The Responsibility to Protect (R2P) Doctrine

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Looking for the effective measures to prevent systematic violations of human rights and core crimes of international law, the International Commission on Intervention and State Sovereignty in December 2001 released the report "Responsibility to protect". It embraces three specific responsibilities: a) to prevent - to address both the root causes and direct causes of internal conflict and other crises putting populations at risk; b) to react – to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; c) to rebuild – to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert. Taking into consideration the core foundations of international community, its origin of state sovereignty, the principle of non-intervention, and the prohibition of (even) threat and/or using force in mutual relationship, on one side, but also the general idea of obligation to protect human rights, on the other – question arises: is there a base of justification for one (or more) state(s) to use force against other state for the humanitarian purpose, at all?

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'Never again' we said after the Holocaust. And after the Cambodian genocide in the 1970s. And then again after the Rwanda genocide in 1994. And then, just a year later, after the Srebrenica massacre in Bosnia. And now we're asking ourselves, in the face of more mass killing and dying in Darfur, whether we really are capable, as an international community, of stopping nation-states murdering their own people. How many more times will we look back wondering, with varying degrees of incomprehension, horror, anger and shame, how we could have let it all happen? (Garreth Evans, 2004)

1. Introduction

The development of human rights after the 2nd World War and the adoption of many international documents,[4] as well as the frequent examples of their violations brought to the idea of practicing humanitarian interventions.[5] Such intervention could be defined as "the threat or use of force across state borders by a state(s) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state whose territory force is applied." (Holzgrefe, 2003, p. 18)

Taking into account humanitarian component of such action, its application and practice seems to be considered as logic and human idea. But, its implementation is very complicated and controversial in contemporary international relations.

Any type of external military intervention on the territory of another state (even) for the purpose of human protection is always opposed to the state sovereignty. It has been regarded as the pivotal structural paradigm of international law (Payandeh, 2010 p. 470) and is never to be taken lightly. It is more than just a functional principle of international relations; for many states and nations, it is also recognition of their equal worth and dignity, a protection of their identity and national freedom.

Protecting this fundamental right of each state Charter of the United Nations and many related documents prohibited states from threatening or using force, except in self-defence or pursuant to Security Council authorization. Central concepts of international law (sovereignty, territorial integrity, non-intervention, self-defence, etc.) rely on the exclusive or dominant role of the state. (Schreuer, 1993, p. 448)

At the same time, the concept of human rights has been developing since the end of the 2nd World War. The importance of its protection and further development in the contemporary world, as well as the opinion that the treatment and the status of human rights within the state border does not exclude interference from abroad, raises the question of mutual relationship between human rights protection, on one side, and the protection of state sovereignty, on the other. In Stahn's opinion, sovereignty never meant that a state could act in its territory regardless of the effect of its acts on another state. After the end of the 2nd World War the adoption of the UN Charter and the rise of key human rights instruments eroded the classic equation of sovereignty; it contained important references to human rights protection. (Stahn, 2007, 111-112)

Taking into consideration the core foundations of international community, its origin of state sovereignty and the prohibition of (even) threat and/or use of force in mutual relationship, on one side, but also the general idea of obligation to protect human rights, on the other – question arises: how to reconcile these two seemingly uncompromising protections? Furthermore, what is (if any) the base of justification for one (or more) state(s) to intervene on the territory of other state or even to use force against it for the humanitarian purposes only?

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[4] For example: The Universal Declaration of Human Rights (1948), The Convention on the Prevention and Punishment of the Crime of Genocide (1948), The International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights (1966), The Convention on the Suppression and Punishment of the Crime of Apartheid (1973), The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), regional documents as: The European Convention for the Protection of Human Rights and Fundamental Freedoms (1954), African Charter on Human and People's Rights (1981), American Convention on Human Rights (1969), etc.
[5] Although it is believed to be a rather recent phenomenon, the legal doctrine of humanitarian intervention traces roots back to the work of Hugo Grotius.

Those who support the idea of humanitarian intervention emphasize that there are situations that could justify foreign intervention, despite the sovereignty claim. These cases are grave breaches of human rights, such as genocide, war crimes, crimes against humanity, cases of ethnic cleansing etc. Perpetrators of such crimes should no longer be able to hide behind the shield of state sovereignty. In Badescu's opinion (Badescu, 2011, p. 2), humanitarian intervention simply signals to its proponents the imperative of action in the face of mass violence and is intertwined with a perception of sovereignty as conditional to a state's respect for the human rights of its citizens. On the other side, to its opponents – it is an oxymoron that serves as a pretext for selective military intervention without legal sanctioning, and an exercise that only achieves uncertain results.

