ABUAD Law Journal (ALJ)
Vol. 7, No. 1, 2019, Pages 194-222 https://doi.org/10.53982/alj.2019.0701.09-j
Published by College of Law, Afe Babalola University Law Journal, College of Law, Afe Babalola University, Km 8.5, Afe Babalola Way, P.M.B. 5454, Ado Ekiti, Ekiti State, Nigeria ISSN: *6378-5994*
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The Legal and Institutional Challenges to the Implementation of the R2P Principle

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Abstract

The Responsibility to Protect (R2P) is an international legal principle that places both general and customary international law obligation on States to protect their own citizens from mass atrocity core crimes of genocide, war crimes, crimes against humanity and ethnic cleansing. This paper adopts doctrinal research method in examining the legal and institutional challenges to the global implementation of the R2P principle. This paper finds that there exist some teething legal and institutional challenges that affect the effective implementation of the principle.Implementation has been mixed as the case studies shows. Where it had been implemented, as in Libya, the result was quite limited while in situations where it has not been implemented at all, as in Syria, it calls to question the genuineness and integrity of the legal, political and moral commitment of the international community of States to end atrocious crimes in many troubled regions of the world.Conclusively, the R2P principle is an emerging customary rule of international law but has yet to attain full status of "*jus cogens*" peremptory norm of international law.The paper therefore recommends that an advisory body be established by the United Nations to advise States on the limitation of the R2P principle. It is also recommended that building institutional capacity and preparedness by States backed by greater cooperation between States, the international community and international organizations to implement the R2P principle is central to guaranteeing an effective R2P regime that is properly implemented in a timely manner. It also recommends measures to remove the legal and political uncertainties surrounding the outer bounds and limits of the principle arguing for inclusion of environmental crimes and natural disasters as grounds for invocation of R2P.

Keywords: Responsibility to Protect, United Nations, Challenges.

1.0 Introduction

Security is about the most paramount issue for all nations. It elicits the attention of all and sundry, be it security of possessions, resources or lives. The world has witnessed series of genocides since after the Second World War which has forced the United Nations to shift from humanitarian intervention to Responsibility to Protect. The whole essence of the principle of R2P is to ensure that genocide and other crimes against humanity will never again be allowed to occur without the international community acting to quell same. The International Commission on Intervention and State Sovereignty hatched the idea of R2P in the year 2001.[1] However, it was during the United Nation's World Summit of 2005 that the heads of states and government adopted the R2P principle.[2]

R2P is therefore a solemn pledge made by world leaders to all that are facing a threat of one atrocity or the other, that humanity will stand by them and avert such a threat. Muthida posited that 'the R2P principle, in fact, was introduced as a remedy to controversies involving humanitarian intervention, and it was intended to move the international community past the controversies that international law experienced with humanitarian intervention.'[3] The R2P is of a tripod nature, namely, the responsibility to prevent, responsibility to react, and the responsibility to rebuild.[4] Though the R2P principle was initiated to cure the pre-R2P crisis on humanitarian carnage and international law, the R2P implementations that followed 2001 ICISS report hashave failed to exhibit any significant change in international law on humanitarian intervention.[5]

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[1]International Commission on Intervention and State Sovereignty, Report 2001: The Responsibility to Protect (2001) [hereafter ICISS]. Retrieved Aug. 14, 2018 fromhttp://responsibilitytoprotect.org/ICISS%20Report.pdf.

[2] 2005 World Summit Outcome Document, G.A Res. 60/1, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

[3]Muditha H., 2015 The Meaning of the Responsibility to Protect: An Analysis of the R2P Principle in International Law, 2001-2013.*Theses and Dissertations.* Law, Indiana University + 445.

[4]*Ibid*, 345

[5]*Ibid*

 https://doi.org/10.53982/alj.2019.0701.09-j

This paper examines the scope of the R2P principle, the legal challenges facing its applicability. It will also consider the interface between law, morality and politics in implementation of R2P.

2.0 Legitimacy and Legality of Humanitarian Intervention under the R2P Principle

It is germane to reinstate that the legitimacy of any humanitarian intervention is appraised on the account of the initial decision to intervene, the mode in which the intervention was conducted, and the outcome of the intervention.[6] The above partition into these stages is imperative in recognizing how diverse factors come to play a role in determining legitimacy as the intervention progresses.

It is germane to note the position of Voon who said that:

> Trying to resolve the indeterminacy surrounding the legality of unauthorised humanitarian intervention, question of its legitimacy is of vital importance, because even authorised humanitarian intervention can lose its legitimacy in the course of action. In the beginning, legitimacy depends on the legal evaluation of a humanitarian crisis and authorization of the UN Security Council. And in the end, legitimacy of humanitarian intervention depends on its compliance with the principle of proportionality in the use of force.[7]

In this section, we shall be considering the scope of the applicability of the R2P principle. We will also examine the interface between legal, moral, and political issues in R2P implementation.

[6]Voon, T. 2002. Closing the gap between legitimacy and legality of humanitarian intervention: lessons from East Timor and Kosovo.*University of California Journal of International Law and Foreign Affairs*7: 31–58.
[7]Voon,*Ibid* p. 31.

 https://doi.org/10.53982/alj.2019.0701.09-j

2.1 Examining the Outer Reach and Limits of the Applicability of the R2P Principle

A clear delineation between the outer reach and limits of the applicability of the R2P principle to contexts and situation is key to attracting legitimacy and mitigating the criticisms against the R2P concept. Two important case studies had in the past brought the scope of the concept into sharper focus resulting in critical debates about the limits and outer reach of the concept. They are: the Georgia and the Myanmar/Cyclone Nargis cases.

In these two cases, twopermanent members of the UN Security Council- Russia and France respectively- invoked the R2P to legitimize the deployment or threat of coercive force to quell what was believed to amount to a commission of one or more of the four R2P crimes.[8]The heated debate that greeted the two cases brought to the limelight the scope of the R2P principle and the limits and bounds of its use.[9]For the Georgia's case, the debate hinged on the factual accuracy of Russia's claims about the alleged abuse of civilians in South Ossetia by Georgia.

On the other hand, the debate over Myanmar centered on the applicability of R2P to situations where a government refuses to permit consignment of humanitarian relief materials in the wake of a natural disaster. In both cases, the claims advanced were bluntly rejected by the international community, effectively placing the two limits on the use of R2P for coercive reasons to include: (1) that coercion must be preceded by cogent and compelling cogent evidence of genocide or mass casualty atrocities; and (2) crimes against humanity, excluding crimes not associated with the deliberate killing and displacement of civilians.

