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**The Doctrine of ‘Responsibility to Protect’: Look Back the Israeli Blockade on Gaza Strip in 2007**

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**Abstract.** As state members of the international community recognize the need to prevent war crimes, crimes against humanity, genocide and ethnic cleansing, and to protect the world people from their impacts, the doctrine of ‘Responsibility to Protect’ has been developed and promoted since the United Nations General Assembly – World Summit 2005. Thereby, it is not only a state’s responsibility to prevent and protect its citizens from the abovementioned crimes, but also the responsibility of the world community to help preventing, intervening, and rebuilding when such crimes happen. However, after its promotion in 2005, the world community still struggles to intervene effectively on the on-going conflict between Israel and the Hamas party representing the Palestinians. This paper looks back the Israeli blockade on the Gaza Strip in 2007 and indicates several limitations in the implementation of this doctrine, as well as to emphasize the crucial role of ‘prevention’ part, especially in case where crimes against humanity occur because of incomplete resolve of war crimes.

**Keywords:** Responsibility to Protect, R2P, crimes against humanity, Israeli Blockade, humanitarian intervention, human rights protection

**Introduction**

Peacekeeping missions and human right protection are two important features of the modern international community. Despite the fact that the world society today is providing better assistance to its members through various developments in both international bilateral and multilateral relations, the world is still facing difficulties in dealing with several international crimes, including genocide, war crimes, ethnic cleansing and crimes against humanity. These four crimes not only impose negative impacts on human rights, but also cause political uncertainties in international relations. The international community recognizes that it is important to prevent these crimes, member states however usually fail to act in a timely and effective manner, which then usually leads to horrific consequences. According to Luck (2008), the United Nations has faced many difficult questions about its capacity and the political will of its state members, due to the failures of preventing and responding to such cases (p. 2).

Perhaps the most important problem here lies in the contradiction between the doctrines of state sovereignty and the desire to protect human rights. This contradiction makes it nearly impossible to reach agreement on how and when the international community would legally intervene when human right abuses are taking place within the territory of a single sovereign state. In other words, the tension between the desire to intervene to protect human rights and the desire to respect state sovereignty makes it hard for the international community to determine in what situations or for which purposes should it intervene in the affairs of a member State. In fact, earlier international interventions were based on an alleged ‘right to intervene’ or based on the Security Council’s power to determine the existence of a threat to international peace.

The doctrine of ‘Responsibility to Protect’ (R2P) was promoted to the world community in the United Nations General Assembly – World Summit 2005 as an emerging norm aiming to provide effective solutions to protect human rights from the above crimes with the use of interventions. According to various scholars, the most important concept inherent in the idea

of R2P is that national sovereignty is said not to be a privilege, but rather a responsibility. More importantly, it is not only the responsibility of an individual member state to prevent genocide, war crimes, crimes against humanity and ethics cleansing and protect its citizens from those incidents, but also the responsibility for all other members in the international community to assist and help those victims even though they are not member states' citizens. R2P allows the international community to intervene in the internal affairs of a state, with the purposes of preventing inhuman crimes and protecting human lives.

Although many member countries have welcomed the promotion and implementation of R2P, performing it effectively in practical situations is not always an easy obligation. One of the main reasons is that this is an international norm, not yet a binding law. It also remains unclear about the level of human rights abuse required to justify intervention, or what degree or type of intervention by other state members to prevent human rights abuse is justified in each case. Different political perspectives will usually create different judgments regarding whether the intervention is lawful or not, causing a serious barrier to state members' willingness to take action in a timely manner.

In the context of the on-going political conflict between Israelis and Palestinians, this paper aims to review the historical development and theoretical framework of R2P; and via secondary data analysis, it looks back and discuss the case of Israeli blockade on Gaza Strip in 2007. As a result, the paper indicates some crucial limitations in implementation of the promoted norm such as effective timing of intervention and political unwillingness. Moreover, there is also a struggle to particularly deal with war crimes, compared to the others. And in this particular case, war crimes are seen as the root of issues led to crimes against humanity.

### **Historical Review of R2P**

Sovereignty, intervention, and prevention are three essential concepts of the contemporary debate on the use of coercive means to secure humanitarian objectives. Amongst these, state sovereignty and intervention are usually assumed to be irreconcilable and contradictory, even though the intervention might be for humanitarian purposes. In addition, intervention is a most challenging controversial element. According to the International Commission on Intervention and State Sovereignty (ICISS) (2001), under the United Nations Charter, since 1945, the threat or use of force against the territorial integrity and political independence of any State is prohibited by Article 2 (4). Although the prohibition seems to be clear, questions and concerns about the legality of humanitarian intervention still remained. For example, in 1946, an eminent legal scholar continued to argue that intervention is legally permissible when a state is guilty of cruelties against its nationals "in a way that they denied their fundamental human rights and shocked the conscience of humankind" (ICISS, 2001).

Humanitarian organizations in later years also argued that people should have the right to receive assistance; and if this cannot be fulfilled by the state, outsiders have a right of access to fill the gap. In addition, the programme of the '1993 Vienna World Conference on Human Rights' most directly and strongly supported this approach by reaffirming in its 'Vienna Declaration and Programme of Action 1993' – Article I.29 as "the right of victims to be assisted by humanitarian organizations, as set forth in the Geneva Conventions...and called for the safe and timely access for such assistance" (ICISS, 2001).

