability to the international community, primarily through the judicial and quasi-judicial channels. The article contends that R2P is structurally incapable of functioning in preventing mass atrocity crime in the present utilizing the Rohingya crisis as a threshold case by contending that R2P is structurally incapacitated by political vetoes and jurisdictional restraint in addition to poor accountability mechanisms.

II. R2P Beyond Rhetoric: Legal Position and Enforceability.

The Responsibility to Protect has been claimed to have been a normative breakthrough in the context of international law though the nature of its law has remained a highly controversial subject matter. As the concept of R2P was developed in reaction to what is seen as the failures of the international community during the humanitarian disasters of the 1990s, R2P was developed to redefine the connection between sovereignty and protection.[9] Its ethical appeal is however widely agreed upon, given that the legislative impact, as a new standard, or a political duty, is an issue of

[6] Morten B. Pedersen, 'The Rohingya Crisis, Myanmar, and R2P 'Black Holes'' (2021) 13 (2-3) Global Responsibility to Protect 349-378.
[7] Ibid.
[8] Ibid.
[9] **Mardiyanto (n.3).**

scholarly debate. This also creates the ambiguity in the inconsistency in the application of R2P and its failure to establish binding obligations in cases that involve mass atrocity.[10]

Bellamy does not refer to R2P as a rule of positive international law, but instead as a normative framework, the role of which is to reframe expectations of state behaviour without replacing the current legal frameworks.[11] This shows how R2P is reliant on a political consensus rather than a legal commitment and this has combined with an easy time of supporting everywhere at the same time an inability to be enacted. **Mardiyanto** is also more optimistic in his position stating that R2P is another conceptualization of sovereignty as responsibility within the existing duties of the international humanitarian and human rights law.[12] It is understood that in this perspective, R2P does not prevent any emergence of the new obligations but, on the contrary, incorporates and restates the old ones, especially the obligation of states not to commit genocide and crimes against humanity.

Nevertheless, as per Hilpold the conceptual plasticity of R2P faces the risk of diminishing its normative power.[13] According to him, the intentional non-precision in law in the doctrine which has created a structure that is not clear in terms of thresholds, standards that can be subjected to judicial review and does not provide any enforcement mechanisms has resulted in the creation of such a structure.[14] As a result, R2P is not implemented as a legal imperative but rather as a policy discourse that is applied arbitrarily and randomly depending on geopolitical interests. This remark is particularly appropriate in the light of the Rohingya crisis where the gravity of the alleged crime has not been followed by the united action.

It is commonly stated that the legal backgrounds of R2P are the United Nations Charter particularly, Chapter VI, and Chapter VIII which authorize collective action against threats to

[10] Paloma Maria Bazan Tourn, 'R2P–A Problem of Inconsistency in Mass Atrocity Response in the United Nations Security Council: A Comparative Case Study of Libya, Cote d'Ivoire, and Myanmar' (2022).
[11] Alex J Bellamy, 'Sovereignty redefined: The promise and practice of R2P' In *The Responsibility to Protect Twenty Years On: Rhetoric and Implementation* (Cham: Springer International Publishing, 2022) 13-32.
[12] **Mardiyanto (n.3).**
[13] Peter Hilpold, ed. *The Responsibility to Protect (R2P): A New Paradigm of International Law?* (Martinus Nijhoff Publishers, 2014).
[14] Ibid.

international peace and security.[15] However, neither of them establishes an affirmative duty of the international community to act nor does it override the ban on the use of force provided in Article 2(4).[16] That R2P has attempted to reconcile these two principles has resulted in a framework that is normatively highly effective but which has only been shown to be legally indefinite. Though in the 2005 World Summit Outcome Document, it is stated that the international community is actually ready to provide a collective action in the situations when the national authorities cannot protect its citizens, the preparedness language is not persuasive enough.[17] The absence of an obligatory language is also thermodynamic, which points to the political nature of the commitment and at the same time, limits its capacity to serve as the rule of law.

