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Promoting Responsibility to Protect through Non-State Armed Groups: Overcoming the Legal and Regulatory Constraints

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ABSTRACT: Promoting responsibility to protect through non-state armed groups will immensely reduce humanitarian crises around the globe. This paper aimed to analyze in detail the notion of responsibility to protect through non-state armed groups and its constitutive elements and set out a legal test that will expand the pre-existing notion of humanitarian intervention. In doing so, the paper advanced several conceptual arguments that focused on the responsibility to protect. The paper analyzed its views in light of contemporary developments on the responsibility to protect. The paper adopted a diagnostic approach based on a review of the literature and an evidence-based analysis of the humanitarian engagement of non-state armed groups. This paper showed the importance of reiterating that if the future of humanitarian intervention must be guaranteed, the need to take cognizance of the significant role of non-state armed groups in conflict mediation or intervention should not be overlooked. It is advanced that the continued neglect of non-state armed groups in conflict mediation or intervention portends a clog in responsibility to protect during armed conflicts.

KEYWORDS: Responsibility to Protect, Non-State Actors, Armed Groups.

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I. INTRODUCTION

The emergence of all forms of armed conflicts, internal disturbances, and terrorism encourages the importance of promoting the responsibility to protect through non-state armed groups. These forms have forced millions of people to become internally displaced or refugees around the globe seeking shelter and protection in other countries.[1] However, the government's inability to adequately respond to these unabated disasters has led to the formulation of 'responsibility to protect' the basic human rights of their citizens and the level of engagement of the non-state actors in stepping in when States are incapacitated.

The above concerns are the primary theme of the discussion. It considers that one has to determine whether the level of intervention is adequate to abate or mitigate the humanitarian disasters involving mass atrocities, hunger, and or crimes committed against human persons[2] before one can suggest any reasonable question on the responsibility to protect. For instance, on February 27, 2007, the International Criminal Justice issued an essential Judgment in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide[3]. The Court stated that the obligation "to prevent" can within the scope of the convention imposed an obligation that was not territorially limited. Therefore, international humanitarian law provides that if a party to an armed conflict with control of non-combatants[4] is unable or unwilling to meet their needs, offers may be made to carry out relief actions that are

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1 See *United Nations High Commissioner for Refugees Mid-Year Trends Report 2015*, by UNHCR (UNHCR, 2015).

2 Boissonde Chazourmes, Laurence Boisson, & Luigi Condorelli, "Common Article 1 of the Geneva Conventions Re-visited: Protecting Collective Interests" (2000) 82:837 International Review of Red Cross 67–87.

3 *Application for Revision of the Judgment of July 11, 1996, in the case Concerning "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia); Preliminary Objections" (Yugoslavia v Bosnia and Herzegovina)*, 2003 ICJ.

4 *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, 1907; *Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1977.

humanitarian and impartial. This conception is to emphatically underscore the need for global community or state actors' conscious and positive measures upon which the non-combatants will be adequately protected.

The responsibility to protect does not apply to other violations and abuses of human rights. Instead, it is restricted to four components of mass atrocity crimes such as genocide, ethnic cleansing, war crimes, and crimes committed against human persons. In this sense, the UN Security Council Resolution urged the Council to uphold its commitment to the responsibility to protect and protect civilians. It utilizes bilateral meetings with States at their permanent missions to the UN in New York. In the same vein, the UN General Assembly held a plenary meeting on the responsibility to protect. It included to prevent genocide, war crimes, ethnic cleansing, and a crime against humanity as part of the agenda of its 75th session that presented a significant opportunity for the UN membership to take stock of efforts to prevent or halt mass atrocities crimes.

Nevertheless, the responsibility to protect remained the most effective principle around which the international community can coalesce when vulnerable populations are faced with threats of the atrocity of crimes. As a complementary effort, the Human Rights Council, on July 24, 2020, adopted resolution 44/14 at its meeting on the responsibility to protect[5] populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, as enshrined in the 2005 world summit outcome. In its resolution, the Council discussed best practices for strengthening national policies and strategies to implement the responsibility to protect through national mechanisms and other stakeholders.[6] Also, it is important to stress that advancing the responsibility to protect through non-state armed groups can increase respect for international humanitarian law since most contemporary armed conflicts are non-international. In this sense, engaging non-state armed groups in conflict intervention and management will be laudable if they are meant to be accountable for abuses and

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[5] United Nations Human Rights Council: Intersessional Panel Discussion on the 15th Anniversary of the Responsibility to Protect, (2011), online: <https://www.ohchr.org/hr/bodies/hrc> accessed April 28, 2022.

[6] See *60/1. 2005 World Summit Outcome*, A/60/L1 2005 para 138-140.

disrespect to international humanitarian law. Given the current issues surrounding the consequences of adopting a unilateral decision on the use of non-state armed groups in the responsibility to protect, it will be neater and more effective to have a mutual agreement between the international community and non-state armed groups. Otherwise, a unilateral decision is likely to influence non-state armed groups' attitudes, especially where there are certain obligations in the implementation, enforcement, supervision, and or monitoring of the rules of international humanitarian law during armed Conflicts.[7]

The engagement of non-state armed groups will undoubtedly reduce the humanitarian impacts and minimize the level of destruction experienced during armed violence by combatants.[8] Thus, this argument was reinforced and sustained by adopting several techniques, including counter-insurgency, containment, negotiation, integration, and adoption.[9]This paper aims not to investigate the failures of the state or international community to protect its citizens during armed violence. Instead, it is to verify whether extending the responsibility to protect through non-state armed groups will increase the opportunities for conflict resolutions and or meditation, as the case may be. However, if organized armed groups decide to carry out government functions and exercise effective sovereignty, they are bound by the rules of international humanitarian law.[10] Also, if armed groups have reached a certain level of organization, stability, and effective control of territory, they can then be considered to possess international legal personality. It renders them bound by customary international law. In

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[7] S Sivakumaran, *The Law of Non- International Armed Conflict* (Oxford: Oxford University Press, 2012).

[8] C Hofmann & U Scneckener, "How To Engage Armed Groups Reviewing Options and Strategies for Third Parties" (2011) 29:4 Security Apparatuses in Fragile and Authoritarian States 254–59.

[9] *Mediating Peace with Proscribed Armed Groups*, by Veronique Dudouet, Special Report 239 (Washington DC: United States Institute of Peace, 2010); C Hofmann, "Emerging Non-State Armed Groups in Humanitarian Action" (2006) 13:3 International Peacekeeping Journal 396–409 at 397,409.

