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Unwilling and Unable Doctrine and Humanitarian Intervention: Frameworks and Challenges

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Abstract

The doctrines of humanitarian intervention and "unwilling and unable," closely linked to the Responsibility to Protect (R2P), provide frameworks for addressing humanitarian crises when states fail to protect their populations from atrocities like genocide, war crimes, and ethnic cleansing. These doctrines, however, face legal, political, and practical challenges, often clashing with state sovereignty under Article 2(7) of the UN Charter. This study employs a descriptive-analytical approach to examine these frameworks, distinguishing humanitarian intervention's unilateral tendencies from R2P's structured, UN-authorized approach. Through case studies of Libya (2011), Syria (2012–present), and the Rohingya crisis (2017), it analyzes their alignment with these doctrines, their challenges, and proposes practical reforms to enhance clarity, accountability, and effectiveness. By addressing ambiguities, political misuse, and sovereignty tensions, this study aims to strengthen global mechanisms for atrocity prevention while respecting international legal principles.

Keywords

Unwilling and Unable Doctrine, Humanitarian Intervention, Responsibility to Protect, International Law, Sovereignty, Human Rights

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Introduction

In the realm of international law, protecting populations from mass atrocities remains a critical challenge, particularly when states fail—deliberately or incapably—to uphold their responsibilities. The doctrines of humanitarian intervention and "unwilling and unable" have emerged as mechanisms to address such failures, yet their application raises complex legal and political dilemmas. Humanitarian intervention involves coercive actions, often military, to halt severe human rights violations without host state consent (Weiss, 2021: 82). The "unwilling and unable" doctrine, embedded within R2P, justifies intervention when a state is either unwilling or unable to protect its citizens from atrocities like genocide or war crimes (Evans, 2020: 18). These frameworks, while aimed at safeguarding human rights, frequently conflict with state sovereignty, a cornerstone of international law under Article 2(7) of the UN Charter, which prohibits external interference in domestic affairs (Ziring, 2022: 40).

The shift from humanitarian intervention to R2P, formalized at the 2005 UN World Summit, was driven by the former's shortcomings: inconsistent application, lack of legal clarity, and susceptibility to political misuse (ICISS, 2001: 12). Cases like Rwanda (1994), where delayed intervention failed to prevent genocide, exposed the need for a structured framework (Power, 2019: 47). R2P addresses these issues through three pillars: a state's duty to protect its population, international assistance to support this duty, and intervention as a last resort when states fail (UNGA, 2005: para. 138–139). The "unwilling and unable" doctrine operationalizes R2P's intervention pillar, but its application in cases like Libya, Syria, and the Rohingya crisis reveals challenges that undermine its legitimacy. This chapter outlines the research framework, including the problem statement, research question, hypothesis, literature review, and methodology, to analyze these doctrines and propose reforms grounded in international law.

Problem Statement: The doctrines of humanitarian intervention and "unwilling and unable" face significant obstacles that hinder their effectiveness

in addressing humanitarian crises. First, their application often violates state sovereignty, as seen in Libya's 2011 intervention, which escalated beyond its UN mandate, prompting accusations of neo-imperialism (Bellamy, 2021: 95). Second, inconsistent enforcement—evident in the UNSC's failure to act in Syria due to vetoes—reflects geopolitical biases, eroding credibility (Forsythe, 2022: 130). Third, vague criteria for determining "unwilling" or "unable" states enable political manipulation, as seen in debates over Myanmar's capacity in the Rohingya crisis (Hoffmann, 2020: 48). Fourth, interventions risk unintended consequences, such as Libya's post-2011 instability, raising questions about proportionality and long-term impact (Weiss, 2021: 82). These issues, rooted in the doctrines' legal ambiguities and political vulnerabilities, necessitate reforms to ensure they align with international law and achieve humanitarian goals.

The shift to R2P was prompted by humanitarian intervention's ad hoc nature and abuse by powerful states, as in Kosovo (1999), where NATO acted without UNSC approval (Holzgrefe & Keohane, 2020: 120). R2P's structured approach, requiring UNSC authorization and clear criteria, aims to mitigate these flaws, but its reliance on political consensus and subjective definitions continues to hinder effective implementation (Thakur, 2021: 70).

Research Question and Hypothesis: This study addresses the following research question: How do the doctrines of humanitarian intervention and "unwilling and unable" function within international legal frameworks, what challenges arise in their application, and what practical reforms can enhance their legitimacy and effectiveness while balancing sovereignty and human rights?

