The Three Pillars of the Responsibility to Protect

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Abstract

The Responsibility to Protect principle, as shall be seen, incorporates within its framework three distinct but simultaneously related to each other phases. The objective of this paper is therefore to examine the purpose and importance of each of these phases in more details, which will thereby help us understand both the weaknesses and the potential the principle has for further development.

The said pillars are: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild, respectively. Here, I shall separately analyze the causes and tools available for the prevention of the crisis, but also less coercive and more coercive tools when the matter comes to *reacting* to the crisis. The paper will also examine *"just cause"* criteria and the *"precautionary principles"* which are necessary when dealing with the question of "when and who should intervene?", along with the 'Moderate Instrumentalist Approach' developed by James Pattison, which is important from the standpoint of understanding the effectiveness of the intervener. Further on, the work is devoted to the last phase of the Responsibility to Protect. Here, I shall primarily analyze the questions of who should undertake the rebuilding process and who has the right capacity to do that. These are the questions of the utmost importance, for if the rebuilding process is avoided or done improperly, the crisis will gain control again. And in this respect, I will argue that it is the international community in the face of the United Nations which is best fit to carry out the rebuilding process.

Keywords: responsibility to protect/R2P, ICISS Report, UN, responsibility to prevent, responsibility to react, responsibility to rebuild.

1. Introduction

Winston Churchill called it *"a crime without a name"* (Lemkin, 1946: 227). It is the crime of genocide. The end of the 20th century compelled us to feel the horrific vicissitudes of this crime more than once. This period proved to be a step toward a change in the nature of armed conflict. The result came with violent internal conflicts replacing massive inter-state wars. The horrors in Cambodia, Rwanda, Srebrenica and elsewhere demonstrate only too well the colossal failures and the disdainful behavior of the international community to prevent massive slaughters in a timely and decisive manner.

In his Millennium Report to the General Assembly in 2000, the then Secretary-General of the United Nations Kofi Annan posed the well-known question: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our

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common humanity?" (Secretary-General, 2000). From this question it becomes apparent that there are two conflicting principles: state sovereignty on the one hand, and the protection of human rights, on the other. And the question that arises further in this respect is: "Which principle should prevail when they are in conflict?" (Secretary-General, 2000).

What happened by way of response to Annan's appeal was a major breakthrough in international relations. The principle of the Responsibility to Protect was developed.

The principle was outlined in the Report provided by the International Commission on Intervention and State Sovereignty (ICISS) in December 2001. It all started with a simple question which was, if states are sovereign, how can we nonetheless protect populations? And the Responsibility to Protect came to remind us that sovereignty is a principle not to prevent populations from being protected, shielding them from international concern, but rather, sovereignty entails responsibilities, and that responsibilities are shared not only by the territory State to its population, but also international actors have a responsibility to protect as well.

This paper will argue that the Responsibility to Protect principle is neither a myth on the one hand, nor a panacea to massive slaughters, genocides and other crimes against humanity on the other, but it is just one institution which We the People, the international community can make use of for the building of a better international order. We have to admit that crimes are inherent in human nature and they have always been recurrent in human history. My proposition is based on the conviction that the Responsibility to Protect principle does not provide a silver bullet to all these crimes, and the question that needs to be answered is how we can hold these crimes within their confines and not let them proliferate like a disease, a disease which is contagious and which may ultimately lead the world to a condition hitherto unknown to mankind.

2. Materials and methodology

In the course of writing this work, both general scientific methods were used (analysis, synthesis, analogy, modeling, comparative approach, systemic method, induction and deduction methods, historical method) and private scientific methods (formal legal and comparative legal).

The general theoretical and special research base of the present work constitute the following foreign (European and American jurists) authors: Alex J. Bellamy & Stephen McLoughlin, Gregory H. Stanton, Jennifer M. Welsh and Serena K. Sharma, James Pattison, along with many others.

The empirical basis of the study is comprised of universal, regional and bilateral instruments, drafts of international organizations, and official positions (historical and contemporary) of states.

3. Discussion
A. The Responsibility to Prevent

As already illustrated, the Responsibility to Protect principle is comprised of three sub-responsibilities, the first of which is the responsibility to prevent. It is said in the ICISS Report that, "Prevention is the single most important dimension of the responsibility to protect: ...and more commitment and resources must be devoted to it" (Report..., 2001: XI). Indeed, I am also an adherent of such a proposition as the research elucidates this within a number of reasons, the two of which are particularly noteworthy.

First, prevention is preferable to the other two constituent parts of R2P in that it is far cheaper (McLoughlin, 2009: 10). As the Carnegie Commission's Report on Preventing Deadly Conflict (1997) indicates, "Prevention entails action, action entails costs, and costs demand trade-offs. The costs of prevention, however, are miniscule when compared with the costs of deadly conflict and of the rebuilding and psychological healing in its aftermath" (Commission, 1997: XLVI). The ICISS Report itself recalls the Carnegie Commission's Report, stating that during the period of 1990s the international community spent over $ 200 billion on seven major interventions, but could have saved $ 130 billion by dint of effective preventive measures (Report..., 2001: 20).

Second, prevention may save much more lives than reaction. Indeed, even the most decisive, rapid and timely undertaken military intervention cannot be as effective as prevention in terms of saving as many human lives as possible (McLoughlin, 2009: 9). In other words, preventive measures if undertaken with due consideration may not only avert the crisis from escalation but it may even produce no loss of human lives, whereas by the time of military intervention no matter in what fashion undertaken most of the losses would have already occurred. This is further supported

by the analysis concerning the Rwandan genocide. Here, it is said, that even if the international community responded in a rapid and effective way to the genocide, still at least 600,000 human beings would have been killed in any case (Stanton, 2004: 222).

