THE RESPONSIBILITY TO PROTECT. FROM "EMERGING NORM" TO A FALSE PROMISE. A NEW CHALLENGE TO INTERNATIONAL SECURITY POLICY

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Abstract

The meaning of RtoP (responsibility to protect) is self-explanatory, it shows what the international community (or at least some part of it) considers unacceptable in today's world: genocide, ethnic cleansing and barbarous acts against civilians. However, the same international community stood silent when Rwanda and Srebrenica happened. Yet precisely because of the guilt and shame associated with its previous failures, the same international community managed to launch an initiative, "responsibility to protect" (RtoP/R2P), in 2001. We insist on calling RtoP an "initiative", not as a derogatory term, but as a counter-rhetoric argument to the so-called "RtoP emerging norm". According to international law theory, a norm can be either customary (derogatory), either peremptory (jus cogens), there is no in-between option, particularly when interpreting the UN Charter provisions in relation with to the broad-spectrum of the principle of non-intervention as opposed to human rights (the area where RtoP tries to overstep the Charter's authority). The main aspects of RtoP are, (1) on one count, the infringement on state-sovereignty (the "functional sovereignty" theory), particularly on the quality of the so-called "Westphalia-style" sovereignty, (2) the other being the clear purpose of the ICISS, above and beyond of ending mass-atrocities, which is the process of legalizing humanitarian intervention. After the 1999 Kosovo Intervention and during

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the early phases of the War on Terror, humanitarian intervention became seriously de-legitimised, this is why something novel was needed, which where RtoP stepped-in, riding on the hopes of many.
Keywords: humanitarian intervention, responsibility to protect, international law, state sovereignty, (non) interventionism, human rights.

Introduction

Following a series of ominous cases of egregious human rights violations during the final decade of the 20st century, the initiative called *RtoP* (responsibility to protect) came into being, addressing the same issues which its previous counterpart, *humanitarian intervention*, failed to manage: the *principle of non-intervention*, the *authority of the UN Security Council* on deciding when intervention is legal, the issue of *legitimacy by appealing to the cosmopolitanism of human rights*. Because of the increasing prevalence of human rights rhetoric in the legal scholars' *communis opinio*, the main aspect of RtoP is centred on the *defence of fundamental human rights*, via the *functional interpretation of the principle of state-sovereignty* – sovereignty is directly involved with the well-being of the state's citizens – *when a state abuses its citizens, it automatically forfeits the right to be called a state*, and at the same time it incurs the wrath of the international community which sees it as its 'sacred duty to intervene' and protect civilians from genocide and ethnic cleansing.

However, with all the goodwill and noble intentions, we cannot overlook the *unresolved aspects which RtoP has 'inherited'* from the now-defunct humanitarian intervention: (1) the desire to *legalize unilateral military interventions*, (2) the *lack of consensus* in the 'rest of the world', particularly in the East and South and the former colonies, (3) the desire to circumvent the UN Security Council, (4) the desire to *impose a reformation of the current international system* without the input from all the major players, (5) the *over-concentration on the matter of legitimacy* (*just cause*) while *disfavouring the concrete aspects with regards to the implementation and conduct of the intervention*, and (6) *after, the post-intervention situation*: if the military operation has accomplished its main task – preventing genocide (i.e. the

responsibility to protect) – *what will happen next* ? Another concern with the application of RtoP stems from the *fears of the developing nations* with the occult purpose of intervention – *can RtoP actually be a tool for regime change* in the guise of the unbridled humanitarian concerns? As we have seen in the case of the *Intervention in Libya (2011)*, the recoil of regime change can have a dangerous and costly price.

Finally, we must raise the question on *the viability of intervention in connection with the RtoP framework*, as we have seen in the past, consensus is hardly ever present, particularly in cases which involve such delicate aspects as intervention and sovereignty. Therefore, *we propose a paradigm shift* from "Responsibility to *Protect*" to "Responsibility to *Prevent*", since it will involve far more states and entities which are now *opposed to the militaristic rhetoric of RtoP*.

Historical aspects and early development

In 2000, in the wake of the events in Africa (Rwanda, Somalia) and during the Break-up of Yugoslavia[1], especially after the Rwanda (1994) and Srebrenica (1995)[2] massacres, and in the aftermath of the Kosovo

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[1] International Commission on Intervention and State Sovereignly (ICISS), *The Responsibility to Protect*, ICISS, Ottawa, 2001, p. 1; *Idem, The Responsibility To Protect. Research, Bibliography, Background*, ICISS, Ottawa, 2001, p. 3; Charles Cater, David M. Malone, "The origins and evolution of Responsibility to Protect at the UN", in *International Relations*, Vol. 30(3), 2016, pp. 282-285, accessible on-line: http://journals.sagepub.com/doi/abs/10.1177/0047117816659586 (03.03.2017).

[2] The *Srebrenica Massacre* (July 1995) was the systematic killing of more than 8000 Bosniak-Muslims men and boys, in and around the vicinity of the town of Srebrenica, by units of the Army of Republica Srpska aided by the "Scorpions" Paramilitary Group, during the Bosnian War. In 1993, the Srebrenica town and surroundings (the Srebrenica enclave), were declared a "safe zone" by the UN (the Security Council Resolution no. 819), the subsequent UNPROFOR Peacekeeping Mission on the premises, was represented at the time by the Dutch "Dutchbat" peacekeeping force of around 400 troops, however they did not prevent the capture of the town by elements of the Army of Republica Srpska (the *Drina Corps* under the command of General Živanović), with reports of the Dutch forces being overwhelmed and unable to act. The ensuing massacre was perpetrated by army units under the command of General Ratko Mladić. After the massacre, it is approximated that a number between 25.000 and 30.000 Bosniak women, children and elderly, were forcefully re-located,

Intervention (1999)[3], the *International Commission for Intervention and State Sovereignty* (ICISS)[4], issued a report entitled "the Responsibility to Protect" (*RtoP*) which proposed a series of radical changes, especially involving the *notion of sovereignty* (and subsequently *non-intervention*) vs. *human rights*[5].

The "core dilemma" of RtoP is centred on *sovereignty vs. human rights*, with the notion of *sovereignty as a responsibility*, asserting the shift "[…] from sovereignty as control to sovereignty as responsibility in both internal functions and external duties"[6] with a series of consequences: state authorities are responsible for the protection and welfare of their citizens, the political authorities have a *dual responsibility*: both to their citizens and the international community, the agents of the state are responsible for their actions (for both omission and commission)[7].

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with the purpose of ethnic cleansing, this was used as evidence of the genocidal intent of the Main Staff of the Army of Republica Srpska. Also there were widespread individual violations against women and children, including mass rape, and indiscriminately killings of pregnant women and children. See more, *Encyclopaedia Britannica*, "Srebrenica Massacre", accessible on-line: http://www.britannica.com/EBchecked/topic/1697253/Srebrenica-massacre; *The Hague Justice Portal, Srebrenica in Summary*, accessible on-line: http://www.haguejusticeportal.net/ index.php?id=9564; *The International Criminal Tribunal for the former Yugoslavia*, "Reports", accessible on-line: http://www.icty.org/sections/AbouttheICTY/ReportsandPublications (03.03.2017).

[3] Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, Cambridge University Press, 2006, pp. 246-250.

[4] In September 2000, the ICISS was formed as the behest of the Canadian Government, aided by a group of major foundations and supported by the UN. The Commission was asked before the UN General Assembly to address the wide palette of questions which formed the *debate around humanitarian intervention and genocide prevention* and to present to the Secretary-General of the UN a report which would bridge the dissensions on the issues of sovereignty and human rights. ICISS, *The Responsibility to Protect*, p. vii; Gareth Evans, "From Humanitarian Intervention to the Responsibility to Protect", in *Wisconsin International Law Journal*, Vol. 24, No. 3, 2006, pp. 704-712.

[5] C. G. Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights*, Routledge Publishers, 2011, pp. 19-20.

[6] *Ibidem*, p. 13;

[7] Thomas G. Weiss, Ramesh Thakur, *Global Governance and the UN. An Unfinished Journey*, Indiana University Press, 2010, pp. 312-313; Peltonen Hannes, "Sovereignty as Responsibility, Responsibility to Protect and International Order: On Responsibility, Communal Crime Prevention and International Law", in *Uluslararası İlişkiler*, Vol. 7, No. 28, Winter, 2011, pp. 59-81.

Therefore, *the attack of the "Westphalian-style sovereignty"*[8], is the most important aspect of the RtoP initiative since it challenges the domestic jurisdiction and sovereignty in the specialized interpretation of the term, deferring sovereignty as "exercise[ing] exclusive and total jurisdiction within its territorial borders"[9] and imposing a *functional interpretation of sovereignty*[10], as being limited by state action when the obligation to provide protection to its citizens is not fulfilled, meaning that non-intervention is superseded by human rights and that "the principle of non-intervention yields to the international responsibility to protect".