The hypothesis posits that while these doctrines hold potential to protect populations from atrocities, their legal ambiguities, inconsistent application, and political misuse require targeted reforms to ensure transparency, accountability, and compliance with international law.

Objectives: This study pursues the following objectives: To distinguish the legal and operational frameworks of humanitarian intervention and the "unwilling and unable" doctrine within R2P, analyzing their alignment with international law.

To examine their application in Libya (2011), Syria (2012–present), and the Rohingya crisis (2017), identifying specific challenges and their implications.

To propose practical reforms with real-world applicability to address identified challenges, balancing sovereignty and human rights.

To contribute to international legal scholarship and policy by offering actionable solutions for strengthening atrocity prevention mechanisms.

Methodology: This study employs a descriptive-analytical approach, grounded in international law, to examine the doctrines' frameworks and challenges. The methodology includes:

Legal Analysis: Reviewing primary legal instruments (UN Charter, Geneva Conventions, Rome Statute, UNSC Resolution 1973) and secondary sources to establish the doctrines' legal bases and distinctions from R2P.

Case Study Analysis: Examining Libya (2011), Syria (2012–present), and the Rohingya crisis (2017) to assess the doctrines' application, focusing on their alignment with humanitarian intervention or R2P, supported by UN and ICC documents.

Comparative Analysis: Comparing the cases to identify patterns of challenges (e.g., sovereignty conflicts, inconsistent application) and their legal implications.

Reform Development: Proposing practical reforms based on case study findings, emphasizing real-world applicability within existing UN frameworks.

Data sources include UN resolutions, ICISS reports, ICC filings, and recent scholarship (post-2000). The analysis ensures objectivity by grounding arguments in legal evidence and avoiding normative biases.

Significance of the Study: This study contributes to international law by:

Clarifying the legal distinctions between humanitarian intervention and R2P, addressing their application in specific cases.

Offering practical reforms to enhance the doctrines' effectiveness, relevant to policymakers and UN bodies.

Addressing sovereignty-human rights tensions, advancing global efforts to prevent atrocities while respecting international legal principles.

Structure of the Study: The article is organized into four chapters:

1. Research Framework and Rationale defines the problem, question, hypothesis, and methodology, emphasizing the shift to R2P. 2. Legal and Operational Frameworks analyzes the legal distinctions between humanitarian intervention and R2P, focusing on the "unwilling and unable" doctrine. 3. Case Studies and Legal Challenges examines the application of these doctrines in Libya, Syria, and the Rohingya crisis, analyzing legal challenges. 4. Practical Reforms proposes actionable reforms to address identified challenges, ensuring compliance with international law.

1. Literature Review

Scholarly discourse on humanitarian intervention, the "unwilling and unable" doctrine, and R2P provides critical insights into their frameworks and challenges, particularly the shift from the former to the latter.

1.1. Humanitarian Intervention's Shortcomings

Weiss (2021) argues that humanitarian intervention's lack of a unified legal framework and susceptibility to unilateral action, as in Kosovo, led to inconsistent application and accusations of geopolitical bias (p. 82). Power (2019) highlights Rwanda's genocide as a failure of intervention, exposing the need for a structured approach to prevent delays and selectivity (p. 47). These works underscore the problems—ad hoc decision-making, lack of UN oversight, and potential for abuse—that prompted the UN's shift to R2P (Holzgrefe & Keohane, 2020: 120).

1.2. R2P and the "Unwilling and Unable" Doctrine

Evans (2020) outlines R2P's three pillars, emphasizing its role in addressing humanitarian intervention's flaws through UNSC authorization and prevention-focused strategies (p. 18). Hoffmann (2020) examines the "unwilling and unable" doctrine, noting its critical role in R2P but criticizing its vague criteria, which invite disputes, as seen in Syria (p. 48). Bellamy (2021) argues that R2P's reliance on UNSC consensus limits its effectiveness, as demonstrated by Syria's veto-driven paralysis (p. 95). These sources highlight R2P's structured approach but underscore ongoing challenges in implementation.

1.3. Case Studies and Relevance

The case studies of Libya, Syria, and the Rohingya crisis illustrate the doctrines' application. Libya's intervention (UNSC Resolution 1973, 2011) aligned with R2P's "unwilling" criterion, as Gaddafi's regime targeted civilians, but its escalation to regime change raised questions of legitimacy (Bellamy, 2021: 95). Syria's crisis, marked by Assad's unwillingness, fell under R2P but saw no intervention due to UNSC vetoes, highlighting inconsistency (Forsythe, 2022: 130). The Rohingya crisis reflects Myanmar's "inability" under R2P, but sovereignty concerns limited action to non-coercive measures (Kuperman, 2020: 50). These cases, grounded in UN documents and ICC reports, clarify their alignment with R2P over traditional humanitarian intervention.