2. The development of the responsibility to protect (R2P) doctrine

At the end of the 20th century, the attitude of necessity of making clear postulates of humanitarian intervention arose. In his Millennium Report of 2000, then Secretary-General Kofi Annan, recalling the failures of the Security Council to act in a decisive manner in Rwanda and the former Yugoslavia, put forward a challenge to members States: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?" (Millennium report, 2000)

Some particular cases were set as trigger examples for the responsibility to protect emergence. Rwanda in 1994 represents the full horror of inaction and refusal of the Security Council to take necessary steps to avoid genocide. Somalia in 1992/93 is considered to be another fail of the UN, as well as Srebrenica in 1995, when the tragic fail of the UN to prevent genocide raised serious debate about intervention for human protection purposes.

Opposite to these inefficiencies of international community the case of humanitarian intervention in Kosovo in 1999 raised major questions about the legitimacy of military intervention in a sovereign state, concentrating attention on all the other sides of the argument. Is it sure that all peaceful means of resolving the conflict fully were explored? Did the intervention receive appropriate authority? How could bypassing and marginalization of the UN system, by "a coalition of the willing" acting without Security Council approval, possibly be justified? Or – against all this – was it the case that had the NATO not intervened, Kosovo would have been at best the site of destabilizing civil war, and at worst the occasion for "another Srebrenica"? (Responsibility to Protect Report, 2001, 1.1.-1.3.)

It was considered essentially to clarify the behaviours of state which could justify an intervention from abroad, on one side, and the modalities of intervention itself, on the other. In accordance to previous experiences, justification for the intervention could be found in the situations of violations of human rights (Sigman, 2013, p. 6) after the diplomatic efforts had failed (Luck, 2013). Buchanan (2003, 131) goes further in justifying even unilateral[6] humanitarian intervention. Basically, his argument states that observance of the law should not and does not hinder fidelity to basic moral values. Following this line of reasoning, Buchanan lists three principles for which unilateral humanitarian intervention is justified; moral necessity, protection of human rights, and moral improvement to the legal system (Buchanan, 2003, p. 131).

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[6] There are two types of humanitarian intervention; authorized, that which is sanction by the UN, and unauthorized (or unilateral) which is not sanctioned by the UN (Goodman 2006, p. 107; Sigman, 2013, p. 2)

On the other side, in Goodman's opinion, it is difficult to escape the conclusion that international law forbids the unilateral use of force to rescue victims of a humanitarian catastrophe. (Goodman, 2006, p. 111) Nzelibe is asking a question: was the cause for the military intervention ever just because of the abuse of human rights, or did those seeking secession manipulate external intervention to advance their political purposes? The problem is that most contemporary atrocities take place in the context of civil wars or rebellions in which rebel leaders are usually pursuing independent political objectives that might be more valuable to them than the lives of their followers. Furthermore, third parties might use intervention as a pretext to start wars for reasons unrelated to preventing atrocities. (Nzelibe, 2009, p. 1172; 1178)

Even with the fear that all of such principles for justification can be abused (Sigman, 2013, p. 9), ideas like these have encouraged the development of the new idea – the responsibility to protect civilians in the light of specific extension of the humanitarian intervention.

Looking for effective measures to prevent systematic violations of human rights and to make a stronger responsibility for states and international community, the International Commission on Intervention and State Sovereignty (hereinafter: ICISS) in December 2001 released the report "Responsibility to protect", which embraces the "new idea" of state sovereignty. At the core of the concept lies a two-dimensional understanding of responsibility: a) the primary role of the state itself; its responsibility to protect its citizens from atrocities, and b) the responsibility of the international community to prevent and react to massive human rights violations, when the state is unwilling or unable to perform this mission.

During the consultations that helped shape the Responsibility to Protect Report, the ICISS have found broad willingness to accept the idea that the responsibility to protect its people from killing and other grave harm was the most basic and fundamental of all the responsibilities that sovereignty imposes – and that if a state cannot or will not protect its people from such harm, then coercive intervention for human protection purposes, including ultimately military intervention, by others in the international community may be warranted in extreme cases. (Responsibility to Protect Report, 2001, 8.2.)

The consequences of the failure by States to protect their populations were evident in many unfortunate occasions in the brutal legacy of the 20th century.