In fine, for prevention to be effective, there are a number of conditions that should be satisfied. Among those are, development of early warning capacity, building and applying appropriate preventive tools, cooperation between states, international organizations, and regional organizations, and, of course, the willingness of states to actualize these conditions. Indeed, I consider the willingness of states to pose a particular importance, and I would regard it as a starting point, for if willingness is present and rightful, the fulfillment of the rest of the conditions would inevitably follow. Indeed, the practice proves the veracity of these words.

1. Developing Early Warning Capacity

Early warning is a crucial element to preventive measures since it contributes to the reduction of the risk of human rights violations. It should be emphasized, however, that so far early warning system has been rife with disadvantages and flaws, partly because it has been unstructured and inconsistent. The ICISS Report particularly indicates that, "More often than not what is lacking is not the basic data, but its analysis and translation into policy prescription, and the will to do something about it" (Report..., 2001: 21).

The actors engaged in the early warning system have been abundant, including regional organizations, embassies, non-governmental organizations, intelligence agencies, UN peacekeeping forces, the ICRC, and many others. One organization, however, plays a particularly important role in developing early warning and effective prevention capacity. It is the International Crisis Group (ICG). Here, as observed by Gareth Evans in his presentation, there are three distinct dimensions wherein the ICG poses a particular importance (Evans, 2012).

First, in terms of identifying the right policy responses, the ICG provides reports and briefings which examine challenges and opportunities for good policy in regard to all the stages of the conflict: long-term and short-term prevention, managing and settling the conflict, and post-conflict rebuilding (Evans, 2012).

Second, the ICG provides early warning through the monthly *CrisisWatch* bulletin which summarizes developments of current or potential conflicts, assesses the overall changes of the situation, warns of a particular risk of new or significantly escalated conflict, and summarizes the reports of the International Crisis Group (Evans, 2012).

And third, the ICG is in charge of suggesting new strategic and tactical avenues for intractable conflicts and crises (Evans, 2012).

Here, it is similarly important to mention the supplementary role of such organizations as the Human Rights Watch (HRW) and Amnesty International (AI), which complement the work of the International Crisis Group. More specifically, these organizations have expanded their commitments, thereby including early warning activities about conflicts and crises that have the potential of leading to genocide and other mass human rights violations (Report..., 2001 : 21).

Furthermore, the Report of the Panel on United Nations Peace Operations (2000) considers the UN headquarters to be the domain where early warning should be centralized. Particularly, it states "the need to have more effective collection and assessment at UN headquarters, including an enhanced conflict early-warning system that can detect and recognize the threat or risk of conflict or genocide" (The Report of the Panel..., 2000: 1).

Finally, the involvement of regional organizations in early warning activities should also be considered noteworthy. Regional organizations are better accustomed to the characteristics of the tensions in the region, and are thus better fit to provide timely and accurate information about the potential escalation of the conflict and crisis. This in its turn may help apply the appropriate tools and methods to avert the conflicting situation which may otherwise have resulted in mass human rights violations. For these reasons, the ICISS recommends that a substantial amount of resources should be made available to support regional conflict prevention efforts as well as improving the effectiveness of regional organizations in peacekeeping, peace enforcement and intervention operations (Report..., 2001 : 22).

2. "Root Cause" Prevention and Direct "Preventive Toolbox"

It is to be noted that crimes against humanity do not happen accidentally and they always reflect the underlying causes deeply entrenched in a particular society and taking place over a long

period of time. At this, it is pivotal to address the root causes of a conflict and thereby understand the preventive strategies and mechanisms targeted at quelling such causes from upheaval. As maintained by the former Secretary-General Kofi Annan in his *Prevention of Armed Conflict*, such 'root causes' comprise socio-economic inequities and inequalities, denial of human rights, systematic ethnic discrimination, disputes over political participation or long-standing grievances over land and other resource allocation (Annan, 2001: 7). He further mentions that a deep and careful understanding of local circumstances and traditions is therefore of great importance (Annan, 2001: 7). Similarly, the Carnegie Commission's Report indicates that, "whatever model of self-government societies ultimately choose, and whatever path they follow to that end, they must meet the three core needs of security, well-being, and justice and thereby give people a stake in non-violent efforts to improve their lives. Meeting these needs not only enables peoples to live better lives, it also reduces the potential for deadly conflict" (Commission, 1997: XXVIII). Here, it is necessary to address the three phases that may ultimately lead the situation to mass human rights violations, (as epitomized in the diagram below) (McLoughlin, 2009: 17).
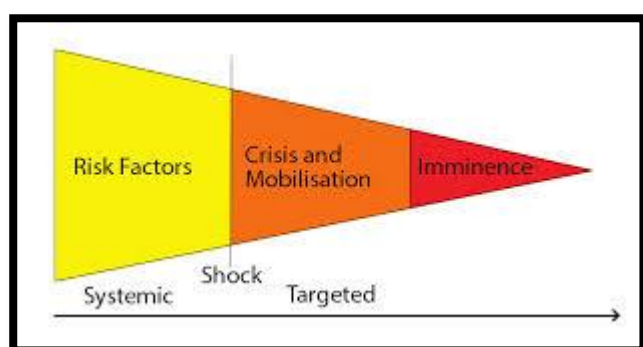
Fig. 1. Temporal view of systemic and targeted prevention)

The risk factors, as illustrating the first phase, may encompass poverty, uneven allocation of resources, cleavages between different groups of a particular society, socio-political disparity, the absence of the rule of law and weak democratic structures (Sharma, 2012: 6). It is true that such factors provide a possibility and the potential for further mass human rights violations, but it should equally be emphasized, that these risk factors alone evidently do not suffice to result in such violations. The preclusion of these factors, however, should also be noteworthy.