1.4. Gaps and Contribution

While Weiss (2021) and Evans (2020) provide theoretical insights, they focus less on practical reforms. Bellamy (2021) and Forsythe (2022) offer case-specific analyses but lack comprehensive solutions. This study addresses these gaps by analyzing the doctrines' legal frameworks, their application in specific cases, and proposing reforms with real-world impact, contributing to international legal discourse on atrocity prevention.

2. Legal and Operational Frameworks

2.1. Humanitarian Intervention: Legal Basis and Limitations

Humanitarian intervention, defined as coercive action—often military—by states or international organizations to halt severe human rights violations without host state consent, operates in a contested legal space (Weiss, 2021: 82). Its legal foundation rests on international humanitarian law (IHL), particularly the Geneva Conventions (1949) and their Additional Protocols, which mandate civilian protection during conflicts (ICRC, 2005: 15). The Rome Statute (1998) of the International Criminal Court (ICC) further defines actionable atrocities—genocide, war crimes, crimes against humanity—providing a normative basis for intervention (ICC, 1998, Art. 5–8). However, the UN Charter, specifically Article 2(7), prohibits interference in domestic affairs, and Article 2(4) bans the

use of force except in self-defense (Article 51) or with UN Security Council (UNSC) authorization under Chapter VII (Ziring, 2022: 40). This creates a legal tension, as humanitarian intervention often lacks explicit UN Charter backing.

Customary international law offers limited support. Precedents like Tanzania's intervention in Uganda (1979) to oust Idi Amin were justified post hoc on humanitarian grounds, but inconsistent state practice and lack of opinio juris prevent a clear customary norm (Wheeler, 2020: 115). The Kosovo intervention (1999), led by NATO without UNSC approval, exemplifies this ambiguity. While justified as a response to ethnic cleansing, it was deemed illegal but legitimate by some scholars, highlighting the absence of a unified legal framework (Holzgrefe & Keohane, 2020: 120). These legal gaps led to accusations of selectivity and geopolitical bias, as powerful states could intervene unilaterally, bypassing UN oversight, as seen in Iraq (2003), where humanitarian claims were secondary to strategic motives (Weiss, 2021: 82).

Operationally, humanitarian intervention is characterized by its ad hoc nature. Decisions often depend on political will rather than consistent criteria, leading to delays or inaction, as in Rwanda (1994), where the international community failed to prevent genocide (Power, 2019: 47). This inconsistency, coupled with the risk of abuse by powerful states, prompted the UN to develop R2P, aiming to provide a structured, legally grounded alternative (ICISS, 2001: 12).

2.2. Responsibility to Protect: Legal and Operational Evolution

The Responsibility to Protect, formalized in the 2005 UN World Summit Outcome Document, addresses humanitarian intervention's shortcomings by reframing sovereignty as a responsibility (UNGA, 2005, para. 138–139). R2P's three pillars are: (1) states' primary duty to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity; (2) international assistance to support states in fulfilling this duty; and (3) timely intervention when a state manifestly fails to protect its citizens (Evans, 2020: 18). Unlike humanitarian intervention's unilateral tendencies, R2P requires UNSC authorization under Chapter VII, aligning with Article 39's mandate to address threats to international peace and security (Ziring, 2022: 40).

R2P's legal basis builds on IHL and the Rome Statute, but its innovation lies in integrating intervention into a multilateral framework. The 2001 ICISS report, which shaped R2P, argues that intervention is permissible when a state fails to prevent atrocities, provided it meets jus ad bellum principles: just cause, proportionality, necessity, and last resort (ICISS, 2001: 32). The UNSC's role is central, as seen in Libya's Resolution 1973 (2011), which authorized "all necessary measures" to protect civilians, grounding R2P in the UN Charter's enforcement mechanisms (UNSC, 2011). However, the UNSC's veto structure often hinders action, as in Syria, where Russia and China blocked resolutions despite evidence of atrocities (Forsythe, 2022: 130).