Then, following several political crises that had significant impacts on human rights, such as the Rwandan genocide of 1994 and in Sierra Leone in 1997, as well as the mass murder in Srebrenica in 1995; the international community recognized a need for developing a more effective solution that would govern the issues of sovereignty and intervention to prevent similar humanitarian crises in the future. However, differences in the viewpoints of member States once again emerged in divisive debates within the Security Council in 1999 on what to do about mounting violence and possible ethnic cleansing in Kosovo. During this period,

former UN Secretary-General Kofi Annan posed, in a series of speeches, “the stark choice between standing by when mass atrocities were unfolding or intervening militarily even if Security Council authorization was blocked”. For many member states, this was seen as an unacceptable choice between two unpalatable options. In essence, they found the debate over humanitarian intervention to be ultimately unsatisfying and unproductive in terms of advancing United Nations policy or doctrine” (Luck, 2008, p.2).

Meanwhile, Francis Deng and his colleagues at the Brookings Institution had been developing a concept that viewed sovereignty as responsibility. In the view of Deng and his colleagues, sovereignty imposed “abiding obligations towards one’s people, as well as certain privileges internationally” (Luck, 2008, p.3). In addition, by performing these obligations and respecting fundamental human rights, a state would have less reason to worry about or protest coercive interventions from the outside. These views in fact reflected evolving notions of sovereignty that had been discussed or mentioned by the international community in modern political doctrines. For example, Article 4 (h) of the Constitutive Act of African Union in 2000 asserted the right of the Union to intervene in a member state pursuant to a decision of the African Union Assembly 2000 in respect of grave circumstances, namely: war crimes, genocides, and crimes against humanity.

Moreover, the ICISS was launched by the Canadian Government in 2000. The initial development of this independent organization was to respond to the indeterminate debate over humanitarian intervention, and the Security Council’s split over how to respond to the crisis in Kosovo. The R2P doctrine was first introduced by the ICISS in its 2001 report to describe a concept that embraced three core elements for state members to follow: a responsibility to prevent, a responsibility to react, and a responsibility to rebuild.

For instance, first, states and international community have the responsibility to prevent serious international crimes, which requires action to address both root causes and direct causes of internal conflict and other man-made crises putting a state’s population at risk. Second, states and the international community have the responsibility to react during situations of compelling human need with appropriate measures, including the use of military force. Finally, states and international community have the responsibility to rebuild in the aftermath of atrocities. The responsibility to protect thus includes providing assistance with recovery, reconstruction and reconciliation as well as seeking to address the causes of civil conflict.

The R2P doctrine received a renewed emphasis in 2004 when the former UN Secretary-General Kofi Annan created a panel called the ‘High-Level Panel on Threats, Challenges, and Change’. This panel was established to identify major threats facing the international community in the broad field of peace and security, and to generate new ideas about policies and institutions with the purpose of preventing or confronting these challenges. In relation to R2P, according to its 2004 report named ‘A more secure world: Our shared responsibility’, the Panel endorsed the emerging norm of R2P, stating that:

—“*There is a growing recognition that the issue is not the right to intervene of any state, but the responsibility to protect of every state when it comes to people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. And there is growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community – with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies...*” (Para 201, p.65); and

—“*We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of*

*international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent” (Para 203, p.66).*

In 2005, with the intention of obtaining the full support of the international community, the United Nations decided to promote the principles of R2P at its 2005 General Assembly World Summit. At this 60<sup>th</sup> session of the United Nations General Assembly gathering, 191 heads of state and government representatives unanimously endorsed a resolution supporting the R2P doctrine. In addition, paragraphs 138 and 139 of the 2005 World Summit Outcome Document clarified the agreements of heads of state and government in respect of implementing the ‘Responsibility to Protect’ norm, as follows:

—**Paragraph 138:** *“Each and individual state has the responsibility to protect its population 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”;* and

—**Paragraph 139:** *“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 United Nations Charter, to help 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 with 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”.*

In 2006, the United Nations Security Council included in Resolution 1674 on the protection of civilians in armed conflict a re-affirmation of R2P. Then in its later Resolution 1706, which sought to provide a peacekeeping mission to the Darfur political crisis, the Security Council once again recognized the significance of implementing R2P and re-asserted its commitment to the principles of this doctrine. Most recently, in 2009, the United Nations General Assembly prepared several reports aimed at facilitating implementation of the R2P, and at improving the commitment of the world community to this doctrine<sup>1</sup>.

### **R2P’s Theoretical Framework**

The significant issue in R2P falls within the dilemma of intervention. Humanitarian intervention “has been controversial both when it happens and when it has failed to happen” (ICISS, 2001, p. 1). For example, the Rwandan genocide in 1994 was a case where there was no humanitarian intervention by the international community. Intervention failed to happen when the Security Council refused to take necessary action to intervene and provide assistance for humanitarian purposes. This failure of international will at the highest level, caused many African people to conclude that, for all the rhetoric about the universality of human rights, some human lives in Africa were in reality viewed as less important than lives elsewhere in the

<sup>1</sup> ‘The 2009 General Assembly Debate – An Assessment’ and the ‘Responding to the UN Secretary-General’s Report’

international community. In contrast, Kosovo was an example where intervention took place in 1999. However, this intervention in fact raised many significant questions about the legitimacy of military intervention in a sovereign state. An alternative view asks “was it the case that had the North Atlantic Treaty Organization (NATO) not intervened, Kosovo would have been at best the site of an ongoing, bloody and destabilizing civil war, and at worst the occasion for genocide slaughter like that which occurred in Bosnia in 1995?” These cases reflected different political views on interventions, causing endless debates on whether the international community is not intervening enough or it is intervening much too often. Also, concerns about legality, process and the possible misuse of precedent in relation to intervention are very hard questions to answer. In addition, according to the ICISS (2001), any new approach to intervention on human protection grounds needs to meet at least four basic objectives: a set of clear rules, procedures and criteria for determining whether, when and how to intervene; a process for establishing the legitimacy of military intervention which should take place only when necessary and after all other approaches have failed; mechanisms to ensure that military intervention, when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and mechanisms to help eliminate, where possible, the cause(s) of conflict while enhancing the prospects for durable and sustainable peace (p. 11).

