



The Responsibility to Protect Doctrine (RtoP) in the Context of the Alleged Atrocity Crimes in the Occupied Palestinian Territories: The Relevance and Applicability

**International
Law**

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***Doktrin Tanggungjawab untuk Melindungi (RtoP)
dalam Konteks Dakwaan Jenayah Kekejaman di
Wilayah Palestin yang diduduki: Perkaitan Dan
Kebolehlaksanaan***

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SAMEH EISSA ABDELHALIM ISMAIL

HENDUN ABD RAHMAN SHAH

(Corresponding Author)

Faculty of Syariah and Law

Universiti Sains Islam Malaysia (USIM)

71800 Nilai, Negeri Sembilan, Malaysia

sameh.eisa@yahoo.com

hendun@usim.edu.my

ABSTRACT

The Responsibility to Protect (RtoP) doctrine was introduced by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 and unanimously adopted by the United Nations General Assembly (UNGA) in 2005, upon the failure of the United Nations (UN) and the international community to contain a series of grave humanitarian disasters. The purpose was to create a more acceptable norm, than the "humanitarian intervention" by which actions for protecting civilians amid conflicts are prioritized. However, the robust enduring allegations of atrocities committed by Israel against civilians in the Occupied Palestinian Territories (OPTs), particularly the current upheaval, continue to raise the question of the RtoP, and whether it can be invoked for protection of civilians thereof. With focus on the OPTs' crises, the paper aims at analysing the RtoP's background, emergence and adoption together with the related scholarly literature to determine its scope of work, with focus on interstate question. The paper employs a desk and library-based approach by analysing and synthesising past literatures, existing legal provisions and treaties. The literature shows acute divisions that range between the applicability, conditional one and strict non-relevance due to the so called "RtoP's inapplicability in interstate crises". Utilizing the doctrinal legal research for analysis of relevant provisions and application of legal reasoning entailed, this paper will examine whether the RtoP applies to interstate conflicts. The research finds that the RtoP was evolved in a context that focused mainly on internal wars rather than interstate conflicts. However, neither The ICISS nor the WSOD articles 138 & 139 have excluded the interstate crises. The paper then frames the argument that the RtoP applies whenever and wherever genocide, war crimes, ethnic cleansing and crimes against humanity are committed or threatened with the state in





concern being “manifestly” unable or unwilling, regardless of the crimes perpetrator or the nature of conflict, or whether the said crimes occur as a result of intrastate or interstate crises. This result contributes to further advance the priority of civilians’ protection in dire situations and ought to provide a new perspective in approaching the historical Palestinian crisis, as well as similar cases. Academically, it can be utilized by future researchers on discussions and studies that cover the RtoP’s capabilities and possible practical ways of its application in the OPTs and other similar situations.

Keywords: Responsibility to Protect, Interstate, Occupied Palestinian Territories, Atrocity Crimes, Israel

ABSTRAK

Doktrin Tanggungjawab untuk Melindungi (RtoP) telah diperkenalkan oleh Suruhanjaya Antarabangsa mengenai Campur Tangan dan Kedaulatan Negara (ICISS) pada tahun 2001 dan diterima sebulat suara oleh Perhimpunan Agung Pertubuhan Bangsa-Bangsa Bersatu (UNGA) pada tahun 2005, berikutan kegagalan Pertubuhan Bangsa-Bangsa Bersatu (PBB) dan masyarakat antarabangsa untuk membendung siri bencana kemanusiaan yang dahsyat. Tujuannya adalah untuk mewujudkan norma yang lebih diterima, berbanding “campur tangan kemanusiaan” yang mana tindakan untuk melindungi orang awam di tengah-tengah konflik diutamakan. Walau bagaimanapun, dakwaan kukuh yang berterusan mengenai kekejaman yang dilakukan oleh Israel terhadap orang awam di Wilayah Palestin yang Diduduki (OPT), terutamanya pergolakan semasa, terus menimbulkan persoalan mengenai RtoP, dan sama ada ia boleh digunakan untuk perlindungan orang awam di sana. Dengan fokus pada krisis OPT, kertas kerja ini bertujuan untuk menganalisis latar belakang, kemunculan dan penerimaan RtoP bersama-sama dengan literatur ilmiah yang berkaitan untuk menentukan skop kerjanya, dengan tumpuan pada persoalan antara negara. Kertas kerja ini menggunakan pendekatan berasaskan meja dan perpustakaan dengan menganalisis dan mensintesis literatur lampau, peruntukan dan perjanjian undang-undang yang sedia ada. Literatur menunjukkan perpecahan yang ketara yang berkisar antara kebolehgunaan, bersyarat dan ketidakrelevanan mutlak disebabkan oleh apa yang dipanggil “ketidakberlakuan RtoP dalam krisis antara negara”. Dengan menggunakan penyelidikan undang-undang doktrinal untuk analisis peruntukan yang berkaitan dan penerapan penaakulan undang-undang yang terlibat, kertas kerja ini akan mengkaji sama ada RtoP terpakai kepada konflik antara negara. Penyelidikan mendapati bahawa RtoP berkembang dalam konteks yang memberi tumpuan terutamanya kepada perang dalaman dan bukannya konflik antara negara. Walau bagaimanapun, baik ICISS mahupun artikel 138 & 139 WSOD tidak mengecualikan krisis antara negara. Kertas kerja ini kemudiannya merangka hujah bahawa RtoP terpakai bila-bila masa dan di mana sahaja genosid, jenayah perang, penghapusan etnik dan jenayah terhadap kemanusiaan dilakukan atau diancam dengan negara yang berkenaan “jelas” tidak mampu atau tidak mahu, tanpa mengira pelaku jenayah atau sifat konflik, atau sama ada jenayah tersebut berlaku akibat krisis dalaman atau antara negara. Hasil ini menyumbang kepada memajukan lagi keutamaan perlindungan orang awam dalam situasi yang teruk dan seharusnya memberikan perspektif baharu dalam mendekati krisis Palestin yang bersejarah, serta kes-kes yang serupa. Dari sudut akademik, ia boleh digunakan oleh penyelidik masa depan dalam



perbincangan dan kajian yang meliputi keupayaan RtoP dan cara praktikal yang mungkin untuk penerapannya di OPT dan situasi serupa yang lain.