Thus, contrary to popular misconception, the ICISS did not find widespread support for an unlimited, absolute view of sovereignty. (Badescu, 2011, p. 38) Instead, both developed and developing countries agreed that sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic human rights of all the people within the state. (Responsibility to Protect Report, 2001, 1.35.) In Payandeh's opinion, the concept of responsibility to protect doctrine tries to cut the Gordian knot of the tension between sovereignty and human rights by embedding the notion of human rights in the idea of state sovereignty. Under this premise, intervention within a state that fails to protect its citizens from massive human rights violations does not constitute an intrusion into that state's sovereignty, but rather appears as the realization of a responsibility which is shared by the state and by the international community. (Payandeh, 2010, p. 471)

In Stahn's opinion, many of the elements of concept of responsibility to protect are not novel, but rooted in a broader ideological or legal tradition; and it appears to be this link that allowed the concept to gain some acceptance in recent practice. (Stahn, 2007, p. 115) The experience and the

aftermath of some recent humanitarian fails, as well as the controversy of intervention or perhaps its absence in the situations that called for it have provided an indication that the core of international relations at the beginning of the 21st century needed to be comprehensively reassessed.

Furthermore, ICISS have found that the expression "humanitarian intervention" did not help to carry the debate forward and believed that the language of past debates arguing for or against a "right to intervene" by one state on the territory of another is outdated and unhelpful. So, they prefer to change the term into a "responsibility to protect". (Responsibility to Protect Report, 2001, 2.4.) In Stahn's opinion ICISS did nothing more than used a rhetorical trick; just flipped the coin, shifting the emphasis from a politically and legally undesirable right to intervene for humanitarian purposes to the less confrontational idea of a responsibility to protect. (Stahn, 2007, p. 102)

The ICISS emphasised an additional benefit from the proposed change in terminology – it is also a change in perspective. (Responsibility to Protect Report, 2001, 2.29) In Stahn's opinion, responsibility to protect addresses the dilemma of intervention from the perspective of the needs of those who seek or need support, rather than from the interests and perspectives of those who carry out such action. (Stahn, 2007, p. 103)

The ICISS sought to bridge the gap between intervention and sovereignty by introducing a complementary concept of responsibility, under which it is shared by the state and international community. The responsibility to protect relies on the axiom that sovereignty exists essentially for the purpose of protecting people and it is conceived of as the principal guardian of the rights of its people. However, it loses this status of primacy in cases where it is unable or unwilling to ensure this protection; that it becomes the responsibility of the international community to act in its place. (Stahn, 2007, p. 102, 114)

Yet, it is far from clear how the international community – represented through the United Nations, regional organizations, and individual states or groups of states – should act and is allowed to act. As it has been emphasized in the ICISS Report – any new approach to intervention on human protection grounds needs to meet several basic objectives: a) to establish clearer rules, procedures and criteria for determining whether, when and how to intervene; b) to establish the legitimacy of military intervention when necessary and after all other approaches have failed; c) to ensure that military intervention, when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and d) to help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace. (Responsibility to Protect Report, 2001, 2.3.)

3. The concept of the responsibility to protect doctrine – prevention, reaction and rebuilding

The responsibility to protect concept embraces three specific responsibilities to: a) prevent, b) react and c) rebuild. In this way, the ICISS developed a multiphase conception of responsibility and expanded the conceptual parameters of the notion of intervention, declaring that an effective response to mass atrocities requires not only reaction, but further, lasting engagement to prevent conflict and rebuild the society after the event. (Stahn, 2007, p. 102)

3.1. Responsibility to prevent

As Secretary-General concluded in his 2013 Report the range of risk factors demonstrates that atrocity crimes are processes and no single events. An environment that is permissive to such crimes does not develop overnight; the process can take years or even decades. The Holocaust did not originate in the gas chambers and the genocide in Rwanda did not start with massacres in churches. Those genocides started with hate speech, discrimination and marginalization. While the processes differed, in each case, a number of steps were taken that, intentionally or unintentionally, facilitated the perpetration of those crimes. There are numerous entry points for action that can stop the process and prevent atrocity crimes. (Secretary-General Report, 2013, par. 30)

As mentioned before, responsibility to prevent is first and foremost the responsibility of state, but not exclusively. The common fact is the failure of prevention could have a great impact on regional and/or international peace and security. Therefore, a strong support from the international community is needed, and in many cases may be indispensable. Such support may take many forms. It may come in the form of development assistance and other efforts to help address the root cause of potential conflict; or efforts to provide support for local initiatives to advance good governance, human rights, or the rule of law; or good offices missions, mediation efforts and other efforts to promote dialogue or reconciliation. (Responsibility to Protect Report, 2001, 3.3) In 2007, Secretary-General has welcomed the agreement of the Security Council to his intention to appoint Edward Luck as his new Special Adviser on the Responsibility to Protect. (UN Doc, S/2007/721) His primary roles will be conceptual development and consensus-building, in recognition of the fledgling nature of the international agreement on the responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity.