The three pillar model of R2P that consists of state responsibility, international assistance and collective response supports this conflict between aspiration and enforceability further. The first pillar which proclaims the prime responsibility of the states to protect their citizens is quite appropriate to long time provisions of the international law, and it is not a disputable one.[18] International assistance and capacity-building is the second pillar, which equally reflects the already existing cooperative practices, which are already built into the UN system.[19] The weakness of the legal aspect of the R2P status is that the third pillar is the one that permits the joint action in case the state is clearly incapable of providing the safety of its people.[20] This pillar is explicitly subject to authorisation by the Security Council and therefore the most significant aspect of R2P is the one that is under the political influences of veto power.

Bellamy does not refute this structural constraint but says that R2P was purported to play with politics because this is not how we would want it to be.[21] Though this useful defence is enough to justify the design of R2P, it does not go very far to the normative question of the institutionalisation

[15] Samuel Jarvis, 'The R2P and atrocity prevention: Contesting human rights as a threat to international peace and security' (2023) 8(2) European journal of international security 243-261.
[16] Christine Gray, *International law and the use of force* (Oxford University Press, 2018).
[17] Hilpold (n.4).
[18] Alex J. Bellamy, 'The three pillars of the responsibility to protect' (2015) 41 Pensamiento propio.
[19] Adrian Gallagher, 'The promise of pillar II: analysing international assistance under the Responsibility to Protect' (2015) 91 (6) International Affairs 1259-1275.
[20] Aurora Martin, 'Responsibility to Protect (R2P) in Theory and Practice–Flaws and Challenges' (2018): 3 Cogito-Multidisciplinary research Journal 84-93.
[21] Bellamy (n.18).

of atrocity prevention into a highly likely paralysing system. Evans further admits that R2P cannot escape the realities of collective security but can still come in handy in the definition of discourse and expectations on the way states act.[22] However, these arguments run the danger of misconstruing the normative power and legal efficiency. An activable principle based on political will is not reliable, without further development of the institution, as an instrument of protecting vulnerable people.

This is even more difficult in ascertaining the legal character of this institution because R2P is a prevention-oriented institution. Prevention has been referred to as the nucleus of the doctrine but preventive responsibilities are in their nature difficult to define and execute.[23] Even though the prevention of atrocities is most likely to be in the form of early warning, diplomatic involvement and capacity-building, these aspects do not readily become legal obligations, which can be challenged in court.[24] R2P is normatively appealing because of the preventative element; and it saves states the burden of not acting.[25] The impossibility to prevent atrocities is scarcely ever applicable in the framework of a violation of the international law, which implies that the state and the international institutions can use R2P as a rhetoric tool without any legal consequences.

Such division of rhetoric and responsibility is particularly notable in case of the absence of definite avenues linking R2P with the international adjudicative processes. The International Criminal Court and the International Court of Justice can further be argued to lack a mandate to implement R2P in any such manner.[26] R2P at the most can only inform the interpretations of the existing obligations or constitute the political backdrop on which the legal action occurs. The result is a construct that is pointing at the legal responsibility but not entirely adopting the institutional implications of legalisation.

[22] Gareth Evans, 'The Responsibility to Protect: from an idea to an international norm' In *Responsibility to protect: The global moral compact for the 21st century* (New York: Palgrave Macmillan US, 2009) 15-29.
[23] Raymond Kwun-Sun Lau, 'Operationalizing Human Security: What Role for the Responsibility to Protect?' (2023) 60 (1) International Studies 29-44.
[24] Ibid.
[25] Hilpold (n.13).
[26] Kersten, Mark, Jeff Handmaker, and Karin Arts. 'A Fatal Attraction? The UN Security Council and the Relationship between R2P and the International Criminal Court' (2018) Mobilising International Law for Global Justice 142-162.

In this respect, R2P is like a gray zone of the norms of popular international law. It is neither a binding legal norm, nor a desire to make something moral. It is powerful in the sense that it can be applied to convey an intuitive idea of what kind of harm is not acceptable and redefines the aspect of sovereignty morality.[27] Its drawback is that it is based on political agreements and lacks enforceable standards.[28] The Rohingya crisis justifies the costs of this confusion. Despite the general acknowledgment of the fact that the atrocity thresholds have already been crossed, the reaction of R2P has not provoked the appropriate reaction of the law or institutions, which demonstrates the deficiencies of normatively ambitious, yet legally constrained doctrine.[29] R2P has failed to do the same to its practice. The subsequent history of rhetoric as an element of a legal framework will depend upon the willingness of the international community to mitigate the inadequacies of the structures and legal frameworks which support its applicability at that time. R2P as of now will remain a symbol of collective want rather than something to draw people in and to defend them.