Kata kunci: Tanggungjawab untuk Melindungi, Antara Negara, Wilayah Palestin Yang Diduduki, Jenayah Kekejaman, Israel

INTRODUCTION

The Responsibility to Protect (RtoP) doctrine has emerged upon the failure of the United Nation and the international community to contain a series of grave humanitarian disasters for the purpose of prioritizing the human's protection from the most dire atrocities; genocide, war crimes, ethnic cleansing and crimes against the humanity (Garwood-Gowers, 2013). The idea was soon enshrined and adopted by the United Nation General Assembly (UNGA) by overwhelming majority voting of member states in 2005, through paragraphs 138 and 139 of the World Summit Document Outcome. The RtoP emphasizes that each state has a primary responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and all other states are obliged to assist the state to carry out its responsibility. When the state, deliberately or weakly, fails to protect its population then the international community has a responsibility to protect the populations through both; non-coercive and, in extreme situations as a last resort through the Security Council, militarily intervention (UN General Assembly, 2005). Despite the controversiality, the RtoP has been invoked in more than 90 Security Council (SC) resolutions (Global Center for the Responsibility to Protect, 2023); few of which were seen arguably as successful application, either partially or in full. The intervention in Libya was the most prominent one— “the textbook case”, as in Gareth Evans's words.

On the other side, RtoP-based intervention in Syria has never been achieved despite widely believed to be more due for the far reach level of gravity, because of the Russian veto. On the contrary, while the continuous robust allegations of atrocities being committed in the OPTs, with more intensity in Gaza, there was no official invocation or even discussion for RtoP so far up to date. Academically, while the Westbank side is by far absent in the literature, the intensity of violence in Gaza has brought some of RtoP's discussions into light. The little literature shows acute division between those who suggest the relevance and applicability, and others who condition the applicability to prerequisite legal position of Gaza strip, and others who strictly put front the notion of “RtoP's inapplicability in interstate crises” since the nature of conflict is classified as an international one. This reveals bold gray areas in understanding the RtoP, how and why it emerged and its applicability and scope of work. The question ought to be answered is; *who is to protect whom, from what, and how?* To achieve the goal of identifying the relevance of RtoP and its applicability for protection of civilians in the OPTs, this paper intends first to briefly analyze RtoP's background for better understanding of the context. Second, it will analyze the ICISS report which came up with the RtoP norm. Third, it tries to interpret articles 138 and 139 of the WSOD that codify the RtoP. Fourth, the UN Secretary General report 2009, is analyzed with intersection of the RtoP's implementation. The paper, fifth, addresses the RtoP in the



context of the OPTs and existing related literature. Having these analyses, the paper then will discuss the RtoP's scope of work with focus on the interstate applicability and draw on findings and conclusion.

METHODOLOGY AND RESEARCH DESIGN

The selected methodology for achieving the research objectives is the doctrinal research, utilizing qualitative library-based method for collecting and investigating the contents of the ICISS report titled "the Responsibility to Protect", which is the foundational background to the RtoP principal for getting deeper understanding of the purposes meant to be served by the RtoP, articles 138 and 139 of the World summit Outcome Document as a crystallization and codification of the RtoP, the Secretary-General report titled "Implementing the responsibility to protect" as a significant commentary and refining of the RtoP, especially its scope and implementation and relevant provisions. This entails an analytical approach for examining and assessing the understanding and interpretation of the RtoP principle. Collecting non-authoritative secondary data from commentaries and scholarly articles pertaining the RtoP in the context of the OPTs is followed. The collected literature then is critically analyzed and rigorously juxtaposed with the analysis findings of the RtoP landmark documents. Critical method is then utilized for examining and evaluation of the RtoP scope of work and applicability with focus on interstate crises as in the OPTs with power reasoning application for "identification of weaknesses, expression of opinion, and rational agreement or disagreement" (Anwarul, 2007, as cited in Naimat et al., 2024). As such, the study will carry out research into the RtoP doctrine through collecting and analyzing the available authoritative materials and non-authoritative sources. By interpreting the RtoP's scope of work and applicability to interstate crises, as in the case of the OPTs, with the application of power of reasoning, the study will draw a tentative conclusion that portrait answers to the research questions.

ANALYZING OF THE RTOP BACKGROUND

The responsibility to protect idea has evolved relevantly recently after a long list of catastrophic humanitarian crises where the international community failed to address. The genocide in Rwanda, where almost 800,000 people were killed (History.com Editors, 2009), and the massacre of Srebrenica were the prominent ones. As Andrew Garwood-Gowers considered the RtoP as a demonstration of international "dismay" at the human atrocities of the 1990's (Garwood-Gowers, 2013). In that context, there was a heated debate on the "humanitarian intervention"—where a state or group of states or international organization threat to or use force for a primary purpose of protecting nationals of other state who are subjected to massive human rights violations or deprived from internationally recognized human rights with or without permission from the targeted state or the international community (Murphy, 1996).

Aside from the illegal unilateral interventions on humanitarian grounds, there were United Nation-authorized interventions. Nevertheless, humanitarian intervention was highly problematic during and after the Cold War where opponents considered it as an



assault on sovereignty and non-interference principals and served as a political instrument covered by international law to allow the big powers (Global North) to intervene in developing countries (Global South) (Mani & Weiss, 2011). In addition, in practice, the actual instances of both interventions and the inaction generated much criticism (Evans, 2009a). As Evans underscored that while in the first half of the 20th century, the state of mind that even massive atrocities like those occurred in Cambodia were not the rest of the world's business, in the 1990s, the UN interventions in Somalia 1993, Rwanda 1994, and Srebrenica 1995, were "incompletely erratically or counterproductively" carried out, and while the coalition of willing intervention in Kosovo 1999 was accepted by most states, it lacked the SC approval and challenged the "integrity of the whole international security system" (Central European University, 2012).

The intervention in Kosovo in 1999 and its outcomes, particularly, have paved the ground for the creation of responsibility to protect, contributed to the consensus of UNGA to adopt it, and even influenced the terminology of articles 138 and 139 of the WSOD. The report of the independent international commission on Kosovo suggested that the Kosovo intervention invoked "the need to close the gap between legality and legitimacy" and that "the time is now ripe for the presentation of a principled framework for humanitarian intervention which could be used to guide future responses to imminent humanitarian catastrophes and which could be used to assess claims for humanitarian intervention". The report has even explicitly called on the UNGA to adopt the proposed framework and recommended elements of legitimacy that ought to be satisfied as grounds for humanitarian intervention (Independent international commission on Kosovo, 2000).

In his report titled "We the Peoples: The Role of the United Nations in the 21st Century" to the GA, Kofi Annan triggered this sensitive gap and asserted that despite he urged member States to agree on more effective intervening policies that range from diplomacy to military action to stop grave violations, the military response was controversial. While acknowledging the controversy on the military action, Annan posed the famous 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 offend every precept of our common humanity?

Annan was questioning possible responses to atrocity crimes without humanitarian intervention's assault on sovereignty after the 90's "fierce argument" between the humanitarian intervention proponents and the state sovereignty defenders (Evans, 2009a). He then confronted the argument that both; the humanity and sovereignty are respectable by affirming that this doesn't provide an answer as to which should supersede when both are in conflict. Annan followed that by acknowledging the sensitivity of "humanitarian intervention", yet confirming that "...surely no legal



principle—not even sovereignty—can ever shield crimes against humanity”.(Annan, 2000)

In response to Annan's question, the Canadian Government appointed the International Committee on Intervention and State Sovereignty (ICISS), which produced a report titled “The Responsibility to Protect”.