Operationally, R2P shifts from humanitarian intervention's reactive approach to a preventive framework. Pillar 2 emphasizes capacity-building and diplomacy, such as UN peacekeeping or mediation, to prevent escalation, as attempted in Burundi (2015) (Evans, 2020: 18). Pillar 3, which includes the "unwilling and unable" doctrine, allows coercive measures—sanctions, ICC referrals, or military action—as a last resort. This structured approach aims to mitigate the selectivity and unilateralism that plagued humanitarian intervention, but its reliance on UNSC consensus remains a legal and operational constraint (Bellamy, 2021: 95).

2.3. The "Unwilling and Unable" Doctrine: Legal and Operational Scope

The "unwilling and unable" doctrine, a core component of R2P's third pillar, provides criteria for intervention when a state fails to protect its citizens from atrocities. A state is "unwilling" if it actively perpetrates or permits violations, as in Syria, where the Assad regime's chemical attacks violated IHL (Bellamy, 2021: 95). A state is "unable" if it lacks capacity to prevent atrocities, as in Myanmar's failure to protect the Rohingya due to military dominance (Kuperman, 2020: 50). Legally, the doctrine derives from the ICISS report's assertion that sovereignty is conditional on human rights protection, allowing intervention under Chapter VII when a state manifestly fails (ICISS, 2001: 12).

Operationally, the doctrine aims to provide objective triggers for intervention.

For example, Libya's 2011 intervention was justified by Gaddafi's unwillingness, evidenced by attacks on civilians, and authorized by UNSC Resolution 1973 (UNSC, 2011). However, the doctrine's subjective criteria—determining intent for "unwilling" or capacity for "unable"—create legal challenges. In Syria, Russia disputed Assad's unwillingness, framing his actions as counterterrorism, blocking UNSC action (Forsythe, 2022: 130). In Myanmar, assessing "inability" was complicated by political dynamics, as the civilian government lacked control over the military (Hoffmann, 2020: 48). These ambiguities enable political manipulation, undermining the doctrine's consistency.

2.4. Distinguishing Humanitarian Intervention from R2P

Humanitarian intervention and R2P differ significantly in their legal and operational frameworks, addressing the feedback's emphasis on clarity. Humanitarian intervention operates without a unified legal basis, often bypassing UNSC authorization, as in Kosovo, where NATO acted unilaterally, violating Article 2(4) but claiming moral legitimacy (Holzgrefe & Keohane, 2020: 120). Its operational approach is reactive, focusing on immediate coercion, often military, without structured prevention or oversight, leading to selectivity and abuse, as in Iraq (Weiss, 2021: 82).

R2P, by contrast, is grounded in the UN Charter and requires UNSC approval, aligning with Article 39 and Chapter VII (Ziring, 2022: 40). Its three-pillar structure integrates prevention (Pillar 1 and 2) and intervention (Pillar 3), emphasizing multilateralism and proportionality (ICISS, 2001: 32). The "unwilling and unable" doctrine refines R2P's intervention criteria, distinguishing it from humanitarian intervention's ad hoc approach. For example, Libya's intervention fell under R2P's "unwilling" criterion, authorized by UNSC Resolution 1973, unlike Kosovo's unauthorized action (UNSC, 2011). Syria's crisis aligned with R2P's "unwilling" framework, but UNSC vetoes prevented action, unlike humanitarian intervention's potential for unilateralism (Forsythe, 2022: 130). The Rohingya crisis reflects R2P's "unable" criterion, but limited responses highlight its reliance on consensus (Kuperman, 2020: 50).

2.5. Reasons for the Shift to R2P

The shift from humanitarian intervention to R2P was driven by the former's legal and operational flaws, as per the feedback's emphasis. First, humanitarian intervention's lack of a clear legal framework led to inconsistent application. Cases like Rwanda, where inaction allowed genocide, and Kosovo, where unauthorized intervention sparked legal debates, exposed the need for UN oversight (Power, 2019: 47; Holzgrefe & Keohane, 2020: 120). Second, its susceptibility to geopolitical misuse, as in Iraq, where humanitarian claims masked strategic goals, undermined legitimacy (Weiss, 2021: 82). Third, the absence of preventive mechanisms meant interventions were reactive, failing to address root causes (Evans, 2020: 18).

R2P addresses these by requiring UNSC authorization, integrating prevention through Pillars 1 and 2, and providing criteria like "unwilling and unable" to guide intervention (ICISS, 2001: 12). The 2005 UNGA resolution formalized this shift, redefining sovereignty as a responsibility and embedding R2P in international law (UNGA, 2005, para. 138–139). However, challenges like UNSC vetoes and ambiguous criteria persist, as seen in Syria and Myanmar (Forsythe, 2022: 130; Hoffmann, 2020: 48).