III. Rohingya Crisis as a Paradigm of R2P

Rohingya crisis is one of the shining instances of today where the factual and the legal ideals of the Responsibility to Protect have been met but practical applications of the institutions of protection have not been realized.[30] Rather than recording all the history of the Rohingya marginalization that was well-documented, this section dwells upon the legal meaning of the violence committed within the Rakhine state of Myanmar, as well as why the situation should be squarely classified as a core crime, namely, genocide, ethnic cleansing, and crimes against humanity. It is argued here that the Rohingya crisis is not a gray or isolated case, but it is a paradigmatic R2P case and thus shows the structural failure of the doctrine against a political opposition that is rooted firmly.

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[27] Tor Dahl-Eriksen, 'Sovereignty as Responsibility with References to the Framework of R2P' (2024) 12 (1) Penn State Journal of Law & International Affairs 4.
[28] Luke Glanville, 'Does R2P matter? Interpreting the impact of a norm.' *Cooperation and Conflict* (2016) 51 (2) 184-199.
[29] Zahed, Iqthyer Uddin Md. 'Responsibility to protect? The international community's failure to protect the Rohingya' (2021) 52 (4) Asian Affairs 934-957.
[30] Zhu Xianghui, *New Modes of Non-Military Intervention Under the Responsibility to Protect: The Case of the Rohingya Crisis in Myanmar's Rakhine State* (2023) https://www.stimson.org/wp-content/files/file-attachments/Zhu%20Xianghui%20-%20New%20Modes%20of%20Non-Military%20Intervention%20R2.pdf accessed 20 January 2026.

A. Legal Environment and Structural Persecution

Rohingya is a minority Muslim ethnicity located in the northern part of the state of Rakhine that has been discriminated against in decades of legislation and policy.[31] By 1982 the *Myanmar Citizenship Act* rendered the Rohingya non-stateless and denied them the political participation and the freedom of movement, access to education and other basic civil rights.[32] In spite of the fact that discriminatory citizenship regimes do not necessarily evolve into R2P, these regimes provide a background condition of critical prerequisites to the mass atrocity crimes because they provide vulnerabilities, impunity and social dehumanisation.

In legal terms, the deprivation of citizenship in the long term and the imposition of restrictions on marriage, movement, and livelihood, is a sign of an institutionalised pattern of persecution.[33] They can be applied to the legal analysis of the crimes against humanity particularly persecution as stipulated by customary international law and written in Article 7 of Rome Statute.[34] This institutional discrimination is significant in that it had its own cumulative effect: it led to the establishment of the conditions under which other, more extreme forms of violence could be carried out on a mass scale with a sense of little to no inner resistance or accountability.

B. Mass Violence and Atrocity Thresholds

The breaking point between institutional discrimination and enormous crimes of atrocities was the violence in the Rakhine State that has been growing since 2016.[35] Following an attack by the Arakan Rohingya Salvation Army on security posts, the Myanmar military started so-called clearance operations, the result of which were mass killings, sexually transmitted violence, village-burning, and forced displacement.[36] These are not individual operations or uncoordinated operations but had high coordination, consistency and coverage.

[31] Ibid.
[32] Su Yin Htun, 'Legal aspects of the right to nationality pursuant to Myanmar citizenship law' (2019) 3 JSEAHR 277.
[33] Sayedul Husan, and Md Shahidul Islam. 'Statelessness and Citizenship: Examining the Consequences and Legal Implications of the Denial of Citizenship to the Rohingya People in Myanmar' (2024) 2 (1) Journal of Law and Social Sciences-University of Turbat 1-14.
[34] S Clark, 'Crimes against humanity and the Rome Statute of the International Criminal Court' In *The Rome Statute of the International Criminal Court* (Routledge, 2017) 75-94.
[35] Lydia González Villa, 'The Rohingya genocide: The internationally neglected people of the Rakhine state' (2019).
[36] Mohammad Iqbal, 'Migration Crisis: Extermination and Ethnic Cleansing of Rohingya Minorities in Myanmar and a Potential Threat to Stability in South and South-East Asia' (2017) Available at SSRN 3066658.