ICISS REPORT 2001

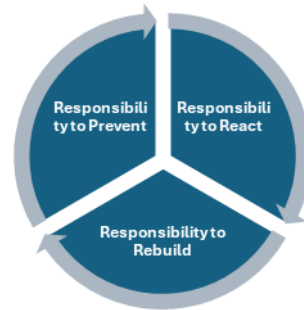
As its name suggests, the International Commission on Intervention and State Sovereignty (ICISS) has been formed to address the challenge posed by the then Secretary-General, Kofi Annan; questioning means of response for halting or ending conscience-shocking atrocities without being in violation of the backbone principles of the UN Charter, namely state sovereignty and non-interference. The context reveals that the commission task, guided by the Kosovo report mentioned earlier, was to articulate or suggest some new grounds that enable for intervention in compelling humanitarian catastrophes while, if not on consolidation with, not being in breach of, state sovereignty and non-interference principals, and without reiterating the dilemma of what commonly known as “humanitarian intervention” and “the right to intervene”. Impacted by the overall atmosphere of the 1990's sobbing over various humanitarian upheavals, condemnation of inaction in Rwanda and Srebrenica, the outcomes of the intervention in Kosovo, African Union's enacting of intervention for outstanding crises, Annan' report “We the Peoples: The Role of the United Nations in the 21st Century”, and being sought for making a change in the international humanitarian policy, the ICISS came up with an ambiguously wide range of standings in its report in 2001, titled, “the responsibility to protect”(ICISS, 2001).

To break through the state sovereignty and non-interference principals, the ICISS circulated its standings on what it considered “basic principles”. These are; first, the sovereignty implies responsibility, and responsibility is assumed first and foremost to the state itself for protecting its population, the idea that was introduced first by Fransis Deng in his work on internally displaced persons. Second, if that state fails to protect its population, “the non-intervention principal yields to the international responsibility to protect”. The ICISS grounded these principals on the obligations entailed in sovereignty, the Security Council responsibility in maintaining international peace and security, the legal obligations for human rights and human security in various international instruments and national laws and the developing practices by states, regional organizations and the Security Council. It introduced 3 subsequent layers of responsibility. First, the responsibility to prevent, which the ICISS has given a priority as the most significant element of the RtoP and considers one of the main features that distinguish the RtoP doctrine from the disreputable “humanitarian intervention”. That is meant to address root and direct causes of “internal conflict and other man-made crises putting populations at risk”. Second, the responsibility to react, which constitutes the most sensitive and contested element of the RtoP— responding to “situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military



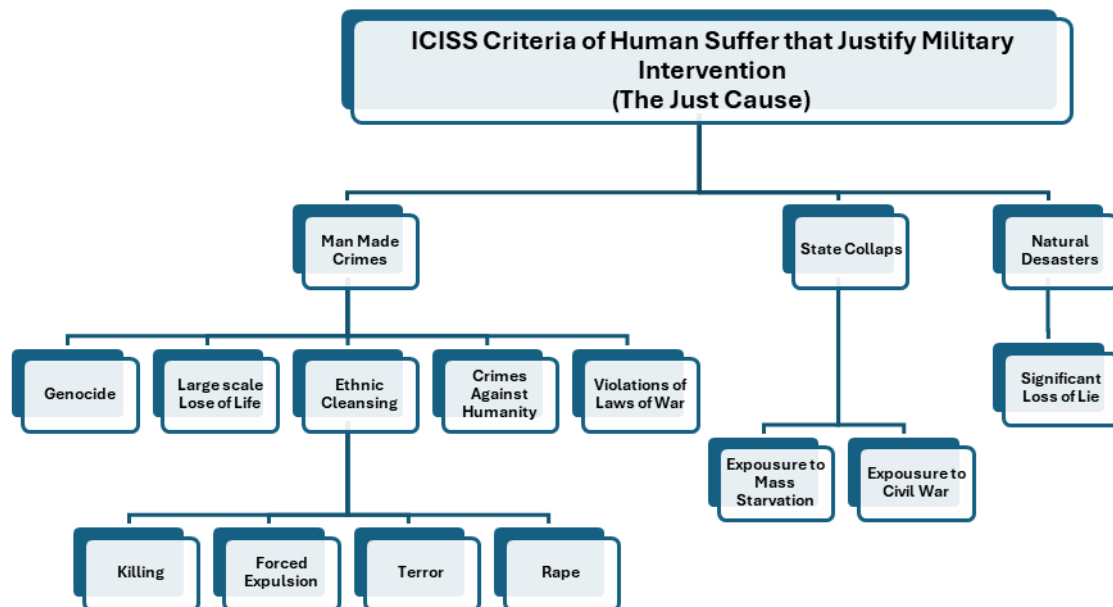
intervention". Third, the responsibility to rebuild, which also added a more valuable dimension to the ICISS contributions— that is providing full assistance for restoration and recovery after the military intervention. It includes "reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert". Despite the 2 appealing elements of responsibility to prevent and responsibility to rebuild as being comfortably agreeable, the responsibility to react, and particularly, militarily is considered the big deal issue since it overlaps with the state sovereignty and non-interference principle and formulates the common element with humanitarian intervention. However, the ICISS stressed that both; the responsibility to prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied. In addition, Gareth Evans has always repeated that the RtoP is not only and shouldn't be thought of as a prima facie coercive military intervention. Instead, and in contrast with "humanitarian Intervention" which is all about sending troops, Evans argued that use of force under the RtoP is one tool "at the most extreme end of spectrum before dealing with extreme situations"(Geneva Centre for Security Policy, 2018) . But if a military intervention is required, in the ICISS's view, as indicated by Evans, there are 3 preconditions to be sought: legality, legitimacy and practical deliverability. For the legality; except for the self-defense under the UN Charter, article 51, it's the approval of the SC under Chapter VII or the regional organizations under Chapter VIII that can make the use of force legal. It's worthy to mention that the ICISS has suggested that if approval from the SC is failed to be obtained, then it can be through the General Assembly under "united for peace" procedure, which was suggested earlier on the Kosovo report. For legitimacy, the ICISS set 5 criteria to be met ahead to justify the use of force under the RtoP. First, the just cause threshold; the level, gravity and seriousness of the harm inflicted on populations. Based on the analysis of this research, ICISS has set the bar low to accommodate a wide range of human suffering that can justify the just cause threshold. The evident of this can be clearly seen in under paragraph 4.20 of the ICISS report where a breakdown of what sort of harm is included. Based on the analysis, the said harm can be caused by one of 3 categories; the threat or occurrence of manmade crimes; Genocide, large scale loss of life, ethnic cleansing either by killing, forced expulsion, acts of terror, or rape, crimes against humanity and violations of laws of war, exposure to starvation and or civil war following state collapse, and natural or environmental disasters. The following 2 graphs illustrate the 3 layers of responsibility as suggested by the ICISS, and the 3 categories of harm that in its view can justify the "just cause" element.

