

Reexamining the Concept of Responsibility to Protect in Light of the Mass Atrocities in Myanmar

Dr. Najiba Mustafayeva*

Despite significant achievements in the international human rights regime, millions of civilians still fall victim to unimaginable atrocities that continue to shock the conscience of humanity and threaten international peace and security. Mass murders of national, ethnic, and religious groups have continued with depressing frequency – most recently in Myanmar, where violence broke out again in late August 2017, after security forces launched an operation against Rohingya Muslims. There were more than 1,000 fatalities, and 800,000 civilians were forced to seek refuge in neighboring Bangladesh. The international community has failed to prevent gross and systematic atrocities, and the vow of “never again” risks becoming an empty promise. The question remains: when, if ever, it is appropriate for the international community to take coercive actions against a sovereign state for the purpose of protecting people at risk in that state? The challenge is the legal reconciliation of the two main jus cogens principles of international law – state sovereignty, and the need to protect the fundamental human rights of populations at risk from their own governments. The answer lies within the concept of the Responsibility to Protect (R2P), and this article examines R2P through an analysis of the role of state responsibility as it relates to national sovereignty in the light of mass atrocities committed against Rohingya Muslims in Myanmar.

Keywords: Rohingya, Muslims, Myanmar, Responsibility to Protect, UN



* Dr. Najiba Mustafayeva is a Research fellow at the Center for Strategic Studies under the President of the Republic of Azerbaijan

Introduction

After the crimes of World War II, the international community vowed “never again”. World leaders agreed to complement the 1945 UN Charter with a road map to guarantee the rights of every individual. In the Preamble of the UN Charter, the original member countries reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and committed to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained¹.

Prior to the atrocities of World War II, which gradually transformed public thinking, it was practically unthinkable for international law to interfere with relations between states and their citizens. In this direction, milestones include the establishment of a number of institutional entities and mechanisms in the area of human rights and human security. They have included, among others, the UN High Commissioner for Human Rights and the UN Human Rights Council. Furthermore, apart from the International Bill of Human Rights, which consists of the 1948 Universal Declaration of Human Rights and the two 1966 International Covenants. The UN created an extensive network of special conventions, bodies and procedures to monitor adherence to the treaty obligations of member states. They are important milestones in the transition from a culture of violence to a more enlightened culture of peace. Moreover, what has gradually emerged is a parallel transition from a culture of sovereign impunity to a culture of national and international accountability².

A significant achievement in this realm was the establishment of the Nuremberg and Tokyo international tribunals after World War II, dealing with the core international crimes. Following the Nuremberg and Tokyo trials, the first international criminal tribunals were established in the 1990s, to respond to atrocities committed during the conflict in the former Yugoslavia and the mass killings in Rwanda. The International Criminal Tribunal for the former Yugoslavia (ICTY) and its sister court for Rwanda (ICTR) were both created by the UN Security Council. Since

1 The United Nations (1945) Charter of the United Nations, Available at: <http://www.un.org/en/sections/un-charter/preamble/index.html> (Accessed: 23.10.2017)

2 The International Commission on Intervention and State Sovereignty (2001) Report “The Responsibility to Protect”, Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (Accessed: 21.10.2017)

then, special courts have also been set up to prosecute domestic and international crimes. Examples of such mixed tribunals can be found in Bosnia Herzegovina, East Timor, Sierra Leone, Cambodia and Lebanon³.

In 2002 the International Criminal Court (ICC) began functioning following the ratification of the Rome Statute by 60 states. The ICC has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, war crimes, and crimes of aggression. The Statute “shall apply equally to all persons without any distinction based on official capacity”⁴.

Despite these significant achievements in the international human rights regime, millions of civilians still fall victim to unimaginable atrocities that shock the conscience of humanity and threaten international peace and security. Mass murders of national, ethnic, and religious groups have continued with depressing frequency — most recently in Myanmar, where violence broke out again in late August 2017, after security forces launched an operation against Rohingya Muslims. There were more than 1,000 fatalities, and 800,000 civilians were forced to seek refuge in neighboring Bangladesh⁵.