In the phase of crisis and mobilization, the risk factors, as mentioned in the first phase, increase the likelihood of the crisis (Sharma, 2012: 6). This may be triggered by some shock or crisis, e.g. economic, political or even natural factors, which may increase the probability of mass human rights violations (Sharma, 2012: 6). The assassination of a president or a severe economic crisis may serve as such triggering factors for further mass atrocities (Sharma, 2012: 6). Still, it is to be noticed, while this second phase escalates the tension within the society, it is not sufficient for atrocity crimes to take place. For this to happen, there should always be explicit signs of organization and mobilization, which may to a certain extent be evident in the last third phase (Sharma, 2012: 6).

During the imminent emergency, the third phase, human rights violations and increased number of violent clashes become more and more intense and stringent, and thereby indicate the possibility of mass human rights abuses to start, shall preventive measures fail to be undertaken (Sharma, 2012: 6).

The diagram above further provides two important preventive strategies in regard to the analyzed three phases. Those are systemic and targeted preventive strategies. Systemic strategies are designed to address the first phase (risk factors), and thereby develop resilience and capacity in those societies where the risk factors are most evident (Ruben Reike, 2013: 7). In contrast, the last two phases require targeted preventive strategies which pursue two aspects in this regard: first, such strategies deal with a particular society in general and not a group of a society, and second, they address a specific matter, such as the availability of weapons for potential perpetrators (Ruben Reike, 2013: 7).

Additionally, the ICISS Report itself provides a number of propositions for root cause prevention. Particularly, the Report indicates the need to strengthen the rule of law, promote civil society, promote economic growth and opportunity, provide better terms of trade and permit greater access to external markets for developing economies, and protect the independence of the judiciary (Report..., 2001 : 23).

Considering the direct preventive tools, it should be observed, that unlike the root cause preventive measures, the former may take the form of positive and negative inducements and even threats to resort to force as *ultima ratio*. More specifically, direct preventive tools may include mediation, dialogue, international appeals or promises of new funding or investment, which illustrate positive inducements (Report..., 2001: 23-25). *A contrario*, negative inducements may encompass diplomatic isolation, suspension of organization membership, "naming and shaming", travel and asset restrictions on targeted persons, withdrawal of investment, threats to withdraw IMF or World Bank support, no-fly zones or safe havens, ICC, ICTY or ICTR referrals, and other measures (Report..., 2001: 23-25).

In fine, addressing root cause prevention is much more favorable than direct prevention for two main reasons. First, root cause prevention is much easier than direct prevention since the tension has not yet risen to a critical level. And second, direct prevention has shorter time available to make a difference than root cause prevention (Report..., 2001: 23).

B. The Responsibility to React

When preventive measures produce no favorable results in precluding the crisis and the territory state is unwilling or unable to redress the critical situation, the international community may exercise interventionary (*reactive*) measures to rectify the situation, which as such contain coercive measures. These measures include political/diplomatic, economic, judicial, and military measures, with the latter operating as *ultima ratio*, that is exercisable only in extreme cases, as a last resort. Indeed, the 2005 World Summit Outcome Document itself acknowledges the vital importance of the responsibility to react in its paragraph 139. More specifically, the Document reads, "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context we 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 the peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (G.A. Res. 60/1, 2005 : 30). When the matter comes to the responsibility to react, it should be emphasized, that less coercive measures should be applied first, and only when the latter ones give no result, should more coercive and intrusive measures be applied (Report..., 2001: 29). Furthermore, the threshold for less coercive measures is set lower, whereas for military intervention to take place the threshold must be higher. This higher threshold becomes evident when we start to deal with the just cause criteria and the precautionary principles, as encapsulated in the ICISS Report (Report..., 2001: 29).

1. Measures Other Than Military Intervention

Measures other than military intervention are more preferable than military intervention itself, since the latter actually displaces the domestic authority of the territory state for a period of time and thereby exercises the intervention for human rights protection purposes. For these reasons, the ICISS Report provides alternative sanctions in a number of areas, particularly, military, economic, and political areas (Report..., 2001: 29-30).

In the framework of military sanctions, the ICISS mentions arms embargoes, ending military cooperation and training programs, which may induce the perpetrator to comply with international norms and thus ensure human rights protection in its territory (Report..., 2001: 30).

In the economic area, the Commission provides financial sanctions, restrictions on income generating activities (such as, oil and drugs), restrictions on access to petroleum products, and aviation bans (Report..., 2001: 30). The Report, however, stresses that blanket economic sanctions have been discredited for they tend to have great disproportionate impact on the civilian population and may thus exacerbate the critical situation even further (Report..., 2001: 29).

And finally, in the political and diplomatic area, the ICISS Report provides the following sanctions: restrictions on diplomatic representation, restrictions on travel, suspension of membership or expulsion from international or regional bodies, and refusal to admit a country to a membership of a body (Report..., 2001: 30-31).

The Report above all else also emphasizes that sanctions targeted at leadership groups and security organizations which are in charge of mass human rights abuses, now pose increasing importance as alternative to general sanctions (Report..., 2001: 29-30).