Figure 1: ICISS Layers of Responsibility



(Source: Author's own, 2025)

Figure 2: ICISS Criteria of Human Suffer Invoking RtoP



(Source: Author's own, 2025)

Finally, for the “practical deliverability”, it's all about the allocation and sustaining of resources necessary for the operations, by the countries and international organizations involved, to be carried out successfully and sufficiently. As Evans underscored that the “practicality” is the third box needed to satisfy intervening conditions; having the legality and legitimacy elements in place, the resources are necessary for implementation (Geneva Centre for Security Policy, 2018). Lack of which, ICISS's added, “has been a major problem in the past”.



But what does the ICISS say about the applicability of the RtoP?

In the synopses of the ICISS under the basic principle, it reads “Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.” The *prima facie* use of word “internal” here clearly indicates that the ICISS was referring to crises that occur as a result of non-international conflict — intrastate situation. Not far from that is the use of “insurgency” and “repression” events. However, it can be argued that “state failure” condition can be caused due to an external matter such as an invasion, or even an aggression. As Prof. Giorgetti put it “{a}lthough it is not possible to single out one cause of State failure, several interlinked causes exist, both endogenous and exogenous to the State... Exogenous causes include macroeconomic and political policies, foreign interventions, either in support of those in power or opposition groups...” (Giorgetti, 2010). Moreover, it can be also argued that the insurgency, repression, and even internal war conditions can be themselves stemming originally from an external act by other state or non-state actor. Furthermore, history has witnessed crises that were mixed in nature as the case of the former Yugoslavia, which was referred to in the ICISS report itself and the 2009 Secretary-General report as a case study to support the RtoP concept and prevention of conflict escalation. In its decision on the defence motion for interlocutory appeal on jurisdiction, the Appeals Chamber of the International Tribunal ruled, “we conclude that the conflicts in the former Yugoslavia have both internal and international aspects”(International Tribunal for the former Yugoslavia (ICTY), 1995);

However, there are various instances in the ICISS report that assert the argument that it was meant for crises to occur as a result of civil wars and non-international conflicts. For example, in paragraph 1.23, it reads that “UN peacekeeping strategies, crafted for an era of war between states ... may no longer be suitable to protect civilians caught in the middle of bloody struggles between states and insurgents”.

Paragraph 2.12, reiterating the words of Kofi Annan in his report “in larger freedom”, reads“... the overwhelming majority of today’s armed conflicts are internal, not inter-state...civilians killed in them increased from about one in ten at the start of the 20th century to around nine in ten by its close...”—that is a justification that is built on the premise that the UN while its foundational principals are state sovereignty and non-interference, it bears the main mandate of maintaining international peace and security. This illustrates; first, that the focus was mainly on responding to intrastate wars, second, is that as the UN bears, primarily, the duty of maintaining international peace and security, which is being in threat recently by the civil wars and internal conflicts, in contrast with the classical international conflicts, then the RtoP is introduced to connect the dots by filling a gap in international policy dealing with *prima facie* contradicted foundational principals of the UN in cases of non-international conflicts. Other instances can be seen in paragraphs 3.5, 3.6, 4.4. However, the ICISS, in paragraph 4.20 has specified what it considers included in the 2 broad sets of conditions that each of which can justify military intervention —large scale loss of life and large scale ethnic cleansing. It included the threat or occurrence of genocide, large scale loss of life with or without



genocidal *mens rea*, and “whether or not involving state action, different manifestations of ethnic cleansing..., crimes against humanity and violations of the laws of war..., situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war; and overwhelming natural or environmental catastrophes...”. The ICISS has excluded cases that fall short of mass killing or mass ethnic cleansing, cases of military coups or government overthrow, cases of military intervention of a state to rescue its citizens on another state— classical form of “humanitarian intervention”, and use of force of a state in response to terrorist attacks occurred on its territory. It is observed in this vein that the ICISS hasn’t mentioned cases of international conflicts or interstate crises under the exclusions list. It’s of high significance to mention that the ICISS has emphasized that, situations where the just cause threshold is met, it doesn’t distinguish between the state act and inaction and whether the case is a state collapse or failed State. Moreover, it stated that “{ }n a failed or collapsed state situation, with no government effectively able to exercise the sovereign responsibility of protecting its people, the principle of non-intervention might seem to have less force. But when it comes to the threshold “just cause” issue of determining whether the circumstances are grave enough to justify intervention, it makes no basic moral difference whether it is state or non-state actors who are putting people at risk.” Finally, in paragraph 4.23, the ICISS confirmed that no distinction to be given to abuses being completely within state borders or those of wider impacts to ensure those cases of “conscience shocking” that threaten the international peace and security are dealt with under chapter VII of the UN charter.

Another two important worth mentioning points are that the ICISS has stressed that there is no distinction as to the source of harm being by the state itself or by a non-state act, and whether the act comes with *mens rea* or lack thereof.

The bottom line conclusion that can be drawn here is that despite the terminology used refers to the more likely to be intrastate conflict, there wasn’t an explicit exclusion of human suffering resulting from interstate conflicts. In addition, risk factors considered by the ICISS on which it justified the necessity for response, including coercive intervention can be rather manifesting with even more urgency for response as a result of international conflict. As stated in paragraph 2.22; “the security of people against threats to life, health, livelihood, personal safety and human dignity – can be put at risk by external aggression, but also by factors within a country, including “security” forces.”. In addition, in paragraph 4.20, where specified conditions that makes the militarily intervention justifiable, the ICISS stated “those crimes against humanity and violations of the laws of war, as defined in the Geneva Conventions and Additional Protocols and elsewhere...”. While its additional protocol II addresses the non-international armed conflict, the Geneva Conventions generally and primarily regulate international armed conflicts.

WORLD SUMMIT 2005

Following the ICISS report in 2001, which introduced and laid the groundwork of the RtoP, further finetuning was made by the report of the High-level Panel on Threats,



Challenges and Change in 2004, entitled “A more secure world: our shared responsibility.”, which underscored that sovereignty comes with responsibility and further linked between human rights and global security.(UN High-level Panel on Threats, Challenges and Change, 2004). the Report of the Secretary-General in 2005, “In larger freedom: towards development, security and human rights for all” reinforced the need for collective international response to protect populations from mass atrocities based on the High-Panel concept of “collective security”, which “tackles new threats and old and that addresses the security concerns of all States” (Annan, 2005). Then, in September 2005 comes the World Summit, the landmark of the RtoP development—the codification of articles 138 and 139 in the WSOD, where more than 150 heads of States unanimously accepted their both; individual and collective responsibility to prevent and stop genocide, war crimes, ethnic cleansing and crimes against humanity, hereinafter referred to as “the four major crimes” representing what all previous debates and compromises ended up with(Ercan, 2015). The article 138 reads

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability

The article 139 reads

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, we are 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, 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 break out (UN General Assembly, 2005).