[10] JK Kleffner, "The Applicability of International Humanitarian Law To Organized Armed Groups" (2011) 93:882 International Review of Red Cross 443–461.

light of the international legal personality possessed by the non-state armed groups, the Darfur Commission of Inquiry posits that:

> All insurgents that reached a certain threshold of organization, stability, and effective control of territory, possessed international legal personality and were bound by the relevant rules of customary international law on internal armed conflicts.[11]

The above view does not entirely detach the construction of the binding force of international humanitarian law on organized armed groups from States. The growing significance of responsibility to protect through non-state armed groups has led to several multilateral efforts capable of controlling or impacting access to some regions where people are in dire need of humanitarian assistance or protection due to armed violence. However, non-state armed groups have certain obligations prescribed under international humanitarian law regarding how they conduct hostilities and the treatment of non-combatants in the occupied territories.

This paper has carefully perused all the existing legal frameworks and discovered many inadequacies and examined various measures to address humanitarian crises worldwide. This paper emphasizes seeking to be laid conscious and focused on regulation and monitoring by State actors in the responsibility to protect. Aside from The Hague Conventions adopted in 1899 and 1907, which focused on the prohibition of warring parties from using certain means and methods of warfare, several other related treaties have been adopted since then. However, the Geneva Conventions of 1864 and subsequent Geneva Conventions, notably the four 1949 Geneva Conventions and the two 1977 Additional Protocols, focused on protecting persons not or no longer taking part in hostilities.

II. METHODS

The paper adopted a diagnostic approach based on a review of the literature and an evidence-based analysis of the humanitarian engagement of non-state armed groups. The data was obtained through primary and secondary

[11] See *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-Genera*l, by United Nations (Geneva, 2005) Para 172.

resources. The primary resources consisted of relevant laws relating to the responsibility to protect. They were such as the Hague Conventions adopted in 1899 and 1907, which focused on the prohibition of warring parties from using certain means and methods of warfare. It also included the Geneva Conventions of 1864 and subsequent Geneva Conventions, notably the four 1949 Geneva Conventions and the two 1977 Additional Protocols, which focused on protecting persons not or no longer taking part in hostilities. Meanwhile, the secondary resources were taken from books, law journals, and other academic documents discussing the responsibility to protect.

III. THEORETICAL CONCEPT OF THE RESPONSIBILITY TO PROTECT

The thematic focus of 'responsibility to protect' is broad and all-encompassing. The starting point of this analysis is that the responsibility to protect expands the pre-existing notion of humanitarian intervention as a species of international armed conflict which must be determined solely based on the prevailing circumstances. Besides being widely held, this view is reflected notably in international instruments and jurisprudence and some military manuals.[12] Therefore, the seeming failure of the international community to adequately respond to mass atrocities crimes as genocide, crimes against humanity, war crimes, and ethnic cleansing. Its summit led to the UN adopting the responsibility to protect as a principle for proactive measures over different global humanitarian catastrophes.[13] Interestingly, the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)[14] was the first human rights treaty adopted by the UN General Assembly, which signified the international community's commitment to never again after the atrocities committed during the second world war. In a similar vein, Article 61 of the International Covenant on Civil and Political Rights 1966[15] Its emphasis is

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[12] *The Laws of War on Land. Oxford, September 9, 1880, Article 41.*

[13] See United Nations World Summit 2005.

[14] *Convention on the Prevention and Punishment of the Crime of Genocide*, 1951.

[15] *International Covenant on Civil and Political Rights*, 1976 Article 61.

on the inherent right to life and posits that the law shall protect such right and no one should be deprived of his right to life. In countries that have not abolished the death penalty, the sentence may be imposed only for the most serious crimes under the law in force at the commission of the crime.

It is also not contrary to the position of the present covenant and the convention on preventing and punishing genocide. When deprivation of life constitutes the crime of genocide, nothing in this article shall authorize any state party to the present covenant to derogate from any obligation assumed under the convention on the prevention and punishment of the crime of genocide. Again, the 1948 UN Genocide Convention created an international legal culture recognizing the commission of genocide as a crime beyond any justification. Also, the heinous atrocities during the conflict in Rwanda and the former Yugoslavia, the 1998 Rome Statute[16] provided a tool that could finally make a shared international commitment against genocide possible in practice.

In this respect, the 1998 Rome Statute and the International Criminal Court offered a permanent framework for States to investigate and prosecute genocide committed since 2002. Be that as it may, the principle of responsibility to protect has been fashioned out as an international approach adopted by all state parties of the UN at its global summit to address four major international community concerns. However, a cursory look at its meaning in recent times has provided a better insight into the exact meaning of the responsibility to protect. This paper's emphasis sought to be laid conscious and focused on regulation. It will enable us to establish the components of a legal test for determining the extent of the responsibility to protect international humanitarian law. This understanding of the principle of responsibility to protect is ascertained based upon the existing premise that sovereignty entails a responsibility to protect all persons from mass atrocity crimes or human rights infringements during armed violence.[17]

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[16] See *Rome Statute of International Criminal Court 1998*.

[17] United Nations Office of the Special Adviser on the Prevention of Genocide.

The responsibility to protect implies respect for the norms and principles of international law and international humanitarian law, especially looking at the existing principles of law concerning sovereignty, security, peace, human rights, and or armed violence.[18] However, the scope and definition of the principle of responsibility to protect can be viewed from three major perspectives. First, the state's responsibility to protect. Second, global assistance from the international community, capacity building, and timely and decisive collective response.[19] However, applying the principle of responsibility to protect can only be necessary when there are mass atrocity crimes such as genocide, crimes committed against human persons, atrocities of armed violence, and clannish purification. The responsibility to protect is a question of degree. The notion and definition of responsibility to protect as adopted at the 2005 World Summit could be expanded in light of changes in new technologies of warfare and the use of force.[20] It has been notably contended that the development of modern technologies has tremendously increased the level of resorts to armed violence and compels the need for States to be proactive in protecting their citizens. The adoption of the principle of responsibility to protect in 2005 demonstrated the state's resolve and commitment to the responsibility to protect. The term "responsibility to protect" has a broad and narrow meaning. The broad meaning extends the term to encompass State Parties' involvement or policies that bother on the responsibility to protect. Meanwhile, the narrow meaning limits the term to direct State Parties' control or decisions concerning the responsibility to protect.

However, it is very open to question whether the principle of responsibility to protect has lived up to expectation, given today's current situations and high uprisings. It will be hyperbolic to say that the responsibility to protect has failed because of the above situation, as some people are compelled to say. On the conceptual level, member states had requested further

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[18] Aidan Hehir, "The Responsibility to Protect and International Law" in Philip Cunliffe, ed, *Critical Perspectives on the Responsibility To Protect Interrogating Theory & Practice* (New York: Taylor & Francis, 2011) at 84-100.