Recall that in August 2008, the nationalist government of Georgia launched a military assault targeted at restoring constitutional order in the breakaway region of South Ossetia. Russia quickly responded by routing and pushing the Georgian Army back to Georgia and in

[8]Bellamy, A. J.2010. The responsibility to protect—five years on.*Ethics and International Affairs*24.2: pp. 150-153.
[9]*Ibid.* p 150.

 https://doi.org/10.53982/alj.2019.0701.09-j

the process took the city of Gori. A cease-fire was later brokered by then French President, Nicolas Sarkozy ensuring a cessation of hostilities and eventual withdrawal of Russian forces from Georgia proper.[10]

So soon thereafter, Russia unilaterally recognized the independence of South Ossetia and that of Abkhazia, the other breakaway province of Georgia.[11] The 'Russian authorities'[12] defended their actions in Georgia alleging that their intervention was justified on R2P grounds following the commission and imminent commission of mass atrocities amounting to a genocide by Georgian soldiers.[13] During a heated exchange with Georgia at the UN General Assembly over the incident, Russia consistently argued that its actions were justified by the R2P principle.[14] Russia's defence won little or no support at all.

For example, two of R2P's Canadian originators described the intervention of the Russians as a misappropriation of R2P and the Global Centre also dismissed Russia's claims arguing that the protection of nationals in foreign countries is beyond the scope of R2P, that the scale of Russia's intervention was manifestly disproportionate, and R2P does not provide a justification for use of force without the approval of the UN Security Council.[15] In addition, a special commission set by the European Union found that they had acted disproportionately, and little or no support

[10]*Ibid* p. 150.
[11]*Ibid* p. 150.
[12]Minister of Foreign Affairs of the Russian Federation Sergey Lavrov, interview with the BBC, Moscow,
August 9, 2008. Retrieved Aug. 27, 2018http://www.warandpeace.ru/en/commentaries/view/26041/.
[13]International Crisis Group. 2008. Russia vs. Georgia: The Fallout.*Europe Report No. 195*, pp. 2–3.
[14]UNGA. Delegates weigh legal merits of responsibility to protect. GA/10850, July 28, 2009, p. 14. Retrieved Aug. 27, 2018 fromhttps://www.un.org/press/en/2009/ga10850.doc.htm.
[15]Axworthy, L. & Rock, A. 2009. R2P: anew and unfinished agenda.*Global Responsibility to Protect* 1.1: 59; Global Centre for the Responsibility to Protect, the Georgia-Russia Crisis and the Responsibility to Protect: Background Note. August 19, 2008; and Evans, G. 2009.Russia, Georgia, and the Responsibility to Protect.*Amsterdam Law Forum 1*, no. 2.

 https://doi.org/10.53982/alj.2019.0701.09-j

existsto justify Russia's unilateral recognition of South Ossetia's independence.[16]

In the second case, on 3 May 2008, Cyclone Nargis struck Myanmar, devastating most part of the Irrawaddy area. The disaster had displaced approximately 1.5 million people and 138,000 more were either left dead or reported missing.[17] Despite the massive impact of the humanitarian catastrophe occasioned by the disaster, and the obvious inability of the government to respond to the humanitarian crisis, the Myanmar's military regime initially refused access to humanitarian agencies to deliver urgent supplies and medical assistance.

As offers of humanitarian assistance poured in, Myanmar was slow to issue visas insisting on distributing the aid itself, thereby raising fears that much of the materials would be siphoned off for other uses, including by and for the military.[18] Angered by the slow process, the French Foreign Minister Bernard Kouchner proposed to the UN Security Council to invoke the R2P principle to authorise the delivery of aid materials without the consent of Myanmar, arguing that the denial of aid delivery amounted to nothing else but crimes against humanity.

The proposal was vehemently opposed by China and the Association of South East Asian Nations (AESAN) which argued that R2P did not apply to natural disasters. In a view shared by UN officials, the AESAN governments maintained that Myanmar must not be forced into accepting humanitarian assistance and that Kouchner's argument posed a threat to the relief effort which required the cooperation of the Asians and the emerging consensus on R2P.[19] The British Government rebuffed Kouchner's proposals

[16]*Bellamy Ibid. p*. 150.
[17]Haacke, J. 2009. Myanmar, the responsibility to protect and the need for practical assistance.*Global Responsibility to Protect* 1.2: p. 156.
[18]World Fears for Plight of Myanmar Cyclone Victims. *Reuters* May 13, 2008.
[19]Luck, E. Briefing on International Disaster Assistance: Policy Options to the U.S. Senate Committee on Foreign Relations, June 17, 2008; and Julian Borger and Ian MacKinnon, Bypass Junta's Permission for Aid, US and France Urge.*The Guardian*, May 9, 2008, p. 20.

as aggressive and agreed that R2P did not apply to natural disasters.[20] The ASEAN and the UN Secretary-General later used diplomacy to prevail on the Myanmar regime to allow safe and unhindered delivery of international aid under the aegis of UN-ASEAN relief effort.

At the time, there were speculation(s) that the threat of R2P encouraged the Myanmar regime to concede to delivery of aid. It was also speculated that the fear of western unilateral invasion rather than a multilateral R2P option forced the regime to shift grounds since there was little likelihood that the UN Security Council would authorise the invocation of R2P.[21] One thing that stand out in these two scenarios is the failure of Russia and France to attract some legitimacy to their arguments about the limits of the R2P and such development point to only one direction—and that is, that the R2P principle can only apply to cases of genocides, war crimes, mass atrocities and crimes against humanity as opposed to natural disasters.

2.2 Examining the Relationship between the Legal, Policy, Moral, Operational and Political Dimensions of the R2P Principle

The R2P principle is undoubtedly made up of different components, namely—the legal, policy, moral, operational and political dimensions and it takes all of them in agreement to understand the full depth and breadth of the R2P doctrine and how it works in practice. By the word 'legal' it is meant that all the legislative frameworks including treaties, conventions, declarations and customary international law as well as soft laws such as the ICISS report which together constitute the authoritative legal documents that enunciates the R2P principle both at the national and international level. Similarly, in the context of thispaper's analysis

[20] Borger & MacKinnon. Bypass Junta's Permission for aid, US and France urge.*The Guardian* May 2008. Retrieved Aug. 27, 2018 fromhttps://www.theguardian.com/world/2008/may/09/cyclonenargis.burma.
[21]Selth, A. 2008. Even Paranoids Have Enemies: Cyclone Nargisand Myanmar's Fears of Invasion.*Contemporary Southeast Asia* 30.3: 379–402.

of the R2P principle, the word 'policy' is conceived as the rational outcomes that results from the process of making and applying the R2P's applicable laws by States and international community. This means that the policies that results from the process of applying and implementing the applicable legal framework by States and the international community cannot be validly separated from the laws themselves. This is so not least because it is the resulting policies that creates room for assessment of the moral validity or contents or acceptability of the laws themselves.

