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Humanitarian Intervention and Responsibility to Protect

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Introductory remarks

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In this work we shall analyze the important and influential ways in which the idea of the Responsibility to Protect has added to theoretical studies concerning the use of force within the framework of international law. The potential 'normative impact' (J. Brunnèe, S. Thope, 2005) of the Responsibility to Protect upon the 'cardinal principles of the international law' (P. Picone, 2003) will be analysed in the light of the United Nations institutional reform promoted first by the 2003 High Level Panel on Threats Challenges and Changes and later on by the 2005 United Nations World Summit.

The main aspect of the United Nations institutional reform for the implementation of the preventive dimension of the Responsibility to Protect is the creation of the United Nations Office of the Special Adviser on the Prevention of Genocide (Professor F. Deng).

The mandate of the Special Adviser includes mostly early warning activities aimed at paying special attention to warning signs of genocide and related crimes.

This proves that the Responsibility to Protect civilians "from genocide and mass atrocities[1]" (A. Bellamy 2008) is partially based on an improvement of the early warning capacity of the United Nations system and that the reform of the United Nations system has been guided by the need to implement the Responsibility to Protect.

However, "the legal implications of the introduction of the Responsibility to Protect are controversial" (A. Bellamy, 2008) and not all legal scholars are willing to recognise that the Responsibility to Protect can violate or challenge the foundations of international law, which are the principles of sovereignty, non-interference and territorial integrity.

On the one side, indeed, the 'normative impact' would be limited by the fact that the Responsibility to Protect is still an 'emerging' (E. Sciso, 2005) rather than an 'embedded' (A. Bellamy, 2008) norm.

On the other side, the Responsibility to Protect would not represent a challenge for the cardinal principles of the international law for the simple fact that the foundations of the international law "…are already well established" (A. Bellamy, 2008).

On the contrary, the very emergence of the Responsibility to Protect could be regarded as a sign of the crisis of the cardinal principles of the international law, which - according to the Italian jurist P. Picone - already exists.

We shall describe the shift from the ten-year debate on the right of humanitarian intervention, which blossomed throughout the nineties, to the formulation of the idea of the Responsibility to Protect at the end of 2001 by the International Commission on Intervention and State Sovereignty (ICISS).

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[1] "To better reflect situations like in Rwanda and Srebrenica, which have been described as involving genocide, war crimes, ethnic cleansing and crimes against humanity….the Secretary General sought to change the name of the Special Adviser on the Prevention of Genocide's title to Special Representative for the Prevention of Genocide and Mass Atrocities. "Mass atrocities was not intended as a legal term; it was intended to allow the Special Representative on the Prevention of Genocide to address situations where serious violations may be taking place prior to or at the same time as genocide, or where the actual or prospective occurrence of genocide as a legally definable crime may be difficult to determine but where the conflict is not less heinous or is of equivalent concern to the international community". (R. Davis, B. Majckodunmi, J. Smith-Hohn, June 2008, 3).

We shall analyse the evolution of this idea from the 2001 ICISS report to its formal adoption within the Outcome Statement of the 2005 United Nations World Summit.

The formal endorsement of the Responsibility to Protect in many official United Nations documents and resolutions and its incorporation in United Nations', regional organizations' and individual states' practice led some legal scholars, like A. Bellamy, to believe that the Responsibility to Protect should be regarded more as an 'emerging norm' of the international law than as an 'abstract idea' (concept) or as a moral principle.

We shall take into consideration, compare and discuss the theoretical arguments in favour and against the recognition of the Responsibility to Protect as a legal norm developed by some of the most important contemporary jurists, political theorists and international actors.

We shall assess whether there is an international consensus about the meaning of the idea of the Responsibility to Protect and, at the same time, the political will to implement the Responsibility to Protect, taking into consideration that big powers like China, Russia, India and the G77 remain unconvinced about the Responsibility to Protect as a norm that has the potential to undermine the United Nations Charter and the foundations of international law (cf. A. Bellamy, 2008).

We shall distinguish among three different possible connotations of the meaning of the Responsibility to Protect. First , the Responsibility to Protect can be conceived as an abstract idea (as a concept), as "a suggestion, a proposal, something requiring further development, elaboration, agreement before it can be turned into a plan of action for institutional reform" (A. Bellamy, 2008, 5).

Secondly, the Responsibility to Protect can be regarded as a (moral) principle, or, to put it better, "as a fundamental truth or proposition which serves as the basis for belief leading to action" (A. Bellamy, 2008, 6). To consider the Responsibility to Protect as a principle represents a step further in the evolution of the status of the Responsibility to Protect, (when compared to the articulation of the Responsibility to Protect as an idea within the 2001 ICISS report) because it means that a consensus on the meaning of the Responsibility to Protect has been reached and the principle "can function as a foundation for action" (A. Bellamy, 2008, 6).

Finally, the Responsibility to Protect can be regarded as a 'legal norm/requirement'.

"Norms can be defined as collective understandings of the proper behaviour of actors" (A. Bellamy, 2008, 6-7).

On the basis of this distinction, we shall assess the current status of the Responsibility to Protect (as an idea, a concept, a moral principle, a principle of customary international law, a legal requirement, an emerging norm of international law).

The claim of the present work is that the Responsibility to Protect had the status of an idea within the 2001 ICISS report, the status of a principle of customary international law within the 2004 High Level Panel report and the status of an emerging norm of the international law in the following United Nations documents (like the Outcome Statement of the 2005 United Nations World Summit) and United Nations Security Council resolutions (like the resolution 1674 on the protection of civilians in armed conflict, the resolution 1769 on the establishment of the hybrid force and the expansion of the United Nations mission in the Sudan to Darfur

region and finally, in the resolution produced by Ban Ki Moon on 12 January 2009 on the implementation of the Responsibility to Protect).

By elaborating on the idea of the Responsibility to Protect, we shall prove that this idea represents a challenge for some of the "cardinal principles of the international law such as the sovereignty of the states that constitute the international community, the equality among states regardless of their dimensions, the non interference in their internal affairs (Chapter VII of the United Nations Charter), the non use of force, the inviolability of the borders of the states, the impossibility for a state to be subjected to the jurisdiction of another state (which is called 'jurisdictional immunity') and finally, the diplomatic intangibility of the official representatives of the states" (P. Picone, 2005, 893).

We shall assess whether or not the articles 138 and 139 of the Outcome Document of the 2005 United Nations World Summit represent a weakening notion when compared to the original formulation of the idea of the Responsibility to Protect as proposed within the 2001 ICISS report.

Our investigation shall address the issue whether the idea of the Responsibility to Protect can be considered as a legal obligation that may give a substantive contribution to ensure human security.

The reason behind the choice to analyse the idea of the Responsibility to Protect - along with its legal implications and the opportunities for its concrete implementation - is to be found in the fact that the norm of the Responsibility to Protect would help the international community of Sovereign States to reach a consensus on the guidelines that should orient the United Nations Security Council in its decisions about the authorization of the use of armed force as a tool "to protect the population of a State from genocide, war crimes, and other serious violations of the basic human rights that the local authorities are not willing or able to prevent and repress" (P. Picone, 2005, 893 and following).

However, Paragraphs 138 and 139 of the Outcome Document of the 2005 United Nations World Summit, where the Responsibility to Protect was formally endorsed, failed to reach an agreement on the criteria for legitimizing the use of force to prevent genocide and mass atrocities.

The investigation over the nature, the purpose, the foundation, the legality and the legitimacy of the Responsibility to Protect is an issue of great actuality.

Indeed, the Responsibility to Protect is not only an international commitment by 191 Sovereign States who agreed to formally adopt this idea within the Outcome Document of the United Nations World Summit in September 2005[2], but it is also the subject of the Secretary General report on the implementation of the Responsibility to Protect appeared on 12 January 2009.

The Responsibility to Protect is an influential idea that dominates the international arena and that can have consequences in the real world, by playing a central role in the decision-making of world leaders and international actors.

As regards the organization of the study, the work is divided into six chapters as follows.

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[2] www.responsibilitytoprotect.org

Chapter I deals with the period in between 2001 and 2005 and includes a conceptual analysis of the Responsibility to Protect from its original articulation in the 2001 ICISS report to its formal endorsement within the Outcome Document of the 2005 United Nations World Summit.

Chapter II retraces the historical evolution of the traditional notion of sovereignty from its original philosophical formulation in the thought of the two political philosophers J. Bodin and T. Hobbes to its endorsement in the Westphalia Treaty in 1648 and in the Montevideo Convention on the Rights and the Duties of States in 1933.

The chapter encompasses also the analysis of the criticism of the traditional notion of sovereignty conducted by the French philosopher J. Maritain and the German international relations' theorist H. Morgenthau in two separate articles on the subject of sovereignty both published in the the middle of the XXth century.

Finally, we shall describe the shift from the traditional notion of sovereignty to the proposal of the concept of sovereignty as responsibility in the works produced by Prof. F. Deng throughout the nineties.

We shall analyze the impact that the concept of the Responsibility to Protect has on the legal meaning of the traditional notion of sovereignty. The traditional notion of sovereignty as it was encorporated in the text of Westphalia Treaty can be summarised in the Latin sentence: "Rex est imperator in regno sue", meaning that the sovereign - who in the XVIIth century was identified with the absolute monarch - has "the right to rule his own territory". In the framework of the Public International Law, "sovereignty is a "jus cogens" (or peremptory) norm, which can be derogated only in two circumstances: when the sovereignty afforded domestically by citizens dissipates or when the legitimacy afforded internationally by the other sovereign states ceases". (ISIS Europe, p. 2).

The proponents of the concept of sovereignty as responsibility underline that thanks to this new concept, the protection of the civilian population becomes an essential requirement of sovereignty's legitimacy.

However, also the Westphalian notion of sovereignty was already based on the assumption that the legitimacy is a function of its internal recognition by the citizens of the State and external recognition by the international community.

The shift from the traditional notion of sovereignty to the concept of sovereignty as responsibility will be characterized as a shift from the rights of sovereign states to enjoy territorial integrity, political independence and non-intervention to the responsibility to protect the inalienable human rights of the individuals, which, according to the definition provided in a recent article by the Nobel Price A. Sen, are "the fundamental freedoms that individuals enjoy by virtue of their humanity".

The fact that the notion of sovereignty should be broadened to include the protection of the human rights of individuals is a consequence of the evolution of the contemporary international human rights system.

We shall retrace the evolution that international human rights law has known in the course of the last century. By virtue of this evolution, today international law recognises to individuals several human rights, which are guaranteed by the United Nations human rights' legislation (international treaties and conventions, the first of which is the 1948 Genocide Convention).

Despite its evolution, the contemporary international human rights system is not always able to prevent massive human rights' violations, which continue to be perpetrated in different regions of the world. However, this system is being successful in forcing a growing number of states to respect the international human rights' treaties and conventions that they have ratified.

The mainstreaming of the human rights' protection within the concept of sovereignty shall be considered a sign of the deep influence that human rights are able to exercise on the way in which sovereign states perceive their responsibilities both towards their people and towards the international community.

The concept of sovereignty as responsibility stems from the belief that all human beings have the right to be treated with humanity and dignity and therefore states have the primary responsibility to guarantee the promotion and protection of the human rights of their own people.

At the same time the international community has the responsibility and the duty to prevent or react to serious human rights' and humanitarian law's violations like genocide or related crimes.

However, the weakening of the concept of Responsibility to Protect when compared to its original formulation proves that the Responsibility to Protect does not encompass a broad definition of human rights but it is limited to promote human security, which means that the Responsibility to Protect is concerned only with the protection of civilians from the perpetration of those international crimes that might cause their displacement and physical destruction.

However, in order to remedy to this limit of the notion of the Responsibility to Protect, in June 2008 the Office of the Special Adviser on the Prevention of Genocide tried to establish a list of indicators that can help to identify those situations that can be qualified as "Responsibility to Protect situations", which are characterised not only by the lack of human security but also by widespread human rights' violations.

Because the perpetration of international crimes like genocide or related crimes is usually preceded by other human rights' violations, the mandate of the Special Adviser will be broadened up to include these violations in the interest of this new United Nations' institution, which is crucial for the implementation of the Responsibility to Protect.

We shall prove that, because the principle of sovereignty as responsibility entails not only rights but also responsibilities, the notion of sovereignty as responsibility is more comprehensive than the traditional notion of sovereignty.

We shall claim also that the tension that today exists between the Responsibility to Protect and the principle of sovereignty reflects the tension that has always existed between sovereignty and human rights within the United Nations Charter, which establishes that the United Nations' mandate is at the same time the protection of the territorial sovereignty of states and the promotion of human rights' defense.

Among the solutions that legal scholars have proposed to conciliate the two sides of the United Nations' mandate - and in this way solve the dilemma between sovereignty and human rights - there is the recognition of a legal exception to the non-intervention principle in cases of serious human rights' abuse.

This recognition requires the shift from the traditional notion of sovereignty conceived as a barrier against intervention to the more permeable notion of sovereignty as responsibility, which is centered on the need to promote and protect the rights of the individuals.

We shall critically consider the position of those authors who believe that - when it is carried out with the purpose to defend civilians from genocide and related crimes - intervention should be regarded as legitimate.

The description of the main legal and political principles upon which the traditional notion of sovereignty relies, will be followed by the identification of points in common and differences with the notion of sovereignty as responsibility.

On the basis of the last work of the scholar A. Bellamy on the Responsibility to Protect, we shall identify the main differences between the traditional notion of sovereignty and notion of sovereignty as responsibility.

The first difference between the two notions consists in the fact that while the traditional notion of sovereignty would be focused on the right of self-determination, the notion of sovereignty as responsibility would be focused on the human rights of individuals. The second difference consists in the way to conceive international society.

On the one side, the traditional notion of sovereignty is based on the principle of equality among sovereign states. The corollary of this principle is that all the states are seen as equal and there are no states that have the right of oversight the behavior of the others.

On the other side, the notion of sovereignty as responsibility is based on the assumption that the international community can exercise the right to oversee the domestic behavior of the other sovereign states in some specific circumstances, and particularly when these states are manifestly failing to fulfill their responsibilities towards their own people.

The criticism of the traditional notion of sovereignty will be conducted by reading a famous article titled "The Concept of Sovereignty" and published by the French philosopher J. Maritain in 1950, where the concept of sovereignty is considered as synonymous of absolutism, and the author proposes its elimination from the dictionary of political philosophy.

In another famous article on the subject of sovereignty titled "The Problem of Sovereignty Reconsidered" (1948) the German international realtions' theorist H. Morgenthau highlights the contradictions between the traditional notion of sovereignty and the international legal system.

Then, again on the basis of the last work of A. Bellamy on the Responsibility to Protect, we shall clarify the meaning of the legal and political principles upon which the traditional notion of sovereignty relies.

The first is the legal rule of the non- interference in the internal affairs of the other sovereign states.

The second is the principle of pluralism, on the basis of which people can choose to live in many different ways and external states do not have the right to impose on the other states their own modus vivendi. The purpose of pluralism is to preserve differences among cultures in the world politics.

The third is the self-determination principle, which was historically introduced in the International Covenant on Human Rights in 1966. The right of self-determination, which is in its turn based on the fundamental right to freedom, is the right of the people to freely determine their own political status, choose their own form of

government and pursue their economic, social and cultural development. The traditional notion of sovereignty is based on the right of self-determination. Sovereign states own the right of self-determination in the sense that they are free to determine their own form of culture and their own system of governance.

Differences between the traditional notion of sovereignty and the notion of sovereignty as responsibility will be identified also by taking into consideration the thought of the Former United Nations Secretary General K. Annan in an interview titled "Two Concept of Sovereignty" and published by the *Economist*.

During this interview, K. Annan explains that on the basis of the traditional notion of sovereignty and in virtue of the right of self-determination, states have the right to choose their own form of government. The right of self-determination can be protected only by respecting the non-intervention principle, which is conceived as a barrier against the attempt of the more powerful states to intervene in the affairs of smaller and less powerful states.

The concept of sovereignty as responsibility, instead, can be summarized in the recognition of the fact that if the government fails to fulfill its own responsibilities, this failure could require and legitimize the external interference of the international society of states in the internal affairs of the sovereign state that fails to protect its own people.

Nonethless the non-intervention principle has historically assolved several important functions and the failure to respect this cardinal principle of the international law can imply serious risks of unilateralism, interventionism and neo-imperialism.

The main functions assolved by the non-intervention principle are the protection of weak states from the interference of the most powerful states that often try to use military interventions to impose their cultural and political values on target states, the prevention of the re-emergence of imperialism and the preservation of the international legal order.

We shall also explain the meaning of the notion of popular sovereignty and its partial overlapping with the meaning of the notion of sovereignty as responsibility.

Indeed, according to this notion, only those states that are governed in compliance with the will of the people and respect their rights - including self-determination - can be considered as legitimate.

The analysis of the notion of sovereignty as responsibility will be carried out by taking into consideration the work of Professor F. Deng and R. Cohen titled *Sovereignty as Responsibility: Conflict Management in Africa* (1996). This work is aimed at highlighting the responsibilities that sovereign states have towards their own population and at developing ways of enabling states to fulfill these responsibilities.

Professor F. Deng and R. Cohen moved from the assumption that the traditional notion of sovereignty is a barrier against the external interference of third states in the internal affairs of a sovereign state.

Although they recognize that each state has the primary responsibility to protect its own citizens, they also observe that not always states are responsible neither towards their own people nor towards the international community. They propose to substitute the traditional notion of sovereignty with the notion of sovereignty as responsibility to overcome the obstacles that the traditional notion of sovereignty creates when it would be necessary the international involvement to provide assistance to internally displaced people. From these

considerations, they draw the conclusion that although governments have the primary responsibility for protecting the rights of their population, this responsibility shifts to the international community when states abuse their sovereign rights. The international community becomes responsible for protecting the rights of the people of those states whose governments are unable or unwilling to protect the rights of their citizens.

Nowadays, the concept of sovereignty as responsibility continues to be met with resistance by several governments that consider this new notion as an attempt to legitimize the interference of the strong in the affairs of postcolonial states (A. Bellamy, 2008).

With the aim of replying to the perplexities expressed by countries like China, Russia and India and the whole G77 with respect to the idea of sovereignty as responsibility, we shall take into consideration the provocative idea proposed by the scholar M. J. Smith, who argues that "sovereignty is a contingent value: its observance depends upon the actions of the state that seeks its protection (N. Wheeler, 2001, 125).

One of the harshest criticisms ever raised against the Responsibility to Protect that we shall discuss in this chapter is that the Responsibility to Protect would express a form of Western neo-imperialism.

Countries such as Zimbabwe are very diffident towards concepts such as "humanitarian intervention" and "Responsibility to Protect", because they believe that intervening states can be motivated by imperialistic aims rather than by humanitarian purposes.

We shall try to formulate a possible reply to this objection by observing that those states that do not perpetrate genocide or related crimes against their own people, should not be scared by the evolution of the concept of sovereignty in the direction of making this concept less absolute.

On the basis of the new more diluted concept of sovereignty as responsibility, outside peaceful or military interventions are considered legitimate in those internal conflicts in which international crimes are being committed.

These interventions can consist in the adoption of peaceful political, economic or legal measures (such the trials of the International Criminal Court) or in the recourse to military force as a last resort.

However, today the very idea of the use of armed force as a last resort was put aside in favor of the preventive deployment of armed forces at the earliest stages of the outbreak of the violence, that is to say before the violence escalates into an open armed conflict.

We shall identify a concrete historical example of this strategy in the preventive deployment of a United Nations military force in the Former Yugoslav Republic of Macedonia (UNPREDEP) in 2001 which proved to be successful in preventing the eruption of the conflict.

Chapter III analyses the main problems that can be identified in the contemporary conflict prevention theory, like the scope of conflict prevention, the role played by conflict analysis and early warning, how to enhance the effectiveness of structural and operational preventive measures and how the United Nations' institutional reform facilitates the institutionalization of conflict prevention practices.

The chapter outlines the historical evolution of the idea of conflict prevention from the Congress of Vienna to its endorsement in the most recent United Nations' documents, like the Report of the Secretary General on the Prevention of Armed Conflict, appeared in June 2001.

The last paragraph of the chapter offers a brief historical overview of the cases of humanitarian intervention occurred before the 9/11.

The reason why the 11 September represents a watershed in the history of humanitarian intervention is that after the 11 September 2001 and the War on Terror in Iraq and Afghanistan, "the political will for humanitarian intervention is evaporated (ISES Europe, 4).

In the aftermath of the 2003 US-led unilateral intervention, outside interventions for humanitarian purposes like the ones that should have taken place in the Darfur region of the Sudan or in Zimbabwe became even more problematic than before.

We shall take into consideration some of the most significant case studies of humanitarian intervention occurred throughout the nineties.

The aim of the chapter is to analyse the interventions in Somalia (1992-1995), Bosnia-Herzegovina (1992-1995), and Kosovo (1999).

We shall move from the consideration that although foreign military interventions are an integral part of foreign military policy of countries since the end of the Cold War, there are very few studies specifically devoted to the impact that military interventions have for the state target of the intervention.

A possible explanation of the fact that there are much more studies devoted to the causes of the conflict than studies focalized on the consequences of the conflict is that scholars focus their attention on the causes of the conflict with the aim of deriving helpful indications for the formulation of effective conflict prevention theories and practices.

We shall assess prospective costs and benefits of humanitarian interventions for the target state, for the international community, for international and regional agencies involved in the intervention and in the post-conflict reconstruction efforts.

An intervention with humanitarian purposes can be regarded as successful when it manages to contain conflicts, to build a durable peace and an environment conducive to economic and social development, to improve the quality of the life of the people of the target state, to improve its economic performance through assisting economic reconstruction and development during the post-conflict phase, to create functioning and stable political and economic institutions, to facilitate national reconciliation among ethnic, racial, national or religious groups.

We shall make clear that costs and benefits of humanitarian interventions depend on the nature of the intervention (in support or hostile to the target state) and its objectives (humanitarian, political, economic…). Moreover, while some interventions have long-term consequences, other interventions have more fleeting consequences.

On the basis of these criteria, NATO-led intervention against Serbia had both positive and negative effects.

Positive because UNMIK international administration established in the aftermath of the end of NATO-led military intervention, managed to improve the economic performance of the province of Kosovo, to build democratic and liberal institutions of self-government, to develop the judiciary, the police and the civil administration, and an environment conducive to socio-economic development in the province of Kosovo.

Moreover, NATO-led military intervention allowed ethnic Albanians who had fled to neighboring countries to return to their homes, once NATO air strikes drove Yugoslav force out of Kosovo.

Among the other positive effects of the intervention are the massive rebuilding of Kosovo's infrastructure, the reconstruction and development of Kosovo's economy.

Finally, Kosovo's experience was extremely helpful to produce the Brahimi reportof the Panel of the United Nations Peace Operations, which was submitted to the United Nations Secretary General on 17 August 2000.

Among the negative consequences of NATO-led military interventionis instead, there is the fact that the reconciliation between ethnic Albanians and Serbs living in Kosovo remained elusive and Serbs live confined in the Mitrovica region of northern Kosovo.

Therefore, the intervention was not able to improve the quality of the life of the whole Kosovo' s population.

While on the one side the intervention increased the quality of the life of ethnic Albanians living in Kosovo, it drove the majority of Serbs either out of Kosovo or into largely isolated enclaves (2008, United Nations Peace Operations, Year in Review, 21).

Another negative aspect of the intervention is that those regional alliances and international organisations that decide to assume the responsibility to react to humanitarian crises, should also assume the responsibility to rebuild countries shattered by conflict. Kosovo's post-conflict reconstruction implied huge financial costs both for the international community and for the European Union (which run the economic reconstruction and development pillar until the end of 2008).

Indeed, UNMIK international administration, which was established with the UNSC resolution 1244 on 10 June 1999 was "staffed by some 3.300 international police and thousands of international and local civilians" (2008, United Nations Peace Operations, Year in Review, 22).

Due to its large dimension and its ten-year length, the United Nations Mission in Kosovo turned to be one of the most costly peacekeeping operations of the whole United Nations' history.

Among the negative effects of the intervention there was the fact that the difficulties encountered by the United Nations Mission in Kosovo and the Organisation for Security and Cooperation in Europe in building an effective and impartial judiciary and administers the munipalities of the province of Kosovo undermined the role and the credibility of the United Nations and the Organisations for Security and Cooperation in Europe.

These difficulties were partly related to the failure to involve local population in the first stages of the post-conflict reconstruction process and partly to the lack of expertise and experience of Kosovar people in the field of the judiciary (lack of knowledge of the rule of law and the international human rights standards).

All the case studies considered in this chapter can be characterized as 'humanitarian interventions'.

We shall define 'humanitarian inteverventions' as those interventions that imply the use of armed force to intervene in a sovereign state essentially for humanitarian purposes, with the aim to end the sufferance of the people of the state target of the intervention.

The choice to devote a paragraph of the chapter on the theory of conflict prevention to the assessment of the effectiveness of humanitarian interventions of the past decade is based on the assumption that the dilemma between neutrality and intervention could be reduced to the problem of the effectiveness of the intervention.

The analysis of the impact of humanitarian interventions for the target state leads to the recognition of the crucial role played by local participation. The extent to which local people are involved in the peace-building process and in reconstruction efforts affects deeply the chances of success of such efforts.

Indeed, the local population will not accept and sustain in the long run solutions imposed from the outside, unless the international and regional agencies in charge of the post-conflict reconstruction activities will manage to involve locals.

Chapter IV is an assessment of the impact that the United Nations institutional reform could have on the implementation of the principle of the Responsibility to Protect. To this end we shall analyse each of the main aspects of the United Nations institutional reform, whose mandate is relevant for the implementation of the Responsibility to Protect. The reforms that are relevant for the implementation of the Responsibility to Protect are the reform of the United Nations Security Council; the creation of the United Nations Office of the Special Adviser for the Prevention of Genocide and the creation of the United Nations Peace-Building Commission.

The paragraph devoted to the United Nations Security Council's reform is aimed to highlight that because the problem related to the right of veto of the 5 permanent members of the Security Council has not been solved yet and, at the same time, the implementation of the Responsibility to Protect should be approved by the Security Council, there is little hope that the Security Council manages to give timely responses to crisis situations, as Rwanda and Bosnia had proved in the recent past. The inability of the Council to authorise timely responses to humanitarian emergencies raises the risk of unilateralism.

The paragraph devoted to the formation of the United Nations Peacebuilding Commission is aimed to highlight that the weakening of the notion of the Responsibility to Protect from its original formulation in 2001 to its endorsement in the Outcome Document of the 2005 United Nations World Summit is reflected at an institutional level by the exclusion of the preventive dimension of the Responsibility to Protect in the mandate of the Peace-Building Commission.

Indeed, in spite of the fact that the Commissioners of the High Level Panel on Threats, Challenges and Changes proposed to incorporate a preventative component in the mandate of the Peace-Building Commission, the scholars of the Yale Center for the Study of Globalisation, who were in charge of reading the text of the High Level Panel and giving and interpretation of it, suggested on the contrary to limit the mandate of the Peace-Building Commission to the accomplishment of post-conflict activities such as reconstruction and institution building.

On the one side, the paragraph devoted to this new United Nations institution retraces the history of the creation of the PeaceBuilding Commission in December 2005, with an identical decision of the Security Council and the General Assembly, on the other, it tries to clarify the mandate of the Peacebuilding

Commission and in which sense this mandate is relevant for the operationalisation of the Responsibility to Protect.

The High Level Panel on Threat Challenges and Changes proposed to include in the mandate of the Peace Building Commission the identification of those states that risk to collapse, the prevention of the further deterioration of their situation and the provision of assistance to states that are crossing the transitional period between the end of the conflict and the starting of the reconstruction process.

However, the readers of the Panel Report provide several reasons to explain their reluctance to include a preventative dimension in the mandate of the Peace-Building Commission.

They argue that the Peace-Building Commission's mandate should be informed by the principle of impartiality and for this reason the Commission can not take side in domestic conflict, as it would happen by including conflict prevention tasks in its mandate.

Moreover, conflict prevention tasks would require violating the principle of the non-interference in the internal affairs of the other sovereign states and the need to monitor developing countries to identify those states that have high likelihoods to lapse into violence.

Again, political factors such as the vital interests of the most powerful states, can affect the identification of the countries at risk and finally, even assuming that the Peace-Building Commission could be successful in identify countries at risk, there is no guarantee that the Commission will be able to prevent the conflict from erupting in these countries.

The objections to incorporate a preventative component in the mandate of the Peace-Building Commission lead the readers of the Panel Report to conclude that the mandate of the Peace-Building Commission should encompass only the duty to rebuild rather than also the duty to prevent.

The paragraph devoted to the Special Adviser for the Prevention of Genocide and the creation of the Office of the SAPG is aimed to clarify the contribution that this new United Nations can give to the implementation of the Responsibility to Protect. To this end, we shall make clear what are the role and the main responsibilities of the United Nations Special Adviser on the Prevention of Genocide. These responsibilities will be summarised in three main points (the gathering of information on human rights and humanitarian law violations; early warning; make reccomendations to the Security Council).

The paragraph is also aimed to show the difference between conflict prevention and genocide prevention on the basis of Article 1 of the 1948 Convention for the Prevention and Punishment of Genocide, which confirms that genocide is a crime under international law "whether committed in time of peace or war".

Therefore, although often there is a link between armed conflict and the perpetration of the crime of genocide, genocide prevention strategies should take into consideration that genocide can be committed in time of peace as well. Moreover, while conflict prevention measures are focused on the hostilities between armed groups or on the political instability pusuant to the fight for the attaintment of the power, genocide prevention strategies should be centered on the atrocities committed against civilians and should use as indicators that raise the likelihood for genocide to be committed are gross human rights' violations such as arbitrary arrest and

detention or arbitrary displacement. Indeed, these kinds of human rights' violations have historically preceded the perpetration of the crime of the crimes.

The paragraph highlights that genocide prevention is only an element of the preventive dimension of the Responsibility to Protect. This limitation is due to the practical obstacles to realise conflict prevention activities, which require considerable political and financial resources. Indeed, there is a huge disparity between the financial resources that the international community devotes to preventive action and the resources allocated to peacekeeping and peacebuilding operations. This disproportion mirrors the different degree of attention payed to the two dimensions of the Responsibility to Protect (the responsibility to prevent and to rebuild respectively).

The conclusion of the chapter is an analysis of the three factors whose combination seems to be the pre-requisite for the operationalization of the Responsibility to Protect.

The first factor is the political will to intervene to prevent or to halt the perpetration of international crimes within the borders of sovereign states.

The second factor is the development of the military capacity of all international and regional agencies involved in the intervention.

The third factor is the capability of international and regional organisations to combine forms of soft power – like the imposition of sanctions – with forms of hard power – like the resort to the use of force.

The Brahimi report in 2000 highlighted the discrepancy that often exists between the objectives that intervening states want to achieve in the target states and the material, military, logistical and financial resources, which are available to reach these objectives and realise interventions with humanitarian purposes.

For the moment it is evident that regional agencies such as the European Union and the African Union do not have military capacities comparable with the military capability of the United States or the NATO, which are able to undertake military interventions also for prolonged periods of time.

Therefore, in order to attach a growing role to regional agaencies such as the European Union or the African Union in the operationalisations of the Responsibility to Protect, it would be necessary to further develop the existing military capacities of these two organisations, which at the moment are very limited.

The European Union could also decide to develop its expertise on civilian missions (police or rule of law missions).

However, before thinking about possible alternatives to enforce the Responsibility to Protect, the idea needs to be further developed and it would be necessary to reach an agreement on its moral and legal meaning.

According to E. Luck, Special Adviser of the Secretary General on matters related to the Responsibility to Protect, this agreement has not been reached yet.

There is no agreement on the fact that the Responsibility to Protect should be regarded as a norm.

Indeed, E. Luck himself continues to consider the Responsibility to Protect as an abstract idea, as a concept.

On the contrary, according to the scholar A. Bellamy, the Responsibility to Protect, in the light of its official endorsement in the Outcome Statement of the 2005 United Nations World Summit, should be regarded as

something more than a simple idea, since all the delegations who took part to the Summit gave their adherence to the Responsibility to Protect.

Other authors like J. Brunnèe and S. Thope claim that a dissemination of the concept by its proponents would be required. The advocacy of the idea of the Responsibility to Protect would give a substantive contribution to the maturation of the concept. The concept of the Responsibility to Protect is still far from being recognized as a legal norm. To this end, it would be necessary to mainstream the idea of the Responsibility to Protect within a normative binding instrument that could be considered as a traditional source of law from which a legal norm can stem from (J. Welsh, 2006). But before incorporating the idea within a binding normative instrument (such as a treaty or Charter provisions), it would be necessary to reach a consensus on the legal meaning of the Responsibility to Protect. Once the Responsibility to Protect will be included within a normative binding instrument, the norm would acquire a binding legal force and would become able to raise a sense of legal obligation and adherence in those states that already agree on endorsing the idea within the Outcome Document of the United Nations World Summit (J. Brunnèe and S. Thope, 2005). Arrived to this point, the effective implementation of the norm will require again the willingness of the states to act in this direction.

Chapter V describes the increasing significant role that regional organizations are assuming in operationalising the principle of the Responsibility to Protect.

Although the role of regional organization in the prevention, management and resolution of armed conflicts was established much before, until the ECOWAS (Economic Community of Western African States) missions in Liberia and Sierra Leone, the practice of the states suggested that the previous authorization of the United Nations Security Council is the condition for the legality and the legitimacy of each humanitarian intervention.

Under international law, regional organisations are limited in the sense that their power is coincident with the power of their member states and can not overcome this power.

Interventions carried out by regional organizations can be justified on the basis of humanitarian reasons but, from a more strict legal point of view, in the United Nations Charter does not provide for the possibility for a regional organisation to recourse to the use of armed force to intervene in an internal armed conflict if not specifically authorized by the United Nations Security Council.

Indeed, according to Chapter VIII of Article 53 of the United Nations Charter, "no enforcement action shall be taken under regional arrangements or by regional agencies without autorisation of the Security Council" (Art. 53, para.1, at 26).

ECOWAS did not obtained the approval of the United Nations before intervening in the internal armed conflict that was taking place in Liberia in 1990.

However, in spite of the fact that ECOWAS intervention was not legal under the United Nations Charter, this intervention was supported by the United Nations and by the international society of states.

ECOWAS intervention was illegal but legitimate in the eyes of the international community.

On the other side, ECOWAS intervention in Sierra Leone in 1997 highlighted that the customary international law seems to recognise the right of regional organisations to intervene in internal armed conflicts, when these conflicts are characterised by serious human rights violations that represent a violation of jus cogens (peremptory) international legal norms or when the state collapsed and precipitated in a situation of anarchy.

The support that the United Nations and the international community gave to ECOWAS missions in Liberia and Sierra Leone proves that the United Nations and the international community want to encourage African states to assume a growing role in the prevention, management and resolution within the internal conflict that afflict the continent.

The chapter is also aimed to clarify the European Commission's disposition towards the Responsibility to Protect.

All the Member States of the European Union in the occasion of the 2005 United Nations World Summit expressed their support for the endorsement of the Responsibility to Protect within the Outcome Statement of the Summit.

However, the strategic interests of the individual states of the European Union seem to represent obstacles to the identification of a common approach of the European Union on how to face those situations that require a military intervention.

Nonetheless, the European Parlament showed its common approach towards the implementation of the Responsibility to Protect in occasion of the humanitarian crisis in Burma.

The position expressed by the European Parliament was that the state of Burma was using the traditional notion of sovereignty as a shield to violate the human rights of its civilian population and called the United Nations Security Council to authorise humanitarian assistance even without the consent of the target state.

The consolidation of the idea that regional agencies should assume a growing role in the operationalisation of the Responsibility to Protect, is proved by the endorsement of this idea in the Outcome Statement of the 2005 United Nations World Summit and by the role played by the African Union in the Darfur region of the Sudan, with the support of the United Nations and of the whole international society of states.

The African Union is much more committed to prevent and solve humanitarian crises erupting in the African continent than it was the Organisation of African Unity.

The shift from the Organisations of African Unity to the African Union coincides with a shift from the principle of non interference to the principle of non indifference.

The adoption of the principle of non indifference is legally supported by the article 4 (h) of the African Union Constitutive Act, which provides for the right of the African Union to intervene in the Member States of the Union in case genocide, crimes against humanity or was crimes are being perpetrated within the borders of a sovereign state of the region.

The exercise of the right of the African Union to intervene in its Member States when international crimes are perpetrated is regulated by the Protocol that creates the African Unione Peace and Security Council.

Against the detractors of the Responsibility to Protect as a Western concept that expresses the neo-imperialist intentions of Western States, it should be noted that the normative framework of the African Union

Constitutive Act is actually very similar to the two articles of the Outcome Statement of the 2005 World Summit in which the Responsibility to Protect was endorsed.

The main difference can be identified in the fact that the African Union Constitutive Act provides for the right to intervene not only in the case in which international crimes are being perpetrated but also in case of unconstitutional changes of regime. This provision can be explained by the fact that the African Continent in the last sixty years has been the theatre of a huge number of coupes d'etat, which caused in the region the highest number of internally displaced people of the world.

This might be sufficient to explain why the preambol of the African Union Constitutive Act the emphasis is put not only on the human rights respect but also in the respect of democratic institutions, good governance and respect for the rule of law.

Among the diplomatic and peaceful measures that have beeen adopted by the African Union as tools to face situations like the one occurring in Darfur since 2003, is the denial of the Chair of the African Union to the Sudan, both in 2006 and in 2007.

Since its Constitution, the African Union has exercised its right of intervention within its member states in several situations and namely in Burundi, Somalia and Sudan.

However, the African Union Mission in the Sudan (AMID) was unable to face the crisis of the Darfur and for this reason the African Union was forced to seek the support of the United Nations.

The African Union Mission in the Sudan should not be regarded as a complete failure.

Indeed, it was useful for exercising a mediating role between the government of the Sudan and the main rebel groups operating in Darfur.

Moreover, the monitoring functions carried out by the African Union's peacekeepers prepared the ground for the hybrid AU-UN mission (UNAMID).

However, the support of the United Nations' troops to African Union's peacekeepers arrived too late, when 200.000 Darfurians had already lost their life and the number of internally displaced people amounted to 400.000.

The international community showed on the one side to be willing that the African Union assumes a leading role in facing the crisis erupted in Darfur, on the other side, proved to be willing to support African Union mission only at a very late stage of the conflict.

However, the AU-UN hybrid mission represents a significant example of the division of labour between international and regional organisations in facing humanitarian crises and protecting civilians caught into conflict. The recognition of the growing role of regional organisations in the prevention and management of humanitarian crises presents at the same time opportunities and challenges.