[19] See the *Responsibility of States for internationally wrongful acts*, 2016.

[20] Marten Zwanenburg, "'The Law of Occupation Re-visited: The Beginning of an occupation" in *Yearbook of International Humanitarian Law* (2007) at128-129.

clarification on the basis for taking collective action under the third pillar of responsibility to protect. In particular, it allows the use of military force by the Security Council when States woefully fail to provide adequate protection for their citizens during military operations. There are some challenging issues associated with the responsibility to protect that have compelled debates in policy-making and the academic spheres. The issues deal with the precise status ranging from the question of its powerful novel mechanism, the existing moral primacy of peace extending permissible military action, to its legal force.

Finally, it enquires as it should be described as a principle and or has attained the status of a globally accepted Norm through constant usage and practice.[21] In other words, there is a school of thought that supports a broad application of this principle in the sense that the responsibility to protect does challenge States to meet their existing obligations.[22] However, some arguments favoring responsibility to protect are predicated on the assumption that it rests on an unarticulated international obligation principle.[23] In maintaining public order and safety, the issue often arises on how the two governing frameworks of humanitarian and human rights law interplay. While it might be tempting to view responsibility to protect as a legal measure to prevent mass atrocity crimes, it stands to reason that its application has received mixed feelings from state parties. It is demonstrated in Libya and other counter-insurgencies of the 21st century. The operational concerns when the question of military intervention comes into play to the third aspect of responsibility to protect involves the use of appropriate peaceful or coercive means in the protection of non-combatants where State Parties failed to protect its citizens adequately. Accordingly, one could argue that the aftermath of the intervention in the Libyan war

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[21] RH Cooper & JV Kohler, *Responsibility To Protect, The Global Moral Combat for the 21st Century* (Basingstoke Palgrave MacMillan, 2010); C Stahn, "Responsibility To Protect: Political Rhetoric or Emerging Legal Norm?" (2007) 101 American Journal of International Law 99–120.

[22] Andrew Clapham & Paola Gaeta, eds, "The Law Applicable to Peace Operations" in *The Oxford Handbook of International Law in Armed Conflict* (Oxford: Oxford University Press, 2014) at 216.

[23] Bain William, "Responsibility and Obligation in the 'Responsibility to Protect" (2010) 36:51 Review of International Studies 25–46.

reinforced much of the uncertainties around the responsibility to protect parameters. It contributed to the division within the UN Security Council on the continuing crisis in Syria. It is on the strength of the above that Asha-Rose Migiro[24] maintained that:

> The global acceptance of the responsibility to protect is not just because of its simplicity but due to its fundamental relevance in protecting non-combatants who may be at risk of genocide or mass atrocity crimes arising from armed violence.

Notwithstanding the above observations, positive duties of protecting and fulfilling a right are likely to raise further concerns that must be examined, especially in situations such as the state's responsibility to protect civil and political rights. The positive obligation to protect can manifest itself in several ways. Peter Hilpold,[25] while commenting on the principle of responsibility to protect opined that the likelihood of responsibility to protect graduating into a norm of Customary International Law[26] is far-reaching. He stated further that the responsibility to protect and its speedy acceptance in the era of mass atrocities due to new technologies of warfare suggest that International Law is in urgent need of humanization.[27] The basis of responsibility to protect from the various views examined is that the legal basis of military interventions is primarily centered on the State obligations under the Charter and or under International Law.[28]While the above expression emphasizes the state's role in the Use of Force in responsibility to protect, it is not in all cases that states may adopt the use of force in responsibility to protect.

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[24] Asha-Rose Migiro was the Deputy Secretary-General of the United Nations from 2007 to 2012.

[25] H Peter, "Intervening in the Name of Humanity: Responsibility to Protect and the Power of Ideas" (2012) 17:1 Journal of Conflict and Security Law 49–79.

[26] International Court of Justice Statute, Article 38(1).

[27] *Ibid.*

[28] See Chapter VII of the United Nations Charter 1945, UN (2011) Resolution on Libya (S/RES/1973), online <http://www.un.org/en/sc/documents/resolutions/2011.shtml> accessed December 26, 2021.

IV. HUMANITARIAN INTERVENTION

The development and extensive use of "Humanitarian Intervention" as legal authority to protect non-combatants are traceable to the era when states resort to the right to use forceful measures as self-defense, including the defense of their mandate. These, however, have remained a controversial implied right in all UN Peacekeeping Operations where various opinions expressed tilted towards a justification for the use of force.[29] The international humanitarian law treaty does not define humanitarian intervention or provide a clear interpretation. However, rather humanitarian intervention emerged from State practices over time or international jurisprudence. However, the notion of humanitarian intervention suffers from a lack of precision as to what the term connotes.[30] Thus, humanitarian intervention is a means to prevent or stop gross violations of human rights in a state where such a state is either incapable or unwilling to protect its people or is actively prosecuting them. Many scholars have identified the 1990s as a decade of humanitarian intervention during which the UN authorized several interventions on humanitarian grounds.[31]

During the 1990s, even as the Security Council was increasingly willing to authorize humanitarian intervention, the United States and its allies took military action on at least three occasions for express humanitarian purposes when the security council did not authorize the specific action.[32] Although humanitarian intervention does exist in State practice, State practice has been deemed a source of law under Article 38(1)(a) of the International Court of Justice, considering the hegemony of the sources of

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[29] See United Nations Department of Peacekeeping Operations, General Guidelines for Peace Keeping Operations, UN Doc. UN/210/TC/GG95 (1995), online: <http://www.un.org/depts/dpko/training/tes/publications/books/peacekeeping-training/guide_en.pdf> accessed December 26, 2021.

[30] I Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963) at 26.

[31] M Kaldor, *Human Security: Reflections on Globalization and Intervention* (Cambridge: Polity Press, 2007) at 16.

