Evaluate the effectiveness of legal and non legal responses in achieving world order in regard to the principle of responsibility to protect’ (2013)

World order refers to the interactions and relationships between state and non-state actors, with the aim of achieving peace and security on domestic, regional and international levels, through legal, political and economic frameworks. One important part of world order is the international set of principles that operates to prevent genocide, war crimes, crimes against humanity and ethnic cleansing, known as the ‘Responsibility to Protect’ (R2P). Legal and non-legal responses are essential to promoting the right to exercise the R2P, including those by the United Nations Security Council (UNSC), the International Criminal Court (ICC), ad-hoc tribunals, non-government organisations (NGOs) as well as media groups who have had limited effectiveness.

The R2P is a framework that was originated as a direct result of the international community’s failure to intervene during the genocide in Rwanda and former Yugoslavia, stipulated in 138-139 Outcome Document of 2005 UN World Summit where it was unanimously accepted that though the states carry primary responsibility for the protection of populations, the international community has a responsibility to encourage and assist States in fulfilling this responsibility. While R2P is not itself a legally binding framework, as a principle R2P is enshrined in Article 1 of the Genocide Convention which holds States responsible in preventing and punishing the crime of genocide and embodied in the principle of ‘sovereignty as responsibility’, enabling the two contradictory aspects of the UN Charter – the non-interference principle in relation to state sovereignty(Article 2(7) and the obligation on UN members to act against human rights violations— to be reconciled.

The body responsible for authorising military and non-military intervention for human protection purposes under the R2P is the UNSC, which is a legal measure that has had limited effectiveness. The UNSC has the responsibility of verifying facts or conditions for grounds that may support military intervention under s42, as well as non-military responses under Section 41 of its Chapter VII powers. However, its effectiveness is generally limited due to the veto power afforded to its five permanent members who obstruct the passage of resolutions even when there is otherwise majority support. Thus the UNSC has often been unable to carry out meaningful or significant action, since Russia and China have repeatedly used their role on the Perm Five to hinder such action. For example, in 2011, both countries vetoed resolutions threatening sanctions against the use of chemical weapons by the Assad regime, which warranted international attention as the state was harming its own citizens, actions which might have curbed the conflict in its early stages, the veto resulting in not only the failure of the R2P, but also a humanitarian crisis faced by Syria’s population, allowing it to escalate to a full-blown civil war, killing over 465,000 civilians and over 13.5 million Syrians in dire need of humanitarian assistance.

Such ineffectiveness has been shown to have devastating consequences, whereby the SC’s refusal to take action even with the knowledge that government officials were planning a genocide In Rwanda in 1994 resulted in the death of approximately 2 million Tutsis in the course of 100 days, destabilising the entire Great Lakes region and exemplifying the ineffectiveness of the SC as not even the serious breach of security and human rights spurred them into action. Thus such unresponsiveness, with the international community allowing such conflicts to continue, is a significant barrier to world order.

However, the UNSC can effectively enact the R2P when cooperation has been reached between its permanent members. This occurred in 2011 following widespread attacks against the civilian population by the Libyan regime, unanimously adopting resolution 1970, explicitly referencing the responsibility to protect. They effectively reacted to "the gross violation of human rights", imposing international sanctions and referring the situation to the ICC in their role of international prosecution. Furthermore in resolution 1973 (March 2011), the SC demanded an end to ongoing attacks against civilians, which it said might constitute “crimes against humanity”, authorising NATO planes to strike Qadhafi’s forces which ultimately effectively ended the conflict and resulted in a regime change. However, the completely destabilised Libya that has been left means that the R2P’s rebuilding role became very much necessary. Indeed the concern of human rights situations being worsened by foreign intervention was also raised in Kosovo (1999) where there has been debate over whether the rights abuses by Belgrade authorities justified outside involvement, but nonetheless, the UNSC effectively prevented a potentially bloody civil war. Thus provided there is
Consensus between the 5 permanent members, the SC can be highly effective mechanism in reaching a legal response to necessitated by the R2P.

International Criminal Court (ICC) prosecutes individuals for international crimes mentioned by the R2P, but its effectiveness has also been limited, having secured 3 convictions since 2002, and retrospectively trying defendants. This is because while its jurisdiction applies to parties to the Rome Statute 2002, this authority has been challenged by the state sovereignty of signatories that prevent the responsibility of effective international prosecution to be carried out. For example, South Africa, a party to the Rome Statute, did not implement the arrest warrants for Sudanese president Al-Bashir, the incumbent head of state who is responsible for perpetrating the Darfur genocide, claiming the ICC to be “anti-African.” Whilst the ICC can obtain jurisdiction by way of UNSC referral, thought not of non-signatory countries, the P5 may not refer cases outside self-interest, such as in 2014, where China and Russia vetoed investigation into Syrian war crime perpetrators, effectively blocking any trial in the ICC and exemplifying its ineffectiveness in addressing the R2P.

As such, ad hoc tribunals convened by the UN, are a much more effective international reaction under the R2P, as their jurisdiction is not exclusive but concurrent with domestic courts and has primacy over sovereign states’ national courts. Furthermore, their non-permanent nature allows them to deal with specific atrocities outlined by Nuremberg Principles. For example, in 2003, the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted 161 individuals for crimes against humanity, setting precedents for the ICTR (Rwanda) and ICTC (Cambodia), altogether trying 600 individuals and convicting 400. In terms of number of convictions and costs of operation, ad hoc tribunals are more effective legal resolution measures, thus conveying that it may be necessary for all judicial authorities to be involved and follow a similar jurisdiction so as to not be impeded by non-compliance to effectively apply the R2P.

Additionally, non-government organisations (NGOs) are organisations independent from state control, which promote universal human rights and raise awareness of threats to world order that should be addressed by the R2P. Indeed the project Responsibility to Protect – Engaging Civil Society (R2PCS) aims to build support for R2P through the engagement of civil society and educating other NGOs about R2P principles and building their advocacy skills to not only effectively lobby governments to respond promptly and appropriately to emerging humanitarian crises but also so they can develop strategies to implement R2P in country specific situations. Furthermore, organisations such as Amnesty International transcend national borders to deliver care and medical assistance to those affected by conflict, often providing cooperative, specific and global responses to key humanitarian issues as they are not affiliated with government agendas and as such, are able to play an effective, transnational role in enacting the R2P. That being said, NGOs lack the power to enforce world order due to their role as primarily spreading awareness.

The media is essential in raising awareness of conflict and rights abuses, with the ‘CNN effect’ pressuring governments to respond to threats to world order. Despite concerns that more powerful media outlets may have an undue influence on world opinion, they nonetheless raise awareness of world order issues by enabling the widespread dissemination of information on human rights abuses globally and thus placing pressure on governments to uphold or negotiate world order agreements. As such, it can be used to pressure non-complying countries into allowing the exercising of R2P, with the UN Secretary General penning an article in the New York Times and the NGO Human Rights Watch publicly condemning Russia and China’s veto actions; drawing public attention though legally neither country had obligation to respond or comply due to state sovereignty. However, western media coverage of the Syrian Civil War that publicised the war crimes of the Assad regime in their use of chemical weapons, did contribute in 2014 where US-coalition invoked R2P to assist Yazidi refugees with aid and launching a counter offensive against insurgents, and demonstrating the effective use of media in influencing the international community to spur actions that consolidate world order.

Legal and non-legal measures thus are both essential to implementing the R2P, even though some have only limited effectiveness, particularly due to the limits to UNSC responses and lack of enforcement held by media and NGOs, but more generally due to the inherent tension between multilateralism and national self-interest.