The international community has failed to prevent gross and systematic atrocities, and the vow of “never again” risks becoming an empty promise. The question remains: when, if ever, it is appropriate for the international community to take coercive actions against a sovereign state for the purpose of protecting people at risk in that state⁶?

Particularly in the wake of the horrifying events of 11 September 2001, which put the international response to terrorism under the spotlight, the issue

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3 Мустафаева, Н (2016) “Международное уголовное правосудие: становление, современное положение и перспективы развития”, Стратегический анализ, №3-4 (17-18), с. 193-217.

4 The International Criminal Court (1998) The Rome Statute, Available at: https://www.icc-cpi.int/nr/rdonlyres/ca9ae17-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (Accessed: 22.10.2017)

5 United Nations Office for the Coordination of Humanitarian Affairs (2017) Pledging conference for the Rohingya refugee crisis, Available at: http://interactive.unocha.org/emergency/2017_rohingya/ (Accessed: 29.10.2017)

6 The International Commission on Intervention and State Sovereignty (2001) Report “The Responsibility to Protect”, Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (Accessed: 21.10.2017)

of intervention for human protection purposes has been one of the most controversial and difficult of all international relations questions. With the end of the Cold War, it gained unprecedented attention. Numerous calls for intervention have been made over the last decade – some of answered and others

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ignored. But there continues to be disagreement over whether is a right of intervention, and if so, how it should be exercised, when, and under whose authority⁷.

The challenge is the legal reconciliation of the two main *ius cogens* principles of international law – state sovereignty, and the need to protect the fundamental human rights of populations at risk from their own governments. The answer lies within the concept of the Responsibility to Protect (R2P).

This article examines the concept of the R2P by considering the role of state responsibility as it relates to national sovereignty in light of mass atrocities committed against Rohingya Muslims in Myanmar. The paper also evaluates international responses to extreme situations in which there is a compelling need to protect innocent people. The key question is securing the necessary political commitment to halt brutal and systematic violations of human rights.

The article is divided into three sections. The first provides a comprehensive overview of the R2P concept, explaining the conditions for international intervention, and who holds the ultimate authority to decide whether, when, where and how any such intervention should proceed. The second section sheds light on the recent outbreak of violence in Myanmar, demonstrating the applicability of the R2P concept. The third section deals with the UN Charter framework, and highlights the importance of the shared responsibility through mobilizing political will to help the targeted population in Myanmar.

A new approach: the Responsibility to Protect (R2P)

External military intervention for human protection purposes (“humanitarian intervention”) has been controversial both when it has happened –as in Somalia and Balkans – and when it

⁷ Ibid.

has not, as in Rwanda. For some, the new activism marks a long overdue internationalization of the human conscience, while for others it has been an alarming breach of state sovereignty of states and territorial inviolability⁸.

At the UN General Assembly in 1999, and again in 2000, Secretary-General Kofi Annan made compelling pleas to the international community to try to reach a new consensus on how to approach these issues, to “forge unity” around the basic questions of principle and process involved. He posed the central question: “...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica –to gross and systematic violations of human rights that affect every precept of our common humanity?”⁹

In response to this challenge, the Government of Canada, together with a group of major foundations, announced the establishment of the International Commission on Intervention and State Sovereignty (ICISS) at the September 2000 General Assembly. The ICISS released a report titled “The Responsibility to Protect”¹⁰, which proposed a radical reformulation of the meaning of state sovereignty. Thus, the report argued that sovereignty entailed not only rights, but also a responsibility to protect its people from major human rights violations.

As Christopher C. Joyner argues, the rationale for conceiving sovereignty in terms of responsibility is increasingly being justified by the escalating influence that human rights norms exert as they are accepted as genuine components of human security. In this regard, the equation of sovereignty as governmental responsibility is increasingly being codified in international human rights mechanisms and recognized in national practice of states. Since 1948, international human rights documents have established legal benchmarks for state conduct, and set up the global regime that mandates national and international

8 Ibid.

9 Annan, K (2000) “We the peoples’: the role of the United Nations in 21st century”, Available at: www.un.org/en/events/pastevents/.../We_The_Peoples.pdf (Accessed: 27.10.2017)

10 The ICISS suggested the phrase “responsibility to protect” (R2P) as a way to avoid “the right to intervene” or “humanitarian intervene” doctrine, but keep a degree of duty to act to resolve humanitarian crises.

protection for and promotion of individual human rights¹¹.

