A STUDY ON THE IMPOSITION OF LEGAL OBLIGATIONS UPON STATES TO INTERVENE: OPERATIONALIZING THE RESPONSIBILITY TO PROTECT (R2P)

By

Afiqah Binti Abdul Razak (2010907979)
Mohd Faizal Hiqram Bin Azmi (2010586919)
Noor Hannah Binti Mohd Nasir (2010972873)

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ABSTRACT

This project paper discusses the status of the doctrine of Responsibility to Protect (R2P) in relation to international law and seeks to establish whether R2P creates legal obligations unto the international community to take the appropriate measures in situations of mass atrocities. The project paper begins with an outline of our research proposal which works to draw the focus of our research to an introduction and general background of R2P. Our project paper further comprises of the conception of R2P alongside the obstacles faced in imposing this doctrine as an international duty. Furthermore, this project paper explores two possibilities in which R2P may impose legal obligations unto States: whether, firstly, R2P introduces a new rule of customary international law or whether, secondly, R2P establishes obligations by extending upon existing rules of *jus cogens.* Apart from that, this project paper analyzes the two recent cases of Libya and Cŏte d'Iviore wherein measures echoing the doctrine of R2P were invoked by the international community via the United Nations Security Council. Based on our findings on all these matters, this project paper shall, lastly, narrow down our research to several recommendations as to the imposition of R2P as an obligation under international law.

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CHAPTER ONE: INTRODUCTION

1.0 Introduction

The Doctrine of Responsibility to Protect (R2P) invokes the concept of intervention into the domestic conflicts within a particular nation. This doctrine receives much criticism for its derogation from the concept of State Sovereignty under Article 2 (7) of the United Nations Charter. On this note, our research seeks to determine on what legal basis R2P derives its validity, and, subsequently, whether R2P does, in fact, create legal obligations upon States to act upon it at all.

1.1 Background

Before the conceptualization of State Sovereignty, atrocities of rape, pillage and massacre between opposing war-tribes, kingdoms and emperors or kings against their own men, were deemed a matter of indifference to all but the victims of the brutality themselves.[1] The reason for such an impassive outlook was not so much due to the fact that the occurrences were in any way trivial, but because there was, at the time, no obligation imposed upon third parties to intervene in such occurrences in the first place.[2]

On this note, we put forward in this research proposal that for such mass atrocities to be put an end to, there is a need for intervention.

An attempt for intervention was first seen in the year 1987 as introduced by one Bernard Kouchner, cofounder of both Médecins San Frontières and Médecins du Monde, government minister and prominent humanitarian activist. He first introduced the concept of "*droit d'ingérence*" or, better known as the, "right to

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1 Evans, Gareth. "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All", (Washington D.C: Brookings Institution Press)

2 Ibid.

intervene."[3] This concept was based on the term, "humanitarian intervention" which had then been deployed as early on as 1840. Kouchner's *droit d'ingérence* was inspired from his involvement as a doctor working for the International Committee for the Red Cross (ICRC) in Biafra, Nigeria and the feeling of confliction he had towards the organization's policy of strict neutrality. This being said, the concern with regards to the *droit d'ingérence* was founded on the fact that the "*ingérence*" proposed conveyed a sense of "interference" rather than pure "intervention."[4]

The problem with humanitarian intervention was that many viewed such a concept as another country's justification for effecting supremacy.[5] This being said, it is nevertheless impossible for our country (or any other country, for that matter) to completely shut out the assistance of the international community in times of crisis. Per the words of Koffi Annan in the Millennium Report of the Secretary-General of the United Nations in the year 2000, "If humanitarian intervention is indeed an unacceptable assault to 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 humanity?"[6]

It was here, as an answer to this question posed by Koffi Annan that the Doctrine of Responsibility to Protect (R2P) subsequently came into the picture.

In its simplest and most widely accepted formulation, R2P stands for the responsibility imposed upon governments, war crimes, ethnic cleansing and crimes against humanity – all crimes of which are categorised under the ambit of "mass atrocity crimes."[7]

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3 Sandoz, Yzes.""Droit or "Devoir D'Ingerence" and the Right to Assistance: the issues involved." Edited by no.288: International Committee of the Red Cross, (2010).

4 Gareth Evans, "From Humanitarian Intervention To The Responsibility To Protect", Wisconsin International Law Journal, Vol 24, No.3, (2006).

5 Ibid.

6 The Secretary-General, "We the Peoples: The Role of the United Nations in the Twenty-First Century, 3 April 2000, available at www.un.org/millenium/sg/report/full.htm.

7 Evans, Gareth. "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All", (Washington D.C:Brookings Institution Press)