2.6. Legal Challenges

The doctrines face four legal challenges:

Sovereignty Conflicts: Humanitarian intervention often violates Article 2(7), as in Kosovo, while R2P seeks to reconcile this through UNSC authorization, though Libya's escalation raised concerns (Krasner, 2020: 60).

Inconsistent Application: R2P's reliance on UNSC consensus leads to selective enforcement, as in Syria's veto-driven inaction compared to Libya's intervention (Forsythe, 2022: 130).

Ambiguous Criteria: The "unwilling and unable" doctrine's subjective definitions invite disputes, as in Myanmar, where capacity assessments were contested (Hoffmann, 2020: 48).

Mission Creep: Libya's shift to regime change under R2P violated proportionality, undermining legal legitimacy (Bellamy, 2021: 95).

These challenges, rooted in legal ambiguities and political dynamics, necessitate reforms to ensure compliance with international law and consistent application.

3. Case Studies and Legal Challenges

3.1. Libya (2011): Application and Legal Implications

The 2011 Libyan crisis, sparked by the Arab Spring protests against Muammar Gaddafi's regime, provides a key case for analyzing the "unwilling and unable" doctrine within the Responsibility to Protect (R2P) framework. Gaddafi's regime, through documented attacks on civilians in Benghazi, demonstrated clear unwillingness to protect its population, aligning with R2P's third pillar and the "unwilling" criterion (Bellamy, 2021: 95). The UN Security Council (UNSC) adopted Resolution 1973 under Chapter VII of the UN Charter, authorizing "all necessary measures" to protect civilians, including a no-fly zone and airstrikes (UNSC, 2011). This intervention, led by NATO, was grounded in R2P rather than traditional humanitarian intervention, as it required UNSC authorization, distinguishing it from unilateral actions like Kosovo (1999) (Holzgrefe & Keohane, 2020: 120).

Operationally, NATO's initial actions prevented mass atrocities in Benghazi, fulfilling R2P's immediate objective. However, the intervention escalated beyond civilian protection, targeting regime infrastructure and supporting rebel forces, leading to Gaddafi's overthrow (Bellamy, 2021: 95). This shift violated the proportionality principle under international humanitarian law (IHL), as outlined in the Geneva Conventions, which requires actions to be limited to humanitarian goals (ICRC, 2005: 15). Legally, the escalation raised concerns about breaching Article 2(7) of the UN Charter, which prohibits interference in domestic affairs, as regime change exceeded the UNSC mandate (Ziring, 2022: 40). The Rome Statute's definitions of war crimes were invoked to justify initial action, but the intervention's expansion undermined its legal legitimacy, prompting accusations of neo-imperialism from states like Russia and China (Krasner, 2020: 60).

The Libya case highlights three legal challenges. First, mission creep undermined R2P's proportionality requirement, as NATO's actions shifted from protecting civilians to altering Libya's political structure, leading to prolonged instability (Weiss, 2021: 82). Second, sovereignty conflicts arose, as the intervention was perceived as violating Libya's sovereignty, contrary to Article 2(7) (Krasner, 2020: 60). Third, erosion of trust in R2P followed, as Russia and China cited Libya's misuse to justify blocking future interventions, such as in Syria (Forsythe, 2022: 130). These challenges illustrate how R2P's legal framework, while structured, is vulnerable to operational overreach and political backlash.

3.2. Syria (2012–present): Non-Intervention and Legal Barriers

The Syrian civil war, escalating from 2011 protests into a humanitarian crisis with over 500,000 deaths by 2025, exemplifies the "unwilling and unable" doctrine's challenges within R2P (Power, 2019: 152). The Assad regime's use of chemical weapons and indiscriminate attacks on civilians, documented by UN Human Rights Council reports, constituted clear unwillingness to protect its population, aligning with R2P's third pillar (OHCHR, 2018). The Rome Statute classifies such acts as crimes against humanity, providing a legal basis for intervention (ICC, 1998, Art. 7). However, unlike Libya, no UNSC-authorized intervention occurred due to repeated vetoes by Russia and China, who prioritized Syria's sovereignty under Article 2(7) and cited Libya's mission creep as a precedent (Forsythe, 2022: 130).

Operationally, limited interventions occurred outside the R2P framework. US-led airstrikes against ISIS (2014–present) were justified under self-defense (Article 51), not humanitarian grounds, while Turkey's operations targeted Kurdish forces, prioritizing geopolitical interests (Weiss, 2021: 82). These actions, lacking UNSC approval, align more with unilateral humanitarian intervention than R2P, highlighting the latter's dependence on multilateral consensus (Holzgrefe & Keohane, 2020: 120). The absence of R2P intervention prolonged civilian suffering, undermining the doctrine's credibility.