In fact, the past seven decades have seen growing discrepancies between the lawful conduct of sovereign states as defined in the UN Charter, and the reality of state behavior on the pretext of sovereign rights. It seems evident that the founding members

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of the United Nations never intended for the Charter to allow governments to exercise unchecked power over their populations. Rather, the Charter and United Nations practice both indicate that sovereignty entails a dual responsibility: on the one hand, it implies the duty to respect the sovereignty of other states and to refrain from interfering in their internal affairs; on the other hand, sovereignty invokes the concomitant duty of the government to respect the fundamental rights of all people within the state, and to take action to protect them. Thus, by construing sovereignty as a principle of state responsibility, relations between states can proceed with less conflict and greater cooperation. At the same time, however, basic human rights within states can be guaranteed under international legal standards¹².

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to the World Summit Outcome Document (paragraphs 138 and 139), all sovereign states have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity¹³. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing

11 Christopher C. Joyner (2015) "The Responsibility to Protect: Humanitarian Concern and the Lawfulness of Armed Intervention", *The Politics of Global Governance: International Organizations in an Interdependent World*, edited by Brian Frederking & Paul F. Diehl, p. 141.

12 *Ibid*, pp. 141-142.

13 Genocide, war crimes and crimes against humanity are defined in international law and codified in the Rome Statute that established the International Criminal Court. Ethnic cleansing is not a crime defined under international law, but has been defined by the UN as "a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas". It may be covered by the subject matter jurisdiction of the *ad hoc* tribunals, particularly persecution as a crime against humanity. The concept of "ethnic cleansing" is one of group behavior and organized crime (See: Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)).

an early warning capability¹⁴.

Moreover, “the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”. In this context, world community “prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Furthermore, the world states intended to commit themselves, as necessary and appropriate, to helping states build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts breakout”¹⁵.

The conflict has resulted in the securitization of almost everything related to Armenia in Azerbaijan and vice versa. Thus, anything that is seen as posing an advantage to Azerbaijan is perceived as to the detriment of Armenia, and vice versa, leading to zero-sum bilateral relations.

Consequently, the Security Council in its resolution № 1674 (2006) reaffirmed the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity¹⁶.

The concept of R2P comprises three pillars. Pillar I – *The protection responsibilities of the state* – identifies the state as the primary bearer of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Pillar II – *International assistance and capacity-building* – stresses the role of the international community in providing cooperation and assistance to allow states to develop local capacities that will enable them to discharge that responsibility. Pillar III – *Timely and decisive response* – applies

14 The United Nations (2005) “2005 World Summit Outcome” Document, Available at: www.un.org/womenwatch/ods/A-RES-60-1-E.pdf (Accessed: 27.10.2017)

15 Ibid.

16 The United Nations (2006) Resolution 1674 (2006), Available at: <https://www.un.org/ruleoflaw/blog/document/security-council-resolution-1674-2006-on-protection-of-civilians-in-armed-conflict> (Accessed: 28.10.2017)

to exceptional circumstances and when measures provided for in the first and second pillars have manifestly failed, allows for the international community to resort to collective action, in accordance with the norms and procedures established in the UN Charter.

As might be expected, the most difficult to implement both conceptually and politically is Pillar III. These difficulties stem from the governing rules of the UN Security Council: for some states with veto power, the only real issue is ensuring that coercive interventions are effective (US, United Kingdom and France); but for others, questions about legality, process and the possible misuse of precedent loom much larger (Russia and China)¹⁷. Most recently, the Arab Spring presented a new challenge to the UNSC, as seen in the voting on Libya¹⁸ and Syria in the R2P framework.