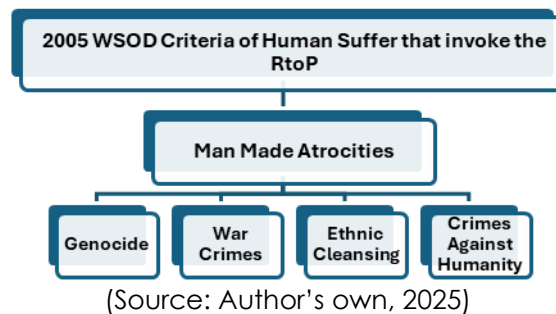
First of all, the use of the term “populations” not “citizens”, or the like, indicates the intent to extend the protection umbrella to include all civilians within the State whether being nationals or otherwise. Second, building on the previous conceptualization, it represents the idea of Frances Deng; sovereignty as a responsibility and provisions and principals of the ICISS report and following emphasizes by the Kofi Annan’s report—that the burden of that responsibility falls first and for most on the State itself, which assumes the control over its territory. This is what Evans considered as “an embrace” rather than “an insult” of State sovereignty (Australian National University, 2011). Third, the said responsibility is not only to react to the threat, incitement or actual occurrence of the four major crimes, but above all, to prevent thereof. Fourth, while RtoP is seen as a political commitment, the state responsibility is, by far, well established in the international and international customary international law. While there’s no particular convention on crimes against humanity, the prevention of genocide has been clearly stated in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and war crimes have been defined by the Rome Statute and dealt with by the IHL and commonly considered customary international law (Reike & Bellamy, 2010). Fifth, the layers of responsibility were limited to the prevention and reaction only and the scope of the RtoP has been significantly limited particularly to the four major crimes rather than the loose language of the ICISS report, which led Weiss to call it “the R2P lite” (Weiss, 2014), figures 3 and 4 below illustrate so. Sixth, while the primary responsibility is assumed by the State itself, the broader international community is also responsible first to assist the State to fulfill its obligations, and second, to protect the populations of that state through gradual means—peaceful measures and, when failed, coercive tools through the Security Council. Seventh, the coercive response by international community is subjected to the UN Charter—the preapproval of the SC and is based on the SC evaluation of the particular case in hand. Eighth, while the prima facie assumption of the RtoP based on articles 138 and 139 being applicable to internal wars or crises tends to be consistent when considering the Secretary-General report “in larger freedom”, the ICISS report and discussions associated, it’s certainly true that articles 138 and 139 have not excluded the applicability to interstate wars or crises. Notwithstanding, a focused critical analysis of the wording of article 139 will, arguably, be a game changer and could significantly alter the common contemporary understanding of the RtoP, particularly as long as applicability in interstate conflicts is concerned. Article 139 refers to Chapters VI and VIII of the UN Charter in the assignment of responsibility of the international community to protect populations from the four major crimes. While Chapter VI explicitly focuses on the peaceful settlement of disputes between states and outlines various methods for resolving conflicts between member states of the United Nations, Chapter VIII recognizes the role of regional arrangements or agencies that often deal with disputes between states within their respective regions in maintaining peace and security. While still can be applied in internal disputes that are escalated to the degree that likely endanger international peace and security, the primary focus of Chapters VI and VIII is on disputes between states, rather than internal conflicts within individual countries. Having the said, this paper argues that the direct reference to Chapter VI and VIII of the UN Charter in article 139 extends the scope of the RtoP to international conflicts.

Figure 3: WSOD Layers of Responsibility



(Source: Author's own, 2025)

Figure 4: WSOD Criteria of Human Suffer Invoking RtoP



(Source: Author's own, 2025)

SECRETARY GENERAL REPORT 2009

In 2009, Ban Ki Moon, then the UN Secretary -General issued the report "Implementing the responsibility to protect" (Ki-Moon, 2009), which introduced 3 pillars of the RtoP, reinforced its scope of work, affirmed its legal base and the importance of the prevention element, and focused on its operationalization. According to Moon, the 3 pillars are State responsibility, international assistance and capacity building and timely and decisive response. Moon asserted that "{t}here is no set sequence to be followed from one pillar to another, nor is it assumed that one is more important than another. Like any other edifice, the structure of the responsibility to protect relies on the equal size, strength and viability of each of its supporting pillars." While prevention is prioritized, "early and flexible response tailored to the specific circumstances of each case" is required upon failure. Moon noted that RtoP provisions are "firmly anchored in well-established principles of international law" since the State responsibility is derived from both; the obligation entailed with sovereignty, building on Frances Deng work, and preexisting international instruments. Moon reaffirmed that the RtoP's scope remains tied to the four major crimes specified in articles 138 and 139 and that while it "should be kept narrow, the response ought to be deep".

While Moon, throughout the report, and similar to the ICISS work, referred to scenarios of internal conflicts and domestic crises as being the drive of crimes related to the RtoP,

he has not excluded crises stemming from conflicts with international nature. To clarify more, in paragraph 39, Moon stated that “In responding to situations relating to the responsibility to protect, police and civilian components may sometimes be particularly critical given the priority tasks of restoring order to, and rebuilding confidence in, societies undergoing domestic chaos and strife”. Similarly, in paragraphs 41, 43, 45, 47 and 56, Moon used phrases like “crisis within a country”, “domestic violence”, “Local dispute”, “disputes within society”. The use of “domestic chaos and strife” and these phrases indicates that the idea in mind is that RtoP situations are those of internal crises within state borders. However, there was no explicit exclusion for crimes resulting from international conflicts or disputes as long as these crimes are of RtoP related. Neither was the applicability restricted to particular perpetrators of these crimes, being a State or non-state actor. As Moon mentioned, human tragedies in the last century weren't limited to specific region in the world, and sometimes related to ongoing conflicts, “Non-state actors, as well as States, can commit egregious crimes relating to the responsibility to protect”. In paragraph 41, Moon drew attention to the notion of preventive deployment, which was introduced in 1992 by then Secretary-General Boutros Boutros-Ghali, and noted that there are 4 instances of deployments implemented before the RtoP emergence that attributed in preventing armed conflict escalation; the former Yugoslav Republic of Macedonia, which he considered as the classic case of preventive deployment, Burundi, Sierra Leone and the Democratic Republic of the Congo. While the latter 3 cases were obviously internal disputes, the former was more complex. Despite the resolutions of the SC on the former Yugoslavia avoided to explicitly indicate the conflict is an international, the language of the UNGA resolution 46/242 have clearly asserted that the republic of Bosnia and Herzegovina suffered an “aggression” by the Yugoslavia (Serbia and Montenegro), making the conflict an interstate one. Based on the said, the analysis of this paper suggests that it's not about the nature of conflict— international or internal, neither the character of crimes perpetrators— the State itself or non-State actor or another State or group of States, that constitute the base on which the RtoP is rightfully invoked. It's all about situations of “consciousness-choking” atrocities that requires a positive response. As Moon asserted, acknowledging the shortage of the UN and its member States in their obligation of preventing and protection, “We can, and must, do better, humanity expects it and history demands it”(Ki-Moon, 2009)— it's all about dealing with humanitarian tragedies positively instead of turning a blind eye.