The positive side of the involvement of regional agencies is that they are more close (culturally and geographically) to the states afflicted by humanitarian crises and therefore, they have better information on the causes and the features of the crisis. For this reason it is opportune the recognition of the important role that regional organisations have to play to prevent humanitarian crises from erupting and in cooperating with the international community in the analysis of the crisis.

On the other side the main challenges that regional organisations have to face while trying to address a humanitarian crisis, are their logistical constraints, which can seriously compromise their effectiveness in preventing or managing the crisis. In spite of their potential logistical constraints, regional organisations should be involved both in the prevention and in the response to the crisis.

The crises in Burundi and Darfur show that sometimes the relation between United Nations and African Union is problematic. These problems are mainly due to the fact that United Nations troops are always deployed at a later stage of the conflict and African Union's troops are incorporated in United Nations' peacekeeping missions.

African Union troops in both cases (Burundi and Darfur missions) lamented that the United Nations were minimising the achievements of the African Union's missions and gave the impression that the United Nations interventions were aimed at putting a remedy to the failed attempts of the African Union to manage the crises. Because the international community and the United Nations have recognised that regional agencies should play an important role in the implementation of the Responsibility to Protect, they should be also willing to assist regional agencies in developing their military capacities.

This is the aim of the Ten Year Capacity-Building Program for the African Union.

Starting from the recognition of the growing role that regional organisations are playing in the prevention, management and resolution of internal armed conflicts, we shall analyze the role of the African Union in the crisis of Darfur and the role of the European Union and the NATO in the Balkans.

Chapter VI proposes a comparison between two concrete and contemporary cases: the Implementation of the Responsibility to Protect in the Darfur region of the Sudan and in Kosovo after NATO-led intervention and during the ten-year UNMIK administration over the province (until the proclamation of the independence of Kosovo from Serbia).

This last chapter is aimed to prove that the Responsibility to Protect includes not only conflict prevention measures (such as early warning, diplomacy, judicial and economic measures) and peace operations, but also the international assistance to help to build responsible sovereigns with appropriate capacity (state-building capacity) are integral parts of the protection of civilians from genocide and mass atrocities (A. Bellamy, 2008, 4).

CHAPTER I

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The Evolution of the Idea of the Responsibility to Protect

1.1 Summary of the First Chapter

The purpose of this chapter is to provide a clear definition of the concept of the Responsibility to Protect and assess its current status.

The conceptual analysis of the Responsibility to Protect will be conducted in the last three paragraphs of the chapter.

These last three sections coincide with the main documents where the idea of the Responsibility to Protect was proposed, articulated and formally endorsed between 2001 and 2005.

In December 2001 the idea of the responsibility to protect was proposed for the first time by the members of the independent International Commission on Intervention and State Sovereignty within their report on the work carried out by the Commission.

In 2004 the idea received a second and further articulation within the 2004 High Level Panel report produced by a group of experts appointed by the former Secretary General K. Annan.

In 2005 the idea was formally endorsed within the Outcome Document of the United Nations World Summit.

Within this first chapter, we shall assess whether or not the paragraphs 138 and 139 of the Outcome Document represent a 'weakening of the original notion' (as in J. Welsh, 2006) of the Responsibility to Protect as proposed within the 2001 ICISS report and within the 2004 High Level Panel on Threats, Challenges and Changes report.

The status of the Responsibility to Protect depends on the recognition of the articles 138 and 139 of the Outcome Document as sources of law.

However, since the international lawyers continue to deny that these two paragraphs can be considered as sources of law (J. Welsh, 2006), the recognition of the Responsibility to Protect as a legal norm (of the international law) remains controversial.

Indeed, in order for a legal norm to be recognised as such, it should stem from the traditional sources of law, category that does not include United Nations statements, resolutions and documents (J. Welsh, 2006).

Thereafter (the analysis of the concept and its current status) follows a discussion on the legal implications of the idea of the Responsibility to Protect and its impact upon the foundations of the international law.

1.2 From the Right of Humanitarian Intervention to the Responsibility to Protect

After the United Nations failure to prevent genocide[3] in Rwanda and Bosnia and the failure to prevent crimes against humanity in Kosovo and East Timor, the Canadian government felt the need to shift the debate from the controversial and problematic right to military humanitarian intervention[4] to the idea of the Responsibility to Protect the civilian population of states when governments are unwilling or unable to accomplish their obligations in terns of protection of the person and the property of their subjects.

At the end of the nineties, partly because of its inaction and partly because of its inadequate and late responses to the humanitarian catastrophes occurred in several countries, the United Nations Security Council lost almost completely its reputation of efficiency and impartiality.

In regards to this, the Italian jurist P. Picone 'diagnoses' a crisis of the international organizations, which is a consequence of the crisis of the cardinal principles of the international law.

The reputation of the Council was particularly affected by its failure to prevent crimes against humanity in Kosovo.

As a consequence of the threat to exercise Russian veto while the Council was called to decide whether authorize or not the use of force in Kosovo, NATO military alliance took the initiative to bypass the authority of the Council and intervene unilaterally in the former Serbian province.

Since NATO intervention was aimed by humanitarian purposes, the global public opinion was willing to recognize its legitimacy at least on a moral level.

However, from a legal point of view, since NATO intervened without the authorization of the Council and then, 'outside the system of multilateral cooperation' (E. Sciso, 2006) its intervention was qualified as unilateral and as a breach of the international law.

Moreover, the effectiveness of the NATO-led intervention was questioned to the extent that some detractors judged the consequences of action to be worse than the alleged consequences of inaction.

Two years later, the Canadian government established an independent international commission whose mandates were to reconcile humanitarian intervention with sovereignty; to develop a global political consensus on how the Security Council of the United Nations should authorize the use of force (on the basis of which criteria); to reflect the perspectives of developed and developing countries that were both fairly and democratically represented within the commission (ICISS, 2001, 2).

The commissioners were called to address the political, legal and moral dilemmas that the NATO-led intervention in Kosovo posed 'with dramatic urgency' (J. Brunnèe and S. Toope, 2005).

More in general, the commissioners were called to face those issues that the ten-year international debate on the right humanitarian intervention proved to be unable to solve.

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[3] "The term 'genocide' is of rather recent origin. It is based upon a combination of the Greek *genos* (meaning race or tribe with the Latin *cide* (meaning killing) …." in **L. S. Sunga**, 1997, 105.

[4] "Humanitarian aid agencies and organizations argued that linking the words 'humanitarian' and 'intervention' ultimately leads to a militarization of the word 'humanitarian', which could seriously undermine the efforts of the humanitarian community to assist and protect civilians in armed conflict" in **O. Jütersoncke**, 2006, 8.

The English philosopher D. Rodin, in his recent contribution to a workshop on the Responsibility to Protect, which took place in 2006 at the Geneva Graduate Institute for International Studies, interpreted the shift from the right of humanitarian intervention to the idea of the Responsibility to Protect as:

"…a move from rights to responsibilities" and precisely "…from the sovereign right of states to be free from intervention to the responsibility of states to protect their own citizens" (O. , 2006, 12).

Indeed, the Responsibility to Protect "…is not at all about rights but about duties. The primary duty holder was the sovereign state which should offer security and protection to its own citizens" (J. Brunnèe, S. Toope, 2005, 2).

This passage shows that the current debate on the responsibility to protect is no longer centered on the security of the state and the respect for its sovereignty (considered in its classical Westphalian connotation), political independence and territorial integrity[5], as was the previous debate on the right of humanitarian intervention.

The current debate on the Responsibility to Protect is rather focused on the security of civilian populations.

However, the Responsibility to Protect should not be confused with the protection of civilians in armed conflict, since this latter is a much broader concept.

A definition of protection has been helpfully provided by the International Committee of the Red Cross in 1999:

"All activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e., human rights law, international humanitarian law and refugee law" (V. K. Holt; T. C. Berkmann, 2006, 19).

The Responsibility to Protect, as conceived in its original formulation, provides for the protection of civilians only in cases of large scale loss of life, massive human rights abuses[6], genocide or ethnic cleansing, whereas the concept of the "protection of civilians" encompasses all the rights of the individual.

Even if we take into account the further evolution of the notion within the 2004 High Level Panel report and 2005 Outcome Document, the Responsibility to Protect remains always a distinct concept from the protection of civilians in armed conflict, especially in the light of the limitations imposed to the concept before its formal endorsement within the Outcome Document, where the Responsibility to Protect is strongly linked to four kinds of international crimes and lost its connection with the perpetration of human rights' abuses actual or apprehended.

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[5] "The principle of **territorial integrity** of the states is recognized expressly in article 2(4) of the United Nation Charter with its legal prohibition of the use of force to promote any change in the territorial status quo of existing frontiers" in **McWhinney**, 2000, 34.

[6] The expression 'massive human rights abuses' should be considered equivalent to 'systematic or mass violations of human rights'. "Article 21 of the 1991 Draft Code contains a general description of systematic or mass violations of human rights, followed by an enumeration of such acts. It reads: an individual who commits or orders the commission of any of the following violations of human rights: murder; torture; establishing or maintaining over persons a status of slavery, servitude or forced labor; persecution on social, political, racial, religious or cultural grounds, in a systematic manner or on a mass scale; or deportation or forcible transfer of population…" in **Sunga**, 1997, 124-5.

The limitations imposed by international actors and world leaders to the concept of the Responsibility to Protect in its formal endorsement within the Outcome Document, led several legal scholars – such as J. Welsh, J. Brunnèe and S. Toope – to suggest that the Outcome Document represents a 'weakening of the idea' if compared to its original formulation proposed in the 2001 ICISS report (J. Welsh, 2006, 23).

While in the 2001 ICISS report indeed, the Responsibility to Protect entailed in a 'continuum' (J. Brunnèe, S. Toope, 2005, 5) the three complementary components of the responsibility to prevent, to react and to rebuild, in the 2005 Outcome Document, both this complementarity and the preeminence of the preventive dimension of the idea of the Responsibility to Protect are gone (O. Jütersoncke, 2006, 13).

The neglect and restructuring of the preventive component of the Responsibility to Protect within the Outcome Document is the result of the 'difficult negotiations' (J. Brunnèe, S. Toope, 2005, 4) concluded among the world leaders who attended the Summit.

All delegations who attended the Summit seemed to be aware of the 'potential for transformative impact' (J. Brunnèe, S. Toope, 2005, 2) that the Responsibility to Protect could have on the classical way to conceive sovereignty and on the two core principles of non-intervention and non use of force.

Thus, "…many states have sought to limit the potential impact of the Responsibility to Protect" (J. Brunnèe, S. Toope, 2005, 5).

Particularly, the set of ideas entailed in the notion of the Responsibility to Protect seems to have the potential to challenge some foundations of the international law such as respect for state sovereignty, political independence, territorial integrity and sovereign equality.

Some developing countries opposed a strenuous resistance against the incorporation of the preventive dimension of the Responsibility to Protect, which could give rise to an 'expansion of the possibilities for intervention' (J. Brunnèe, S. Toope, 2005, 5) particularly through the newly established United Nations institutions such as the Peacebuilding Commission and the Human Rights Council.

However, the risk of interventionism was already intrinsic to the right of humanitarian intervention as it has been constantly highlighted by those authors intervened in the international debate on the existence of such a right.

Among these authors, it is worth to remember the contribution of Prof. A. Orford.

Prof. A. Orford justifies her denial to recognize the existence of a right of humanitarian intervention through observing that the Western states of the North of the world have always perceived themselves as a sort of Ego, who is called to exercise a civilizing missions towards the states of the South, which are by contrast perceived as a sort of Unconscious incapable to carry out autonomously the process of civilization.

Another significant limitation that the leaders of some developing countries imposed on the idea of the Responsibility to Protect, before giving their consent to its endorsement within the Outcome Document, is relating to the guidelines for authorizing the recourse to collective military action.

These threshold criteria, proposed for the first time in the 2001 ICISS report, were then retrieved in the 2004 High Level Panel report.

However, the High Level report retrieves only five out of the six criteria that were originally proposed within the 2001 ICISS report, since the experts of the Panel decided to exclude from the list of the threshold conditions, the criterion of the right authority.

As it is made clear by the two legal scholars J. Brunnèe and S. Toope in their recent article on the Responsibility to Protect (2005), according to the authors of the ICISS report the recourse to intervention is to be considered legitimate "…where there is serious and irreparable harm occurring to human beings, or imminently like to occur. The triggering events were (in the 2001 ICISS): "large scale loss of life with genocidal intent or not, which was the product of deliberate state action, or state neglect, or inability to act, or a failed state situation, or large scale ethnic cleansing" (J. Brunnèe, S. Toope, 2005, 2).

In this passage the two authors clarify that on the basis of the ICISS report, in order to invoke the duty to intervene with the purpose of protecting civilians -'within the system of multilateral cooperation' - (E. Sciso, 2006), it is sufficient that atrocities such as ethnic cleansing, large scale loss of life and massive human rights abuses are 'likely to occur' (J. Brunnèe, S. Toope, 2005).

This specification was the way in which the authors of the ICISS report were trying to stress the centrality of the Responsibility to Prevent, which is the preventive component of the Responsibility to Protect:

"For the ICISS report the Responsibility to Protect encompassed a broad spectrum of measures focused upon the prevention of humanitarian crises. Although the Outcome Document retains some flavor of prevention, the various aspects are not explicitly staged. Nor are forcefully worded". (J. Brunnèe, S. Toope, 2005, 5)

A. Bellamy, in a recent article, specified in what the measures focused upon the prevention of humanitarian consist.

These measures are different in relation to the kind of root causes of conflict they are aimed to tackle:

" …the political dimension (relating to good governance, human rights, and confidence building) referred to the secretary general's preventive diplomacy; the economic dimension (relating to poverty, inequality, and economic opportunity) referred to the use of positive and negative inducements; the legal dimension (relating to the rule of law and accountability) referred to a range of measures from mediation to legal sanctions; and the military dimension (relating to disarmament, reintegration and security sector reform) – considered the most limited in scope – referred to preventive deployments (A. Bellamy, 2008, 138).

The neglect of the preventive dimension in the Outcome Document is evident from the fact that the responsibility to react can be exercised only when international crimes have already taken place, without considering the need to preventing the perpetration of such international crimes.

Moreover, within the Outcome Document, the Responsibility to Protect is more linked with a limited list of international crimes (J. Brunnèe, S. Toope, 13).

The two American legal scholars J. Brunnèe and S. Toope provided an important distinction between positive and negative sides of the creation of "…a category of offences that might justify collective military action".

The positive side is that: "…the linkage between a Responsibility to Protect and specific triggering offences could lead to a clarification and consolidation of the concept and the content of international crimes, and import substance into the heretofore rather vague construct of erga omnes obligations".

However, the efforts aimed at implementing the Responsibility to Protect principle in the Darfur region of the Sudan, did not lead to the clarification of the concept of genocide. The mandate of the International Commission of Inquiry on Darfur was that of establishing whether or not genocide has been committed in this region.

To this end the president of the Commission, Prof. A. Cassese, refers to the traditional definition of genocide provided within the Geneva Convention of 1948[7].

His reference to the classical definition of genocide is proved by the fact that Prof. Cassese incorporated this definition in his report the Secretary General on the situation of the region between 2004 and 2005: " …both under the 1948 Convention and the corresponding rules of customary law, genocide comprises various acts against members of a national, ethnic, racial or religious group (killing members of the group, causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in a part ; imposing measures intended to prevent births within the group ; forcibly transferring children of a group to another group), committed with the intent to destroy, in whole or in part, the group" (A. Cassese, 2005, par. 181, 53).

In the same report, Prof. A. Cassese refers the following definition of war crimes[8]:

"This class of international crimes embraces any serious violation of international humanitarian law committed in the course of an international or internal armed conflict (whether against enemy civilians or combatants) which entails the individual criminal responsibility of the person breaching that law. War crimes comprise for instance, indiscriminate attacks against civilians, ill-treatment or torture of prisoners of war or of detained enemy combatants, rape of civilians, use of unlawful methods or means of warfare, etc. » (A. Cassese, 2005, par.177, 52)

As regards the crimes against humanity, in the same report of the International Commission of Inquiry on Darfur, the Prof. A. Cassese refers to this definition, which retrieves many elements of the definition provided within article 6 (c) of the Nuremberg Charter[9].

"These are particularly odious offences constituting a serious attack on human dignity or a grave humiliation or degradation of one or more human beings (for instance, murder, extermination, enslavement, deportation or forcible transfer of population, torture, rape or other forms of sexual violence, persecution, and forced disappearance of persons). What distinguishes this category of crime from that of war crimes is that it is not concerned with isolated or sporadic breaches, but rather with violations which i.) may occur either in time of

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[7] The General Assembly adopted the UN Genocide Convention unanimously on 9 December 1948…the Convention entered into force on 12 January 1951. The Genocide Convention states specifically in Article I that 'genocide, whether committed in time of peace or in time of war, is a crime under international law' making clear that norms prohibiting genocide apply at all times" in L. S. **Sunga**, 1997, 108.

[8] One of the most comprehensive definition of war crimes was included in the Article 6 (b) of the Nuremberg Charter: 'war crimes include, but shall not be limited to murder, ill-treatment or deportation to slave labor or any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity" in L. S. **Sunga**, 1997, 165.

[9] "Article 6 (c) of the Nuremberg Charter defines 'crimes against humanity' as: murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution or in connection with any crime within the jurisdiction of the Tribunal whether or not in violation of the domestic law of the country where perpetrated" in L. S. **Sunga**, 1997, 106.

peace or of armed conflict, and ii.) constitute part of a widespread or systematic practice of atrocities (or attacks) committed against the civilian population" (A. Cassese, 2005, par. 177, 52).

Finally, a recent definition of the crime of ethnic cleansing has been provided by the Serbian legal scholar A. Bell-Fialkoff in his *Brief History of Ethnic Cleansing*: "At one hand it is virtually indistinguishable from forced emigration and population exchange while at the other it merges with deportation and genocide. At the most general level, however, ethnic cleansing can be understood as the expulsion of an 'undesirable' population from a given territory due to religious or ethnic discrimination, political, strategic or ideological considerations, or a combination of these" (A. Bell-Fialkoff, 110, 1993).

The negative side of linking the principle of the responsibility to protect to a limited list of international crimes is that "…the requirement that an international crime has already taken place necessitates a legal assessment, which is likely to generate a heated and protracted debate that could actually delay response. In the case of genocide, one of the triggering crimes, we already know that disagreements over the question whether the facts fit the definition have stymied action on a number of occasions. And as is well known, recognition that a crime exists will not necessarily lead to action, as the Rwanda case so sadly demonstrated" (J. Brunnèe, S. Toope, 2005, 6).

The case of Darfur, for instance, shows the side effects of the need to prove that the crimes committed against the people of Darfur were 'not less serious than genocide'.

Indeed, the authorization for intervening could not be given by the Security Council before the assessment of the crimes perpetrated has been carried out by an international commission appointed by the Secretary General. The need that the crimes perpetrated in the Darfur region of the Sudan fits the definition of genocide provided by the UN Convention of 1948 had as a result that, before the United Nations Security Council issued its authorization for intervening in the region, "…nearly two and half million people were displaced or in need for humanitarian assistance and around 200 thousands people were already killed". (House of Commons, International Development Committee, 2004/5, Volume I, 3)

Another distinction between the documents can be identified in the different manners in which the ICISS report and the Outcome Document solve the issue of authority.

J. Brunnèe and S. Toope explained that, according to the authors of the ICISS report:

"In cases where a state abjectly failed its protective obligation, or where the state was itself the perpetrator of massive human rights' violations, collective military action could be authorized internationally to protect victims within a sovereign state. This authorization should be sought first in the Security Council, and in case of inability or refusal to act, through a revitalization of the moribund 'Uniting for Peace' resolution of the General Assembly or through a reference to a regional organization. In the latter case, the Security Council would have to be asked to approve the intervention retroactively" (J. Brunnèe, S. Toope, 2005, 2-3).

In her contribution to the workshop on the Responsibility to Protect that took place in 2006 at the Graduate Institute of International Studies in Geneva, Prof. J. Welsh provided several helpful comments to the recommendations of the commissioners relating to the issue of the 'right authority'. She observes that the commissioner continued to recognize the Security Council as the only source of authority for legitimating

humanitarian interventions in spite of the fact that they were totally aware of the possible objections that could be raised against this claim.

Prof. J. Welsh identifies the limits of the Security Council as the only legitimate source of authority in: "…the slowness of the Security Council decision-making; the under-representation of key regions; and the political nature of vetoes of the five permanent members, which compromise the credibility and the impartiality of the Council. (There is also the more obvious point that by requiring Security Council authorization, one ensures that the Responsibility to Protect will never be applied against a member of the Permanent Five). Nonetheless, they (the commissioners) believe that recourse to unregulated unilateralism was even more unpalatable alternative" (J. Welsh, 2006, 31).

The fear that individual countries or regional military alliances such as NATO can make recourse to unilateralism can be explained referring to the fact that the commissioner are writing only two years after NATO decision to bypass the authority of the Security Council and to intervene unilaterally in Kosovo with the aim of facing its humanitarian catastrophe, as a consequence of the failure of the United Nations Security Council to act (because of the threat of an un-impartial opposition of Russian veto).

The awareness of the commissioners about predictable objections against their claim that the Security Council is the only legitimate authority is proved by their efforts to anticipate these objections through the proposal of some alternative solutions, to be adopted where a 'breakdown of diplomacy occurs within the Council" (as it happened before the US-led invasion of Iraq).

Prof. J. Welsh has summarized the solutions proposed by the commissioners as follows: "

- states must at least request Council authorization before acting

- a resolution supporting military intervention must have at least majority support in the Council

- and, if the veto is used in these instances, recourse can be made to the General Assembly (under the Uniting for Peace resolution) or to regional bodies" (J. Welsh, 2006, 32)

It is a contention of many legal scholars that "… the Responsibility to Protect could acquire a real meaning for the international community, including governments and international organizations and the norm could be effectively implemented, only if its proponents, lawyers and philosophers will manage to persuade the global public opinion that the Responsibility to Protect can be conceived as a norm not only in the domain of international relations, but also in the realm of international law (J. Brunnèè and S. Toope, 2005, 6-7).

The problem is that for the moment, even according to Prof. J. Welsh, paragraphs 138 and 139 of the World Summit Outcome Document, devoted to the Responsibility to Protect "…are an example of soft law, with the ambiguity of the two paragraphs being the price to be paid for minimum consensus" (J. Welsh, 2006, 33).

With the term 'soft law' Prof. Welsh refers to the fact that the articles where the Responsibility to Protect has been endorsed are not traditional sources of law and, at the same time, the Responsibility to Protect has not been recognized yet as a full blown legal norm.

Using the terms 'soft law', Prof. Welsh meant that the Responsibility to Protect does not have any legally binding force, or that its binding force is somewhat 'weaker' than the binding force of traditional international law.

Moreover, as the philosopher H. Morgenthau made clear in his article on "The Problem of Sovereignty Reconsidered", "…international law is a decentralized legal order", in the sense that "Its rules are…binding only upon those states which have consented to them, and many of the rules that are binding by virtue of the consent given are so vague and ambiguous and so qualified by conditions and reservations as to allow the individual states a very great degree of freedom of action whenever they are called upon to comply with a rule of international law" (H. Morgenthau, 1948, 343).

The idea expressed in this passage fits well the current status of the general emerging norm of the international law of the responsibility to protect.

Indeed, articles 138 and 139 of the Outcome Document within which the norm has been endorsed are characterized by a great degree of vagueness and ambiguity.

In addiction, as J. Brunnèe and S. Thope stressed in their recent article on the Responsibility to Protect, the norm is qualified by strong limitations such as his link to a limited list of international crimes.

The ambiguity of the norm coupled with the limitations to which its content has been subjected in order to be endorsed in the Outcome Document, allow individual state a very great degree of freedom of action whenever they are called upon to comply with the norm of the responsibility to protect.

For these reasons, articles 138 and 139 of the Outcome Document represent '…a weakening of the original notion of the Responsibility to Protect' in the sense that in its last configuration within the Outcome Document, the idea manifestly lacks the necessary legally binding force that it should have in order to be recognized as an example of 'hard law' rather than of 'soft law'.

The strong limitations of the idea of the Responsibility to Protect as endorsed within the Outcome Document prove that "…the notion of the Responsibility to Protect has met with resistance in the field of international law" (J. Welsh, 2006, 23).

This resistance is due mainly to the difficulties to find conciliation between the responsibility to protect and the cardinal principles of the international law.

However, "The duty and responsibility to protect targeted victims of genocide, war crimes and crimes against humanity, and indeed, to prevent these atrocities from occurring, can be found in multiple international law instruments explicitly of by reasonable inference. The several Geneva Conventions, the Genocide Convention, the Universal Declaration of Human Rights plus various regional human rights conventions, and the International Conventions on Civil and Political Rights all recognize the rights of innocent people to be free from atrocities conducted either in armed conflicts, or under more covert circumstances where states lend support to unofficial illegal acts or , at times, are unable or unwilling to protect their population from their occurrence". (D. Aronofsky, 2007, 317).

The responsibility to protect belongs to those rules of the international law that "…owe their existence to the consent of the members of the international community" (H. Morgenthau, 1948, 343). This latter fact further limits the binding force of this norm upon the reaction of the members of the international community to humanitarian catastrophes.

The binding force of the norm of the responsibility to protect indeed, results to be strictly dependent on the consent of all states of the international community.

1.3 The End of the Cold War and the Changed Nature of Armed Conflict: From International Disputes to Internal Violence

Several political and legal scholars agree to recognize that the end of the Cold War[10] brought a radical change in the character of armed conflict" (J. Engstrom, 2009, 1).

Many of the major international conflicts that occurred throughout the nineties indeed, were classifiable rather as intra-State armed conflicts than as inter-State wars.

"Of the fifty-six armed conflicts between 1990 and 2000 identified by the Stockholm International Peace Research Institute (SIPRI) as major, in that they involved more than a thousand battle-related deaths in one year, fifty-three of them were intrastate. Intrastate conflict is a phenomenon that exploded with the end of the Cold War as the checks and balances and internal suppression that had maintained uneasy peace for so long fell away, but it shows, unhappily, no sign of diminishing" (G. Evans, 2004, 2).

Today internal conflicts continue to erupt in the Sub-Sahara Africa region[11] and in the former Soviet Union[12].

In the Middle East, the Arab-Israeli conflict continues, while Iraq[13] and Afghanistan continue to suffer from a situation of high political instability.

As Kevin Clements, Director of the Australian Centre for Peace and Conflict Studies, has helpfully explained:

"There is a clear African Crisis Zone and a Central Asian Crisis Zone. Elsewhere specific countries, such as Burma, Colombia, Nepal, Sri Lanka, Indonesia, the Philippines plus a number of microstates in the South West Pacific are also in conflict…There is a growing internal unrest and cross-border violence in Central Asia. Three strategic countries in the region, Uzbekistan, Tajikistan and Kyrgyzstan, are plagued by a host of internal political and security problems, aggravated by poor and deteriorating economic and social conditions…Enlargement of the European Union could lead to destabilising effects in the neighbouring regions, such as south-eastern Europe, the former Soviet Union, Turkey and North Africa…" (K. Clements, 2006, 6).

In spite of this change in the nature of armed conflict and the consequent need to develop mechanisms (such as legal norms) aimed at preventing internal conflicts rather than mechanisms aimed at preventing inter-State wars, Prof. N. Ronzitti has sharply made clear that "…international law is more equipped for mechanisms

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[10] "…as the Cold War system and the overriding concern about the threat of nuclear war meant that Western observers were either oblivious to or ignored the plethora of existing, brewing or temporarily suppressed conflicts beyond the borders of the Western hemisphere" in **J. J. Engstrom**, 2009, 1.

[11] The political unrest in Kenya at the beginning of 2008 and the endless conflict in the Democratic Republic of Congo are just two of the many examples it would be possible to refer to.

[12] The high likelihood of the outbreak of violence in the Former Soviet Union has been recently exemplified by the eruption of the conflict in Georgia/Ossetia in August 2008.

[13] US military occupation of Iraq will last at least until the first half of 2010, mainly with the aim of preventing the continuous terrorist attacks among the different factions.

aimed at the prevention of international conflicts (*conflicts between states*) that for mechanisms to be used to prevent internal violence" (N. Ronzitti, 1998, 117).

Indeed, for instance, "…the article 1.1 of the UN Charter provides for amicable settlement of international disputes, rather than for an adjustment of the internal ones[14].

International law did not have any evolution in terms of its capability of preventing internal violence within internal conflicts, due to the fact that internal conflicts do not have an international nature.

However, international law had a significant evolution in terms of persecuting and punishing the perpetrators of international crimes even within internal conflicts.

This evolution consisted in the creation of international criminal tribunals, which assert the principle of personal responsibility for the crimes perpetrated in the context of internal conflicts.

This evolution consists also in the establishment of the Rome Statute of the International Criminal Court.

Taking into account the changed nature of violent armed conflict helps to explain why at the present time international crimes (crimes against international law) are mostly committed in the course of internal conflicts at the expenses of the civilian population.

Considering the scarce resources devoted to non-military conflict prevention measures (contrary to the recommendations made by the 2001 ICISS report), sometime the intervention in the internal affairs of a sovereign state is the only possible way in which the perpetration of such crimes can be prevented, especially when the state itself is the perpetrator of these crimes.

Otherwise, if we take for granted the absolute inviolability of sovereignty, the impunity for the international crimes committed under the jurisdiction of another state could be avoided only ex-post, through the action of the international criminal tribunals. A recent example is provided by the warrant of arrest of the Sudanese president Sudan Omar al-Bashir who has been accused to favour the genocide and crimes against humanity perpetrated by Janjaweed militias in the Darfur region of his country with the complicity of Sudanese government.

This warrant of arrest was possible on the basis of the Statute of the International Criminal Court, which includes the principle of individual criminal responsibility for violations of the law of internal armed conflict.

1.4 Responsibility to Protect: Legal Obligation or Moral Requirement?

There is wide-ranging disagreement in contemporary debate about the form as well as the contours of the content of the Responsibility to Protect.

The intention of the proponents of the idea of the Responsibility to Protect was that of creating a *binding* legal norm in the realm of the international law. International law was "…the discipline that dominate existing studies of humanitarian intervention" (N. Wheeler, 2000, 2).

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[14] "According to article 1.1 of the Charter, the basic purpose of the UN is to maintain international peace and security, and to that end: to bring about by peaceful means, and in conformity with the principle of justice and international law, adjustment or settlement of international disputes which might lead to a breach of the peace" in G. **Palmisano**, 2004, 1104.

Consequently international law is also the discipline that dominates the studies on the Responsibility to Protect, which have their roots in the debate on humanitarian intervention.

With the adjective 'binding' we refer to the 'constraining power' that a norm should have in order to be considered as an example of 'hard law'.

As Prof. N. Wheeler has helpfully suggested "Norms are not material barriers (*in the sense that there is something intrinsic to the norm that physically stops from doing something*) and their constraining power derives from the social disapproval that breaking them entails"(N. Wheeler, 2000, 5)….The tendency among realist-inclined international-relations scholars is to assume that, since states are judge and jury in their own courts, international law is not proper law because it lacks the authority to create obligations that are binding" (N. Wheeler, 2000, 2).

However, since the Responsibility to Protect has been officially endorsed in the 2005 Outcome Document and there are several global movements (such as the World Federalist Movement) committed in the advocacy of this principle, cases of infringement of this norm gave rise to the social disapproval of the global public opinion when the international community fails to protect populations from international crimes committed under the jurisdiction of a 'failed' state, as it happened in the case of the Darfur region of the Sudan.

Prof. N. Wheeler rejected the objection against the alleged lack of constraining power of international legal norms because he believes that "…law is the interlocking of authority with power. What is important is then to distinguish between power that is based on relations of domination and force, and power that is legitimate because it is predicated on shared norms" (N. Wheeler, 2000, 2).

However, even if, in the wake of him, we agree to recognise a binding force to international legal norms, the investigation on whether a new norm of the international law is emerging remains still open even after the official endorsement of the Responsibility to Protect in the 2005 World Summit Outcome Document.

Indeed, it is incoherent to speak of a general emerging norm of the international law without specifying who is obliged to guarantee respect for it.

Saying that the international community should guarantee respect for the Responsibility to Protect   norm has a very limited explanatory power.

Therefore it is reasonable to speak of a general emerging norm of the international law only if we consider it together with the corresponding obligations.

In other words it is reasonable to speak of a general emerging norm of the international law only if this norm is binding towards the international community.

If the Responsibility to Protect is conceived as a binding legal norm, the international community should be obliged to intervene when international crimes are committed under the jurisdiction of a state that is unable or unwilling to protect its own citizens.

Moreover, as Prof. N. Wheeler pointed out: "…when new norms are raised, there always follows a process of contestation as the supporters of the old norm seek to resist the advocates of the new norm. This struggle is rarely resolved quickly and the result is either the defeat of the new norm or its acceptance as a legitimate practice". (N. Wheeler, 2000, 5).

The main opponents to the recognition of the Responsibility to Protect as an emerging legal norm are those legal scholars and international actors who seek to defend the old cardinal principles of the international law. Indeed they are aware that if one day the Responsibility to Protect will become a legal norm upon which consensus will be reached, this norm could represent a challenge for the foundations of the international law, such as sovereignty, non intervention and non use of force.

It is more opportune to talk about an acceptance of the Responsibility to Protect, rather than of a defeat, but this acceptance is not a full acceptance of the whole set of ideas that the Responsibility to Protect entailed when it was proposed for the first time within the 2001 ICISS report.

In spite of the ambiguity of the current status of the Responsibility to Protect, one the main concerns of the contemporary international agenda is the challenge to implement the Responsibility to Protect principle, which was indeed the subject of the UN Secretary General Report appeared on 12th January 2009 and titled *Implementing the Responsibility to Protect*.

Since at the conclusion of the World Summit, all UN member states agreed on including the Responsibility to Protect in the Outcome Document, the Responsibility to Protect should be regarded as a relevant normative innovation. (J. Brunnèe, S. Toope, 2005).

According to the former Secretary General Kofi Annan, the agreement among all UN member states is the *condition sine qua non* of the relevance of any United Nations normative change. The Responsibility to Protect is *relevant* in the sense that it "has a potential for transformative impact in a key area of international law and politics: the use of force to address massive human rights violations in member states" (J. Brunnèe, S. Toope, 2005, 2).

In spite of its formal endorsement in the Outcome Document, the form and the contours of the content of the norm of the Responsibility to Protect are vigorously disputed.

In a recent article, Dr. Carsten Stahn, an associate legal officer of the International Criminal Court, argues that the concept of the Responsibility to Protect is characterized by a certain degree of ambiguity.

Indeed, there is no univocity and unanimity in the interpretation of its meaning, which might assume two main different connotations. The Responsibility to Protect can be interpreted as necessity (a binding legal norm) or as a moral duty.

While for some country delegations that took part to the 2005 World Summit the Responsibility to Protect is undoubtedly a binding legal norm, for other countries, such as the United States, its legal nature is questionable and the Responsibility to Protect should be simply regarded as a moral principle.

The recognition of the legal nature of the Responsibility to Protect would imply that the United Nations Security Council, the United Nations itself and the individual states of the international community have the obligation under the international law to intervene in those states which manifestly fail to protect their citizens from the following four kinds of crimes: genocide, war crimes, ethnic cleansing and crimes against humanity.

Otherwise, the recognition of the moral nature of the Responsibility to Protect and, at the same time, the denial of its legal nature, would imply that the international community has the moral responsibility to resort

to all the possible means, peaceful and not, (provided for in the Chapters VI and VIII of the UN Charter) to protect the populations of the *failed* states from the above mentioned crimes.

The simple fact that the Responsibility to Protect has been incorporated in the Outcome Document does not mean that the idea of the Responsibility to Protect has been accepted by international actors (such as world leaders or policy makers) and does not ensure that the Responsibility to Protect has the power to influence the behavior of these international actors (J. Brunnèe, S. Toope, 2005, 7).

The American legal scholars Brunnèe and Toope in their recent article stressed the importance to reach a consensus on the meaning, the status and the content of the idea of the Responsibility to Protect within the international community.

Indeed if the concept is not interpreted in a univocal sense and accepted by all international actors, then, it is likely that the so-called norm of the Responsibility to Protect will be simply ignored or evaded because it will not perceive as a legal obligation and it will not have any binding power over the international actors (J. Brunnèe, S. Toope, 2005).

The same scholars wonder whether the incorporation of the idea within the Outcome Document represents a base for a further maturation of the norm.

Indeed, they advance the hypothesis that the official endorsement of the Responsibility to Protect in the Outcome Document can be even the result of a compromise among world leaders and that some states agree to include the Responsibility to Protect only because in this way they gain other benefits such as founding devoted to the assistance to development given by the most wealthy states and by the United Nations to developing and less developed countries.

But, at the same time they tried to limit the idea of the Responsibility to Protect as much as possible, being aware of the revolutionary impact that the responsibility to protect could have if its endorsement in the Outcome Document can actually be regarded as the base for its further normative evolution.

The American legal scholars conclude their article considering that a lot of work remains to be done before the Responsibility to Protect can be considered as a binding legal norm of the international law, as it is evident from the fact that the Responsibility to Protect, up to now, has been incorporated only in United Nations documents, resolutions and reports, but it has never been included within 'a binding normative instrument'. (J. Brunnèe, S. Toope, 2005, 7).

1.5 The International Commission on Intervention and State Sovereignty (ICISS)

The term "Responsibility to Protect" was first introduced in the report of the International Commission on Intervention and State Sovereignty (ICISS) in December 2001.

The independent Commission had been set up to reply to the call of Kofi Annan for *a rethinking how the international community, and in particular the United Nations, should act in the face of gross human rights violations* (O. Jütersoncke, 2006, 9) and then, to develop a more effective multilateral approach to preventing and responding to serious humanitarian crises.

The Commission had the merit to promote a comprehensive debate about humanitarian intervention and to attempt "…to cut through what had become the Gordian knot of humanitarian intervention, namely whether or not a norm of humanitarian intervention exist and who could invoke the norm, only the Security Council or individual states?" (J. Brunnèe, S. Toope, 2005, 2).

"…following the work of Francis Deng[15], Representative of the United Nations Secretary General on Internationally Displaced Persons, the Commission proposed to approach the issue (when sovereignty must yield to the protection against gross human rights' violations) via the notion of 'sovereignty as responsibility'. In its original formulation, proposed in the 2001 ICISS report, the idea of the Responsibility to Protect entailed the complementary responsibilities to prevent, react and rebuild.

"The ICISS identifies three conditions for successful prevention: 1) effective early warning mechanisms; 2) a well-stocked 'preventive toolbox' that combines political, economic, legal and military measures; and 3) sufficient political will to act. Nevertheless, the Commission concedes a long-standing thorn in the side of those who have argued for better strategies of prevention: that some states remain reluctant to accept any kind of externally sponsored prevention efforts for fear that internationalizing the problem will lead inevitably to intervention (ICISS, 2001, 25)". (J. Welsh, 2006, 30).

