

Calling for a Security Council Intervention by Invoking the Responsibility to Protect (R2P): On-going application of R2P from the final stages of armed conflict (2009) until now

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- UN Resolution 63/308 defines R2P in Paragraphs 138-139 of the 2005 World Summit Outcome Document. Paragraph 139 gives the “international community, through the United Nations...the responsibility to use appropriate diplomatic, humanitarian and other peaceful means...to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”
 - Asking that the Security Council and General Assembly intervene in favour of Tamils is essentially invoking the Responsibility to Protect (R2P). The General Assembly unanimously passed Resolution 63/308 committing itself to R2P in September, 2009 - just four months after Sri Lanka militarily destroyed the de facto state of Tamil Eelam. Sri Lanka arguably committed war crimes, crimes against humanity, ethnic cleansing, and genocide in the process.
 - The Montevideo Convention, recognized as customary international law, states:
“The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.” Tamil Eelam had these rights. When Sri Lanka broke the Ceasefire Agreement in 2006, it arguably committed the crime of aggression.
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- Sri Lanka claims the territory of Tamil Eelam as its own, and calls Tamils “citizens”. The Sri Lankan Constitution states in Chapter 1 Nr. 3 that “Sovereignty is in the People”. However, it is not clear who “the People” should be, as more than one “People” lives in Sri Lanka. To clarify, Chapter 2 specifies that “Buddhism should be given the foremost place and it shall be the duty of the state to protect and foster Buddha Sasana”. In reverse conclusion it means that the Sri Lankan state considers the Sinhala people as its primary “People.” The Constitution thus leaves Tamils and other target peoples without protection.
 - When a State is “manifestly failing” to protect its own populations from these crimes, then the international community has a responsibility to intervene collectively in a timely manner. R2P imposes three responsibilities on the international community in these cases:
 1. the responsibility to prevent
 2. the responsibility to react
 3. the responsibility to rebuild, especially after a military invasion.
 - The international community has already failed to ‘prevent’ Sri Lanka’s military destruction of the de facto state of Tamil Eelam, and its associated crimes. A referendum would arguably lay the peaceful and democratic foundations for stability and security in the region, and thus ‘prevent’ future crimes by removing the root causes of conflict.
 - Any appeal to the General Assembly and the Security Council could still rely on the ‘responsibility to rebuild’ the de facto state of Tamil Eelam.
 - An international criminal tribunal would ‘react to’ crimes which have been committed and are ongoing.