Figure 5: RtoP 3 Equal Pillars

Three Equal Pillars		
State Responsibility	International Community Assistance	International Community Action

(Source: Author's own, 2025)



THE RTOP AND THE CASE OF THE OCCUPIED PALESTINIAN TERRITORIES

The ongoing Israeli-Palestinian conflict began in the outset of the 20th Century. Following the historical magnitude events of partitioning plan reflected on the UN resolution 181, 1947, the creation of Israeli State, many wars occurred including the 1948, 1956, 1967 which led to the occupation of Gaza, the West Bank including the eastern Jerusalem. 1973 Arab-Israeli war followed. Intifadas and escalation of violence have never come to an end up to date. The bloodbath of civilians for more than a century is still ongoing, with the highest cost in the Palestinian side. While this paper is not meant to investigate the gigantic century-long conflict between Israel and Palestine, nor the subsequent violations of international law, international humanitarian law and international human rights law, nor assessing the seriousness or gravity of such violations to determine whether they hit the threshold of one of the four major crimes invoking the RtoP, the study, rather, is burdened with analysis of the RtoP itself, especially its scope and applicability with focus on the interstate conflicts as in the OPTs. That said, this paper attempts to answer the long due question of the RtoP applicability for protecting civilians in the OPTs based on the allegations or de facto assumption of atrocity crimes being committed, and still occurring at the time of writing this paper, including genocide, war crimes, ethnic cleansing and crimes against humanity.

There are considerable robust claims of systematic atrocity crimes, including genocide, war crimes, ethnic cleansing, and crimes against humanity being committed by Israel against civilian Palestinians in Gaza(OHCHR, 2023), and the Westbank, including eastern Jerusalem(Human Rights Watch (Organization), 2021). Since the 2005 “disengagement” of Israeli troops from Gaza, frequent war rounds have erupted between the Israeli Defense Forces (IDF) and Palestinian resistance factions in Gaza, such as the current one at the time of writing these words(“Israel Expands Gaza Offensive,” 2024). South Africa has even brought Israel to the International Court of Justice (ICJ) with claims of committing genocide in Gaza following the 7th of October events. Despite hasn't explicitly called for immediate stop to the ongoing war, the ICJ called for Israel to take all possible measures to prevent the commission of acts fall under article II of the genocide convention (ICJ, 2024). These wars have caused, and continue to cause, large toll of fatalities, massive destructions, and numerous conscience-shocking humanitarian disasters(Amnesty International, 2023). As of today, since the 7th of October events, Aljazeera live tracker shows that while Israeli death toll records 1139 case, there are more than 43000 with more than 16000 have been killed, more than 101000 injuries and above 10000 missing in Gaza(“Israel Expands Gaza Offensive,” 2024).

The atrocities and large scale loss of life associated have led, and continue to lead to the question of RtoP, its relevance and applicability for the protection of civilians living thereof. Despite the significance, this question received scant attention within both academic and international spheres, let alone the non-governmental organizations concerned with the RtoP (Hehir, 2014). While the West Bank part, almost, hasn't been addressed at all, Gaza's atrocities brought some discussions, most prominently, during the 'Operation Protective Edge' offensive on Gaza (Hehir, 2014). The International



Coalition for the Responsibility to Protect (ICRtoP) issued a statement to address the situation in light of the RtoP. While acknowledged that many of violations to the international humanitarian law in the then recent operation in Gaza suggest hitting the threshold of war crimes, the ICRtoP submitted that the determining factor to the RtoP applicability is the legal status of Gaza strip, considering the "RtoP's applicability to atrocities committed within a state's borders". The ICRtoP then elaborated that if Gaza is occupied then the responsibility to protect populations rests on the two parties of the conflict; namely, Israel and Hamas to the extent of "effective control" each has for protection. However, the ICRtoP continued, if the Gaza is an independently govern by Palestinian authority or Hamas, then the conflict must be seen as an international armed conflict—between two states, where each state is responsible under RtoP to prevent atrocity crimes within its borders, yet "RtoP would not be applicable for the protection of civilians across borders in the crisis" (ICRtoP, 2014)

The said ICRtoP statement generated few debates that explicitly indicate contradictions in understanding and interpretation of the RtoP principal, especially its scope of work. For example, Megan Schmidt, who was then, a Senior Program Officer at the ICRtoP, adopted the same argument made by the ICRtoP, which considered accepting Gaza being occupied is a prerequisite to RtoP application in Gaza and therefore, the question of Gaza's legal status is "central" to the question of applicability (Schmidt, 2014). Similarly, James P. Rudolph who was then an attorney in Washington, D.C. and California stated that "neither Israel nor Gaza is engaging in excessive force against its own population, so R2P, while an attractive prism through which to view the conflict, seems not to apply." (Rudolph, 2014). Likewise, David Rieff, a writer and journalist, while acknowledged that there is not a "clear-cut" answer to the RtoP's applicability question, put it clear that RtoP "only applies to intra-state wars" (Rieff, 2014).

On the contrary, Dr Aidan Hehir, a Reader in International Relations at the University of Westminster, found that despite Paragraph 138 refers directly to the state internal responsibility, in Paragraph 139 it's not with same clarity. He noted that the wording of the said paragraph doesn't arguably preclude interstate conflict. (Hehir, 2014). Simon Adams, who was then the executive director of the Global Centre for the Responsibility to Protect (GCRtoP), stated that "At the heart of R2P is a global commitment to protect people, regardless of ethnicity, religion or statehood (or lack thereof), from crimes that offend and diminish us all as human beings. This means, he stressed, as UN Secretary-General Ban Ki-Moon insists, that the Responsibility to Protect applies everywhere and at all times. That includes Israel and Gaza"(Adams, 2014). Seeking an answer to whether the RtoP can apply in interstate situations, Ercan has analyzed the 2 assumptions of Gaza as being an occupied or independent territory. Ercan argued that RtoP applies to intrastate and "unique cases" of interstate crises since paragraph 138 of the WSOD doesn't provide an "explicit statement indicating that R2P applies solely to intra-state situations"(Ercan, 2015).