In light of the ICISS' interpretation, *sovereignty is not indivisible*, therefore it would be possible to forfeit some aspects of it as to allow intervention and provide relief "[…] where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure". Also, it makes reference to the process of creating *new rules of customary international law*, by using the terminology "developing practice".[11]

The overall strategy of RtoP is organized into *three pillars*[12], which are "equal in terms of size, strength and viability"[13] as follows: *first*, states have the responsibility to protect their population from genocide, war crimes, ethnic cleansing and crimes against humanity; s*econd*, the international community has a responsibility of assistance towards the state in question, as to fulfil its primary responsibilities; *third*, if the state does not fulfil its primary responsibilities, the international community has the responsibility to intervene through coercive measures short of the use of force (economic sanctions and other diplomatic measures), with military intervention being considered as a last resort. The Report also discusses its *new approach* – the umbrella-concept of "the Responsibility to Protect", the interconnectivity of the pillar system is made as to ensure that intervention on grounds of

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[8] Thomas G. Weiss, Ramesh Thakur, *op. cit.,* pp. 309-311.

[9] ICISS, *The Responsibility to Protect*, pp. 12-13.

[10] C. G. Badescu, *op. cit.*, p. 26.

[11] ICISS, *The Responsibility to Protect*, p. 9.

[12] Hugh Breakey, *The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis*, Griffith University, May, 2011, pp. 37-40.

[13] United Nations General Assembly, *2005 World Summit Outcome*, A/60/L.1, para. 138-139, p. 31; on the *three pillars of RtoP*, see Ban Ki-moon, *UN Secretary-General's Report: Implementing the Responsibility to Protect*, 2009, A/63/677, pp. 10-27.

genocide prevention must be employed as an "extraordinary and exceptional measure" and that is meets specific criteria, represented by its *four basic objectives*:

> "(1) […] to establish clearer rules, procedures and criteria for determining whether, when and how to intervene; (2) […] to establish the legitimacy of military intervention when necessary and after all other approaches have failed; (3) […] 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; (4) […] and to help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace"[14]

These aspects which involve military intervention are considered as a "last resort" and are undertaken only after the preventive (non-military) options have been exhausted, the decision to act with military force must be taken in observance of special conditions which include: a *clear purpose*, *proportionality* and *reasonable prospects*, and only under the "direct authority of the Security Council"[15]. On these proposals, the ICISS report has received significant support both from states and legal scholars[16], though it has been criticized by some BRICS states (such as India, Russia[17], Brazil[18] and China[19]), and some authors[20] whilst others have a mixed, semi-favourable

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[14] ICISS, *The Responsibility to Protect,* p. 11.

[15] *Ibidem*, pp. xii-xiii.

[16] The authors which have expressed support for RtoP: C. G. Badescu, *op. cit.*, p. 3; Gareth Evans, *The Responsibility to Protect, Ending Mass Atrocity Crimes Once and For All*, Brookings Institution Press, 2008, p. 11; *Idem, From Humanitarian Intervention to the Responsibility to Protect*, p. 703; Thomas G. Weiss, Ramesh Thakur, *op. cit.*, p. 338.

[17] Gareth Evans, *From Humanitarian Intervention to the Responsibility to Protect*, p. 716.

[18] The position of the Brazilian ambassador to the UN signifies that "R2P is not a principle proper, much less a novel legal prescription. Rather, it is a powerful political call for all States to abide by legal obligations *already set forth in the Charter*, in relevant human rights conventions and other instruments". Aidan Hehir, "R2P and International Law", in Philip Cunliffe (ed.), *Critical Perspectives on the Responsibility to Protect, Interrogating Theory and Practice*, Taylor & Francis, 2011, p. 92.

[19] "However, some Member States criticised the manner in which these mandates were implemented. Critics complained that NATO (in Libya) and the UN (in Cote d'Ivoire) overstepped their Security Council mandates by *contributing to the forcible change of regimes*,

reviews[21]. The UN in particular, has recognized its importance at the *2005 World Summit*,[22] and since then it has twice endorsed the RtoP initiative[23]; the United Nations Secretary-General Ban Ki-moon also voiced his support

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that they used disproportionate force which increased the risks to the civilian populations and that they ignored or outright rejected opportunities for political dialogue. A number of countries, including Russia, India, and China went so far as to argue that regime change must never be part of the toolkit of responding to genocide, war crimes, ethnic cleansing and crimes against humanity. Subsequently, Russia in particular, has argued that Libya coloured its thinking on Syria, pushing it to resist Western pressure on the al-Assad regime on the grounds that this might open the door to regime change." See, Alex J. Bellamy, *The Responsibility to Protect: Towards a "Living Reality",* Report written for the United Nations Association-UK, UNA-UK, 2013, p. 19.

[20] These authors have expressed critical opinions of RtoP: Louis Pingeot, Wolfgang Obenland, *In whose name? A critical view on the Responsibility to Protect*, Global Policy Forum, 2014, p. 32; Alex J. Bellamy, "The Responsibility to Protect - Five Years On", in *Ethics and International Affairs*, Issue 24, No. 2, 2010, p. 143 ; Philip Cunliffe, "Sovereignty and the Politics of Responsibility", in Christopher J. Bickerton, Philip Cunliffe, Alexander Gourevitch, (eds.), *Politics without Sovereignty A critique of Contemporary International Relations*, University College London Press, 2007, p. 39-41; Alexander Gourevitch, "National Insecurities. The new politics of the American National Interest", in Christopher J. Bickerton, Philip Cunliffe, Alexander Gourevitch, (eds.), *Politics without Sovereignty A critique of Contemporary International Relations*, University College London Press, 2007, p. 58; Aidan Hehir, *op. cit.*, in Philip Cunliffe (ed.), *Critical Perspectives on the Responsibility to Protect, Interrogating Theory and Practice,* Taylor & Francis, 2011, p. 84.

[21] James Pattison, *Humanitarian Intervention and the Responsibility to Protect, Who Should Intervene?*, Oxford University Press, 2010, pp. 252-253.

[22] "Amidst the general disappointment […] there were several important rays of hope […] perhaps in the longer term the most important, was the General Assembly's endorsement of the 'responsibility to protect'". Nicholas J. Wheeler, "A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit", *Journal of International Law & International Relations*, Vol. 2, Issue 1, 2005, p. 95, accessible on line: http://www.jilir.org/docs/issues/volume_2-1/2-1_7_WHEELER_FINAL.pdf (03.03.2017).

[23] On *two separate occasions*, the Security Council has reaffirmed its commitment for the initiative presented by RtoP, first in 2006 with *Resolution no. 1674*, and second in 2009 with *Resolution no. 1894*, (both, para. 138, 139). The Security Council has since then mentioned RtoP on a number of cases, for example: *Libya*, with Resolution no. 1970, Resolution no. 1973, Resolution no. 2016, Resolution no. 2040; and *Mali*, with Resolution no. 2085, Resolution no. 2100; as well as in other cases which involved resolutions for countries engulfed in civil war and civil disobedience. See, *United Nations Security Council*, "Resolutions", [S/RES/1674 (2006); S/RES/1894 (2009); S/RES/1970 (2011); S/RES/1973 (2011); S/RES/2016 (2011); S/RES/2040 (2012); S/RES/2085 (2012); S/RES/2100 (2013)], accessible on-line: http://www.un.org/en/documents/ods/ (03.03.2017).

for RtoP, with the first comprehensive document released in 2009, during the Annual Report of the Secretary-General on the Work of the Organization, and afterwards debating RtoP in the UN General Assembly for the first time, giving states the floor in voicing their support and concerns on the matter. This practice has continued in the subsequent UN Secretariat's Annual Report since 2010.[24]

Criticism of the RtoP initiative

On the other side of the argument, we have the critics of the ICISS report. One of the most vehement voices to challenge the RtoP initiative is that of Alan Kuperman, who believes that "[actually] RtoP caused genocide" referring to the cases in which rebels would encourage uprisings or secessions, as to incur a genocidal response from the authorities so that the West who would militarily intervene and change the 'murderous' regime and in the process aiding the "political games of rebels", and that "RtoP is a wonderful principle", unfortunately the "norm meant to protect civilians has backfired"[25]. This argument is quite famous, though is not the first time it has been used, (during the Yugoslav Wars, the Serbs have claimed provocation into genocide by Muslim separatists) and it has been linked to a number of *false flag operations*[26], with the most recent one exactly

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[24] *The United Nations*, "Reports of the Secretary-General": (1) Early warning, assessment and the responsibility to protect (A/64/864, 2010); (2) The role of regional and sub-regional arrangements in implementing the responsibility to protect (A/65/877–S/2011/393, 2011); (3) Responsibility to protect: timely and decisive response (A/66/874–S/2012/578, 2012); (4) Responsibility to protect: State responsibility and prevention (A/67/929–S/2013/399, 2013), accessible on-line: http://www.un.org/sg/speeches/reports/68/report.shtml; (03.03.2017).