This moral contentof the R2P principle can then be measured by paying attention to the mode of operation usually adopted by Statesand the international community in implementing the principle. It is this mode of operation (operational aspect of R2P) usually adopted by national and supranational authorities to implement the R2P that can be used to study the political attitude and behaviour of States and the international community towards the implementation of the concept. By closely studying the State's and international community's mode of operation (behaviour) in terms of commitment to R2P implementation, the political willingness of all national and transnational authorities to implement the doctrine can be predicted.

The most latent way in which the relationship between these various dimensions of the R2P has been tested in the past relates directly to the unanimous and universal condemnation of abominable crimes of genocide, war crimes, crimes against humanity and crime of aggression by States and the international community and such condemnation speaks volume of the political commitment of States to the implementation of the R2P doctrine. In so doing, States usually cite the existing legal framework enunciating the R2P principle as their legal and moral authority to implement the doctrine one way or the other, whereas the results of those implementation efforts are manifested through the resulting State policies.

It is therefore no surprise that international concerns and sympathy are more easily triggered by contravention of universal prohibitions

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on crimes against humanity and genocide than other human rights norms do, such as the right to humanitarian support, and that is because the mentioned norms enjoy the status of *Jus cogens*.[22] However, notwithstanding the fact that the crime of genocide is well rooted in international law by the Genocide Convention[23], the greatest challenge that arises while qualifying genocide in the international criminal law is 'the most important obligatory element to be proved that is the intent to destroy in whole or in part the group as such.'[24] This intent is an aggravated criminal intention or *dolusspecialis*: it implies that the perpetrator consciously desired the prohibited acts he committed to result in the destruction, in whole or in part, of the group as such, and knew that his acts would destroy in whole or in part, the group as such.[25]

The whole concept of R2P presupposes that the occurrence of mass crime against humanity in a country is capable of 'imposing on the international community a moral imperative to intervene forcibly that trumps its traditional duty of non-intervention in the UN Charter system'.[26] When the entire attendant issues of legality embedded in the UN Charter arestepped down, it will be glaring that state practice and international standards of international organization seems to qualify humanitarian crises as international crimes.[27] However, 'precise threshold of human rights abuses and

[22]*Ibid* p. 379.
[23]Convention on the Prevention and Punishment of the Crime of Genocide Retrieved Aug. 21, 2018 from: http://www.preventgenocide.org/law/convention/text.htm.

[24]*Ibid*
[25]International Commission of Inquiry on Darfur, Report to Secretary General. 2005. Retrieved August 21, 2018, from http://www.un.org/News/dh/sudan/com_inq_ darfur.pdf.
[26]*Ibid.*
[27]In the case of humanitarian crisis in Darfur, it was stated that situation did not amount to genocide. While authorizing humanitarian intervention in Libya, UN Security Council stated that widespread and systematic attacks in Libya against the civilian population may amount to crimes against humanity. It is worth mentioning that in Syrian humanitarian crisis UN General Assembly mentioned widespread and systematic human rights violations without referring to an international crime.

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their qualification under international criminal law still remain one of the most controversial questions in humanitarian crises'.[28]

The Darfur Commission Report clearly reflects the problems of qualification of the genocide crime in international law.[29] The report stated that: the intent of the attackers was not to destroy an ethnic group as such, or part of the group. Instead, 'the intention was to murder all those men they considered as rebels, as well as forcibly expel the whole population so as to vacate the villages and prevent rebels from hiding among, or getting support from, the local population'.[30] However, despite the substantial and credible evidence gathered by the Darfur Commission to the effect that there was a systematic occurrence of 'killing of civilians of a particular tribal extraction, international community was expecting legal qualification of the genocide crime and was not keen to handle crimes against humanity in Darfur without categorizing humanitarian crisis as genocide'.[31]

The necessity to meet the criteria of humanitarian crisis before humanitarian intervention can occur is exigent not only because of the high legal standard set for genocide and crimes against humanity in the international law, but also 'because the extent and range of human rights violations may not be apparent until foreign troops or international bodies are on the ground collecting evidence and what counts as "large scale" will always be a matter of context'.[32] It ought to be accepted that human rights violations differ in every humanitarian crisis and the mere existence of massive human rights violations, but not the "label" of international crime or exact number of victims, should be the crucial legitimating factor at the stage of deciding to intervene. Moreover, sovereignty of one state in the international law guarantees protection from out-

[28]*Ibid*.
[29]*Ibid*.
[30]*Ibid*, 519.
[31] Ibid
[32]Evans, G.J. 2009.*The responsibility to protect ending mass atrocity crimes once and for all*. Washington: The Brookings Institution. 12.

side interference and is reflected in the UN Charter's prohibition on the use of force.

Supporters of humanitarian intervention offer a liberal account of state sovereignty in response to the non-interventionist arguments.[33] It means 'that when a state abuses the rights of those living in it, it forfeits its domestic and international legitimacy, along with its claim to sovereignty and the protection of the non-intervention rule.'[34] That means that other 'states stop having duty to respect sovereignty of the responsible state, but at the same time start facing responsibility to protect vulnerable populations from massive human rights violations and that is the main idea of the Responsibility to protect concept'.[35]

Even though it is not possible to defend this new doctrine solely on the basis of principled commitment to human rights for a duty so broadly stated has potentially disastrous consequences for global stability[36], international practice concerning the concept of Responsibility to protect makes it obvious that massive human rights violations are not to be ignored and left under the shelter of the sovereignty concept and its legal implications on the use of force.[37] That means that principle of state sovereignty yields to protection of human rights in the contemporary international law while invoking Responsibility to protect.

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[33]De Sousa, M. 2010. Humanitarian intervention and the Responsibility to protect: bridging the moral/legal divide. *University College London Review* 16: p. 51–74. 55.
[34]Wheeler, N. 2000.*Saving strangers: humanitarian intervention in international society*. Oxford: Oxford University Press. 28.
[35]Ibifd
[36]*Ibid*.
[37]The responsibility to prevent, one of the three elements said to be integral to the concept of Responsibility to protect, had been addressed by the International Court of Justice in the Genocide Case *(Bosnia and Herzegovina v. Serbia and Montenegro)*. Concept of Responsibility to protect was used in the language of Security Council resolution No. 1973 (2011) authorizing humanitarian intervention in Libya. In the Secretary-General's report entitled "Early warning, assessment and the responsibility to protect" (No. A/64/864, 2010), the Special Adviser on the Responsibility to Protect is charged with the development and refinement of the Responsibility to Protect concept and with continuing a political dialogue with Member States on further steps toward implementation.

 https://doi.org/10.53982/alj.2019.0701.09-j

3.0 The Legal Challenges

A number of legal challenges confronted the UN Security Council at different times in history in a bid to resolve the entire dilemma that comes with the question of deciding whether or not to intervene in the affairs of sovereign nations who fail to protect its own citizens from catastrophic crimes of unimaginable magnitude. Two major problems continue to arise each time the UN proceeds to invoke the R2P in order to protect lives.