In fact, the history of humanitarian military intervention features many examples of powerful states or coalitions invoking the humanitarian doctrine to justify their pursuit of their own geopolitical interests. Thus, the doctrine of so-called “humanitarian intervention” has frequently given rise to serious abuses, and was reserved for the most powerful states¹⁹. There are growing concerns that the concept of the R2P might be also misused for purposes other than protecting civilians, such as regime change. This perception may make it even more difficult to attain the protection objectives pursued by the international community²⁰.

As a result of disagreements among permanent member states of the UN Security Council, which use their veto rights to block the resolutions linked with the R2P capabilities, the United Nations is limited to condemning (*post factum*) the ongoing atrocities, or

17 Мустафаева, Н (2017) “Апокалипсис международного права в пост биполярном мире: от хаоса к ренессансу”, The Russian International Affairs Council (RIAC), Available at: <http://rus-siancouncil.ru/analytics-and-comments/columns/global-governance/apokalipsis-mezhdunarodnogo-prava-v-postbipolyarnom-mire-ot-khaosa-k-renessansu/> (Accessed: 28.10.2017)

18 Libya was the first case where the United Nations Security Council authorized a military intervention citing the R2P.

19 Christopher C. Joyner (2015) “The Responsibility to Protect: Humanitarian Concern and the Lawfulness of Armed Intervention”, The Politics of Global Governance: International Organizations in an Interdependent World, edited by Brian Frederking & Paul F. Diehl, p.137.

20 See: the United Nations (2011) “Responsibility while protecting: elements for the development and promotion of a concept”, Annex to the letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, Available at: <http://undocs.org/A/66/551> (Accessed: 18.10.2017)

at best, to establish a fact-finding group/mission, the results of which an alleged offender state may simply ignore.

Consequently, we are faced with the failure of the “never again” promise, most recently in the Myanmar, described by the UN Secretary-General Antonio Guterres as “a humanitarian catastrophe with implications for peace and security that could continue to expand beyond Myanmar’s borders”²¹.

Violence against Rohingya Muslims in Myanmar: a failure of “never again”?

The Rohingya Muslims, an ancient community in the majority Buddhist Myanmar, are often described as “the world’s most persecuted minority”. They are not considered one of the country’s 135 official ethnic groups and have been denied citizenship in Myanmar since 1982, effectively rendering them stateless. Almost all of the Rohingya in Myanmar live in the western coastal state of Rakhine, and are not allowed to leave without government permission. Rakhine is one of the poorest states in Myanmar, with ghetto-type camps and lacking basic infrastructure and services.

According to the Arakan Rohingya National Organisation, “Rohingyas have been living in Arakan (the area now known as Rakhine) from time immemorial”²².

During more than a century of British rule (1824-1948), there were significant levels of labor migration to what is now known as Myanmar from today’s India and Bangladesh. Because the British administered Myanmar as a province of India, this migration was considered internal, according to Human Rights Watch. The migration of laborers was viewed negatively by the majority of the native population²³.

21 The Global Center for the Responsibility to Protect (2017) Ongoing “clearance operations” by the security forces in Myanmar (Burma) constitute a systematic policy of ethnic cleansing directed at the Rohingya population in northern Rakhine State, Available at: http://www.globalr2p.org/regions/myanmar_burma (Accessed: 28.10.2017)

22 Arakan Rohingya National Organisation (2006) “Facts about the Rohingya muslims of Arakan”, Available at: <http://www.rohingya.org/portal/index.php/learn-about-rohingya.html> (Accessed: 24.10.2017)

23 Aljazeera (2017) “Myanmar: Who are the Rohingya?”, Available at: http://www.aljazeera.com/indepth/features/2017/08/rohingya-muslims-170831065142812.html?gclid=EAIaIQobChMIoOeN58q1IwIVVM0bCh1JCw4-EAAYASAAEgLaJ_D_BwE (Accessed: 24.10.2017)

Human Rights Watch's 2006 report argues that after independence, the government viewed the migration that took place during British rule as "illegal, and it is on this basis that they refuse citizenship to the majority of Rohingya"²⁴.

Since the 1970s, a series of crackdowns on the Rohingya Muslims have forced hundreds of thousands to flee to neighboring Bangladesh, as well as Malaysia, Thailand and other Southeast Asian states. During such crackdowns, refugees have often reported torture, rape, fire-raising and murder committed by the Myanmar security forces.