However, the scholar A. Bellamy, in a recent article titled "Conflict Prevention and Responsibility to Protect" has pointed out that the ICISS:

"Despite stressing the critical importance of conflict prevention, the commission stopped short of making concrete proposals other than the call to centralize the world's conflict prevention efforts and develop early warning capacity. It also stopped short of offering guidelines for prevention equivalent to the just-cause thresholds and precautionary principles set out to guide decisions about whether to react military to humanitarian catastrophes. What is more, the commission avoided explicit discussion of the single most pressing dilemma in relation to the responsibility to prevent; the question of how to translate early warning signs into a commitment to act on the part of specific actors and consensus about how to act". (A. Bellamy, 2008, 138).

Moreover, the 2001 ICISS report made clear that: "…intervention should not be equated with the use of force. The focus should instead be on the entire spectrum of non-military means at the disposal of the international community in the face of genocide, war crimes, ethnic cleansing and crimes against humanity". (ICISS, 2001).

In this regard, it was held that the United Nations Security Council should guarantee transparency and increase accountability for future decisions relating to the Responsibility to Protect" (O. Jütersoncke 2006, 5-6).

The Security Council is empowered under the Chapter VII provisions of the Charter to authorize the use of force to maintain "international peace and security", but there is considerable controversy about how far this

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[15] Prof. **F. Deng** introduced the concept of sovereignty as responsibility in a work titled: *Sovereignty as Responsibility: Conflict Management in Africa* (Washington DC: Brookings Institution, 1996).

permits the Council to authorize intervention to stop humanitarian emergencies taking place inside state borders" (N. Wheeler, 2000, 1).

The clarification of the fact that "…intervention should not be equated with the use of force" can be better understood if we take into consideration that the current debate about the Responsibility to Protect has it its roots in the ten-years debate on the right of humanitarian intervention whose literature blossomed throughout the nineties. In the debate on the right of humanitarian intervention, intervention was indeed automatically equated to the use of force.

The need to enhance the United Nations Security Council transparency was felt as a consequence of the fact that in the course of the nineties, the Council issued some of its resolutions about the Responsibility to Protect on the basis of the interests of its permanent members rather than in an impartial manner.

This is what happened for instance in the case of Kosovo. The inaction of the Council – paralysed by the opposition of Russian veto – led NATO to intervene unilaterally in Kosovo, with the aim of preventing the perpetration of crimes against humanity in the Serbian province. In this occasion, not only the authority of the Council was bypassed by Russian veto, but the exercise of veto by Russia had the effect of discrediting the impartiality of the Council in deliberating its resolutions (J. Brunnèe, S. Toope, 2005, 2).

The need to increase the accountability of the Council instead has become particularly urgent as a result of its inaction in front of Rwanda humanitarian catastrophe, (inaction that has been perceived by the global public opinion as moral indifference) in spite of an effective early warning system that could have allow to prevent the genocide, if there would have been the necessary political will to do so.

To increase its transparency and accountability for the decisions about the Responsibility to Protect, a structural reform of the Council was needed.

But, since at the time in which the ICISS report had been produced, the United Nations Security Council reform was not yet in place, the commissioners could only encourage the UN Security Council to refrain from exercising its right of veto, unless *vital interests* of its members were not involved.

However, Prof. N. Wheeler, among the others, stresses that up to now there is not any agreement to make clear what these *vital interests* are.

Moreover, despite the suggestion of the commissioners, even after the introduction of the Responsibility to Protect principle, the Council members continued to exercise their right of veto for decisions relating to the Responsibility to Protect.

The most recent example is offered by the opposition of China veto when the Security Council was in charge of deciding whether authorising or not an intervention in the Darfur region of the Sudan.

"In addition, the (2001 ICISS) report insists that when faced with evidence of human suffering inside the domestic jurisdiction of another state, policy-makers have a wider array of choices between inaction and military invasion. In so doing, it laments that the resource devoted to preventive measures are dwarfed by the money allocated to war preparation, war fighting, humanitarian assistance to victims of violence, and peacekeeping". (J. Welsh, 2006, 29).

The effort to find a middle way between inaction and military invasion is particularly necessary in the light of the fact that:

"'Doing something' to rescue non-citizens facing the extreme is likely to provoke the charge of interference in the internal affairs of another state (as it happened in Kosovo), while 'doing nothing' can lead to accusation of moral indifference (as it happened in Rwanda)". (N. Wheeler, 2000, 1).

"The second stage on the continuum – protection – kicks in when the situation on the ground places civilians at serious risk. At this point the Commissioners argue, the option of military action must be considered and evaluated. The ICISS employs a Just War framework of six principles to guide decision-makers contemplating such action: 1. just cause. 2. Right intention. 3. Last resort. 4. Proportional means.5. Reasonable prospects. 6. Right authority)". (J. Welsh, 2006, 30).

"…the ICISS calls upon intervening states to commit to a long-term process of rebuilding- once the military phase is complete. Here, the recommended priorities are economic reconstruction, the establishment of legitimate and effective institutions of governance, the restoration of public safety, and sustainable development…there are benefits and drawback to requiring outside actors to stay on in the country in which intervention takes place until sustainable reconstruction and rehabilitation have occurred. The Commissioner highlight the importance of achieving a balance between the responsibilities of international actors and the rights of 'local' ownership…the process of devolving responsibility back to the local community is essential to maintaining the legitimacy of the intervention itself….the commissioners concluded: a poorly administered occupation which overtly treats the people, or causes them to believe they are being treated, as an 'enemy' will obviously be inimical to the success of any long-term rehabilitation effort (ICISS, pp.44-45)". (J. Welsh, 2006, 31).

In the report elaborated by the ICISS commission, the notion of Responsibility to Protect appears to be closely related to the notion of human security which should be protected and promoted by governments, as is now widely accepted on the international plane.

The invasion of Iraq in 2003, 'portrayed as exercise of preventive war' (the US Vice-President D. Keney), was destructive to the Responsibility to Protect agenda to generate a consensus among world leaders around matters related to the use of force and the Responsibility to Prevent:

"There is considerable evidence that the adoption of 'preventive war' by the United States and its allies has increased global wariness to projects – such as the responsibility to prevent – that entail limitations on state sovereignty. Speaking in his capacity as South Korea's foreign minister, the United Nations Secretary General Ban Ki Moon argued that the United Nations should create clear mechanisms and modalities to limit the extent to which the Responsibility to Protect could be invoked to override sovereignty. Although Russia supported the rhetoric of the Responsibility to Protect, it shared China's view that no action should be taken without Security Council approval, argued that the United Nations was already equipped to deal with humanitarian crises, and suggested that, by countenancing infringements on state sovereignty, the Responsibility to Protect risked undermining the Charter. In a similar vein India counseled against the concept by arguing that the Security Council was already sufficiently empowered to act in humanitarian emergencies

and by observing that failure to act in the past was caused by a lack of political will, not a lack of authority. For its part, the group 77 suggested that the Responsibility to Protect should be revised to emphasize the principles of territorial integrity and sovereignty. In the wake of Iraq, states worried that principles involving a denigration of sovereignty might be used by the powerful to justify interference in the affairs of the weak" (A. Bellamy, 2008, 147).

A. Bellamy suggest that the occupation of Iraq has discredited the idea of the Responsibility to Protect because of the fact that the advocates of a broader US right to use force preventively have attempted to garner legitimacy by using a language similar to that of the Responsibility to Protect (A. Bellamy, 2008, 145). The consequence is that the Responsibility to Prevent dimension of the Responsibility to Protect is often confused with the Bush doctrine of preventive war, which provides for the use of force to prevent that rogues states acquire the capability to produce weapons of mass destruction or to prevent them from organizing terrorist attacks against the United States.

The invasion of Iraq highlighted one of the main objections that realists such as the American international lawyers T. Frank and N. Rodley contended to humanitarian intervention, that of *abuse.*

They argued that "…humanitarian intervention should not be legitimized as an exception to the principle of non-use of force because this will lead to abuse…the prohibition on the use of force in article 2 (4) of the United Nations Charter is already vulnerable to states abusing it in the name of self-defense. In the absence of an impartial mechanism for deciding when humanitarian intervention was permissible, states might espouse humanitarian motives as a pretext to cover the pursuit of national self-interest…The problem of abuse leads some to argue that humanitarian intervention will always be a weapon that the strong will use against the weak". (N. Wheeler, *Objections to Legitimising Humanitarian Intervention*, p. 394).

The argument conducted by realist's authors marks immediately the distance between the frustrating debate about the right to a military humanitarian intervention and the discourse about the Responsibility to Protect.

Indeed, the biggest effort made by the proponents of the Responsibility to Protect was that of establishing precise criteria for the legitimacy of the intervention for humanitarian reasons.

If the five criteria were followed, the US invasion of Iraq could not have taken place.

Indeed, there are many senses in which the US-led invasion of Iraq does not meet the criteria of legitimacy introduced in the 2001 ICISS Report and in the 2004 High Level Panel report.

US government justified its invasion of Iraq first using as a legitimation, the alleged production of weapons of mass destruction and secondly invoking alleged human rights violation of a part of Iraqi population.

However, following the norm of the Responsibility to Protect, unilateral interventions such as the US invasion of Iraq should not be considered as legitimate.

In line with the Responsibility to Protect set of ideas, each intervention should be previously approved and legitimised by the authority of the Security Council:

In addiction, the proposed criteria for the legitimacy of the intervention impose that the intervention should have reasonable prospects for success in halting or averting the suffering of civilians.

The United States-led invasion of Iraq instead, failed in the purpose of protecting civilians against the perpetration of international crimes and on the contrary, had as a consequence "…the loss of innocent civilian life, the atrocities committed against Iraqi prisoners, the devastation and social deterioration caused by ethnic insurgency, and the lack of a realistic exit strategy" (T. Cathaway, 2007, 212).

Besides this, the argument that a norm cannot be articulated and proposed because this could lead to abusing it, is not a strong reasoning and can be easily questioned. Indeed, it is not possible to think to propose and recognize legal norms that are not exposed to the risk of being abused. Probably, such norms (that cannot be abused or violated) do not exist.

Prof. D. Rodin, in his contribution to the workshop on the Responsibility to Protect that took place in Geneva in 2006, has rightly claimed that in order to understand the legal and political aspects of the Responsibility to Protect, it is necessary to have an important conceptual background and to have clear in mind the logical meaning of the terms of the debate.

For example to clarify what a duty is, it would help us to understand what does it mean that a state has the responsibility/possesses the duty to protect its own population or that the international community has the responsibility/ possesses the duty to take peaceful or interventionist measures to protect the populations of those states who failed to meet their duties of protection:

"The most intuitive notion with which to begin is that of a duty. A duty is simply an obligation owed by some party to perform or abstain from performing a certain act. However, Hohfeld's treatment of duty differs from the way that term is sometimes used in ordinary parlance. We often talk of a duty without identifying a specific party which is its object. A Hohfeldian duty, however, is necessarily relational, in the sense that it always specifies an obligation owed by one party to another. It follows that for Hohfeld, a duty has three distinct elements, a subject (the party whose duty it is), a content, (what it is his or her duty to do) and an object (the party to whom the duty is owed)" (D. Rodin, 2006, 47).

Starting from the assumption that to say that the state has the primary Responsibility to Protect its own citizens is equivalent to say that the state possess the duty to protect its own citizens, follows that the state is the subject, the party whose duty it is; the content of the duty is the protection of the population of the state and finally, the population of the state is the object, the party to whom the duty of protection is owed.

However, the existence of *erga omnes* obligations implies that the population of the state is not the only object of the duty. Indeed, the state is considered responsible for the protection of its own citizens, not only towards its own citizens, but also towards the international community as a whole.

So the international community as a whole can be considered as the second object of the duty of the state to protect its own citizens.

But, if this state fails to meet its duty, this duty shifts to the international community.

In this second case, starting from the assumption that to say that the international community has the Responsibility to Protect the population of a state, who is unable of unwilling to protect its own population is equivalent to say that the international community possess the duty to protect the population of that state, follows that the international community is the subject, the party whose duty it is; the content of the duty is

the protection of the population of the state who failed to meet its duty of protection; the population of the state is the object, is the party to whom the duty of protection is owed.

Prof. D. Rodin has also helpfully distinguished between two orders of responsibilities:

"The first order responsibility is the responsibility of the state towards its own citizens and the second order responsibility comes once a particular state fails to live up to its primary responsibility of protecting its citizens" (O. Jütersoncke, 2006, 13).

According to D. Rodin, the way in which this second order responsibility should be interpreted implies that the international community has a duty to protect the citizen of state that fails to live up to its own Responsibility to Protect (D. Rodin, 2006, 45-60).

"Rodin suggests that in order to understand the move from rights to responsibilities, one needs to remember that such terms have an inherent logic to them, the 'logic of rights'" (O. Jütersoncke, 2006, p. 12).

"…the logical consequence of the move (from sovereignty as control[16], as it happens in the 2001 ICISS report) towards 'sovereignty as responsibility', as entailed in Article 138, is merely that if a state fails to protect its citizens, then it no longer has a claim to sovereignty. But if the state no longer has a claim to sovereignty, this means that the international community has a liberty to intervene, according to the logic of rights. A liberty, however, is far from being a duty…the permissive right to intervene is not equivalent to the (moral) requirement or (legal) obligation to do so. In terms of policy, the first task regarding the implementation of the Responsibility to Protect is thus to decide" (O. Jütersoncke, 2006, 13).

That states have the primary Responsibility to Protect their own citizens, but if they fail to do so, their responsibility shifts to the international community is a liberal assumption.

The supporters of realism on the contrary believe that "…the state is the only responsible for its own citizens and its obligations and duties are limited to them". Thus, if a civil authority has broken down or is behaving in an appalling way towards its citizens, this is a responsibility of that state's citizens and its political leaders. Outsiders have neither the moral duty nor the legal obligation to intervene even if they would be able to improve the situation and stop the killing" (N. Wheeler, 2000).

1.6 The 2004 High Level Panel on Threats, Challenges and Changes: A More Secure World. Our Share Responsibility

The experts of the High Level Panel on Threats, Challenges and Changes were appointed by the former Secretary General Kofi Annan in order to discuss the options available for the institutional reform of the United Nations.

A United Nations reform was needed to increase the efficiency and effectiveness of United Nations institutions in the accomplishment of its mandate.

The pillars of the United Nations mandate are the defense of sovereignty, the maintenance of international peace and security, the promotion of development and human rights.

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[16] "Sovereignty is no longer conceived as undisputed control over territory, but rather as a conditional right dependent upon respect for a minimum standard of human rights" in **J. Welsh**, 2006, 27.

The United Nations' institutional reform was needed to increase the chances of United Nations institutions to face successfully the greatest contemporary global security threats of the twentieth first century.

In the light of the atrocities committed in Rwanda and Bosnia, the former Secretary General felt the need to incorporate the protection of populations from genocide as a part of the United Nations reform agenda.

In December 2004, the experts of the High Level Panel released their report and among the recommendations aimed at strengthening international security, they included the idea of the Responsibility to Protect, especially with the intention to implement the protection of civilians from grave threats such as genocide.

The definition of the Responsibility to Protect provided by the experts of the High Level Panel is not particularly deferential to the traditional principle of state sovereignty.

The idea of the Responsibility to Protect has been characterized by the experts of the Panel as an 'international collective Responsibility to Protect' and, then, as a collective duty (not individual).

This can be read as an overcoming of unilateralism in favor of multilateralism.

Indeed, since the experts recognized the contribution that the idea of the Responsibility to Protect can give to the protection of the populations from grave threats such as genocide, massive human rights violations and large scale acts of violence against civilians, they thought that this responsibility should be assumed by the international community, which is committed in a 'collective action' to face human rights abuses and international crimes committed against civilians.

But in order to make the collective international Responsibility to Protect effective and, a deep United Nations institutional reform was needed.

The configuration that the experts gave to the idea of the Responsibility to Protect within the High Level Panel report is not very distant from its original formulation in the 2001 ICISS report. This is why it is possible to identify many features in common between the two reports.

First, with regard to the protection of the use of force for the protection of civilian population between the recommendations made by the commissioner within the 2001 ICISS report and the recommendations made by the experts within the 2004 High Level Panel there is an overlapping. An example is represented by the fact that in both reports the Security Council members are encouraged to refrain from the exercise of veto in those circumstances in which their vital interests are not involved.

Secondly, the commissioner of the ICISS and the experts of the High Level Panel solve in the same way the issue of the 'right authority'.

Both (commissioner and experts) recognize the Security Council as the source of legitimacy for the authorization of military intervention to face humanitarian crises as a last resort.

Thirdly, the 2001 ICISS report and the 2004 High Level Panel outline the same five criteria that should guide the Security Council in its decision about the Responsibility to Protect.

The outline of these criteria, according to the experts of the Panel, is useful in many different senses.

The experts of the Panel emphasize that the criteria can legitimize the Security Council resolutions relating to the Responsibility to Protect and in this way, increase the credibility of United Nations Security Council in front of the global public opinion on the one side; on the other, the criteria can "maximize the possibility of

achieving Security Council consensus (and in this way reduce the likelihood that Security Council members recourse to the exercise of veto) and minimize the possibility of individual member states bypassing the authority of the Security Council". (J. Brunnèe, S. Toope, 2005, 3)

In addiction, both report (ICISS and High Level Panel) leave open the possibility for unilateral action in those cases in which the Council fails to act.

However, despite the possibility to identify many features in common between the two reports, they differ on an important issue, which are the 'triggering events' (J. Brunnèe, S. Toope, 2005) that can lead the Council to authorize the use of force.

The High Level Panel anticipates an important limitation of the idea of the Responsibility to Protect compared to its original formulation, which will become definitive in the 2005 Outcome Document:

"…the duty of potential interveners to act is limited to cases of international crimes". (J. Brunnèe, S. Toope, 2005, 6).

As we have already mentioned several times instead, in its original formulation the Responsibility to Protect provides for the duty to intervene also for massive human rights violations, even if they do not reach the threshold to be considered as international crimes.

In spite of this limitation, the High Level Panel, as the ICISS report, continues to recognize the preeminence of the preventive dimension of the Responsibility to Protect, and indeed, the experts of the Panel do not require that the international crimes have already taken place in order for the intervention to be legitimate, but it is sufficient that the international crimes are 'likely to occur'. (J. Brunnèe, S. Toope, 2005).

Instead, the Outcome Document, not only will limit the triggering events for the use of force to international crimes, but also will require that international crimes are actually perpetrated and not simply apprehended/threaten.

The two American legal scholars J. Brunnèe and S. Toope provided an important distinction between two concerns of the experts of the panel:

"The preoccupation of the authors of the Panel was from one side legal: the Council should concern itself not only with whether force can legally be used, which assumed the Council could, but also whether, as a matter of good conscience and good sense, the force should be used (and then authorized by the Security Council)". (J. Brunnèe, S. Toope, 2005, 3).

This second concern rises from the need to address the issue of legitimacy: what it is right to do when serious human rights violations, genocide, violations of international humanitarian law are taking place under the jurisdiction of another sovereign state.

The issue of legitimacy should not be confused with that of legality: what is necessary to do from the legal point of view in case of genocide, serious human rights violations, and violations of international humanitarian law.

1.7 The Outcome Document of the 2005 United Nations World Summit

In September 2005, four years after the first occurrence of the Responsibility to Protect in the ICISS report, the political delegations who took part to the United Nations World Summit agreed that states have the primary Responsibility to Protect their own population from genocide, war crimes, ethnic cleansing and crimes against humanity but, if a state fails to meet such a duty then the responsibility (*to protect the population*) shifts to the international community, which is called to take measures that are primarily preventive and peaceful (*non military*) but that could be interventionist.

In the set of ideas comprised within the notion of Responsibility to Protect indeed, armed intervention against another sovereign state is provided only as a last resort[17] in extreme circumstances, after all the preventive and peaceful measures taken had proven to be unsuccessful in preventing the perpetration of the abovementioned international crimes.

As a result of the difficult negotiations concluded among the world leaders who took part to the 2005 World Summit, the Responsibility to Protect was finally formally endorsed in its Outcome Document.

In spite of this formal endorsement, the question "…on how far the society of states recognizes the legitimacy of using force against states who grossly violate human rights" (N. Wheeler, 2000, 6) remains unsolved.

Moreover, it is true only up to a certain extent that "…once established, norms will serve to constrain even the most powerful states in the international system". (N. Wheeler, 2000, 7).

Indeed, even assuming that a legal norm of the Responsibility to Protect was established, it is still in question to what extent this norm will serve to constrain the most powerful states in the international system to intervene in the internal affairs of states where international crimes are perpetrated, even when their interests are not involved.

The articulation of the notion of the Responsibility to Protect included in the paragraphs 138 and 139 of the Outcome Document differs markedly from its previous formulation proposed in the 2001 ICISS report:

"Although article 139 of the Outcome Document represents a significant departure from the original United Nations Charter[18], overall the original notion of the Responsibility to Protect has been weakened: gone are the complementary notions of the responsibility of the international community to prevent, react and rebuild.

There might have been rhetorical commitment, but it remains unclear how the capacity of international actors has been enhanced" (O. Jütersoncke, 2006, 13).

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[17] One of the five criteria (just cause, right intention, last resort, proportional means, and reasonable prospects) listed in the 2001 ICISS report to orient/guide the decision of the UN Security Council whether authorize or not the recourse to the use of force, is that of last resort. Indeed, the responsibility to protect is not aimed at promoting interventionism; rather, it is a set of ideas that seeks to codify a spectrum of action to be taken by the Security Council, the General Assembly and regional organizations, when crises that threaten civilian populations reach a certain threshold.
"…the responsibility to react – with military coercion – can only be justified when the responsibility to prevent has been fully discharged" in 2001 ICISS report, 36.

[18] The legal scholar Welsh indeed, has helpfully pointed out that the paragraphs 138 and 139 of the World Summit Outcome Document devoted to the responsibility to protect "…see a declared commitment on the parts of states to act in ways not explicitly provided for in the UN Charter" in J. **Welsh**, 2006, 43.

Prof. D. Rodin thinks that inside the debate on the right of humanitarian intervention there was a conflict between the rights of sovereign states to be free from intervention and the human rights of the individual.

However, "…instead of positing a conflict between the two rights…sovereignty is now (in the debate about the Responsibility to Protect) seen as conditional on the state's behavior towards its citizens. This conditionality, Rodin argued, is unobjectionable, and has strong roots in social contract theory and the theory of human rights" (O. Jütersoncke, 2006, 13.).

Indeed, according to the theory of human rights: "…individual human rights are inalienable and transcend sovereign frontiers" (J. Welsh, 2006, 23).

Furthermore, Prof. N. Wheeler makes clear that: "As a result of the international legal obligations written into the United Nations system, clear limits were set on how governments could treat their citizens. The international legal obligations that protect individuals against the power of the state can be found principally in the United Nations Charter, the 1948 Universal Declaration of Human Rights, the 1948 Genocide Convention, and the two international Covenants on human rights drawn up in 1966. Cumulatively, these established important limits on the exercise of sovereign prerogatives" (N. Wheeler, 2000, 1).

However, in the World Summit Outcome Document, there is no longer mention neither of the five criteria proposed in the High Level Panel report nor of the six criteria proposed in the ICISS report.

The General Assembly (no longer the Security Council) is invited to continue to reflect over the principle of Responsibility to Protect.

As the United Nations debated major reforms of its human rights system and how it is managed, this idea of committing to an international Responsibility to Protect gained support from many governments and civil society from all regions.

Southern leadership at the World Summit was central. Argentina, Chile, Guatemala, Mexico, Rwanda and South Africa, were some of the influential governments insisting on a meaningful commitment to the Responsibility to Protect. The leadership of these governments allowed for the support of many other members from the global South.

In the end, the historic commitment was finally made at the World Summit in Sept 2005.

In Paragraphs 138-139 of the World Summit Outcome Document, Heads of State and government agreed the following:

-That each individual state has the primary Responsibility to Protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing. And it is also a responsibility for the prevention of these crimes.

-That the international community should encourage or assist states to exercise this responsibility

-The international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to protect population threatened by these crimes. When a state manifestly fails in its protection responsibilities, and peaceful means are inadequate, the international community must take stronger measures, including collective use of force authorized by the Security Council under Chapter VII.

According to Prof. D. Rodin within the paragraph 138 of the World Summit Outcome Document there is a move from the Westphalian concept of sovereignty as control to the notion of sovereignty as responsibility, which has been proposed for the first time by F. Deng.

"If a state fails to protect its citizens, then it has no longer a claim to sovereignty. But if the state has no longer a claim to sovereignty, this means that the international community has a liberty to intervene, according to the logic of rights".

Prof. D. Rodin takes the responsibility argument to its logical conclusion observing that:

"A liberty (*such as the liberty to intervene of the international community in a state that fails to protect is citizens*) is far from being a duty: the permissive right to intervene is not equivalent to the (moral) requirement of (legal) obligation to do so. The first task regarding the Responsibility to Protect is to understand how (*as a moral requirement or as a legal obligation?*) this second transition (*from the right to intervene to the responsibility to prevent, react and rebuild*) is to be interpreted". (D. Rodin, 2006, 45-60).

The conclusion is that the Responsibility to Protect is neither the right nor the duty of the international community to intervene, but it is a middle way between a right and a duty (between a liberty right to intervene of the international community) and a duty to prevent, react and rebuild.

Prof. D. Rodin, in his understanding of the paragraph 139 of the World Summit outcome Document, suggested that in this paragraph there is a transition from rights to responsibilities: "…from the right of the international community to intervene in the face of humanitarian crises, to a responsibility of the international community to prevent, react and rebuild in such situations".

"The Outcome Document reflects at the same time the reluctance of the states (particularly of United States) to support whatever form of codification of the criteria to intervening in a sovereign country.

The world leaders intervened to the World Summit failed in endorsing a set of criteria for guiding the use of force.

Within the World Summit Outcome Document, the Responsibility to Protect does not feature in the document section of peace and security, but rather under the rubric of human rights". (O. Jütersoncke, 2006, 11).

Indeed, the concept of Responsibility to Protect raises also the question whether it is more important the maintenance of peace or the respect for human rights and whether we can conceive human rights and peace as two sides of the same coin.

Indeed, R. Takur (one of the member of the 2001 ICISS Commission) and P. Malcontent, in their recent book on international accountability have commented that "…at the international level… human rights had be regarded as a precondition for political stability and socio-economic progress. Consequently, human rights started to climb the ladder of international political priorities and became strongly interrelated with the 'higher objective' of maintaining international peace and security". (R. Takur, P. Malcontent, 2004).

R. Takur and P. Malcontent can be considered as supporters of the solidarist claim: whatever the legality of humanitarian intervention, there is a moral duty of forcible intervention in exceptional cases of human suffering. (N. Wheeler, 2000).

CHAPTER II

The Reconsideration of the Concept of Sovereignty in the Light of the Principle of the Responsibility to Protect

2.1 Summary of the Second Chapter

The purpose of this chapter is to describe the shift from the traditional notion of sovereignty to the notion of sovereignty as responsibility. The traditional notion of sovereignty was introduced between the XVIth and the XVIIth century by the two political philosophers J. Bodin and T. Hobbes.

Being their writings aimed at guaranteeing the legitimacy of the absolute monarchy, the definition of sovereignty that they provided can be assimilated to the notion of absolutism.

Considering the traditional notion of sovereignty as synonymous with absolutism, the contemporary French philosopher J. Maritain in an article devoted to the subject of sovereignty proposed to banish the notion formulated by J. Bodin and T. Hobbes from the dictionary of political philosophy.

In the same period the German theorist of international relations H. Morgenthau, published an article titled "Sovereignty Reconsidered", where he perceives the existence of a tension between the traditional notion of sovereignty and the system of international law: "the assumption of international law imposing legal restraints upon the individual states seems to be logically incompatible with the assumption of these states being sovereign, that is, being the supreme law creating and law enforcing authorities, independent of legal restraint" (H. Morgenthau, 1948, 343).

To be more faithful to the meaning of his article, we have to specify that while Morgenthau believes that sovereignty is incompatible with a strong, efficient and centralised legal order; on the contrary there would not be incompatibility between sovereignty and a weak, inefficient and decentralised legal order.

He argues also that the meaning of the concept of sovereignty is deeply affected by changes in the political reality. The fact that meaning of the concept of sovereignty varies across the time imposes a continuous reconsideration of this notion.

H. Morgenthau reconstructs the historical evolution of the concept of sovereignty.

He starts by considering its original formulation, which was firstly provided by J. Bodin and T. Hobbes and later on endorsed within the Treaty of Westphalia (1648). According to this notion, the sovereignty of the state implies that the state has the primary responsibility to protect the person and the property of its subjects and to discharge its governmental functions effectively within its borders.

Until its endorsement within the Montevideo Convention on the Rights and Duties of States, signed in 1933, the notion of sovereignty remained almost unchanged

Notoriously the three elements that this Convention identifies as constitutive parts of sovereignty are a permanent population, a defined territory and a functioning government (Montevideo Convention, 1933).

The crucial importance of the principle of sovereignty continues to be recognized by contemporary international actors, on the one side and by legal and political theorists on the other. In this regard a

significant example is offered by the statement released in 2003 by the United States ambassador R. Haass, where he claims that: "sovereignty has been a source of stability for more than two centuries, during which, it established legal protections against external intervention and offered a diplomatic foundation for the negotiation of international treaties, for the formation of international organisations and for the development of international law, provides a stable framework within which representative government and market economies could emerge in many nations, remains an essential component of international peace, security, democracy and prosperity. State sovereignty remains a fundamental principle of interstate relations and for the foundation of the world order, a key constitutional safeguard of international order and a core principle of Customary International Law and of the United Nations Charter" (R. Haass, 2003).

Taking into consideration the considerable impact that the Second World War had on the elaboration of its content, some political theorists believe that the contemporary relevance of the United Nations Charter should be questioned.

In particular, the claim to sovereign status that inform the content of the United Nations Charter – whose focus is the external unlawful use of sovereignty by states in committing acts of aggression - seems to be difficult to conciliate with the current United Nations' mandate.

Aside from the maintenance of international peace and security, the prevention of genocide in the context of internal conflicts became an integral part of the United Nations agenda since 2003. The inclusion of genocide's prevention in the United Nations' mandate followed a request presented by the former Secretary General Kofi Annan to the High Level Panel on Threats, Challenges and Changes. In spite of the fact that the United Nations Charter provides for "a restriction of the sovereignty of United Nations member states to the extent of the obligations assumed by states by virtue of their membership in the United Nations" (C.C Joyner, 2007), the conciliation between the claim to sovereign status and the accomplishment of the United Nations' mandate remains difficult.

The United Nations Charter encompasses the three main components of the traditional notion of sovereignty, which are: 'sovereign competence', (more commonly known as 'domestic jurisdiction'); the 'independence' of the State in international relations; and the legal 'equality' of states. The principle of sovereign competence of the State is enclosed in the art 2 (7) of the United Nations Charter along with the prohibition "to intervene in those matters that are essentially within the domestic jurisdiction of any state" (art 2 (7) of the United Nations Charter). Domestic jurisdiction means that "each state is permitted by international law to decide and act without intrusions from other sovereign states and is allowed to choose the political, economic, social and cultural systems along with the formulation of its own foreign policy" (C.C Joyner, 2007, 718).

Domestic jurisdiction is the consequence of the "title to sovereignty that concerns both the factual and legal terms under which territory is deemed to belong to one particular state only, and embodies the essence of territorial sovereignty in the sense that as a sovereign over territory, the state enjoys a certain type of competence –sovereign competence, which is a consequence of the title" (N. Gal-Or, ILF, 2008, 321). Within the concept of domestic jurisdiction of the state it is possible to distinguish two fundamental components. The

first component is the *prescriptive jurisdiction*, which can be defined as: "The power of a state to make or prescribe law within or outside its territory" (Winston, P. Nagan, Craig Hammer, 2003).

The second component is the *enforcement jurisdiction*, which can de defined as: "The power of the state to implement the law within its territory" (Winston, P. Nagan, Craig Hammer, 2003).

The contemporary literature on the subject of sovereignty proposes the idea of a transition from a domestic to an international jurisdiction. Indeed, "what were once circumstances and problems solely within the bound of domestic jurisdiction have been elevated to the level of global community concerns" (C.C Joyner, 2007, 718).

For instance "How a state treats its own nationals is no longer a matter exclusively falling within the domestic jurisdiction of the state" (C.C Joyner, 2007, 718). Human rights were never "a matter exclusively within the domestic jurisdiction of a state" (C.C Joyner, 2007, 718), but they were always "a matter of concern to the international community" (C.C Joyner, 2007, 718). Indeed, already in the text of the United Nations Charter, "the solution of economic, social, cultural and humanitarian problems, as well as human rights, is elevated to the international sphere. These matters are not exclusively domestic and solutions cannot be located exclusively within the sovereignty of states. In this regard, the United Nations can be considered as a centre for harmonising the actions of states (and their international cooperation, art 1 (2)) in solving problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all, state sovereignty without distinction as to race, sex, language or religion". (C.C Joyner, 2007, 718).

The second component of the principle of sovereignty is the independence of the state: "Possession of sovereignty imbues the government of a state with supremacy over its territory and independence in international relations. In principle, however, such independence is neither absolute nor unlimited". (C.C Joyner, 2007, 717).

The third component of the principle of sovereignty is the legal equality of states.

The principle of the legal equality among states is enclosed in the art 2 (1) of the United Nations Charter. The legal meaning of the principle of the equality among states is that "according to traditional international law, the world consists of a number of sovereign states, in principle equal: none of them subject to any authority above themselves, the government of each state having complete jurisdiction inside their respective territory. Whatever legal order there is to be among these states has to be achieved through reciprocal self-regulation and coordination, by bilateral agreements and multilateral negotiations. (A. Eide, 1974, 1).

According to the Italian lawyer P. Picone, nowadays we are witnessing a crisis of the cardinal principles of the international law. The crisis of the foundations of international law concerns particularly the concept of sovereignty and its main components (domestic jurisdiction, legal equality and non intervention). For instance, the concept of domestic jurisdiction is losing ground in favor of the concept of international jurisdiction. Similarly, the persuasiveness of the principle of the legal equality among sovereign states is undermined by the perception of a huge imbalance in terms of their military and material power. Finally, the US-led military invasion of Iraq is an empirical evidence of the crisis of the principle of non intervention, which is in its turn a corollary of the principle of the legal equality among states. In the light of the crisis of

the main components of the concept of sovereignty and in the aftermath of the introduction of the principle of the Responsibility to Protect, many political theorists felt the need to shift the debate from the concept of sovereignty as control to the concept of sovereignty as responsibility. The concept of sovereignty as responsibility came at the end of a long process of reconsideration. Protagonists of this process are the two former United Nations Secretary Generals (B.B. Ghali and K. Annan) and the current Special Adviser on the Prevention of Genocide, Mr. F. Deng. The notion of sovereignty, which is the subject of international law and international relations' theory, has always been politically sensitive and controversial. (Winston, P. Nagan, Craig Hammer, 2003).

Nevertheless, the tension between the traditional notion of sovereignty and international law (H. Morgenthau, 1948) calls for an evolution and a structural modification of the concept of sovereignty.

The reconsideration of the concept of sovereignty is aimed to reach a greater compatibility between the way of understanding sovereignty and the recent evolution of international law.

The purpose of this chapter is indeed to reconsider the concept of sovereignty in the light of the principle of the Responsibility to Protect, which can be considered as a general emerging norm of the international law.

The evolution of the human rights law, aimed at protecting the dignity of the human person, had a strong impact on the evolution of the Responsibility to Protect as a norm, on the one side, and on the way to conceive sovereignty, on the other.

Human rights norms are today accepted as essential components of "human security", which was formulated in contrast with the concept of "state security", to give prominence to the security of the individual. The recognition of human rights as a component of human security, justifies the adoption of a new way of understanding sovereignty.

The concept of sovereignty has been broadened to encompass not only the rights, privileges and immunities of sovereign states (such as jurisdictional immunity) but also their responsibilities to protect the basic rights of the civilian population and to regulate political and economic affairs.

The concept of sovereignty as responsibility "is increasingly being codified in international human rights instruments and recognised in state practice. Since 1948, the adoption of several salient international human rights instruments have established legal benchmarks for state conduct and erected the global legal regime that mandates national and international protection for and promotion of individual human rights" (C. C. Joyner, 2007, 706).

The present chapter describes the move from the Westphalian concept of sovereignty, "in the context of a nation-state's 'right' to monopolise certain exercises of power with respect to its territory and citizens" (J. H. Jackson, 782) to a new approach to sovereignty as responsibility.

The doctrine of sovereignty as responsibility was explicitly proposed for the first time during the nineties by Francis Deng, Special Adviser for the Prevention of Genocide, along with the scholar R. Cohen, in a book titled *Sovereignty as Responsibility, Conflict Management in Africa* (1996).

His claim is that "…when states are unable to provide life supporting protection and assistance for their citizens, they are expected to request and accept outside offers of aid.

Should they refuse or deliberately obstruct access to their displaced or other affected populations and thereby put large number at risk, there is an international responsibility to respond" (F. Deng, 1996).

In the same book, Prof. F. Deng proposed an important distinction between internal and international accountability:

On the one side, the sovereign state is internally accountable in the sense that it is responsible towards its own population; on the other side, the sovereign state is internationally accountable in the sense that it is responsible towards the international community of states and in the form of compliance with human rights and humanitarian agreements (F. Deng, 1996).

F. Deng gives new prominence to the old notion of 'suspended sovereignty'. He believes that: "When a government massively abuses the fundamental rights of its citizens, its sovereignty is temporarily suspended" (F. Deng 1996). Elaborating on the notion of 'suspended sovereignty', other authors claim that: "The world community has the obligation to rule those territories where the governments fail" (J. H. Jackson, 787).

However, the idea of sovereignty as responsibility is the fruit of a gradual change in the understanding of the concept of sovereignty. In this regard, the contribution given to the evolution of the concept of sovereignty provided by the two former United Nations Secretary Generals has been crucial. The definition of the notion of sovereignty that they provided while exercising their mandate, reflects a gradual change in the way of conceiving the principle of sovereignty.

