AFE BABALOLA UNIVERSITY ADO EKITI

A TERM PAPER

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TO

INTERNATIONAL REFUGEE LAW IS MAINLY A TREATY LAW. DISCUSS CRITICALLY THE REGIONAL AND GLOBAL INSTRUMENTS FOR REFUGEE PROTECTION AND THEIR LIMITATIONS.INTERNATIONAL REFUGEE LAW IS MAINLY A TREATY LAW. DISCUSS CRITICALLY THE REGIONAL AND GLOBAL INSTRUMENTS FOR REFUGEE PROTECTION AND THEIR LIMITATIONS.

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APRIL 2020

International humanitarian law is a set of rules that seek to limit the effects of armed conflict on people and objects. Also known as the law of war or law of armed conflict, IHL protects certain categories of people and restricts the methods and means of warfare. IHL protects people who are not or no longer taking part in the fighting, such as civilians, the wounded, the sick, prisoners of war, detainees, shipwrecked, and medical and religious military personnel. These categories of people are entitled to respect for their lives, and parties to a conflict must provide them with assistance and treat them humanely at all times and without discrimination. The duty to implement IHL lies first and foremost with States.

The responsibility to protect embodies a political commitment to end the worst forms of violence and persecution. It seeks to narrow the gap between Member States’ pre-existing obligations under international humanitarian and human rights law and the reality faced by populations at risk of genocide, war crimes, ethnic cleansing and crimes against humanity. The Responsibility to Protect – known as R2P – is an international norm that seeks to ensure that the international community never again fails to halt the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. The concept emerged in response to the failure of the international community to adequately respond to mass atrocities committed in Rwanda and the former Yugoslavia during the 1990s. The International Committee on Intervention and State Sovereignty developed the concept of R2P during 2001. The Responsibility to Protect was unanimously adopted in 2005 at the UN World Summit, the largest gathering of Heads of State and Government in history.

States have long accepted limits on their conduct, whether towards their own citizens or others. The UN Universal Declaration of Human Rights requires that states protect individual and social rights; the Geneva Conventions and various treaties and covenants prohibiting torture, trafficking in persons, or nuclear proliferation similarly restrict the right of states to behave as they wish. At the same time, there has been a shift in the understanding of sovereignty, spurred both by a growing sensitivity to human rights and by a reaction to atrocities perpetrated upon citizens by their own leaders. Sovereignty is increasingly defined, not as a license to control those within one’s borders, but rather as a set of obligations towards citizens. Kofi Annan spoke of the sovereignty of the individual as well as of the state. Francis Deng, the Special Adviser on the Prevention of Genocide and the former representative of the Secretary-General on internally displaced persons, developed the concept of “sovereignty as responsibility.” And chief among those responsibilities, he and others argued, is the responsibility to protect citizens from the most atrocious forms of abuse. Simply put, people come first. Regional cooperation arrangements for refugee protection can be practical, principled responses by several States working together to meet the protection needs and humanitarian challenges posed by the movement of asylum seekers, whether fleeing in large or small numbers. The founding document of contemporary refugee law, the 1951 Convention relating to the Status of Refugees (1951 Convention) reflects awareness of the inequality of effort required to protect refugees and the corresponding need for State solidarity. The 1951 Convention’s Preamble notes the international scope and nature of the refugee problem, acknowledges that ‘unduly heavy burdens’ may fall on ‘certain countries’ of asylum, and points out the obvious necessity of international cooperation in order to achieve solutions.

There is another important source of guidance agreed by States on refugee protection matters, including on regional cooperation. The States comprising UNHCR’s intergovernmental governing body, its Executive Committee, have addressed the need for States to work together to ensure protection and have provided basic guidelines for comprehensive regional approaches to refugee protection. In emphasizing the value of regional cooperation that is responsive to the particular needs of a given refugee situation, UNHCR’s Executive Committee has noted that there is no blueprint for such approaches, but has stressed that protection considerations must govern the entire process.

There are three major challenges in moving R2P from theory to practice. The first is conceptual to ensure that the scope, and limits, of the norm as it has evolved are well understood in all parts of the world, so that misunderstandings (for example that R2P is only about military intervention) do not persist, and that as new situations arise requiring preventive or reactive action by the international community, there will be broad consensus about what to do.

The second is institutional, to ensure that governments and intergovernmental organizations have available all the diplomatic, civilian and, as necessary, military capability needed to ensure effective early warning and early action, to provide essential assistance to those countries who need and want it and most importantly, to people desperately in need of protection.