As Secretary-General concluded in his 2013 Report, there are different efforts that could be taken inside the society as a method of atrocity prevention. For example, human rights institutions always play an important role in atrocity prevention by promoting and monitoring the implementation of international human rights standards and domestic law. Inside this framework, constitutional protections, when upheld, can contribute to creating a society based on non-discrimination by recognizing society diversity and granting explicit protection to different populations, including minorities. In this part, education is one of the most important tasks of prevention and promotion of tolerance and an understanding of the value of diversity. Education systems should reflect the ethnic, national and cultural diversity of societies, set an example of inclusiveness in their policies, and prescribe textbooks that promote inclusiveness and acceptance. Furthermore, national and international civil society organizations have a range of tools at their disposal to prevent or respond to crimes and violations relating to responsibility to protect. The public commitment of states to this doctrine provides civil society organizations with a strong basis to hold national governments and the international community to account when they are manifestly failing to protect populations. The media is further important element of civil society. The independence and plurality of the media should be encouraged, including the right of national, racial, religious and ethnic minorities to have their own media. Finally, commemoration acts and memorials to past atrocities could also be seen as preventive measure. There are many countries that have taken preventive actions and institutionalized the memory of past atrocity crimes by establishing memorials or organizing remembrance ceremonies. The empowerment of victims' associations ensures that those who were most affected by atrocity crimes remain part of the national conscience as their respective countries move forward. (Secretary-General Report, 2013, par. 35; 45; 50; 54; 61; 64)

3.2. Responsibility to react

When preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then coercive measures by other members of the broader community of states may be required. In the light of the risks involved, coercive measures have never been the favoured tools for implementing the responsibility to protect. Such coercive measures of reaction may include political, economic or judicial measures, and in extreme cases they may also include military action.

Taking into account the principle of non-intervention, the question arise: what situations could be described as extreme cases to justify the use of force? Decisions to use force or apply other coercive measures are never to be taken lightly. Such decisions require careful assessment of the situation, a review of the likely consequences of action and inaction and an assessment of the most effective and appropriate strategy for achieving collective goal. Assessment must be timely and should facilitate, and never inhibit, effective responses. There is no template for decision-making in such situations, nor is one desirable as each situation is different. Instead – Secretary-General concluded – the international community should learn from its experience to date and strive to improve on implementation, using all available tools. (Secretary-General Report, 2012, par. 57)

To make the decision easier as much as possible the ICISS Report proposed six criteria for military intervention: right authority, just cause, right intention, last resort, proportional means and reasonable prospect.

3.2.1. Right authority

One of the most important, but also the most controversial question is one about the authorization for the use of force. The Security Council has the "primary", but not the sole and/or exclusive authority to deal with military intervention. Its authorization in all cases must be sought prior to any military intervention being carried out. Security Council should deal promptly with any request for authority to intervene in practicing responsibility to protect. In this matter it should seek for adequate verification[7] of facts that might support a military intervention. (Responsibility to Protect Report, 2001, 6.14)

But, what if the Security Council fails to act, as it had happened before? Even in instances when the Security Council does consider authorizing intervention, it is usually facing problems of the slowness of its decision-making process, and the use of veto by its five permanent members, which avers intervention from taking place within the right time frame to save lives. The Responsibility to Protect Report suggests the permanent members of the Security Council refrain from exercising their veto when their vital interests are not at stake, and when a resolution in favour of military intervention has majority support. (Badescu, 2011, p. 50, 71)

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[7] The ICISS Report proposed The International Committee of the Red Cross (ICRC) to make a report about the gravity of the situation and inability of state to manage it satisfactorily, but because of its basic principles of independence from political decisions and impartiality – ICRC is not a perfect candidate for "the job". Nevertheless, there are many United Nations bodies that could provide credible information. For example, UN Secretary-General could obtain accurate information and a fair assessment of particular situation, and also may bring to the attention of the Security Council any matter which in his opinion may threaten the international peace and security. (Responsibility to Protect Report, 2001, 4.29-4.30)

In Stahn's opinion, the ICISS Report managed to gather broad support because it avoided taking a final stance on the question of the legality/legitimacy of unauthorized interventions. The ICISS made it clear that Security Council should be the first port of call on any matter relating to military intervention. But, in the situations where Security Council fails to act, ICISS Report did not categorically exclude the possibility that the responsibility to protect might ultimately be provide by others – the UN General Assembly, regional organizations, or coalition of states. (Stahn, 2007, p. 104)