These elements need to be met comprehensively because state sovereignty is so important that the norm of non-intervention is enshrined in Article 2.7 of the UN Charter which provides that a condition of any one state’s sovereignty is a corresponding obligation to respect every other state’s sovereignty. Furthermore, a sovereign state is empowered in international law to exercise exclusive and total jurisdiction within its territorial border, which other states have the corresponding duty not to intervene in the internal affairs of a sovereign state. However, according to recent research, the main problem which the international community today is facing is not inter-state armed conflicts between different nations, but rather conflicts within a nation’s sovereign territory that impose negative impacts on its citizens. Furthermore, according to ICISS (2001), the proportion of civilians killed in these conflicts increased from about one in ten at the start of the 20<sup>th</sup> century to around nine in ten by recent years. This figure shows a major difficulty as how to reconcile the foundational principles of state sovereignty and the accompanying primary function to maintain international security and peace.

Therefore, political analysts believe that one of the most appropriate solutions to solve these national armed conflicts is to view sovereignty as responsibility. In addition, a responsibility of a state sovereignty is said to have at least three essential elements as: first, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare; second, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the United Nations; and third, it means that the agents of state are responsible for their actions; that means they are accountable for their acts of commission and omission. These functions are strongly supported and strengthened because of the development in international human rights norms, as well as the increasing impact in international discourse of human security concept. What is important about R2P is the view, accepted by, the ICISS, that debates about intervention for human right protection purposes should focus not on the right to intervene, but on the responsibility to protect.

The intellectual and political origins of R2P “lay in older ideas about ‘sovereignty as responsibility’ and their rearticulation in various forms in 1990s as a response to the commission of genocide, mass atrocities and forced displacement in that decade” (Bellamy & Beeson, 2010, p. 263). The doctrine of R2P outlines how the international community might perform its responsibility to prevent, protect, and assist citizens from genocide, war crimes, ethnic cleansing and crimes against humanity. This terminology focuses on the following

concepts to explain its implementation: firstly, the R2P implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention; secondly, the R2P acknowledges that the primary responsibility in this regard rests with the state concerned, and that it is only if that state is unable or unwilling to fulfil this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place. In many situations, the state will seek to acquit its responsibility in full and active partnership with representatives of the international community; and finally, the R2P means not only 'responsibility to react', but also the 'responsibility to prevent' and 'the responsibility to rebuild' as well. For instance, this third perspective focuses on the providing of conceptual, normative and operational linkages between assistance, intervention and reconstruction.

The ICISS believes that the R2P implies an accompanying responsibility to prevent. For example, in respect of the state itself, an example of creating the basis for conflict prevention is where a country provides fair treatment and fair opportunities for all citizens as a national commitment. This commitment may have to include efforts in improving accountability and good governance, respecting and protecting human rights, as well as promoting more social and economic developments. As a whole, the ICISS also suggests that in order for the international community to help in the effective prevention of conflict, it is necessary to meet three essential elements. First, there has to be knowledge of the fragility of the actual situation and the risks associated with it. Second, there must also be a policy measurement tool that is capable to provide different solutions for different circumstances. This is known as a toolbox for prevention. Finally, there needs to be a willingness to apply these tools in relevant cases in order to solve conflicts. This raises the issue of political will. A problem with this strategy of prevention is that "some states are becoming reluctant to accept any international endorsed preventive measures at all – even of the softest and most supportive kind; their fear is that any 'internationalization' of the problem will result in further external 'interference' and start down a slippery slope to intervention" (ICISS, 2001, p. 25).

Another issue in relation to prevention is that political officials facing rebellion or secessionist violence may well be afraid that they are giving additional legitimacy to those who caused their problems if they invite or support intervention. It is very important that the international community, when providing assistance, fully respects and recognizes the sovereignty and territorial integrity of countries needing help from outside. In addition, United Nations' organizations such as World Bank and International Monetary Fund (IMF) need to work together with other regional and sub-regional organizations to provide full support for states that are receiving assistance from abroad to deal with governance, reconciliation, long term rehabilitation and reconstruction issues.

The 'responsibility to react' is another important aspect of R2P. The reason for implementing this responsibility is that when preventive measures fail to resolve the case and when a state is unable or unwilling to respond to the situation, then the international community is required to intervene in order to provide humanitarian assistance to affected citizens of that particular state. This Intervention may include political, economic or judicial measures, or even military action in extreme cases. The most important issue is to choose the measure(s) most suitable for a particular situation and most likely to be effective. Different cases require different approaches. Each approach (political, economic, judicial or military) has its own advantages and disadvantages depending on different circumstances. For example, in the case of a country closely connected to the rest of the world economically, effective intervention could include restrictions on access to petroleum products which can help to restrict or minimize the military operations of that particular state. The downside of such restrictions is that they can have, possibly devastating impacts on civilians of that state. On the other hand, if a state is well-known to the international community through its representatives in the political

and diplomatic arena, intervention would be best if there is a restriction on diplomatic representation which includes the expulsion of diplomatic staff abroad.