2. The Question of Intervention

When less coercive measures, as analyzed above, do not succeed to stave off the humanitarian crisis, military intervention may come into play, provided that the necessary requirements are satisfied. Military intervention is undoubtedly the part of the Responsibility to Protect principle subject to most discussion, and which thus opens the gates for acrimonious debates. As the ICISS Report makes it clear, the starting point in this respect should be the principle of non-intervention from which any departure has to be justified (Report..., 2001: 31). Indeed, the principle of non-intervention serves as a platform whereby states are encouraged to solve their own internal problems and prevent these problems from transforming into a threat to international peace and security. Nonetheless, there may be exceptional circumstances wherein such internal problems may destabilize the international order and the need to react to these situations by the international community of states through military actions will be considered. Interestingly, the ICISS notes that even in states which strongly support the principle of non-intervention and reject any infringement on state sovereignty, there appears to be 'general acceptance that there must be limited exceptions to the non-intervention rule for certain kinds of emergencies' (Report..., 2001: 31). The Commission then goes further to indicate that, 'these exceptional circumstances must be cases of violence which so genuinely "shock the conscience of mankind," or which present such a clear and present danger to international security, that they require coercive military intervention' (Report..., 2001: 31).

What is to be analyzed thereinafter in this regard are the just cause criteria and the precautionary principles which the Commission deems necessary when addressing the decision to exercise military intervention.

3. The "Just Cause" and "Precautionary Principles"

The "just cause" element examines the level of harm sufficient for military intervention to take place. The ICISS is of opinion that for such an intervention to be warranted and thereby override the principle of non-intervention, 'there must be serious and irreparable harm occurring to human beings, or imminently likely to occur' (Report..., 2001: 32). The Commission further provides two sets of exceptional circumstances where such a harm takes place and wherein military intervention for human rights protection purposes is to be justified. Those are *large scale loss of life* or *large scale "ethnic cleansing"* (Report..., 2001: 32). The existence of either or both of these conditions is sufficient for the "just cause" element to be satisfied.

The ICISS Report further analyzes what is included in and excluded from the scope of the two exceptional circumstances. More specifically, these conditions include: 1) actions, as enshrined in the 1948 Genocide Convention, 2) 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, 3) crimes against humanity and violations of the laws of war, as defined in the Geneva Conventions (GCs) and Additional Protocols (APs) and elsewhere, which involve large scale killing or ethnic cleansing, 4) different manifestations of "ethnic cleansing" (e.g. systematic killing of members of a particular group, systematic physical removal of such members, acts of terror, systematic rape), 5) situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war, 6) and, overwhelming natural or environmental catastrophes resulting in the threat or occurrence of significant loss of life (Report..., 2001: 33). Here, it is also important to recall that the 2005 World Summit Outcome Document limited the threshold for the "just cause" to four international crimes which are genocide, war crimes, ethnic cleansing, and crimes against humanity. And despite such a restriction, we have to admit that the Outcome Document makes the "just cause" element more precisely defined (G.A. Res. 60/1, 2005: 30).

Finally, the Commission's Report provides situations which are excluded from the scope of the two exceptional circumstances. Particularly, those are: 1) human rights violations falling short

of outright killing or ethnic cleansing (e.g. systematic racial discrimination or systematic imprisonment), 2) situations where a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over, 3) the use of force by a state to rescue its own nationals on foreign territory, and the use of force in response to a terrorist attack on a state's territory and citizens (Report..., 2001: 34).

Apart from the "just cause" requirement which addresses the type and level of harm, the ICISS Report also provides a number of precautionary principles for military intervention to be justified and which are worth our attention. Among those principles are: 1) right authority, 2) right intention, 3) last resort, 4) proportional means, 5) and reasonable prospects (Report..., 2001: 32).

Right authority principle deals with the question as to who has the proper capacity and resources to exercise military intervention. It is to be emphasized, that the UN Security Council is seen as the most appropriate body in this respect. Indeed, its authority flows both from the UN Charter and all of the Reports analyzed so far. But the question that is of huge concern here is, what if the Security Council fails to act (e.g. because of the veto power of the P5) and respond to mass human rights violations. Are there other alternative institutions to address the question of military intervention should the Security Council stand by? The ICISS and the Report of the Secretary-General on Implementing the Responsibility to Protect provide an opportunity for the General Assembly to actually address this question pursuant to its "Uniting for Peace" procedures (Report..., 2001: 53). More specifically, if the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly may make a decision which, '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' (Report..., 2001: 53). In addition, regional organizations may also undertake military intervention, however, again through the Security Council authorization (Report..., 2001: 53-54). The question becomes more complicated when a regional organization intervenes in the territory of a non-member state, as it indeed happened in the practice of NATO in regard to the intervention in Kosovo (Report..., 2001: 53-54).

NATO argued, however, in support of its actions that if the intervention had not taken place the conflict in Kosovo could have spilled over the territories of NATO members thereby causing severe disruption (Report..., 2001: 53-54).

For the principle of right intention to be satisfied, the primary purpose of the intervener, irrespective of other motives, must be to halt or avert mass human rights violations. For this to happen, it is better to have multilateral intervention, as opposed to a unilateral one (Report..., 2001: 35-36).

The principle of last resort requires that every possible non-military measure (along with positive and negative inducements) should be undertaken before coercive military use of force is applied (Report..., 2001: 36-37).

The requirement of proportional means implies that the scale, duration and intensity of the planned military intervention be the minimum necessary to secure the human rights protection objective (Report..., 2001: 37).