The recent wave of atrocities started in October 2016 after the killings of border police and security crackdowns in Rakhine villages. The Myanmar government blamed members of an armed Rohingya group. During the crackdown, government troops were accused of multiple human rights abuses, including killing, rape, and arson attacks. The Myanmar government has denied these allegations.

The United Nations accused the government of Myanmar of carrying out ethnic cleansing of Rohingya Muslims. In March 2017 the UN Human Rights Council adopted a resolution to set up an independent, international fact-finding mission to investigate the alleged crimes with a view to ensuring full accountability for perpetrators and justice for victims²⁵. In this resolution, the Council pointed to a February 2017 report by the UN Office of the High Commissioner for Human Rights, which found that crimes against the ethnic Rohingya community in northern Rakhinestate "seem to have been widespread as well as systematic, indicating the very likely commission of crimes against humanity".

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It should be specifically noted that the UN special rapporteur on human rights in Myanmar, Yanghee Lee, had initially urged the Council to establish a full Commission of Inquiry²⁶, the body's

24 Human Rights Watch (2006) Report on "Burma/Bangladesh: Burmese refugees in Bangladesh: still no durable solution", Available: <https://www.hrw.org/reports/2000/burma/index.htm> (Accessed: 15.10.2017)

25 The United Nations Office of the High Commissioner for Human Rights (2017) "Human Rights Council decides to dispatch a fact-finding mission to Myanmar to establish facts on violations, especially in Rakhine State", Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21443&LangID=E> (Accessed: 21.10.2017)

26 The United Nations Office of the High Commissioner for Human Rights (2017) "Statement by Ms. Yanghee Lee Special Rapporteur on the Situation of Human Rights in Myanmar at the 34th session of the Human Rights Council", Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21355&LangID=E> (Accessed: 20.10.2017)

most powerful investigative mechanism, but member states ultimately reached a compromise on a fact-finding mission, to which Myanmar and its neighbors would be more likely to agree. While the resolution passed, Myanmar and several other states “disassociated” themselves from the resolution in whole or in part²⁷. Thus, the Council limited its actions with a pledge to provide a full report next year on the results of their investigation.

The recent violence broke out in late August 2017 in Rakhine state. Myanmar’s military launched a crackdown on the country’s Rohingya Muslims after police posts and an army base were attacked. More than 200 villages have been burned, and refugees say the army is responsible for mass killings, tortures, and rapes. The Myanmar government denies these claims²⁸. More than half a million people have fled horrific violence in Myanmar and crossed the border into neighboring Bangladesh. Almost 60% of them are children²⁹.

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The government of Nobel Peace Prize laureate and State Chancellor Aung San Suu Kyi does not recognize the Rohingya as an ethnic group and have blamed violence in Rakhine state, and subsequent military crackdowns, on those they call “terrorists”. San Suu Kyi has been widely criticized for her failure to condemn indiscriminate force used by state troops, as well as for failing to uphold the rights of the more than one million Rohingya in Myanmar.

Moreover, Myanmar’s government officials, namely State Chancellor Aung San Suu Kyi and Minister of Foreign Affairs Kyaw Tin, have stated that the UN’s decision to establish an independent international inquiry was not “in keeping with what is actually happening on the ground”, and that they “will order Myanmar embassies not to grant any visa to UN fact-finding mission members”³⁰.

27 Time (2017) “The UN has agreed to investigate Myanmar’s Alleged Abuse of Rohingya”, Available at: <http://time.com/4710430/myanmar-rohingya-human-rights-council-probe/> (Accessed: 21.10.2017)

28 In November 2017 Myanmar’s army released a report denying all allegations of rape and killings by security forces.

29 UNICEF (2017) “Covering the Rohingya crisis for UNICEF: Three views”, Available at: <https://blogs.unicef.org/blog/three-photographers-filmmakers-covering-rohingya-crisis-unicef/> (Accessed: 29.10.2017)

30 Furthermore, The United Nations special reporter on human rights in Myanmar Yanghee Lee claimed, she was denied access to certain parts of Rakhine state and was only allowed to speak to Rohingya who had been pre-approved by the Myanmar’s government.