The extent and the nature of the violence qualify the legal requirements of crimes against humanity. The acts, which were carried out in a massive and methodical attack on a civilian population with awareness of the given attack, included murder, deportation or forcible transfer, rape and persecution. [37]Trends of behaviour recorded by reports of UN fact finding mechanisms can barely be called fair counter insurgency measures.[38] The murder of civilians, the destruction of food sources, and using sexual violence as the weapon of terror presuppose the intention to wipe out the Rohingya people population in the northern Rakhine State on a permanent basis.[39]

Ethnic cleansing is not a crime per se within the context of the international criminal law; however, it is widely accepted as a descriptive term, and it encompasses the acts that can be qualifying as crimes against humanity/genocide.[40] The very fact that over 700,000 Rohingya are displaced to Bangladesh within a short period of time, not to mention the fact that their villages are being methodically destroyed, is one of the strongest testimonies to the fact that the campaign was devoted to the alteration of the demographic situation in the region.[41] In that regard, the Rohingya crisis has a very strong connection with the cases of the past, i.e., the 1990s in Bosnia that became known to develop the concept of R2P.[42]

C. Genocide and Question of Intent

The largest legal controversy of the Rohingya crisis has been whether the atrocity is a genocide under the Genocide Convention.[43] Genocide is based on the fact that a clear indication of intention to annihilate a group of people who are under their custody wholly or partially exists.[44] The intent is arguably difficult to establish; however, it is possible to deduce by the patterns of actions, the extent of atrocities and the assaulting of the physical and social life of a group.[45]

[37] Ibid.
[38] Gerald Arthur Moore, 'The politics behind the establishment of United Nations-mandated fact-finding missions: the case of Myanmar' (2019).
[39] Ibid.
[40] Md Pizuar Hossain, 'Rohingya Persecutions in Myanmar: Ethnic Cleansing or Genocide?' (2020).
[41] Ibid.
[42] Mohammad Tanzimuddin Khan, and Saima Ahmed. 'Dealing with the Rohingya crisis: The relevance of the general assembly and R2P' (2020) 5 (2) Asian Journal of Comparative Politics 121-143.
[43] Hossain (n.40).
[44] Ibid.
[45] Ibid.

UN investigative missions have discovered that based on reasonable grounds one can conclude that there might be genocidal intent owing to the systematic nature of the violence, it being committed against Rohingya identity and the rhetoric of the group as existential threat.[46] This setting of villages on fire, child-execution and deprivation of a payback in the form of land expropriation and militarisation also contributes to an inference that they had an intention to destroy the group somehow in part.[47] Though judicial determination of genocide in judicial determination might not still be established, the goodwill of judicial determination of such determination is sufficient to initiate R2P which does not require absolute legal determination before any action is taken.[48]

This point is crucial. R2P was tailored expressly to be used in the situation of risk and imminent harm, but not with reference to the repercussions of the judicial resolutions. The necessity of a legal certainty in the pre-emptive or protective actions is against the logic of prevention as in the doctrine. In Rohingya case, evidences were more than enough to a sense of grave danger as a matter envisaged by R2P, yet nothing was done to the international community.

D. Protection of the Failure of State and the First Pillar of R2D

The state is the primary agent of protective population according to the first pillar of R2P. Not only their absence of protection is seen through the behaviour of Myanmar, but it is arguably the active participation in the action of perpetration of atrocities.[49] Any proposals that Myanmar had not been able and willing to protect the Rohingya would be voided by the intervention of the state security agencies, the legislation that were discriminatory and the blockage of the humanitarian services to the population.[50]

This distinction is significant because the idea of R2P is that sovereignty implies responsibility. International concern no longer provides sovereignty as a protection where the state is obviously failing to perform the same. This would be a transgression of the normative foundation of non-intervention since the act of Myanmar in the Rohingya case is a manifestation of a pure violation

[46] Moore (n.38).
[47] Ibid.
[48] Alice Ribbenvik, 'Responsibility to Protect and International Law-The Case of the Rohingya' (2020).
[49] Ibid.
[50] Shehmin Awan, 'The Statelessness Problem of the Rohingya Muslims' (2020) 19 Wash. U. Global Stud. L. Rev. 85.

of the social contract between the state and the people. At this, the crisis complies with the preconditions of eventualization of the leftover responsibility of the international community.