[25] Alan J. Kuperman, "Review of Gareth Evans' Responsibility to Protect", in *Political Science Quarterly*, Vol. 124, No. 3, (Fall 2009), p. 591. For a more comprehensive debate between the two, see: *CNN's Amanpour*, "Does the World Have the Right to Prevent Genocide?", CNN Transcripts, October 28 2009, accessible on-line: http://transcript.cnn.com/TRANS-CRIPTS/0910/28/ampr.01.html and on YouTube: https://www.you-tube.com/watch?v=jW0UTm6iY2M (03.03.2017).

[26] * In military terminology, *false flag* (sometimes *black flag*) represents the covert operation or (*black op.*) meant to deceive the enemy and the population in such a way, that the subversive actions appear as though they have being carried out by entities, groups, or nations other

in April 2015[27], so technically, there is the possibility that in some part of the world, this could be used as a tool for independence. Before their debate (Evans vs. Kuperman), Gareth Evans, one of the "fathers" of the RtoP initiative, in defence of his creation and discussing about sovereignty – the arch-enemy of humanitarian intervention – wrote that "sovereignty is a license to kill: what happens within state borders, however grotesque and morally indefensible, is nobody else's business"[28]. In this line, he mentioned the largely criticized Vietnamese Invasion of Cambodia, whom he views as being a humanitarian intervention and as an example of how sovereignty, even when used by genocidal governments, represents a bygone era of the time when newly formed states "proud of their identity, conscious in many cases of their fragility, and generally saw the non-intervention norm as one of their few defences against threats and pressures from more powerful international actors"[29]. Evans forgets to add that at the time the US were actively supporting the Khmer Rouge (the perpetrators of the *Killing Fields*) at the time, and that

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than those who actually planned and executed them. Though they are considered "perfidy" and prohibited under the 1977 Protocol Additional (I) to the Geneva Conventions (1949) they have been extensively used (and still are), particularly by the US, British and the Russians.

** For example, the US and the UK, used a directed and complex false-flag operation, in conjuncture with a coup d'état in 1953, called *Operation TP-Ajax*, to remove the democratically elected government of Iran (prime-minister Mosaddegh), by employing a directed campaign of bombings by Iranians posing as members of the Loyalist Communist Party to undermine the authority of the government. This ultimately led to the Islamic Revolution of 1979 which overthrew the Shah, the US-Iran relations being extremely tense ever since. Another example, the Russians are suspected to have organize the *2008 Kurcha incident*, as to provide them with a *casus belli* to intervene in the breakaway Georgian regions of Abkhazia and South-Ossetia, because of the pro-West stance that former Georgian president Saakashvili took, with later information suggesting that the film crew (supportive of the Russians) who recorded the incident, was already in place before it happened. See more, Robert B. Durham, *False Flags, Covert Operations, & Propaganda*, First Edition, 2014, pp. 1-6, 254-277; C. G. Badescu, *op. cit.*, pp. 142-144.

[27] *Global Research*, "Turkey Wages War on Syria: Leaked Recording Confirms Turkish "False Flag" Attack", accessible on-line: http://www.globalresearch.ca/turkey-wages-war-on-syria-leaked-recording-confirms-turkish-false-flag-attack/5375807 (03.03.2017).

[28] Gareth Evans, "The Responsibility to Protect", in Richard H. Cooper, Juliette Voïnov Kohlerin, (eds.), *Responsibility to Protect The Global Moral Compact for the 21st Century*, Palgrave Macmillan, 2009, p. 16.

[29] *Ibidem*, p. 17.

they were the most ardent critics of the Vietnamese intervention, and also that the situation has not changed from the 1970s, powerful states continue to involve themselves in other states' business. Also, it is noted that the majority of historians actually perceive that the Vietnamese intervention was in fact a self-defence operation, as radical Khmer factions were responsible for several attack across the border, the fact that the intervention had a humanitarian outcome, does not change the fact that the military operation of Vietnam was not a humanitarian intervention, though it clearly had humanitarian outcomes.

In relation with the **Darfur case**, as one humanitarian crisis which did not receive the 'benefit' of the RtoP intervention, Evans tries to clarify the confusion which baffled many academics. In this respect, he devises a series of criterions which he applies to the Darfur case as to prove that military intervention on behalf of the RtoP was, until the time of his writing, unnecessary, and that "the point particularly for those who continue to think that any embrace of R2P means committing oneself to multiple military interventions in highly problematic circumstances, is that R2P is about much more than coercive humanitarian intervention"[30]:

> "(1) *Seriousness of harm* – does it involve genocide and other large-scale killing, ethnic cleansing, or serious violations of international humanitarian law, actual or imminently apprehended; (2) *Proper Purpose* – the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other motives may be in play; (3) *Last Resort* – has every non-military option for meeting the threat in question been explored; (4) *Proportional Means* – are the scale, duration, and intensity of the planned military action the minimum necessary to secure the defined human protection objective; (5) *Balance of consequences* – is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction."[31]

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[30] *Ibidem*, p. 24.
[31] *Ibidem*, pp. 23-24.

We disagree with the opinion of Evans, mainly because the rhetoric of the conditions above is seen as overly cautious at best in comparison with the rhetoric used in the cases of Kosovo and Iraq. The fact that the previous cases in which humanitarian interventions were used backfired profusely and delegitimized the intervening states in such a way in which now they employ a series of criterions as to convince themselves (and the world) that Darfur did not need an Western intervention, represents, in our opinion, the negative consequences of overextending one's reach in the preceding situations which were hailed as "humanitarian interventions". The "need for selectivity"[32] which Evans endorses, reminds us of the rhetoric of act-utilitarianism, hence, the self-defeating quality of his discourse and of the applicability of RtoP. He supports the need that further criteria must be developed for better deciding which situation should be included as being under the RtoP mandate, therefore he proposes the creation of a "credible R2P watch list", which should encompass a number of instruments, as to help determine the position in which the a respective or prospective country is, relative to the RtoP mandate.

> "(1) *The first relevant consideration* is whether the country in question has a past history of mass atrocities perpetrated by repressive governments or different groups in the population against each other or both; (2) *The second* is whether tensions of a kind that have given rise to conflict in the past, even if falling short of the perpetration of full-scale mass atrocities, still persist; (3) *The third factor* is the strength of the country's coping mechanisms when it comes to resolving grievances and tensions; (4) *The fourth factor* is the receptivity of the country or society in question to external influence, either positively, in the form of welcoming assistance to solve its problems, or negatively, in the sense of being susceptible to economic, political, diplomatic, legal, and – in the last resort – military pressure; (5) *The final factor* […] is good leadership. Countries with such leadership tend to be able to solve almost any problem."[33]

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[32] *Idem, The Responsibility to Protect, Ending Mass Atrocity Crimes Once and For All,* pp. 71-74.
[33] *Ibidem*, pp. 74-75.

Evans' proposal seems to assume too much on the part that the international community, for it seems less likely that it would accept this type of "blacklist" where states which do not behave accordingly are going to be written down and then chastised publically through acts of diplomacy before being threatened with intervention if they refuse to conform. Also, we must remember that RtoP is not an internationally accepted norm, it has only reached the status of *proposal*, and in the last years, it seems to have regressed to the point where some believe it will remain exactly that, a proposal. Therefore, it seems that Evans is somewhat surmising too much from his creation and from counting too much on the alluring power of anti-genocide rhetoric. Another aspect which intrigues us is the so-called "good leadership" criterion, as it would infer that leaders who do not fit the prescribed qualities of "good leaders" represent a threat to their country. Yet even assuming that it is so, is it not the responsibility of the people to decide which leader is best suited to their needs? This proposal alone makes us seriously consider that all the good aspects of RtoP are not enough to fill the hole that Evans' proposal, of implicit regime change, made, and what is even worse, it the 'proposal' that it should be endorsed internationally, with the violation of so many Charter rules and international documents.

Other authors also voiced their criticisms. Aidan Hehir, another concerned voice, believes that the RtoP initiative is not what it seems, or more correctly put, *it's no longer what it seemed to be at the beginning*, being *radically changed* from the time of its inception:

> "[…] the significance of R2P is very limited and the furore over its prescriptions is a function more of what people imagine them to be rather than what they actually are. As R2P has evolved since 2001 it has moved away from the issue that was its inspiration, namely responding to certain egregious intra-state humanitarian crises, and has increasingly developed into an amorphous concern with prevention. While the term 'Responsibility to Protect' and its abbreviation 'R2P' have very quickly pervaded political discourse, both lack substance and are little more than slogans employed for differing purposes shorn of any real meaning or utility."[34]

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[34] Aidan Hehir, "The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?", in *Sage Journals' International Relations*, Vol. 24, No. 2, June 2010, p. 219.