Most importantly, the use of military force needs to be considered carefully. It must only be used in cases of “actual or threatened large scale loss of human life or ethnic cleansing” (ICISS, 2001, p. 34). Actual information for determining this would be very hard to obtain in a timely manner, but it is essential to know in order to decide whether a military intervention is truly needed, because intervention by force is considered to be the last resort where others have failed to resolve the conflicts.

Post-intervention obligations are also very important. More specifically, the ‘Responsibility to Protect’ implies the responsibility not just to prevent and react, but to follow through and rebuild. There are four responsibilities which states are required to fulfil after conducting humanitarian intervention, including peace building, security, justice and reconciliation, and development.

The issue of authority is another important issue needing resolution when implementing the R2P. The Security Council is known to have a primary, albeit executive, responsibility under the United Nations Charter for peace and security matters. In fact, “Article 10 gives a general responsibility to the UN General Assembly with regard to any matter within the scope of UN authority, and Article 11 gives the General Assembly a fall-back responsibility with regard specifically to the maintenance of international peace and security – albeit only to make recommendations, not binding decisions” (ICISS, 2001, p.48). Moreover, the authority of the UN is not supported by coercive power, but rather by its role as a forum capable of bestowing international legitimacy. The responsibility to protect human life and to promote better welfare for citizens is one of the most significant duties under the operation of the UN. Therefore, with the support of the Security Council in international law enforcement, the UN is the most suitable organization, with universally accepted authority, to perform/implement the R2P.

The ICISS (2001) recommends that, for the UN to function effectively and efficiently as a law-enforcing collective security body, states must renounce the unilateral use of military force for national purposes. The corollary of this, not always as readily accepted, is that states should also be willing to use force on behalf of, as directed by, and for UN’s goals. In other words, the UN has the moral and political legitimacy required to implement R2P, but for the UN to succeed, the international community must match the demands made on the body by the resources given to it.

In the United Nations Secretary-General’s Report on ‘Implementing the Responsibility to Protect’ in 2009, Mr. Ban Ki-moon outlined a three-pillar strategy for advancing the agenda of the Responsibility to Protect. According to Mayersen (2010), the strategy includes: first pillar – the protection responsibilities of the State: the sovereign states have an obligation and carry the primary responsibility to protect their citizens from mass atrocities; second pillar – international assistance and capacity-building: the international community has the responsibility to assist states in capacity building to fulfil this responsibility to prevent mass atrocities before, during and after the conflict; and third pillar – timely and decisive response: if the state in question fails to act appropriately, the responsibility to do so – in a timely and decisive matter either diplomatically, humanitarily, peacefully and as a large resort by stronger measures – falls to a larger community of states (p. 8).

In summary, according to ICISS (2001), the doctrine of ‘Responsibility to Protect’ should be clearly based on the following principles: the operation must be based on a precisely defined political expressed in a clear and unambiguous mandate, with matching resources and rules of engagement; the intervention must be politically controlled; the aim of the human protection operation is to enforce compliance with human rights and the rule of law as quickly and as comprehensively as possible; the conduct of the operation must guarantee maximum protection of all elements of the civilian population; strict adherence to international humanitarian law

must be ensured; force protection for the intervening force must never have priority over the resolve to accomplish the mission; and there must be maximum coordination between military and civilian authorities and organizations (p. 67).

### **A Look Back: the Israeli Blockade of the Gaza Strip in 2007**

The State of Israel is a parliamentary republic in the Middle East located on the eastern shore of the Mediterranean Sea. It borders Lebanon in the north, Syria in the northwest, Jordan and the West Bank in the east, and the Gaza Strip and Egypt in the southwest. The Gaza Strip and the rest of the West Bank were occupied by Israel in 1967<sup>2</sup>. Since the early 1990s, Israel has imposed increasingly severe restrictions on Palestinian movement in and out of the Gaza Strip, including on travel by Palestinian nationals to other parts of the Occupied Palestinian Territories. This is said to have strongly contradicted the internationally recognized principle by Israel that the West Bank and the Gaza Strip comprise one territorial unit as well as violating the occupying power's duty to ensure the welfare of the occupied population, which is stipulated in Articles 27 and 47 of the Fourth Geneva Convention. It is necessary to first understand the ongoing political conflict between Israelis and Palestinians in the Middle East. Many political commentators identify the issues emerging out of this conflict as mutual recognition, borders, security, water rights, control of Jerusalem, Israeli settlements, Palestinian freedom of movement and legalities concerning refugees. In many years, the violence between the parties in the area resulting from the above issues has caused significant international concerns in relation to security and human rights standards in the area.

One of the most critical periods in the area significantly started in 2003 when the Palestinians had been fractured by conflict between the two major factions: Fatah, the traditional dominant party, and its later electoral challenger, Hamas. In addition, Hamas is known as a Palestinian Islamic socio-political organization with an associated paramilitary force. However, Hamas is classified as a terrorist organization by the United States, European Union, and some other countries including Israel and Egypt. According to the Israel Ministry of Foreign Affairs (2007), the Hamas government does not recognize the right of the State of Israel to exist or accept previous accords signed between Israel and the Palestinian Authority. In 2006, The Hamas party won the Palestinian legislative elections, gaining a majority of seats in the Palestinian Legislative Council, intensifying the conflict between Israel and Hamas-dominated Gaza. Hamas later on took sole control over the Gaza Strip by seizing all government institutions as well as replacing Fatah government officials with its own by conducting a short civil war in Gaza in June 2007. Following this internecine fighting known as the Battle of Gaza, the entire Gaza Strip came under the full control of the Hamas government. The control of the territory by the Palestinian National Party (the Palestinian interim government) was then split between Fatah in the West Bank, and Hamas in the Gaza Strip. The division of government between the parties had effectively resulted in the collapse of bipartisan governance of the Palestinian National Authority (PA).