According to the former Secretary General B. B. Ghali, sovereignty is a contingent rather than an absolute concept. In his words: "…sovereignty has never been inviolable either in law or in practice. Indeed, sovereignty may be limited by customary and treaty obligations in international relations and law may be violated by the powerful…" (B. B. Ghali, *An Agenda for Peace*, 1992). Similarly, K. Annan pointed out that the frontiers of the states cannot be considered as shields to defend the criminal behaviors of State's authorities. Since frontiers are not absolute barriers, State's leaders can no longer rely on the privilege of jurisdictional immunity. The thought of K. Annan mirrors an evolution in the way of understanding sovereignty. Certain circumstances, like the production of weapons of mass destruction by 'rogues' states, the perpetration of genocide under the jurisdiction of a sovereign state or, generally, the lack of an actual control over the territory by failed states, pose conceptual problems for the traditional way of understanding sovereignty. In the light of anomaly examples of sovereignty, like fragile, failed and quasi states, the literature on the subject became very critical towards the traditional way of conceiving sovereignty. K. Annan's claim is that the concept of sovereignty implies the responsibility of the states to protect their own populations. When the state is unable or unwilling or is itself the perpetrator of massive human rights violations, the international community should assume the responsibility to protect the citizens of failed states. K. Annan is even the author of the famous distinction between two concepts of sovereignty. While the first if centered on the state, the second is focused on the people. In this second way of understanding sovereignty, states are considered as instrument at the service of their citizens.

In a recent article, the scholar C. C. Joyner has helpfully identified several implications of conceiving sovereignty as governmental responsibility:

The first implication is that "state officials are responsible for policies that ensure the protection of their citizens and the promotion of their welfare" (C. C. Joyner, 2007, 706).

Secondly, "governments are obligated to their own nations and to the international community" (C. C. Joyner, 2007, 706). And finally, "government officials are responsible for their own policy decisions and are accountable for their own actions" (C. C. Joyner, 2007, 706).

2.2 Sovereign Equality and Non-Intervention, the Doctrine of Pre-Emptive Self- Defense and the United States-Led Invasion of Iraq

The meaning of the principle of the 'legal equality of states', is that: "…according to traditional international law, the world consists of a number of sovereign states, in principle equal: none of them subject to any authority above themselves, the government of each state having complete jurisdiction inside their respective territory. Whatever legal order there is to be among these states has to be achieved through reciprocal self-regulation and coordination, by bilateral agreements and multilateral negotiations" (A. Eide, 1974, 1). The norm of the sovereign equality is based on the assumption that every state has the same legal rights of any other states. Among this legal rights are: "…the rights to recognise and to be recognised by other sovereign states, to send and receive embassies, to make treaties with other states, to join international organisations like the United Nations as full members, and to litigate in the International Criminal Court of Justice" (T. H. Lee, *International Law, International Relations Theory, and Pre-emptive War: the Vitality of Sovereign Equality Today*, 2004, 148-49).

But among the legal rights of the sovereign States there is also the right to wage war in two circumstances:

- "in individual or collective self defence" (T.H. Lee, 2004, 149)

- "if the United Nations Security Council determines the existence of any threat to the peace, breach of the peace, or act of aggression and authorise war as necessary to maintain or restore international peace and security" (T.H. Lee, 2004, 149)

Also the legal right to wage war seems to undermine the principle of the sovereign equality among states because, according to the United Nations Charter, the recourse to the use of military force should be authorised by the United Nations Security Council, but, in order for the use of force to be legitimate, the recourse to force should be authorised by the Council members, in the absence of the exercise of veto by one of the five permanent members. It is then evident that the legal right to wage war is not possessed in an equal way by all 192 sovereign states, because those states that are not members of the Security Council can wage war only for self-defence, or should be authorised to wage war by the Security Council members.

The inequality consists in the fact that the Security Council members have a greater right to wage war those States that are not Security Council members.

The norm of the sovereign equality among states represents a foundation of the international law.

However, the norm of the sovereign equality among states seems to be undermined by their inequality in terms of political power. A significant example is represented by the disproportionate capacity of the United States to use military force when compared to the military capacity of all the other states of the international

community. The very consideration of the American military supremacy makes the norm of sovereign equality not particularly persuasive, because it makes evident that among states there is a considerable imbalance of military and material power.

A concrete example of the incapacity of the international law to impose legal restraints on sovereign States is represented by the unilateral US-led invasion of Iraq (realised along with US main partners: United Kingdom and Australia).

Since the intervention occurred without the previous approval of the Security Council, the United States tried to provide legal arguments to justify the occupation of Iraq in 2003.

However, the global public opinion considered these legal arguments to be 'specious' (T.H. Lee, 2004, 151).

The main justification provided by the United States to justify their decision to wage war against Iraq was the Bush's doctrine of pre-emptive self-defence.

After the shock provoked by the attacks of the 9/11, the United States were inclined to presume that the State of Iraq - as the State of Afghanistan - had the worst intentions against the United States.

The United States intelligence had the suspicious that the State of Iraq was trying to produce weapons of mass destruction.

The alleged production of weapons of mass destruction could put at risk once again the national security and the very survival of the United States.

However, the doctrine of pre-emptive self-defence is forbidden by the international law and it is a not a part of it. Consequently, the second war in Iraq should be regarded as unlawful.

In spite of the fact that many States refused the doctrine of the pre-emptive State defence, and particularly the State of Iraq, this doctrine could be supported from a philosophical point of view through referring to the theory of international relations outlined by Kant in the work titled *Perpetual Peace*: "Immanuel Kant, in rejecting a narrow doctrine of self-defence limited to imminent attack, justified a right of pre-emption whenever a state was threatened" (T.H. Lee, 2004, 159).

Despite the objections to the legal arguments provided by the United States to justify their intervention, nonetheless, "international institutions could not provide meaningful sanctions…in the absence of a credible, coercive enforcement authority (*of international legal norm such as the prohibition of unilateral use of force*)". (T.H. Lee, 2004, 156).

The precedent provided by the second war against Iraq is very dangerous because it suggest that "breaking the rule carries no adverse consequences". (T.H. Lee, 2004, 160).

It should be recognised that international theory did not managed yet to provide a solution to the so called "security dilemma", which can be described as a situation where two States arrive to conflict or war, over security concerns. With reference to the case of Iraq, the intelligence service of the United States found out that the State of Iraq was producing weapons of mass destruction.

The article 51 of the United Nations Charter restricts the legitimacy to wage war only to instances of self-defence.

However, the United States were not willing to act in compliance with this article.

They decided to unilaterally intervene in Iraq to prevent this latter from producing and using weapons of mass destruction.

According to the perspective of the United States administration, the seriousness of the threat represented by the production of weapons of mass destruction represents a sufficient reason to decide to wage war. A nuclear attack against the United States is something that should be prevented before it takes place, rather than something to react to.

The suspicious advanced by the United States intelligence, posed a security dilemma between the respect of the sovereignty and the security of the sovereign State of Iraq on the one side and the national security of the United States on the other.

With reference to the "security dilemma" debate, while some theorists think that this dilemma can be partially solved by international institutions and norms, realists are sceptical about this opportunity and think that there are no international institutions and norms that can "affect or condition a state's military behaviour in any significant way" (T.H. Lee, 2004, 159) and then, that can ameliorate the security dilemma.

The scholar T. Lee pointed out that the norm of sovereign equality is important because in the absence of this norm "will diminish the multilateral participation in the determination of international outcomes of interest to the supreme state and the world at large".

An example of this multilateral participation is offered by the support that Germany and Japan provide to the United States, in spite of the fact that they did not manage to obtain a permanent seat within the Security Council and then, do not have a legal formal equality with the permanent members of the Security Council, but only an informal power and, most importantly, "states will lack any right to influence or limit the supreme state's decisions whether to exercise its special right to wage war. The resultant unilateral determinations will not only be undemocratic; they stand a greater risk of inaccuracy". (T.H. Lee, 2004, 156).

Interestingly, the same T. Lee argues that sovereign equality does not contribute to world stability, on the contrary, if there was an actual sovereign equality, all States would have had the same right to wage war and this could lead to an even higher degree of world's instability.

Moreover, from the comparison between the period of the Cold War, characterised by the bipolarity between the two military powers of the United States and the Soviet Union, with the previous period, characterised by a multipolarity among several states, T. H. Lee draws the conclusion that bipolarity is more stable than multipolarity in terms of the number of conflicts that occurred during the Cold War and in the previous period respectively.

The norm of non-intervention in the internal affairs of another State is a corollary of the norm of sovereign equality. The norm of sovereign equality was introduced in the international law at the end of the eighteen century when the most part of the states were monarchies.

The most ancient and powerful monarchies were: Great Britain, Spain and France.

The norm was introduced with the aim of defending the "less populous, smaller and younger" (T.H. Lee, 2004, 151) republics such as Holland and the United States.

Also the corollary of the norm of sovereign equality, the norm of non intervention, was directed at the protection of the republics from the more powerful monarchies.

2.3 The Concept of Sovereignty in the Thought of the German Theorist of International Relations H. Morgenthau

In his important article titled « Sovereignty Reconsidered » (H. Morgenthau, April 1948, Colombia Law Review), the German international relations theorist H. Morgenthau retraced the historical evolution of the concept of sovereignty. In the historical evolution of the concept of sovereignty, H. Morgenthau distinguishes four moments. The concept of sovereignty was firstly developed in the second half of the sixteenth century. In its first conceptualization, the notion of sovereignty was referring to the new phenomenon of the territorial state where a centralized power exercises its authority to enact and enforce the law within a certain territory. During the sixteenth and seventeenth century the sovereign power was primarily exercised by the absolute monarch.

Within a century, the power of the monarch became a supreme power that could not be challenged neither from the inside nor from outside the state (H. Morgenthau, 1948, 341). The notion of sovereignty as a supreme power over a certain territory appeared for the first time in a specific moment of the second half of the sixteenth century, which coincides with the end of the Thirty-Year War. According to H. Morgenthau, it is possible to distinguish between a political and a legal meaning of the notion of sovereignty. In its original formulation, in the second half of the sixteenth century, the notion of sovereignty was political in nature. The notion of sovereignty was political in nature in the sense that sovereignty is a political fact and as such, it is the subject of a political doctrine. According to the political doctrine of sovereignty, the bearer of the sovereign power is the supreme political and legislative authority within its territory. The fact that the sovereign possesses the supreme political authority over his territory is described by Morgenthau as political in nature.

In the article titled "The Problem of Sovereignty Reconsidered" H. Morgenthau provides not only the temporal but also the spatial coordinates, with respect to the birth of the notion of sovereignty. Indeed, according to his historical reconstruction, the notion of sovereignty was developed almost at the same time in European monarchies (and specifically in France, England and Spain). In virtue of the principle of independence, each sovereign can exercise his authority over his own territory, but he does not have any kind of authority over the territories that are under the jurisdiction of the other sovereigns.

According to Morgenthau, one century after the introduction of the notion of sovereignty, there has been a shift in the way to conceive this notion: originally conceived as a political fact, within a century sovereignty turned into a legal fact. The legal meaning of the doctrine of sovereignty is the fact that the bearer of the sovereign power (primarily the monarch) is the source of all the positive law, which is the man-made law. (H. Morgenthau, 1948, 341). Despite the fact that the monarch was not binded to respect the positive law of which he was the source, his power was not without limits.

The sovereign power had its limits in the respect due to the divine law, which reveals itself to his conscience and in general to the human reason as natural law. (H. Morgenthau, 1948, 341).

Therefore, while at the moment of its formulation in the aftermath of the end of the Thirty-Year War, sovereignty was the subject of a political doctrine, one century later, sovereignty became the subject of a legal doctrine. After having illustrated the birth of the concept of sovereignty at the end of the Thirty-Year War, and the shift from the political to the legal doctrine of sovereignty, H. Morgenthau describes the birth of the national democratic state and the emergence of the notion of popular sovereignty in the course of the modern age. With the phrase "modern age", H. Morgenthau refers to the political situation comprised between the end of the nineteenth and the beginning of the twentieth century. In this period, the political doctrine of sovereignty, which was emphasized in the course of the sixteenth and seventeenth centuries, started to be repudiated, because of the difficulty to identify a single person as invested of the supreme authority to enact and enforce the law. (H. Morgenthau, 1948, 342). In the course of the sixteenth and seventeenth centuries, instead, when Bodin and Hobbes conceptualized for the first time the notion of sovereignty and the absolute power of the monarch, the identification of the single person who was invested with the sovereign power, was much easier since it was primarily the monarch of France, England or Spain who was invested with the supreme authority to enact and enforce the law. The repudiation of the political doctrine of sovereignty, according to Morgenthau, occurred hand in hand with the affirmation of the liberal society. Indeed, the first shots against the authority of the state came from the liberal society.

From the point of view of the pluralism, the state is only one among the many existing human associations. Pluralists claim that the distinction between the state and the other human associations is quantitative rather than qualitative in nature. (H. Morgenthau, 1948, 343).

The affirmation of the liberal society had the effect to shrink the dominion of the authority of the state. This shrink is highlighted by the idea - expressed in the philosophy of law blossomed between the end of the nineteenth and the beginning of the twentieth century - that the concept of sovereignty can be applied only to the legal order (H. Morgenthau makes the example of the tribunals). Another relevant change in the way to conceive sovereignty, as a consequence of the change of the political situation, occurred in the sixteen years comprised between 1914 and 1930. (H. Morgenthau, 1948, 342). While in the period comprised between the end of the nineteenth century and the beginning of the twentieth century, the political doctrine of sovereignty was repudiated and the sovereign power of the state appeared discredited, (since it was shrinked to the legal order), instead, in the sixteen years between 1914 and 1930, the political situation will be subject to a significant change, which will be reflected into the reaffirmation of the sovereign power.

H. Morgenthau has also distinguished among the three forms assumed by the sovereign power in the sixteen years between 1914 and 1930: totalitarian governments; authoritarian governments and democratic agencies with the aim of regulating the social process to guarantee the well being of their people. In the same article H. Morgenthau underlined that the concept of sovereignty is a function of the political situation that exists in a particular period of the history.

The fact that the concept of sovereignty can be affected by the historical circumstances helps to explain why this concept needs to be periodically rethought in the light of the changed political conditions. In compliance with this reasoning, the contemporary rethinking of the concept of sovereignty as responsibility can be interpreted as the reply to the effort to reconsider the concept of sovereignty in the light of the contemporary international situation.

H. Morgenthau has also the merit of having recognized the importance of the concept of sovereignty for the development of the international law. The relevance of the concept of sovereignty for the development of the international law may help to explain why the concept of sovereignty, not only in the middle of the twentieth century, but even today, is subject to continuous revisions and attacks. According to H. Morgenthau, one of the most important premises of the international law is the fact that the international law imposes legal restrictions over individual states. This assumption of the international law appears to H. Morgenthau to be incompatible with the recognition of the sovereignty of the states, which is the recognition of sovereign states as the supreme authorities that enact and enforce the law and are independent from legal restrictions.

With the aim of guaranteeing the compatibility of the international law and the concept of sovereignty, H. Morgenthau has introduced the distinction between a centralized system of the international law, strong and efficient and a decentralized system of the international law, which is on the contrary weak and inefficient. Now, according to H. Morgenthau, while there would be incompatibility between the concept of sovereignty and the centralized system of the international law, the concept of sovereignty would not be incompatible with a decentralized system of the international law. The international law is a decentralized legal order in the sense that international legal norms are binding only over those states that gave their consensus to these norms.

Moreover, many of the international legal norms that are binding only in virtue of the consensus received from the individual sovereign states, have a vague and ambiguous legal meaning. International legal norms include so many conditions and reserves that individual states, whenever they are called to act in compliance with these ambiguous international legal norms, maintain a high degree of freedom of action. Only a few international legal norms exist independently from the consensus given by individual states. These norms are the logic premise of the existence of each legal system.

Examples are offered by the norm for the interpretation of the other legal norms; the norms that provide sanctions, or again, the norms that limit the jurisdiction of individual states. These latter are the logic premise of the existence of a multiple state-system. This kind of norms, whose existence does not depend on the consensus they may receive from states, are binding over all states, independently from their consensus, and are called by H. Morgenthau "common international law" or "jus necessarium" of the modern state system. (H. Morgenthau, 1948, 343). It is precisely the binding force of some international legal norms (those norms that are common to all states and whose validity is independent from individual states' consensus) that makes the sovereignty of individual states as a possible legal concept. (H. Morgenthau, 1948, 344). Among the norms of the international law that make possible the legal concept of sovereignty, there is the norm that imposes the mutual respect for the territorial jurisdiction of individual states. Without the obligation to respect

this norm, the international law and the state system based on the international law, could not exist. Aside from these common and necessary international legal norms, each individual state indeed, is the highest authority that enacts the law and it is binded to respect only those international legal norms to which the state gave its consensus. H. Morgenthau considers the decentralization of the international law, not only with reference to the legislative function of the sovereignty, but also with reference to the juridical and executive functions of the sovereignty.

The individual sovereign state is considered as the supreme authority to decide whether and when and under what conditions a dispute should be submitted to the international judicial apparatus.

At the time in which H. Morgenthau is writing (1948), states could not be convoked in front of an international court without their consensus and if this consensus was given in a general/generic form, the legal reserves make it generally possible to evade the jurisdiction of an international court without violating the international law. The decentralization of the juridical function within the international legal order is nothing but the way to indicate the national sovereignty with reference to its juridical function. As regards the sovereignty in the domain of law enforcement, H. Morgenthau has introduced a helpful distinction between two situations:

1) The sovereignty of the state as law enforcement (police) is identical to the sovereignty in the legal field, which is to say that the sovereign power has the last decision on whether and how to deal with an action of law enforcement;

2) From the other side, the sovereignty of the state conceived as the subject of the action of enforcing the law, manifest itself in the "impenetrability of the state".

The phrase "impenetrability of the state" is another way to say that in a given territory only one state can have the sovereignty, namely, the supreme authority, and no state has the right to carry out/perform act of government within that territory, without the consensus of the sovereign power within that territory.

As regards the exercise of the executive function, (which is the application of international legal norms), all the actions of application of international legal norms, with the exception of the war, are limited to the exercise of a pressure over a recalcitrant government. (H. Morgenthau, 1948, 344).

H. Morgenthau points out that all the means that have the aim to exercise a pressure over a state to lead it to respect international legal norms, such as diplomatic means, intervention and so on do not compromise the territorial sovereignty of the state that is not acting in compliance with international legal norms. It is then evident that the enforcement of international legal norms can not compromise the territorial sovereignty of the state. The exception to this rule is represented by the war, which is regarded as an extreme form of law enforcement under the international law.

The essential aspect of the war is indeed the penetration of the territory of the enemy and the safeguard of the integrity of the territory of the intervening state.

International law allows the state that is at first intervening and later on occupying the territory of another state, to exercise his sovereign rights in the territory occupied by its military force.

H. Morgenthau considers the decentralization of the legislative, judicial and executive functions as manifestations of the sovereignty. After the introduction of the double distinction between an international legal order centralized and decentralized on the one side, and among the three aspects of the decentralization of the international law with reference to the different functions performed by the sovereign authority on the other side, H. Morgenthau moves to describe the three principles on which the concept of sovereignty is based, which are independence, equality and unanimity.

Independence is defined by H. Morgenthau as a peculiar aspect of the supreme authority of the state, which consists in the exclusion of the legal dependence of the state from other states.

The recognition that the state is the supreme sovereign power within a certain territory logically implies that the state is independent and that there is no authority above the state.

The independence allows the state to manage its internal and foreign affairs at its discretion, insofar as the state is not binded to respect treaties or what H. Morgenthau called "common international law". The individual state, in virtue of its independence, has the right to choose its own constitution, system of administration and foreign politics. H. Morgenthau points out that as the independence is a necessary quality of all states, at the same time, the duty to respect such independence is a necessary international legal norm. The duty to respect the independence of the other states is embodied in the norm that prohibits intervening in the internal affairs of the other states.

The second peculiar aspect of sovereignty is the equality among sovereign states.

H. Morgenthau makes it clear that while all states have the supreme political authority over their territories, at the same time, no state can be subordinated to another state in the exercise of its authority. In virtue of the principle of equality among sovereign states, no state can say to the other states which laws should be enacted or enforced within their territories. The equality among sovereign states is the corollary of the principle of sovereignty and at the same time, it is a cardinal principle of the international law, which is aimed to express that the international law is a law among coordinated rather than subordinated entities. While states are subordinated to the international law, they are not subordinated to each other, that is to say that they are equal. (H. Morgenthau, 1948, 346).

The principle of sovereign equality among states was emphasized also by the United Nations Charter, which declares that the United Nations is an international organization based on the principle of the sovereign equality of all its members. From the principle of sovereign equality among states derives another fundamental norm of the international law, which is the norm of unanimity. This norm is responsible for the decentralization of the legislative function and, to a certain extent; it is responsible also for the executive function. The principle of unanimity means that all states are equal legislative authority independently from their dimension, population and power. H. Morgenthau explains the practical meaning of the principle of unanimity by making a concrete example: in an international conference whose aim is the creation of a new international legal norm, the vote of the United States counts as much as the vote of Panama and both votes are required to make the new international legal norm binding for both countries. (H. Morgenthau, 1948, 346). Without the principle of unanimity, a big and powerful state could be able to use its preponderance in terms of

representativeness to impose legal obligations over a weak and small state, without the consensus of this latter. Without the principle of unanimity, the most powerful states could exercise their authority over small and weak states, and destroy their sovereignty. (H. Morgenthau, 1948, 346). In virtue of the principle of unanimity, each state that participates to the deliberations (for the creation of new international legal norms), has the right to decide for himself whether it wants or nor to be binded to the respect of that deliberation. H. Morgenthau wants also to warn the readers of his article against some misunderstandings of the concept of sovereignty.

He clarifies that sovereignty is not freedom from the regulation by the international law of all questions that are traditionally left to the discretion of individual states, or, as it is established in the article 2 paragraph 7 of the United Nations Charter, those questions that are under the domestic jurisdiction of individual states.

H. Morgenthau makes an example, which could be applied also to the current Italian foreign policy, observing that it is misleading to consider the international regulation of the immigration policies as incompatible with state sovereignty. There would be incompatibility between the international regulation of immigration policies and state sovereignty only if states did not give their consensus in advance. However, explains H. Morgenthau, the conclusion of international treaties that concern matters of immigration, does not affect the sovereignty of the contracting states.

Starting from this premise, H. Morgenthau draws the conclusion that sovereignty is not equality of rights and obligations under the international law. On the contrary, the sovereignty of the state can coexist with huge inequalities in both, rights and obligations. To explain what this does mean concretely, H. Morgenthau makes the example of the treaties of peace, which often impose unilateral legal obligations that penalize the vanquished states (for example, as it happened in Austria, Germany, Hungary and Bulgaria), in terms of dimension and quality of military personnel, armaments, economic politics, and foreign affairs. Despite this penalization, the vanquished state does not loose its sovereignty. The existence of these unilateral legal obligations imposed by peace treaties, leads vanquished states to review these treaties on the basis of the principle of sovereignty and its corollary of sovereign equality among states. However, according to H. Morgenthau, even unilateral legal obligations do not compromise the sovereignty of those states upon which these legal obligations are imposed. H. Morgenthau warns the readers also from believing that the sovereignty of the state can be undermined by their interdependence in political, military or economic terms.

Indeed, even if certain states are dependent on others and for them it is very difficult to carry out autonomous domestic and foreign policies, yet their dependence does not undermine their sovereignty (their supreme legal authority within their territories). Weak states (for example, Panama) are less able than powerful states (for example, the United States) to enact and enforce the laws that they would desire to enact and enforce within their territories and their choice in terms of policies and law is much more limited when compared to powerful states.

Another aspect of the concept of sovereignty, which H. Morgenthau clarifies in his article and which is particularly relevant for the purposes of our discourse, is the specification of the conditions under which a state looses its own sovereignty. H. Morgenthau tries to offer to this problem both a theoretical and a practical

solution. From the theoretical point of view, sovereignty is the supreme legal authority of the state, in the sense that it has the supreme authority to enact and enforce the law within a certain territory. From a practical point of view, the state looses its sovereignty, when it falls under the authority of another state, so that it is this latter to exercise the supreme authority to enact and enforce the law in the territory of the first state.

H. Morgenthau distinguishes two different ways in which the state can loose its sovereignty.

The first way occurs when the state assume on itself legal obligations that give to another state the authority over its activities to enact and enforce laws.

The second way in which the state can loose its sovereignty is when the state looses the impenetrability of its territory.

2.4 The Concept of the Responsibility to Protect and the Introduction of the Concept of Fragile, Failed and Quasi States

As we have already anticipated in the summary, the purpose of this paper is to rethink the concept of sovereignty in the light of the principle of the Responsibility to Protect.

"The Responsibility to Protect was conceived in a spirit similar to that of the Fourth Geneva Convention, namely focusing on the individual and informed by the law of human rights. Associated with concerns regarding, among other things, the loss of state capacity, characteristic of the fragile-failed states, it pointedly penetrated the core of the legal construct of sovereignty. Responsibility to Protect is testimony to a broader systemic shift in international law, namely, a growing tendency to recognise that the principle of state sovereignty finds its limits in the protection of human security. This propelled a reconsideration of sovereignty for twenty-first century purposes" (N. Gal-Or, ILF, 2008, 321).

N. Gal-Or has helpfully observed that the concept of the Responsibility to Protect has been developed in tandem with the concept of fragile or failed states.

"Recently, the concept of failed and fragile states was coined to capture the essence of situations in which internal sovereignty is compromised and corresponding sovereign competences weakened. Concurrently, the impact of mitigated internal sovereignty, often entailing a corresponding weakening of external sovereignty, has propelled the birth of another new term – the Responsibility to Protect…To arrive to a legal characterisation, the status of a fragile-failed state must be determined in relation to the legal concept of sovereignty…The doctrinal discourse of both state responsibility and humanitarian intervention wrestles with the question of establishing when a state's abdication of responsibility justifies foreign intervention, and when foreign intervention transforms into foreign occupation. It is precisely at this convergence that the Responsibility to Protect links with fragile or failed states to create the point where deterioration in the fragile or failed states is recognised as an instance of suspended sovereignty " (N. Gal-Or, ILF, 2008, 304, 321-5).

In the same paper, Prof. Noemi Gal-Or, argues that "under a certain fragile-failed state situation, a legal suspension of sovereignty ought to be identified. It arises when the sovereign (its government) is denied control over part of, or the entire, state territory" (N. Gal-Or, ILF, 2008, 318).

The need to rethink the concept of sovereignty, which are the sovereign competence (domestic jurisdiction), independence and legal equality of states, stems from several reasons.

The literature on sovereignty is very critical of this idea, especially in the light of fragmented sovereignties or failed states, which are anomaly examples of sovereignty.

The scholar J. Di John, in a recent paper titled "*Conceptualising the causes and consequences of failed states: a critical review of the literature*" (2008) has identified among the symptoms of the failure of state sovereignty: the lack of actual control of the state over its territory; the contestation of territorial sovereignty by force internally; the occupation and the control of large portions of the territory by insurgents, inhibiting the state from carrying out its responsibility to protect lives and property and maintain public security. Other symptoms of state failure are the political vacuum that leads non state actors taking matters into their own hands, leads also to the massive flight of refugees, and the forced displacement of populations, creates consequences of concern to other states, international organisations and civil society.

Failed states are characterised by anarchy, chronic disorder and civil war waged without regard for the laws of armed conflict. These features inhibit or prevent a state from acting with authority over its entire territory. They violate the substantive United Nations' membership requirement in Charter Article 4 that they are able to carry out their obligations.

The failure of state capacity may have grave humanitarian consequences.

Another anomaly example of state sovereignty is constituted by the so called "quasi states".

They represent a challenge to traditional interpretations of State Sovereignty, because there are certain states that are incapable to effectively exercise authority over their territories and populations. In these cases sovereignty is a legal fiction not matched by an actual political capacity

Indeed, a prominent dimension of sovereign status is the exercise of actual control over territory.

State capacity/authority is an essential condition for the protection of fundamental rights

A modicum of state authority and capacity is a prerequisite for the maintenance of domestic and international order and justice.

Then, sometimes the concept of sovereignty is only a social construct, to which is possible to attribute misleading connotations. Sometimes policy makers and the media make an instrumental use of the concept of sovereignty to avoid coping with the real policy issues involved.

The discourse on fragile and failed states and on the Responsibility to Protect have at the same time a legal and a political nature.

The concept of sovereignty is at the base of the debates about fragile/failed states and the general emerging norm of the Responsibility to Protect.

The scholar N. Gal Or in a recent article formulates the hypothesis that the situations of fragile and failed states and the duty of the Responsibility to protect represent the two sides of the same coin, labeled "sovereignty".

The articulation of fragile and failed states and the Responsibility to Protect is essential to ascertain the status of "suspended sovereignty" and the contemplation of the legal means to rebuild once again the governing capacities of the state.

The concept of the Responsibility to Protect, which was formulated for the first time in the 2001 ICISS report, was developed in parallel with the two concepts of failed and fragile states.

Indeed, the notion of "failed state" was conceptualized mostly from the attacks of the 11 September, to designate those countries that represent a threat for the others.

In the aftermath of the attacks of the 11 September, United States' foreign policy was largely based on the notion of "failed states".

"Failed States are seen as places where terrorist organizations and international criminal network can flourish" (J. Di John, 2008, 1).

Fragile states are those weak states that cannot fulfill certain basic functions - administration, tribunals, police and armed forces – that are necessary to guarantee the security and the welfare of their subjects and the smooth functioning of the international system (Cf. J. Di John, 2008, 2).

Fragile states, vulnerable to internal and external crises and conflicts, have institutions that embody and maybe preserve the conditions of the crisis (Cf. J. Di John, 2008, 9).

For instance, the economic institutions reinforce the stagnation or low rates of economic growth or embody the extreme inequality in term of wealth distribution, access to land and the means for a live. (Cf. J. Di John, 2008, 9).

The social institutions of fragile states may embody the extreme inequality of the lack to access to health and education. (Cf. J. Di John, 2008, 9).

The political institutions may establish exclusionary coalitions of power based on ethnic, religious or regional lines. (Cf. J. Di John, 2008, 9).

The state is fragile when its institutions are not able to guarantee security, development and the welfare of its citizens.

Fragile states are the opposite of stable states, which are able to resist to internal and external crises and shocks. (Cf. J. Di John, 2008, 9).

Failed states instead, are simply not poorly performing in the accomplishment of their functions (indeed it would be a mistake to identify poorly performing states with failed states) but they are going to collapse. (Cf. J. Di John, 2008, 10).

Obviously the failure should be interpreted in the historical context in which it occurs, in the sense that the failure of the state is the final stadium of a gradual process of weakening of the governing capacity of states (Cf. J. Di John, 2008, 9).

A state can be considered as "failed" when it is no longer able to guarantee basic security and those functions that allow the economic, social and political development and that it does no longer exercise an actual control over its territory and borders (J. Di John, 2008, 2).

We can even say the fragility is the initial stadium and collapse is the final stadium of the failure.

One of the hypotheses that have been formulated to explain the fragility and the failure of the states is the dramatic increase of the number of states that has been occurring throughout the second half of the XXI century. (Cf. J. Di John, 2008, 2).

The process of formation of the state is always accompanied by conflict, violence and uncertainty of the institutional structures in charge of establishing the positions of power and legitimacy (Cf. J. Di John, 2008, 2).

In order to clarify the concept of "failed states", it is necessary to consider the definition of "state" that exists in the different areas.

In the international law, "a given state exists when a political entity is recognized by the other states as the highest political authority in a given territory and it is treated as an equal in the international community of states" (J. Di John, 2008, 3).

In the Montevideo Convention signed in 1933, state was defined as "a given political entity that possesses a permanent population, a given territory, a government and the capacity to enter in relation with other states" (J. Di John, 2008, 3).

In the political philosophy, N. Machiavelli argued that the use of force is the only foundational element of the state (J. Di John, 2008, 3).

The sociological definition of state that was formulated by M. Weber, traced the philosophical definition provided during the Italian Renaissance by N. Machiavelli:

"A state is a human community which successfully claim the monopoly of the legitimate use of physical force within a given territory" (J. Di John, 2008, 3).

This philosophical and sociological definition of the concept of state proves that the conceptualization of the notion of failed state is affected by the definition of state that we choose to adopt.

For instance, on the basis of the definition of state provided by M. Weber, M. Ignatieff argues that " the failure of the state occurs when the central government looses the monopoly of the means of violence" (M. Ignatieff, 2002, 118).

In the social contract theory, the state is the outcome of a social contract among individuals who decide to transfer all their rights and freedoms (all but the right to life, in Hobbes' theory) to an absolute sovereign government.

The main function of the state (as a result of the social contract) is to guarantee peace and security.

Indeed, individuals are willing to alienate their rights and freedoms to come out from the state of nature, which is characterized by the insecurity of the human life and by a situation of "bellum of omnes contra omnia".

Even the definition of state that emerges from the social contract theory allows proving that the conception of failed state depends on the definition of state that we decide to take into consideration.

For instance, W. Zartman suggests that the failure of the state occurs when:

"The fundamental functions of the state are no longer performed. A failed state is a situation where the structure, the political authority (legitimate power), the law, the political order have fallen apart" (J. Di John, 2008, 4).

The inability of the state to perform certain functions whose accomplishment is at the base of the legitimacy of the political authority of the state and the pre-condition of the validity of the social contract, which was

stipulated among individuals to give the state the legitimacy in order that the state acquires the political authority to guarantee the fulfillment of these functions.

Historically, the concept of "failed state" was introduced almost ten years before the formulation of the concept of the Responsibility to Protect.

Indeed, in 1993, the two scholars A. Helman and B. Ratner used this expression to describe "a new disturbing phenomenon whereby a state was becoming utterly incapable of sustain itself as a member of the international community" (J. Di John, 2008, 4).

Failed states are those that may jeopardize the security of their neighboring countries through refugee flows, political instability and random warfare (J. Di John, 2008, 4).

Actually the concept of failed state, although intuitively understandable, if we take into consideration all the different dimensions in which this failure can occur, then it would become an extreme articulated concept.

The scholar R. I. Rotberg, President of the World Peace Foundation, has helpfully observed that the failure of the state can occur in the following different areas: security, economic development, political representation, income distribution and so on (R. I. Rotberg, 2005, 85).

The concept of fragile/failed state and the concept of the Responsibility to Protect are both related to the condition of "suspended sovereignty".

"Suspended sovereignty" (N. Gal-Or, 2008, 330) arises when the sovereign control of a part or of the whole territory is denied to the state in different orders of circumstances:

First in case of paramilitary control of the territory of the state from a non-state actor and when the situation cannot be characterized as a non-international conflict.

Secondly in case of indirect foreign military control but not direct armed confrontation with the military forces of the state or other armed forces.

Finally, when the sovereign does not have formally or freely accepted the foreign intervention.

The condition of "suspended sovereignty", can be considered as deriving from the combination of a legal status of conflict, a temporary vacuum of government (fragile or failed state) and a legal order that authorizes the peaceful intervention of a third part to re-establish sovereignty (N. Gal-Or, 2008, 327)

The analysis of the concept of sovereignty leads to the distinction between external and internal sovereignty.

External sovereignty is the relation among actors outside the state.

Internal sovereignty is the set of domestic relations (N. Gal.OR, 2008, 303)

In her recent article, the legal scholar N. Gal Or explains that the concepts of failed and fragile states are related to the concept of internal sovereignty and that the state can be considered as fragile or failed when its internal sovereignty is vitiated.

She makes also clear that the internal sovereignty of a state is vitiated when the state looses its sovereign plenary control over its territory and that when the internal sovereignty of a state is vitiated, it is more likely that this state becomes the target of foreign occupation. She defines the occupation of a failed state as a form of interference with its external sovereignty, which however infringes also the internal one.

She also clarifies that the notions of failed and fragile states were conceptualized to describe situations where the internal sovereignty is compromised and the correspondent sovereign functions are weakened.

For N. Gal Or then, the introduction of the concept of the Responsibility to Protect could be explained by the weakening of the internal and external sovereignty of the state. Her perspective represents a turnaround when compared with the view of the opponents of the concept of the Responsibility to Protect.

Indeed, according to the detractors of the concept of the Responsibility to Protect, this idea may have the side effect of weakening the principle of sovereignty. The perspective of N. Gal-Or is in contrast with the view of the detractors of the Responsibility to Protect in the sense that, when the idea of the Responsibility to Protect had been introduced, the weakening of the principle of sovereignty was already occurring.

In fact, the introduction of the idea of the Responsibility to Protect would have been possible only as a consequence of the weakening of the concept of sovereignty. N. Gal-Or agrees with the detractors of the Responsibility to Protect in recognizing that this idea implies a new awareness of the limits of external sovereignty. The concept of the Responsibility to Protect is subjected to a continuous evolution. Particularly, N. Gal Or refers to the concept of the Responsibility to Protect as it was endorsed in the report of the former Secretary General K. Annan, titled: *A more Secure World: Our Shared Responsibility*. In this report the concept of the Responsibility to Protect represents only an aspect of the broader concept of human security.

N. Gal Or in her article reports the passage of the document where it is stated that the emerging norm of the Responsibility to Protect citizens from large-scale violence is the primary responsibility of states (national authorities).

When a state fails to protect its own subjects, the international community has the responsibility to act, through humanitarian operation, monitoring missions and the exercise of a diplomatic pressure, and finally the recourse to force, when and if necessary, but only as a last resort, in case of conflict or use of force, this implies the clear commitment of the international community to rebuild shattered societies (K. Annan, *A more Secure World: Our Shared Responsibility*, 2004). Even though the terms "fragile" and "failed" do not figure in the 2004 Secretary General report, and even if the Responsibility to Protect is not limited to situations of fragile or failed states, the concept of Responsibility to Protect was created to prevent situations that can be described as fragile or failed states (N. Gal Or, 2008).

The set of situations that can be described as fragile or failed states, where the governing capacities of the state are significantly weakened are usually considered by the international community as situations that may even represent a threat for the international peace and security.

The new idea suggested by N. Gal Or in her recent article on Fragile-Failed States, the concept of Occupation and the Responsibility to Protect is that fragile or failed states are closely related to the idea of the Responsibility to Protect, since the Responsibility to Protect is conceived as a tool to help to rebuild the weakened competencies and governing capabilities of the sovereign state.

The aim of the operationalization of the Responsibility to Protect is to help the state to recover the capability to perform those basic functions that legitimize its political authority.

Since the end of the Second World War, the concept of sovereignty met a significant evolution.

The most significant change was the expansion of this concept up to include not only the government but also its subjects. Nowadays, the concept of fragile and failed state is only a political concept, but several scholars are trying to provide a legal definition of the two concepts.

According to the scholar N. Gal Or, the provision of a legal definition of fragile and failed states would require the specification of their meaning in relation to the legal concept of sovereignty.

The legal concept of sovereignty can be used as the benchmark to establish which situations can be classified as fragile and failed states. With this aim, N. Gal Or takes into consideration two instances of sovereignty: the sovereignty of the state, which is useful to make the diagnosis of a fragile/failed states.

She considers also the sovereignty of other political entities and international organizations which are relevant in relation to the restitution of the full sovereignty to fragile and failed states.

The Responsibility to Protect, as the four Geneva Conventions, is focused on the human rights' of the individual.