First, is that the legal status of the R2P principle is unknown; for example, is it a norm of international law and if so what category of international norm and is it merely a soft law and how does its uncertain status affect the legitimacy and effective implementation of the principle both within the national legal orders and within the supranational domains. This particular legal problem is interwoven with the fact that there are no clearly prescribed rules to define the limits of the applicability of the concept to contexts and situations.
Second, is that there are no clearly prescribed rules for exercising competencies over specific cases. This part of the paperconsiders these broad legal challenges and how it affects the acceptability and/or legitimacy of the R2P principle at the international level. In order to bring the problems into sharper focus, some critical country case studies most notably those of Rwanda, Bosnia Herzegovina, Sudan, Kosovo, Somalia and the most recently Libya are examined to illustrate how these legal challenges manifest themselves in practice. We start first with analysis of the legal status of the R2P.

3.1 An Appraisal of the Legal Status of the R2P Principle

There have been some uncertainties about the legal status of R2P. For example, questions have been asked as to whether the principle is a norm, and, if so, what type of norm and what does it require.[38] Generally, norms are shared expectations of appropriate behaviour for actors with a given identity.[39] Some consensus does exist

[38]Bellamy, *ibid.*p. 160.
[39]Finnemore, M. &Sikkink, K. 1998. International norm dynamics and political change.*InternationalOrganisation*52.4: p. 891.

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anyway to show that R2P is a norm; the only disagreement is what sort of norm it is.[40] According to Bellamy, R2P is not a single norm but a collection of shared expectations that have different qualities. For example, R2P involves expectations about how States relate with the population under their care and these expectations predate R2P and are already entrenched in international humanitarian and human rights law.[41]

Although, their scope concerning crimes against humanity is not really clear in terms to what extent they are embedded, the fundamental belief that States are under a legal and moral obligation not to kill civilians intentionally is well established in international law.[42]This belief accords well with the obligations ofa State(s) to protect its own population from avoidable catastrophic crimes (R2P Pillar I). The first pillar is understood to be a restatement, reaffirmation and codification of already existing norms of customary international law.[43]

However, Pillar II of R2P requires States as members of the international community to ask for assistance from each other and a further obligation on the requested States to assist the requesting State. It is not clear if the second should qualify as a norm as well given that its implementation is highly dependent on States cooperating with each other. Thisis sobecause ofcooperation of States is an ambiguous, undefined and elusive aspect of international relations. Assuming that Pillar II constitutes a norm, there is still a legal issue as to whether it exerts enough compliance pull to merit the status of a norm.[44]

In the same vein, the legal status of pillar III as a norm or not a norm is even more contentious. It is seen as a form of intervention

[40]See, e.g., Evans. 2007.*The Responsibility to Protect.* p. 55; and Chataway, T. Towards normative consensus on responsibility to protect.*Griffith Law Review* 16.1

[41]Ban, Implementing the Responsibility to Protect.para. 13.

[42]Slim, H. 2008.*Killing civilians: method, madness and morality in war*. New York: Columbia University Press.

[43]Bellamy i*bid*p. 160.

[44]Franck, T. 1990.*The power of legitimacy among nations.*Oxford: Oxford University Press. p. 49.

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that often violatesthe sovereignty of States. Be that as it may, the test of whether pillars II and III respectively qualify as a norm according to Bellamy will depend on the "extent to which there is a shared expectation that (1) governments and international organisations will exercise this responsibility; (2) they recognize a duty and right to do so; (3) failure to act will attract criticism from the society of states."[45]

There is some ample evidence to support the view that such positive obligations or duties exist and this received judicial approval in *Bosnia vs. Serbia* where the ICJ held that States have a legal obligation to take all measures reasonably necessary to prevent the crime of genocide.[46] The ICJ's position is bolstered by Common Article 1 of the 1949 Geneva Convention which requires States to ensure respect for international humanitarian law.[47] In addition, the International Law Commission's (ILC) Draft Articles on the Responsibility of States for Internationally Wrongful Acts give states a duty to cooperate to bring an end to breaches of the law.[48]The report of an independent inquiry into the Rwandan

[45]Bellamy, *ibid*p. 160.
[46]International Court of Justice, ''The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina vs. Serbia and Montenegro*),'' Judgment February 26, 2007, paras. 428–38.
[47] International Humanitarian Law is defined generally in the four Geneva convention 1949 namely: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), adopted 12 August 1949, entered into force 21 October 1950, 75 UNTS 31; Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (Second Geneva Convention), adopted 12 August 1949, entered into force 21 October 1950, 75 UNTS 85; Convention Relative to the Treatment of Prisoners of War, (Third Geneva Convention), adopted 12 August 1949, entered into force 21 October 1950, 75 UNTS; Convention Relative to the Protection of Civilian Persons in Time of War, (Fourth Geneva Convention), adopted 12 August 1949, entered into force 21 October 1950, 75 UNTS 287. See also See Additional Protocol I to the Geneva Conventions, 8 June 1977; *cf* Convention on the Repression and Punishment of the Crime of Genocide, 9 December 1948; and the Convention against Torture and other Inhumane or Degrading Treatment or Punishment.
[48]ILC, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001; available at untreaty.un.org/ilc/texts/instruments/English/commentaries/9 6 2001.pdf; and

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genocide recognized that the UN system has a shared expectation to prevent genocide and that the international community can neglect crime of genocide because it cannot survive their being repeated.[49]

These pieces of evidence coupled with the international community's commitment to the principles of R2P since its emergence in 2001 point to the direction that pillars II and III of the R2P are emerging norms of international law,[50] although this claim will require a liberal interpretation of relevant rules of international law.[51] The only obstacle to a full recognition of Pillars II and III respectively is that they suffer from problem of legal 'indeterminacy.'[52]

Although, it is an indisputable fact that norms shape understandings and limitsbehaviours that can be vindicated by reference to them, it is never fixed and absolute what a norm will prescribe or entail in a given situation[53] nor does it precisely indicate the behaviour it expects in a given situationso as to be able to determine the strength of its compliance-pull.[54] The harsh reality at present, is that the R2P

ILC, ''Third Report on Responsibility of International Organisations by Mr. Giorgio Gaja, Special Rapporteur,'' A/CN.4/553, para. 10.

[49]Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda. S/1999/1257, December 16, 1999.

[50]Arbour, L. 2008. The responsibility to protect as a duty of care in international law and practice.*Review of International Studies* 34.3: 445–58.

[51]Alvarez, J. E.June 30, 2007. *The schizophrenias of R2P*. Panel presentation at the 2007 Hague Joint Conference on contemporary issues of International Law: criminal jurisdiction 100 years after the 1907 Hague Peace Conference, The Hague, Netherlands. p. 12.