[32] See The Establishment of No-fly Zones in Northern and Southern Iraq in 1991 and 1992, the bombing of the Bosnian Serbs by NATO in 1995, and NATO's Kosovo campaign against Yugoslavia in 1999.

law in the same provisions. There is a generally accepted notion that State practice cannot overrule treaties and customary law, both of which denounce the use of force except in self-defense[33]. There is no legal rule governing the exception of humanitarian intervention to the use of force, as there is for collective security measures and self-defense. The criteria for applying humanitarian intervention stems from the fact that it is no State's prerogative to allow the wanton disregard and violations of human rights. Therefore, if such wanton disregard and violations occur, another State or other States may intervene to end it.[34]

The norms of sovereignty have still not changed to allow for unauthorized humanitarian intervention, but the only intervention for humanitarian purposes that seem to be widely accepted are those authorized by the security council under the provisions of Chapter VII of the UN Charter.[35] The relatively more binding framework of Chapter VII of the UN Charter is preferred to violate one state's sovereignty for humanitarian purposes. Realistically, article 2(4) of the UN Charter[36] provides for sovereignty and political independence of any state, but this principle shall not prejudice the application of enforcement measures under Chapter VII. In sum, the invasion of Iraq failed to meet the test for humanitarian intervention. The security council did not approve invasion, and the Iraqi government violently opposed its existence on the line.[37] As the protection of non-combatants has become increasingly prominent in international relations discourse and humanitarian practices, the term intervention came into use over the nineteenth century, but its meaning remained imprecise. However, where States regulate the use of force as self-defense in humanitarian

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[33] WD Werwey, "Humanitarian Intervention Under International Law" (1985) 32:3 Netherlands International Law Review 357–418.

[34] *Humanitarian Intervention, NATO and International Law: Can the Institution of Humanitarian Intervention Justify Unauthorized Action?*, Research Report, by Clara Portela, Research Report 00.4 (Berlin: Berlin Information-center for Transatlantic Security (BITS), 2000).

[35] The Charter of the United Nations 1945, Chapter VII.

[36] The Charter of the United Nations, 1945, Article 2(4).

[37] Human Rights Watch, "War in Iraq: Not a Humanitarian Intervention," *Human Rights Watch (HRW)* (2004), online: <https://www.hrw.org/news/2004/01/25/war-iraq-not-humanitarian-intervention>.

intervention, the mode or manner of its enforcement or application will not offend the rules of international humanitarian law. In this sense, it will be wrong for the States to enact any other law for humanitarian intervention that will be inconsistent with the provisions set out in the principal law.

The humanitarian intervention approach to protecting non-combatants has been saddled with several criticisms. According to Marc Dubois,[38] the global community twisted the concept of protection in such a manner to suites its selfish desires, even the most unwanted aid activities as protection. In the absence of a clear distinction between intervention and war,[39] any regulation of the former could be circumvented by resorting to the latter. However, it is more often conceived as the classical origins of what became known as a humanitarian intervention which lies in the emergence of a substantive doctrine of the just war in the middle ages.[40] Indeed, the right to wage war is for punishment.[41] In other words, some legal literature follows the same expansive view and supports the position that humanitarian intervention in the early twentieth century was inherently vague and found a variety of forms.[42] The above position was further justified by Grotius, who admitted that the right to wage war is for punishment,[43] and such a right had been recognized by his scholastic predecessors as necessary to preserve order in a society lacking any higher Tribunals to resolve disputes,[44] but was generally limited to redressing injuries to the person or the state of the sovereign or where some other basis for jurisdiction justified the resort to war.[45] This paper posits that in

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[38] Marc Dubois, "Protection: the new humanitarian fig-leaf," *Groupe URD* (2009), online: <https://www.urd.org/en/review-hem/protection-the-new-humanitarian-fig-leaf/>.

[39] Fransisco de Vitoria, *Classic of International Law* (Washington DC: Carnegie Institution, 1917).

[40] Joachim von Elbe, "The evolution of the concept of the just war in international law" (1939) 33:4 American journal of international law 655–688 at 665.

[41] Hugo Grotius, *Dejure Belliac Pacis Libritires*, Classics of International Law 3 (Keslytans: Oxford Clarendon Press, 1925) at 338.

[42] *Ibid.*

[43] *Ibid.*

[44] John Eppstein, *The Catholic Tradition of the Law of Nations* (London: Burns Dates & Wash Bourne, 1935) at 80.

[45] Hugo Grotius, *supra* note 41.

understanding humanitarian intervention, it is instructive to view it from any of the following definitive components.

A. Humanitarian Intervention as a Legal Right

It is noteworthy that humanitarian intervention exists as legal. This paper draws a distinction between the two schools of thought that justify it as a quasi-judicial police measure against the crimes of a sovereign and those who justify it as a defense of the rights of the defenseless. First, opinions differ on whether the idea of such a conception is legally tenable or not. In this sense, the paper notes that the first category is a publicist who defined the theory of humanitarian intervention as an attempt to give a juridical basis to the right of one state to exercise international control over the internal acts of another state are contrary.[46] The above expression conforms with Grotius's conception of punitive war. It was adopted by the representatives of "civilized" governments intervening in the affairs of other states. In addition, it would not be farfetched to imagine that a legal right has evolved, permitting the Security Council to decide on military enforcement measures to protect non-combatants within a State. This legal right has been formed by evolutionary interpretation and the informal modification of the UN Charter. It is through the subsequent practice of the Council through its extensive interpretations and application of what constitutes a threat to the peace under Chapter VII of the UN Charter.[47]

Second, the other school of thought recognizes the legality of humanitarian intervention is dependent on the basis that a state is entitled to assert the right of its subjects vis-à-vis their sovereignty. For this reason, it has become imperative to admit that this is the modern equivalent of Grotius's right to wage war on behalf of the oppressed.[48] In the same vein, theorists in their writings restricted the right of humanitarian intervention on the

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[46] A Rougier, *"La Theoriede 'L' Intervention d'humanite"*, 3 (RGDIP, 1910).
[47] The United Nations Charter 1945, Article 39.
[48] *Ibid.*

grounds of situations where civil war had broken out[49] or acts of rebellion that broke the political bonds between sovereign and citizens.[50]

B. Humanitarian Intervention as Political and Unavoidable

With regard to the humanitarian intervention being conceived as political and unavoidable, there are major challenges in evaluating the legal status of humanitarian intervention. There are several questions outside the realm of international law regarding its legality. However, this view finds support in law literature. Therefore, despite the long-standing position of the UN on this issue, Sir William Harcourt's position is that intervention is a question instead of policy than law. It is above and beyond the domain of law, and when wisely and equitably handled by those who have the power to give effect, it may be the highest policy of justice and humanity.[51] It is clear from the above that despite the practical necessity of the principle of humanitarian intervention, the paper notes that various writers have echoed that international law had little to say about such high politics.[52] Conversely, other writers adopted a more subtle position, noting that there is scope for the moral evaluation of State behaviors independent of the legal regime. In a similar vein, the paper notes that Herman Rodecker Von Rotteck, whom Stowell credited as the first to establish the theory of intervention on the ground of humanity,[53] nevertheless, it should be considered a violation of the law, but sometimes excused or even applauded as one may excuse a crime.[54]

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[49] Henry Wager Halleck, *International Law, Or, Rules Regulating the Intercourse of States in Peace and War* (Kegan Paul, Trench, Trübner, 1961) at 340.