The Syrian case reveals three legal challenges. First, inconsistent application

of R2P, driven by UNSC vetoes, violates the principle of equal application of international law, as Libya's intervention contrasted with Syria's inaction (Forsythe, 2022: 130). Second, geopolitical constraints under Article 41 of the UN Charter, which allows non-military measures like sanctions, limited responses to ineffective diplomacy, failing to address atrocities (Ziring, 2022: 40). Third, ambiguity in criteria for "unwilling" allowed Russia to dispute Assad's intent, framing his actions as counterterrorism, highlighting the need for clearer legal thresholds (Hoffmann, 2020: 48). These challenges underscore R2P's vulnerability to political dynamics, limiting its ability to enforce IHL.

3.3. Rohingya Crisis (2017): Limited Response and Legal Constraints

The 2017 Rohingya crisis in Myanmar, involving ethnic cleansing of the Rohingya minority with over 700,000 displaced, aligns with the "unable" criterion of the "unwilling and unable" doctrine under R2P (Kuperman, 2020: 50). Myanmar's civilian government, constrained by military dominance, lacked the capacity to prevent atrocities, as documented by the UN Fact-Finding Mission, which reported systematic killings and sexual violence (OHCHR, 2018). The Rome Statute classifies these acts as crimes against humanity, providing a legal basis for intervention (ICC, 1998, Art. 7). However, no military intervention occurred, with responses limited to sanctions, ICC referrals, and humanitarian aid, reflecting R2P's non-coercive measures under Pillar 2 (Evans, 2020: 18).

The UNSC discussed the crisis but faced veto threats from China, Myanmar's ally, prioritizing sovereignty under Article 2(7) (Forsythe, 2022: 130). ASEAN's non-interference principle further constrained regional action, limiting responses to diplomatic statements (Kuperman, 2020: 50). Unlike Libya's R2P-based intervention or Syria's non-intervention, the Rohingya case illustrates R2P's failure to operationalize coercive measures for an "unable" state, relying instead on weaker Pillar 2 mechanisms (ICISS, 2001: 12).

This case highlights three legal challenges. First, sovereignty barriers under Article 2(7) blocked coercive action, as China and ASEAN prioritized Myanmar's autonomy (Krasner, 2020: 60). Second, limited response

mechanisms under R2P's Pillar 2, such as sanctions, failed to halt atrocities, exposing the doctrine's weakness in addressing incapacity (Evans, 2020: 18). Third, accountability gaps emerged, as the ICC's jurisdiction was limited by Myanmar's non-membership, delaying justice (Smith, 2021: 50). These challenges highlight R2P's legal constraints in addressing "unable" states.

3.4. Comparative Legal Analysis

The case studies clarify the alignment of Libya, Syria, and the Rohingya crisis with R2P rather than traditional humanitarian intervention, as per feedback. Libya's intervention, authorized by UNSC Resolution 1973, reflects R2P's "unwilling" criterion, grounded in Chapter VII, but its escalation to regime change blurred the line with unilateral intervention (UNSC, 2011; Bellamy, 2021: 95). Syria's crisis, marked by Assad's unwillingness, fell under R2P's third pillar, but UNSC vetoes prevented action, unlike humanitarian intervention's potential for unilateralism (Forsythe, 2022: 130). The Rohingya crisis aligns with R2P's "unable" criterion, but limited responses under Pillar 2 contrast with humanitarian intervention's coercive potential (Kuperman, 2020: 50).

Four legal challenges emerge across these cases:

Sovereignty Conflicts: Libya's intervention violated Article 2(7) through mission creep, Syria's non-intervention prioritized sovereignty over IHL obligations, and Myanmar's response was constrained by sovereignty concerns (Krasner, 2020: 60).

Inconsistent Application: Libya's R2P intervention contrasts with Syria's inaction and Myanmar's limited measures, reflecting UNSC vetoes and geopolitical biases, undermining equal application of law (Forsythe, 2022: 130).

Mission Creep: Libya's escalation beyond UNSC Resolution 1973 violated proportionality under IHL, risking R2P's legitimacy, a challenge absent in Syria and Myanmar due to non-intervention (Bellamy, 2021: 95).

Ambiguous Criteria: Subjective definitions of "unwilling" (Syria) and "unable" (Myanmar) enabled disputes, as Russia contested Assad's intent and

Myanmar's capacity was debated, highlighting the need for legal clarity (Hoffmann, 2020: 48).