And finally, the principle of reasonable prospects requires the military intervention to have a reasonable chance for success. As the Commission's Report makes it clear, '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' (Report..., 2001: 37).

In fine, it should be acknowledged that in case both the "just cause" threshold and the precautionary principles are met, the decision to intervene will be justified. Nonetheless, here it is similarly noteworthy to notice that even if some of these requirements are not satisfied, the intervention may still be justified, at least considered legitimate, as shall be demonstrated further in this work.

4. The Moderate Instrumentalist Approach

The Moderate Instrumentalist Approach, as developed by James Pattison, tackles the question of effectiveness of the intervener (Pattison, 2010: 69). Indeed, the most important factor to be considered is not whether the intervener has the UN Security Council authorization, but rather the effectiveness of the intervener which justifies its legitimacy (Pattison, 2010: 69). To illustrate this approach, we need to break down effectiveness into three types: *'local external effectiveness'* (I), *'global external effectiveness'* (II), and, *'internal effectiveness'* (III) (Pattison, 2010: 74).

For local external effectiveness to be present, the intervener must promote the enjoyment of human rights of those in the political community that is subject to its intervention (Pattison, 2010: 74). Thus, for instance, if the intervener exercises military intervention in a particular state, then it is necessary that the aggrieved population of that state would benefit from the intervention (Pattison, 2010: 75). On the contrary, if military intervention exacerbates the situation of the population, the intervener would be locally externally ineffective, and thus considered illegitimate (Pattison, 2010: 75).

Global external effectiveness requires the intervener to promote the enjoyment of human rights in the world as a whole (Pattison, 2010: 76). In the meantime, this type of effectiveness excludes double enjoyment of human rights by those that fall under local external effectiveness and internal effectiveness (Pattison, 2010: 76). In other words, global external effectiveness promotes the enjoyment of human rights in the world at large, except for the intervener's citizens and those that are directly subject to its intervention (Pattison, 2010: 76). Global external effectiveness should not be undermined for it can ultimately have serious ramifications for the international political landscape. This may be the case when military intervention results in a mass refugee flow. Despite the fact, that intervention may at some point help the victimized population of the target state ('local external effectiveness'), it may nonetheless lead to a large refugee flow and thereby harm the enjoyment of human rights in the neighboring states as well (Pattison, 2010: 76). Interestingly, as one may reminisce here, this type of effectiveness is largely in harmony with the Utilitarian War theory, which propagated the idea of *'the greatest happiness for the greatest number'*. Similarly, global external effectiveness is partly also tackled with promoting or at least not harming the enjoyment of human rights in the world as a whole.

Finally, the third type of effectiveness, which is internal effectiveness, requires that intervention be undertaken in such a manner so as to promote, or at least not to harm, the intervener's own citizens' enjoyment of human rights (Pattison, 2010: 77). It can be observed, that internal effectiveness poses less importance than the latter two ones, nonetheless, it should similarly be complied with for intervention to be effective overall (Pattison, 2010: 77).

It is to be emphasized, that all three types of effectiveness should operate together, since the absence of even one type, regardless of its importance over the rest, may render the intervener ineffective and, thereby, illegitimate.

5. The Responsibility to React in Practice

It would certainly be remiss not to introduce the practical application of the responsibility to react, for one reason because in practice it may have different manifestations subject to various interpretations. It is important to analyze a number of practical situations in order to understand how the responsibility to react actually works. It will be observed that in practice the responsibility to react may not be in full concordance with the requirements provided in the ICISS and other reports, more specifically, it may lack the Security Council authorization when the mater comes to military intervention, but it may still at some point be considered legitimate. What follows are practical examples wherein different *reactive* measures have been employed in different situations.

Kosovo

The end of the 1990s triggered intense conflicts between different ethnic groups within the former Federal Republic of Yugoslavia (FRY), which afterward escalated into civil war, thereby resulting in mass human rights violations across the region (Calic, 2000: 19). This compelled the Security Council, after failing to prevent human rights abuses in the Balkan states, to pass a number of consecutive enforcement resolutions to address the situation in Kosovo which posed a threat to international peace and security, pursuant to Chapter VII of the UN Charter (More specifically, S.C. Res. 1160, UN Doc. S/Res/1160, Mar. 31, 1998, (imposing an arms embargo); S.C. Res. 1199, UN Doc. S/Res./1199, Sept. 23, 1998, (calling for a ceasefire); S.C. Res. 1203, UN. Doc. S/Res./1203, Oct. 24, 1998, (calling for cooperation with OSCE and NATO verification missions)).

Apart from these enforcement resolutions, the Security Council's indecision to take more coercive measures to avert the atrocities in Kosovo induced the NATO states to exercise intervention for human rights protection purposes instead. More specifically, the NATO states were considering an air bombing campaign against the Serbian forces that were in charge of mass human rights violations, with the United States maintaining that NATO independently possessed

the legitimate use of force, with no need to secure authorization from the Security Council (Judah, 2000: 121). Later on, when all possible less coercive measures (particularly, diplomatic) were exhausted, with no positive results, the NATO states actualized the considered bombing campaign in Kosovo (Thakur, 2000: 4). What happened further was Russia's and China's severe condemnation of NATO actions, particularly qualifying these actions as a 'flagrant violation of the United Nations Charter' through a draft resolution submitted to the Security Council by the Russian government (S.C. Res. 328, 1999). The resolution was, nonetheless, further defeated by twelve votes to three, with only Russia, China and Namibia voting for it (SC/6659, 1999).