He points out that when RtoP was created, its main purpose was that of responding to situations which were similar with the massacres of Rwanda and Srebrenica, however, it has since evolved into an operative principle with more emphasis on prevention and political involvement than clear actions amounting to the radical changes in international relations, as it claimed in its early days. Also, Hehir indicates that the involvement of the UN, the Security Council in particular, seemingly warped the original purposes, diluting the original text which made a clear reference to "the obligation of the international community" and replacing it with the lesser term of "responsibility", which gives way for the Security Council to "be prepared act" instead of "the shared responsibility to take collective action". Continuing, he points out that the rhetoric of the *2005 Outcome Document* could be interpreted as giving a "significant scope for politically determined *ad hoc* interventionism"[35]. Hehir believes (and justly so), that the "fundamental flaw" which RtoP has, (morally speaking) is the rhetoric of "never again", though with "little demonstrable utility in practice" and its "seemingly wilful evasion of the influence of power and inflated sense of the capacity of R2P may advocates to influence the behaviour of states through the application of moral pressure"[36]. Therefore, the implications of the fact that the *2005 Outcome Summit* does not carry much legal weight (if any), and *does not enforce RtoP as a legal international norm*, coupled with the grandiose presentation and limited support (not for the concept itself, but rather for the issues with implementing the *third pillar*) make Hehir to conclude that "R2P's only possible utility lies in its shaming power and rhetorical impact"[37].

We agree with this view, in particular with the arguments about the moral aspect of RtoP. The desiderate of stopping genocide is axiomatically a noble and just ideal, however, to believe that states will give up their power and commit manpower and resources just for the fact that they've publically endorsed RtoP is naïve at best. Also, the RtoP language reminds

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[35] *Idem*, "R2P and International Law", in Philip Cunliffe (ed.), *Critical Perspectives on the Responsibility to Protect, Interrogating Theory and Practice*, Taylor & Francis, 2011, p. 90-91.
[36] *Ibidem*, p. 95.
[37] *Ibidem*, p. 96.

us of the utilitarian rhetoric of John Stuart Mill[38], who viewed the British Empire as the great civilizing force which even when it made "any attempt it makes to exert influence over them [other states], even by persuasion, is rather in the service of others, than of itself" [39], and at the same time ignored the atrocities committed during the *Sepoy Rebellion in of 1857*, really shows the extent and reach of foreign policy and state interest warped into *power politics*. It is the same story with RtoP, it claims it wishes for prevention rather than intervention, but when put to the test it suffers from the same old *humanitarian intervention disease* which did not prevent Rwanda and Srebrenica, in practice, its moral qualities fail utterly, first and foremost, because the foreign policy of the interveners and their inability to take the responsibility of what intervention for humanitarian purpose actually involves – loss of life from the intervening forces, very high costs and political chaos at home.

Another critique towards RtoP comes from Louis Pingeot and Wolfgang Obenland, who uncovered a series of "flaws of R2P" as follows:

> "(1) it has too many analytical gaps, problematic assumptions, and controversial solutions; (2) its understanding of the mechanisms behind conflicts and global policymaking is at times naïve and disconnected from reality; (3) it is far from being universally applicable, and it employs double standards; (4) it fails to ask the right questions, by focusing on sovereignty as the main obstacle to saving lives; (5) it originates from a government project, rather than a project that sprung from civil society initiatives, therefore making it questionable; (6) the supporters of R2P usually discard criticism of the doctrine as a "misinterpretation" of what it truly is or as a knee-jerk reaction; (7) although its supporters present the doctrine as a revolutionary advance in international relations, it in fact has many historical predecessors – with emphasis on the *colonial period*". [40]

Among these, we believe that *(2), (3) and (4) represent the most significant failures of RtoP*, because they rely on an idealized interpretation of

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[38] John Stuart Mill, "A Few Words on Non-Intervention," in *Fraser's Magazine*, 1859 (first appeared), in *Foreign Policy Perspectives*, No. 8, 2006.
[39] *Ibidem*, p. 1.
[40] Louis Pingeot, Wolfgang Obenland, *op. cit.*, pp. 5-6, 32-41.

its role, they do not try to understand the underlying issues which cause ethnic conflict, and they automatically revert to a sort of simplistic reactionary rhetoric which derives from the process of managing the already enacted genocidal violence. Instead on shifting the whole approach towards *trying to ascertain the root cause of human conflict*, they blindly accept that it may occur at any time and the only solution is enforced prevention. We believe that one cannot invoke prevention before one understands the underlying mechanics of what one tries to prevent from occurring actually is. RtoP does nothing of this sort, it basically tries to wrap the ugly and complex facets of ethnic conflict in the cloth of imperfect sovereignty and governmental responsibility, doing this without the slightest application of the realistic concepts which drive inter-human sectarian conflict. We fail to ascertain why the great minds behind this initiative did not consider the *worst-case scenario*, which involves *RtoP's usage as a tool which causes disgruntled minorities and rebellious factions to provoke and sustain artificial ethnic dissention* so that the highly susceptible and sensitive Western societies would immediately take action, so that their establishments are shielded from being publically chastised by their own citizens. However, they do recognize *some arguments in support of RtoP* such as the reiteration of principles and concepts and existing state obligations, and with the desiderate of trying to change the old rhetoric, distancing itself from humanitarian intervention, though it did not "manage to completely disentangle itself from the concept of humanitarian intervention"[41]; it "underlines the primary responsibility of states towards their own people"; it emphasizes the "role of the international system in helping individual states to fulfil their responsibility towards their own citizens"[42]; it attempts to build more "consistent international response to crises" and to "overcome the doctrine of (unilateral) humanitarian intervention"; stressing that "all actors involved in a conflict should be held accountable", by endorsing "correlation between criminal prosecution and deterrence"[43]. We do believe that some parts of the RtoP initiative are welcoming, for example the *accountability issues* are approached in the fashion in which *both*

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[41] *Ibidem*, p. 22.

[42] *Ibidem*, p. 23.

[43] *Ibidem*, p. 24.

interveners and intervened are considered equally responsible under international criminal law, making the job of the troops on the ground much more equitable for the civilian population trapped within the conflict area, it also gives a sense of justice and delimitates the responsibility of the entire operation from the acts of individuals which do not respect their mission and abuse their power. However, this proposal could backfire, since the "possibility of holding intervening states accountable for their action in the course of R2P could have serious repercussions for the effectiveness of interventions"[44], again bringing into question the double standards problem of the interveners.

Another proposal of RtoP is that of focusing, albeit theoretically, "on 'root cause prevention' [it] offers an opportunity to advocate for more international support to help states not only in times of crisis and conflict, but also in times of peace"[45]. Though this is highly commendable, this could in fact corrupt the whole process of aid and international assistance, by transforming the alleged economic assistance tools into instruments to politically intervene in the affairs of the state in question, conditioning the aid and international support in exchange for proxy control, *turning R2P into colonialism 2.0*, which represents one of the many fears of former colonies which are slowly transitioning towards democratic elected governments.

Quiet support for RtoP

In support of RtoP, Anne Orford believes that "[…] the significance of the responsibility to protect concept lies not in its capacity to transform promise into practice, but rather in its capacity to transform practice into promise, or deeds into words"[46]. She argues that one important aspect of RtoP is the separation from the aspect of sovereignty infringement, view which characterized the doctrine of humanitarian intervention, perceiving the concept of sovereignty as possessing the criterion of being "effective at

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[44] *Ibidem*.

[45] *Ibidem*.

[46] Anne Orford, *International Authority and the Responsibility to Protect,* Cambridge University Press, 2011, p. 2

guaranteeing protection" as part of the intrinsic quality of legitimate authority as being an intrinsic part of sovereignty[47]. Orford does not agree with the idea that *RtoP is being forcefully imposed* as a form of "soft-law"[48], since she considers that "[…] most agree that the World Summit Outcome cannot be understood to impose new legal obligations […] nor does it appear that the declaration of an international responsibility to protect has imposed a legal obligation upon states to engage in unilateral or collective intervention in situations of humanitarian crisis"[49], arguing that those obligations already existed in various international instruments, such as the Genocide Convention[50] and other UN General Assembly documents.

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[47] *Ibidem*, p. 16.

[48] In the classic, *binary rhetoric* (*lex lata* vs. *lex ferenda*, complete law vs. legal project), the concept of "soft law" refers to non-binding agreements, as opposed to "hard law" which are considered binding or obligatory. The discussion does not stop here, with the dichotomy of soft vs. hard law being perceived differently. According to Professor Shaw, "It is sometimes argued more generally that particular non-binding instruments or documents or non-binding provisions in treaties form a special category that may be termed 'soft law'", though, he clearly points out that "'soft law' is not law". So, while not legally binding, soft law can be politically influential in setting down objectives and aspirations which may crystallize into custom or be adopted as treaties. In spite of this, some disconsider the binary rhetoric (hard law is preferable over soft law). At the extremes of the debate, *constructivists* believe that soft law should have a more active role to play, in contrast with *legal positivists* who prefer hard law, considering that soft law is problematic and is only useful when included in the process of developing hard law. See more, Gregory C. Shaffer, Mark A. Pollack, "Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance", in *Minnesota Law review*, No. 94, Issue 706, 2010, pp. 712-717, 720-727, ; Malcom N. Shaw, *International Law, Sixth Edition,* Cambridge University Press, 2008, pp. 117-118; John P. Grant, J. Craig Barker, *Parry and Grant Encyclopaedic Dictionary of International Law, Third Edition,* Oxford University Press, 2004, p. 558; Samantha Besson, "Sources of International Law", in Samantha Besson, John Tasioulas (eds.), *The Philosophy of International Law*, Oxford University Press, 2010, pp. 170-172.