The notion of the Responsibility to Protect is also concerned with the weakening of the governing capacity of the state, which is a feature of fragile and failed states.

N. Gal Or recognizes that the concept of the Responsibility to Protect might have a strong normative impact at the expenses of the legal concept of sovereignty.

On the other side, the Responsibility to Protect represents a further confirmation of the tendency of the international law to recognize that the principle of the sovereignty has its limit in the protection of human security.

This new tendency of the international law encourages a rethinking of the legal concept of sovereignty in relation to goals and challenges of the XXI century.

According to N. Gal Or, the legal contours of the Responsibility to Protect should be discussed in broader framework rather than limiting our attention only to the concepts of the responsibility of the state and humanitarian intervention.

Even the Outcome Document of the 2005 World Summit failed to establish when the failure of the state to fulfill its primary responsibility justifies foreign intervention and when foreign intervention turn into foreign occupation (Cf. N. Gal Or, 2008).

Further efforts are needed to identify the precise point in which the situations of fragile and failed states should be considered as instances of "suspended sovereignty".

Indeed, the internal sovereignty of fragile and failed states is characterized by a discrepancy and a clash between "residual sovereignty" and "actual sovereignty" (Cf. N. Gal Or, 2008, 330).

The scholar N. Gal Or suggests finally that the operationalization of the Responsibility to Protect and its translation into a real policy, would require the exercise of a domestic and extraterritorial jurisdiction from a foreign political entity, that does not necessarily possesses the tile to sovereignty to administer the territory of the failed state.

In the light of this requirement, the territorial jurisdiction of the failed state over its territory and permanent population is seriously tampered by the introduction of the general emerging norm of the Responsibility to

Protect, which requires an extraterritorial jurisdiction of foreign actors, which can assist in rebuilding the suspended governing competencies of the sovereign.

2.5 The Critic of the Concept of Sovereignty in the Thought of the French Philosopher J. Maritain

Since its introduction, the concept of sovereignty was subject to continuous revisions, mostly from legal and political theorists. In 1950 the French philosopher J. Maritain published an article titled "The Concept of Sovereignty". This article contains one of the harshest critics that have ever been made of the notion of sovereignty. At the beginning of the article, J. Maritain laments that the philosophical meaning of the concept of sovereignty has never been exhaustively examined. From 1950 on, the controversies on sovereignty became deeper. One of the most controversial issues that remain unsolved is whether the bearer of sovereignty is the individual state or the international community.

This problem is particularly relevant for the purpose of analyzing the general emerging norm of the Responsibility to Protect, which is based on the assumption that individual states have the primary responsibility to protect, but, when they are not able or willing to fulfill their primary responsibility, this responsibility should pass to the international community. In the light of this recognition, today the traditional concept of sovereignty faces many challenges, some of which are legal in nature.

The first example of these legal challenges is offered by the difficulty to conciliate certain norms of the international law (the R2P itself) with the principle of sovereignty.

A second challenge is the difficulty to conciliate the principle of sovereignty with the imposition of certain legal obligations (under the international law) on individual sovereign states. A further challenge is represented by international criminal tribunals and the Rome Statute, which was established to judge those international crimes that are perpetrated under the domestic jurisdiction of an individual state.

However, in his article on the concept of sovereignty, J. Maritain suggests that the challenges to the concept of sovereignty may have, aside from a legal character, also a political, social and philosophical nature. An example of political challenge to the concept of sovereignty is represented by the collapse of the authority of the sovereign state. Another is the concept of popular sovereignty, which was developed in contrast with the concept of the sovereignty of the state. Popular sovereignty is the conceptualization of the idea that is no longer the state but are rather the people, the source of the legitimate authority of the state.

The two different reconstructions of the historical evolution of the concept of sovereignty proposed by H. Morgenthau and J. Maritain respectively agree in recognizing that there has been a shift from a political to a legal doctrine of sovereignty.

From the comparison of their articles devoted to the subject of sovereignty, many common points can be pointed out in their way of understanding the historical evolution of the notion.

Indeed, in both articles J. Bodin is recognized as the father of the traditional doctrine of sovereignty. And both authors observe that in the political reality of the XVI century, which was reflected by the political thought of J. Bodin, the sovereign power was primarily in the hands of the monarch and has its limits in the divine law.

J. Maritain takes into consideration the concept of sovereignty as it was originally formulated by J. Bodin, and carries out a philosophical analysis of this concept.

While H. Morgenthau defines sovereignty as the supreme power to enact and enforce the laws within a certain territory, J. Maritain instead underlines the fact that in the definition of sovereignty provided by J. Bodin, sovereignty has the character of separateness and transcendence. The transcendent character of the sovereign power is what separates the sovereign from the political body. The two articles differ also in their purpose.

Indeed, while the article of H. Morgenthau was aimed at proving the incompatibility between the concept of sovereignty and a centralized international legal order, strong and efficient; the purpose of the article of J. Maritain is that of proving that the concept of sovereignty (in some of its components) is intrinsically wrong.

The traditional political and legal doctrine of sovereignty is presented by J. Maritain as the fruit of an original mistake committed by the theorists of sovereignty. This mistake consisted in forgetting not only that the people own the right to self-governance, but also that the bearer of the sovereign power is the vicar of the people.

Instead, paradoxically, within the doctrine of sovereignty, the separation of the sovereign from the people became the condition for the exercise of the right to govern.

J. Maritain believes that insofar as the monarch should represent the people, he should be held accountable towards the political body. The monarch is a part that represents the whole (the political body) and it exercises the highest political authority within the political body.

The two authors agree not only in recognizing that the conceptualization of the idea of sovereignty occurred along with the emergence of the monarchy in Europe, but also in identifying sovereignty with the supreme power and in considering independence as one of the main components of sovereignty. Another common point between the analysis of the concept of sovereignty provided by H. Morgenthau and J. Maritain is the indivisibility. Sovereignty is indivisible in the sense that it is a property that belongs to the sovereign independently from the political body and does not admit degrees. However, H. Morgenthau fails to consider what J. Maritain considers instead as one of the main features of the concept of sovereignty: the absolute sovereign power of the bearer of sovereignty is separated from the political body.

J. Maritain considers legitimate the identification of sovereignty with the supreme power and considers legitimate also to think that independence is an essential component of sovereignty, insofar as supreme power and independence are a consequence of the full autonomy of the political body.

The full autonomy of the political body consists in the fact that the political body is a perfectly self-sufficient society (since it owns the right of self-governance). According to J. Maritain, what is wrong in the concept of sovereignty is its character of absolute separateness and transcendence from the political body.

The separation of the sovereign from the political body is wrong because the sovereign should on the contrary represent the political body. The premise of the reasoning of J. Maritain is that the theorists of the doctrine of sovereignty, when they attribute the character of separateness to the concept of sovereignty, made a serious mistake.

Indeed, not only sovereign power cannot be separated from the political body but also it should be held accountable towards the political body.

From the premise that there is an intrinsic mistake in the traditional doctrine of sovereignty follows the conclusion that the concept of sovereignty can be applied neither to the state, nor to the political body.

According to J. Maritain the doctrine of sovereignty is wrong because it does not take into account the fact that there is no human agency that has by nature the right to govern over people.

Aside from his bright critic of the concept of sovereignty, J. Maritain had also the merit to introduce the helpful distinction between external and internal sovereignty.

This distinction remains in the contemporary doctrines of sovereignty, for example, among the theorists quoted in this work, by N. Gal Or.

Independence is regarded by J. Maritain as an essential component o the external dimension of sovereignty.

At the time in which J. Maritain wrote his article, the sovereign state was above the community of nations and owns an absolute independence from this community.

Today the independence of the sovereign state from the international community is no longer absolute in virtue of the existence of erga omnes obligations.

Erga omnes obligations are base on the recognition of the existence of values that are shared by the whole international community. The existence of these common values imply that the state may be held responsible towards the international community, when its behavior is not in compliance with these common values.

Internal sovereignty is defined by J. Maritain as the supreme sovereign power of the state over the political body. According to J. Maritain, this way to conceive internal sovereignty is incompatible with pluralism and it is compatible only with centralism.

J. Maritain underlines that one of the inner risks of the concept of sovereignty is the fact that the sovereign power could be exercised without accountability. He is afraid that the fact that sovereignty is defined by classical modern political philosophers as a supreme, absolute and unlimited power, would imply that the bearer of sovereignty is responsible neither towards the community of nations (in virtue of its independence), nor towards the body politic (in virtue of its transcendent character). Despite its critic of the concept of sovereignty, J. Maritain does not believe that all the aspects of sovereignty are wrong and should be rejected.

For example, he believes that the right to a supreme independence and to a supreme power is a natural and inalienable right of the bearer of sovereignty. However, the aspect of sovereignty that J. Maritain considers wrong and as the fruit of a mistake that was originally committed by the first theorists of sovereignty, is the transcendent character of sovereignty and the separation of the sovereign from the political body.

This separateness of the sovereign from the political body is conceived as the condition to exercise the right to govern over the political body.

The concept of sovereignty is right when it is the symbol of the legitimate political authority, of the governance, of the juridical personality and equality among states, when it is the symbol of the recognition of a state from the other members of the international community, when it is the symbol of the formal unity of the legal system, when it is the symbol of the legislative and of the executive authorities.

But sovereignty is a wrong concept if it is conceived as the symbol of an absolute and uncontrolled power, and when it is the symbol of the power, immunities and privileges of the bearer of sovereignty.

The fact that J. Maritain identifies the concept of sovereignty with the concept of absolutism, depends partially on the fact that he takes into consideration the doctrine of sovereignty that was elaborated by the classical authors of the modern political philosophers, such as J. Bodin, T. Hobbes and J. J. Rousseau and partially of the fact that, at the time in which J. Maritain writes, sovereignty was accepted as a symbol of an unconditional power, and as the symbol of the privileges enjoyed by the bearers of sovereignty (heads of states), for example the jurisdictional immunity from the international criminal tribunals.

Political theorists agree in recognizing that the shift from the traditional notion of sovereignty to the concept of sovereignty as responsibility occurred in the course of the nineties.

This paragraph was aimed to prove that the problematic character of the concept of sovereignty and what J. Maritain considers wrong in the concept of sovereignty is the identification of sovereignty with an absolute and uncontrolled power. This conception of sovereignty can have the side effect of denying the responsibility the bearer of the sovereign power should have not only towards the political body over which he rules, but also towards the political community.

J. Maritain in the course of his article has repeatedly highlighted that there is no human agency that has by nature the right to govern.

He underlines that the body politic has the right to self-governance in virtue of its autonomy and finally he stresses that the bearer of the sovereign power is nothing but a deputy of the people, who receives his right to govern from the body politic and for this reason, it should be accountable towards the body politic.

The fact that the concept of responsibility should be mainstreamed within the concept of sovereignty was evident since the time of the Nuremberg trial, where jurists started to postulate the existence of a natural right that would constitute the criterion to assess the morality of the positive law, which can be considered valid (right) only when it is in conformity/in compliance with the natural law.

CHAPTER III

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From a Culture of Reaction to a Culture of Prevention

3.1 Summary of the Chapter

The last paragraph of the present chapter is devoted to the impact of humanitarian interventions occurred during the nineties over the local population, international, regional and sub-regional organizations involved in the process of conflict resolution, and finally over the local population of the target state.

We shall take into consideration three case studies: the UNOSOM intervention in Somalia (1992-1995), the UNPROFOR intervention in Bosnia (1992-1995), and finally the NATO-led intervention in Kosovo in 1999. Particularly, the case studies of Rwanda and Bosnia are analysed with the aim of proving that the failure to prevent the genocide in Rwanda and in general, the disintegration of the Former Yugoslavia, are rather due to the failure to give an appropriate response than to the lack of a global and systemic early warning system. Indeed, an effective early warning capacity does already exist within the United Nations system.

In the literature on conflict prevention a consensus has been reached on the fact that "preventive action plans should be based on existing case studies" and should derive on "the generalisation of the lessons learned". (see A. Ackermann, 2003).

From the generalisation of the lessons learned from the case studies considered in the present chapter, several conflict prevention's experts drawn the conclusion that, in order to be effective, conflict prevention, should not only be country-context specific, but also it requires "the adoption of timely, multilateral, and coordinated preventive measures, supported by a lead actor, by major international donors and by a domestic capacity for conflict regulation. These preventive measures should support indigenous capacities for long-term prevention and should be sensitive to those structural factors that make a country more conflict prone". (see A. Ackermann, 2003).

The importance of reflecting on how to enhance conflict prevention's effectiveness is useful to avoid "policy errors, failures in prevention and indirect and negative consequences of the preventive action". (see A. Ackermann, 2003).

Conflict analysis can be defined as the diagnosis of the structural and proximate causes of conflict and the identification of potential preventive actors.

In the model of preventive strategy proposed by the scholar Beyna, conflict analysis is followed by prevention analysis, which is the assessment of the accordance between the preventive measures to be adopted and the diagnosis of the causes of conflict.

The third moment of this model is the reflection on how to organise and realise the preventive action; how to monitor and assess the outcomes of this action and modify the preventive strategy accordingly. (see A. Ackermann, 2003).

Both, the debate on the right of humanitarian intervention and the literature on the prevention of armed conflict blossomed throughout the nineties.

Although at the end of the Cold War saw a decrease in the intensity and number of armed ethnic conflicts, "conflicts remain a characteristic feature of the international system". (A. Ackermann, 2003).

From this fact stems the importance of the literature on conflict prevention.

The main problems addressed by the literature on the subject of conflict prevention are "the factibility, legality, effectiveness and institutionalisation of conflict prevention practice, how to integrate measures aimed at the prevention of armed conflicts in the long-term development assistance post-conflict programs, how international, regional, sub-regional, non governmental organisations and development agencies may facilitate the implementation of conflict prevention practice, what is the scope of conflict prevention, what is the role played by conflict analysis and early warning in conflict prevention, how it is possible to enhance the institutionalisation of conflict prevention. (see A. Ackermann, 2003).

The idea of conflict prevention, as well as the idea of the Responsibility to Protect, in order to become a norm, should overcome three different stages.

The first stage is the creation of the norm, the second is its institutionalisation and the third is its internationalisation. (see A. Ackermann, 2003).

We shall retrace the historical evolution of the idea of conflict prevention from the Congress of Vienna, to its incorporation in the United Nations Charter until its endorsement in recent United Nations documents, like the report on Conflict Prevention produced by K. Annan in 2001.

In the contemporary perspective on conflict prevention there is a growing consensus on the fact that the notion of conflict prevention should rather be limited to the first stages of the conflict rather than including the phase in which the violence has already taken place or encompassing the post-conflict stage.

Moreover, conflict prevention strategies should be directed to address both structural and proximate causes of conflict.

Contemporary conflict prevention theory is based upon the distinction between structural and operational dimensions of conflict prevention.

Operational prevention is aimed at facing imminent crises and includes short-term measures such as "fact finding and monitoring missions, negotiation, mediation, the creation of channels of dialogue among contending groups, coercive diplomacy, preventive deployments, confidence building measures, economic sanctions, trade, humanitarian and financial aid, military measures like deterrence, embargoes and peacekeeping and legal measures". (see A. Ackermann, 2003; A. Bellamy, 2008).

On the contrary structural prevention includes long-term measures like facilitating good governance, adherence to human and minority rights, economic, political and societal stability and civil society building, development promotion, poverty reduction, economic equality promotion, fighting economic underdevelopment, unemployment, economic deprivation, environmental protection's promotion, fighting the weakness of the institutions by reforming the security sector, the administration and the judiciary. (see A. Bellamy, 2008).

We shall take into consideration the main criticisms raised against the idea of conflict prevention.

The first of these criticisms is the consideration that because a state can be in crisis over a prolonged period of time, it is difficult to predict when and where violence may erupt. (see A. Ackermann, 2003, A. Bellamy, 2008).

Moreover, prevention requires government to devote resources to regions that are not in conflict yet. In the case in which governments manage to prevent the eruption of the violence, they could be accused to waste precious resources to avoid non-existent crises and without obtaining any tangible benefit. (see A. Bellamy 2008).

Since the idea of conflict prevention has been incorporated in the first dimension of the idea of the Responsibility to Protect, the problem of comprehensiveness as well remains unsolved, in the sense that it is not clear whether the idea of prevention should be associated to early warning, preventive diplomacy and crisis management, and whether it should include both, structural and operational preventive measures along with the responsibility to ending impunity, (especially by submitting the cases to the International Court of Justice created with the Rome Statute in 1998). (see A. Bellamy, 2008).

These difficulties might explain why there is such a huge disparity between the resources devoted to conflict prevention and those destined to conflict management and post-conflict reconstruction.

Indeed, conflict management and post-conflict reconstruction, unlike conflict prevention, are able to generate tangible benefits.

Since a consensus on the exact causal mechanisms that lead to the eruption of conflict has not been reached yet, scholars did not arrive to conceive a unitary theory on the causes of armed conflict.

However, some of the key variables and structural causes of conflict have been identified and on this basis it is possible to build an appropriate strategy of conflict analysis. (see A. Ackermann, 2003)

Given the multiplicity of these variables and the complexity of their interaction, the prediction of the eruption of the conflict remains a difficult task.

In order for the international community to be able to give effective preventive responses, it would be necessary to collect accurate information on the key variables and the structural causes that can lead a country to lapse into violence. Indeed, another feature of an effective conflict prevention strategy is that it should be based on a "country specific approach". (see A. Ackermann, 2003).

Another problem related to conflict prevention that the present chapter deals with is the institutionalisation of conflict prevention practices.

What is important to note is that the main regional agencies that have a preventive capacity - the Organisation for Security and Cooperation in Europe, the European Commission and the European Union - have developed their capacity in addressing the structural causes of conflict rather than the capacity to address proximate causes of conflit. (see A. Ackermann, 2003).

The decision to incorporate a chapter devoted to the idea of conflict prevention in a study devoted to the general emerging norm of the Responsibility to Protect is based on the ground that since its original

articulation within the report produced by the independent International Commission on Intervention and State Sovereignty (ICISS), a preventive aspect was included in the idea of the Responsibility to Protect.

While the debate on the right of humanitarian intervention blossomed throughout the nineties was centered on the rights of states to intervene in other states where conflict has already caused lost of civilians on a massive scale, the idea of the Responsibility to Protect focuses on the human rights of civilians caught in conflict.

The very fact that a preventive dimension was included in the idea of the Responsibility to Protect proves that the Responsibility to Protect was rather aimed at offering the opportunity to implement conflict prevention measures than at increasing the opportunities for intervention in the internal affairs of the other sovereign states.

However, differences can be identified between the preventive dimension of the Responsibility to Protect and the broader conflict prevention literature.

The literature centered on the subject of conflict prevention indeed, distinguishes between structural and proximate causes of conflict.

In its original articulation the preventive aspect of the Responsibility to Protect was almost coincident with the content of the conflict prevention theory, in the sense that it encompassed both structural and direct conflict prevention strategies.

However, the further evolution of the idea of the Responsibility to Protect in the High Level Panel Report and in the Outcome Document of the 2005 United Nations World Summit suggests a divergence between the Responsibility to Prevent, restricted to the Responsibility to Prevent Genocide and the broader conflict prevention theory, (which includes a structural and an operational dimension).

The gradual weakening of the preventive component of the Responsibility to Protect is reflected at the institutional level by the United Nations reform, which will be discussed more in detail in the next chapter.

However, the very fact that the former United Nations Secretary General refused the proposal of the panelists to assign a preventive mandate to the newly established Peace-Building Commission, should not be interpreted as an evidence of the fact that the United Nations are not moving from a culture of reaction to a culture of prevention.

The reason why the Secretary General preferred to limit the mandate of the Peace-Building Commission to post-conflict activities like reconstruction and institution building, is that these long-term measures can give a substantial contribution to preventing the reoccurrence of the conflict in those countries that have already experienced conflict at least once and therefore, they have high probabilities to relapse into violence, if the structural causes that led to the eruption of the conflict are not effectively addressed.

3.2 Why a Culture of Prevention Ought to be Preferred to a Culture of Reaction

According to the scholar A. Ackermann, interests in conflict prevention theory and practice, and the literature on this subject, blossomed throughout the 1990s. After twenty year, the interest in developing effective conflict prevention practices "is motivated not only by moral and legal considerations, but above all by cost-benefits analyses. Managing conflicts after they have escalated into violence is much more costly, difficult and risky[19]". In this passage, with the expression "legal considerations", L. Reychler, author of "*Democratic Peacebuilding and Conflict Prevention*", refers to the fact that not only each external intervention in a sovereign country without Security Council's approval - even though aimed to stop an internal conflict - represents a violation of the prohibition of the use of armed force and, at the same time, a form of interference in the internal affairs of another sovereign state, but also to the fact that during violent armed conflicts, many international crimes such as war crimes[20], genocide and crimes against humanity are committed.

Hhumanitarian intervention represents a threat of the cardinal principles of the international law, and namely, of the principle of the sovereignty of the state, the equality among sovereign states and the right to self-determination.

Many concepts, like the traditional notion of sovereignty, are obsolete and in conflict with some of the new emerging principles of the international law, such as the "erga omnes obligations[21]", whose objects[22] are values recognised by the international community as a whole.

From a moral and human perspective, conflict prevention ought to be preferred to conflict management and resolution. This view is supported referring by the Former Secretary General K. Annan in the first paragraph of his report titled "*Prevention of Armed Conflict* (June 2001)", where he considers that: "The costs of not preventing violence are enormous. The human cost of war include not only the visible and immediate –death, injury, destruction, displacement- but also the distant and indirect repercussions for families, communities, local and national institutions and economies, and neighbouring countries".

The importance of this report is related to the fact that it give voice to the will to pass from a culture of reaction, which characterised the period pursuant to the end of the Cold War and its violent civil conflicts, to a culture of prevention, aimed by the will to promote at the same time, human rights, development and human

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[19] **L. Reychler**, *Democratic Peacebuilding and Conflict Prevention*, 83, in "International Law: Theory and Practice", edited by K. Wellens, Martinus Nijhoff Publishers, The Hague/Boston/London, 1998

[20] "War crimes, if they are detrimental to the persons protected during an internal armed conflict, are:
  i)   "acts of violence against the life and the integrity of the person, particularly all the forms of Homicide, mutilations, cruel treatment and torture;
  ii)   "to violate the personal dignity, particularly humiliating and degrading treatments;
  iii)   "to take hostages";
  iv)   "to pass and to execute judgements without a previous trial, before a regularly constituted tribunal that offers all the judiciary guarantees generally recognised as indispensable". Cf: Natalino Ronzitti, Diritto Internazionale dei Conflitti Armati, p. 328.

[21] **P. Picone**, *Interventi delle Nazioni Unite e Diritto Internazionale*, Cedam, 1995, p. 517.

[22] See **G. Palmisano**, *Directed Conciliation in a Conflict Prevention Perspective, Studi di diritto internazionale in onore di Gaetano Arangio-Ruiz* , vol. II, Napoli, Editoriale Scientifica, 2004 (pp. 1095-1127) p. 1103:
"…values such as respect for basic human rights, the right to existence and to an identity for peoples and minorities, or even – according to some – the rights of peoples to democratic governance, seem nowadays to be considered of the 'international community as a whole', in the sense that they are object of erga omnes obligations imposed by rules of general international law".

security. Among the most serious consequences of violent international and internal armed conflicts are large scale human suffering and destructive violence. Experts in conflict prevention practices argue the need a conflict impact assessment in terms of humanitarian, social, cultural, psychological and spiritual costs.

Conflict prevention represents a better option than conflict management and resolution on the basis of financial considerations as well: armed conflict require huge economic and material costs and the waste of resources[23]. Peacekeeping operations have been overused in the last twenty years. As to January 2008, twenty peacekeeping operations were undertaken all over the world, staffed with around 130.000 people. According to a recent article published in 2007 by BBC, each year 18 billion of dollars are spent in peacekeeping operations and it is not clear how much financial resources are devoted to conflict prevention. However, according to the scholar K. Clements: "…preventive diplomacy and conflict prevention programmes of most wealthy states (with some notable European exceptions) receive little public or political recognition and have been relatively deprived of funds[24]".

While assessing the costs of conflict, we should consider not only the costs of destructive violence and peacekeeping operations, but also those implied by post-conflict peace-building efforts. Conflict prevention is more convenient than conflict management and resolution also for international considerations: there is a growing recognition of the fact that conflict represents a threat for international stability: "There is a tendency for conflicts to spill over borders and become regional[25]". However, even though the conflict remains confined within the borders of the state involved, its prevention ought to be preferred to its resolution, since armed violent conflict prevents the opportunity to create a positive environment for the socio-economic development of the country involved.

Finally, in most cases conflict resolution implies the recourse to coercive measures, such as military interventions approved by the Security Council, which not always are effective in terms of civilian protection, often are realised outside the system of multilateral cooperation and represent a settlement of the situation that does not come from within the country involved in the conflict, but is imposed from the outside (and in this sense violate the right of self-determination). Humanitarian intervention migh imply heavy costs not only for the citizens of the target state, but for the intervenors and the international community as well. The risk of new forms of imperialism and the use of military force for the promotion of political, economic and geo-strategic interests is always inherent in humanitarian interventions[26].

In his work on "*The Causes and Prevention of Violent Conflict*", the political scientist K. P. Clements has explained that: "The main regions of current and prospective intrastate conflicts are Sub-Saharan Africa, the former Soviet Union, the Balkans and parts of Asia. In the Middle East, the Arab-Israeli conflict continues, as

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[23] "War destroys infrastructure, or diverts its use for military purposes. Education and health services suffer. Conflict disrupts normal economic activities and plunders natural resources". See: **S. Gruzd**, *Peace, Security and the African Peer Review Mechanism. Are the tools up to the tasks?*, African Security review 16.3, Institute for Security Studies, p. 2.
[24] **K. P. Clements**, 2006, 15.
[25] **K. P. Clements**, 2006, 6.
[26] In the book entitled "*Reading Humanitarian Intervention. Human Rights and the Use of Force in International Law*"(Cambridge University Press, 2003), Prof. **A. Orford**, tries to show that it is not true that humanitarian intervention allows a progress from the irrational, tribal, pre-modern world of the failed states to civilized states in order to promote freedom, human rights' respect and democracy in such states, but it should be seen as a part of the history of global imperialism.

do the wars in Iraq and Afghanistan. Serious intrastate violence occurs in North Africa, especially Algeria. There is a clear African Crisis Zone and a Central Asian Crisis Zone. Elsewhere specific countries, such as Burma, Colombia, Nepal, Sri Lanka, Indonesia, the Philippines plus a number of microstates in the South West Pacific are also in conflict…There is a growing internal unrest and cross-border violence in Central Asia. Three strategic countries in the region, Uzbekistan, Tajikistan and Kyrgyzstan, are plagued by a host of internal political and security problems, aggravated by poor and deteriorating economic and social conditions…Enlargement of the European Union could lead to destabilising effects in the neighbouring regions, such as south-eastern Europe, the former Soviet Union, Turkey and North Africa…[27]"

According to many political scientists, most conflict occurred after the end of the post Cold war era, were internal conflicts: "Many of the major international conflicts appear to be, at least at the beginning, non inter-State disputes but mere internal crisis, or intra-State conflicts[28]". Therefore, it seems necessary a shift of the focus from the need to prevent inter-States armed conflicts to startegies aimed at preventing intra-State armed conflicts.

However, as Prof. N. Ronzitti has highlighted: "International law is more equipped for mechanisms aimed at the prevention of international conflicts (*conflicts between states*[29]) than for mechanisms to be used to prevent internal violence[30]". Prevention of internal conflicts requires engaging with "internal political and social dynamics[31]". Sometimes, an internal armed conflict can prompt the involvement of other states and then, it is possible that intra-states conflicts escalate into violent international conflict. This happens when: "…the violent and repressive conduct by a state, although 'internally' directed (concerning the governance of its territorial community), is contested by one or more other States, thereby giving rise to a true inter-State dispute likely to escalate into violent international conflict[32]". Indeed, for example, also the article 1.1 of the United Nations Charter, provides for amicable settlement of international disputes, rather than for an adjustment of the internal ones[33]. The growing recognition of the importance of conflict prevention derives from the fact that conflict prevention practices are strictly related with the maintenance of international peace and security[34], which represents one of the most crucial issues in the domain of the international law.

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[27] **K. P. Clements**, *The Causes and Prevention of Violent Conflict*, Chapter 2 pp. 3-20 in Ustinia Dolgopol and Judith Gardam (Eds) 2006 The Challenge of Conflict: International Law Responds Leiden and Boston Martinus Nijhoff Publishers, p. 6.

[28] **G. Palmisano**, *Directed Conciliation in a Conflict Prevention Perspective*, p. 1102.

[29] The cursive is mine.

[30] **N. Ronzitti**, *Peaceful settlement of disputes a san instrument for conflict prevention*", p. 117.

[31] **O. P. Lefkon**, *Culture Shock: Obstacles to Bringing Conflict Prevention under the Wing of UN Development . . . and vice versa*, New York University Journal of International Law and Politics, Spring 2003, p. 4.

[32] **G. Palmisano**, 2004, (pp. 1095-1127) p. 1103.

[33] **G. Palmisano**, 2004, (pp. 1095-1127), p. 1104:
"According to article 1.1 of the Charter, the basic purpose of the UN is to maintain international peace and security, and to that end: to bring about by peaceful means, and in conformity with the principle of justice and international law, adjustment or settlement of international disputes which might lead to a breach of the peace".

[34] The Security Council resolution 1366 of 30 August 2001 expressed the Security Council "determination to pursue the objective of prevention of armed conflict as an integral part of its primary responsibility for the maintenance of international peace and security". See: Security Council Resolution of 30 August 2001, paragraphs I and II.

3.3 Structural and Operational Prevention Measures

Introduction

This paragraph is aimed at analysing the meaning of the idea of conflict prevention and its main aspects: structural (long-term preventive practices, "deep prevention aimed at eliminating the underlying causes of conflict[35]") and operational (short-term preventive practices, "light prevention aimed at facing the direct or proximate causes of conflict[36]") prevention.

We shall also retrace the original historical partial overlapping of the concept of conflict prevention with the concepts of peace making[37] and preventive diplomacy. We shall illustrate the contemporary perspective on conflict prevention: its evolution to include structural preventive measures aimed at addressing the root causes of conflict.

Conflict prevention', which can be defined as "political, economic or military actions taken by third parties to keep inter or intra-state tensions and disputes from escalating into violence[38]", is to prevent armed conflict.

"An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups within a State". (A.P. V. Rogers, *Law on the battlefield*, Manchester University Press, 2004, p. 218 and N. Ronzitti, I conflitti armati non internazionali, 320).

In the aftermath of the end of the Cold War era, the idea of conflict prevention has been subject to an evolution.

Particularly, the negative experiences of the disintegration of the Former Yugoslavia and the failure to prevent genocide in Rwanda led the international community to understand the importance of preventing violent forms of conflict, through the adoption on the part of the international community of both, short and long-term preventive strategies.

The evolution of the concept of conflict prevention was characterised by the fact that while the concept elaborated during the nineties included only operational preventive measures, the concept articulated during the last decade encompasses also structural preventive strategies.

The original articulation of the idea of conflict prevention was characterised by an overlapping with the the concept of preventive diplomacy, which includes only short-term preventive practices, aimed at avoiding the potential escalation of disputes into violent conflicts.

The idea of preventive diplomacy, like the concept of conflict prevention, has been subjected to a gradual evolution.

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[35] **A. Ackermann**, 2003, 341.

[36] **A. Ackermann**, *Ibidem.*

[37] **L. Reychler**, *Democratic Peacebuilding and Conflict Prevention*, in International Law: Theory and Practice, edited by Karel Wellens, Martinus Nijhoff Publishers, The Hague/Boston/London, 1998, p. 84: "Peace making concerns the use of peaceful means, such as consultation, negotiation, inquiry, mediation and conciliation, to transform a conflict in a peaceful and constructive way. The main aim of peace making is to achieve agreement(s), among the parties involved, about the ways and means to realize their preferred peace or world order".

[38] **R. Dwan**, *Conflict Prevention*, SIPRI yearbook, 2002, pp. 97-123 (but the quotation is from p. 97).

In a recent article on conflict prevention, the scholar A. Ackermann explains that the term "preventive diplomacy", has been used for the first time during the sixties, with reference to the effort of "keeping regional conflicts localized as to prevent their violent spill over in the superpower arena". (A. Ackermann, 2003, 340).

According to the scholar P. Lefkon, preventive diplomacy consists essentially in United Nations' fact finding missions and Secretary General's good offices[39].

A new definition of preventive diplomacy was also proposed by the former Secretary General B. B. Ghali in 1992. In this new definition, preventive diplomacy is conceived as "a policy aimed at preventing conflicts from emerging, and also from escalating into violence[40]".

After the end of the nineties, characterised by a decline of violent conflicts and ethnic wars, but, at the same time, by the persistence of the remaining conflicts[41], the idea of conflict prevention started to include structural preventive strategies as well, aimed at facing the root causes of conflicts by adopting long- term preventive measures. The scholar M. Lund proposed one of the most comprehensive definitions of conflict prevention ever articulated within the conflict prevention literature. According to G. Palmisano, Lund's definition of conflict prevention is characterised by a partial overlapping with the concept of "preventive diplomacy" conceived as a policy that "seeks to resolve disputes before violence breaks out[42]". In the report entitled *Preventing Deadly Conflicts,* M. Lund explains that the primary objective of conflict prevention is to reduce tensions and to block violent acts and then, is aimed at preventing "…existing disputes from escalating into conflicts or at bringing hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of United Nations'[43]". The same M. Lund provides a definition of preventive diplomacy as an "action taken in vulnerable places and times to avoid the threat or use of armed force and related forms of coercion by states or groups to settle the political disputes that can arise from destabilising effects of economic, social, political and international change[44]". Structural prevention, when it is referred to the more general processes of democratization or economic development that are peace-building activities, characterise the peace-building process, is a concept too comprehensive. In the book titled *Preventing Violent Conflict,* M. Lund makes clear that "conflict prevention refers to actions, policies or institutions[45] to keep emerging internal or inter-state disputes in specific vulnerable places and periods from escalating into

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[39] **O. P. Lefkon**, *Culture Shock: Obstacles to Bringing Conflict Prevention under the Wing of UN Development . . . and vice versa*, New York University Journal of International Law and Politics, Spring 2003, p.5.

[40] **A. Ackermann**, 2003, 340.

[41] "The nature of violent conflicts has changed in subtle ways since the end of the cold war. The proxy conflicts of that time have by and large been resolved. But the conflict that remain are proving more persistent and resistant to solution". See: **K. P. Clements**, 2006, 6.

[42] **B.B. Ghali**, *An Agenda for Peace*, paragraph 21. (Paragraphs from 20 to 59 are devoted to preventive diplomacy, peacemaking, peace-keeping and post-conflict peace-building).

[43] **G. Palmisano**, 2004, 1099.

[44] **M. S. Lund**, 1996, 37.

[45] See: **G. Palmisano**, 2004, 1097: "The African States have also undertaken some noteworthy initiatives to put into place institutional mechanisms for the prevention of violent conflicts. An example is the establishment of the Mechanism for Conflict Prevention, Management and Resolution", by the Conference of heads of State and Government of the Organisation of African Unity at the Cairo Summit of June 1993"…"Recently, conflict prevention has also come to the attention of the European Union…State Members of the European Union stated that "conflict prevention is one of the main objectives of the Union's external relations and should be integrated in all its relevant aspects".

significant, ongoing violence, while simultaneously promoting opportunities and movement wherever possible towards non-violent reconciliation of basic clashing interests. Prevention focuses on changes that are needed and possible in the medium term, rather than, on the one hand, attempting wholesale structural socioeconomic and political transformations to improve the human condition, which are achievable only in the long run, or on the other hand, diplomatic or military efforts to merely manage a crisis or end a raging conflict in the short term[46]". M. Lund's concept of conflict prevention is focused on "preventive diplomacy" and included a limited set of diplomatic or military initiatives. But after the disintegration of the Former Yugoslavia and the genocide in Rwanda, the concept of conflict prevention has been broadened by academic authors to encompass structural interventions as well, like institution building and economic development.

In the last decade political scientists have recognised that the idea of conflict prevention should include only the preventive measures to be adopted before a conflict has escalated, and should not include the stages pursuant to the escalation of the violence.

M. Lund proposes to limit conflict prevention pratices to the pre-conflict stage, in which violence has not taken place yet, but there are tensions among different parties in the society. The measures adopted in this stage should be aimed at reducing these tensions.

Other scholars however, argue that conflict prevention should include also measures that can be adopted also after the outbreak of the violence. These measures should be aimed at containing or reducing the intensity and the duration of the conflict and its geographical spill over and at controlling the damaged caused by the conflict.

Some authors propose also to strech the idea of conflict prevention to include measures to be adopted during the post-conflict phase. These measures should be aimed at building a durable peace and a positive environment, in order to prevent the reoccurrence of the conflict[47].

Therefore it is possible to distinguish among different ideas of conflict prevention on the basis of the purpose of the preventive measures and the stage of the conflict in which the preventive action is undertaken.

"The overall aim of conflict prevention is to make the world safe from conflicts, by preventing unnecessary destruction and creating conditions for a sustainable peace[48]". In the 2001 Report of the Secretary General on "*Prevention of Armed Conflict*", "conflict prevention": "…encompasses both short-term and long-term political, diplomatic, humanitarian, human rights, developmental, institutional, and other measures taken by the international community, in cooperation with national and regional actors".

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[46] **Lund M. S**., *Preventing Violent Conflict: Progress and Shortfall*, in Contributing to Preventive Action, ed. by Cross P., CPN yearbook, 1997/1998, Ebenhausen, 1998, p. 21.
[47] See: **L. Reychler**, 1998, 83.
[48] **L. Reychler**, in his article on *Democratic Peacebuilding and Conflict Prevention* (1998) has provided an operational definition of sustainable peace:
"A sustainable peace may be characterised by the following:
- absence of physical violence,
- elimination of unacceptable political, economic and cultural discrimination,
- self-sufficiency
- enhancement of constructive conflict transformation
- internal and external legitimacy or approval".

In the 2001 ICISS report, conflict prevention is a "responsibility of sovereign states, and the communities and institutions within them" and encompasses "a firm national commitment to ensuring fair treatment and fair opportunities for all citizen…Efforts to ensure accountability and good governance, protect human rights, protect social and economic development and ensure a fair distribution of resources …[49]".

With respect to the problem of comprehensiveness, the idea of conflict prevention has been stretched to include both, operational and structural preventive measures, but at the same time, the idea of conflict prevention has been limited by some authors to the pre-conflict phase.

This restricted idea of conflict prevention is dominant in the realm of conflict prevention theory, but in the practice of the United Nations, conflict prevention measures are adopted especially during the post-conflict stage. This is also reflected by the mandate of the newly established peace-building commission.