First alternative is to seek support for military action from the UN General Assembly meeting in an Emergency Special Session established by the "Uniting for Peace" procedures. It was developed in 1950 for the situation(s) when the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security. Although the General Assembly lacks the power to order that action should be taken, its decision in favour of such action, especially if supported by an overwhelming majority of member states, would provide a high degree of legitimacy for an intervention which subsequently took place, and encourage the Security Council to rethink its position. (Responsibility to Protect Report, 2001, 6.29-6.30)

A further possibility is to pursue collective intervention by regional or sub-regional organizations; an action recognized by the UN Charter. In strict terms, the letter of the Charter requires such action to be subjected to prior authorization from the Security Council. Interventions by ad hoc coalitions or individual states without the approval of the Security Council or the General Assembly, or a regional or sub-regional grouping of which the target state is a member, do not find wide favour. (Responsibility to Protect Report, 2001, 6.31, 6.35-6.36)

In his 2011 Report, the Secretary-General emphasized the role and the significance of the regional and sub-regional bodies, such as the Economic Community of West African States (ECOWAS), the African Union and the Organization for Security and Cooperation in Europe (OSCE), in developing the principles of protection and the practical tools for achieving them. The UN followed their lead. In the time the Report was released, it was concluded that since 2009 the UN have applied responsibility to protect principles in our strategies for addressing threats to populations in about a dozen specific situations. In every case, regional and/or sub-regional arrangements have made important contributions, often as full partners with the UN. Such arrangements can encourage governments to recognize their obligations under relevant international conventions and to identify and resolve sources of friction within their societies. There are many such examples of neighbours helping neighbours. (Secretary-General Report, 2011, par. 4; 17)

In Badescu's opinion, while outlining the significant implications of inaction, the ICISS report emphasized the importance of having Council authorization, and of states always requesting it before acting. But, the record of state practice shows that the international community no longer sees the approval of the Security Council as an absolute must. (Badescu, 2011, p. 69-70) In Stahn's opinion, the ICISS left open whether and under what circumstances an intervention not authorized by the Security Council would be valid in legal norms. (Stahn, 2007, p. 104) Interventions since the 1990s also suggest that states seem to respect "legitimacy ladder" when considering interventions, and climb the necessary stairs accordingly; the Security Council is the most desirable form of authorization, therefore located at the top of the legitimacy hierarchy, followed by regional organizations as the second-best authoritative mechanism The R2P report's recommendations confirm the existence of an imaginary legitimacy ladder for intervention.

3.2.2. Just cause

What are the situations that could justify military intervention for human protection purposes? In accordance to the ICISS Report these situations are described as prevention or suppression of large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale "ethnic cleansing," actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. ICISS made no attempt to quantify "large scale": opinions may differ in some marginal cases (for example, where a number of small scale incidents may build cumulatively into large scale atrocity), but most will not in practice generate major disagreement. Military action can be legitimate as an anticipatory measure in response to clear evidence of likely large scale killing. Without this possibility of anticipatory action, the international community would be placed in the morally untenable position of being required to wait until genocide begins, before being able to take action to stop it.

ICISS Report also defines basic elements of justifications as: a) actions defined by the framework of the 1948 Genocide Convention that involve large scale threatened or actual loss of life; b) the threat or occurrence of large scale loss of life, whether the product of genocidal intent or not, and whether or not involving state action; c) different manifestations of „ethnic cleansing", including the systematic killing of members of a particular group in order to diminish or eliminate their presence in a particular area; the systematic physical removal of members of a particular group from a particular geographical area; acts of terror designed to force people to flee; and the systematic rape for political purposes of women of a particular group (either as another form of terrorism, or as a means of changing the ethnic composition of that group); d) crimes against humanity and violations of the laws of war, as defined in the 1949 Geneva Conventions and 1977 Additional Protocols and elsewhere, which involve large scale killing or ethnic cleansing; e) situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war; and f) overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened. (Responsibility to Protect Report, 2001, 4.19-4.20)

3.2.3. Right intention

The primary purpose of the intervention must be to halt or avert human suffering. Any use of military force that aims from the outset, for example, for the alteration of borders or the advancement of a particular combatant group's claim to self-determination, cannot be justified. Overthrow of regimes is not, as such, a legitimate objective, although disabling that regime's capacity to harm its own people may be essential to discharging the mandate of protection – and what is necessary to achieve that disabling will vary from case to case. Occupation of territory may not be able to be avoided, but it should not be an objective as such, and there should be a clear commitment from the outset to returning the territory to its sovereign owner at the conclusion of hostilities or, if that is not possible, administering it on an interim basis under UN auspices. One way of helping ensure that the "right intention" criterion is satisfied is to have military intervention always take place on a collective or multilateral rather than single country basis. Another is to look to whether, and to what extent, the intervention is actually supported by the people for whose

benefit the intervention is intended, as well whether the opinion of other countries in the region has been taken into account and is supportive. (Responsibility to Protect Report, 2001, 4.33-4.34)