Gareth Evans, the main architect of the RtoP, in 2011 during a lecture organized by the national Australian University, has been asked a very direct question; "do you think the



principal of RtoP should have been applied to protection of the people of Gaza against the Israeli military campaign at the end of 2008 and beginning of 2009?". Evans answered "I don't think there's any doubt about that the principle is applicable in the occupied territories situation in the sense that it's not sovereign Israeli territory which is the usual context in which we think about the RtoP—that something that happens behind state boundaries but as a territory under occupation by a sovereign force and there's no doubt that the RtoP people against mass atrocity crimes is one that is owed by Israel to its people... RtoP has a primary currency, traction, resonance and application in the context of situation occurring within sovereign state boundaries...I don't think there's any conceptual problem, it has really been just a kind of political problem..." (Australian National University, 2011).

As such, some suggest the applicability, other condition the applicability to prerequisite legal positions, and some strictly put front the notion of "RtoP's inapplicability in interstate crises". The little literature reveals bold gray areas in understanding the RtoP and its scope of work, which, I argue, is the core element of the RtoP principal. These gray areas, I suggest, are stemming, inter alia, from the lack of a clear definition of the RtoP, understanding its background, and the ambiguity of the wording of paragraphs 138 and 139 of the World Summit Outcome Document. The following section is assigned with analysis of RtoP's scope of work with focus on the applicability in interstate situations as in the OPTs.

THE RTOP SCOPE OF WORK AND INTERSTATE CONFLICTS

The R2P introduced by the ICISS has a rather ambiguous and loosen scope of work. This loosen scope was later confined in the 2005 World Summit Outcome Document, and even finetuned further by the 2009 Secretary-General report. This section will conclude the analysis of the R2P scope based on the ICISS report and the 2005 outcome document in terms of the conditions or the level of seriousness of the harm that can invoke the R2P applicability and the cause or perpetrator character of such harm. Having this done, it can be then determined whether the R2P can be applied in interstate conflicts. Finally, it will also identify what Gareth Evans called "the toolbox" of R2P; which includes both non-coercive and coercive measures under R2P.

RtoP Scope of Work According to ICISS

Layers of Responsibility

The ICISS introduced 3 subsequent layers of responsibilities. First, the responsibility to prevent, which the ICISS has given a priority as the most significant element of the RtoP and considers one of the main features that distinguish the RtoP doctrine from the disreputable "humanitarian intervention". Second, the responsibility to react, which constitutes the most sensitive and contested element of the RtoP—responding to "situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention". Third, the responsibility to rebuild, which also added a more



valuable dimension to the ICISS contributions— that is providing full assistance for restoration and recovery after the military intervention.

Level of Harm Seriousness

The ICISS, in paragraph 4.20 has specified what it considers included in the 2 broad sets of conditions, each of which can justify military intervention —large scale loss of life and large scale ethnic cleansing. It included the threat or occurrence of genocide, large scale loss of life with or without genocidal *mens rea*, and “whether or not involving state action, different manifestations of ethnic cleansing..., crimes against humanity and violations of the laws of war..., situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war; and overwhelming natural or environmental catastrophes...”.

Cause of Harm/Perpetrator Character

The current study argues that based on the various categories of the harm based on which the ICISS justify the use of force under the RtoP, we can now determine the possible sources of harm or its perpetrators as one of the followings; the state in concern itself, non-state actor within the borders of the state in concern, non-state actor beyond state borders, other state or states act, and natural disasters as force majeure.

RtoP Scope of Work According to the 2005 WSOD

Layers of Responsibility

While built on the ICISS work, emphasizing the layers of responsibilities as the responsibility to prevent and the responsibility to react, articles 138 and 139 of the WSOD remained silent on the responsibility to rebuild.

Level of Harm Seriousness

the scope of the RtoP, as per articles 138 and 139 of the WSOD, has been significantly limited particularly to the four major crimes; genocide, war crimes, ethnic cleansing and crimes against humanity, rather than the loose language of the ICISS report

Cause of harm/Perpetrator Character

Since the scope is limited to the 4 major crimes, it can now be said that perpetrators will be one of the following: the state in concern itself, non-state actor within the borders of the state in concern, non-state actor beyond state borders, other state or states act.

RtoP Mechanisms (“Tools Box”)

Gareth Evans has always repeated that the RtoP is not only and shouldn't be thought of as a *prima facie* coercive military intervention. Instead, and in contrast with



“humanitarian Intervention” which is all about sending troops, Evans asserted that use of force under the RtoP is one tool “at the most extreme end of spectrum before dealing with extreme situations”. As per the ICISS, “The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.” That is to say that measures to prevent crises are prioritized, but when failed, coercive diplomatic, political, economic and military (arm embargo and ending training and cooperation programs) measures can then take place. Then, when failed, and only in extreme cases, with the preapproval of the SC, military intervention can be the last resort. On the other hand, article 139 of the WSOD refers to chapters VI, VIII, and VII in the assignment of responsibility of the international community to protect populations from the four major crimes. This outlines the various peaceful methods for the settlement of disputes, the role of regional arrangements, organizations or agencies thereof in maintaining international peace and security and refers to coercive military actions authorized by the SC acting in capacity to maintain international peace and security.

RtoP and Interstate Conflicts

While textual references in the ICISS report 2001 and the Secretary-General report 2009 clearly focus on internal and civil wars, neither one nor articles of WSOD 2005 do explicitly exclude interstate conflicts. Despite the *prima facie* use of words like “internal”, “insurgency” and “repression” clearly indicates that the ICISS was referring to crises that occur as a result of non-international conflict — intrastate situation, it can be argued that “state failure” or “state collapse” condition can be caused due to an external matter such as an invasion, or even an aggression. Moreover, it can be also argued that the insurgency, repression, and even internal war conditions can be themselves stemming originally from an external act by other state or non-state actor. Furthermore, the history has witnessed crises that were mixed in nature as the case of the former Yugoslavia, which was referred to in the ICISS report itself and the 2009 Secretary-General report as a case study to support the RtoP concept and prevention of conflict escalation; the Appeals Chamber of the International Tribunal ruled, “we conclude that the conflicts in the former Yugoslavia have both internal and international aspects”. Notwithstanding, a focused critical analysis of the wording of article 139 will, arguably, be a game changer and could significantly alter the common contemporary understanding of the RtoP, particularly as long as applicability in interstate conflicts concerned. Article 139 refers to Chapters VI and VIII of the UN Charter in the assignment of responsibility of the international community to protect populations from the four major crimes. While Chapter VI explicitly focuses on the peaceful settlement of disputes between states and outlines various methods for resolving conflicts between member states of the United Nations, Chapter VIII recognizes the role of regional arrangements or agencies that often deal with disputes between states within their respective regions in maintaining peace and security. While still can be applied in internal disputes that are escalated to the degree that likely endanger international peace and security, the primary focus of Chapters VI and VIII is on disputes between states, rather than internal conflicts within individual countries.