In the paper titled "*Conflict Prevention for a New Century*[50]", professor A. Chayes has highlighted that the current goals of international policy, which are democratisation, economic development and more precisely, "reconstructing economies in a more market oriented dimension" and the wider recognition of the human rights (the claims of groups rights and the right to self determination) are in tension and not easily consistent with the goal of conflict prevention. Indeed, democratisation, which can be defined as "the application of Western democratic forms in countries without democratic institutions or traditions[51]", is a mode of mobilization of ethnic and other kinds of conflicts. With respect to the objective of reconstructing economies in a more market directed dimension, the problems is that there are countries that do not have the infrastructures to adapt to market economies, and this can lead to the failure to supply basic human needs and to extremely disproportionate wealth accumulations by some, which may represent the basis for conflict and mobilisation. "By itself, development risks causing more problems than it hopes to solve. The social changes accompanying rapid economic development often produce inequality, instability, and political tension. Traditional social structures are undermined, while political reform lags behind economic and social change[52]". Finally, the wider recognition of human rights is itself a cause of the conflicts we seek to prevent, which are characterised by the lack of respect or protection of human rights.

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[49] **ICISS**, 2001,19.
[50] **G. E. Morris**, *Conflict Prevention for a new Century*, American Society of International Law Proceeding, April 6-9 1994, particularly remarks by Abram Chayes.
[51] *Ibidem.*
[52] **O. P. Lefkon**, 2003, 8.

3.4 A Comprehensive Understanding of the Structural and Proximate Causes of Conflict as a Requirement of an Effective Conflict Prevention Strategy.

A fundamental requirement of an effective conflict prevention strategy is conflict analysis, which encompasses the identification of the proximate and structural causes of conflict.

Among the factors that the literature on conflict prevention has identified as structural sources of conflict, there is the perception of the inequality in the allocation of power, resources and privileges. Indeed in order to prevent conflicts effectively it would be necessary that the governments put their effort in trying to change the perception of unfairness in the distribution of benefits among different identity groups (P. Lefkon).

The political scientist K. Clements, has identified the "deep horizontal inequalities" as one of the main factors that can lead to conflict. With the expression "deep horizontal inequality", he refers to: "…marginalisation and exclusion of groups from economic, social and political benefits on the basis of the class, identity and ethnicity[53]".

The concept of horizontal (inter-ethnic) inequality considered as "distributional disparity in the economic, social and political conditions of groups that differ from a cultural or a geographic point of view" is also central to grievance theory, which is one of the main explanations invoked to explain the outbreak of violent internal armed conflicts.

However, grievance theory alone is not sufficient to explain the beginning or the persistence of a conflict. It is necessary to consider also the rate of economic growth and the weakness of the state institutions, which often do not have the necessary powers and resources to accomplish their protection mandate effectively.

In order to increase the explanatory power of the grievance theory, political scientists combine grievance explanation with greed theory, which can be defined as "the elite competition over valuable natural resources rents[54]".

One of the most important root causes of conflict, identified by the literature on conflict prevention, is 'political exclusion'.

The term 'political exclusion' refers to the impossibility for individuals or communities to participate in elections and be able to elect their own representatives.

However, in ethnically divided countries such as Rwanda or Burundi, systems based on the majority do not guarantee the stability of the country, because the result of the elections implies necessarily the exclusion of several ethnic groups.

In such kind of countries it would be necessary to introduce proportional representation systems, which better reflect and represent the composition of the society in ethnic terms. From one side, it is necessary a sensitivity to ethnic tensions, from the other side, it is necessary to understand the nature of opposition politics within governments.

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[53] **K. Clements**, 2006, 10.
[54] **S. Mansoob Murshed & Mohammad Zulfan Tadjoeddin**, *Reappraising the Greed and Grievance Explanations for Violent Internal Conflict,* 3.

Other root causes of conflicts, which have been identified by the literature on conflict prevention, are the unfair structure of international political and economic relations (for example the fact that the economies of African countries are excluded from the global market), the legacy of "apartheid, slavery and colonialism" (in African countries), conditions of extreme poverty due to persistent inequity in accessing socio-economic gains, the proliferation of small arms, climate changes (in spite of the fact that the link between climate change and the likelihood of violent conflicts needs to be further explored).

"The proximate causes of conflict are many…Michael Brown posits four types of underlying causes: 1) structural factors (weak states, intrastate security concerns, and ethnic geography),

2) political factors (discriminatory political institutions, exclusionary national ideologies, intergroup politics, and elite politics),

3) economic/social factors (economic problems, discriminatory economic systems, and modernization), and

4) cultural/perceptual factors (patterns of cultural discrimination and problematic group histories)[55]".

With respect to the structural factors, in order the explain the insurgence of armed conflicts, it is very important to refer to the way in which countries are governed, in matters such as ensuring the respect of fundamental human rights. The weakness of state institution can lead to an institutional breakdown or to a failure of the social contract theory between the rulers and the ruled. An important proximate cause of conflict is represented by the internally displaced people or by the refugee flows, which often spill over the borders of the country involved in the conflict and compromise the stability of neighbouring countries.

With respect to the political factors, a proximate cause of conflict is represented by rapid "political changes" (such as the collapse of the government or of the central authority) or by the "elite manipulation of group identities[56]". Because of the "elite manipulation of group identities", even ethnic and religious tensions can be regarded as political factors. With respect to the economic factors, the scholars of conflict prevention (P. Lefkon himself) refers to "rapid changes in the economy, poverty, land scarcity, overpopulation, economic decline[57]", competition on natural resources, such as oil and diamonds, poor management of natural resources and disputes over natural resources, underdevelopment, debt burden, famine, military expenditures. In order to try to identify the root causes of conflict, it is necessary to take into account the concept of power, in its military, economic and political dimensions.

K. Clements, in his work titled *The Causes and Prevention of Violent Conflict*, explains that military power:

"…in recent years, has been used to promote American political interests. Where these happen to coincide with global interests there is a commonality of purpose where they do not the current US administration is willing to proceed unilaterally[58]".

K. Clements has underlined that both military and economic powers can be used in two opposite directions. The US hegemonic military power can be used both to destabilise, as it happened in the case of Iraq, or on the contrary, to stabilise.

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[55] **O. P. Lefkon**, 2003, 4.
[56] *Ibidem*.
[57] *Ibidem*.
[58] **K. Clements**, 2006, 7.

Economic power, which is concentrated in United States, Europe, Japan, China and India, can be used to ensure the long-term structural prevention of conflict or on the contrary: "to advance their own self interests on the backs of the rest of the world". Also the economic power therefore, can become a source of instability for the countries that do not have economic power. Kevin Clements explains that there is also another form of power, which is called political "persuasive" power and it is represented by the fact that: "Western values dominate most multilateral institutions and western states exercise disproportionate influence within them. This is one reason why many non-Western actors feel alienated and excluded[59]".

According to K. Clements, political persuasive power is a prerogative of Western countries including Japan, US and Europe (and excluding China and India) and also development assistance can be regarded as a way to manifest such a power. But development assistance can be conceived as a mean of conflict prevention in the sense that, since one of the proximate causes of conflict is the horizontal unequal distribution among different groups of political, social and economic benefits, it would be necessary to elaborate development programs based on the "equitable allocation of assistance among groups[60]".

Super economic powers decided, on the basis of their geo-strategic and economic interests, which countries assist in the economic, political, cultural, social and technological development process and which countries marginalise and exclude from development assistance and humanitarian intervention.

The literature on conflict prevention blossomed throughout the nineties, has identified economic, political and ethnic causes of conflict.

But, as we have previously anticipated, also the relation between the goal of the global agenda of protecting human rights and the goal of preventing conflicts can be contradictory.

At the same time the goal of promoting the process of democratisation, and especially the promotion of a majoritarian democracy in ethnically divided countries, can be inconsistent with the goal of promoting conflict prevention. With respect to the economic sources of conflict, K. Clements argues that the relation between war and poverty is circular, in the sense that: "War causes poverty, but also poverty increases the likelihood of civil war[61]". There is also a relation of proportionality between the human development index of the country and its likelihood to go into war. However, this proportionality is not linear and it is a function of the dependence of the country on natural resources export (rents).

Countries with low human development index (especially if they are rich in natural resources and dependent on the rents coming from the exportation of natural resources) are conflict-prone countries.

K. Clements explains the "conflict trap" phenomenon: "…once countries have experienced a conflict they double their chance to having another conflict within a 5-10 year period. If they have experienced two conflicts their chances of another are quadrupled[62]".

With respect to the political causes of conflict, according to the democratic peace theory:

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[59] **K. Clements**, 2006, 7.
[60] **O. P. Lefkon**, 2003, 4.
[61] **K. Clements**, 2006, 8.
[62] *Ibidem*.

"Violent conflicts tend to occur more frequently within autocratic and non-democratic political systems or within systems that are in transition[63]".

In fact it seems than to be a democracy is not a sufficient condition to create a sustainable peace, but is also necessary that this democracy presents some features of decency.

The expert in conflict prevention L. Reychler has identified the conditions that are necessary to create an environment characterised by security and sustainable peace in: "the compatibility of political and economic values, the democratisation of the member states, communication and mobility, economic growth, political efficacy, constructive management of ethnic and nationalist conflicts, successful arms control, and the perception of common dangers or concerns about the rest of the world[64]".

3.5 The main actors involved in conflict prevention policies and practices: States, international, regional and non governmental organisations and conflict prevention activities: early warning, negotiation, mediation and conciliation.

Actors:

The actors that should be involved in the conflict prevention process are States and international, regional and non governmental organisations.

Historically, the main preventive actor has been the United Nations. From the establishment of the United Nations to the end of the nineties, United Nations' conflict prevention strategies included essentially only operational measures such as preventive diplomacy, peacekeeping missions, the monitoring of the electoral process and different kind of sanctions. But the 2001 report on Conflict Prevention of Armed Conflict issued by Kofi Annan, marked a shift from a culture of reaction to a culture of prevention, characterised by the inclusion in the concept of conflict prevention of structural preventive measures, which are "strategies to address the root causes of conflict[65]".

Within UN Secretariat: "The Department of Political Affairs can provides (political) early warning of impending conflicts and analyse possibilities for preventive action[66]".

The political early warning system in the Department of Political Affairs is aimed at facilitating the effort of the Secretary General at preventing deadly conflicts through the monitoring the political climate[67] and the developments in the field of security and human rights of the conflict prone-countries of the world (such as the South Asia, the Balkans and the Horn of Africa), also trying to becoming familiar with the history of those countries. The gathering and the analysis of the information (that in the most part of the cases, are not first hand information) is carried out by the desk officer of the regional divisions of the Department of Political Affairs. However, the political functions of these officers include not only early warning activities but also the implementation of the preventive measures in order to prevent the gap between early warning and early

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[63] **K. Clements**, 2006, 9.
[64] **L. Reychler**, 2004.
[65] **O. P. Lefkon**, 2003, 3.
[66] **G. Palmisano**, 2004, 1096.
[67] To monitor the political climate of a country requires to develop indicators to predict when a situation might lead to conflict. It is important that the information at the disposal of the desk officer of the Department of Political Affair is quantitative, rather than qualitative.

action. This early action consists in dispatching fact finding missions in countries after the early warning stage and during nascent stages of conflict.

"…also in the recent "Millennium Declaration" heads of States and Governments have solemnly affirmed their determination "to make the United nations more effective in maintaining peace and security by giving it the resources and tools it needs for conflict prevention…[68]".

The World Summit Outcome Document, which has been published in 2005, has recognised the growing role of regional, sub-regional and non governmental organisations (such as Human Rights Watch or International Crisis Group) in the conflict prevention process.

Thirteen years before (1992): "In An Agenda for Peace, the Secretary General Boutros Boutros-Ghali pointed out that not only could regional actors "lighten the burden of the [Security] Council," but also "as a matter of decentralization, delegation, and cooperation with United Nations efforts," their involvement could "contribute to a deeper sense of participation, consensus, and democratization in international affairs[69]".

The literature on conflict prevention stresses the necessity to support the civil society in order that civil society becomes more efficient in supporting the democratic process.

Regional, sub-regional and non governmental organisations have a more extensive knowledge of the situation on the ground than international institutions such as United Nations can have.

To be "closer to the scene of a potential conflict" generally means also to have "greater access to the major actors and problems" and to have "greater cultural and political sensitivity, but especially, it means that "they (*regional organisations*[70]) may react more quickly (*than global organisations*[71])[72]".

The scholar Paul Martin, in his paper titled Regional Efforts at Preventive Measures: Four Case Studies on the Development of Conflict-Prevention Capabilities, has demonstrated that:

"…regional organisations posses a number of advantages over the global organisations…However, none of the regional organizations has the United Nations' level of resources, institutional capacity, prestige, or experience in dealing with threats to international peace and security[73]".

Some of the advantages presented by regional organisations are related to financial considerations. Indeed, as Paul Martin has observed: "In some cases they (regional organisations) will have existing resources, and thus will not have to wait for voluntary contributions from more or less interested Member States.

Even more important than financial considerations: "…regional organizations may have a greater stake in the outcome, which, while it often pre-determines the nature of their intervention, makes them somewhat more likely to intervene than the United Nations[74]".

P. Martin has pointed out that the different regional organisations have also different level of capacity to prevent conflict. The level of capacity is a function of their authority and their availability of military and

[68] **G. Palmisano**, 2004, 1096.
[69] **P. Martin**, 1998, 1.
[70] The cursive is of the author.
[71] The cursive is of the author.
[72] **P. Martin**, 1998, 1.
[73] **P. Martin**, 1998, 20.
[74] **P. Martin**, 1998, 1

financial resources. Furthermore, as M. Lund - one of the main and authoritative contemporary experts on conflict prevention - has observed: "Tools for managing a conflict in one region are not necessarily applicable to other regions[75]". On the other side, according to A. Ackermann "There is agreement *(in the contemporary literature on conflict prevention theory and practice*[76]*)* that effective prevention must be country context-specific[77]". In this passage, A. Ackermann seems to suggest that, since an effective prevention requires an extensive knowledge of the details of the conflict, and since national and local non-governmental organisations are closer to the ground than regional and sub-regional organisations can be, we can assume that non governmental organisations are more suitable to take practical preventive action than regional and sub-regional organisations, which the most part of the time, are too far from the action.

This may help to explain why so often international institutions were unable to give effective and timely answers to humanitarian crises situations during the nineties.

The most recent conflicts showed that also regional organisations such as the African Union were unable to prevent the escalation of intrastate tensions into significant violence and the use of armed force both within the Darfur region of the Sudan.

3.6 Early Warning and Early Action as Conflict Prevention Tools

The 2001 Report prepared by the International Commission on Intervention and State Sovereignty (ICISS) highlights that the responsibility to prevent consists in facing the root/structural causes of conflict, in developing an efficient early warning system, which is the identification of potential conflicts at an early stage (through the recognition of human rights violations or the worsening of the humanitarian conditions on the grounds, which are both signs of potential conflict), and the capacity to give a prompt answer (*early action*[78]) to the situations of humanitarian crises, before they degenerated into mass atrocities[79].

According to the scholar P. Lefkon: "An effective early warning system requires (1) collection of information, (2) analysis of information, (3) transformation of analysis into policy recommendations, and (4) delivery of these recommendations to those with authority to take preventive action[80]".

However, A. Ackermann observed that a global and systematic early warning system aimed at identifying potential armed conflicts has not been created yet[81].

P. Lefkon, has identified the obstacles to a meaningful early warning system in the: "…inability to process the information and generate meaningful policy (Philip Lefkon, p.16)".

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[75] **M. Lund**, 2000, p. 13.
[76] The cursive is mine.
[77] **A. Ackermann**, 2003, 343.
[78] The cursive is mine.
[79] **ICCIS**, 2001, 19-27.
[80] **O. P. Lefkon**, 2003.
[81] See: **A. Ackermann**, 2003, 342: "The obstacles to early warning are still multiple and focus on questions as to who does the warning and who is to be warned and what kind of warning is more useful. Moreover, early warning is often undertaken in an ad hoc fashion because of the absence of any global or systematic early-warning system".

However, according to the scholar L. Reychler: "… there is a tendency to focus most attention on the hard-tangible-quantifiable variables[82] and to overlook the soft variables which influence the conflict dynamics, such as perceptions[83], expectations, styles of analysis, preferred world orders and strategic approaches.

A second problem is the predominant attention given to the anticipation and the forecasting of threats, dangers or worse-case developments. A disproportionately low amount of attention is dedicating to alerting decision-makers as to the existence of opportunities to intervene proactively. As a consequence most wars could be analysed as histories of missed opportunities.

The third problem concerns the assessment of costs and benefits of alternative policy options. Cost-benefit analyses tend to be very rudimentary, and neglect several important cost factors. Finally, if policy impact assessment are made, they tend to be of a uni-dimensional nature. Not enough attention is paid to assessing the impact of conflict prevention measures on the domains, levels or time-frames.[84]"

Early warning encompasses collecting and analysing information (calling the attention on potential conflicts, for example in the Horn of Africa) to determine when a situation can lead to armed conflict.

A part from the problems related to the collection and analysis of the information, a limit to develop an effective early warning system is represented by the concerns of some governments with respect to early warning of non-international conflicts, since the involvement of the UN agencies in conflict prevention (that consists in the preparation of the political reporting on the humanitarian situation of the host government) might imply a violation of the two principles of the state sovereignty and non-intervention in the internal affairs (of a sovereign state) and then put at the risk the relationship between member states, UN agencies and aid workers involved in humanitarian or development assistance.

In order to avoid the risk to reach a huge number of losses and disperses among the civilians living in the countries that are experiencing humanitarian crises or violent conflicts, "early action", which can be defined as "a timely and prompt answer to humanitarian crises or to violent armed conflicts", is crucially important.

According to the SIPRI, the problem at stake is not only to make more effective the early warning system, but also to overcome the gap that exists between early warning and early action to prevent violent conflict[85].

To reduce the gap between early warning and early response means that the actors involved in conflict prevention are able to respond immediately to signs of incipient violence.

What happened in Darfur and what is currently happening in Kenya, though, seems to proof that United Nations and African Union institutions do not have acquired yet the capacity to respond proactively[86] to the threat of conflict[87].

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[82] These hard tangible quantifiable variables are: "drug trafficking; organised crime; economic inequality and wealth distribution; illicit arms trade; ethnic, religious and other diversities; and refugees and internally displaced persons". See: **S. Gruzd**, *Peace, security and the African Peer Review Mechanism: Are the tools up to the task?*, p. 4.
[83] For example, "the perceived unfairness in allocating power and privilege underlies many African conflicts". (S. Gruzd, 6).
[84] **L. Reychler**, 1998, 84.
[85] **SIPRI**, *Preventing Violent Conflict, The Search for Political Will, Strategies and Effective Tools*, Report of the Krusenberg Seminar, organized by the Swedish Ministry for Foreign Affairs, the Stockholm International Peace Research Institute and the Swedish Institute of International Affairs, 19–20 June 2000-September 2000, p. 7.
[86] "Pro-active conflict prevention refers to efforts made before a conflict has escalated". See, **L. Reychler**, 2004, 83.
[87] **House of Commons**, International Development Committee, first report of session 2004/05, 17.

It seems that regional organisations are encountering the same limits that international organisations faced in conflict prevention and management practices, throughout the nineties.

Indeed, the AU-UN hybrid force intervened after four years from the onset of the conflict, when about 200.000 people have already died and when the conflict was already spread into the borders of Chad, compromising its already weak political stability[88].

3.7 The Impact of Humanitarian Interventions carried out throughout the nineties in Somalia, Bosnia and Kosovo

This paragraph is aimed to prove that humanitarian intervention occurred during the nineties had serious impacts for the local population, for the international community and for international and regional organizations involved in the process of conflict management, resolution and post-conflict reconstruction.
The incorporation of a paragraph on the impacts of humanitarian intervention within a chapter devoted to conflict prevention theory is that the analysis of costs and benefits of humanitarian intervention might helps to make clear the urgency to move from a culture of reaction to a culture of prevention.

In order to prove the hypothesis that the success of the intervention depends on the degree of involvemnt of the local population in the post-conflict reconstruction process, it is useful to take into consideration the two cases of Somalia and Bosnia.

Interventions in Somalia and Bosnia are both instances of humanitarian intervention carried out at the beginning of the nineties.

They can be classified as "humanitarian" because in both cases, the decision to intervene was based on the consideration that the recourse to the use of force was the only way to put end to the sufference of the civilian population and was an unvoidable step to help these states to create the conditions for a durable peace and a stable political situation.

These two cases can be considered comparatively with respect to the involvment of the local population in the different phases of the conflict.

While Somalia represents an instance of failure, on the contrary, after August 1995, peacebuilding efforts started to be partially successful in Bosnia.

The failure of peacebuilding efforts in Somalia can be regarded as a consequence of the lack of local participation and cooperation with the domestic parties within the country.

Indeed the degree of involvment of the local population in Somalia remained low in all the phases of the conflict.

Conversely, the degree of local participation in Bosnia shows a considerable variation throughout the post-conflict phase.

The greater degree of local participation might be sufficient to explain why Bosnia should be regarded as a successful historical example with regard to the possibility to build a durable peace after a humanitarian intervention occurred.

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[88] **House of Commons**, 2004/05, particularly chapter: "ignoring early warning?" pp. 10, 11, 12.

With respect to the context in which the United Nations' humanitarian operations were carried out in Bosnia, firstly it is necessary to consider that Bosnia, which was one of the six Republics of the Former Socialist Federal Republic of Yugoslavia, was different from the other five because of the fact that there was not a prevalent ethnic group.

In Bosnia, indeed, in 1991, the 44% of the local population was constituted by Muslim people, the 31% was Serb and the 18% Croat, while the rest of the population was resulting from the mix of different ethnic groups.

In March 1992, almost one year after the declaration of independence of Slovenia and Croatia from Yugoslavia, which took place in June 1991, Bosnian people voted for obtaining the independence and the outcome of this event was the outbreak of a conflict between Serbian government and Bosnian Serbs.

In June 1992, the mandate of UNPROFOR was extended to include Bosnia with the aim to keep open Sarajevo airport.

Since the war was involving ferocious fightings among the main three ethnic groups living in Bosnia, the mandate of UNPROFOR was broadened with the purpose of protecting Bosnian people in six designed safe areas.

Until February 1994, all the efforts made by the United Nations to put an end to the war proven to be ineffective to provide relief in this war area.

With respect to the human costs of the humanitarian intervention in Bosnia, the United Nations High Commissioner for Refugees and the UNPROFOR lost several staff members.

The impact of UNPROFOR was negative for the international community as well, since the reputation of the United Nations' capacity in managing humanitarian crises was damaged.

In addition, the difficulties encountered by UNPROFOR troops in delivering aid to Central Bosnia, led observers to accuse the United Nations to deliberately deny their aid to Bosnia for political purposes, and namely, to force Bosnian Muslims to accept an unfavourable peace agreement.

This allegation proved to be false and the actual reason the difficulties experienced by UNPROFOR in delivering aid to Central Bosnia was rather the obstacles created by the fighting parties to humanitarian assistance.

Neverthless, the United Nations operation gave a substantive contribution to feed Bosnian people and to prevent their starvation for two winters. In this sense the mission had a positive impact for the local population.

However, the mission was only partially successful since the United Nations failed to achieve many of the objectives included in their mandate.

In 1993, only the 54% of the food estimated to be necessary to feed Bosnian people was delivered, due to the obstacles and delays provoked by the warring parties, who were harassing and sometime even killing United Nations staff members.

The fact that United Nations staff members did not have freedom of movement within Bosnia, prevent them from effectively defending Bosnian people ar risk and providing security in safe areas. For this reason,

serious human rights' violations and killing of civilians continued to be committed despite UNPROFOR presence in Bosnia.

The only partial effectiveness of United Nations mission (UNPROFOR) in delivering aid and protecting civilians was due, among the other shortfalls, to the inadequacy of the human resources employed in the mission.

Indeed, in spite of the fact that the Secretary General assessed that it would be necessary to deploy 40.000 peacekeepers to protect humanitarian convoys and civilians living in safe areas, until March 1994, only 14.000 UNPROFOR troops were deployed in Bosnia.

According to the evidences released by UNPROFOR's officials and troops engaged in the field, the failure to accomplish successfully their mandate (in terms of aid delivering and civilian protection) can be explained by referring to two main obstacles.

The first obstacle was represented by the lack of the personnel employed in the mission, the second was the lack of leadership within the UN mission.

Leadership would have been needed to provide coherent direction and strategy for the mission, to coordinate effectively military and humanitarian operations and develop a comprehensive action plan.

Although the United Nations High Commissioner for Refugees was the leading humanitarian agency and UNPROFOR was in charge of providing security, none of these two agencies had the whole authority over the mission. The lack of unitary leadership determined the incoherence of the actions to accomplish the mandate of the mission.

To remedy this lack of leadership, in May 1993 the Secretary General appointed a special representative, who had the whole authority over the mission.

In spite the appointment of the special representative of the United Nations Secretary General represented an important step towards providing the mission with the needed leadership, his appointment did not prevent the massacre committed in Srebrenica in July 1995, where seven thousands of Bosnian Muslims were killed by Serbian-Bosnian forces.

In the aftermath of the massacre, NATO aircraft forces decided to bomb Serbian positions.

The recourse to the use of force had as a result the conclusion of Dayton peace agreements at the end of 1995.

With respect to Kosovo, Kosovo is a territory of the Former Federal Republic of Yugoslavia, inhabited mostly by Albanians Muslims who have been claiming for the independence since 1996, when suddenly the situation precipitated and resulted in civil war.

The United Nations, the NATO and the OSCE were ostensibly trying to find peaceful solutions, but actually the "negotiation" of Rambouillet was used by M. Albright to persuade Europeans of the need to use force.

American Unilateralism met with the need to build a multilateral intervention under the NATO banner.

In the aftermath of Serb refusal of Rambouillet negotiations, NATO moved to the use of force and on March the 24, 1999 started a violent aircraft attack against Serb military targets.

The immediate result of the war was precisely what the mission was meant to avoid: namely the increase of the number of the refugees, ethnic cleansing, the perpetration of violence against Kosovar-Albanians.

The abandonnement by Kosovar Albanians of their territory to look for refuge in Albania and Macedonia. Kosovo became the theatre of the war between Serbs and UCK forces.

NATO- led military intervention had been carried out in violation both of the United Nations Charter and the treaty institutive of the Atlantic Charter.

In a later stage, the Security Council enacted a resolution that provided for Kosovo occupation by NATO troops under the United Nations banner until a referendum for the autonomy (not the independence) of the region.

Then, there was a difference between the United Nations resolution and NATO's purpose in the sense that while NATO (and especially the United States) wanted from the beginning the independence of Kosovo from Serbia, the United Nations' resolution was in favour of the autonomy of Kosovo from Serbia, but not supportive of its independence.

It is possible to explain the will of the United States that the United Nations legitimise NATO-led military intervention (which was already started) because the United States and the United kingdom, which were the main intervening forces within NATO military intervention, were aware of the fact a solution of force outside the multilateral framework and without the approval of the United Nations Security Council would probably turn in a failure perceived as unlawful in the eyes of the public opinion and the international community.

The intervention in Kosovo highlights the potentially paradoxical relationship between the United Nations and regional alliances such as NATO.

Indeed, despite the fact that NATO claimed the legitimacy to use force against Serbia to protect Kosovo population even without previously receiving the approval of the Security Council, on the other hand, NATO referred to the Security Council's resolutions to justify its intervention.

This proves that even the most powerful states such as the United States or the United Kingdom prefer to act with the United Nations approval rather than without it. NATO action in Kosovo thus reignited the debate over one of the central challenges facing UN peacekeepers: whether, as Kofi Annan put it, "a coalition of states" that "did not receive prompt Council authorization" should "stand aside" and allow ethnic cleansing or genocide "to unfold[89]".

NATO intervention in Kosovo posed a challenge to the Security Council primacy in issues of international peace and security. Indeed, when the Council debated NATO's use of force against Yugoslavia, the Slovenian Ambassador reminded his audience that Article 39 of the UN Charter gave the Council a "primary" but not "exclusive" role in maintaining international peace and security[90].

In contrast, Kofi Annan argued that "unless the Security Council is restored to its prominent position as the *sole source of legitimacy* on the use of force, we are on a dangerous path to anarchy". Consequently, NATO's intervention in Kosovo can be seen as heralding either a new era of positive activism by regional organizations or a "coming anarchy"[91].

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[89] N. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society*, Oxford University press, 2000, p. 294.
[90] N. Wheeler, 2000, 279.
[91] N. Wheeler, 2000, 271.

The progresses achieved in the province of Kosovo in terms of building democratic institutions and an environment conducive to economic and social development, might be explained while considering that the NATO-led military intervention carried out against Belgrade was perceived by the local population of Kosovo as supporting ethnic Albanians living in Kosovo, rather than as a hostile intervention.

The intervention against Serbia had a positive impact for the majority of ethnic Albanian population living in Kosovo. Indeed, on the one side, "NATO air strikes drove Yugoslav force out of Kosovo and hundreds of thousands of Kosovo Albanians who had fled to neighboring countries returned" (2008 United Nations Peace Operations, Year in Review, 21).

However, "reconciliation between the various communities remained elusive. In 1999, attacks on the Kosovo Serb minority drove the majority of Serbs either out of Kosovo or into largely isolated enclaves. This remains the case to this day, with the largest Kosovo-Serb-majority area in the Mitrovica region of northern Kosovo" (2008 United Nations Peace Operations, Year in Review, 21).

This proves that the impact of NATO-led intervention was positive for ethnic Kosovo Albanians majority but negative for Kosovo Serb minority and that the intervention was unable to have positive consequences for the whole Kosovo population.

On the other side, the intervention was followed by massive rebuilding of Kosovo's infrastructure, by the reconstruction and development of Kosovo's economy and by the creation of liberal institutions. Indeed, the tasks of UNMIK administration in Kosovo included "establishing Kosovo's institutions of democratic self-government and interim civil administration and its judiciary and police and overseeing its elections" (2008 United Nations Peace Operations, Year in Review, 21).

The liberal institutions that were created in Kosovo during the post-conflict phase represented the foundations for the political liberalization and the development of a market economy in the former Serbian province. NATO military intervention against Serbia had a significant impact for the international community in financial terms.

Indeed, UNMIK international administration, which was established with the United Nations Security Council resolution 1244 on 10 June 1999 was "staffed by some 3.300 international police and thousands of international and local civilians" (2008 United Nations Peace Operations, Year in Review, 22).

Due to its large dimension and its 10 year-length, the United Nations Mission in Kosovo turned to be one of the most costly peacekeeping operations of the United Nations' history.

Kosovo's post conflict reconstruction implied huge financial costs for the European Union as well, which assisted the process of reconstruction and economic development of the province until the end of 2008.

Moreover, NATO intervention had important consequences also for the way in which the public opinion perceives the role and credibility of the regional organizations involved in the peacekeeping mission, especially the NATO (in charge of providing security and overseeing the creation of a new Kosovo Security Force), the European Union (in charge of the economic reconstruction pillar) and the Organisation for Security and Cooperation in Europe (OSCE, in charge of the institution-building pillar).

In some respects, NATO intervention had a positive impact for the international community, which had the opportunity to mainstream the lessons learned from Kosovo in its approach to the post-conflict transitional administration.

Indeed, in the light of the successes and failures of UNMIK mission in Kosovo, it was possible to produce the Brahimi report of the Panel of the United Nations Peace Operations, which was submitted to the United Nations Secretary General on 17 August 2000.

The first and most considerable consequence that humanitarian intervention had in Kosovo, is the need to establish a transitional administration, whose head was the Special Representative of the United Nations Secretary General, who vested "all executive, legislative and judicial powers" (2008 United Nations Peace Operations, Year in Review, 21).

The fact that the transitional administration of Kosovo was in the hands of the United Nations, lead the local population to feel excluded from the ownership of the transition process.

This feeling of exclusion was also caused by the fact that UNMIK administration had initially failed to involve the local population. The lack of local participation might have an explanatory power of the fact that the measures adopted by UNMIK administration have been met with resistance by the local population, including the effort to establish a functioning legal system.

Initially UNMIK administration was forced to base its action on the local expertise in some key areas, like the judiciary and the rule of law.

Unfortunately, in these two sectors, the expertise and the experience of local population were lacking.

For instance, the Kosovar Alabanians judges were having a lack of knowledge of international standards both in term of due process and in terms of human rights.

Another significant problem was represented by the compatibility of the applicable law in Kosovo - once it was established to apply the law in vigor before 1989, previous to the revocation of Kosovo autonomy by Belgrade central government - with international standards.

The bad management of the judiciary, which characterized UNMIK administration, lead to the lost of credibility and legitimacy of UNMIK in the eyes of the local population.

Also the introduction of international judges, who can function as a model for the local judges, did not manage to solve the situation.

Indeed, if on the one side, Kosovar Albanian judges were not familiar with international standards, international judges, who should function as model of efficiency, of the application of standards of equality in the treatment of national minorities, were not familiar with the applicable law in Kosovo.

Kosovo post-conflict situation was therefore characterized by a lack of understanding between Kosovo and the international community and by the lack of trust of the local population in the UNMIK administration.

Because of this lack of understanding, UNMIK managed only partially to accomplish to its mandate to assist Kosovar population to overcome ethnic divisions, mainly between Albanian majority and Serb minority and it was extremely difficult to start a process of reconciliation between the two ethnic groups.

The case of Kosovo proves that the analysis of the consequences of military intervention for the population of the target state is very useful to identify both the prospective mistakes that can be avoided and at the same time, those aspects that can be improved.

For instance, the experience of Kosovo proves that the division of the post-conflict reconstruction activities among international and regional organizations (UN, NATO, OSCE and EU) could be made more productive through ensuring a better integration amongst the organisations that run the reconstruction 'pillars'.

With regard to the difficulties that have been encoutered in establishing an effective and impartial judiciary, the Brahimi report, on the basis of Kosovo's experience, has suggested that in the immediate phase of emergency, the international community should adopt in the target state of the intervention in which a transitional administration should be established, a standard legal template (that should be prepared prior to the intervention). This legal template can function as the applicable law until an adequate and permanent legislation will not be developed.

Part II: The Implementation of the Idea of the Responsibility to Protect

CHAPTER FOUR

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The Institutionalization of the Responsibility to Protect Principle within the Context of the United Nations' Institutional Reform

4.1 Summary of the Chapter

In this chapter we shall take into consideration those institutional reforms of the United Nations system that are relevant for the implementation of the Responsibility to Protect principle.

Among these reforms, we shall consider first the reform of the United Nations Security Council, especially with reference to its composition and the exercise of the veto power by its permanent members.

Secondly, the creation of the Special Adviser on the Prevention of Genocide, which the scholar A. Bellamy has considered as the most relevant reform for the implementation of preventive component of the the Responsibility to Protect.

Thirdly, the installation of the Peace-Building Commission, which is relevant for the implementation of the obligation to rebuild.

The chapter clarifies that in the original recommendations of the High Level Panel, the Peace-Building Commission was supposed to have both preventive and peacebuilding functions.

However, later on the international actors decided to limit the mandate of the Peace-building Commission to post-conflict reconstruction activities.

The chapter explains also the reasons that led to the exclusion of the preventive function from the mandate of the Peacebuilding Commission.

These reasons can be summarized in two main arguments, entailed in the proceeding of the workshop on *The United Nations Reform* organized by the Yale Centre for the Study of Globalization in 2005.

The first argument is that it would have more sense to spend financial and other resources in the institutional efforts for post-conflict reconstruction activities than in the prevention of state collapse.

Indeed, it is extremely difficult to predict where the next civil war will break out.

By contrast it is well known that conflict-prone countries are more likely to relapse into violence.

The fact that states have recently experienced war is a good indicator to predict the outbreak of future conflicts.

The second argument is that the assignment of a preventive function to the Peacebuilding Commission can have some serious side effects.

The awareness by the rebel groups of the existence of an international organism in charge of identifying and preventively intervene in states at risk of lapsing into conflict, can encourage them to try to make external intervention more likely by using force or being intransigent in negotiations, like it happened with Kosovo Liberation Army in 1997-98 and with Sudanese Liberation Army in Darfur.

Finally, the creation of the Human Rights Council, which is the key of the United Nations reform, is important for the link that exists between Human Rights defense and Responsibility to Protect.

However, the mandate of the Human Rights Council is very general and consists in "the promotion of universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner" (United Nations Task Force, 2005), without including functions explicitly and specifically related to the implementation of the Responsibility to Protect.

The Chapter tries also to highlight the difficulties related to the institutionalization of the preventive dimension of the Responsibility to Protect.

The formal endorsement of the Responsibility to Protect principle within the Outcome Document represents already a restriction of the concept when compared to its original formulation in the ICISS report.

As we have already clarified in the first chapter of this work, the preventive component of the Responsibility to Protect does no longer figure in the Outcome Statement, where the Responsibility to Protect is strictly linked to four kinds of international crimes and no longer to other "massive and sustained human rights violations" (Task Force of the United Nations, *The Imperative for Action*, 2005).

The institutional reform of the United Nations mirrors the restrictions to which the Responsibility to Protect has been progressively subjected in United Nations official documents. In particular, it reflects the neglect of its preventative component.

Indeed, the Special Adviser on the Prevention of Genocide is the only organ of the United Nations which has an explicit preventive dimension.

The positive thing is that in spite of the name of this new organ makes explicit reference only to the crime of genocide, the mandate of the Special Adviser includes the collection of information "on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide" (Human Rights Quarterly, vol. 28, Report on the Work of the Office of the Special Adviser of the United Nations Secretary General on the Prevention of Genocide, prepared by Payam Akhavan Mc Gill University, Faculty of Law, Montreal, Canada, p. 1046).

4.2 The Institutional Reform of the United Nations Security Council

After the US-led invasion of Iraq in 2003, the capacity of the United Nations to prevent and avoid unilateralism was put in question.

The war against Afghanistan engaged by the United States in the aftermath of the attacks of the twin towers was wrongly perceived as unilateral.

However, but in this circumstance the United States were justified/legitimated to intervene by the UN Security Council against Afghanistan, in consideration of the seriousness of the terrorist attack inflicted to the United States.

The UN Security Council's authorization to wage war against Afghanistan was conceded with the clause that this intervention should not represent/constitute a precedent for the crystallization of a rule of the customary international law about the legitimacy of unilateral interventions.

Anyway, after the two US-led interventions in Afghanistan and Iraq, the global public opinion perceived that the risk of Unilateralism was growing.

For this reason, in 2003, the former Secretary General of the United Nations Kofi Annan appointed the commissioners of the High Level Panel on Threats, Challenges and Changes.