The third, as always, is political: to ensure that when mass atrocities next occur, the necessary commitment will be there from the decision-makers that matter. This means having arrangements in place for effective mobilization by both governments and civil society. Crises threatening large-scale loss of life are bound to continue to arise, and with them debates over issues such as the most appropriate response to the killing of civilians in Darfur, Cyclone Nargis in Myanmar, and to the violence surrounding the elections in Zimbabwe. The international community of states will encounter extremely difficult and painful questions about the applicability of R2P, which only demonstrates the need for clarity over the reach and limits of this new principle. The attempt to forge political consensus in any given case will depend in part on reaching agreement over exactly what it was that the states agreed to do when they adopted R2P in 2005. But it will depend as well on an evolution of public sentiment. Leaders will take real risks only if citizens demand it; and publics have only recently begun to demand that their leaders confront the issue of human rights violations abroad. As the clamor grows, so will the likelihood of action.

The Secretary General defined R2P as having three equally important and parallel pillars. The first is that a State has the primary responsibility to protect individuals under its jurisdiction from the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. The second pillar addresses the responsibility held by all members of the international community to assist States to fulfill their responsibility to protect. The third pillar, and the most contentious, is that if a State is ‘manifestly failing to protect’ its population from the R2P crimes of genocide, war crimes, ethnic cleansing and crimes against humanity, then the international community is ‘prepared to take collective action in a timely and decisive manner’. This pillar allows for the possibility of the use of force for protection purposes under Chapter VII of the UN Charter.

In the first instance States have a responsibility to protect populations under their jurisdiction and control. States also have a responsibility to other States to assist them to fulfill their responsibility to protect their populations. The Secretary General notes that this may be done in four ways:

a) Encouraging States to meet their responsibilities under pillar one;

b) Helping them to exercise this responsibility;

c) Helping them to build their capacity to protect; and

d) Assisting States ‘under stress before crises and conflicts break out’.

In addition, the “International Community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations. It may seem evident that the ‘international community’ is referring to States working together through the United Nations. However, there has been no agreed definition of what ‘international community’ is, and while it clearly applies to States, it is possible that it may also apply to the means States employ to implement their responsibilities including non-state actors, non-government organizations and civil society more generally. While these non-state actors are unlikely to have a ‘legal’ responsibility under international law, there is strong argument that a ‘moral’ responsibility exists.

If States fail to prevent the commission of R2P crimes, and do not intervene to prevent the further commission of R2P crimes, then they have failed in their ‘responsibility to protect.’ When such international crimes have been committed States then in most instances they have a responsibility to punish those responsible through their domestic legal system or, failing that, through international mechanisms that have been established such as the International Criminal Court. R2P relies on existing international law for prosecution of R2P crimes. It does not outline a separate regime for the prosecution of perpetrators.

Somalia: Somalia has been in a continuous state of civil war since 1991. The majority of Somalia is no longer under the control of the federal government, and successive UN and NATO peacekeeping forces have been unable to shore continued insecurity, from the UN-led UNOSOM I and the United States led UNITAF (1992-1993) to UNOSOM II (1993-1995). The International Coalition for the Responsibility to Protect asserts that up to “2007, each party to the armed conflict has committed serious violations of international humanitarian law, in some cases, amounting to war crimes.”183 In 2008, Human Rights Watch stated that approximately 700,000 people were internally displaced in 2007 alone, and more than ten percent of the total population was displaced at the close of 2007.184 Despite these allegations, the United Nations has failed to authorize further UN peacekeeping missions, and has not acted to meaningfully realize its obligations under the Responsibility to Protect doctrine.

The conditions in Zimbabwe since 2000, both the repression by state security forces, including enforced disappearance, murder, torture, and rape, and the severe economic collapse, including two hundred and thirty one million percent hyper-inflation and eighty percent unemployment due to failed state policies, displacement of over 1 million civilians, and grave failure of the sanitation and healthcare, have been cited as evidence of the failure of the ruling ZANU-PF leadership to fulfill its responsibility to protect. The potential for Zimbabwe to be considered ripe for R2P action by other states was increased by the extreme violence following the March 2008 presidential election, including “torture, beatings, mutilations, murder, rape, land seizures and forced displacement, enforced disappearances, deprivation of access to food, and summary executions ... perpetrated against leaders and supporters of the opposition.”164 Neither the AU, which belatedly condemned the post-election violence, nor has the South African Development Community (SADC) taken R2P action. China and South Africa have successfully averted any action by the Security Council. NGOs are divided as to whether invoking the R2P would be helpful, “considering the limited political will of regional and foreign states to commit to any significant preventive or reactive measure.”165 Further to the September 2008 Global Political Agreement, a unity government was put in place in February 2009 without resolving Zimbabwe’s economic, social, or political crisis.166 Whether the acts and omission attributable to the Mugabe government constitute R2P crimes is a matter of debate. What is certain is the lack of political will that would be required for any meaningful R2P action in the case of Zimbabwe.