In response to the government takeover by Hamas in 2007, the government authorities of Israel and Egypt decided to largely close their border crossings with Gaza. This decision was made on the ground that the Fatah authorities had fled and were no longer providing security on the Palestinian side. Since the blockade in 2007, Israel has only allowed limited humanitarian supplies from aid organizations into the strip. According to the United Nations Office for the Coordination of Humanitarian Affairs (2009), the amount of goods Israel allowed into Gaza in 2009 was one quarter of pre-blockade flow. In particular, as a result of the blockade, residents in Gaza have been unable to rebuild thousands of homes destroyed by Israel during previous wars in the area. Despite the fact that Hamas is classified by some countries

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<sup>2</sup> According to the Amnesty International (2005), Israel/Occupied Territories: Amnesty International condemns discriminatory laws passed by the Israel



and regions as a terrorist organization, from a humanitarian viewpoint, the blockade on the Gaza Strip by Israel and Egypt has been condemned as violating the norm of Responsibility to Protect where it showed a possibility of committing a crime against humanity<sup>3</sup>.

Geographically, the Gaza Strip has land borders with both Israel and Egypt, and a sea border. In the blockade, Israel navy maintained a sea blockade from three nautical miles while Egypt was constructing an underground steel barrier to prevent circumvention of the blockade through tunnels. The humanitarian issues became worse in 2008 when both Hamas and Israel continued to fire missiles and rockets into each other's territory after Hamas protested against the blockade by Israel. Israel then began to construct its air and ground military operations into the territory of Hamas. The United Nations Secretary-General Ban Ki-moon issued a condemnation of what he termed Israel's excessive and disproportionate response and called on Israel to cease such attacks into Gaza. This request was complied with by both Israel and Hamas when they ceased their attacks in Gaza for six months. However, the situation seemed to be getting worse after expiry of the six-month ceasefire when Israel launched its military campaign into the Gaza Strip in December 2008, claiming that a war was necessary to stop Hamas rocket attacks on southern Israel and arms smuggling into Gaza. The Israeli operation began with an intense bombardment of the Gaza Strip, targeting Hamas bases, police training camps, police headquarters and offices. Civilian infrastructures, including mosques, houses, medical facilities and schools, were also attacked, as Israel stated that many of them were used by combatants and as storage spaces for weapons and rockets. In early 2009, the Israeli ground invasion began. Following the Gaza war between Israel and Hamas, international human rights groups and aid organizations have accused both Hamas and Israel of war crimes and demanded an immediate end to the violence. The war came to an end in the middle of January 2009 when both sides agreed to announce unilateral ceasefires. Israel then kept maintaining its blockade and claimed that the blockade was important, as a security measure, to limit Palestinian rocket attacks from the Gaza Strip on its cities as well as to prevent Hamas from obtaining other weapons. Egypt, on the other hand, also argued that it could not open its Rafah crossing with the Gaza Strip since completely opening this border would have represented Egyptian recognition of Hamas control over the Gaza Strip and the West Bank.

Nevertheless, the blockade by both countries has been criticized by United Nations Secretary-General Ban Ki-moon, the United Nations Human Rights Council, and other human rights organizations as illegal and as a breach of human rights. In particular, the Amnesty International UK Director, Kate Allen in 2010 claimed that Israel's responsibility to protect its citizens did not give it the right to punish every man, woman and child of Gaza. She then stated that all states are obliged under international law to intervene to put an end to this brutal blockade. The United Nations and the International Committee of the Red Cross have also repeatedly called the blockade illegal under the Geneva Conventions, and urged Israel to lift the blockade immediately. In addition, according to a report of United Nations in 2008, the United Nations Human Rights investigator, Richard Falk, condemned Israel's blockade of Gaza as a flagrant and massive violation of international humanitarian law and crime against humanity. Also, the report of Fact Finding Mission on the Gaza Conflict (2009), mandated by the President of the Human Rights Council in April 2009 and headed by Justice Richard Goldstone, found evidence that both the Israeli Defense Forces and armed groups from Gaza had committed serious war crimes and breaches of humanitarian law (paragraph 108). Meanwhile, Navi Pillay, United Nations High Commissioner for Human Rights, accused the blockade of violating all standards of international humanitarian laws.

War crime and crimes against humanity are two phenomena which demand strong measures from the international community in accordance with the promotion of the R2P

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<sup>3</sup> According to the International Coalition for the Responsibility to Protect (ICRtoP) – Report of the United Nations Fact-Finding Mission on the Gaza Conflict (2009), paragraph 75

doctrine in 2005 World Summit. In this case, the Fact Finding Mission on the Gaza Conflict in 2009 recommended the Security Council to pass a resolution requiring both Israel and Hamas to launch domestic investigations into the above-mentioned crimes and report on the findings of both these investigations and the prosecutions of the perpetrators. As a solution, if good-faith investigations in line with international standards have not been fully met by either Israel or Hamas six months after the passage of the recommended resolution, it would be necessary for the United Nations Security Council to refer the responsible party/parties to the International Criminal Court to be dealt with. Similarly, it has also been suggested by many international human rights lawyers that legal grounds which international community could consider to stop the Israeli actions include a World Court lawsuit against Israel for genocide, comprehensive economic and other sanctions against Israel, and the suspension of Israel from all UN General Assembly activities, etc, as were used against South Africa and Yugoslavia in the past. Furthermore, as an attempt to impose pressure on Israel, in March 2010, the United Nations Secretary General Ban Ki-moon made his visit to the Gaza Strip and repeated his condemnation of the blockade as well as requesting Israel to lift its blockade immediately.