Back in September 2016, Aung San Suu Kyi entrusted former UN Secretary General Kofi Annan with finding ways to heal the long-standing divisions in the region. Thus in 2016, the Rakhine Commission was established, mandated to look at the root causes of the conflict in Rakhine state. It does not have a mandate to investigate human rights abuses, nor will it address questions of justice and accountability³¹. Taking advantage of the limited mandate of the commission, the government of Myanmar contends that “the Rakhine Commission, created a year ago, makes a UN-led inquiry unnecessary”. This indicates a blatant attempt to evade responsibility for the alleged recent human rights violations by military and security forces, which can be confirmed via the Fact-Finding Mission’s investigation. It is important to note that the Fact-Finding Mission has a broad mandate, and is empowered to look at all recent allegations of situations where the human rights of people in Myanmar have been undermined by any actor, whether they are part of the military or security forces, or non-state armed groups³².

The Global Center for the Responsibility to Protect specifies that the rejection of the UN fact-finding mission is a setback regarding accountability for systematic violations and abuses of human rights. The government’s refusal to end discriminatory state policies regarding the Rohingya has encouraged violations of their fundamental human rights and reinforced the dangerous perception of them as ethnic outsiders. The 1982 Citizenship Law and the Protection of Race and Religion laws were intended to eradicate the Rohingya’s legal right to exist as a distinct ethnic group in Myanmar. The government has not taken any significant steps to repeal discriminatory laws and end anti-Rohingya policies³³.

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Furthermore, “fighting insurgents” cannot serve as a legitimate pretext to commit atrocities. Equally important, the government

31 The Commission offered practical recommendations to address the root causes of conflict in Rakhine, including through reforming the 1982 Citizenship Law.

32 Human Rights Watch (2017) “United Nations Fact-Finding Mission on Myanmar”, Available at: <https://www.hrw.org/news/2017/08/02/qa-united-nations-fact-finding-mission-myanmar> (Accessed: 24.10.2017)

33 The Global Center for the Responsibility to Protect (2017) Ongoing “clearance operations” by the security forces in Myanmar (Burma) constitute a systematic policy of ethnic cleansing directed at the Rohingya population in northern Rakhine State, Available at: http://www.globalr2p.org/regions/myanmar_burma (Accessed: 28.10.2017)

has a responsibility to protect its entire population, irrespective of ethnic or religious identity. The government's unwillingness to do so provides substantial grounds to conclude that it is manifestly failing to uphold its responsibility to protect³⁴.

In such a situation, the United Nations, in keeping with its 2005 World Summit Outcome Document, has a responsibility to protect the targeted minorities. This responsibility includes using appropriate diplomatic, humanitarian and other peaceful means to protect populations. In the face of the Myanmar government's manifest failure to protect its population from imminent and recurring attacks, there is an international commitment to take timely and decisive action to protect populations under threat.

International response: shared responsibility through mobilizing political will

There is an urgent need for collective action to help the targeted population in Myanmar. At the same time, there is a need to reconcile the principle of shared responsibility with that of nonintervention. In fact, when authorization is needed for human rights protection purposes, the first stop must be in the UN Security Council³⁵.

However, despite the 2005 World Summit Outcome Document, which declares that the Security Council is prepared to take action should governments manifestly fail to protect their populations, the Security Council has been largely silent on mass atrocities in Myanmar.

On 2 September 2017 UN Secretary General Antonio Guterres sent a letter to the President of the UN Security Council, urging Council member states to address the situation in Rakhine State and help prevent "a humanitarian catastrophe". In response, on 28 September, the UN Security Council held its first open meeting on Myanmar in eight years, with a briefing from the Secretary General. Despite the magnitude of the crisis,

Similar to the rest of the post-Soviet region, Russia fiercely opposes any other influence in the South Caucasus, even though it fails to openly dominate the region on its own.