[50] William Oke Manning, *Commentaries on The Law of Nations*, Sheldon Amos, ed (London, 1875) at 97.

[51] Harcourt WV, *Letters By Historicus on Some Questions of International Law* (London: MacMillan, 1863) at 14.

[52] JN Pomeroy, *Lecture on International Law in Time of Peace* (Cambridge, Massachusetts: Riverside Press, 1886) at 244-245.

[53] *Ibid* at 525.

[54] WE Hall, *Treaties on International Law* (Oxford: Clarendon Press, 1884) at 265.

C. Collective Intervention

The development and extensive use of humanitarian intervention under international law is evidence that the import of this requirement is to protect the interest of human persons. In this sense, it cannot be denied that public opinion and the powers' attitude favor such interventions. Both international law and civil society organizations will recognize that interventions in the interests of humanity are admissible, provided they are exercised in the form of a collective intervention of the powers.[55] One question that might be enquired is whether the Security Council may authorize Article 42 measures to end serious or extreme human rights violations or humanitarian crimes. Indeed, various opinions emerged as to the legitimacy of unilateral action. However, the legal situation changes when the UN's humanitarian intervention or an appropriate Regional Body is authorized.[56]This support for multilateral action may be prompted by the feeling that if some formal international process authorizes coercive action, such as voting by the Security Council, then it acquires legality, which it would lack if the decision to intervene were left to the National Governments acting unilaterally.

The above position would have been better and more justifiable if the collective humanitarian intervention had been applied in order to curb the danger of abuse posed by unilateral intervention.[57] With the current advances in the understanding of the collective humanitarian intervention, under Article 39 of the UN Charter,[58] the Security Council can only authorize Cases of threat to the peace, breach of the peace, and acts of aggression.[59]A key point to note is that Article 39 introduces the coercive powers of the Council and provides for a two-step process that:

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[55] L Francis & & L Oppenheim, *International Law* (New York: Longmans Green and Co, 1905) at 1.

[56] Jost Delbruck, "A Fresh look at Humanitarian Intervention Under The Authority of The United Nations" (1993) 67 Indiana Law Journal at 887.

[57] Nancy D Arnison, "International Law and Non-Intervention: When Do Humanitarian Concerns Supersede Sovereignty?" (1993) 17 Fletcher Forum World Act at 199.

[58] The United Nations Charter 1945, Article 39.

[59] The United Nations Charter 1945, Chapter VII.

> The Security Council has the sole power to determine what amounts to a threat to peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures are in line with Article 42 in maintaining or restoring international peace, security, and order.[60]

The above overview highlights that the Security Council, like the other UN organs, is bound by the principles, rules, and standards outlined in the UN Charter. Its actions, therefore, are subject to legal scrutiny, both in content and in practice.[61]On a practical level, particularly regarding the Russian government's threat and use of force and aggression against Ukraine, the security council is primarily responsible for maintaining international peace and security under the UN Charter. The security council must determine when and where a United Nations peace operation should be deployed. Fundamentally, however, it is submitted that the ongoing Russian invasion of Ukraine has exposed many grave weaknesses in the international order. One prominent flaw that needs to be addressed is the UN Security Council and its role in overseeing the multilateral system. For instance, the war in Ukraine has once again shown the veto power of the security council's five permanent members to be a significant stumbling block to peace. As broadly examined, both Chapter VI and VII of the UN Charter entrusted the responsibility of preventing threats to peace, suppressing acts of aggression, and bringing about Peaceful settlement of international disputes to the security council. However, the absolute veto power granted by Article 27 to each of the Council's permanent members (the P5, comprising China, France, Russia, United Kingdom, and the United States) has from the beginning been a critical obstacle to the body's fulfillment of its mission. The P5 has always been divided into rival geographical blocs, with a member of one block, primarily Russia or the United States, exercising its veto on many crucial decisions. Drawing from the above illustration, the current Ukraine conflict, Russia's security council

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[60] *Ibid* Article 39.

[61] D D Caron, "The Legitimacy of the Collective Authority of the Security Council" (1993) 87:552 American Journal of International Law, online: <https://lawcat.berkeley.edu/record/1114681/files/fulltext.pdf>.

veto means that the United States and its allies can impose sanctions only through a coalition of the willing.

V. NON-STATE ARMED GROUPS

There is no internationally agreed definition of non-state armed groups in international treaties. Given the increasing importance of non-state armed groups, this term refers to a non-state party to an international and non-international armed conflict. However, international humanitarian law uses armed forces to designate and define the combatants fighting within a state party to the conflict. In addition, an important point to note herein is that non-state armed groups play a significant role in contemporary international and non-international armed conflicts. For the time being, when a non-state armed group acts under control or on behalf of a foreign State, International Courts consider that such a state will be held responsible for those acts and that the conflict will be internationalized. Thus, under non-international armed conflicts, Additional Protocol II to the 1949 Geneva Convention[62] defines non-state armed groups as dissident armed forces or other "organized armed groups" who fight regular armed forces or against each other on the territory of one or several States. The specific question is whether they can be considered parties to the conflict? However, to be considered parties to the conflict, they have to fulfill certain conditions such as being under a responsible command and exercising control over a part of their territory and/or carrying out sustained and concerted military operations implementing the existing protocol.

The object and purpose of the above criteria are also to recall that a non-state armed group that carries out military operations must fulfill under the organization, which includes rules of conduct and respect for the rules of international humanitarian law in its actions in combat. Further, the UN Security Council has established two sanctions regimes that can directly impact humanitarian action, referred to as the ISILA-Qaida sanctions and

[62] Article 1(1) of Additional Protocol 1 of the 1949 Geneva Convention.

the Taliban sanctions.[63] These sanctions regimes are framed in counterterrorism relevant to humanitarian action in the 1999 International Convention for the Suppression of the Financing of Terrorism.[64] Under this treaty, it is an offense to provide or collect funds by any means, directly or indirectly, to carry out an act of terrorism.