[52] An area of law may be considered "indeterminate to the extent that legal questions lack single right answers." See Kress, K. 1989. Legal indeterminacy.*California Law Review* 77.2: 283; See also Madry, A. R. 1999. Legal indeterminacy and the bivalence of legal truth.*Marquette Law Review* 82.3: 582. 'Indeterminacies' in the law also entails that "all statutes, court opinions and regulations contain ambiguities and gaps that create uncertainties in the law and lead to unanticipated consequences." See Halliday, T. C. &Carruthers, B. G. 2007. The recursivity of law: global norm making and national law making in the globalization of corporate insolvency regimes.*American Journal of Sociology* 112.4: 1149.

[53]Wheeler, N.J. 2000. *Saving strangers: humanitarian intervention in world politics* New York: Oxford University Press. It is based on Skinner, Q. *Analysis of political thought and action*, in Tully, J. (Ed.) 1998.*Meaning and context: Quentin Skinner and his critics.* Cambridge: Polity. p. 117.

[54]Franck, *Power of legitimacy*. p. 52.

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is not acknowledged as an international legal standard in accordance to recognized sources of international law.[55] R2P is not part of any known international treaty.[56]

More so, the ICISS report of 2001 and the subsequent UN World Summit Resolution on R2P of 2005 cannot also be acknowledged as treaties. If anything can be made out of it, the ICISS Report is widely seen as a political declaration made by highly distinguished people.[57] In addition, it is equally worthy of note that by virtue of 'Articles 10 to 14 of the UN Charter, the powers of the GeneralAssembly are limited to discussing matters within the scope of the UN Charter and the maintenance of international peace and security, referring legal matters or making recommendations to the Security Council,[58] hence it can be contended that Resolution 60/1 is beyond the scope of the UN General Assembly.[59] Furthermore, the resolutions of the General Assembly do not by any means create legal obligations.[60] Consequently, the World Summit Outcome Document adopted by the UN Assembly does not create legal responsibility.[61]

It is pertinent to state that R2P principle has not attained the status of customary international law[62] being that it does not measure into the constitutive essentials of customary international law.[63] By virtue of Article 38(1) (b) of the ICJ[64] customary international law, requires a repeated conduct of states that amounts to state practice and a corresponding belief that this conduct is required by law,

[55]Burke-White, W.W. 2011 Adoption of the responsibility to protect. University of Pennsylvania Law School, *Public Law Research Paper No. 11-40*.
[56]*Ibid.*
[57]*Ibid.*
[58]Articles 10 - 14, United Nations, Charter of the United Nations, 24 October 1945.
[59]*Ibid.*
[60] Burke-White, *op.cit.* 12
[61]*Ibid*
[62]*Ibid*
[63]Payandeh, M. 2010. *With great power comes great responsibility? The concept of the responsibility to protectwithin the process of international lawmaking.* Yale Law School p. 23.
[64]Article 38(1)(b), United Nations, Statute of the International Court of Justice.

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opiniojuris.[65] It is difficult to recognize these elements in the context of Responsibility to Protect.[66] The emergence of a 'customary norm can be identified by looking at the statements of states or to their assent or acquiescence to the endorsement of the concept within the UN framework.'[67] Unwritten statements, as well as resolutions of international organisations and statements of states within international organisations can be regarded as evidence of state practice and *opiniojuris.*[68]

It is dicey to ascertain the version of the responsibility to protect a specific statement refers to.[69] Since R2P has traversed through several modifications during its developmental process, 'it is far from clear what exactly State means when it endorses the concept'.[70] The same difficulty applies to the element of repeated practice.[71] Since the concept encompasses a variety of possible reactions to deteriorating human rights situation in a specific state, it is relatively easy to allege a connection between a reaction of a state or international organisation in a specific case and the concept of Responsibility to Protect.[72]

For instance, the Security Council's resolution with regard to Darfur has been qualified as implementing responsibility to protect.[73] However, it is far from clear why the mere mention of the concept in the preamble of the resolution should imply that the Security Council was implementing the concept.[74] There are no indications that the Security Council was obliged to take a specific action due

[65]*Ibid.*
[66]Payandeh, *op.cit.*
[67]*Ibid*.
[68]*Ibid*.
[69]*Ibid*.
[70]*Ibid*.
[71]*Ibid*.
[72]*Ibid*.
[73]*Ibid*.
[74]In Resolution 1706, the Security Council recalled Resolution 1674 (2006), which reaffirmed the endorsement of the responsibility to protect in the World Summit Outcome Document. S.C. Res. 1706, pmbl., U.N. Doc. S/RES/1706 (Aug. 31, 2006).

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to its previous endorsement of the concept. [75] Most scholars qualify it as a norm, which might become customary international law. [76] Legal scholars such as Jennifer Welsh and Maria Banda contend that Responsibility to Protect is an example of soft law.[77]

Burke-White argues that this approach is both analytically unhelpful and risks promoting a political backlash.[78] He maintains that soft law is subject to multiple definitions and often inaccurate usage. [79] Legal scholarship defines soft law as either imprecise legal obligations or non-legally binding obligations.[80] Classifying the Outcome Document under the first definition inaccurately suggests that it is legally binding, if imprecise.[81] As noted earlier, neither the ICISS report nor the Outcome Document has the capacity to establish international legal obligations. [82] Under the second definition, the Responsibility to Protect is seen as a hortatory norm, rather than a legal rule. White-Burke had contended, and thispaper agreewith him that:

> Despite the accuracy of this definition, the terminology of soft law is both confusing and unhelpful.[83] Labelling a non-legally binding norm as 'law' creates a mis-perception of a legally binding rule and may lead to some states worried about 'creeping legalization', which in turn will lead to its denunciation in an effort to avoid it he norms legal codification.[84]

The concept of Responsibility to Protect has also been characterized as an emerging principle of customary international law in the

[75]Payandeh, *op. cit*.
[76]*Ibid*.
[77]Burke-White, *op. cit*. See also Welsh, J. M.& Banda, M. 2010. International Law and the responsibility to protect: clarifying or expanding States' responsibilities? *2 Global Responsibility to Protect* 3, 213.
[78]*Ibid*.
[79]*Ibid*.
[80]*Ibid*.
[81]*Ibid*.
[82]*Ibid*.
[83]*Ibid*.
[84]*Ibid*.

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ICISS report. Similarly, the High-Level Panel report qualified the concept as an emerging norm, an assessment shared by the current Secretary General. CarstenStahn argues that: characterizing Responsibility to Protect as an emerging norm is misleading, since it is over-optimistic and over pessimistic at the same time.[85]Stahn states 'that some of the features of the concept are actually well embedded in contemporary international law, while others are so innovative that it might be premature to speak of a crystallizing practice'.[86]Against the background of the foregoing elucidation of the legal status of R2P, the only reasonable conclusion to reach is that the R2P principle is an emerging customary rule of international law but has yet to attain full status of "*jus cogens*"[87] peremptory norm of international law.