E. Constraints of International Response and R2P Practice

The global reaction against the Rohingya crisis has been feeble, and largely inefficient even though it has passed the substantive tests of R2P. The collective act to prevent or to hold accountable or to protect, though has taken place in a limited manner due to geopolitical consideration that the affected state particularly Bangladesh has had to bear the humanitarian burden of en bloc displacement.[51] The third pillar of R2P is not as coordinated as it should be through diplomatic statements, limited sanctions, or humanitarian aid, although they are crucial.[52]

The fact that the major powers were not willing to sanction Myanmar or provide effective course of action is also symptomatic of the political dynamics that remain in play in the concept of collective security.[53] The inability of the Security Council to take decisive action because of the veto power of the permanent members is one such occurrence of how the most vital aspect of R2P remains a thing in the influence of the power politics.[54] Such a stalemate should not mean that R2P is inapplicable but rather, it demonstrates the incompatibility between its normative aspirations and institutional possibilities.

F. Rohingya as a Paradigmatic R2P Case

The Rohingya crisis cannot be perceived as any special or peripheral case but a paradigmatic R2P case. It may be defined as a very recognizable civilian population, realistic evidence of offenses of atrocities, the evident ineffectiveness of state security and severe local and international consequences.[55] The fact that R2P is not currently operationalised in this respect does not reduce its usefulness, but it testifies to the weakness of the doctrine in terms of its structure.[56] When one speaks of the Rohingya crisis in terms of the qualification as legal rather than historical narrations,

[51] Mohammad Tarequl Islam, 'The Stateless Rohingya: Victims of Burma's Identity Politics and Priority for R2P' (2018) Unpublished Thesis of Master of Security and Development, University of Bradford 22-31.
[52] Martin (n.20).
[53] Mohamad Rosyidin and Andi Akhmad Basith Dir. 'Why states do not impose sanctions: regional norms and Indonesia's diplomatic approach towards Myanmar on the Rohingya issue' (2021) 58 (5) International Politics 738-756.
[54] Zahed (n.29).
[55] Islam (n.51)
[56] Ibid.

it is possible to observe that it is not the absence of normative triggers, but the absence of enforcement mechanisms.[57] This crisis hence is a crucial test case and it has demonstrated that the effectiveness of R2P is not as contingent on the visibility of the atrocities, but what matters is whether the international organizations are willing to act against it or not.

IV. The reasons why R2P failed: Institutional and Legal Constraints

The failure of the attempt of Responsibility to Protect in the Rohingya crisis could not be adequately explained by the lack of information, the absence of normative consensus, or the inability to know the gravity of the committed crimes.[58] Rather the opposite, the crisis met the substantive atrocity requirements that R2P had taken into account very early.[59] The institutional and the legal framework in which R2P is likely to be operating were rather the most binding barriers. [60]The reason why R2P has not succeeded does not lie on the failure of its activation requirements, but rather the fact that its enforcement clauses are institutionally dependent on political institutions and legal frameworks that are ill-equipped to offer protection in geopolitically sensitive scenarios.[61]

A. Paralysis and Veto Constraint of the Security Council

The issue stagnation of the United Nations Security Council was the most challenging issue to the R2P practice in the Rohingya crisis. In the case of R2P, although the collective action is conceived by the third pillar, which is applied in the case of a state that is clearly neglectful towards its citizens, it is clearly conditional on its authorisation by the Security Council.[62] R2P becomes a part of the existing collective security system in this structure, therefore, presenting the most important feature of this to the veto powers of permanent members of the Council.[63]

Regarding Rohingya, the efforts to form a powerful course of action on the Council level were either hampered or undermined by the interests of China and Russia that addressed the matter as

[57] Ibid.
[58] Zahed (n.29).
[59] Ibid.
[60] Ibid.
[61] Ibid.
[62] Md Syful Islam, Md Muhıbbullah, and Zobayer Ahmed. 'Challenges in protecting Rohingya refugees: Pathways for international intervention' (2024) 10 (1) International Journal of Social Sciences and Education Research 12-21.
[63] Ibid.