Considering the importance that states attach to protecting critical infrastructures during armed conflicts, Additional Protocol II compels all the parties to the conflict, whether state or non-state actors, to comply with the relevant rules of international humanitarian law.[65] Similarly, non-state armed groups under international armed conflicts are regarded as National Liberation Movements fighting against colonial oppression and foreign domination of their Land. It is made clear by Additional Protocol 1 of the 1977 to 1949 Geneva Conventions, which assimilates those situations into international armed conflicts and allows the members of such groups to be granted combatant status if they carry arms openly and respect the relevant Laws of war.[66]

Despite these arguments, it is clear that International Criminal Tribunals have contended that while a certain level of organization is required,[67] non-state armed groups do not need a hierarchical system or military organization similar to those of regular armed forces to be considered as such.[68]It is common to state that for a group to qualify as an organized armed group, which can be a party to a conflict within the meaning of international humanitarian law. Such an armed group needs to have a level of organization that allows it to carry out sustained acts of warfare capable of complying with the rules of international humanitarian law. However, given these realities, organized armed groups must have some form of

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63 Security Council Resolution 1267, 1999, and Security Council Resolution 1390, 2002.

64 International Convention for the Suppression of the Financing of Terrorism 1999 Article 2.

65 Additional Protocol II of 1977.

66 Additional Protocol I of 1977.

67 *Prosecutor v Limaj et al. (Trial Judgment)*, 2005 International Criminal Tribunal for the former Yugoslavia (ICTY) para 89.

68 See *The Prosecutor v Alfred Musema (Judgement and Sentence)*, 2000 International Criminal Tribunal for Rwanda (ICTR) para 257.

responsible command and the capacity to enforce the rules of International Humanitarian Law. In this context, this would seem to preclude virtually organized groups from qualifying as organized armed groups. It would be difficult to establish an effective system of discipline within such a group to ensure respect for the rules of international humanitarian law.[69]However, regardless of what name such an armed group chooses, what is apparent is that Additional Protocols 1 and 11 to the Geneva Conventions, as we have seen above, aim to ensure maximum compliance with the rules of international humanitarian law by armed groups. Indeed, what the laws contemplate in terms of enforcement of the rules of international humanitarian law is similar, although different names describe them.

Non-state armed groups are vulnerable because of their criminalization by domestic laws. A cursory look at its operations reveals that they need to obtain international permission for its operations. In this regard, they are often not opposed to humanitarian law rules as long as they do not constitute obstacles or threats to the effective performance of combatants' operations. Also, it is worth mentioning that international humanitarian law does not provide a particular status to members of non-state armed groups in situations of non-international armed conflicts. However, there is no doubt, for instance, that members of national liberation movements in international armed conflicts have a different case. Members of non-state armed groups operating in non-international armed conflicts cannot enjoy the Prisoners of War status if they are captured on the battlefield.[70] By emphasizing the limitations and or obligations imposed on members of non-state armed groups, international jurisprudence has also recognized that customary international humanitarian law prescribes that all individuals involved in armed conflict must comply with humanitarian law rules. Whether acting on behalf of state or non-state actors, these individuals have agreed to be bound by these rules.[71] The preceding observation is further reinforced by the fact that Additional Protocol 1 and

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[69] Michael Schmitt, "Classification of Cyberconflict" (2012) 17':2 Journal of Conflict and Security Law 245–260 at 256.

[70] The Geneva Convention 1949, Article 4.

[71] See *Prosecutor v Sam Hinga Norman - Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)*, 2004.

11 of 1977 has expressly provided proper guidance in the operations of non-state armed groups.

VI. INTER-PLAY BETWEEN RESPONSIBILITY TO PROTECT AND HUMANITARIAN INTERVENTION

The underlying principles of "responsibility to protect" and "humanitarian intervention" as two legal norms seek to balance two divergent interests based on criteria bordering on necessity and proportionality. In this sense, the former is based on the consideration of military intervention, while the latter focuses on the requirements of humanity when the rights or prohibitions are not absolute.[72] These are also significant, highlighting the mutual reinforcing interplay between "responsibility to protect" and "humanitarian intervention."

Nevertheless, beyond their specific contexts, humanitarian intervention is analogous to the Common Law defense of other principles and the responsibility to protect the concept under international law.[73] The existence of the two terms suggests that both state parties and the global community have the power to respond to mass atrocity crimes such as genocide, crimes against humanity, war crimes, and ethnic cleansing when it becomes compelling. As pointed out by the Security Council, the two concepts in the previous circumstances arise from the compelling reason to save the global community from extinction. Indeed, Article 39 permits the Security Council to identify what amounts to a "threat to peace."[74] Also, Article 40 enables the Security Council to take preliminary steps to re-establish peaceful conditions.[75] More specifically, Article 42 authorized or required state parties to launch military countermeasures aimed at re-establishing conditions of peace and security in the occupied territories.[76]

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[72] Additional Protocol 1 of 1977, Article 51(4) and 5.

[73] J Moore, *Humanitarian Law in Action Within Africa* (Oxford University Press, 1961). 48.

[74] The United Nations Charter 1945 Article 39.

[75] *Ibid* Article 40.

[76] See United Nations Security Council Resolution 678, S/RES/0678 (1990), Article 42 of The United Nations Charter 1945.

What can be deduced from the above provisions within the context of the responsibility to protect and humanitarian intervention is the authorization of the use of force to protect Libyan non-combatants. It is against mass atrocity crimes such as genocide, crimes against humanity, war crimes, and ethnic cleansing.

As pointed out earlier in this paper, it was evidently in line with the responsibility to protect and humanitarian intervention. Further, the legal basis of this intervention is primarily anchored on the authorization by the UN Security Council. Most fundamentally, the provisions of Article 51, which requires an "armed attack" before the use of force in self-defense, have raised questions about what States must do if the Security Council fails to take action under Chapter VII.[77] Interestingly, the emergence of Customary Law and Secondary Sources of International Law has placed restrictions on the unwarranted use of force in the guise of self-defense in light of the open language of the UN Charter. Such operations have raised numerous legal questions on the so-called humanitarian intervention or the use of force by one state to stop widespread human rights abuses within the territorial boundaries of other States and the responsibility to protect in such situations. It must be borne in mind when considering the practical feasibility of both concepts. First, humanitarian intervention is perceived as a tricky rationale for using military force. On one part are, bound to be mixed motives, including territorial acquisitiveness, and on the other part, even if the defense of others is the primary motivating cause, humanitarian intervention still runs counter to the norms of non-intervention in the internal affairs of a state also enshrined in the UN Charter.[78]

Despite the absolute nature of the humanitarian intervention, similar comments were also made about the responsibility to protect. Humanitarian intervention, which purports to justify a state's military action in preventing human rights abuses in another state, plays a complementary role with the responsibility to protect, which implies that states are under obligations to end such human rights abuses. Moreover, this interpretation is borne out of the reality that affected states consider

[77] See United Nations, *Charter of the United Nations* (1945).
[78] *Ibid* Article 2(7).

themselves highly responsible for the safety of their civilian populations. It requires a proactive and genuine political commitment from the state parties through rapid changes in its internal legislative and institutional policies to meet its obligations. A possible compromised position would be to accept that the responsibility to protect is still in the throes of progressive development under international law.