In his 2011 Report the Secretary-General elaborated on the significance of neighbouring states in decision-making. Politically, it has become increasingly evident that the views of neighbouring States and regional bodies may be taken into account by members of the Security Council when determining which course of action to take in particular situations. States and civil society groups that are closer to the events on the ground may have access to more detailed information, may have a more nuanced understanding of the history and culture, may be more directly affected by the consequences of action taken or not taken, and may be critical to the implementation of decisions taken in New York. (Secretary-General Report, 2011, par. 6) Without sustained public understanding and support, the responsibility to protect will remain unfinished business. (Secretary-General Report, 2011, par. 16)

3.2.4. Last resort

The primary focus should be on assisting the cessation of violence through mediation and other tools and the protection of people through such measures as the dispatch of humanitarian, human rights and police missions. Force, if it needs to be used, should be deployed as a last resort. (UN High-level panel, 2004, 201) Every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored. The responsibility to react – with military coercion – can only be justified when the responsibility to prevent has been fully discharged. This does not necessarily mean that every such option must literally have been tried and failed: often there will simply not be the time for that process to work itself out. But it does mean that there must be reasonable grounds for believing that, in all the circumstances, if the measure had been attempted it would not have succeeded. (Responsibility to Protect Report, 2001, 4.37)

3.2.5. Proportional means

The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question. The means have to be commensurate with the ends, and in line with the magnitude of the original provocation. The effect on the political system of the country targeted should be limited, again, to what is strictly necessary to accomplish the purpose of the intervention. (Responsibility to Protect Report, 2001, 4.39)

3.2.6. Reasonable prospect

Military action can only be justified if it stands a reasonable chance of success, that is, halting or averting the atrocities or suffering that triggered the intervention in the first place. Military intervention is not justified if actual protection cannot be achieved, or if the consequences of embarking upon the intervention are likely to be worse than if there is no action at all. In particular, a military action for limited human protection purposes cannot be justified if in the process it triggers a larger conflict. It will be the case that some human beings simply cannot be rescued except at unacceptable cost – perhaps of a larger regional conflagration, involving major military

powers. In such cases, however painful the reality, coercive military action will be no longer justified. (Responsibility to Protect Report, 2001, 4.41)

3.3. Responsibility to rebuild

The responsibility to rebuild means that if military intervention action is taken – there should be a genuine commitment of helping to (re)build a durable peace, and promoting good governance and sustainable development. One of the essential functions of an intervention force is to provide basic security and protection for all members of a population, regardless of ethnic origin, religion or relation to the previous source of power in the territory. In post-conflict situations, revenge killings and even "reverse ethnic cleansing" frequently occur as groups who were victimized attack groups associated with their former oppressors.

In this part, education is one of the most important tasks in the "rebuilding issue". It can promote tolerance and an understanding of the value of diversity. There is also a practice of commemoration acts and memorials to past atrocity crimes as a significant elements of reconstruction and rebuilding the society (Secretary-General Report, 2013, par. 63; 64)

Furthermore, the binding obligation under international customary law to criminalize genocide, war crimes and crimes against humanity, to investigate and to prosecute perpetrators is significant factor in the rebuilding process. Ensuring accountability for human rights violations and past atrocity crimes contributes not only to their prevention but also builds the credibility of institutions. The legal framework for such accountability is provided through the ratification, domestication and implementation of relevant international legal instruments. (Secretary-General Report, 2013, par. 40)

Ensuring sustainable reconstruction and rehabilitation will involve the commitment of sufficient funds and resources and close cooperation with local people, and may mean staying in the country for some period of time after the initial purposes of the intervention have been accomplished. Too often in the past the responsibility to rebuild has been insufficiently recognized, the exit of the interveners has been poorly managed, the commitment to help with reconstruction has been inadequate, and countries have found themselves at the end of the day still wrestling with the underlying problems that produced the original intervention action. (Responsibility to Protect Report, 2001, 5.2) A final peace building responsibility of any military intervention should be as far as possible to encourage economic growth, the recreation of markets and sustainable development. The issues are extremely important, as economic growth not only has law and order implications but is vital to the overall recovery of the country concerned. (Responsibility to Protect Report, 2001, 5.19)

4. The R2P further development and observations after the ICISS Report was released

After the ICISS Report was released, the debate about the concept of responsibility to protect took a new turn in the High-Level Panel Report from 2004, where it was directly related to institutional reform of the UN. The High-level panel saw the idea of responsibility to protect as a means to strengthen the collective security system under the UN Charter. (Stahn, 2007, 105-107)