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[85]Stahn, C. 2010.Responsibility to protect: political rhetoric or emerging legal norm? *The American Journal of International Law* 101.1: 99-120.

[86]*Ibid*.

[87] For a detailed discussion on the doctrine of *jus cogens*, see generally Verdross, A. V. 1937. Forbidden treaties in International Law.*The American Journal of International Law* 31: 571; Hossain, K. 2005. The concept of *Jus Cogens* and the obligation under the U.N. Charter.*Santa Clara Journal of International Law* 3: 72; Stephens, P. J.A categorical approach to human rights claims: j*us cogens* as limitation on enforcement.*Wisconsin International Law Journal* 22.2: 245; Verdross, A. 1966. *Jus dispositivum and jus cogens* in International Law.*The American Journal of International Law* 60: 55-56; Criddle, E. J. &Fox-Decent, E. 2009. A fiduciary theory of *jus cogens.Yale Journal of International Law* 34.2: 331. It should be noted that *jus cogens* are inviolable binding customary rule of international law to which no derogations are permitted on the part of States and the international community are under an obligation *ergaomnes* to prevent the violation of inviolable norms. See Zemanek, K. in his seminar work entitled *New trends in the enforcement of ergaomnes obligations* in Frowein, J. A.&Wolfrum, R. (Eds.) 2000.*Max Planck Yearbook of United Nations Law*Netherlands: Kluwer Law International. pp. 1-52. See also *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment [1970] I.C.J. 3, 32, T 34 (Feb. 5) where the ICJ defined obligations *ergaomnes*as those that are owed "towards the international community as a whole". Derogations from *Jus cogens* norms are void *ex jure*. This is distinct from the sister doctrine of *Jus dispositivum* which are laws or norms that States may be permitted to deviate from in exceptional circumstances. For example, Chapter V (Articles 20-26) of the Articles on State Responsibility adopted by the International Law Commission (ILC) in 2001 details exceptional circumstances which may preclude wrongfulness of a State to include: (1) Consent of the other Party (Article 20), (2) Self Defense (Article 21), Countermeasures (Article 22), (3) *Force Majeure* (Article 23), (4) Distress (Article 24), (5) States of Necessity (Article 25) and (6) Compliance with peremptory norms (Article 26).

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3.2 No Clearly Defined Rules for Exercising Competencies over Specific Cases

Another major challenge with the R2P is that there are no clearly defined legal rules to guide intervening authorities whether States or international organisations acting under the power of the UN Security Council to exercise competences over specific cases. The ILC Draft Articles on State Responsibility only declare that all "states shall cooperate to bring to an end…serious breach[es]" of peremptory norms.[88] But the category of peremptory norms is particularly indeterminate[89] even though it will by all accounts include norms to prevent mass atrocities whichisconsistent with the R2P. The duty to cooperate on peremptory norms should ideally in many scenarios come into play as to implicate the R2P.[90]

But then, the ILC's Draft Articles "do not even try to identify the conduct that would satisfy a duty to cooperate—or, therefore, when a state might be responsible for not cooperating."[91] Even though the ILC Draft Articles posits that cooperation can be non-institutionalized, it also assumes that cooperation to end violation of peremptory norms will occur through international organisation[92] but this cooperation duty is still aspirational and not yet an effective law.[93] This is so not least because the ILC does not identify what States must do in the organisations except to simply participate.[94]
According to Hakimi, the "claim that international organisations must implement R2P is principally directed at the U.N. Security Council and reflects, at least in part, R2P's historic association with

[88]Draft Articles on State Responsibility, supra note 19, art. 41, & 1. See also Hakimi, M.*supra*p. 261
[89]SeeOrkhelashvili, A. 2006.*Peremptory norms in International Law*. pp. 50-66.
[90]Hakimi, M. su*pra* p. 261.
[91]*Ibid.*
[92]Draft Articles on State Responsibility Article 41, cmt. 2; see also Jørgensen, N. J. B. The responsibility to protect and the obligations of States and organisations under the law of international responsibility, in *Responsibility to protect: from principle to practice* at 125, 129.
[93]Id. art. 41.
[94]Draft Articles on State Responsibility, supra note 19, art. 41.

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the use of force"[95], and to this end, some have argued either for requiring the UNSC to act in humanitarian crisis[96], or restricting the use of veto powers in such cases.[97] The UN Secretary General in his report had identified different proactive measures that the different kinds of international organisations might be able to coordinate or implement.[98] But Hakimi further argues that;

> The claim that an R2P duty attaches to IOs is likely to confront serious hurdles in the near term. First, the U.N. Security Council and its regional analogs are run by states. If R2P duties are not functional when they demand that all outside states act simultaneously, why would the duties become functional simply by demanding that states act through collective organisations? The demand on any particular state would still be diluted, both because of the number of states involved and because holding particular states responsible would mean piercing the IO's veil.[99]

Again, it is to be noted that the relevant international organisations are at best mere political bodies.[100] International organisations

[95]Hakimi*op. cit.* p. 261 See also ICISS REPORT, *supra,* pp. 6.28, 6.31-.35; Badescue, C. G. 2011.*Humanitarian intervention and the responsibility to protect: security and human rights.* p. 84; and Haugevik, K. M. 2009.Regionalising the responsibility to protect: possibilities, capabilities and actualities. 1 *Global Responsibility to Protect* pp. 346, 350-351.

[96]See, e.g., U.N. Secretary-General, We the peoples: the role of the United Nations in the 21st Century: Rep. of the Secretary-General, p. 219, U.N. Doc. A/54/2000 (Mar. 27, 2000).

[97]See, e.g., Costa Rica, Jordan, Liechtenstein, Singapore, & Switzerland, Draft Res.: Improving the working methods of the Security Council, Annex, p. 13, U.N. Doc. A/60/L.49 (Mar. 17, 2006).

[98]Implementing the responsibility to protect: Rep. of the Secretary-General, supra pp. 28-48; Bellamy, A. J. 2013.Making RtoP a living reality: reflections on the 2012 General Assembly dialogue on timely and decisive response.*5 Global Responsibility to Protect* pp. 109, 122-24.

[99]Hakimi,*op. cit.* p. 261. *Cf.* Draft Articles on the Responsibility of International Organisations with Commentaries, art. 40, cmt. 1, in Rep. of the Int'l Law Comm'n, 63d Sess., Apr. 26-June 3, July 4-Aug. 12, 2011, pp. 87-88, U.N. Doc. A/66/10, GAOR, 66th Sess., Supp. No. 10 (2011) [hereinafter Draft Articles on IO Responsibility].