What is even more, when NATO's bombing campaign came to an end, the United Nations created the Independent International Commission on Kosovo (IICK) to investigate the intervention in the region (Kosovo, 2000). Upon completion of its work, the Commission stated that the NATO military intervention was "illegal but legitimate. It was illegal because it did not receive prior approval from the United Nations Security Council. However, the Commission considers that the intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule" (Kosovo, 2000).

Kenya

In 2007, Kenya experienced ethnic violence caused by a disputed presidential election (Williamson, 2013: 15). The announcement of the results of the election led to widespread and systematic violence with 1,200 people killed and more than 600,000 internally displaced (Williamson, 2013: 15). Due to emergency mediation undertaken by the former UN Secretary-General Kofi Annan under African Union (AU) auspices, a potentially larger humanitarian catastrophe was averted (Williamson, 2013: 15). These well-timed diplomatic efforts led to the signing of a power-sharing agreement on 28 February, 2008 (Williamson, 2013: 15). The agreement established, *inter alia*, three commissions—the Commission of Inquiry on Post-Election Violence (CIPEV), the Truth, Justice and Reconciliation Commission, and the Independent Review Commission on the General Elections (Williamson, 2013: 15). And it was exactly due to these commissions, along with the United Nations, and African and European diplomats, that further political events that took place in Kenya, particularly the adoption of the new Constitution in 2010 and presidential elections in 2013, were largely accompanied with no violations (Williamson, 2013: 15).

This rapid and coordinated reaction to the situation in Kenya by the international community was praised as a "model of diplomatic action under the Responsibility to Protect" (Williamson, 2013: 15).

Libya

In early 2011, an intense conflict was triggered as the opposition protests challenged the legitimacy of Muammar Qaddafi's regime in Libya (Hehir, 2013: 1-11). The conflict quickly spread across the region as General Qaddafi urged his forces to fight to the 'last drop of blood', and with dozens of demonstrators killed as a result of such violent clashes (Hehir, 2013: 1-11). In response to these atrocities, the Security Council passed Resolution 1973 to authorize a no-fly zone and undertake 'all necessary measures' to protect the suffering population (S.C. Res. 1973, UN Doc. S/Res/1973, Mar. 17, 2011. Russia and China abstained from voting on the resolution. Press Release, Security Council, Security Council Approves "No-Fly Zone" over Libya, Authorizing "All Necessary Measures" to Protect Civilians, by vote of 10 in favor with 5 abstentions, UN Press Release SC/10200, Mar. 17, 2011).

It then followed the NATO's military intervention through airstrikes, exercised by the United States, the UK, and France (Kirkpatrick, 2011). In addition to this, the International Criminal Court (ICC) issued a warrant for the arrest of Qaddafi and his son (Williamson, 2013: 16). In support of the NATO actions, the United States State Department Legal Advisor Harold Koh stated before the American Society of International Law in Washington D.C., that Qaddafi's "illegitimate use of force not only is causing the deaths of substantial numbers of civilians among his own people, but also is forcing many others to flee to neighboring countries, thereby destabilizing the peace and security of the region. Qaddafi has forfeited his responsibility to protect his own citizens and created a serious need for immediate humanitarian assistance and protection, with any further delay only putting more civilians at risk" (Harold Koh, 2011). Moreover, upon completion of the NATO's intervention and its ultimate triumph over Qaddafi's regime, the International Commission of Inquiry on Libya

concluded in its Report that NATO "conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties" (Report of the International Commission…, 2012).

Nonetheless, Russia and China again severely confronted the NATO's actions in Libya, stating that NATO's intervention was a pretext for Libyan regime change, and that they could merely limit Qaddafi's military operations instead (Tisdell, 2011). NATO's defenders, on the contrary, argued that it was impossible to restore stability in the region without Qaddafi's removal from power.

C. The Responsibility to Rebuild

The Responsibility to Protect principle, among *preventive* and *reactive* measures, also includes rebuilding processes, which, as the ICISS Report makes it clear, are supposed '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' (Report, 2001 : XI). These rebuilding processes may imply that the intervener, after accomplishing its military intervention, should continue its physical presence in the territory state to implement peacebuilding and rehabilitating operations. But above all else, there need to be sufficient funds and appropriate resources and cooperation with local people for these rebuilding processes to be effective (Report…, 2001: 39).

It is true that the responsibility to rebuild has been insufficiently recognized and less discussed than the first two pillars of the Responsibility to Protect, but it should equally be emphasized that its analysis and development is of paramount importance, for one significant reason that its avoidance may bring mass atrocities back again. For these reasons, I shall, first, address the areas where the responsibility to rebuild is most needed, and then tackle the question of who shall or who has the right capacity to undertake these rebuilding operations.

1. Objectives of the Responsibility to Rebuild

In his 1998 Report on *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, the former Secretary-General of the United Nations indicates that, "the crucial underlying need in post-conflict peace-building situations is the security of ordinary people, in the form of real peace and access to basic social facilities. In pursuing these peace-building objectives, a number of requirements are clear. First, time is of the essence. Second, a multifaceted approach, covering diplomatic, political and economic factors, must be adopted. Third, the effort must be adequately financed. Fourth, there must be high-level strategic and administrative coordination among the many actors" (Secretary-General R. o., 1998: 64). Thus, a well-timed approach with a multilateral effort and appropriate resources is indispensable to an effective rebuilding process.