In his 2005 report, contrary to the High-Level Panel which discusses the responsibility to protect in the context of the use of force, the UN Secretary-General returns to the broader understanding of the ICISS Report by placing his assessment of the responsibility to protect in context with the principles of human dignity and the rule of law. (Payandeh, 2010, p. 475) He emphasized the basic points from the ICISS Report: the responsibility to protect lies with each individual State - its primary duty is to protect its population. But, if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the well-being of civilian. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the UN Charter, including enforcement action, if so required. (Secretary General Report, 2004, par. 135) With regard to the use of force, the Secretary-General also focuses on the Security Council and does not discuss the possibility of humanitarian interventions without authorization of the Security Council. He pointed out that the task is not to find alternatives to the Security Council as a source of authority but to make it work better. (Secretary-General Report, 2005, par. 125-126)

In Stahn's opinion this Report did not expressly rule out the possibility of unilateral action in any circumstances. Nevertheless, the general focus of the report on the Security Council and the silence of the Secretary-General on alternative means of carrying out interventions for the purposes of human protection indicated a general reluctance to accept military action without the Security Council authorization. (Stahn, 2007, p. 107)

In the World Summit Outcome document from 2005 different conception of the notion of the responsibility to protect finally became apparent. In Stahn's opinion, the final text of the Outcome Document is a compromise solution that seeks to bridge the different position. States avoided reducing the idea of responsibility to protect to a purely moral concept. However, paragraphs 138 and 139 represent a curious mixture of political and legal considerations, which reflects the continuing division and confusion about the meaning of the concept. (Stahn, 2007, p. 108) As Secretary-General concluded – the responsibility to protect is a universal principle. But, its implementation should respect institutional and cultural differences from region to region. Each region will deal with this principle at its own pace and in its own way. (Secretary-General Report, 2011, par. 8)

The clearest commitment to the concept of the responsibility to protect is contained in par. 138, reflecting the traditional bond of duty between the host state and its citizens (Stahn, 2007, p. 108): Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[8] This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. States accept that responsibility and are willing to act in accordance with it. The international community should, as appropriate, encourage and help states to exercise this responsibility and support the United Nations in establishing an early warning capability. (The Outcome Document, 2005, par. 138)

In his 2010 report on "Early warning, assessment and the responsibility to protect" Secretary-General called for early engagement and a balanced and dynamic understanding of the evolving conditions on the ground in each situation. In that regard, there should be natural synergies between the United Nations and its regional and sub-regional partners when it comes to gathering and

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[8] While the ICISS Report applied to "large scale ethnic cleansing"or "large scale loss of life" the Outcome Document applies to genocide, crimes against humanity, ethnic cleansing and war crimes.

sharing information, comparing notes, and exchanging assessments of situations of common concern.

At every stage of the implementation process, from identification and assessment to policy formulation and action, international actors need to act responsibly. Faulty or ill-informed analysis at an early stage could set international decision makers on the wrong path, leading to overreaction or under-reaction. A pattern of false alarms or, worse, selective reporting could also damage the credibility of the United Nations. It is therefore important that early warning and assessment be conducted fairly, prudently and professionally, without political interference or double standards. (Secretary-General, 2012, par. 51)

Furthermore, national civil society organizations may play an important role by providing grass-roots early warning. New technologies allow individuals to provide live information that can help individuals to remove themselves from harm's way. This was the case, for example, in Libya and Kenya. (Secretary-General Report, 2012, par. 46)

The passage on the responsibility of the international community is framed in more cautious terms and demonstrates significant restraint with regard to the responsibility of the international community. (Stahn, 2007, p. 108; Payandeh, 2010, 476) Par. 139 determines that States are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. States stress the need for the General Assembly to continue consideration of the responsibility to protect populations from enumerated crimes, bearing in mind the principles of the Charter and international law. They also intend to commit themselves, as necessary and appropriate, to helping States build capacity to protect their populations from these crimes and to assisting those which are under stress before crises and conflicts break out. (The Outcome Document, 2005, par. 139) In this regard, term "populations" refers not only to citizens or civilians, but to all populations within State borders. (Secretary-General Report, 2013, par. 5)