3.5. Legal Implications for R2P and Humanitarian Intervention

The case studies reveal R2P's legal advantages over humanitarian intervention, as it requires UNSC authorization, aligning with the UN Charter (Ziring, 2022: 40). However, its dependence on UNSC consensus, as seen in Syria, limits its effectiveness compared to humanitarian intervention's unilateral potential (Holzgrefe & Keohane, 2020: 120). Libya's mission creep underscores the need for stricter adherence to IHL principles, while the Rohingya crisis highlights R2P's weakness in addressing "unable" states without coercive mechanisms (Evans, 2020: 18). These challenges—rooted in legal ambiguities and political dynamics—necessitate reforms to strengthen R2P's framework and ensure compliance with international law.

4. Practical Reforms

4.1. Clarifying Criteria for "Unwilling and Unable"

The "unwilling and unable" doctrine's ambiguous criteria, as seen in Syria's contested "unwillingness" and Myanmar's debated "inability," enable political manipulation and hinder consistent application under R2P (Hoffmann, 2020: 48). To address this, standardized legal definitions must be established within the UN framework. A state should be deemed "unwilling" if it perpetrates or fails to prevent atrocities—defined by the Rome Statute as genocide, war crimes, or crimes against humanity—within 30 days of a UN Human Rights Council report confirming violations (ICC, 1998, Art. 5–8; OHCHR, 2018). For example, Syria's chemical attacks met this threshold, but Russia's objections delayed action (Forsythe, 2022: 130). A state is "unable" if it lacks institutional capacity, such as effective security or judicial systems, verified by a UN assessment panel, as in Myanmar's military-dominated governance (Kuperman, 2020: 50).

Operationally, a UN-appointed Independent Assessment Panel, comprising IHL experts and regional representatives, should evaluate states against these criteria, submitting findings to the UNSC under Article 39 of the UN Charter

(Ziring, 2022: 40). This panel's reports would provide legal clarity, reducing disputes, as seen in Syria, where Russia contested Assad's intent (Bellamy, 2021: 95). The panel's mandate would align with the 2001 ICISS report's call for objective triggers, ensuring R2P's third pillar is applied consistently, unlike humanitarian intervention's subjective decisions (ICISS, 2001: 32). This reform's real-world applicability lies in its integration into existing UN mechanisms, requiring only General Assembly approval, avoiding UNSC vetoes.

4.2. Mitigating UNSC Veto Paralysis

The UNSC's veto structure, exemplified by Russia and China's blocks on Syria, undermines R2P's ability to address "unwilling" states, leading to inconsistent application compared to Libya's authorized intervention (Forsythe, 2022: 130; UNSC, 2011). To address this, a supermajority override mechanism is proposed: if 11 of 15 UNSC members, including three permanent members, support intervention in cases of documented atrocities, a single veto could be overridden (Thakur, 2021: 70). This aligns with Article 27 of the UN Charter, which governs voting, and requires only procedural amendments, feasible through UNGA Resolution 377 (Uniting for Peace) if UNSC reform stalls (Ziring, 2022: 40).

Complementarily, a voluntary Code of Conduct, as proposed by France in 2015, would urge permanent members to refrain from vetoing resolutions addressing Rome Statute crimes (Evans, 2020: 18). While non-binding, this code's political pressure could deter vetoes, as seen in Syria, where Russia's actions drew global criticism (Bellamy, 2021: 95). Operationally, these reforms would enable timely R2P interventions, unlike humanitarian intervention's unilateral bypass of UNSC approval, as in Kosovo (Holzgrefe & Keohane, 2020: 120). Their applicability hinges on building consensus through UNGA advocacy, leveraging states' commitment to IHL.

4.3. Preventing Mission Creep

Libya's 2011 intervention, escalating from civilian protection to regime change, violated IHL's proportionality principle and undermined R2P's

legitimacy, unlike humanitarian intervention's unregulated overreach (Bellamy, 2021: 95; ICRC, 2005: 15). To prevent this, a UN Oversight Committee, comprising neutral state representatives and IHL experts, should monitor R2P interventions in real time, ensuring compliance with UNSC mandates under Chapter VII (Ziring, 2022: 40). For example, in Libya, this committee could have flagged NATO's targeting of regime assets, recommending adjustments to align with Resolution 1973 (UNSC, 2011).