Similar to the United Nations' responses, many other attempts had been tried by many state members in order to improve the humanitarian situation in Gaza. For example, the United States, Britain, Russia and the European Union (EU) called the blockade unsustainable, despite the fact that these countries are allies of the Israeli government. France, in particular, suggested that EU forces could check the cargoes of ships heading for Gaza to ensure they were not carrying goods Israel would consider a security risk. This idea was rejected by Israel, which France then condemned for having a negative and uncooperative approach when dealing with international concerns. Turkey also urged Israel to lift its blockade in Gaza and allow Turkish-led convoys of ships carrying humanitarian aid to enter the Hamas-controlled enclave. Turkey, which was known as Israel's ally was badly damaged, when eight Turkish citizens and one US citizen of Turkish origin were killed in the raid by Israeli troops on a fleet of Gaza-bound aid ships in May 2010. Turkey then cancelled its joint military exercises with Israel and recalled its ambassador from Israel. According to Karadeniz (2010), Turkey demanded that Israel lift its blockade of Gaza as a condition for normalizing diplomatic relations. Similarly, according to Black (2010), Spain also reminded the EU about the necessity for drawing up new proposals to effectively impose international standards to Gaza's current circumstance.

In the Middle East region, according to Gelken (2009), Iran threatened to break Israel's Gaza blockade and claimed that the Hamas government came to power in January 2006 through a fair and open election process. However, following the victory of Hamas in parliamentary elections, the territory was essentially placed under siege, with increasing shortages of even the most basic of daily necessities. Therefore, Iran suggested that other Islamic countries should also break off diplomatic relations with Egypt and Saudi Arabia, because they supported Israel's blockade, massacres and invasions in Gaza. On the other side, in 2009 Jordan also requested a complete end to Israel's blockade of Gaza, adding that it had already broken the siege through frequent aid convoys and its military hospital in Gaza. In June 2010 Jordan stated that it is working with the Arab and regional countries to have the United Nations issue a decision committing Israel to lifting its illegal siege on Palestinians in Gaza. Jordan suggested that it would be a more effective means of putting pressure on Israel if the international community gathered together to implement more serious measures to force Israel to comply with UN decisions. Significantly, Jordan also asked Israel to halt all its unilateral and provocative measures against the Palestinians elsewhere.

Following many suggestions and attempts to impose pressure on Israel, the situation in Gaza then seemed to be better in June 2010 when Israel announced the easing of its blockade in the Gaza Strip. For instance, in June 2010 Israel made an announcement allowing the import of strictly civilian goods into the Gaza Strip, but will restrict problematic dual-use items,

including construction materials that can be used to build rockets and bunkers. However, Israel did not mention allowing exports out of Gaza. Similarly, Federman (2010) reported that Egypt was also then freely opening its border with Gaza allowing in humanitarian aid. Egypt, which has cool relations with Hamas, announced the opening of the border to allow aid in what it called a humanitarian gesture. It was unclear, however, when Hamas authorities would allow their people to cross into Egypt and how long they would be permitted to pass. In response, the international community accused Israel for not progressing far enough in its lifting of the blockade and demanded a complete lifting of the embargo accordingly to the Security Council SC/9990 report in July 2010. Turkey also claimed that the easing of the Gaza blockade and allowing in of imports needed by the population were positive but insufficient steps by Israel, and stated again that Israel's inhuman blockade of Gaza represents a threat to regional peace and stability and that the blockade must entirely be lifted. Similarly, Jordan said any decision to ease the pressure on Gaza is a step in the right direction, but the current Israeli plan is not effective enough because such minimal measures would not solve the ongoing humanitarian problems there effectively, adding that all restrictions in the area would need to be fully terminated.

Hamas authorities dismissed the Israeli decision to ease the blockade as media propaganda. Hamas believed that the Israeli decision to increase varieties and quantities of goods to Gaza was aimed at decorating the blockade and ensuring its continuation in addition to misleading the international public opinion by giving the impression of easing the blockade, adding that the requirement was not to allow entry of additional quantities of good but to lift all forms of embargo by opening the border crossings around Gaza and to ensure the freedom of movement for individuals and the needed goods, especially construction materials. On a different note, the Centre of European Reform doubted that even if the EU was truly willing to help, the Israelis government would consider the solutions suggested by the EU reliable enough compared to similar requests from the United States. In terms of the R2P, the United States is said to have an important role in the case. In addition, during more than four decades of state relationship-building, the Israeli government looks to the United States for inspiration, financial, military and diplomatic support. On the other side, the United States appreciates Israel for its efforts in following and implementing the Western democratic tradition and being a deemed representative of the United States' presence in Middle East because Israel is known as one of the closest allies of the United States. The United States in fact did not request Israel to lift its blockade comprehensively. Instead, the Obama administration believed Israel's blockade of Gaza was untenable and wants to see a new approach that would allow more supplies into the impoverished Palestinian area while guaranteeing Israel's security. However, the report indicates that the United States was reflecting a broadly held view in the upper reaches of the administration by the way it stressed that any new approach would have to ensure Israel's security, while allowing more supplies into the Gaza Strip, claiming that Israel will continue to maintain its right to defend itself. Similarly, Britain was warning of exaggerated expectations of what can be achieved in Israel, despite the fact that Britain's former EU external affairs commissioner, Lord Patten, suggested that the United Nations would be tasked with preventing weapons entering Gaza while the EU should take the initiative with Turkey and the Arab League to re-establish a national unity government of Fatah and Hamas for the West Bank and Gaza. The Arab League, however, was accused by many international human rights lawyers in 2009 of only expressing meaningless statements in an attempt to convince their own people that they will do something, while leaving the Palestinians on their own, according to Gelken (2009).