On the other hand, the conceptualization of responsibility to protect as a mere aspiration compels consideration of other deterrence tools like humanitarian intervention. It informed the need for the Security Council to codify it by adopting a resolution setting out principles that will guide them when deciding whether to authorize or mandate the use of force.[79] Essentially, this paper does not argue against the potential corruption of the responsibility to protect and humanitarian intervention in the cynical service of national self-interest. The fact shows that the more long-standing norm of humanitarian intervention tolerates military intervention by another state in extreme emergencies. The apparent fact is that the responsibility to protect is not that permit military intervention. However, in extreme cases, it will require the state to assist other states facing humanitarian crises.

It is important to note that the emergence of the two concepts has raised several questions about their applicability and acceptability under international law. Indeed, it suggests a clamor for structural integration of these concepts within our international and regional laws since its understanding and applications at the international level are rather complex and a function of multiple channels of interactions between agents of State parties and those subject to the regime of rules and the process of implementation depending on form and structure of the global community.

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[79] Kofi Annan in United Nations, "Secretary-General Presents Report 'In Larger Freedom' To General Assembly, Outlining Ambitious Plan For United Nations Reform," *United Nations* (2005), online: <https://www.un.org/press/en/2005/ga10334.doc.htm>.

VII. NON-STATE ARMED GROUPS IN RESPONSIBILITY TO PROTECT: A COMPLIMENTARY EFFORT

The word "Non-State Armed Groups," which literally refers to a non-state party to an international or non-international armed conflict, was intended to promote international and regional peace and security in conflict mediation, management, and intervention to mitigate humanitarian catastrophes of armed violence. It is noteworthy. However, the engagement of non-state armed groups in responsibility to protect could facilitate the delivery of humanitarian assistance or ensure that the rules of international humanitarian law are promoted in line with international norms and standards. In addition, non-state armed groups may be engaged in services related to the protection of non-combatants and or conflict resolution through dialogue, mediation, and negotiation. With these considerations in mind, the attempt to ensure compliance with the rules of international humanitarian law entails the introduction of varieties of tools and frameworks that can be adapted to promote compliance with the rules of international humanitarian law. For instance, the adoption of the Deed of Commitment[80] under the Geneva Call for complete adherence to the total ban on anti-personnel mines and cooperation in mine action. Nonetheless, it is undisputed that ever since the emergence of the Geneva Call in 2000, it has engaged with more than One hundred non-state armed actors around the globe on international humanitarian norms. The possibility of humanitarian organizations engaging all parties to the conflict on possible measures capable of reducing humanitarian catastrophes through mediation or conflict management was provided under Article 3 of the Geneva Convention.[81]

The fundamental reason non-state armed groups should be engaged for humanitarian purposes is to control, impact, or have quick access to territories where there are non-combatants in dire need of assistance or protection. In a broader context, they have obligations under international

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[80] Geneva Call, "Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and Cooperation in Mine Action launched in 2000", *Geneva Call*, online: <http://www.genevacall.org/how-we-work/deed-of-commitment/>.

[81] Article 3 of the Geneva Convention 1949.

humanitarian law regarding how they conduct hostilities and the treatment of non-combatants in the occupied territories. Despite the advances of non-state armed groups in responsibility to protect, as major actors in modern armed violence, approaches of the state and international organizations in dealing with Non-state armed groups have given rise to certain drawbacks and limitations.[82] Notwithstanding these critical advances in responsibility to protect, it is also significant to note that international humanitarian law has expanded its coverage of non-international armed conflicts. It has drafted or revised various treaties to regulate States and armed groups that may be parties to such conflicts. Also, customary international law has followed the same step in the said expansion in ensuring that the rules of international humanitarian law are strictly adhered to by all parties.[83] It brings to the fore the legal personality of non-state armed groups. It would be crucial to maintain that under international customary law, non-state armed groups that have reached a certain level of organization, stability, and effective control of territory can be considered to possess an international personality. In this sense, they are bound by customary international law and international humanitarian law rules.[84]

Despite its prevalence, non-state armed groups have deeply been involved in promoting the rules of international humanitarian law by integrating them into their doctrines, codes of conduct, disciplinary regulations, and other internal normative instruments. It is evidenced with, for instance, preparing public commitments in observing international humanitarian law in the form of unilateral declarations or deeds of commitments and using the special agreements among the parties to a non-international armed conflict envisaged in Article 3 of the Geneva Convention.[85] The

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[82] Claudia Hofmann, *Engaging Armed Actors in Conflict Mediation: Consolidating Government and Non-governmental Approaches* (Chatham House Research Papers April 2016).

[83] A Roberts & S Sivakumaran, "Law-Making By Non-State Actors: Engaging Armed Groups in the Creation of International Humanitarian Law" (2012) 37 Journal of International Law at 1.

[84] JJ.K Kleffner, *supra* note 10.

[85] See Article 3 of the Geneva Convention 1949.

organization may also seek for more significant impact in terms of protection outcomes to complement its engagement by reference to local customs, beliefs, and traditions, where they overlap with international humanitarian law.

Today, in the so-called "global war on terrorism," states have adopted different approaches to what is prohibited. Some states have followed the language of the 1999 Terrorist Financing Convention more closely and criminalized the provisions of resources with the knowledge or intent that they will be used to commit an act of terrorism.[86] Also, the inability of the global community to grapple with these intractable problems consistently and predictably. Under the responsibility to protect, whether at the international, regional, or domestic level, efforts to advance the responsibility to protect through non-state armed groups should be seen as "a new normal."

It is also primarily concerned with special applications of the theories of humanitarian intervention as well as the responsibility to protect under international law. On this basis, the designation of many non-state armed groups as "terrorists, bandits or militias" when they could be helpful in counterterrorism measures should be prohibited. They may be considered support or valuable tools in implementing global counterterrorism obligations. Given the stigmatization associated with the Non- State armed groups and the intricacies and complexities of their operations, the choice of appropriate regulatory processes or measures should be prescriptive, participatory, and or obligatory. However, the starting point is to determine how best to secure effective implementation of the commitments at all levels. After all, translating international obligations into municipal law by the government is the first compliance test. Despite several legislations on the responsibility to protect, the reality on the ground is appalling. There is a need to strengthen the efforts of States and the global community on the responsibility to protect through non-state armed groups. In order to fill the gap between the law and the reality, there is a compelling need to develop a practical legal framework that will ensure

[86] See International Convention for the Suppression of the Financing of Terrorism 1999, Article 2.

strict adherence to the rules of international humanitarian law by the non-state armed groups. It is essential when promoting the principle of complementarity, or the notion that non-state armed groups should take responsibility for their actions.