The Report then goes further to illustrate the priorities of post-conflict peace-building. More specifically, it mentions that, "societies that have emerged from conflict have special needs. To avoid a return to conflict while laying a solid foundation for development, emphasis must be placed on critical priorities such as encouraging reconciliation and demonstrating respect for human rights; fostering political inclusiveness and promoting national unity; ensuring the safe, smooth and early repatriation and resettlement of refugees and displaced persons; reintegrating ex-combatants and others into productive society; curtailing the availability of small arms; and mobilizing the domestic and international resources for reconstruction and economic recovery. Every priority is linked to every other, and success will require a concerted and coordinated effort on all fronts" (Secretary-General R. o., 1998: 66). A similar approach is suggested in Chapter XII of the UN Charter, Article 76 of which notes that the basic objectives of the system is to promote the political, economic, social, and educational advancement of the people of the territory state, to encourage respect for human rights and for fundamental freedoms, to ensure equal treatment in social, economic, and commercial matters for all the nationals of the UN member states, and also ensure equal treatment in the administration of justice (Charter: art. 76).

The ICISS Report is more specific on this matter and provides three most crucial areas that the intervener has the responsibility to rebuild: security (I), justice (II), and economic development (III) (Report…, 2001: 40).

Within the security area, it is essential that the intervener provides basic security and protection for the entire population of the territory state, regardless of their ethnic origin or relation to the previous source of power in the territory (Report, 2001: 40-41). Furthermore, the

Commission considers the need that the intervener shall address such issues as *disarmament, demobilization and reintegration* of local security forces, and also have an *exit strategy* for the intervening troops themselves (Report..., 2001 : 41).

The justice area most of all needs a properly functioning judicial system, with both the courts and police (Report..., 2001: 41). Otherwise, it would be impossible for the intervening force to bring the violators to justice, thereby rendering the whole operation ineffective. For these reasons, a number of non-governmental bodies have developed "justice packages" which include, *inter alia*, a standard model penal code, thereby allowing the intervener to detain persons responsible for mass human rights violations (Report..., 2001: 42). Also, an important question to be dealt with concerns the *legal rights of returnees*, who, upon return, have largely suffered because of an inadequate protection of property rights (Report..., 2001: 42). Here, the ICISS stresses the need to provide a sizeable amount of new housing stock throughout the country and donor funded projects to alleviate the needs of returnees (Report..., 2001 : 42).

And finally, economic development implies, among other things, the recreation of markets and ensuring sustainable development (Report..., 2001: 42-43). As the Report emphasizes, 'economic growth not only has law and order implications but is vital to the overall recovery of the country concerned' (Report of the International Commission..., 2001: 42).

2. "You Broke It, You Own It" Thesis

"You broke it, you own it" thesis is said to derive from the speech by the former U.S. Secretary of State Colin Powell addressed to President George W. Bush, concerning the consequences of the United States military action in Iraq (Woodward, 2004: 150). According to the proponents of this thesis, the one who intervenes takes the responsibility to rebuild and reconstruct the harm caused by the military intervention. In other words, the duty to bear the whole rebuilding process is imposed solely on the agent who exercised military intervention for human rights protection purposes. What is even more, the adherents of this thesis maintain the idea that the one who intervenes bears the duty to rebuild in order for the entire intervention to be considered morally justified (Pattison, 2013: 2).

Nonetheless, there are a number of drawbacks inherent in the "you broke it, you own it" thesis that are worth pointing out. First, the thesis implies a unilateral action, which is fraught with certain risks. It may well be said, that just as the responsibility to intervene should be carried out with a multilateral effort, the duty to rebuild should also be discharged multilaterally. This is for the reason, that unilateral actions may seek to impose a state's personal objectives and there is a danger of turning the aggrieved situation of the state into a neocolonialism. If so, this may ultimately render the whole operation, the whole principle of the Responsibility to Protect, ineffective, illegitimate and unjust.

Second, as James Pattison illustrates in his work, it seems to be unfair that when an intervener undertakes a just military action to save the lives of others and avert further mass atrocities, to bear the entire costs of the rebuilding process alone (Pattison, 2013: 4). The situation becomes even more unfair if one has to observe it from the standpoint of global external effectiveness (as analyzed above). That is to say, if the intervener undertakes a military action, and thereby averts the humanitarian catastrophe in the territory state, but also promotes the enjoyment of human rights and precludes the catastrophe from spilling across the neighboring states, this may be morally unfair for the intervener to perform the rebuilding operation all by itself.

Third, the intervener, particularly after long-lasting military actions, may run short of further appropriate resources to carry out its duty to rebuild. Such a situation may call for external assistance to supplement the responsibility to rebuild. Nonetheless, such assistance may be lacking and may thus again render the whole operation ineffective and illegitimate.

3. The Collective Duty to Rebuild

It will be argued here that it is the international community in the face of the United Nations which is best fit to undertake the rebuilding process. Indeed, just as the responsibility to react seems to be more appropriate and just when it is exercised by the United Nations, the responsibility to rebuild should equally be carried out by this organization. To illustrate its legitimacy and appropriateness, a number of factors come into play.

First, the United Nations is comprised of both culturally and historically diverse nations and may thus cope with the duty to rebuild more comprehensively and impartially (Pattison, 2013: 24).

It may also be recalled that regional organizations tend to be better accustomed to the region and are thus better fit to perform the rebuilding operation. Nonetheless, it should equally be recalled that the likelihood of partiality with the risk of imposing personal objectives and interests and turning the situation into a neocolonialism, significantly undermines the legitimacy and appropriateness of regional organizations (Welsh, 2009: 136).

Second, the United Nations performs the rebuilding process with a multilateral effort which is crucial to the element of right intention.

And third, the United Nations possesses more appropriate resources to rebuild.