More importantly, the former EU external affairs commissioner also urged the EU to demand Israel immediately end to the blockade, open dialogue with Hamas, and significantly not let the United States monopolize the policy for the Middle East area, or become involved

in the conflict between Israelis and Palestinians in the Gaza Strip and the West Bank. In this case, Israel's treatment of Palestinians is also seen as symbol of the West's relationship with the Palestinians. The diplomatic group known as the Quartet, made up of the United States, Russia, the European Union and the United Nations, said that until Hamas meets the requirements to recognize the rights of Israel's existence and sovereignty and accept the agreements between Israel and the previous Palestinian Authority, the Quartet will not deal with it. The Quartet Group was established in Madrid in 2002 as a result of escalating conflict in the Middle East area. Nevertheless, in 2009, the Quartet made a comment to Israel that the current situation in the Gaza Strip was not sustainable, and has also called for the unimpeded provision and distribution of humanitarian aid within the Gaza Strip, as well as the reopening of the crossing points. However, this would be difficult to achieve so long as the blockade was not being used as a security measure, as claimed by Israel, but as economic warfare against the Islamic group Hamas. Particularly, according to Frenkel (2010), the Israeli government explained in 2010 that the blockade needed to be maintained as an exercise of the right of economic warfare, stating that the economic warfare was intended to achieve a political goal, according to Frenkel (2010). In addition to the economic warfare imposed by Israel, it was also important to notice the existence of four documents related to how the blockade worked from Israel. These documents gave directions for how Israel proceeded requests for imports into Gaza, how it monitored the shortages within Gaza as well as the approval list of what was allowed in, etc. However, the critical issue here was that the details of these documents were not clearly stated by Israel. This lack of clarity caused immense frustration not just among Gaza's citizens, but also among international aid groups, diplomats and especially the United Nations which described Israel's blockade as a collective punishment. It is because it was not only about the shortages in supplies, but also the unpredictability and changing nature of what was permitted for import into the Gaza Strip.

In terms of the R2P, it is clear that both Israel and Hamas were guilty of ongoing war crimes and Israel alone also committed crimes against the Palestinians in the Gaza Strip. Following the discussion above, it can be seen that the international community, including state members, regional members and international aid groups, had implemented the purpose of the R2P doctrine well by trying various and continuous attempts to intervene in the matter, not only to pressure on Israel to lift its blockade, but also to support the citizens in Gaza and to rebuild the area impacted by previous armed conflicts by constantly sending aid convoys there regardless of the possible dangers involving armed protest by Israel. Unfortunately, the United States, as one who has significant influence on Israel's movement, had failed to implement its international responsibility to prevent and protect the citizens there from war crime and crimes against humanity. The lack of United States' response is said to be inconsistent with the way in which it had responded to the crises in Iraq and Kosovo where it showed its enthusiastic intervention for protecting humanitarian and preventing crimes against humanity.

However, the decision of United States in this case is strongly related to a controversial issue in the Gaza Strip in relation to the existence and power of Hamas in the Gaza Strip. It is admitted that Hamas won clean elections in 2006, as verified by the independent monitor sent by the EU. Since that time, Palestinians in the Gaza Strip have not had access to basic human rights such as the right to freedom of movement, access to food and the right the shelter one's family, etc. Following the rocket attacks into the southern part of Israel, the blockade of Israel was not totally wrong, considering the security needed to protect the Israelis in the south. In addition, these rockets are named Quassam which have been simply made and use by Hamas to attack short distant targets in the territory of Israel. These rockets have low levels of accuracy and often hit nearby citizen's houses instead of the desired Israeli government or military target. There are reports claiming that Hamas has repeatedly fired these rockets into Israeli territory since 2001. In these circumstances, there are grounds under international law which support

the legality of the Israeli blockade. In particular, according to Fendel (2010), Israel imposed the blockade on Gaza because Israel and Hamas are currently parties to an armed conflict. Importantly, Hamas has repeatedly bombed civilian targets in Israel proper with weapons that have been smuggled into Gaza by various routes, including the sea. In addition, maritime blockade is a legitimate and recognized measure of self-defence accordingly to various naval manuals including the naval manuals of the United States and United Kingdom, and may be implemented as part of an armed conflict. When a maritime blockade is in effect, no vessels can enter the blockaded area, including both civilian vessels and military vessels. Under international law, any vessel that violates or attempts to violate the maritime blockade may be captured or even attacked.

In light of Hamas-sponsored attacks on Israeli civilian targets, Israel undertook a number of measures against the Hamas regime. One of these measures was and remains the imposition of economic sanctions against the Hamas regime in Gaza. Under international law, every state has the right to decide what goes in and out of its borders. Also, every state has the right to choose whether it wants to forge economic relationship with another entity or state. The issue here is whether Palestine is a State under international law. Palestine has not been recognized as a State by many other States and does not have a state seat at the United Nations.