[49] Anne Orford, *op. cit.*, pp. 23-24.

[50] The *Genocide Convention*, (the Convention on the Prevention and Punishment of the Crime of Genocide) adopted by the UN General Assembly on December 9 1948, and entered into force on 12 January 1951, until now being ratified by 146 states, defines the term "genocide" in Article 2 and incriminates it in Article 3 along with other connected activities. According to Article 2, the term "genocide" represents "[…] any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about

On the methods which involve practical accounts of RtoP implementation (police action), particularly on unauthorized/unilateral humanitarian intervention, Anne Orford discusses the concerns of some academics that concentrated on the possibility that it might be misused:

> "Noam Chomsky focused upon the danger that the doctrine of the responsibility to protect concept might be misused by powerful states to justify unilateral humanitarian intervention, […] There has been much less critical attention paid to the possibility that the responsibility to protect concept might be used precisely as its proponents suggest it should be used – that is, to expand international executive rule in the name of protecting life"[51]

In her opinion, the issue is far more complex than the concern raised by Noam Chomsky, arguing that the failure of the UN to respect its main purpose (maintaining peace and security) and the failure to respond to cases of massacre and genocide "would mean abandoning what many had come to see as the mission of the organization", and that the Kosovo and Iraq cases represented a form of "possible dystopian future in which powerful states or coalitions of the willing side-lined the UN and took its place as the representatives of humanity"[52]. She believes that RtoP is a response to the above-mentioned threat, behaving in a manner consistent with the UN principles and the result of that is "a detailed argument for the political authority of the international community and for the consolidation and integration of executive rule by international actors". Therefore, Orford considers that RtoP has *dispelled the fears* that the "neo-imperialist triumvirate of the US, Britain and France" (the words of Noam Chomsky) which existed and was using RtoP to facilitate their interests, this being endorsed by the UN Secretary-General Ban Ki-moon in his speech before the General Assembly in 2011, affirming that the "[…] development of a

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its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.". *United Nations Treaty Series*, "Convention on the Prevention and Punishment of the Crime of Genocide", 1951, p. 280.

[51] Anne Orford, *op. cit.*, p. 27-28.

[52] *Ibidem*, p. 33.

credible multilateral alternative would make it more difficult for States or groups of States to claim that they need to act unilaterally or outside of United Nations channels"[53].

We disagree with this opinion, simply because the facts don't add up to the proposed ideas which RtoP tries to empower. *Firstly*, if we analyse the military power of states with a tradition of colonial and imperial actions, only the "neo-imperialist triumvirate" fits the *needed requirements*: a strong, flexible military with a blue-water navy, the strong economy needed to support this, and the incommensurable desire to control and intervene. The imperial and colonial traditions of other states, Russia, Japan, Belgium, the Netherlands and Spain/Portugal have either been abandoned their imperialistic desires (due to obvious domestic reasons), or the costs and manpower necessary to maintain them are very high. Other possible candidates are India and China, but up until now, they do not have the military and blue-water navy as to impose themselves as interveners. The only exceptions (as humanitarian interveners) are India, who involved itself in the Sri Lanka Civil War, and Russia which still follows the doctrine of "buffer zones" and tries to retain control of key regions in the Baltic (Finland's neutrality) and Eastern Europe (East Ukraine and Crimea). It is however possible in the future to witness the re-emergence of the Sino-Japanese rivalry in South-East Asia, Japan being on a slow but very well planned shift from isolationism to regional importance, and China trying to manage the huge economic growth and channelling her vast resources into building-up its military. Therefore the costs, both political and financial, do not entice them to spearhead this type of actions, leaving only the three (the US, Britain and France) as the main 'culprits' and 'instigators' of humanitarian interventions.

Laura Herța contends that RtoP has the quality of an "emerging norm", emphasizing the interpretation of *sovereignty as responsibility* (in contrast to s*overeignty as authority*) and pointing to the following "huge differences that while the [latter] refers to states' control over their territories and population, the [former] suggest that sovereignty is conditional on a state demonstrating respect for a minimum standard of human rights"; this approach is further reinforced by the interpretation of

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[53] *Ibidem*, p. 33.

Chapter VII of the UN Charter which views state sovereignty as already yielding to the desire of the international community to preserve "peace and security". [54]

This argument could lead to further interpretations, which reduce the political and legal significance of sovereignty. In what follows, we will counteract such potential interpretations. *First* – the interpretation of *sovereignty as being divorced from the ethos of the state would be incorrect*, the existence of a state is, first and foremost, inextricably linked with the notion of sovereignty, which is indivisible; a state cannot have absolute internal sovereignty and pooled or shared external sovereignty, these notions are incompatible. *Second* – the interpretation of the UN Charter as providing an *ex ante* permission to intervene when the threats to peace and security are obvious would be misguided, since it would disregard the provisions on the authority of the Security Council to decide on the matter (Article 24), and legally speaking, would render useless the purpose of the Security Council[55]. *Third* – the shift from so*vereignty as authority to sovereignty as responsibility* does not represent a solution to the problems of human rights violations, it will only empower or facilitate regime change and will lead to international instability and mistrust, since it would make it extremely difficult to convince the developing nations to acquiesce this 'reformation of the international system'.

In a more specific context, that of the *intervention in Libya* (2011), Laura Herța emphasizes the "empathy [of the international community] for the suffering of innocent Libyans" and, discussing the UN Security Council Resolution no. 1973, she draws attention to

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[54] Laura M. Herța, "*Jus in Bello* and the Solidarist Case for Humanitarian Intervention. From Theory to Practice", in *Studia Europæa*, LVIII, Issue 1, March, 2013, pp. 28-29.

[55] Article 25 states that: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Corroborating this with the previous provision, this means that the Security Council is mandated to first analyse and then decide on the opportunity to disregard the rule set forth in Article 2(4) (forbidding the use of force), the states are bound to respect the decision of the Security Council only, automatically applying the Chapter VII Action by circumventing the vote on the Security Council amounts to a breach of Article 2(4), which according to international law, is considered as an act of aggression.

"The milestone showing that 'the world has become more committed to the protection of civilians' was reflected in the fact that two UNSC Resolutions on Libya 'passed with unprecedented speed and without single dissenting vote"[56].

In our opinion, the situation revealed by the two Security Council Resolutions (Resolution no. 1970 and 1973) point to a mixed status, that of a *pseudo-humanitarian intervention*, since it does not represent a humanitarian intervention *per se*, and it involves several rhetorical aspects pinpointed in the RtoP rationale.

First, from the *standpoint of international law*, Resolution no. 1973 has a number of ambiguities: the reference in para. 4 (which remarks on para. 9 of the Security Council's Resolution no. 1970) uses the legal term of "notwithstanding", combining the two paragraphs into one interpretation:

"Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, […] to take all necessary measures, notwithstanding *paragraph 9 of resolution 1970* –
{"all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer […], of arms and related materiel of all types, and technical assistance, training, financial or other assistance, related to military activities […] or use of any arms and related materiel, including […] armed mercenary personnel whether or not originating in their territories, and decides further that this measure shall not apply to:
(a) Supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee established pursuant to paragraph 24 below;
(b) Protective clothing, including flak jackets and military helmets, temporarily exported to the Libyan Arab Jamahiriya by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; *or*

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[56] Laura M. Herța, *op. cit.*, pp. 39-40.

(c) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee;"], to protect civilians and civilian populated areas under threat of attack, while excluding a foreign occupation force of any form on any part of Libyan territory" }

– to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory".[57]

Interpreting the phrase "to take all necessary measures, *notwithstanding paragraph 9 of resolution 1970*, to protect civilians" is as follows: the absolute embargo imposed to all arms shipments stands as absolute, with the exception of *the humanitarian rationale* – military equipment supplied to the rebels – which is considered as such because it serves the purpose of protecting civilians by providing them means to protect themselves, these actions are considered as legal (i.e. within the limits of the Security Council's resolutions).