the internal one and a part of the sovereign prerogatives of Myanmar.[64] The veto was employed or threatened and this repelled the adoption of binding measures, such as sanctions, an embargo of arms, or a referral to international criminal mechanisms.[65] This resulted in the Security Council intervention being limited to expressions of concern, and non-binding resolutions, neither of which possessed a deterrent effect nor any protective ones.[66]

This finding portrays a severe contravening of R2P. This doctrine has a tendency of creating geopolitical hierarchy, even when it is most needed, although in isolated cases, human protection should be given precedence over the sovereignty.[67] The Rohingya crisis, thus, demonstrates that the third pillar of R2P is not just politically constrained in its nature, but structurally disempowered. The doctrine does not offer any way out of the stalemate in the Security Council in which the permanent members believe that the strategic or economic concerns are at stake and therefore collective protection is conditional rather than binding.

B. ASEAN and Non-Interference Entrenchment

At a regional level, an example of second different restriction to the implementation of R2P can be the Association of Southeast Asian Nations (ASEAN). The lack of policy interventions and the consensus-based decision making axis as it currently exists in the commitment of the ASEAN foundations has been long defended as a method of ensuring the conservativeness of the area.[68] These ideals were, however, applied as a barrier to mass communication and not as a peace maker in Rohingya crisis.

The Rohingya case was at all times characterized by ASEAN as an in-country issue of Myanmar and therefore it was not something that the region could actually question in any serious way.[69] It was the consensus model that enabled Myanmar to avoid the discussion of the crisis and other member states did not employ any pressure which would be construed as invasion of sovereignty.[70] This policy was not an institutional failure of the political will but an outcome of the institutional

[64] Khan and Ahmed (n.42).
[65] Ibid.
[66] Ibid.
[67] Jasjit Singh, 'Reconceptualizing Sovereignty: The Emergence OF The Responsibility To Protect (R2P) In International Law' (2025).
[68] Bellamy (n.11).
[69] Thi Anh Thu Nguyen, 'Refugee Protection in ASEAN: The Case of The Rohingya Refugee Crisis' (2022).
[70] Ibid.

construction of the ASEAN whose preoccupation is with the state autonomy, as opposed to human protection.

The dispute between re-regionalism and prevention of atrocities is highlighted in the role of the ASEAN position in the R2P approach. Despite the said fact that, regional organisations are the possible means of early warning and preventive diplomacy, the normative structure of ASEAN limits its capacities to act in situations where the state consent is not achieved.[71] The Rohingya crisis proves that even in the locations where non-intervention is firmly bred, R2P preventive and protective aspirations can be not met without significant normative change. In this regard, ASEAN did not simply fail to implement R2P but its institutional nature predisposed the implementation to structural impossibility.

C. The Limitations of International Criminal Accountability The ICC and the ICJ

Besides the political institution, the fact of low penetration of international judicial mechanisms has been failed in R2P. The lack of party status of Myanmar under the Rome Statute significantly diminished the jurisdiction of the International Criminal Court in the sense that it restrained the authority of the given institution to act against the alleged crimes which had occurred on the territory of Myanmar.[72] Creative jurisdictional arguments, though, have also allowed only the limited action of the ICC, in particular, with the cross-border deportation to Bangladesh, this is not sufficient to realize full accountability.[73]

More fundamentally, the ICC is susceptible to the collaboration of states which undermines its performance when there is the suspicion of state atrocities.[74] Arrest warrants and prosecutions are largely symbolic without the referral of Security Council or even voluntary cooperation.[75] This limitation indicates a major shortcoming between the subject of responsibility of R2P and realistic constraints of the international law of crime that continue to highly depend on the will of the state.

[71] Aidatul Fitriyah and Ahmad Harith Irfan bin Hamdan. 'Reassessing Human Rights Protection and R2P in Southeast Asia: A Contextual Analysis of ASEAN's Non-Intervention Doctrine and Institutional Limitations' (2025) 3 (1) Sinergi International Journal of Law 17-37.
[72] Caleb H Wheeler, 'Human rights enforcement at the borders: International criminal court jurisdiction over the Rohingya situation' (2019) 17 (3) Journal of International Criminal Justice 609-631.
[73] Martin Mennecke and Ellen E. Stensrud. 'The failure of the international community to apply R2P and atrocity prevention in Myanmar' (2021) 13 (2-3) Global Responsibility to Protect 111-130.
[74] Ibid.
[75] Zahed (n.29).