Above all else, the United Nations has a number of peacekeeping institutions designed for rehabilitating operations. Thus, the Peacebuilding Commission (PBC), as established in 2005 by the UN General Assembly and Security Council resolutions, deals with post-conflict peace building, rehabilitating and development issues (United Nations General Assembly, 2007). Although the Commission does this mainly through recommendations, its role is vital in coordinating the relevant actors in the exercise of their duty to rebuild.

4. Results

The responsibility to prevent has without doubt serious effects on the condition of a conflict. It is important in terms of building a strong early warning capacity and addressing root cause and direct cause preventive measures. But more importantly, we should acknowledge that the responsibility to prevent provides an opportunity to save more human lives and dispense with costly resources. At this, I would say that the further status of the conflict is conditional, for if the responsibility to prevent is undertaken with due consideration, the conflict shall not intensify. However, if it is not undertaken properly the situation may aggravate, thereby leading to the second pillar of the Responsibility to Protect principle, which is the responsibility to react.

The second pillar, the responsibility to react, poses a particular importance in addressing mass human rights violations, when all the measures provided in the framework of the responsibility to prevent have failed. It is particularly important in terms of military intervention, which operates as a last resort, when less coercive measures have exhausted, and where most debates happen to take place. This second pillar of R2P teaches us how crucial it may be to take well-timed, rapid and decisive reactive measures to challenge a humanitarian catastrophe, but it also signifies the importance of the appropriate intervener itself. As analyzed within the Moderate Instrumentalist Approach, the intervener has far more duties to comply with to be considered effective and legitimate, as its effectiveness is by far not limited to the Security Council authorization. Particularly, it should not only save the victimized population of the state subject to its immediate intervention, but it should also promote or at least not harm the enjoyment of human rights of its own citizens and in the world as a whole.

Furthermore, the practical examples, as discussed above, demonstrate that military intervention may in some cases not completely conform to the requirements contained in the ICISS Report and elsewhere. However, interestingly, although not surprisingly, such interventions may still be considered legitimate, since they may avert potentially larger atrocities, as it indeed happened in Kosovo and Libya. Nonetheless, it is to be emphasized, that such interventions require a special approach, for they may serve a dangerous precedent for future interventions with wrongful intentions.

Also, it is noteworthy to recall two important issues (lessons) on this matter. First, for the responsibility to react to be more effective and sometimes decisive, regional and subregional organizations should also be engaged in the process (Williamson, 2013: 19). This was the case in Kenya, where the cooperation with the African Union proved its effectiveness in averting a potentially larger humanitarian catastrophe. Indeed, cooperating with regional organizations may sometimes be crucial to resolving the conflict. This is so because regional organizations are more accustomed to the situation in the region and may thus provide a well-timed response to any conflict that may lead to larger mass human rights violations. And second, accountability, which is another important contributive factor to deterring the commission of mass atrocities, may reduce the likelihood of future humanitarian catastrophes if a perpetrator is successfully prosecuted (Williamson, 2013: 19).

Lastly, regarding the third pillar, the responsibility to rebuild, it is to be recalled that history has witnessed numerous cases whereby coercive military actions are properly exercised but because of the absence of further rehabilitating operations, a new wave of mass atrocities takes over the situation again. Most of all this happens because of superficial attitude of states toward the consequences produced by their military actions, but it also happens because of the lack of strong normative regulations of the responsibility to rebuild. It is therefore important to thoroughly elaborate practical mechanisms and institutions, the scope of which would include even more functions than providing mere recommendations.

Furthermore, it is similarly important for the United Nations to take the leading role in the responsibility to rebuild, since it is more culturally and historically sensitive, more neutral, and operates with a multilateral effort and has more appropriate resources for the rebuilding process than any other organization.

5. Conclusion

As can be seen, it was not until the 2001 ICISS Report, that the Responsibility to Protect principle came to us in a reshaped and retooled fashion. The Report introduced the underlying tenets of the principle with its interrelation between other well-established principles of international law. But above all else, the Report also introduced the Three Pillars of the Responsibility to Protect, along with the "just cause" criteria and the precautionary principles, necessary to establish when addressing the question of military intervention. The principle was further endorsed in the ensuing documents adopted by the UN General Assembly, which although have significantly influenced and changed the content of the principle, nonetheless agree on the ultimate purpose of the principle, that there is a residual responsibility which rests with the international community to act for human rights protection purposes, should the territory state manifestly fail to comply with its primary responsibilities. Interestingly, the principle has also been endorsed in the UN Security Council Resolution 1674, which signifies the ever-growing need and importance of the Responsibility to Protect.

Despite the fact that the Responsibility to Protect principle has withstood harsh criticism, and despite the fact that it has so far not been agreed upon in a single treaty and has yet not elevated to the status of customary international law, it nonetheless bears substantial legal implications in the international legal order and states are therefore barred from bypassing the principle arbitrarily.

Indeed, as practice demonstrates, the Responsibility to Protect principle with all its drawbacks and inconsistencies, still proves to be pivotal in averting serious humanitarian catastrophes and saving as many human lives as possible. One may, however, quite contrarily argue, that practice similarly demonstrates the disastrous failures and the shameful indifference of the international community toward mass killings in different states. The reason for this lies primarily in the gap that exists between legality and legitimacy. But as long as mankind has not created a better and a more effective mechanism for international protective system, the Responsibility to Protect seems to be the exact principle to fill in this gap and put an end to such failures and disdainful behavior once and for all, thereby making a better and a more palatable international order.

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