Second, *from the operational perspective*, the decision to impose NFZ (no fly-zones) has multiple reasons: from protecting civilians from governmental air-strikes, to reducing the number of collateral victims; but the *main objective was to act as a proxy rebel air force*, since the targets were easier to find (either on the ground, or in the air). This kind of support given to rebels, in the absence of the NFZ, could be interpreted as *unconditional aid given to the rebel forces* which could pose serious legitimacy issues to the providing nations which could be deliberately violating international law[58].

With a less aggressive, yet sometimes still with a critical tone, Alex Bellamy, affirms the semblance between RtoP as "old wine in new bottles" or as a "Trojan horse", representing the hidden interests of states like the US and Great Britain, in their quest to impose their will as "norm carriers", and also as a way in which they will justify interference in the internal

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[57] The United Nations, Security Council, *Resolution 1970* (S/RES/1970 (2011)*), p. 3; *Resolution 1973* (S/RES/1973 (2011)), p. 3.

[58] *BBC News*, "Libya: Coalition divided on arming rebels", accessible on-line: http://www.bbc.com/news/world-africa-12900706 ; *The Guardian*, "Libya: Coalition bombing may be in breach of UN resolution's legal limits", accessible on-line: http://www.theguardian.com/world/2011/mar/28/libya-bombing-un-resolution-law (03.03.2017).

affairs of less-powerful states:

> "Do states and regional organizations recognize that they have a 'responsibility to protect' civilians at risk, as the International Commission on Intervention and State Sovereignty (ICISS) argued? Or is humanitarian intervention perceived as a 'Trojan horse' used by the powerful to legitimize their interference in the affairs of the weak? I examine whether the Iraq War has shifted the balance between these two positions, posing the question: Is there more or less likelihood of global consensus on armed responses to 'supreme humanitarian emergencies'?"[59]

Also, he discusses about the concerns of other states who view RtoP as a form of neo-imperialism, "[…] [there are] lingering concerns about RtoP potential to legitimize interference in the domestic affairs of states and other fears about abuse"[60]. Bellamy does not only criticize RtoP as a practical failure[61], for not being applied in situations such as Darfur and Somalia[62], thus not respecting its own principles, but indicates that even on situations it has been applied it has raised important concerns on the issues of abuse and excesses. For example, in the case of Myanmar, France's invocation of RtoP was "widely rejected and criticized", and in the cases of Kenya and Myanmar[63], "the feared mass atrocities did not eventuate".[64]

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[59] Alex J. Bellamy, "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq", in Joel H. Rosenthal, Christian Barry, (eds.), *Ethics & International Affairs. A Reader*, Third Edition, Georgetown University Press, 2009, p. 104.

[60] *Idem, The Responsibility to Protect - Five Years On*, p. 144.

[61] The *Bellamy Report* identified "five critical challenges" which represent the weak points of RtoP: (1) Deepening the engagement of Member States and Regional Arrangements; (2) Making prevention of the four crimes a living reality; (3) Mainstreaming RtoP goals across the UN system; (4) Learning lessons about the implementation of enforcement mandates; (5) Protecting the consensus on RtoP. *Idem, The Responsibility to Protect: Towards a 'Living Reality'*, p. 39.

[62] On the ICISS' 'silence' on the issue of Somalia, being *more involved with tackling piracy than genocide*, "Despite widespread attacks on civilians, international actors have remained reluctant to link the situation to RtoP. Indeed, the ICISS co-chair Gareth Evans, suggested that Somalia was not a 'classic [RtoP] situation' but that the imminent threat of mass atrocities warranted its placing on a watch list of countries of RtoP concern." *Idem, The Responsibility to Protect - Five Years On*, p. 156.

[63] C. G. Badescu, *op. cit.*, pp. 141-142.

Discussing the Libyan Crisis, he argues that "some accept the novelty of the intervention […] reluctant however, to relinquish their critique that R2P 'did nor figure significantly in the Security Council's thinking" and most importantly, regarding the position of the US on Libya and RtoP, "it was not cited as a justification for action because either it was not active in policy –makers minds or, if it was, it was outweighed by other considerations".[65] He also analyses the consequences that have appeared as a result of the inapplicability of RtoP and its connection to the Iraqi Insurgency as a part of the "war on terror"[66]. As he puts it, the "subtle changes" to the humanitarian intervention process are: (1) *first*, the position of the US and Great Britain, as main supporters of interventionism, has since been eroded and they have lost much of their international credibility, particularly on the issues regarding backlash for their actions and regional support in conflict areas: "it has become harder for these states to persuade others to act decisively in humanitarian emergencies at precisely the moment when those states themselves are less able to bear the costs of acting outside the world's institutional framework"[67]; and (2) *second*, on the issue of the "responsibility to protect" rhetoric, the change of language, from the well-known "humanitarian intervention" to the "responsibility to protect" has been pinned by Bellamy on the desire to both "oppose international activism as much as to support it" and that "the brief period of acquiescence to humanitarian interventions in the 1990s was at least partly due to the absence of plausible arguments against them"[68]. Here Bellamy makes a powerful assumption, that *interventionism in the post-Cold War period was a form of re-balancing act between the international community and the state*, as an example, he gives the case of Darfur where "[the]

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[64] Alex J. Bellamy, *The Responsibility to Protect - Five Years On*, pp. 163-164.

[65] *Idem, The Responsibility to Protect: A Defense,* Oxford University Press, First Edition, 2015, p. 96.

[66] *Idem, Responsibility to Protect or Trojan Horse?*, p. 108.

[67] *Ibidem*, p. 104.

[68] Bellamy believes that the military overstretch of the US and its Allies (Britain in particular), have made them more sensitive to the issue international response and the consequences of aggressively pushing for unilateral or unauthorized intervention, outside of the Security Council's authority, were considered "infeasible", the same thing can be said for their diplomatic approach for coercive measures, "[the measures] would probably have been counterproductive". *Ibidem*, pp. 105, 121-122.

'responsibility to protect' language has now enabled *anti-interventionists* to legitimize arguments against action by claiming that primary responsibility in certain contested cases still lies with the state, and not (yet) with an international body"[69].

Another aspect of the Darfur crisis which has come to influence RtoP, is, as per the argument of Ramesh Thakur: "[the] 'responsibility to protect' criteria could constrain as well as enable intervention"[70] but Bellamy perceives this as a serious blow to the interventionist movement, since it gave ammunition to the opponents of RtoP by referencing to the "prevailing normative order" replacing the discredited absolute sovereignty with the primary responsibility to the government, and not the international community.

However, over the years, Bellamy has watered-down his criticism "RtoP tries to do this change [a world free of atrocities] in an incremental and orderly fashion"[71] and "RtoP has begun to change the world"[72], also addressing the criticism of Mahmood Mamadami who believes that RtoP is a "a right to punish without being held accountable – a clarion call for the recolonization of 'failed' states in Africa […] in its present form, the call for justice is really a slogan that masks a big power agenda to recolonize Africa"[73] because of the West's struggle for resources and economic supremacy, inherited from the Cold War era, against the two emerging super-powers (China and India). He continues with his disbelief in the theory proposed by Mamadami, that of the West 'playing' the African diplomats into endorsing RtoP in the UN General Assembly, and agreeing (contrary to their peoples' interests) to support an tacit "right to punish" African states for their perceived misdeeds[74], and also, refuting the idea that RtoP is in fact a generator of "moral hazard" because "it would seem

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[69] *Ibidem*, p. 122.

[70] "Ramesh Thakur, another ICISS commissioner, argues that the moral consensus about the 'responsibility to protect' is likely to be strengthened in the wake of Iraq as states come to realize that it provides a language that can be used to oppose legitimate intervention." *Ibidem*, p. 110.

[71] Alex J. Bellamy, *The Responsibility to Protect: A Defense*, p. 109.

[72] *Ibidem*, p. 111.

[73] *Ibidem*, p. 114.

[74] *Ibidem*, pp. 117-120.

that are no grounds to support the view that RtoP causes atrocities that would not otherwise have happened […] at this macro level, the theory remains merely a hypothesis"[75].

From our perspective, the position of Bellamy has changed little, his original views on RtoP were that of silent support, though he has, on occasion, thrown his share of stones at the hypocritical West for not using RtoP to tackle the humanitarian disasters in Darfur and other parts of Africa and the Middle-East. However, we cannot agree on a number of issues presented by *RtoP* especially on *duality of the concept* – as it seems to implement *double standards* and alludes to the spectre of 'gunship diplomacy', and also, in selection, on *three aspects*.

First, the problem with the RtoP pillar system (particularly the relation between the *first pillar* – the responsibility of the state to protect its citizens and the *third pillar* – the international community's responsibility to intervene), is that it acts like a double-edged sword since it indicates the government's responsibility as a premise which permits intervention, however, since the pillars are all equal, there is no way in which one of them could be silenced from asserting its function. We believe that this is one of the greatest blind spots of the whole RtoP initiative, since it renders as useless the response of the international community. When the state is not directly responsible for atrocities, for example, it supports and supplies paramilitary groups with intelligence and weapons, and then turns a blind eye on the ensuing massacres, the international community cannot intervene without breaking both the rules within RtoP and those of international law. This puts the intervening states in a very uncomfortable position as being allegedly aggressors and not saviours, and with the terminology of "humanitarian intervention" being perceived as flawed, this practical issue alone can spell the end of the RtoP initiative. Most likely, those who envisioned the initiative did not believed it possible that such a small miscalculation, this hairline fracture in the seemingly impervious rhetoric, could prove to be such hassle in the practical phase of the RtoP process.