The mandate of the Panel was the formulation of a set of recommendations about how to realize the institutional reform of the United Nations, even in order to avoid the risk of unilateralism.

The incapacity showed by the UN Security Council in containing the impulses of the United States gave the measure of the urgency of this reform.

It was particularly felt the need to make the Security Council more democratic and able to make timely and adequate decisions about the prevention, the management and the resolution of conflicts.

In 2003 the credibility of the Security Council was undermined not only by its powerlessness to refrain United States from occupying Iraq but also by its incapacity to give a timely and adequate response to the crisis erupted in Darfur in February 2003.

The Security Council was charged of ineffectiveness in the accomplishment of its prior mandate to maintain international peace and security.

One of the reasons of its ineffectiveness should be searched in the fact that often the Security Council has been paralyzed by the threat or the actual exercise of the veto power by its permanent members.

The inaction of the Security Council in front of the need to face humanitarian crises makes more likely the risk of unilateralism either from regional military alliances such as NATO or from individual states, such as the United States.

The authorization of the interventions by the Security Council is the condition sine qua non of their legitimacy within the multilateral system of cooperation.

Through the Security Council approval, it is possible to avoid the plague of Unilateralism.

As it has been underlined by David Malone, the President of the International Peace Academy in his recent book the United Nations reform, the power of the Security Council stems from the fact that the global public opinion is willing to recognize the United Nations Security Council as the source of the legitimacy.

The need for the United Nations institutional reform turns out to be obvious while considering the deficiency of the system created in 1945, in the face of the changed context of the international relations and the dramatic increase of the number of the United Nations members since its creation.

From the moment in which United Nations has been established, it has always been the subject of continuous reforms.

In 2003, the High Level Panel Committee was appointed precisely with the scope of strengthening the collective security system of the United Nations.

The 2004 High Level Panel report entails proposals about the functioning of the already existing United Nations organs and the creation of new organs along with the specification of their possible mandate.

The composition of the UN Security Council is a particularly controversial reform.

Even in the Outcome Document of the 2005 United Nations World Summit the delegations did not manage to reach an agreement about the composition of the UN Security Council.

Some states like Germany, Japan, India and Brazil aspire to obtain a permanent seat within the Security Council.

They consider reasonable to assign the permanent seats on the basis of the degree of the contribution they give to the organization of the United Nations in financial, political and diplomatic terms.

The Security Council's reform should be directed to make it more representative, democratic, efficient and transparent.

The Security Council's reform represents an essential aspect of the United Nations institutional reform.

The composition of the Security Council is undoubtedly an important matter and it is totally understandable that the most part of states are not willing to accept the composition of the Security Council which mirrors the political condition existing in the aftermath of the Second Word War.

However, to reform the Security Council in order that it manages to accomplish more effectively and efficiently its main mandate of maintaining the international peace and security, it would be even more important.

Many interventions authorized by the United Nations Security Council and many peace-keeping operations occurred throughout the last two decades were regarded by the global public opinion as complete or partial failures.

Both military interventions for humanitarian purposes and peace-keeping operations need the support of the governments, both of the governments in charge of authorizing those interventions and of the recipients of the interventions and the peace-keeping operations.

If this support runs out, the likelihood that these missions will turn out to be a failure is very huge.

For instance, the failure of the intervention of the African Union and of the United Nations in Darfur should not be ascribed only to the undeniable limits the logistics capacities of the African Union troops, but also to the obstacles opposed be the Sudanese government to the success of the intervention.

Some Italian jurists like Prof. E. Sciso believe that the United Nations institutional reform is a missed reform or at best, a reform that has been realized only partially.

Indeed, the Outcome Statement of the World Summit failed to fix some precise criteria for the legitimacy of the use of force.

This failure should be ascribed to the fact that in the Outcome Document the criteria of legitimacy entailed in the 2001 ICISS were cancelled.

The commissioner of the International Commission on Intervention and State Sovereignty proposed the following six criteria: the seriousness of the threat, the proper purpose of the proposed military action, which peaceful means, short of the use of force, can be plausibly used with success to stop the threat, the proportionality of the military operation to the threat, reasonable prospects of success of the use of force and right authority.

The fact that these criteria no longer figure in the Outcome Statement reflects the reluctance of the States to fix criteria for the legitimacy of the intervention.

According to Prof. E. Sciso the failure of the Outcome Statement to reach an agreement on the matter/issue of the use of armed force should be look with disappointment.

Another reason of disappointment is the fact that in the final version of the Outcome Statement all the references to disarmament entailed in the previous versions of the same document were deleted.

Therefore, with reference to the United Nations institutional reform, the Outcome Document failed on three different fronts.

First the Outcome Statement failed to reach an agreement on the reform related to the composition of the Security Council.

Secondly, the Outcome Statement failed to fix the necessary criteria for the legitimation of the use of force.

Finally, in the Outcome Document there is no longer reference to the process/procedures of disarmament, in spite of the fact that these references were encompassed in the previous versions of the same document.

However, the failure to provide a solution to the reform of the composition of the Security Council depends on the difficulty to reach an agreement among the different states.

For instance, among the proposals entailed in the High Level Panel, there was that of having only one European representative with a permanent seat within the Security Council. But naturally nor France neither UK were and are willing to renounce to their permanent seat. Other controversies were generated in Europe from the aspiration of Germany to have its own permanent seat within the Council. This aspiration met on the one side the support of several European states (Spain among the others), but on the other, the strenuous resistance of Italian delegations.

However, it is misleading to focus all the attention on the reform of the Security Council.

Indeed, a more general institutional reform of the United Nations is needed.

This institutional reform is already taking place through the creation of new organisms and the rejuvenation of the already existing organs.

Prof. E. Sciso concludes her article on the *Use of Force on the Missed Reform of the United Nations*, by lamenting the inconclusiveness of the Outcome Document in a sector of crucial importance for international relations as the use of force.

However, besides her tough judgment, it should be recognized that the international actors who arrived to the conclusions exposed in the Outcome Document, made a considerable effort in considering the provisions of the United Nations Charter about the use of force, aimed at discouraging the United Nations members states from threatening or using the force in international relations.

To this end, the United Nations member states first renewed their commitment to take/adopt collective measures to prevent or remove threats to peace and acts of aggression; secondly, they stressed the importance to continue to abide by the United Nations Charter and by the foundations of the international law; and finally, underlined their commitment to Multilateralism.

The United Nations Charter is still regarded by all the delegations as suggesting good mechanisms for the solution of international controversies.

The problem is that many provisions of the United Nations Charter have never been put into practice. The American philosopher N. Chomsky said that the United Nations could exercise a positive role if the more powerful states were allowing them to exercise its role.

The American scholar D. Malone, in his book on the United Nations reform wrote that when United States act without the approval of their allies, they are going to pay significant costs not only in financial terms but also in terms of discrediting their reputation in the eyes of the global public opinion. For this reason the United States have strong interests in showing that they are engaged with the rest of the international community in the framework of the United Nations system of multilateral cooperation.

According to D. Malone it is a serious mistake to believe that the United States rule over the United Nations. Actually the United States were very frustrated when they did not manage to obtain the approval of the other members of the Security Council to intervene in Iraq and were forced to bypass the authority of the Security Council.

According to D. Malone, it is wrong to regard the United Nations simply as a tool of the United States.

While for some observers, it is undeniable that the reputation of the United Nations was strongly damaged by its inability to reach a consensus on the issue of Iraq, on the contrary, for others the very fact that the other members of the Security Council deny their approval to intervene in Iraq represents in itself a success insofar as it proves that the Security Council stands fast in front of the arrogance of the United States.

Moreover, according to D. Malone we can not expect and we do not have to pretend that the United Nations are used as a tool to contain a strong political power as the United States, since, given the entity of this power, the Security Council is likely to fail in this mission.

The inability of the Security Council to refrain the United States from unilaterally intervene in Iraq could have damage its reputation but did not manage to compromise its role as source of legitimacy as it is proven by the fact that not long time after the intervention the Council was called to legitimize the new situation in Iraq.

In his book on the *United Nations Reform*, D. Malone suggests that the United States are living a unique moment of their history, particularly after the 11 September.

Bush's administration was strongly ideological and produced a set of questionable doctrines such as the theory of the preventive war.

Moreover, the administration of the former US president often supported the recourse to the use of force to face threatens that was possible to tackle also with non-military means.

D. Malone has observed that today the United States are overstretched military, especially in Iraq and Afghanistan. Even Obama's administration announced the deployment of 17.000 troops in Afghanistan coupled with the intention to keep the United States' troops as a garrison of Iraq territory for the prevention of terrorism, at least until the first half of 2010.

4.3. The Appointment of the Special Adviser for the Prevention of Genocide and the Creation of the Office of the Special Adviser for the Prevention of Genocide in 2004

The most significant United Nations reform with regard to the operationalization of the Responsibility to Protect is the creation of the Office of the Special Adviser of the United Nations Secretary General on the Prevention of Genocide. The Special Adviser was appointed by the United Nations Secretary General on 12 July 2004. The Office of the Special Adviser was established in the late October 2004.

The mandate of the Special Adviser is a response to the failure of the United Nations to undertake an effective action aimed at preventing the perpetration of genocidal acts, such as the ones occurred in 1994 in Rwanda and the ones occurred in 1995 in Srebrenica.

Indeed this mandate include the gathering of existing information within the United Nations System (and particularly in the office of the High Commissioner for Human Rights, United Nations Development Program, the Office for the Coordination of Humanitarian Affairs and the Department of Political Affairs) on serious and massive human rights violations and on violations of international humanitarian law that have an ethnic or racial nature.

The mandate consists in the prevention or halting of those violations that could lead to the perpetration of genocide or related crimes.

The mandate can contribute to the implementation of the Responsibility to Prevent also because it encompasses an advisory component which consists in the elaboration of reccomandations for the United Nations Security Council, through the Secretary General, on the measures that can be adopted to prevent or halt the genocide and to improve the capability of the United Nations of analysing the information related to genocide or related crimes.

The fact that the institution of the Special Adviser was established with the aim to operationalise the preventive component of the Responsibility to Protect is supported also by the consideration that the mandate of the Special Adviser was included in the Outcome Statement of the 2005 United Nations World Summit, along which the endorsement of the two paragraphs 138 and 139, entirely devoted to the general emerging norm of the Responsibility to Protect.

The appointment of the Special Adviser on the prevention of genocide shoud be regarded as an opportunity to enhance the effectiveness of the United Nations to implement the preventive component of the Responsibility to Protect.

The prevention of genocide can not be considered as coincident with the prevention of the conflict tout court on the basis of the analysis of the article 1 of the 1948 Convention on the Prevention and Punishment of Genocide.

The analysis of the article 1 of the 1948 Genocide Convention makes clear that genocide is a crime that can be perpetrated either in time of peace or war. For this reason, despite the crime of genocide is often committed during an armed conflict, there is no a necessary correlation between the perpetration of genocide and armed conflict.

This might help to explain why the United Nations Secretary General decided to create an institution as the Special Adviser, who in charge of analysing and approaching those situations that could lead to genocide.

The prevention of genocide represents an objective much more precise than the general prevention of armed conflict.

In the framework of conflict prevention theory, the analysis of those situations that can lead to the eruption of conflict is focused on the identification of the structural and proximate causes of conflict (that can have a political, economic, cultural, ethnic or other nature), on the hostilities between armed factions or on the political instability resulting from the fight amonsts groups for the attainment of political power.

However, not always conflict prevention strategies are centered on the atrocities that can be perpetrated against the civilian population. The analysis of those situations that could degenerate in the perpetration of genocidal acts should be focused on those atrocities.

The mandate of the Special Adviser - taking into consideration the controversial legal meaning of the term genocide - it is not limited to the definition of the term genocide endorsed in the 1948 Genocide Convention.

The mandate of the Special Adviser includes also the analysis of those situations that involve political, social or other identifiable groups.

According to the article 2 of the 1948 Genocide Convention provides for the protection only of national, ethnic, racial and religious groups.

However contemporary conflicts show the need to analyse those situations in which the subject of widespread human rights' violations are political or social groups.

The conclusion is that the mandate of the Special Adviser should include all the groups that are at risk of mass murder or other forms of destruction and that can be identified not only on national, ethnic and religious ground, but also on the basis of the social or political group to which they belong.

The other crimes that are related to genocide and as such are included in the mandate of the Special Adviser are mass murder and other large scale human rights' violations such as ethnic cleansing.

The mandate of the Special Adviser is that of identifying situations that can lead to genocide or to the perpetration of related crimes.

For the assessment of a situation as genocide the Special Adviser will not use as a pattern the definition of genocide provided in the 1948 Genocide Convention, since his mandate should be guided not by strict legal definition but rather by the capacity to prevent a prospective attack aimed at the physical destruction of an identifiable group (which can have an ethnic, religious, national, racial, political or social nature).

The creation of the Special Adviser of the Prevention of Genocide had already proved its effectiveness in managing to prevent the degeneration of political unrest in Kenya pursuant to 2008 political elections between December 2007 and January 2008.

However, as the scholar A. Bellamy has observed in his last work on the Responsibility to Protect, the prevention of the crime of genocide is only one of the elements of the Responsibility to Prevent. The subject of the Responsibility to Prevent has been restricted to the prevention of the crime of genocide.

The need to make narrow the Responsibility to Prevent, explains A. Bellamy, depends on the fact that the range of structural and direct causes of conflict is so wide that "genuine conflict prevention entails a similar bewildering range of policies and potentially vast political and economic commitment" (A. Bellamy, 2008, 143).

Conflict prevention requires governments to ask their citizens to commit resources to regions not yet in conflict and, if violence is averted, leaves them open to the accusation that they have wasted precious tax monies averting non existing conflicts". (A. Bellamy, 2008).

According to A. Bellamy the difficulty "to draw direct causal link between preventive action and the absence of conflict" (A. Bellamy, 2008, 144) coupled with the fact that "there is no agreement about how comprehensive the Responsibility to Prevent needs to be" (A. Bellamy, 2008, 144) are sufficient to explain why in the articles of the Outcome Document about the Responsibility to Protect, there is no mention of the Responsibility to Prevent and in the whole statement, the only reference to conflict prevention strategies are to need of strengthening the early warning capability, the need to "strengthening the UN's preventive diplomacy capacity" (A. Bellamy, 2008, 142) and the creation of the Special Adviser on the Prevention of Genocide.

A. Bellamy invites the readers to observe that disparity between the financial resources devoted to prevention and reaction respectively reflects the different degree of attention that is attached to these two dimensions of the Responsibility to Protect:

"By 2005, the UN's Trust Fund for Preventive Action had received US 33 million from 35 donors. This compares to an annual running cost of around US 5 billion for the UN's peace operations". (A. Bellamy, 2008, 145).

4.4 The Creation of the Peace- Building Commission: Post-Conflict Peace-Building versus Conflict Prevention Functions

The scholar S. Srinivasan in a recent article on *Conflict Prevention in Darfur* observed that there have been positive developments as regards the institutional framework to operationalise the Responsibility to Protect. The most important institutional developments since the conflict in Darfur began are the formation of the Peace Building Commission, recommended by the High Level Panel, the expansion of the good offices for conflict mediation of the Secretary General, the establishment of a Mediation Support Unit within the Department of Political Affairs, the creation of the Secretary-General's new high-level Policy Committee, which considers United Nations action on the most urgent situations, the further development of the existing Humanitarian Early Warning System to include social and political indicators, the establishment (in 2005) of an Independent Expert on minority Issues, and the replacement of the Human Rights Commission with a new Human Rights Council.

According to the recommendations included by the 16 commissioners within the High Level Panel report, the functions of the Peacebuilding Commission should cover also tasks related to the operationalization of the Responsibility to Prevent.

Among these tasks there is first the identification of those "*countries which are under stress and risk sliding towards state collapse*" (High Level Panel on Threats, Challenges and Changes), secondly the prevention of

the further deterioration of conflict-prone countries, and finally, the provision of assistance to those states that are crossing the transitional period between the end of the conflict and the beginning of the post-conflict peace-building phase.

However, in contrasts with these recommendations, the participants to the workshop titled *Reforming the United Nations Peace and Security devoted to Analyze the Report of the High Level Panel on Threats Challenges and Changes* - organized by the Yale Center for the Study of Globalization and whose proceedings have been published in 2005 - argued that the mandate of the Peace-Building Commission should not entail responsibilities linked to the obligation to prevent but only responsibilities related to the obligation to rebuild.

Several reasons were provided to motivate this reluctance to include a preventive dimension within the mandate of the Peace-building Commission.

First, since the United Nations should keep a certain degree of impartiality, the Peace-Building Commission could not take sides within a domestic conflict.

Secondly, conflict prevention would have as a side effect the continuous breaking of the principle of non-interference in the internal affairs of developing countries.

To accomplish the mandate to identify states under stress that risk to lapse into conflict, the Peace-Building Commission would be in charge of monitoring and keeping under surveillance all developing countries.

Moreover, the identification of states at risk would be conditioned by political factors such as the strategic and other vital interests of the most powerful states.

Again, this mandate would be in contradiction with the need to guarantee the independence of the colonial states from the most powerful Western states, even while these latter are providing them with assistance to development.

Even assuming that the Commission could be successful in identifying the states that risk collapsing, nothing can guarantees that it would likewise be able to prevent these states from lapsing into conflict.

Indeed, the root causes of the conflicts should often be searched in structural problems such as retards in development, which can be solved only with the adoption of long-term measures.

Furthermore, the preventive mandate of the Commission would certainly be undermined by the lack of financial resources devoted to conflict prevention.

From the financial point of view, the Commission would rely on International Financial institutions such as the International Monetary Fund or the World Bank; this dependence could in its turn compromise the timely accomplishment of its preventive mandate.

These reasons lead the participants of the workshop to conclude that the Peace-Building Commission should be specialized exclusively in post-conflict peacebuilding.

Indeed, the functions of the Peace-Building Commission are more related to post-conflict peace-building strategies (such as reconstruction, institution building, sustainable development, and best practices) than to conflict prevention strategies.

Among the most important purposes of the United Nations institutional reform there was the creation of an organism for the management of the post conflict reconstruction's phase. This purpose has been reached through the establishment of the Peacebuilding Commission, which was installed on the 20 December 2005, on the basis of two identical decisions of the General Assembly and of the Security Council.

The creation of the Peacebuilding Commission is one of more positive aspects of the Outcome Document of the 2005 United Nations World Summit.

The Commission indeed represents the institutionalisation of the third component of the Responsibility to Protect: the obligation to rebuild.

The Commission is in charge of guaranteeing a better cooperation among the principal agencies of the United Nations and addressing the needs of post-conflict countries, helping them to recover from conflict by providing assistance in the two sectors of institution building and reconstruction.

The mandate of the Commission entails also the important function to coordinate all the relevant actors who are involved in the post-conflict reconstruction phase.

In spite of the fact that the mandate of the Commission does not include explicitly a preventive dimension, the creation in post-conflict countries of a positive environment conducive to development and economic growth can give a substantive contribution to prevent that the situation relapses into renewed conflict.

CHAPTER FIVE

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The Increasingly Significant Role of Regional Organizations: Pro and Cons of Regionalism

5.1 Summary of the Chapter

The increasingly significant role of regional organizations for implementing the Responsibility to Protect principle is one of the main aspects of the Outcome Statement of the 2005 United Nations World Summit. Article 4 (h) of the African Union's Constitutive Act signed in Lomè in July 2001, provides for the right of humanitarian intervention in respect of genocide, war crimes, ethnic cleansing and crimes against humanity.

From this point of view, there are no particular differences between this provision enshrined in the African Union Constitutive Act and the paragraphs 138 and 139 of the Outcome Document of the 2005 United Nations World Summit in which the Responsibility to Protect principle was formally endorsed. The difference concerns only the language adopted.

This difference in the terminology adopted is due mainly to the fact that the African Union Constitutive Act was issued before the publication of the 2001 ICISS report, where the commissioners proposed for the first time to abandon the expression "right of humanitarian intervention" in favour of the expression "Responsibility to Protect".

Aside from the different terminology adopted in the two documents (provision 4 paragraph h of African Union Constitutive Act and paragraphs 138 and 139 of the Outcome Statement), what it is important to notice is that both, the provision for legitimising the right of humanitarian intervention enshrined in the article 4 (h) of the African Union Constitutive Act and the Responsibility to Protect endorsed in the two paragraphs of the Outcome Statement, are linked to four specific kinds of international crimes, namely, war crimes, genocide, ethnic cleansing and crimes against humanity.

The 2003 Maputo Protocol on Amendments to the African Union's Constitutive Act provides for the right of humanitarian intervention also in respect of serious threats to legitimate order.

From this point of view, there is a divergence between the amendments to the African Union Constitutive Act and the Outcome Statement of the 2005 United Nations World Summit.

Indeed, in the Outcome Document the exercise of the Responsibility to Protect is linked only with the perpetration of the abovementioned international crimes and there is no mention of the legitimacy to intervene in a sovereign State in respect of unconstitutional changes of regimes, as provided for in the 2003 Maputo Protocol on Amendments to the African Union's Constitutive Act.

The reason why the Maputo Protocol provides for the right to intervene in the sovereign members of the African continent also in respect of serious threats to legitimate order is that in the last sixty years the African continent experienced more than one hundred coups d'état.

Internal armed conflict and coups d'état represent among the biggest challenges to the safety of African people and their communities.

Partly because of the violence of internal armed conflicts and partly as a consequence of the numerous coups d'état, the African continent has the greatest number of refugees and displaced persons in the world.

In the 2001 ICISS report, the recourse to armed intervention is provided for only as a last resort when all the efforts to prevent the outbreak of the war, including preventive diplomacy and the imposition of financial, diplomatic, political and military sanctions have proven to be ineffective.

In other words, peaceful conflict prevention measures should always be preferred to costly interventions.

According to the scholars K. Aning and S. Atuobi, "…the principles and norms enshrined in the African Union Constitutive Act …mirror responsibility to protect as a concept for conflict prevention and the protection of the people of Africa against crimes against humanity, war crimes, genocide and ethnic cleansing".

However, in the articles of the African Union Constitutive Act devoted to military intervention there is no mention of conflict prevention measures, but these articles provide for a right of military intervention when international crimes such as genocide are already taking place.

While analyzing "how the African Union security architecture responds in practice to the Responsibility to Protect" (K. Aning and S. Atuobi, 2008, 93), the two authors argue that the "African Union responses to current security challenges in Darfur in Sudan, Somalia and Zimbabwe, and especially the International Criminal Court's application for the issuance of arrest warrant for president Al Bashir of Sudan, does not reflect a clear commitment to the Responsibility to Protect". (K. Aning and S. Atuobi, 2008, 90).

The same two African authors examine also the African Union collaboration with the United Nations to build its capacity to implement the Responsibility to Protect and to tackle with the peace and security challenges across the African Continent.

According to A. Bellamy, African institutions lack the necessary capacity to implement the Responsibility to Protect in its preventive dimension

However, A. Bellamy invites his readers to recognize also the positive aspects of 'the regionalization of conflict prevention institutions'.

He believes that regional institutions when compared to international organization can be more sensitive to regional norms and therefore better able to target appropriate responses. (A. Bellamy, 2008, 147).

Another reason why, according to the advocates of regionalism, regional organization ought to be preferred to international ones, is that "regional bodies are better able to understand local dynamics of conflict, therefore helping to overcome the dilemma of comprehensiveness (which issues responsibility to prevent should include) by focusing only on those elements of conflict prevention that are instrumentally and culturally appropriate". (A. Bellamy, 2008, 147).

However, according to A. Bellamy, the advantages underlines by the advocates of regionalism hide their limits in the capacity to accomplish their mandate of cooperating with international organizations in implementing the Responsibility to Protect:

"Regional organizations differ markedly in their capacity and mandate. A regional focus therefore delivers the weight of conflict prevention efforts to the world's richest regions, traditionally the areas least in need of

conflict prevention. Exacerbating the problem, a regional focus can attract resources away from global institutions. On the one hand, this makes it more difficult from global organizations to fill the gaps in regions with poor institutional capacity. In addition, effective coordination across agencies is made more difficult. On the other hand, a regional focus makes it less likely that global organizations will succeed in forging a consensus on global level preventive measures, such as control on the arms trade, natural resources management, and trade reform designed to lessen chronic inequality in conflict-prone areas". (A. Bellamy, 2008, 147).

5.2 The Role of the United Nations and African Union in Darfur

The African Union played a key role in the response of the international community to the crisis erupted in Darfur in February 2003.

The involvement of the African Union in the conflict in Darfur should be welcomed, for different orders of reasons.

Firstly, the decision to intervene in the Darfur region of the Sudan proved the African Union to be committed in facing the problems of its own member States.

Secondly, the commitment of regional organizations in the management and resolution of humanitarian crises can give a substantive contribution in increasing the capability of the international community to solving or at least mitigating these crises.

Finally, the Sudan was certainly more prone to accept the intervention of the African Union, than it was to agree with the involvement of international organizations like the United Nations.

The crisis in Darfur was indeed perceived by the Sudanese government as an internal crisis that needs to be addressed under its domestic jurisdiction.

The decision of the African Union to intervene in Darfur was made in compliance with art. 4 par. h of the African Union Constitutive Act, which provides for the possibility to intervene in the member states of the Union in case of genocide, serious human rights' violations, unconstitutional changes of regime, which represent threats for the international and internal peace and security.

Despite the African Union Constitutive Act provides for the right of intervention, within this document, the criteria for the legitimacy of the recourse to force remained unspecified.

In the absence of these criteria, the institution in charge of establishing whether or not to intervene or not in the internal affairs of a member State is the African Union Peace and Security Council.

The independence of the African Union Peace and Security Council's decision-making process is limited by the financial constraints of the African Union.

The Africa Conflict Prevention Pool indeed, was largely financed by the United Kingdom and the European Union. (House of Commons, 2004-05).

With regard to the role played by the African Union to solve the crisis in Darfur, the African Union Peace and Security Council provided a mandate aimed to authorize

the military intervention of African Union troops in the region.

The mandate of the African Union mission in the Sudan was endorsed by the United Nations Security Council.

The role of the African Union mission in Darfur was initially limited to the monitoring and reporting on the Ndjamena Humanitarian Ceasefire Agreement, signed on 8 April 2004, which "was the basis for all subsequent diplomatic efforts on Darfur and allowed the African Union to dispatch ceasefire monitors, and subsequently a force to provide protection for those monitors and any civilians in the immediate vicinity of its operations. The Ndjamena text became the foundation, not only for the African Union Mission in Sudan (AMIS) but also for the United Nations Security Council demands". (A. De Waal, 2007, 1041).

The United Nations Security Council resolutions on the Darfur crisis "refer to the need to neutralize and disarm armed militia". (A. De Waal, 2007, 1041).

Monitoring, civilian protection and militia's disarmament were regarded as three necessary steps to solve the crisis in Darfur.

At the beginning, the mission of the African Union was extremely limited in terms of troop's numbers, strength of its mandate, logistic apparatus and financial resources. (A. De Waal, 2007, 1041).

However, between October 2004 and March 2005, progresses were made in terms of the number of troops, which passed from 500 to 1942 unities. (House of Common, 2004-05).

Despite the significant increase of the number of the African Union troops deployed in the mission, in order to effectively accomplish its mandate, which includes monitoring ceasefire, monitors and civilians protection - the African Union had initially estimated that the success of the mission would have required the deployment of at least 6.000 troops.

This estimation however, was optimistic when compared with the suggestions provided by the commanders of the United Nations forces.

According to these latter, the successful management of Darfur crisis would have required the deployment of a much larger number of troops (comprised between fifteen and forty-four thousands). (House of Commons, 2004-05).

Since the increase of the number of the African Union forces of four or five times (in compliance with the suggestions of the UN commanders) was made impossible by the financial constraints of the regional organization, the African Union planned to deploy in the region at least 3320 troops within February 2005.

Still in March 2005, the personnel of the mission amounted to less than 2000 troops.

From these data and considerations, emerges that the ineffectiveness of the African Union mission in Darfur was due, among the other factors, to a serious shortage of personnel.

While the African Union mission played an extremely active role with reference to the monitoring activities, on the contrary its role with regard to the protection of the civilian population was rather limited.

Nevertheless, the mission had some positive impact in improving the security of the region and in reducing the violations of the Ndjamena Humanitarian Ceasefire Agreement.

The presence itself of the African Union troops in Darfur represented a deterrent that managed to communicate to the factions that the violators of the ceasefire would be held responsible and punished for such violations.

In August 2004, the United Nations "demanded a series of steps to ensure security around displaced persons' camps". (A. De Waal, 2007).

This demand is sufficient to prove that a stronger mandate was needed to consolidate any progress of the African Union mission in terms of civilians' protection.

However, the effectiveness of the monitoring and reporting activities was severely limited by its the lack of transparency.

This lack of transparency consisted mainly in the failure of the personnel deployed in the mission to publish the data of the violations of the ceasefire and to make available the names of the people accountable for such violations.

Therefore, the future missions of the African Union should consider the need to improve their transparency through making the information deriving from their monitoring and reporting activities public and available to the international community.

Detrimental to the effectiveness of the African Union mission was also the weakness of its mandate.

The mandate of the African Union mission in Darfur was characterized by a certain degree of ambiguity and lack of clarity that gave room to non-univocal interpretations by the different parties presents in the region.

Starting from October 2004, this mandate was broadened up to include the protection of the civilian population.

However the protection was limited only to those civilians who were imminently under threat and was subordinated to the financial resources, logistic apparatus and technical capability of the African Union troops.

The effective protection of Darfurian civilians would have required the inclusion within the mandate of the use of force with the double aim to protect civilians and disarm Janjaweed Arab militias, authors of the violence perpetrated against the three African tribes of Fur, Masalit and Zaghawa

The very fact that the mandate of the mission was so limited, had as a consequence that, even after the deployment of the African Union troops, between October 2004 and February 2005, large scale killings, war crimes and crimes against humanity continued to be perpetrated in Darfur. However, the mandate of the African Union mission was never broadened up to include peace enforcement or disarmament.

Probably the limits of the mission's mandate were due to the awareness of its limits in terms of logistic, technical capacity and personnel development.

The African Union mission would not have been sufficient to effectively accomplish its mandate, even taking into consideration the serious constraints of the scope of this mandate.

Moreover, the effectiveness of the mission has been partially compromised also by the slowness of troops' deployment, which raises doubts about the planning capacity of the personnel working at the African Union headquarters.

The aim of guaranteeing the security of the internally displaced people living in refugee camps and of civilians returning to their villages and homes would have required the increase of the quality and number of police officials.

Moreover, the exclusion of the former members of Janjaweed militias from the police force was essential to create the trust of Darfurian civilians towards the law enforcement personnel.

One of the reasons that prevent the Western military forces from intervening in Darfur is that their intervention would have had the potential to destabilize the whole Sudan.

However, it would have been necessary at least to provide the African Union with military assistance, taking into consideration that "the African Union had never handled a peace support operation of the size and complexity required for Darfur". (A. De Waal, 2007, 1042).

The effectiveness of the African Union mission in Darfur should be assessed on the basis of different orders of criteria. Firstly, on the basis of its capability to protect the civilians of Darfur; secondly, on the basis of the level of security that the mission is able to guarantee; and finally, on the basis of its capability to oblige the parties to respect the Darfur crisis ceasefire through reducing or avoiding its violations.

The effectiveness of the African Union mission in Darfur depended on many factors.

Among these factors there are the clarity and the broadness of its mandate, the number, logistic and technical capacity of the troops provided both by the African Union Peace and Security Council and by African countries, the political pressure exercised by the international community through the United Nations Security Council.

With regard to the role played by the United Nations in the Darfur region of the Sudan, the Security Council has been rather slow in taking into consideration the crisis in the region and its role has been circumscribed by member states to a humanitarian and developmental nature.

This slowness should be imputed to the concern that to face the crisis in Darfur would have compromised the result of the Comprehensive Peace Agreement between the North and the South of the Sudan.

Indeed, despite the Darfur crisis erupted at the beginning of 2003, the first resolutions of the United Nations Security Council concerning the crisis date from the latter half of 2004.

Since the Darfur crisis was regarded as a threat to international peace and security, United Nations Security Council resolutions about Darfur's crisis, refer to the Chapter seven of the United Nations Charter.

When a crisis represents a threat to the international peace and security, the Security Council can legally adopt all the measures comprised between economic and diplomatic sanctions and the use of military force.

The United Nations Security Council resolution 1556 of July 2004 was aimed to oblige all the parties to allow the humanitarian access to the Darfur region and to cooperate with the efforts of mediation made by the African Union, to respect the Darfur crisis ceasefire signed in April 2004, to disarm the Janjaweed militias and to give the leaders of the Arab militias to justice, to produce a report on the disarm, 30 days after the publication of the resolution and finally, to decree an arms embargo.

The United Nations Security Council resolution 1564 of September 2004 was aimed to express concern about the lack of progress in terms of security and civilian protection, in terms of disarms of the militias and to call the government of Sudan to provide the Council with the names of the leaders of militias.

Finally, the resolution was aimed to establish the International Commission of Inquiry in Darfur, which will be in charge of assessing whether in Darfur genocide has been committed or not.

The investigation into whether the atrocities committed in Darfur could be qualified as genocide, was the source of countless disputed between the United Nations Security Council which was reluctant to qualify the crimes perpetrated in Darfur as genocide, and the United States government, which concluded that in September 2004, after an inquiry conducted in Chad by an investigative team, concluded that genocide has been committed in Darfur.

The main obstacles to the success of the mission to protect Darfurian civilians stemmed from the fact that the Sudan was always opposed to an intervention of the United Nations forces in its territory.

From the beginning of the summer 2005, the government of the United States claimed the need to replace African Union troops with a peacekeeping force of the United Nations.

In the light of the failure of the African Union mission in Burundi, the government of the United States was convinced that United Nations peacekeepers would be much more effective than African Union troops not only in providing security to Darfurian civilians, but in reaching all the goals that it would have been necessary to reach in the region: "improving humanitarian access, supporting the Comprehensive Peace Agreement, obtaining justice, seeking a negotiated peace and punishing those standing in the way of these goals" (A. De Waal, 2007, 1043).

In his recent article on the Responsibility to Protect in Darfur, the scholar A. De Waal underlined that the government of the United States made significant diplomatic efforts to persuade the African Union, the United Nations and Khartoum government that it would be necessary to replace African Union troops with the United Nations forces.

The proposal to create a hybrid African Union-United Nations force, represents a compromise that managed to obtain the consensus of the Sudanese government and that was authorized in the United Nations Security Council resolution of the 31 July 2007.

However, the expectations on the capability of the United Nations forces to solve the Darfur crisis were too high.

Darfurian civilians and the whole international community were expecting that the United Nations forces would be able to disarm militias and to physically protect displaced people living in refugee camps.

However, there was a huge discrepancy between the expectations of Darfurian civilian population and the international community on the one side and the resources and capability of the United Nations forces on the other.

The very fact that the Outcome Document of the 2005 World Summit recognized the need to assign growing responsibilities to regional organizations, made controversial the issue whether the military troops should be under African Union or United Nations control.

This question remained controversial during the three years comprised between 2004 and 2006.

The recognition of the need to assign a growing role to regional organizations did not diminish the awareness of the fact that the military forces of the African Union were lacking in terms of number, equipment and capacity.

In order to solve Darfur crisis, it would have been necessary both to monitor the ceasefire in the region and to protect displaced civilians living in refugee camps.

However, the African Union troops were lacking in terms of logistic and communication to perform this double task.

As we have already clarified at the beginning of this paragraph, the mandate of the African Union mission was limited to the monitoring of ceasefire violations occurring in the region of the Darfur, but did not include the protection of Darfurian civilians.

African Union mission was not independent from the financial point of view, since the State members of the African Union were not able to financially support the mission, which was dependent on the European and North American financial contributions.

A possible conclusion that can be drawn from the comparison between the pro and cons of regionalism is that the regional mission of the African Union, even because of its financial constraints, was extremely limited in number, mandate, logistic, equipment and the military capacities of its troops.

However, even admitting that the international forces of the United Nations could be more numerous, better equipped, better trained and therefore, more efficient of the regional troops of the African Union, nevertheless, even the United Nations forces were limited in absolving the impossible mandate of providing physical protection to Darfurian civilians in the middle of continuing hostilities.

The scholar A. De Waal has helpfully observed that the debate on the Responsibility to Protect has been always focused on the question when and whether to intervene rather than on how to intervene and with what purpose.

This is maybe the reason why only very late, when thousands had already been killed and millions displaced, the African Union became aware of the fact that it would have been necessary to have a larger number and better equipped troops with a broader mandate.

The goals to prevent ceasefire's violations and protect civilians would have required the disarm of Janjaweed militias.

However, the scholar A. De Waal observed that the difficulty to disarm Arab militias in the Darfur region was comparable to that of disarming the factions in Somalia.

This is due to the fact that "the disarm is almost always voluntary (A. De Waal, 2007, 1046).

The consideration of the difficulty to disarm Arab militias leads the scholar A. De Waal to express an opinion that is opposite to the one expressed by International Crisis Group, according to which the implementation of the Responsibility to Protect in Darfur was a reachable objective.

The scholar A. De Waal has also suggested that the ineffectiveness of the African Union mission in the Darfur, could be clarified on the basis of psychological reasons.

Around the middle of 2005 indeed, while African Union troops were performing difficult tasks in a hostile environment, they were informed that in the eyes of the international community, and especially in the eyes of the United States governments, they represented only the "second best option" (A. De Waal, 2007, 1045) and they were informed of the fact that they will be replaced by the United Nations troops (the first best option).

Since donors did not honor their promises to provide African Union troops with financial support, during 2005 African Union troops remained unpaid.

The awareness that soon they would have been replaced by United Nations troops prevented African Union troops from drafting long-term programs.

This suggests that the relations between international and regional forces should be reconsidered in a way more sensitive to regional troops, which can be seriously demoralized by the awareness to be only a secondary option to which international forces should certainly be preferred (A. De Waal, 2007, 1046).

5.3 The Role Played by the European Union, the NATO and the Organisation for Security and Cooperation in Europe in Cooperating with the United Nations Mission in Kosovo

The increasingly growing role of regional organization in the operationalization of the Responsibility to Protect was evident since the end of the nineties.

Both the European Union and the NATO had a great deal of involvement in the creation of "a state-like governing apparatus" (D. Schleicher, 2004, 1) in Kosovo.

One of the first role played by the North Atlantic Treaty Organization after its intervention in Kosovo, was that of establishing "an international security force with a unified command and control apparatus to establish secure conditions and assist the return of displaced persons". (D. Schleicher, 2004, 41).

NATO troops became the basis of the United Nations force in Kosovo, called "KFOR" (Kosovo Peacekeeping Force).