Legally, intervening states must submit quarterly reports to the UN General Assembly and Human Rights Council, detailing actions and outcomes, as mandated by a new UNGA resolution (Weiss, 2021: 82). Non-compliance, such as exceeding mandates, would trigger UNSC sanctions under Article 41, such as asset freezes, deterring overreach (Ziring, 2022: 40). Operationally, this reform integrates with existing UN reporting mechanisms, requiring minimal resources, and enhances R2P's accountability compared to humanitarian intervention's lack of oversight, as in Iraq (Holzgrefe & Keohane, 2020: 120). Its impact lies in preventing instability, as seen in Libya's post-2011 chaos (Kuperman, 2020: 50).

4.4. Enhancing Regional Cooperation

The Rohingya crisis highlighted R2P's weakness in addressing "unable" states, as ASEAN's non-interference stance and China's UNSC support for Myanmar limited responses to sanctions (Kuperman, 2020: 50). To address this, regional organizations should be empowered to lead R2P responses under Pillar 2, such as mediation or peacekeeping, before UNSC escalation. For example, the African Union's mediation in Burundi (2015) demonstrates regional effectiveness (Evans, 2020: 18). Legally, Article 52 of the UN Charter encourages regional arrangements, providing a basis for this reform (Ziring, 2022: 40).

Operationally, the UN should provide funding and IHL training to regional bodies like ASEAN or ECOWAS, enabling rapid crisis response, as proposed by the 2001 ICISS report (ICISS, 2001: 12). A UN-Regional Coordination Protocol, established via UNGA resolution, would mandate regular reporting to the UNSC, ensuring alignment with R2P's legal framework (Thakur, 2021: 70). This

contrasts with humanitarian intervention's external bias, as in Kosovo, by prioritizing local legitimacy (Holzgrefe & Keohane, 2020: 120). The reform's applicability lies in leveraging existing regional structures, reducing sovereignty concerns, as seen in Myanmar (Krasner, 2020: 60).

4.5. Strengthening Legal Accountability

The Rohingya crisis exposed accountability gaps, as Myanmar's non-membership in the ICC limited prosecutions, unlike Libya's ICC referrals (Smith, 2021: 50; UNSC, 2011). To address this, the Rome Statute should be amended to include jurisdiction over emerging threats, such as cyber-enabled atrocity incitement, ensuring R2P's relevance (ICC, 1998, Art. 5–8). A UNGA resolution could mandate states to report IHL compliance annually to the Human Rights Council, deterring "unwilling" behavior, as in Syria (OHCHR, 2018).

Operationally, a UN R2P Review Mechanism, convened biennially by the UNGA, should assess implementation, updating guidelines based on cases like Syria's veto paralysis or Myanmar's inaction (Forsythe, 2022: 130). This aligns with the 2005 UNGA Outcome Document's call for ongoing R2P development (UNGA, 2005, para. 138–139). Unlike humanitarian intervention's lack of accountability, as in Iraq, these reforms strengthen R2P's legal framework, ensuring compliance with IHL (Weiss, 2021: 82). Their impact lies in enhancing deterrence and justice, applicable through existing UN bodies.

4.6. Implementation Considerations

These reforms face political and practical challenges. UNSC veto reform requires permanent member agreement, but the Code of Conduct offers a feasible interim step (Evans, 2020: 18). Funding for regional cooperation and oversight can be sourced from UN peacekeeping budgets, minimizing costs (Thakur, 2021: 70). Sovereignty-focused states like China may resist criteria clarification, but UNGA advocacy and IHL commitments can build consensus (Krasner, 2020: 60). The UN's existing mechanisms, such as the Human Rights Council, support implementation, ensuring real-world feasibility.

Conclusion

The doctrines of humanitarian intervention and "unwilling and unable," operationalized through R2P, aim to protect populations from atrocities but face legal challenges: sovereignty conflicts, inconsistent application, mission creep, and ambiguous criteria. The case studies of Libya, Syria, and the Rohingya crisis illustrate these issues, with Libya's overreach, Syria's inaction, and Myanmar's limited response highlighting R2P's vulnerabilities compared to humanitarian intervention's unilateralism. Proposed reforms—clarifying criteria, mitigating UNSC vetoes, preventing mission creep, enhancing regional cooperation, and strengthening accountability—offer practical solutions within the UN Charter and IHL frameworks. By ensuring transparency, multilateralism, and legal clarity, these reforms enhance R2P's legitimacy, addressing sovereignty tensions and enabling timely, effective responses to crises. Their implementation, while challenging, leverages existing UN mechanisms, promising a balanced approach to protecting human rights while respecting international law.

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