Having said this, this paper argues that the direct reference to Chapter VI and VIII of the UN Charter in article 139 extends the scope of the RtoP to international conflicts.

In addition, the reference of Rwanda and Srebrenica in Anan's famous challenging question to the UN in 2000, which led to the constitution of the ICISS, which in 2001 came up with the R2P, has a lot to say in this vein. Anan asked the UN; "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?". While the Rwandan case was obviously an internal dispute, the Srebrenica massacre had multifaceted aspects related to the nature of crises. Despite the resolutions of the SC on the former Yugoslavia avoided to explicitly indicate the conflict is an international, the language of the UNGA resolution 46/242 have clearly asserted that the republic of Bosnia and Herzegovina suffered an "aggression" by the Yugoslavia (Serbia and Montenegro), making the conflict an interstate one.

Identifying possible sources of harm, based on ICISS report, and perpetrators of the four major crimes, based on articles 138 and 139 of the WSOD can be useful, not only for understanding the difference between the ICISS report and what has been unanimously adapted by the UNGA in 2005, but also in suggesting the applicability within an interstate conflict.

Table 1: ICISS VS WSOD: RtoP Applicability Based on Human Suffer Source/Perpetrator

Perpetrators/Sources of harm that can possibly cause serious mass harm that invokes the RtoP	RtoP applicability under the 2001 ICISS Report Large scale loss of life/ethnic cleansing/State collapse	RtoP applicability under art. 138&139 2005 UNGA Genocide/war crimes/ethnic cleansing/crimes against humanity
The State itself	Applies	Applies
Domestic non-State actor	Applies	Applies
External non-State actor	Applies	Applies
Other Sovereign State(s)	Applies	Applies
Natural disasters	Applies	Not Applicable

(Source: Author's own, 2025)

The above table shows that while the ICISS report gave a wide range of harm or threats that include both; man made and natural disasters, articles 138 and 139 have restricted the harm to the specific 4 major crimes. In addition, while the ICISS provisions, mainly, draws on crises that occur internally within State borders, nothing in ICISS report nor articles 138 and 139 ceases explicitly ceases the applicability of RtoP to atrocities stemming from international armed conflict.

Based on the said, the analysis of this paper suggests that it's not about the nature of conflict— international or internal, neither the character of crimes perpetrators— the State itself or non-State actor or another State or group of States, that constitute the base on which the RtoP is rightfully invoked. It's all about situations of "conscience-



shocking" atrocities that require a positive response. As Moon asserted, acknowledging the shortage of the UN and its member States in their obligation of preventing and protection, "We can, and must, do better. Humanity expects it and history demands it." — it's all about dealing with humanitarian tragedies positively instead of turning a blind eye. The paper then frames the argument that the RtoP applies whenever and wherever genocide, war crimes, ethnic cleansing and crimes against humanity are committed or threatened with the state in concern being "manifestly" unable or unwilling, regardless of the crimes' perpetrator or the nature of conflict. It remains solid that the "gross and systematic violations of human rights that affect every precept of our common humanity", as Anan posed it in his famous question in the UN and led to the RtoP's emergence, are not and should not be restricted by borders or perpetrators. Therefore, if it's ruled that one of four major crimes is being committed in Gaza or the Westbank, then the RtoP is, and should be, applicable for protection of civilians exposed to it and the international community should take all necessary steps to step in to effectively protect the humans from the ongoing offensive. This study then argues that the focus should not be the question of whether the RtoP is applicable or not where populations are massacred and the world is watching the violence live on media channels, rather, the focus ought to be shifted to the actionable responses —the mechanisms and tools. As Ki-Moon stated" ... our strategy must also include ways to generate the kind of "timely and decisive" response the Summit called for and our people expect...it is a sign of progress that our debates are now about how, not whether, to implement the Responsibility to Protect. No government questions the principle. Tactics, however, will –and should –be the subject of continuing scrutiny." (Ki-Moon, 2011).

CONCLUSION

The concept of R2P was born out of the tragic experiences of the 1990s, which highlighted the inadequacies of the existing international framework in addressing mass atrocities in Rwandan Genocide (1994), Srebrenica Massacre (1995) and Kosovo Crisis (1999). It was the post-Cold War era where imminent crises are no longer interstate. The ICSS 2001 report that came up with the RtoP concept clearly indicated under the core principles that "where a population is suffering serious harm, as a result of internal war internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. Despite The RtoP has been always considered a reformed version of the humanitarian intervention, rhetorically and conceptually, It is deeply linked to, as Chomsky described its "cousin" the controversial humanitarian intervention, which was associated with mobilizing unilaterally or multilaterally militarily into other territories claiming the purpose of protection of own citizens from grave violations perpetrated by the State. The RtoP is widely understood as a shift of the traditional absolute sovereignty, the idea that Evans puts it "no matter what happens within the state borders, it's no body's business", which also indicate that the main essence of the RtoP was focused on the protection of populations from atrocities occurred due to an internal conflict within the state borders. However, the wording of articles 138 and 139 of the World Summit Outcome Document hasn't limited the RtoP to



atrocities stemming from internal conflicts within state borders nor identified the perpetrator position; being the State itself, local non state actor, other state or other external non state actor. It rather stressed on the idea of protecting populations from mass atrocities when the state (sovereign) is unwilling or unable to protect them. The word "populations" used instead of "citizens" to reflect broader umbrella for protection. The famous challenge question of Anan in the General Assembly which led ultimately to the creation of the RtoP, as Evans asserted, was clearly not seeking solutions related exclusively to the internal civil wars or non-international wars. The 2 examples Anan mentioned in his questions were Rwanda and Srebrenica. While the former was an intra-state crisis, the latter was arguably yet affirmed by the ICTY, an interstate conflict led to the broadly known as massacre of Bosnia. Anan was questioning ways to respond and end, what he described, "gross and systematic violations of human rights that affect every precept of our common humanity", regardless of causes or perpetrators of the crimes. The gross and systematic violations in this vein are not restricted by borders or perpetrators. Therefore, if it's ruled that there is either genocide, war crimes, ethnic cleansing or crimes against humanity perpetrated against populations in Gaza and or the Westbank, then the RtoP is due and the international community should intervene to carry out its duty to protect humans where the state or states involved is/are manifestly failing to do so. This can be performed through the various tools of the RtoP along the spectrum—from diplomacy to sanctions to even, despite realistically hard, military action.

In conclusion, the current study frames the argument that the RtoP applies whenever and wherever genocide, war crimes, ethnic cleansing and crimes against humanity are committed or threatened with the state in concern being "manifestly" unable or unwilling, regardless of the crimes perpetrator or the nature of conflict, or whether the said crimes occur as a result of intrastate or interstate crises.

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List of Cases

Kosovo Intervention

Libya Intervention