The move made by Gambia against Myanmar in the International Court of Justice would be a more correct step to make particularly in regard to the state responsibility following the decision of the Genocide Convention.[76] The presence of the temporary actions of the Court itself is a pointer that the Court knows that the accusations can be serious. The ICJ however has a limitation on individual criminal responsibility and is limited in interstate disputes only.[77] Besides, the final responsibility of implementing the decisions of the ICJ is based on the Security Council, which is once more instilling the same kind of political restraint that has curtailed other forms of international action.[78] The Rohingya case will consequently uncover the deficiencies of judicialization as a substitute of collective protection. Despite the fact that legal proceedings actually contribute to better articulation of norms and building of a historical record, it does not, in its own right, provide a ready defence against the vulnerable populations. As such, R2P cannot work in the situation where timely and decisive response is not possible when there are slow, indirect and non-enforcement accountability mechanisms.

D. The Structural Detachment between R2P and Enforcement

The joint inefficiency of the Security Council, ASEAN and international courts portrays a deeper problem: R2P articulates the responsibilities, yet offers no independent enforcement remedies. The doctrine assumes that there are institutions that will operationalise protection within normative threshold whilst being violated.[79] The Rohingya crisis demonstrates that this assumption has to be founded on false premises.

The political authorisation, regional consent and voluntary cooperation by R2P creates different points of veto at which action can be stalled or watered down.[80] All this is not a coincidence but these limitations are inherent in the international law order as it exists. As a result, R2P is an improved model of post hoc condemnation as compared to prevention or protection model.[81]

[76] Michael A Becker, 'The plight of the Rohingya: Genocide allegations and provisional measures in The Gambia v Myanmar at the International Court of Justice' (2020) 21 (2) Melbourne Journal of International Law 428-449.
[77] Michael Ramsden, 'Accountability for crimes against the Rohingya: strategic litigation in the international court of justice' (2020) 26 Harv. Negot. L. Rev. 153.
[78] Ibid.
[79] Singh (n.67).
[80] Amit Upadhyay, and Abhinav Mehrotra. 'Assessing the Efficacy of the Responsibility to Protect (R2P) Principle amidst the Misuse of Veto Power: A Critical Analysis' (2025) 53 (1) International Journal of Legal Information 64-71.
[81] Bellamy (n.11).

This instability regarding institutions has great normative implications. R2P risks forfeiting its credibility due to the lack of provision of security in cases where its applicability has been widely accepted. A good example of the discrepancy between the declarative promise and the actual action can neutralize the deterring action of the doctrine, which may start to embolden the culprits, is the Rohingya crisis.

V. International Responsibility Implications

The Rohingya crisis is an eye-opener that can be used to reconsider the contemporary architecture of international accountability. The failures of the protection of the Rohingya are no exception but an indicator of the tensions in the very essence of the international legal order i.e. the instability of coexistence between the concept of sovereignty and shared responsibility and the aspiration to prevent mass atrocities.[82] These tensions have a lot to do with the future of the Responsibility to protect, and the international law in general.

Firstly, the crisis shows the undiminished nature of sovereignty as a mode of protection in the politics of deterioration of its normative site. R2P tried to re-package sovereignty as responsibility, which requires state authority to the security of populace against heinous damage.[83] The concept of sovereignty was employed several times in the Rohingya case, which became the tool of the evasion of an investigation and the prevention of an intervention, and even though there were enough reasons to think that the crimes under consideration fell into the most severe international crime categories, these notions were justified.[84] This does not mean that sovereignty despite the rhetoric redefinition is operationally dominant. How much doctrinal innovation can be achieved without institutional reform can be seen in the imposition of sovereignty as a normative concept in contrast to sovereignty as a political practice.[85] In these instances where enforcement vehicles continue to be conditional on the goodwill of the state or hew and row, sovereignty has served as a barricade to protection and not accountability.[86]

[82] Zahed (n.29).
[83] Conor Foley, 'The evolving legitimacy of humanitarian interventions' (2013) 10 SUR-Int'l J. on Hum Rts. 75.
[84] Islam, Muhıbbullah and Ahmed (n.62).
[85] Singh (n.67).
[86] Ibid.