[100]Hakimi,*op. cit.* p. 261.

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reserve ontothemselves the broad discretion to decide whether or notthey will help any population at risk and they can ultimately decide that (it) they will do nothing[101], even though this discretion does not necessarily mean that international organisations will just do whatever they please.[102] After all, the UN Security Council is generally required to account for human rights interest when making critical decisions[103] regardless of the fact that the Security Council has a wide 'discretion to weigh those interests against the countervailing considerations that favour or disfavor a particular decision.'[104] Attempts to put some constraints to the Council's discretion in this regard[105], including the ICISS proposals on R2P[106] have had little success.[107] According to José Alvarez, the idea that the Security Council is obligated to respond to humanitarian crisis is "absurdly premature and not likely to be affirmed by state practice."[108]

[101]See Krisch, N. Article 39, in the Charter of the United Nations: A Commentary 1272, 1275-76 (Bruno Simma et al. eds., 2012); Ronzitti, N. 2005. The current status of legal principles prohibiting the use of force and legal justifications of the use of force in redefining sovereignty: the use of force after the Cold War. 91, 108 (Bothe, M. et al. Eds.); Schott, J. 2007. Chapter VII as exception: Security Council action and the regulative ideal of emergency.*Northwestern University Journal of International Human Rights*6: 24, 38.

[102]See, e.g., Tzanakopoulos, A. 2011.*Disobeying the Security Council*. p. 202; cf. Hurd, I. 2005. The strategic use of liberal internationalism: Libya and the UN Sanctions 1992–2003.*International Organisation*59: 495, 523.

[103]See, e.g.,Drezner, D. W. 2011.Sanctions sometimes smart: targeted sanctions in theory and practice.*International Studies Review*13:. 96, 104; cf. U.N. Secretariat, Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law, p. 1.1 U.N. Doc. ST/SGB/1999/13 (Aug. 6, 1999).

[104]See Krisch, N. Introduction to Chapter VII: The General Framework, in The Charter of the United Nations: A Commentary, *supra* p. 1258.

[105]See, e.g., Fassbender, B. 1998. UN Security Council reform and the right of veto. pp. 263-75; Johnstone, I. 2008. Legislation and adjudication in the UN Security Council: bringing down the deliberative deficit.*American Journal of International Law* 102: 275, 303–307.

[106]ICISS REPORT, *supra* note 9, pp. 6.13-.27; Special Rapporteur on Resp. of Int'l Orgs., Third Rep. on Responsibility of International Organisations, p. 10, Int'l Law Comm'n, U.N. Doc. A/CN.4/553 (May 13, 2005).

[107]Hakimi*op. cit.* p. 261.

[108]Alvarez, J. E. 2008.*The schizophrenias of R2P in human rights, intervention and the use of force* (Alston, P. &MacDonald, E. Eds.) pp. 275, 282.

Furthermore, even if international organisations, for example, NATO[109], had an R2P duty, the extent to which enforcement of the duty could be achieved meaningfully in practice remains unclear. Third, even if IOs had an R2P duty, the extent to which it could meaningfully be enforced is unclear[110] in so far as international organisations are rarely held responsible for international legal violations.[111]

Thus, in conclusion, if the duty to cooperate in order to realize the visions of R2P is not clearly allocated in some specific ways, as against allocations to States and international organisations at large, the duty is less likely to be enforced by anyone.

4.0 The Institutional Challenges

One of the most reassuring developments in the international legal order since the early 1990s has been the establishment of new institutions and strengthening of existing ones in both the public and non-governmental sectors aimed at responding to and at the same time preventing mass atrocity crimes. More specifically, in relation to R2P, the UN has undertaken some institutional reforms in its system for the implementation of the R2P principle. These institutional reforms have found some expression both in words and action.[112]

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[109] NATO stands for North Atlantic Treaty Organisation. The NATO was created in 1949 by the United States, Canada, and several Western European nations to provide collective security against the Soviet Union. NATO was the first peacetime military alliance the United States entered into outside of the Western Hemisphere. After the destruction of the Second World War, the nations of Europe struggled to rebuild their economies and ensure their security. The former required a massive influx of aid to help the war-torn landscapes re-establish industries and produce food, and the latter required assurances against a resurgent Germany or incursions from the Soviet Union…. See generally Office of the Historian, Milestones: 1945-1952. Retrieved Sept. 5, 2018 fromhttps://history.state.gov/milestones/1945-1952/nato.

[110]See, e.g., Telestsky, A. 2012.Binding the United Nations: compulsory review of disputes involving UN international responsibility before the International Court of Justice. 21 *Minnesota Journal of International Law* 21: 75, 80.

[111]Draft Articles on IO Responsibility, *supra p.* 2; Holder, W. E. Can international organisations be controlled? Accountability and responsibility.*American Society of International Law Proceedings*97: 231, 234.

[112]Kendal, D. M. 2013. Denmark and the Responsibility to Protect (R2P) - how Denmark can further contribute to the prevention of mass atrocities.*Ibid*p. 1.

Some of the institutional structures include: United Nations Security Council, Office of the Special Adviser on the Prevention of Genocide, Peace Building Commission, Human Rights Council, and the regional and sub-regional organisations. Others include early warning networks, international tribunals and NGOs dedicated to the R2P principle. The "expanding number of actors involved in implementing and monitoring R2P presents an opportunity for information sharing and pooling of resources to support each pillar of the international norm—the task ahead is to build on these developments to ensure that institutions and governments work together to achieve the desired outcomes."[113]

However, implementation of the R2P principle within the context of institution in the UN system is not without challenges. It faces not only institutional but also purely legal and political problems. The challenges are interconnected. The political dimension of the problem raises questions like who should bear the cost of R2P operations whereas operational challenges relate specifically to "expanding the set of tools for policymakers, supporting justice and accountability mechanisms, and narrowing the gap between warning and responses"[114] as well as resolving questions about who should participate in R2P operations and under what conditions and circumstances.

Whilethis paperfocuses primarily on dissecting the institutional problems, it also takes into account the specific issues relating to political and operational architecture of the R2P principle. Thus, the major institutional challenge that has been facing the proper and timely implementation of the R2P vision within the UN system has been how to achieve synergy in the workings of the institutions whilst translating their unique functions into practical results.
The harsh reality is that no institution or country acting alone has the resources, information, or authority to fulfill even the most

[113]Albright, M. K. & Williamson, R. S. 2013.*The United States and R2P: from words to action.* Published by the United States Holocaust Memorial Museum, United States Institute of Peace, and Brookings Institution p. 22.
[114]*Ibid* p. 5.

infinitesimal part of what the R2P vision requires having regard to the huge demands contained in the three pillars that shapes the principle. While some evidence of regular consultation between the institutions and other governments and international NGOs exist, there has not been good record of information sharing and coordinate policies and actions between them; yet, implementation of the R2P is highly dependent on close collaborations and cooperation between these bodies.