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[75] *Ibidem*, p. 126.

Second, with regards to the potentially destabilizing factor of RtoP, we find that it is a very easy to claim the international responsibility to protect civilian population against gross human rights abuses committed by their governments, and subsequently intervene to stop massacres from happening. However, as the case in Libya has revealed, the overthrow of the Arab Jamahiriya on the pretext that Ghaddafi called the rebels in the town of Benghazi "rats", "cockroaches", and that he was going to "get rid of them" really sparked the fear of genocidal intent in Western leaders, as they forgot all about the rich oil fields of Libya and rushed to save the rebels from being killed[76]. Now, after almost four years since the Libyan 'Revolution', the country is involved in a brutal civil war between four factions[77]: the internationally recognized *Government in Tobruk* (Council of Deputies), *Islamist Government in Tripoli* (New General National Congress), *Ansar-al Sharia in Benghazi* (Shura Council), and *Da'esh*. The recent intervention of Egypt (aided by UAE forces), which supports of the Government in Tobruk, further complicates the situation, with recent Egyptian air-strikes aimed at Da'esh forces which executed twenty-one Egyptian Coptic Christians[78] in February 2015. The implications of RtoP have to be put in perspective, however, the fact that the Western states gladly intervened in Libya, whilst turning a blind eye on the situations which could qualify as being far worst, such as the Boko Haram[79] and Sri Lanka[80], really makes the

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[76] *ABC News*, "Raging Gaddafi orders forces to 'capture the rats'", accessible on-line: http://www.abc.net.au/news/2011-02-23/raging-gaddafi-orders-forces-to-capture-the-rats/1953788 ; *Times of Malta*, "Gaddafi: 'I will not give up', 'we will chase the cockroaches' ", accessible on-line: http://www.timesofmalta.com/articles/view/20110222/local/gaddafi-in-fighting-speech-i-will-not-give-up.351487 ; *BBC News*, "Libya protests: Defiant Gaddafi refuses to quit", accessible on-line: http://www.bbc.com/news/world-middle-east-12544624 (03.03.2017).

[77] *The Economist*, "Libya's Civil War, The four-year descent from Arab spring to factional chaos", accessible on-line: http://www.econ omist.com/news/briefing/21638123-four-year-descent-arab-spring-factional-chaos-it-should-come (03.03.2017).

[78] *BBC News*, "Islamic State: Egypt urges international intervention in Libya", accessible on-line: http://www.bbc.com/news/world-middle-east-31494806 (03.03.2017).

[79] *The Independent*, "Boko Haram renames itself Islamic State's West Africa Province", accessible on-line: http:// www.independent.co.uk/news/world/africa/boko-haram-renames-itself-islamic-states-west-africa-province-iswap-as-militants-launch-new-offensive-against-government-forces-102049 18.html (03.03.2017).

[80] C. G. Badescu, *op. cit.*, pp. 176; *World Without Genocide*, "Sri Lanka", accessible on-line: http://worldwithoutgenocide.org/genocides-and-conflicts/sri-lanka ; *Genocide Watch*, "Sri Lanka", accessible on-line: http://www.genocidewatch.org/srilanka.html (03.03.2017).

case for both the hypocrisy of politicians and the lack of vision for the RtoP implementation system.

Thirdly, on the overall issue of the RtoP initiative, we first and foremost believe it to be a perfect example of "good intentions paving the road to hell", this because there are, in fact, *two versions of RtoP: the first one*, or the 'original' RtoP (or RtoP 2001) as presented by Gareth Evans[81] Co-Chair of the ICISS, which reiterates various principles upheld by a number of UN documents and international conventions; and *the second*, or the *reformed version of RtoP* (or RtoP 2005) to which virtually all of the world's countries have agreed to and have endorsed in the 2005 Outcome Summit of the UN General Assembly[82]. The modifications in question, address the complex issues of military intervention for humanitarian reasons, and in the case of a stalemate in the Security Council, *regional groups can act to enforce the RtoP* by carrying out non-authorized humanitarian interventions, with *post factum* authorization. Also, some other paragraphs have been excluded, for example, the responsibility to reconstruct or rebuild.[83]

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[81] (1) "The UN may not always be the most appropriate instrument. While the world organization remains the centrepiece for discussions of improved international capacity for conflict prevention, prospects for strengthening the role of regional organizations are also being explored". (2) "Another potential source of authorization for interventions is regional organizations. Chapter VIII of the Charter assigns a possible role in the maintenance of international peace and security to 'regional arrangements or agencies'. Regional organizations are becoming more assertive in authorizing their own interventions without prior approval from the Security Council. There is also growing opinion that to be regarded as "legitimate", such interventions need only be preceded by a credible account of an incipient or actual humanitarian catastrophe, demonstrate that reasonable efforts to reach a diplomatic or peaceful resolution have failed, and carry out the operation in accordance with IHL. Such a conception of legitimacy suggests that a literal reading of Chapter VIII of the Charter is no longer an accurate reflection of contemporary international law." ICISS, *The Responsibility to Protect, Supplementary Volume*, pp. 29, 160, 170.

[82] *The World Summit Outcome Document*, 2005, A/RES/60/1; See also, Fredric L. Kirgis, "International Law Aspects of the 2005 World Summit Outcome Document", in *American Society of International Law*, Vol. 9, Issue 30, 2005, accessible on-line:
http://www.asil.org/insights/volume/9/issue/30/international-law-aspects-2005-world-summit-outcome-document ; (03.03.2017).

[83] "R2P 2005 does not explicitly rule out other types of authorisation – even unilateral action remains a possible action outside of the R2P 2005 aegis". Hugh Breakey, *op. cit.*, p. 31-37.

RtoP and Syria

In 2015 we witnessed the anniversary of a decade of RtoP since it was officially recognised in the Outcome Document of the 2005 World Summit. Since then, and "despite the insistent language of responsibility in the doctrine",[84] the situation of the globe has not changed for the better, with ongoing conflicts in Burundi, Yemen, South Sudan, and the Central African Republic, with the Syrian civil war topping the list[85]. While RtoP has been used (unsuccessfully and with dramatic consequences) during the Libyan crisis of 2011[86], it has not been used in the Syrian scenario, even though on more than one occasion (the Yazidi peoples' plight[87], the Al-Ghouta chemical attacks and the destruction of *Palmyra*[88]) it could have been invoked and applied. The reasons for this are *multiple*, from the complexity of the Syrian situation and the heterogeneity on the ground towards the delicate balance of power and vested interests of the UNSC Member States.[89]

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[84] Philip Cunliffe, "The doctrine of the 'responsibility to protect' as a practice of political exceptionalism", in in *European Journal of International Relations*, Vol. 1, Issue 22, 2016, pp. 2-3, accessible on-line:
http://journals.sagepub.com/doi/abs/10.1177/1354066116654956?journalCode=ejta (03.03.2017).

[85] *Ibidem*.

[86] "[…] the Libyan intervention morphed into regime change R2P was announced 'R.I.P.'; and in Syria the international community has 'dismally failed to uphold its responsibility to protect'", Christopher Hobson, "Responding to failure: The Responsibility to Protect after Libya", in *Millennium: Journal of International Studies*, Vol. 44, Issue 3, 2016, p. 2, accessible on-line: http://journals.sagepub.com/doi/abs/10.1177/0305829816640607 (03.03.2017).

[87] Adam Roberts, *The Yazidi and the Responsibility to Protect*, Thesis, Department of International Studies and the Graduate School of the University of Oregon, June 2016, pp. 31-33, 50-52, accessible on-line:
https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/20521/Roberts_oregon_0171 N_11609.pdf?sequence=1 (03.03.2017).

[88] Camilla Rigano, *RtoP and Cultural Heritage An analysis of the Responsibility to Protect Culture Heritage of an Outstanding Universal Value*, Thesis, Department of Political Science, LUISS, 2016, pp. 32-36, accessible on-line: http://tesi.eprints.luiss.it/17596/1/073782_RIGANO_CAM-ILLA.pdf (03.03.2017).

[89] "[…] it would be foolish to equate Libya with Syria – the circumstances of the two countries were quite different in the period 2011–2012 and are even more so today, if that is conceivable, and consequently equally foolish to extrapolate directly from UNSC decision-making over Libya to Council decisions, or lack thereof, on Syria". Charles Cater, David M. Malone, *op. cit.*, p. 291.