34 The Global Center for the Responsibility to Protect (2010) "Applying the Responsibility to Protect to Burma/Myanmar", Policy brief, Available at: <http://responsibilitytoprotect.org/Applying%20the%20Responsibility%20to%20Protect%20to%20Burma%20Myanmar.pdf> (Accessed: 26.10.2017)

35 Christopher C. Joyner (2015) "The Responsibility to Protect: Humanitarian Concern and the Lawfulness of Armed Intervention", *The Politics of Global Governance: International Organizations in an Interdependent World*, edited by Brian Frederking & Paul F. Diehl, p. 147.

the meeting had no outcome³⁶.

Thus, much more needs to be done to unify the international community behind initiatives to engage with and put pressure on the government of Myanmar to fulfill its R2P obligations. First of all, there is an urgent need to adopt a Security Council resolution on the ongoing atrocities in Myanmar, including through imposing an arms embargo and targeted sanctions directed at senior military officers with command responsibility for forces engaged in ongoing mass and brutal human rights violations.

The call for the urgent adoption of “a strongly worded resolution of the UN Security Council on the Myanmar crisis” is contained in the Report by the UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, which was submitted in accordance with Human Rights Council resolution 34/22³⁷.

Furthermore, in order to eliminate the practice of bad-faith invocations of the R2P concept by the permanent member states of the UN Security Council, there should be an agreement among the “G5” not to use the veto right in matters where their vital interest are not at stake, or activate the procedure of the “consensus mines one” when the permanent member state implicitly involved in the crisis would be deprived of its veto. However, such reform assumes a revision of the United Nations Charter, which can come across a resistance of the “G5”. Thus, for example, in 2013 France proposed to regulate the use of the veto whereby the five permanent members of the Security Council would voluntarily and collectively undertake not to use the veto where a mass atrocity has been ascertained. Even as a voluntary measure that would not require a revision of the United Nations Charter, this proposal was not accepted.

Global solidarity and immediate action based on international political will are urgently needed in order to confront the violence in Myanmar, as well as support the Rohingya refugees and their

36 Previously, the UN Security Council discussed the situation under “any other business” on 30 August, 13 September and 26 September, with no outcome. On 13 October the UN Security Council held an Arria Formula Meeting with the former head of the Advisory Commission on Rakhine state, Kofi Annan (See: Ongoing “clearance operations” by the security forces in Myanmar (Burma) constitute a systematic policy of ethnic cleansing directed at the Rohingya population in northern Rakhine state, Available at: http://www.globalr2p.org/regions/myanmar_burma)

37 The United Nations (2017) “Report of the Special Rapporteur on the situation of human rights in Myanmar”, Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/72/382 (Accessed: 31.10.2017)

host countries. In this respect, regional actors also have a crucial role to play. They should put pressure on the government of Myanmar, in keeping with R2P and their Charters, and lead the way for future international efforts. Thus, Yousef bin Ahmad Al-Othaimen, the Secretary General of the Organization of Islamic Cooperation (OIC), which represents 57 states and acts as the collective voice of the Muslim world, has called upon the Myanmar government to ensure human rights for the Rohingyas (including citizenship), and to work with Indonesia and Malaysia on a roadmap for the resolution of the crisis³⁸.

Global solidarity and immediate action based on international political will are urgently needed in order to confront the violence in Myanmar, as well as support the Rohingya refugees and their host countries.

Regional organizations are well positioned to understand the root causes of conflicts, which can aid their efforts to influence the prevention or resolution of these conflicts. Therefore, the cooperation between the United Nations and regional organizations in matters relating to the maintenance of international peace and security, consistent with Chapter VIII of the Charter of the United Nations, can improve the collective security system based on the respect of fundamental human rights.

Consolidating democracy and cultivating respect for human rights is a complex commitment requiring political will and a strong sense of state responsibility. The government of Myanmar must repeal or amend all laws and regulations that systematically discriminate against Rohingya and other minorities in Myanmar, including the Protection of Race and Religion laws and the 1982 Citizenship Law. Within the framework of R2P commitment³⁹, the government should take steps towards building a more inclusive society in which the rights of Myanmar's diverse populations are protected.