In Stahn's opinion, the Outcome Document assumes a more reserved stance vis-à-vis responsibility to take collective action through the Security Council under Chapter VII. The second sentence of par. 139 places this idea under a double qualifier. First, the heads of state and government merely reaffirm their preparedness to take such action. This language points toward a voluntary, rather than a mandatory engagement. Moreover, states commit themselves to act only on a case-by-case basis through the Security Council, which again stands in contrast to the assumption of a systematic duty. More fundamentally, the text of the Outcome Document does not firmly state that United Nations collective security action constitutes the only option for responding to mass atrocities through the use of force. Some states claimed that the concept of collective action under the umbrella of the responsibility to protect should not preclude action absent Security Council authorization. The United States, for example, argued that the Outcome Document should not foreclose the possibility of unauthorized intervention, noting that there may be cases that involve humanitarian catastrophes but for which there is also a legitimate basis for states to act in self-defence. The Outcome Document does not exclude this line of reasoning. It leaves the door open to unilateral responses through its case-by-case vision of collective security and a qualified commitment to act in cooperation with regional organizations. (Stahn, 2007, p. 109)

http://www.iises.net/

In his first report in 2009 on implementing the responsibility to protect concept, Secretary-General laid out a three-pillar strategy for implementation in line with paragraphs 138 and 139 of the World Summit Outcome. The first pillar refers to the primary responsibility of each State to protect its populations by preventing genocide, war crimes, ethnic cleansing and crimes against humanity ("atrocity crimes") in accordance with their national and international obligations. The second pillar sets out the parallel commitment of the international community to encourage and assist States to fulfil their responsibility. The third pillar underscores the range of tools available under Chapters VI, VII and VIII of the Charter of the United Nations for timely and decisive response when States manifestly fail to meet their responsibilities.

Secretary-General emphasized that the provisions of paragraphs 138 and 139 of the Outcome Document are firmly anchored in well-established principles of international law. At the heart of these paragraphs lies the state acknowledgement of its primary responsibility to protect its populations. Under conventional and customary international law, states have obligations to prevent and punish genocide, war crimes and crimes against humanity… The Summit's enunciation of the responsibility to protect was not intended to detract in any way from the much broader range of obligations existing under international humanitarian law, international human rights law, refugee law and international criminal law. It should also be emphasized that actions under paragraphs 138 and 139 of the Outcome Document are to be undertaken only in conformity with the provisions and principles of the United Nations Charter. (Secretary-General Report, 2009, par. 3; 4)

These provisions are to be seen as a tribute to the determination and foresight of the world leaders and to their shared understanding of the urgency of the issue that they were able to agree on such detailed provisions regarding the responsibility to protect. Their determination to move the responsibility to protect from promise to practice reflects both painful historical lessons and the evolution of legal standards and political imperatives.

5. Conclusion

No one is prepared to defend the claim that states can do what they want to their own people, and then hide behind the principle of sovereignty. There is no justification for core crimes, genocide, ethnic cleansing etc. In 2001 the ICISS has called on the international community, its members and nations and non-governmental organizations, to embrace the idea of the responsibility to protect as a basic element in the code of global citizenship, and its vital necessity.

But, critical observations of the responsibility to protect concept emphasize that the history of the responsibility to protect doctrine sounds almost like a fairy tale. (Stahn, 2007, p. 98) One of its most striking aspects appears to be the gap between the promise and the reality. (Chandler, 2009, p. 27) Although state representatives and international organizations permanently endorse the concept, single states and groups of states continue to emphasize the significance of state sovereignty, with regard to the domestic affairs of a state, to point out the limited competences of the Security Council, and to emphasize that the responsibility to protect has not yet gained legal force. The endorsement of the responsibility to protect has not significantly impacted international law. The prohibition of the use of force and the principle of non-intervention are left intact. From a legal perspective, the normative content of the responsibility is, therefore, evolutionary rather than revolutionary. (Payandeh, 2010, p. 480; 515) Its further development should be observed in the wider frame of the international law making process.

The development of the concept shows that significantly different understandings of the responsibility to protect exist. The details of the concept, as developed by the ICISS Report in 2001, differ remarkably from the 2004 High-Level Panel Report, which was endorsed in principle by Secretary-General in 2005. The 2005 World Summit Outcome Document reflects an even narrower consensus.

While the concept is widely accepted, single implications which are associated with it are not. Unfortunately, we are constantly witnessing atrocity crimes as the direct consequence of the failure of states to take preventive measures. Côte d'Ivoire, Congo, Sri Lanka, Sudan and lately Syrian Arab Republic could be seen as unnecessary – by proper implementation of the concept of the responsibility to protect they could have been prevented.

In Stahn's opinion the concept of responsibility to protect may gradually replace the doctrine of humanitarian intervention in the course of the 21st century. However, at present, many of the propositions of this concept remain uncertain from a normative point of view or lack support. Responsibility to protect is thus in many ways still a political catchword rather than a legal norm. Further fine-tuning and commitment by states will be required for it to develop into organizing principle for international society. (Stahn, 2007, p. 120)

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