VIII. DEVELOPING A LEGAL FRAMEWORK TO COMPLY WITH INTERNATIONAL HUMANITARIAN LAW

The global community should develop robust, effective, and enforceable legal instruments to drive the new trend of participation by non-state armed groups in conflict management and resolutions. It is to effectively address the challenges posed by the operations of the non-state armed groups because they are not parties to treaties either on international humanitarian law, international human rights law, or international criminal law. These developments demonstrate that statutes should be interpreted within the established framework of the international law of armed conflict.[87] Interestingly, all non-state armed groups are bound by Article 3 of the Geneva Convention[88] which requires each party to respect humanitarian obligations, as well as many other rules of international humanitarian law that have the status of customary international law.[89] Also, by way of extension, the above position was replicated in Additional Protocol II of 1977, wherein non-state armed groups are in occupation of a particular territory, as the case may be.[90]

However, the existing legal frameworks for holding non-state armed groups accountable for violations of humanitarian norms are less developed than those applicable to States. However, the idea of a new legal framework is predicated on the fact that non-state armed groups are not obligated to the several treaty-based reporting, monitoring, and verification

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87 See Article 8 of the 1998 Rome Statute.

88 See Common Article 3 of the Geneva Convention 1949.

89 Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law Volume I: Rules* (New York: Cambridge University Press, 2005).

90 See Additional Protocol II of 1977.

mechanisms for states.[91] Furthermore, developing a practical legal framework ensures non-state armed groups comply with international humanitarian law, international human rights law, and international criminal law. It should be an enormous concern given that some non-state armed groups are often used as ad-hoc UN Security Council Sanctions regime, which sometimes assists in curbing abuses in international law. Thus, there is a need to bring regulations and compliance in harmony since the legal frameworks applicable to the operations of non-state armed groups are either inadequate or not proactively committed to the enforcement of international humanitarian law.

In this respect, the question then should be, what should be the practical measure to ensure that non-state armed groups increase their respect for humanitarian norms? In response to the above question, the paper suggests that there should be a mutual agreement between the non-state armed groups and the states, which is in line with Article 3 of the Geneva Convention.[92] With this agreement, non-state armed groups can effectively carry out preventive activities or facilitate the task of relief personnel in an armed conflict situation[93] with strict adherence to the rules of international humanitarian law. Also, it is worth noting that the military necessity argument can be invoked in exceptional circumstances with the agreement between the parties. It regulates and ensures that all parties to the armed conflicts respect international humanitarian law, international human rights law, and international criminal laws. For instance, about accountability, it should be noted that the agreement above has helped to ground war crimes liability in The International Criminal Tribunal for the former Yugoslavia (ICTY).[94]Secondly, while these and other arguments are undoubtedly compelling and deserve serious consideration, non-state armed groups may make a unilateral commitment to respect humanitarian norms, which may

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[91] P Bongard & J Somer, "Monitoring Armed Non-state Actor Compliance with Humanitarian Norms: A Look at International Mechanisms and Geneva Call Deed of Commitment" (2011) 93 International Review of Red Cross at 673.

[92] See Article 3 of the Geneva Convention 1949.

[93] See Commentary to Additional Protocol 1 of 1977.

[94] *Prosecutor v Stanislav Galic (Trial Judgement and Opinion)*, 2003 International Criminal Tribunal for the former Yugoslavia (ICTY) para 95.

not be formally binding.[95] Indeed, this may be one for non-state armed groups to promote and ensure respect for international humanitarian law and international human rights law.

Thirdly, different concerns are raised and continue to be expressed on developing effective legal frameworks. They will ensure compliance with the rules of international humanitarian law by non-state armed groups. Another notable suggestion has a formal agreement in the form of a Deed of Commitment. Based on the plain language of the Deed of Commitment, non-state armed groups are committed to humanitarian norms and are responsible for their actions.[96] While this Deed of Commitment seems straightforward, these Deeds are monitored at three different levels: non-state, armed group reporting its activities, third-party monitoring, and field missions by Geneva call, respectively, that include verifying alleged non-compliance with humanitarian norms.[97] While this approach may appear appealing, the reason behind the Geneva call is that an engagement with the non-state armed groups can advance compliance with humanitarian norms and protect civilians from the dangers of armed conflicts.[98] Aside from the above measures, another measure adopted by non-state armed groups is the adoption of internal regulations to control their members' behavior through administering oaths of allegiance, codes of conduct, standing orders, penal codes, and military manuals.[99]

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[95] A Roberts & S Sivakumaran, "Hybrid sources of Law: Armed Groups and The Creation of International Humanitarian Law" 37 Yale Journal of International Law at 1, 108, 142-43.

[96] See Geneva Convention, *supra* note 81.

[97] P. Bongard & J. Somer, *supra* note 92 at 689.

[98] Pascal Bongard, "Engaging Armed Non-state Actors on Humanitarian Norms: Reflections on Geneva Call's Experience" *Humanitarian Exchange Magazine* (2013), online: <https://genevacall.org/wp-content/uploads/dlm_uploads/2013/12/art-1.pdf> at 9-10.

[99] A. Roberts & S. Sivakumaran, *supra* note 96 at 133, 51, 438, 442.

IX. CONCLUSION

This paper has examined the usefulness of the responsibility to protect through non- State armed groups. However, engaging non-state armed groups on humanitarian issues does not change the legal status of the global community but rather will serve as a complementary effort geared toward limiting the humanitarian catastrophes and reducing the violence perpetrated by armed actors in armed violence orchestrated for one reason or the other. With positive sensitization, the public must understand that the global community alone or through its agents cannot single-handedly curb the prevailing high crime. At this juncture, having an in-depth analytical and objective view of the complementary efforts of non-state armed groups will be capable of showcasing the fundamental relevance of non-state armed groups in areas of ensuring safe, regular access to non-combatants. Scrutinizing conventions, treaties, and legislation becomes a key to achieving all efforts made to advance the responsibility to protect through non-state armed groups. Therefore, considering the current humanitarian catastrophes around the globe, non-state armed groups in the responsibility to protect serve as an improvement in humanitarian intervention. In light of the relevance of non-state armed groups to international law, international humanitarian law, and the global community, a review of the existing regulations, manuals, and rules will mark a progression and improvement from the euphoria of the old world order to the cautiously pragmatic approach to the significant role of non-state armed groups under the collective humanitarian intervention.

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The authors declared that they have no conflict of interests.

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