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Furthermore, the Myanmar authorities should permit the UN Human Rights Council-mandated Fact-Finding Mission to enter Rakhine State, and expeditiously implement the recommendations of the Advisory Commission led by former

38 VOA News (2017) "World Islamic Body Tells Myanmar to Protect Rights of Rohingya Minority", Available at: <https://www.voanews.com/a/world-islamic-body-tells-myanmar-to-protect-rights-of-rohingya-minority/3971376.html> (Accessed: 30.10.2017)

39 Myanmar acknowledged its responsibility to protect during a UN General Assembly debate on R2P in 2009.

UN Secretary-General Kofi Annan⁴⁰.

In the case of further failures to constrain internal violence in Myanmar and unwillingness by the government to remedy the situation, measures of coercive intervention by the international community shall acquire a new urgency.

Conclusion

Genocide, war crimes, ethnic cleansing and crimes against humanity: the brutal legacy of the twentieth century speaks bitterly and graphically of the profound failure of both individual states and the international community at large to uphold their most basic and compelling responsibilities, as well as laying bare the collective inadequacies of international institutions. Tragic events led world leaders to question whether the UN and other international institutions should be exclusively focused on the security of states, without regard to the safety of the people within them. Could the international community not find the will and capacity to do better in the new century?⁴¹

The issue of international intervention for human protection purposes is a clear and compelling example of concerted action urgently required to bring international norms and institutions in line with international needs and expectations.

The protection of human security, including human rights and human dignity, must be one of the fundamental objectives of modern international institutions.

The issue of intercession for human protection purposes is itself both a product and a reflection of how much has changed since the UN was established. Human rights have been mainstreamed into international law, and respect for human rights is a central subject and responsibility within international relations⁴².

The concept of human security – including concern for human rights, but ultimately broader than in scope – has also become an important element in international

40 The Global Center for the Responsibility to Protect (2017) Ongoing “clearance operations” by the security forces in Myanmar (Burma) constitute a systematic policy of ethnic cleansing directed at the Rohingya population in northern Rakhine State, Available at: http://www.globalr2p.org/regions/myanmar_burma (Accessed: 28.10.2017)

41 The United Nations (2009) “Implementing the responsibility to protect”, Report of the Secretary-General, Available at: <http://responsibilitytoprotect.org/implementing%20the%20rtop.pdf> (Accessed: 01.11.2017)

42 The International Commission on Intervention and State Sovereignty (2001) Report “The Responsibility to Protect”, Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (Accessed: 21.10.2017)

law and international relations, increasingly providing a conceptual framework for international action. There is growing recognition worldwide that the protection of human security, including human rights and human dignity, must be one of the fundamental objectives of modern international institutions⁴³.

In fact, globalization and the revolution in information technology has made global communications instantaneous, and provided unprecedented access to information. The result has been a massively heightened awareness of any crisis, wherever it may be occurring, combined with immediate and often very compelling visual images of the suffering via television and social media⁴⁴. In August 2017, the world was appalled by the mass atrocities in Myanmar perpetrated against the Rohingya Muslims. Humanitarian catastrophes, marked with gross and systematic violations of human rights, occur not only in major capitals but also in distant places around the world. These catastrophes are critically important for an international response, by mobilizing political will for political pressure on the government of Myanmar. If the government of Myanmar fails to uphold its responsibility to protect the population, the international community has also failed, as this paper has argued⁴⁵.

In August 2017, the world was appalled by the mass atrocities in Myanmar perpetrated against the Rohingya Muslims.

The concept of the R2P is a new opportunity for collective action. Initiated following the end of the Cold War, it has the potential to empower the UN Security Council, enabling it to fulfill the role originally envisioned for it by the UN Charter. It also represents a revolutionary transition from a culture of sovereign impunity to a culture of national and international accountability. This transition is not be easy to manage politically, but if achieved, it would add tremendous symbolic value to the credibility of the responsibility to protect based on existing international law within the international community. It would empower the international community to live up to the vow of “never again”.

43 Ibid.

44 Ibid.

45 Moreover, the concept of R2P is multidimensional, as it entails not only a responsibility to react, but also the responsibility to prevent and to rebuild.