Therefore, Syria is a very particular and peculiar landscape, one which cannot support the monochrome framework of RtoP. In the opinion of Hobson[90], RtoP was envisaged as a means to address humanitarian crises by "turning the protection of civilians into a responsibility" in the sense of trying to find a way to "transcend the political differences that can lead to inaction in the face of a humanitarian crisis". Yet the use of RtoP in Libya was exactly the opposite: it "morphed into a tool for regime change"[91], to even consider the same happening in Syria, where the dangers of extremism and radical Islam were already present, was deemed unacceptable. But this meant that the use of RtoP in one situation, and the abstention of its use in the other (albeit more complex, but more so in need of intervention) was the admission that RtoP was exactly what its critics claimed it to be, a hollow promise which only serves as "humanitarian" when the interests of the few and powerful are sated. The best example was the refusal of the African Union and some African countries to support the draft resolutions proposed by Western states to apply RtoP to Syria in 2013[92] because of the threat that if they would take part to another regime change with possibly more devastating consequences than those which took place in Libya. Another aspect is that of the humanitarian facets of RtoP which not necessarily need to involve military action. For example, Holmes talks about his experience as a UN emergency relief co-ordinator and the scepticism involved with military intervention for humanitarian purposes, "[…] humanitarians are deeply and rightly sceptical of military interventions presented as for protecting civilians. The unintended consequences tend to be severe, including further civilian casualties"[93]. Also, military interventions

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[90] Christopher Hobson, *op. cit.*, p. 5.

[91] *Ibidem*, p. 2.

[92] Matthias Dembinski, "Procedural justice and global order: Explaining African reaction to the application of global protection norms", in *European Journal of International Relations*, Vol. 1, Issue 24, 2016, pp. 2-3, accessible on-line:
http://journals.sagepub.com/doi/abs/10.1177/1354066116681059?journalCode=ejta (03.03.2017).

[93] John Holmes, "Does the UN's Responsibility to Protect necessitate an intervention in Syria?", in *The Guardian*, 28 August 2013, accessible on-line:
https://www.theguardian.com/commentisfree/2013/aug/28/syria-intervention-un-responsibility-to-protect (03.03.2017).

can hinder and even threaten the lives of humanitarian relief workers "[…] from perceptions of direct or indirect western intervention".[94]

In our opinion, RtoP was too deeply influenced by the central idea and its ultimate goal: to stop genocide. However, if the situation on the ground is complex and highly changeable, for example, Syria (from 'Arab Spring' to civil war, 'moderate rebels' and 'Islamic State') then RtoP cannot be invoked, let alone applied, without clearly knowing who the "good guy" and who the "bad guy" is. In many ways, the final chapter of RtoP is just another form of unilateral intervention, yet to reach that, one must either dispense any other means short-of-intervention, or to find/create a *nefarious persona ficta* so that the international community cannot refuse not to follow suit. In Libya, the "bad guy" was Ghaddafi, but Syria's Bashar al-Assad is viewed *differently*[95], as a person which one can talk to, even moderate, an perhaps more importantly, he has important allies (Russia and Iran[96]) all which can make the ordinary person confused about the purpose of a 3rd pillar RtoP involvement in Syria. Yet even if we might supposedly comprehend that RtoP is all about good intentions, in the Syrian scenario it cannot be invoked, since "[…] taken together, in the case of Syria, the three elements of right authority, right intention and reasonable prospects are missing"[97].

Our conclusions on the RtoP initiative

We believe that RtoP is a remarkable process, though when put into practice its flaws are revealed in such a way that it makes up question the whole concept, not as being poorly designed (it possesses some innovative

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[94] *Ibidem*.

[95] Jonathan Steele, "US must identify IS, not Assad, as the main enemy in Syria", in *Middle East Eye*, 18 September 2015, http://www.middleeasteye.net/columns/us-must-identify-not-assad-main-enemy-syria-1955255349 (03.03.2017).

[96] Simon Adams, "Failure to Protect: Syria and the UN Security Council", Global Centre for the Responsibility to Protect, *Occasional Paper Series*, No. 5, March 2015, pp. 14-16, accessible on-line: http://www.globalr2p.org/media/files/syriapaper_final.pdf (03.03.2017).

[97] Erfaun Norooz, "Responsibility to Protect and its applicability in Libya and Syria", Thesis, *Vienna Journal on International Constitutional Law*, 2015, Vol. 9, Issue 3, pp. 36-38, accessible on-line: https://www.icl-journal.com/download/1d60bf91da3f98e153088f67d3676e5a/ICL_Thesis_Vol_9_3_15.pdf (03.03.2017).

aspects), but poorly implemented. RtoP had the chance to become one of the greatest post-World War II initiatives, rivalling the UN Charter itself, but sadly it has wasted away that chance. On the flaws in implementing RtoP, they have a number of sources.

First, it gives the impression of a "Trojan Horse", particularly in the view of African states, since it makes it relatively easy to either use the short-of-war instruments to 'persuade' the governments into taking certain measures, *dangerously blurring the line between international responsibility to protect and interventionism*, and in the process, reminding them of the colonial past (*post-colonialism*[98]). Basically, the endorsement shifts from the so-called "right of humanitarian intervention" (as it has been known in the 1990s) to the modern form of the concept "the responsibility to protect". It seems logical to assume that the shift from the rhetoric of the now-infamous Kosovo Intervention, which badly stained the reputation of term "humanitarian intervention", had to be changed to something novel, fresh and more complex, and which also directly emphasised *prevention by non-forceful measures*, and that *military intervention was the last resort option* for situations with the potential of Rwanda and Srebrenica. There have also been concerns about the implementation of RtoP from the G77 Countries[99], especially some African states, who view it as a form of neo-colonialism and infringement of the non-intervention principle.

Second, RtoP claims novelty, but it only reiterates various concepts and principles already well-known and accepted worldwide, possibly in an effort to pre-legitimize and brush-off any criticism as an attack aimed on genocide prevention and not on its underlying issues. In this respect, it uses the artifice of integrating the now-infamous practice of "humanitarian intervention" in its three-pillar system, transferring the attention towards

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[98] Mojtaba Mahdavi, "A Postcolonial Critique of Responsibility to Protect in the Middle East", pp. 1-5, 10, in *PERCEPTIONS*, Spring 2015, Volume XX, Number 1, accessible on-line: http://sam.gov.tr/wp-content/uploads/2015/11/02_Mahdavi.pdf (03.03.2017).

[99] The G77, (or Group of 77) represents a coalition of developing nations, formed in 1964, with the purpose of mutual support inside the UN and economic interests and implementing regional policies. The G77 has now 137 member states, with 120 of them also being members of the Non-Aligned Movement. Though they represent a loosely coalition, it is notable to remember that they also represent the "rest of the world" encompassing two thirds of the UN's members and more than half of the population and territory of the world.

the debate on sovereignty rather than on applicability of measures, implementation procedures and on the ground strategy, employing instead the pre-established UN intervention methods, with skilfully hiding the so-called "right of humanitarian intervention" as a form of collective responsibility in the case of stalemate in the Security Council.

Thirdly, RtoP has serious issues in relation to morality and applicability, it does not have the guarantee, nor does it hints at the possibility of, it being used, *in extremis*, against a Western country. This raises significant concerns on its overall purpose and it clearly shows that its ultimate motivation was not to prevent genocide but to manage or react to the situations in which the genocidal violence is imminent. However, it doesn't quite succeed in that either. Since its inception, it has not seen consistent usage, this alone represents a far cry from the rhetoric of "never again" and represents the fatal Achilles heel of the RtoP initiative. Sadly, the Libyan Crisis, and the subsequent Syrian Civil War, has revealed that the motivations behind the foreign policy of powerful states make them impervious to the chagrin of clothing their self-interested actions into the fabric of RtoP, though some academics believe that it is the other way around, that the very fabric of RtoP, indeed contains several loopholes hinting to aspects of less than universal significance.

Our proposal

With respect to the RtoP initiative, we consider that it should focus more on the issues which are considered as the *underlying causes of ethnic conflict*, such as previous ethnic tensions spanned across centuries, the involvement of great powers which favoured one group above the other (ex. political, confessional, racial criteria) and the factors which exacerbated these pre-existing frictions such as economic hardship and cultural and identity crises. Therefore, RtoP should encourage international and UN-sponsored aid programmes which could tackle the complex problem of ethnic conflict in multi-ethnic environments, emphasising on the *prioritization of education and multiculturalism* as opposed to heated debates over sovereignty and intervention. We believe it is more preferable to prevent and neutralize the causes which lead to the radicalization based on ethnic affiliation, than

intervene after the problems have escalated towards violence and hatred, the risks to all parties involved will multiply exponentially, as violence only creates more violence. The *pivot from protection to prevention* (from "Responsibility to *Protect*" to "Responsibility to *Prevent*") will dispel many of the fears and mistrust associated with RtoP and Western agenda, and will prove its commitment towards maintaining and promoting global peace and security.

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