Lack of communication and information sharing in collaborative terms between the institutions obviously hamper the works of the UN Security Council in the task of accomplishing its prime duty—that is to protect the peace and security of the world. This is so, not least because governments serving in the UN Security Council need such crucial information to understand the nature, variety, and severity of individual country security situation. In addition, most of the institutions particularly the UN office on prevention of genocide does not have sufficient resources to expand staff base and training programs on preventing genocide and other core crimes.

Also, during periods of humanitarian crisis occasioned by mass atrocity crimes, talks between the UN, its institutions and regional organisations like AU, EU and NATO aimed at drawing a quick and robust plan to quell the crisis have always been engulfed in protractedand prolonged diplomatic negotiation with warring factions often leading late interventions. However, this is not to suggest that regional organisations have not done enough in assisting the UN and its institutions to respond to mass atrocity crimes. They have in fact done so on many occasions with limited success though. According to Madeleine K. Albright and Richard S. Williamson;

> One of the most pronounced lessons from recent experience is the key role of regional organisations in providing political backing, substantive insights, and material aid for initiatives related to R2P. The Arab League was an early and influential supporter of multilateral action in Libya and Syria. In 2000,

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> five years before R2P was adopted, the Constitutive Act of the AU approved a historic shift from a posture of nonintervention to an attitude of non-indifference toward mass violations of human rights. AU members specifically endorsed "the right of the Union to intervene in a Member State pursuant to a decision by the Assembly in respect to…war crimes, genocide, and crimes against humanity." The United States and other world leaders should strive to elevate the ability of the AU and other regional organisations to carry out early warning, prevention, and response measures. As the regional body with the most resources, NATO can be particularly helpful by working in partnership with other regional groups to provide technical and logistical assistance. This is in keeping with NATO's 2010 Strategic Concept, which cites the organisation's experience in combating ethnic cleansing in the Western Balkans, its adoption of a comprehensive approach to crisis management, and its commitment to human rights and the rule of law.[115]

As already noted, these wide range of institutional problems are exacerbated by political challenges. For example, even within the Security Council, arguments and improper exercise of veto power doesnot always allow the Council to take timely action to prevent spread of atrocities. The political loggerhead between the five world powers has meant that the UN is unable to invoke the R2P to respond to the ongoing war in Syria.

The Syrian situation is comparable to similar failures in the 1990s that culminated in the spread of the genocide in Rwanda in 1994. Well over 800 thousand people among the Hutu and Tutsi ethnic groups were massacred in just 100 days while the world watched

[115]*Ibid* p. 5.

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helplessly. The US did not want to be involved in the Rwanda genocide.[116] France was involved but disgracefully took sides with one of the warring ethnic groups.[117]

Worse still, the two world powers namely the United States and Russia have been supporting opposite camps in the Syrian civil war. In fact, at some point in Syrian crisis, the US and Russia were nearly on the verge of a nuclear showdown and their actions crippled the works of the UN and the institutions mandated to implement the R2P principle. In addition, the role of individual States in implementing R2P is complicated by every State's ambivalent attitude towards involvement in overseas conflicts. With respect to the United States particularly, Madeleine K. Albright and Richard S. Williamson further writes;

> …surveys regularly show that the public strongly favors action to prevent atrocities in the abstract, but support can be difficult to rally in specific cases, especially if it requires a large investment of money or troops over an extended period of time. The U.S. desire to prevent injustice and alleviate suffering is powerful, but so is wariness about entanglement in complex foreign problems. This wariness is a constraint not only during a crisis but also with respect to long-term investments that might help prevent future atrocities. Such investments include the creation of effective early warning systems, development aid, support for democracy, and an

[116] See generally Graybill, L. 2002. Responsible ....by Omission: The United States and Genocide in Rwanda.*Seton Hall Journal of Diplomacy and International Relations* pp. 86-100. See also, Dowden, R. 2004. Comment: The Rwanda Genocide: how the press missed the story—a memoir.*African Affairs, Royal African Society* pp. 283-290.

[117]Cameron, H. 2015. The French connection: complicity in the 1994 genocide in Rwanda.*African Security* 8.2: 96-119; See also Mucyo Report - The role of France in the 1994 Rwandan Genocide Report of an independent commission to establish the role of France in the 1994 Rwandan Genocide. Retrieved Aug. 5, 2018 from https://s3.amazonaws.com/s3.documentcloud.org/documents/1392372/footnote-94-mucyo-commission-report.pdf.

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> increased diplomatic presence in countries at risk. Political leaders and the public both tend to prioritize measures that produce quick and dramatic results, which preventive investments rarely do. The reluctance to support such initiatives is deepened, according to surveys, by the misperception among a majority of the U.S. public that foreign aid is a major contributor to the federal deficit. Commonly assumed to account for 20 percent or more of the nation's budget, international assistance of all types is actually equal to less than 1 percent. To date, the concept of R2P has neither attracted widespread notice within Congress nor entered the public consciousness in a meaningful way…"[118]

Given these institutional, political and operational challenges facing the effective implementation of the R2P, the only conclusion to reach is that the principle is observed more in breach than in compliance by the international community. Implementation has been mixed as the case studies have shown. Where it had been implemented, as in Libya, the result was quite limited while in situations where it has not been implemented at all, as in Syria, it calls to question the genuineness and integrity of the legal, political and moral commitment of the international community of States to end atrocious crimes in many troubled regions of the world.

5.0 Conclusion and Recommendations

As earlier discussed above, the major challenge revolves around legality and legitimacy of the R2P principle, thus the need to address the issue. This paper therefore makes the following recommendations, that:

1. A clear definition of the legal rules for effective implementation and proper and specific allocation of State responsibilities particularly in the area of international

[118]Albright, &Williamson,*Ibid* p. 20.

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cooperation to implement R2P is most fundamental to operationalizing the principle in practice.

2. The international community needs to agree what should constitute the specific minimum content of the obligation of States to cooperate so as to create room for discerning when a breach of the duty has been violated.
3. There should be a review of the outer reach and limit threshold of the R2P to accommodate more thriving issues. The outer reach threshold is quite high, and the limit restricts the application of the concept to more novel issues.
4. A key and perhaps the most fundamental proposal that this paper is putting forward is the establishment of an international advisory regime on the implementation of the R2P. Consequently, in line with this proposal, it is suggested that the UN should adjust the current R2P framework to allow for establishment of an international advisory regime (commission) to be made of experts in international law and whose membership will see each State or in a narrower sense, regions represented by one diplomat. The works of the advisory body will be primarily to advise the United Nations and country governments on how best to implement the R2P.