Second, Rohingya crisis reflects the poor collective responsibility in the international system of decentralisation.[87] R2P presupposes that the states will be willing to act mutually in the situations when the national protection fails.[88] Nevertheless, the crisis demonstrates that the feeling of shared responsibility is highly conditional, being filtered through the lenses of strategic concerns, regionalism, and imbalances of power.[89] Such a scenario has been brought about by decentralisation of responsibility among several actors, such as the states, regional organisations and international institutions whereby the responsibility is seen in theory but avoided in practice.[90] This diffusion of responsibility and freedom to passivity allow states to be free to express concern and have no serious obligations.[91] The Rohingya example thus demonstrates that collective responsibility as a preventative measure against crime of atrocities is not endowed with that sense and strength to be a potent force.

Third, the consequences of the atrocity prevention are particularly discouraging. R2P has an ambition of preventing that is founded on the principle of early involvement, mitigation and immediate response.[92] There have been warning signs of the Rohingya case over the years, though the preventative policies were largely doubtful and reactive.[93] This kind of failure is telling of organizational biasness in post-crisis actions, i.e. humanitarian aid, diplomatic rhetoric and legal measures, rather than direct prevention.[94] The emphasis of post-atrocity legal responsibility has assisted in situating normative significance that is weak in securing populations on an actual practicality. The need of atrocity prevention to transcend rhetorical commitment must be supported by institutional arrangements that can act in advance of the violence to become uncontrollable even when the political community is both unanimous.

Together, the Rohingya crisis demonstrates that the international accountability is merely ideal rather than practical. Despite the fact that R2P has succeeded in transforming the language of

[87] Zahed (n.29).
[88] Ibid.
[89] Ibid.
[90] Yukiko Nishikawa, 'The reality of protecting the Rohingya: An inherent limitation of the responsibility to protect' (2020) 16 (1) Asian Security 90-106.
[91] Ibid.
[92] Zahed (n.29).
[93] Nishikawa (n.91).
[94] Ibid.

international concern, it still requires redistribution of power and responsibility to offer protection.[95] The challenge that the international law encounters is not merely a reinstatement of allegiance to the protection but the structural provisions which permit atrocity crimes to remain undetected. The lack of such reckoning will thus reduce the promise of collective responsibility to a symbolic status, which will subject the vulnerable populations to the same types of failures that the R2P was intended to mitigate against.

VI. Conclusion

The example of Rohingya crisis demonstrates that the failure of the Responsibility to Protect is not due to the confusion in the presence of atrocity crimes, as well as unclear normative thresholds that elicit international concern. Rather it indicates a deeper structural breakdown between the extent of ethical aspiration of R2P and the extent of its institutional implementation. In that, however, it is rather a case than an anomaly, a symptom of diagnosis of the limits of a doctrine that professes to provide protection, yet remains within the political and legal apparatuses which cannot be acted decisively on.

As mentioned in this paper, R2P does not require a replacement, but, R2P cannot continue in its current form without a serious reconceptualization. As it stands, R2P is rather a political promise than a legally unambiguous and institutionally independent tool that can be relied upon to be a viable mode of protection. Its dependence on the approval of the Security Council, regional agreement and voluntary cooperation is prone to stalemate at the time when protection is needed most of all. The example of Rohingya demonstrates that the re-enforcement of the postulates of R2P without taking these restrictions into account will result in normalisation of inaction in the interest of normative compliance.

The issue of reformulation of R2P would entail the transformation of the rhetorical approval to operational responsibility. This includes buttressing the preventative element of the doctrine with the institutionalisation of the early-warning apparatus, redressing the relationship between sovereignty and protection to contain the abuse of non-intervention, and decoupling some of the

[95] Ibid.

protective instruments to Security Council stalemate where there is credible establishment of the risk of mass atrocity. Particularly, no condition is made with regard to the need to forgo state sovereignty as an issue of reconceptualization but, on the contrary, to practice it as an issue of accountability to populations.

Lastly, the Rohingya crisis shows that the validity of R2P will not be dictated by its moral consistency but rather its capacity to offer protection in practical sense. Lacking any structural reform, the risk of R2P entailing the creation of a paradox at the center of the international law, that is to say, a collective duty to prevent atrocity crimes that still fails the weakest members of society, threatens to materialize.

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