The conflict between Hamas and Israel is a complex case which raises many issues that need to be resolved by the international community in deciding whether to intervene under the doctrine of R2P. It is clear that the international community had tried various measures to place pressure on Israel's blockade. However, under the context of R2P, it is also true that Israel had the right to protect its citizens from a war crime during the conflict between itself and Hamas in the Gaza Strip. It was reasonable for a state to choose to close its border in order to protect its sovereignty and population. In fact, this has been an on-going violence between Hamas and Israel that needs to be taken into account by the international community, not only the blockade by Israel itself. In this context, Hamas is also liable for firing its rockets into the territory of Israel. One of the reasons is that the numbers of Israeli citizens who are killed by unsophisticated rockets from Hamas are very small compared to the population of 1.4 million Palestinians who are suffering from shortages inside Gaza as a result of the blockade. Nevertheless, under both contexts of humanitarian relief and R2P, it is still a responsibility for the international community to protect citizens from war crimes. However, Arab countries in the region such as Iran and Pakistan do not recognize the right of Israel to exist. In contrast, Western countries and the EU respect the right of Israel to exist and its sovereignty. They are more likely to view Hamas as a terrorist organization when it becomes involved in armed protests against Israeli sovereignty. Therefore, in term of intervention in a war crime, it is obviously difficult for the international community to reach agreement where there is still conflict between members of that community. While Palestine has yet to be formally recognised as a State for the purposes of UN membership, the PLO does have observer status at the UN and Palestine is an important economic and social entity which has received de facto recognition in its international relations. Different political views and traditions may cause a major problem here where they influence the position of a country on the issue of which 'people' have the right to be protected. For example, Iran has supported the Palestinian viewpoint and the Hamas authorities in the Gaza, while the United States has taken the opposition position, claiming that Hamas is a terrorist organization which poses a threat to the Israeli population.

On the other hand, in a political or armed conflict, it is possible for a party to impose economic sanctions on another. This policy has been used and accepted by many countries in the world in armed conflicts as a way to impose punishment on another in term of reducing its economic growth. For example, Cuba, Vietnam, Serbia, North Korea and Iran have all been subjected to economic sanctions. The implementation of R2P is unlikely to be effective unless

the root of the conflict is determined clearly in order to know which party is entitled to receive full humanitarian support and protection from the international community.

In this case, it is clear in this case that Israel's blockade constitutes a crime against humanity. Although the international community had made some efforts to lift the blockade, these efforts had not been effective, as it took three years to make Israel partly ease its blockade (2007-2010). One of the main reasons for this hesitancy was the lack of political willingness of state members which was caused by their different political views of the conflict. The international community had failed to intervene effectively to resolve the root causes of the blockade (i.e., the ongoing war crimes committed by both Hamas and Israel). The presence of war crimes provided a justification for implementation of the R2P especially in the case of ongoing war crimes such as those occurring in and around the Gaza Strip. Although there had been some periods of ceasefire resulting from efforts of the United Nations and other state members, the conflict had not been completely resolved. The doctrine of R2P suggests various procedures for the international community to consider when deciding whether and how to intervene, including military intervention as a last resort, the willingness of the international community, however, seemed not strong enough to maintain a peacekeeping mission in the area. In addition, the level of willingness to intervene by the international community in this case of war crimes and crimes against humanity was limited to calling on the parties involved to continue negotiations, despite the fact the population in the area are significantly and continuously impacted by the conflicts between the two governments.

### **Conclusion**

To sum up, there have been various limitations when the international community implements the R2P doctrine, including the effective timing of an intervention, political unwillingness to intervene, and a struggle to deal with war crimes particularly. The case of Israeli blockade in 2007 and the on-going conflict in this area further indicates a different angle to the limitation in implementing the R2P. Although many state members, regional unions and international organizations have put a lot of effort into resolving the conflict between the Israelis and the Palestinians for many years, the situation there has remained unsettled because the underlying problems cannot be resolved completely. The underlying problem here is the differences in political views and recognition. While many Western countries believe that Hamas is a terrorist organization, the Arab countries, especially Iran and Pakistan, in contrast recognize Hamas' rights to be a political party representing the Palestinians in the Gaza Strip. Because of these differences in political views, the actual interventions in Gaza by the international community stopped at making calls and condemnation because the international community is struggled to determine how they can react to the situation and could not reach an agreement to indicate which party has which rights.

The determination of a responsibility to protect in the case of war crimes is quite different to ethnic cleansing, crimes against humanity and genocide, and needs to be treated differently. It is more difficult to determine the innocent party in a war crime situation compared to the other crimes under the context of R2P, especially in the case between the Israelis and the Palestinians in Gaza where the conflict between the two parties has existed for many decades. In addition, the international community can condemn Israel for committing a crime against humanity which must be stopped; however, when the blockade is fully lifted, no one can assure that the Israelis are safe from the constant rocket attacks from Hamas in the Gaza Strip. As Israel does not recognize Hamas's political right to represent the Palestinians in Gaza Strip, Hamas does not recognize the Israel's right of existence either. Therefore, despite the fact that under the context of R2P, military intervention is considered to be the last resort, it is recommended that in a war crime situation especially, it is necessary to have a procedure to defuse the tensions between the parties or to operate an international peacekeeping force to

ensure the safety for citizens of both sides in a conflict. Otherwise, the situation will become a dilemma and is very hard to resolve where a state with extensive economic and military supports such as Israel would have more advantages in protecting its citizens from outside attacks by imposing border blockades. And by doing that, Israel is said to commit a crime against the Palestinians in Gaza. However, if Israel does not impose a blockade against Hamas, its citizens would be obviously affected by constant rocket attacks from Gaza.

It is also clear that the implementation of the R2P has some limitations in its 'prevention' part. It is recommended that guidelines are needed which the international community can follow through to determine when a state is not able to or willing to prevent the conflict to happen. This will help the international community to react more effectively and efficiently in its prevention and/or intervention. It is possible that war crime would lead to crimes against humanity. Therefore, if the root of the issues in crimes against humanity (the initial war crimes) has not been resolved completely, the intervention on crimes against humanity would not be effective.

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