The United Nations Security Council Resolution 1244 of June 1999 specified in what the mandate of KFOR consists: "Kosovo Peacekeeping Force is supposed to establish and maintain a secure environment in Kosovo, including public safety and order; to monitor, verify and when necessary, enforce compliance with the agreements that ended the conflict; and to provide assistance to the United Nations Mission in Kosovo (UNMIK). KFOR troops have also been at the forefront of providing humanitarian assistance". (D. Schleicher, 2004, 48).

The case of Kosovo shows the importance of the division of labor between international and regional organization.

The division of labor between the international civil administration of the United Nations Mission in Kosovo and the regional military alliance of NATO was particularly important in the light of the fact that:

"The KFOR, which consisted mostly of NATO troops, ruled over the territory of Kosovo for the first six months after the withdrawal of the Yugoslav army (because the United Nations Mission had not entered into Kosovo)…Prior to the arrival of the United Nations Mission in Kosovo, Hashim Thaçi, leader of the Kosovar

Liberation Army, took control of political and administrative power in 27 of the 29 municipalities" (D. Schleicher, 2004, 48-9).

With reference to the role played by the European Union and the Organization for Security and Cooperation in Europe, "both had a formal role in the administration of the United Nations Mission in Kosovo. (D. Schleicher, 2004, 42).

In particular, "the Organisation for Security and Cooperation in Europe was responsible for the third pillar, which dealt with "Democratization and Institution Building", including responsibility for developing political parties, holding elections, organizing the development of the media and ensuring compliance with human rights norms". (D. Schleicher, 2004, 45).

Besides the provision of humanitarian assistance, (sector in which the USAID played an important role) the Organisation for Security and Cooperation in Europe was in charge of providing employment opportunities.

According to Prof. John Bradley and Gerald Knaus, the most important social problem of Kosovo is unemployment of the young population, which is rapidly growing.

In the Kosovo Development Plan (2004), Prof. John Bradley and Gerald Knaus defined unemployment as "…an administrative category that measures the number of those who are actively looking for work but fail to find it". (J. Bradley and G. Knaus, 2004, 9).

They explain that "…discussions on 'real unemployment rate' make sense in societies where unemployment status confers benefits. But - they observe - in Kosovo there are no such benefits and in much of the rural Kosovo, the notion of 'actively looking for work outside the household' make little sense, since almost all the business are run by families. (J. Bradley and G. Knaus, 2007, 9).

These family-run businesses represent the prevalent part of the economy of the country, without considering the widespread informal economy. According to the Kosovo Development Plan (2004): "In Kosovo, most people work outside the formal economy, in casual or unregistered labor. This includes large numbers of subsistence farmers, who live almost entirely outside the cash economy. This informal economy is probably larger than the formal economy. However, the existence of a large grey economy does not make the problem of underemployment any less serious". (World Bank, *Kosovo Labor Market Study: Policy Challenges of Formal and Informal Employment*, June 2003, 39-43).

"In 2002, registered employment in Kosovo provided a total of 147.000 jobs. The largest share – almost three quarters of all official employment – was in the public sector. These are the coveted jobs as teachers, police officers, judges and ministerial or municipal officials.

When the Kosovo authorities include the grey economy in their employment estimates, they count 141.000 agricultural workers. As hardly any of these are registered with the tax authorities, they calculate this by counting every rural household as a farm and assuming that each has one member of the household employed in agriculture. In this instance, 'employment' is pure subsistence, with little produce ever reaching the market. Even when the figures include the world of subsistence agriculture, together with large grey sectors in construction, trade and services, the total employment figure for Kosovo is only 325.000, where the working age population is around one million.

This means that the employment rate (i.e. the numbers employed expressed as a percentage of the working age population) is less than a third. Even taking into account the youthful age distribution of the population, this is a very black picture. Every person employed is obliged to support five or six household members. In this environment, making household savings to finance business investments becomes extremely difficult.

At the same time, Kosovo has the youngest population in Europe, with 36.000 young people pressing onto the labor market every year.

There is simply no possibility that domestic employment creation will absorb this increase in the labor supply in the near future. Furthermore, given the already extremely low productivity of agriculture, there is no way that the next generation can be supported from land-based production activities. To make farm-based production competitive will require productivity to be greatly increased, and agricultural employment to decline as a share of total employment.

In the past, the problem of rapid population growth and chronic underemployment has been met by substantial emigration, mainly to Germany and Switzerland. The route to further emigration to these destinations is now largely closed. This will have two effects on Kosovo society. In the short term, it means that Kosovo's young people have no way of escaping from poverty of the rural areas. In the longer term, it is likely to mean a tapering off of remittance income and a substantial increase in poverty, as the diaspora is no longer replenished with fresh emigration. This is Kosovo's development trap: there is a desperate shortage of employment. Families with increasing numbers of dependents have very few opportunities to increase their cash income. They cannot save for the future or invest in new businesses. The old escape route of emigration is closed. The cash remittances sent back by family members abroad are likely to decline, leaving rural families without an important source of household income and the most important source of investment income. In the absence of a radical shift in policy, the next generation of young Kosovars has very little to look forward to except declining standards of living". (J. Bradley and G. Knaus, 2004, 9-11).

However, according to the Kosovo Economic Outlook 2007: "Kosovo's socio-economic development will strongly hinge on extensive improvement in all areas of education and the development of relevant skills". (Kosovo Economic Outlook 2007, 23)

According to the Kosovo Economic Outlook prepared by the United Nations Mission in Kosovo, there is a strong correlation between the level of education and rate of unemployment.

While unemployment is very low among Kosovars with university degrees, it is the highest in the region among the unskilled segment of the labor force. Lack of adequate skills can be noted both in the private and public sectors. In addition, school enrolment rates are still significantly lower than those in transition countries, especially at the university level. (Kosovo Economic Outlook 2007)

The European Union was responsible for the fourth pillar "which would coordinate development aid, help reconstruct the local infrastructure and construct a functioning, market-based economy" (D. Schleicher, 2004, 45).

However, according to the document titled "*The Pan-European Perspective for the Economic Integration of South-Eastern Europe: the Role of the United Nations Economic Commission for Europe*", Kosovo has made little progress towards establishing a functioning market economy.

Ten years after the ethnic conflict that occurred in Kosovo in 1999, the reconstitution of a functioning economic space is well under way. However, according to the report produced by the USAID in 2003:

"Kosovo's economy is to a certain extent artificial and unsustainable, as it is largely driven and supported by the international and donor community, and Diaspora funds. Private sector activity is based more on trade, services and construction than it is on production. (R. Beilock, 2005, 221-248).

This paragraph was aimed to demonstrate that the post-conflict reconstruction efforts made by regional agencies like the Organisation for Security and Cooperation in Europe and the European Union, did not manage to tackle some of the root causes of Kosovo conflict, like huge level of unemployment and the low performance of the local economy.

Moreover, the European Union action had as a side effect the promotion of an artificial and unsustainable economy, largely dependent on the funding provided by international donors.

The assessment of the effectiveness of post-conflict reconstruction activities, in terms of institution building and economic reconstruction, carried out by regional agencies, is relevant to learn how to prevent in the future the risk to create in post-conflict states a culture of dependence from the international community.

The case of Kosovo shows the risks inner in the enterprise undertaken by the European Union to impose a market oriented economy on a province that was not having the necessary economic infrastructures for the creation of a functioning market economy.

Indeed, the economy of Kosovo prior to NATO intervention and the United Nations' transitional administration was a socialist economy driven by the existence of socially owned enterprises.

According to the studies conducted by some economists, international and regional agencies operating in Kosovo made the mistake to shift abruptly from a socialist economy to a market oriented economy, through the gradual privatization of all the socially owned enterprises existing in the territory.

This enterprise turned to be unproductive in terms of improving the performance of Kosovo economy and in terms of creating the conditions for improving the labor market by solving the phenomenon of unemployment.

The obstacles to the creation of a functioning market economy were identified in the difficulties to carry out successfully the process of privatization, which was hindered by the absence in Kosovo of clear property rights.

The failure to create in Kosovo a functioning market economy highlights the risks inner in the lack of respect for the right of self-determination of the local population, which consists, among the other things, in choosing an economic system that can not be imposed from the outside.

CHAPTER SIX

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A Comparison between Two Concrete and Contemporary Cases: the Implementation of the Responsibility to Protect in the Darfur region of the Sudan and in Kosovo

6.1 Summary of the Sixth Chapter

In this chapter the operationalization of the Responsibility to Protect norm is discussed with respect to the Darfur and the Kosovo humanitarian tragedies.

The first part of the chapter is focused on the humanitarian crisis that erupted in the Darfur region of the Sudan in February 2003.

It describes the division of labor between international and regional organizations (i.e. the United Nations, the African Union, the European Union and the NATO) in implementing the duty to react (the responsibility to react is the second component of the general emerging norm of the responsibility to protect).

The second part of the chapter instead, describes the division of labor between international and regional organizations (i.e. the United Nations, the NATO, the OSCE and the European Union) in preventing the reoccurrence of the conflict in Kosovo during the ten year post-conflict reconstruction phase.

The idea to compare the implementation of the Responsibility to Protect in Darfur and Kosovo stems from the opportunity to identify several analogies between these two conflicts.

First, both of them had their root causes in the violation of minority rights groups; thus, at least partially, they can be qualified as ethnic in nature and grounded on the lack of participation and representation of minority groups in the political decisions made by the central government.

In particular, during the so called "Milosevic's era" the government of Belgrade carried out a politics of discrimination against ethnic Albanians living in Kosovo.

Similarly, the Sudanese government - whose representatives belong mostly to Arab groups – carried out a politics of discrimination against the African sedentary tribes (such as Fur, Masalit and Zaghwa) living in Darfur.

Genocide is usually perpetrated during armed conflicts, especially when conflicts are – at least partially-ethnic in nature.

Abundant early warning signs made the United Nations Security Council aware of the fact that the perpetration of international crimes like genocide or ethnic cleansing was very high both, in the province of Kosovo and in the Darfur region of the Sudan.

However, while NATO-led intervention in Kosovo in 1999 was aimed at preventing an apprehended genocide, the hybrid AU-UN intervention in Darfur in 2007 was aimed at putting an end to it.

In virtue of its preventive nature, NATO's intervention in Kosovo should be related to the first dimension of the Responsibility to Protect, the obligation to prevent.

The intervention was carried out two years before the introduction of the Responsibility to Protect principle by the International Commission on Intervention and State Sovereignty.

In conformity with this principle, the use of armed force should be considered only as a last resort, after all peaceful preventive measures had proven to be ineffective.

However, the question whether all peaceful preventive means had been explored before the military intervention in Kosovo remains controversial.

The aim of this chapter is to consider the implementation of the Responsibility to Prevent in Kosovo during the post-conflict reconstruction phase, rather than focusing on the unsolved controversies about NATO-led intervention in Kosovo.

Indeed, the post-conflict reconstruction phase in Kosovo has been characterized by the effort to mainstream strategies aimed at preventing the reoccurrence of the conflict within the policies directed to rebuild Kosovo's society.

In virtue of its reactive nature, instead, the intervention in Darfur should be related to the second dimension of the Responsibility to Protect, the obligation to react.

Secondly, Darfur and Kosovo conflicts raise similar questions about the legitimacy and the authority of the intervention for humanitarian purposes.

Finally, both conflicts show that a lot remains to be done to improve the effectiveness of the intervention.

Particularly, while Darfur proved the limits in terms of logistics and military capacity of the regional organization of the African Union; NATO intervention was successful in protecting Albanian civilian population and preventing its displacement, but in doing so failed to prevent ethnic cleansing of Serbs and other minorities.

The aim of this chapter is to establish a comparison between Darfur and Kosovo with respect to the implementation of the Responsibility to Protect, and then, to provide insights as to how better operationalise the principle of the Responsibility to Protect in similar circumstances.

6.2 The implementation of the Responsibility to Protect Principle in the Darfur Region of the Sudan

In 2004 the international community became in favor of the intervention in Darfur at the expenses of the sovereignty of Sudanese State.

Indeed, the international community started to be persuaded of the fact that it was nor moral neither legal to defend Sudanese national sovereignty to allow Darfur murders and ethnic cleansing, which represent international crimes forbidden by international humanitarian and human rights law.

As we have anticipated in the summary of this chapter, at least partially Darfur crisis is ethnic in nature.

Indeed one of the root causes of the Darfur crisis was the ethnic tension between the government of the Sudan, whose representatives are mainly Arabs, and the African tribes living in the Darfur region of the Sudan.

The African communities living in Darfur should be considered as "minorities" or as "non-dominant distinct ethnic groups who are marginalized or discriminated against by the State (of the Sudan) (S. Srinivasan, 2006, 2).

"The minorities in Darfur…include ethnic groups which, although they are not necessarily numerical minorities within the region, satisfy this definition on the basis of their non dominance and experience of rights violations (S. Srinivasan, 2006, 2).

The politics of discrimination carried out by the central government against the minority ethnic groups living in the remote region of Darfur, led in its turn to the outbreak of a war between Khartoum government and two armed rebel groups: the Sudanese Liberation Army (SLA) and the Justice and Equality Movement (JEM).

However, the social context of Darfur is very complex.

While analyzing the root causes of the conflict, we should take into consideration the old-age economic competition over land use and water between Arab nomadic groups (supported by Khartoum government) and the sedentary tribes living in Darfur.

The authors of the report titled "Climate Change Behind Darfur Conflict", published in June 2007 by the agency of the United Nations Environmental Programme, have helpfully explained that the economic competition between nomadic and sedentary tribes in Darfur was exacerbated in the last ten years by climate change consequences – like the onward desertification of the region - which made the access to water resources for the communities living in the region even more difficult than in the past decades.

Finally, the last dimension of the Darfur crisis "was a proxy war between Sudan and Chad, with each country hosting and supporting the other's rebel groups" (T. Chataway, 2007, 211).

According to the proponents of the Responsibility to Protect, military intervention with humanitarian purposes ought to be considered only as a last resort.

However, in the case of Darfur, non-violent alternatives to the choice to fight have not been considered:

"As most civil wars, this conflict in Darfur came after a long period of waves of violence. Minorities in Darfur were for decades pushed closer to the brink through marginalization, insecurity and under-development…The potential for major armed conflict was predictable since the 1990s, and certainly evident by late 2002" (S. Srinivasan, 2006, 2).

With the aim of providing an explanation to the neglect of the responsibility to prevent Darfur crisis by international and regional organizations, the scholar T. Piiparinen suggests that the war against terrorism conducted in Iraq and Afghanistan has undermined the military and political capacities of Western States (among the others, US and UK military capacity). For this reason these states became reluctant to engage their troops in Darfur or in other interventions for humanitarian purposes, in spite of their previous advocacy of the principle of the Responsibility to Protect.

The same author advances the hypothesis that: "…what makes Sudan a particularly unattractive target for intervention is the fact that Western governments have become wary of conducting military ventures in Islamic countries. They are aware that such actions may enhance anti-Western sentiments in the Islamic world and play into the hands of terrorists" (T. Piiparinen, 2007, 365).

The lack of commitment by international and regional organizations in preventing through peaceful or military means the crisis led to an escalation of the violence that at a certain moment - in July 2004 – made military intervention in Darfur unavoidable.

Nevertheless, "Preventing or substantially mitigating Darfur's devastating conflict in its earliest stages would have avoided huge costs in terms of human life, financial burden, destabilization beyond Sudan (since the Darfur conflict has spilled over into Chad) and damage to the reputation of the United Nations and the African Union" (S. Srinivasan, 2006, 2).

In July 2004, when the African Union intervened in the internal affairs of the Sudan, mass atrocities and large scale loss of life were already taking place in Darfur. The case of Darfur proved that a lot of imprecision remains with regard to the institutional responsibility.

The lack of precision with regard to the institutional responsibility is a serious problem.

Indeed, "…the whole concept of responsibility is rendered meaningless without a related concept of where that responsibility relies" (A. Bellamy, 2008, 147).

It is not clear on which institutions the Responsibility to Protect civilians lies.

On the wake of the solution to the issue of the right authority provided by the ICISS commissioners, the primary responsibility lies with the host government, and then, in the case of Darfur, with the government of the Sudan.

However, once it became evident that the Sudan was not able or not willing to protect civilians living in Darfur, it was not clear if this responsibility should pass in the hands of the regional organization of the African Union or to the United Nations Security Council.

In spite of the fact that the Outcome Document of the 2005 United Nations World Summit (New York, 14-16 Sept 2005) recognizes the increasingly significant role of regional organizations in facing humanitarian crises, the United Nations Security Council is still considered as the only source of legitimacy for approving the use of armed force with humanitarian purposes.

On the basis of this, in order for the intervention of the African Union to be legitimate, it should meet the approval of the United Nations Security Council.

However, one year later the outbreak of the violence, being the Security Council paralyzed by the threat of the opposition of China's veto, the African Union decided to deploy his troops in Darfur even without Council's authorization.

"…these disagreements (*about where the responsibility to act lies*) themselves have served to stymie collective efforts to respond to the unfolding emergencies" (A. Bellamy, 2008, 147).

Security Council Resolution 1706, which expands the mission of the United Nations peacekeepers in Sudan to include Darfur, represents the first application of the Responsibility to Protect principle to a concrete context.

United Nations troops were deployed in compliance with the articles 138 and 139 of the 2005 Outcome Statement (devoted to the Responsibility to Protect), which assign a growing role to regional organizations in the implementation of the Responsibility to Protect.

The intervention in Darfur was indeed characterized by a positive division of labor among United Nations, African Union, European Union and NATO: "Darfur serves as a laboratory for a new arrangement in which richer organizations of developed countries, such as NATO, contribute material equipment and logistical support while less affluent African organizations provide troops" (T. Piiparinen, 2007, 370).

The division of labor among international and regional organizations "…represents the first serious attempt to transcend the old system characterized by ad hoc contributions of richer countries to their former colonies, which have been intermingled with neocolonial attempts to expand Western political influence in what has been regarded as the African 'backyard'. The European Union Africa Peace Facility established on 19 April 2004 provides a concrete example of the way in which peacekeeping can move away from ad hoc arrangements towards a more permanent, institutionalized, and collective system. The purpose of the Facility is to strengthen the capacity of the African Union and sub-regional organizations to plan and implement peacekeeping operations in Africa effectively (T. Piiparinen, 2007, 385).

The intervention in Darfur occurred also in compliance with the African Union Constitutive Act (25 July 2001), which provides for the right of humanitarian intervention when the state does not fulfill its sovereign responsibility and when, under its domestic jurisdiction, international crimes are perpetrated.

The decision of intervene by African leaders reflects also the move from the philosophy of the Organization of the African Unity in support of the principle of non intervention to the philosophy of the African Union in support of the principle of non indifference.

In the case of Darfur however, the decision to deploy a hybrid United Nations –African Union force was the consequence of the lack of military capacity of the African Union force alone.

The military capacity of the African Union force needs to be further increased:

"…in late July 2004, a full year after the outbreak of large-scale violence, the intervention was considered only by the African Union (AU), an organization facing a severe shortage of matèriel equipment and logistical capacity with which to conduct any effective military operation" (T. Piiparinen, 2007, 367)

Among the lesson learnt from the intervention in Darfur, there is the recognition that the main obstacles to the effective implementation of the Responsibility to Protect principle are the lack of political will on the part of member states of the international community and the limited military capacity of regional organizations such as the African Union.

In addiction, the response of the international community to Darfur crisis arrived too late:

"Since the outbreak of the violence in February 2003, more than a year passed before the first international organization, the African Union, decided to deploy a military operation to put down the massacres. It took two years until United Nations' troops were deployed in Southern Sudan, with only a limited mandate to operate in Darfur (T. Piiparinen, 2007, 365;385).

Due to their limited logistics, air transport, vehicles, and communications capacity, the military troops that were deployed in Darfur were unable to end the violence.

International and regional organizations should further improve their logistics and military capacity before being able to effectively intervene to protect civilians caught in armed conflict.

The explicit reference to the Responsibility to Protect idea in the recent Security Council resolutions[92] represents a positive step in the acceptance of the idea as a binding rule of the customary international law.

However, there is a divergence between the Western rhetoric of the Responsibility to Protect and the lack of commitment in preventing and reacting to Darfur humanitarian catastrophe:

"While Western leaders have actively promoted the responsibility to protect innocent civilians targeted by genocidal governments, they nevertheless have lacked the commitment and resolve to launch an effective humanitarian intervention in Darfur (T. Piiparinen, 2007, 383)

On the wake of T. Piiparinen, even other authors such as P. D. Williams and A. Bellamy argue the need to move from 'stated intentions' to 'necessary actions'.

After the failure to prevent Rwanda genocide, the former United Nations Secretary General K. Annan produced an action plan to prevent genocide (April 7, 2004) to be followed in circumstances similar to the ones occurred in Rwanda.

The first point of this action plan was "the prevention of armed conflict", since "genocide almost always occurs during war and so, one of the best ways to reduce the chances of genocide is to address the causes of conflict" (K. Annan, 2004)

In Darfur, as in Rwanda, the preventive dimension of the Responsibility to Protect was totally neglected.

According to K. Annan's action plan, first the international community was supposed to help Sudan to strengthen its capacity to prevent conflict; secondly, the international community should have prevent Darfur conflict spilling over from Sudan to the neighboring countries and the international community should have paid greater attention to environmental problems and tensions related to competition over natural resources. However, none of these recommendations were implemented in Darfur.

Indeed, according to the United Nations Environmental Program's report, the conflict in Darfur was fuelled by the environmental degradation consequent to climate change.

Moreover, according to the report produced by Minority Rights Groups, the conflict in the Darfur region of the Sudan was fuelled by the marginalization of the communities living in Darfur.

Yet, K. Annan's action plan highlighted the importance of protecting "the rights of minorities, who are genocide's most frequent targets" (K. Annan, 2004).

The second point of the action plan was "the protection of civilians from violence in armed conflict". The protection of civilians should include the protection of women and children. On the contrary, during Darfur conflict women became the direct target of violence and rape and the civilians belonging to specific ethnic groups were deliberately targeted with killings and forcible expulsion.

The government of the Sudan failed its primary responsibility to protect civilians living in Darfur. The African Union mission failed to ensure the protection of Darfur civilians threatened with imminent violence and the intervention of the United Nations forces was not timely to reinforce and provide support to the African Union mission in the accomplishment of its mandate to protect civilians.

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[92] United Nations Security Council resolution 1674 (28 April 2006) on the protection of civilians in armed conflict and United Nations Security Council resolution 1706 (31 August 2006) with which the Security Council expands the mandate of the United Nations mission in the Sudan to include Darfur.

The third point of the action plan was "ending impunity for the people who have committed the crime of genocide through building and maintaining robust judicial systems, both national and international, so that over time, people will see that there is no impunity for such crimes" (K. Annan, 2004).

From this point of view, Darfur case does not represent a complete failure: the International Criminal Court of Justice issued warrants of arrest for the President of the Sudan Omar al Bashir and for its ministers, who shall be tried for the international crimes perpetrated in the Darfur region of the Sudan. However, the very fact that Sudan has not ratified yet the Rome Statute, represents a failure to implement the important recommendation of K. Annan's action plan, to do "greater efforts to achieve wide ratification of the Rome Statute, so that the International Criminal Court can deal effectively with crimes against humanity, whenever national courts are unable or unwilling to do so" (K. Annan, 2004).

The fourth point of the action plan was "strengthening of information gathering and early warning".

With respect to the Darfur crisis, the failure of the international community to provide a timely and adequate response was not due to the lack of information about what was occurring in the region.

On the contrary, the International Commission of Inquiry appointed by the Secretary General and the Special Reporter of the Human Rights in the Sudan were able to gather very precise information to the UN Security Council.

Therefore, we should assume that the Security Council was in the condition of easily predict the likelihood that genocide could be perpetrated, as it already happened in Rwanda.

Contrary to the recommendations made by the former Secretary General K. Annan in his action plan, also in the case of Darfur, as it already happened in the past, the international community was paralyzed "by legalistic argument whether a particular atrocity meets the definition of genocide or not". By the time the international community was certain, it was too late to act. In Darfur the international community was able to recognize the signs of possible genocide, but it did not act in time to avert it, in spite many reports drawn the attention on the impending catastrophe.

The last point of the action plan was the "implementation of swift and decisive action, when, despite all the efforts of the international community, the United Nations learns that genocide is happening or about to happen".

In the case of Darfur there was abundant early warning signs and since 2004, "The United Nations Emergency Relief Coordinator reported to the Security Council that "a sequence of deliberate actions has been observed that seem aimed at achieving a specific objective: the forcible and long-term displacement of the targeted communities, which may also be termed 'ethnic cleansing'" (K. Annan, 2004).

Once again the United Nations Security Council lacked the political will to act.

Military intervention in Darfur far from being swift and decisive was late and largely ineffective. This failure can be attributed to the absence of "clear guidelines on how to identify those extreme cases in which military intervention is required and how to react to them…A serious attempt to provide such guidelines was made by the International Commission on Intervention and State Sovereignty, in its report on the Responsibility to Protect." (K. Annan, 2004).

The criteria for the legitimacy of military intervention were still taken in serious consideration in the High Level Panel report on Threats, Challenges and Changes.

However, the guidelines aimed to identify those extreme cases in which military intervention is required do no longer appear in the Outcome Statement of the United Nations World Summit (New York, 14-16 Sept 2005). The failure to reach a consensus on these guidelines still represents a serious obstacle to improve the collective security system.

6.3 The Implementation of the Responsibility to Prevent in Kosovo

In spite of the fact the International Commission on Intervention and State Sovereignty considered the obligation to prevent as the most important dimension of the Responsibility to Protect, the scholars and international actors who intervened in the debate on the Responsibility to Protect have relatively neglected this dimension, to give more prominence to the reaction component.

However, the prevention of violent armed conflicts is fundamental to the achievement and the maintenance of international peace and security.

In a recent article the scholar A. Bellamy pointed out that: "…the prevention of deadly conflict is one of the fundamental goals of the United Nations. The preamble of the UN Charter commits the organization to saving future generations from the 'scourge of war'. In 1955, Dag Hammarskjold identified the prevention and solving of conflicts as the organization's most significant function" (A. Bellamy, 2008, 136).

Across the globe, international, regional and non governmental organizations are giving more and more importance to efforts for the dissemination of preventive approaches to armed conflict.

However, international law is more equipped for instruments aimed at preventing inter-state conflicts than for strategies to be pursued to prevent internal conflicts (N. Ronzitti, 2001).

In spite of the recognition of the importance of moral, legal and international considerations, the international community is interested in developing conflict prevention practices on the basis of financial considerations as well.

The cost-benefit analysis conducted by the Carnegie Commission on Preventing Deadly Conflicts (1997) on the major military and humanitarian interventions occurred throughout the nineties, shows that the adoption of conflict prevention measures would have avoid the international community to sustain the financial costs of conflict management activities, which have proven to be incomparably huger:

"…in 1997, the Carnegie Commission estimated that even a maximal commitment to direct and structural conflict prevention would cost less than half the price of intervention and subsequent rebuilding". (A. Bellamy, 2008, 136).

In the same year the former Secretary General K. Annan published a report titled *Preventing Armed Conflict*. This report, - in the scourge of the tragedies occurred in Rwanda and in the Former Yugoslavia throughout the nineties - expresses the political will to move the United Nations system from a culture of reaction to a culture of prevention:

"The costs of not preventing violence are enormous. The human costs of war include not only the visible and immediate –death, injury, destruction, displacement- but also the distant and indirect repercussions for families, communities, local and national institutions and economies, and neighbouring countries. They are counted not only in damages inflicted but also in opportunities lost". (K. Annan, 2001, 6).

After the negative experience of the Former Yugoslavia, the concept of conflict prevention has been widened by academic authors to encompass more structural interventions, such as institution building (like the one run by the Organisation for Security and Cooperation in Europe in Kosovo) and economic development and reconstruction (like the one run by the European Union in Kosovo until 2008), which are the same long-term programs that characterise the third dimension of the responsibility to protect: the obligation to rebuild.

Before the nineties instead, the concept of conflict prevention included only those measures explicitly directed towards imminent inter-state conflicts, such as preventive diplomacy, fact finding missions, negotiation, mediation and preventive deployments (B.B. Ghali, *An Agenda for Peace*, 1992):

"The United Nations' conflict prevention function…was based mainly on the secretary-general's preventive diplomacy and crisis management and the proliferation of social, economic, cultural and humanitarian organization under the United Nations' umbrella, none of which has been integrated into a system of conflict prevention" (A. Bellamy, 2008, 136).

The implementation of the responsibility to prevent principle requires either the establishment of an effective early warning system to tackle with the root causes of conflict, and the development of direct conflict prevention capabilities.

"The International Commission for Intervention and State Sovereignty… identified four key dimensions of root causes prevention: political (relating to good governance, human rights and confidence building); economic (relating to poverty, inequality and economic opportunity); legal (relating to the rule of law and accountability); and military (relating to disarmament, reintegration, and security reform). (A. Bellamy, 2008, 138).

One of the outcomes of the United Nations World Summit that took place in New York, between 14th and 16th September 2005 was the commitment of the States "to establish an early warning capability for the United Nations" (A. Bellamy, 2008, 135).

However, four years before, "…the ICISS noted that failings associated with early warning are often overstated and that the nub of the problem tends to lie not in predicting the outbreak of violent conflict but in generating the political to act on these predictions. As is now known only too well, mass killing in Bosnia, genocide in Rwanda, and the reign of terror in Darfur were all predicted before the event- the latter two by senior UN officials" (A. Bellamy, 2008, 137).

In the last decade political theorists and international actors have recognised that preventive strategies can be implemented not only before the outbreak of hostilities but also after violence has already erupted - both, during the conflict and in the post-conflict phase.

The present work considers the possibility to mainstream conflict prevention measures in Kosovo's post-conflict reconstruction policies.

These measures "…are aimed at building a durable peace and a positive environment, in order to prevent the reoccurrence of the conflict (L. Reychler, 1998, 83).

In resolution 1244, adopted on 10 June 1999, the Security Council broadly outlined the mandate of UNMIK as building democratic institutions of self-government and transferring responsibility to them, reconstructing Kosovo's infrastructure, coordinating humanitarian aid, maintaining law and order, protecting human rights, and working toward a political settlement in Kosovo (UNSC resolution 1244, 10 June 1999, par.11).

In 1999 the Secretary General published two reports on Kosovo, which made it clear that UNMIK was to have supreme executive and legislative authority, and would fully take over the governance of Kosovo (D. Zaum, 2007, 132)

The ambition of the United Nations Mission in Kosovo (UNMIK) was that of assisting Kosovo's political community in the process of building its national capacity in the field of economic and political governance.

However, economic development and reconstruction (pillar run by the European Union) and institution building (pillar run by the OSCE) are only indirect conflict prevention measures.

Instead, the mainstreaming of conflict prevention practices in post-conflict developmental assistance programs was necessary to prevent Kosovo from relapsing again into violence.

The mainstreaming of conflict prevention strategies within post-conflict activities requires the establishment of a 'culture of prevention' where countries are alert to problems and are open to early warning and response strategies in order to avoid deterioration of societal structures" (L. van de Goor, M. Huber, 2000/01, 13, 51).

The objective of a culture of prevention is to incorporate conflict prevention as part of all areas of engagement of the post-conflict reconstruction phase.

Post-conflict developmental assistance programs and institutional reforms should then be adapted to the policy goal of implementing the responsibility to prevent.

The mainstreaming of long-term preventive practices in developmental programs and institutional reforms that have been designed for countries emerging from war requires the identification of the root causes of conflict in those countries.

Fundamental socio-economic inequalities in the field of political participation or in the allocation of land or other resources represent long-term structural problems that might lead to the outbreak of intra-state hostilities (K. Annan, Prevention of Armed Conflict, 2001).

The mainstreaming of structural preventive strategies within development-assistance programs and institutional reforms should be aimed at solving or mitigating at least partially long-term structural problems such as systematic ethnic discrimination and the denial of human rights.

The existence of effective preventive mechanisms such as well functioning governance and rule of law institutions can prevent countries suffering from socio-economic inequalities among different ethnic groups to lapse into violence.

In the aftermath of the conflicts occurred in South East Europe during the nineties, in 2001 the United Nations Economic Commission for Europe carried out a study titled "*The Economic Dimension of Conflict Prevention*".

This study replies to "the call of the International Commission on Intervention and State Sovereignty for measures to centralise preventive efforts, tackle the root causes of the conflict, and enhance direct prevention capabilities" (A. Bellamy, 2008, 135).

The aim of the study was the identification of the economic and institutional causes that led to the eruption of conflicts in the region of South East Europe in the course of the previous decade:

"Economic decline and rising poverty; growing inequality within the state; weak and uncertain state institutions; high unemployment, notably amongst youth; the role of parallel structures (terrorist and organized armed groups) and their ability to access international financing" (United Nations Economic Commission for Europe. -UNECE-, 2001, 1).

The purpose of the identification of the root causes of these conflicts was in its turn the specification of appropriate conflict prevention strategies aimed at preventing the reoccurrence of the conflict in the same areas.

Conflicts tend to occur again when their long-term underlying problems have not been solved, at least partially. If the root causes of conflict remain unsolved indeed, each effort of reconstructing the economic and political structures of the society could turn into a failure.

"Conflict typically set off a chain reaction, meaning that the occurrence of a crisis directly increases the probability that another will strike again" (J.J. Kirton, R. N Stefanova, 2004, 84).

Therefore, conflict prevention should be based on the detailed analysis of the root causes that lead the country to lapse into violence for the first time, so to be able to eliminate those impediments that prevent peace consolidation.

Conflict prevention theory is grounded on the important distinction between proximate (short-term) and structural (long-term) causes of conflict.

According to the study conducted by the United Nations Economic Commission for Europe, the structural causes of Kosovo's conflict were economic in nature.

The economic decline of the province of Kosovo was coupled with the phenomenon of rising poverty to which conflict prevention's experts have paid considerable attention.

Indeed, rising poverty along with inequality and the perception of this inequality by the different ethnic or social groups are all factors that increase the likelihood that a conflict breaks out.

The contribution from economic analysis and international relations' theory made clear that on the one side there is a relation between peace, security and economic prosperity, and conversely, there is a nexus between poverty, instability and the risk of war:

"These days conventional wisdom maintains that conflicts, both international and internal, are caused by a struggle for markets, for natural resources, for land and for a better share of the revenue within a given society. As a corollary, the only problems really worth addressing for an effective conflict prevention policy would allegedly be of an economic nature" (J.J. Kirton, R.N. Stefanova, 2004, 89).

This is also the premise of the study conducted by the United Nations Economic Commission for Europe on the causes of the conflict in South Eastern Europe, which underlines the incidence of economic factors in the determination of the emergence of Kosovo's conflict.

This does not mean that the structural problems of Kosovo can be addressed with a single-factor approach.

Indeed conflict prevention's strategies should take into consideration all the complexity of the factors that may fuel the conflict, and not only economic aspects.

However, to stress the incidence of economic factors does not necessarily mean to underestimate the role played by other factors, such as weapons, political leadership, ideology or the lack of respect for human and minority rights.

Economic decline and rising poverty were identified by the United Nations Economic Commission for Europe study as two triggering factors that can be invoked to explain the insurgence of conflicts in South Eastern Europe.

'Economic decline' can be defined as "the failure of the state to either enjoy or sustain a period of rapid economic growth or to deliver real benefits to its population". (UNECE, 2001, 27).

The study conducted by the United Nations Economic Commission for Europe recognizes that conflict prevention strategies to be integrated in post-conflict reconstruction programs should include an important economic dimension.

The emphasis put on economic growth is grounded on the fact that economic reconstruction and growth are essential conditions both to prevent the reoccurrence of the conflict and to build durable peaces, which are perhaps the main goals of the reconstruction process.

Among the economic problems that were afflicting Kosovo when the conflict broke out there were "huge unemployment, massive migration, the incapacity of the state to provide basic services to an increasingly poor population, decaying educational and health care systems, environmental damage and negligence, growing networks of organized crime, drug and weapon trafficking, growing conflicts over scarce resources". (UNECE, 2001, 53).

On the basis of this analysis of the underlying causes of conflict, "the approach taken by UNMIK to the transfer of responsibilities to the new institutions was informed by concerns about the ability of existing institutions to deliver services to Kosovar society, and the capacity of Kosovar to run these institutions effectively". (D. Zaum, 2007, 134).

According to the literature on the subject of conflict prevention 'absolute poverty' is not itself conducive to conflict, "since there is no statistically relevant correlation between poverty and conflict". (J.J. Kirton, R.N. Stefanova, 2004, 90).

Indeed, what led to the outbreak of Kosovo's conflict was rather the perception of the inequalities between Serbs and Albanians, more than the absolute poverty of Kosovar population.

Taking for granted that a market economy is able to offer better performances than a socialist economy, development policy makers imputed the poor performance of Kosovar economy to its socialist character and opted for the transition of Kosovo from a socialist economy to a market-oriented economy.

According to the scholar Morrow, on the one side market economy can have as a side effect the worsening of economic inequalities in income distribution, on the other side, economic development can become a destabilizing factor "insofar as it disrupts the old equilibrium and, as it is often the case, favors one sector of the population often one ethnic group to the detriment of another". (Morrow, 1990).

In Kosovo, economic reconstruction and development along with the process of privatization had as a result a better economic integration of Albanians at the expenses of the Serbian minority.

Because they were forced to abandon Kosovo, Serbs could not prove that they were working within Kosovo's enterprises before the eruption of the conflict, and then also those Serbs who were covering managerial positions before the starting of the hostilities, were deleted from the lists of the employers of the privatized enterprises, which were published by the United Nations.

These lists include very few representatives of the ethnic minorities living in Kosovo, such as Rom and Turkish and very few Serbian names.

The absence of Serbian names in these lists was at the core of many legal protests advanced against UNMIK by Belgrade central government.

Since the search for the independence from Serbia was mainly due to the ethnic discrimination suffered for decades by Albanians, it is now very important that Kosovo does not carry out discriminating policies against Serbs or other minorities.

However, "when in the autumn 2005 Kai Eide, special envoy of the UN Secretary General was called to review the implementation of the standards, he found important shortcoming in the implementation, in particular with regard to the protection of ethnic minorities". (D. Zaum, 2007, 143).

Also according to the most recent United Nations report on Peace operations, in Kosovo, "reconciliation between the various communities remains elusive". (United Nations Peace operations, 2008, 21).

The literature on the subject of Kosovo's conflict stresses the importance of its ethnic dimension. The politics of discrimination carried out by Belgrade central government was characterized by "the exclusion of Kosovar Albanians from all institutions of political and social life, the dismissal of workers from factories, and of teachers and professors from schools and universities, the suspension of Albanian language television programmes and the major Albanian newspapers, the obligation, for Albanians of a special permission to buy property from Serbs, police violence against Albanians in the form of rife and arbitrary arrest and house searches common lead to the declaration of the independence of the Republic of Kosovo in September 1991 and the organization of a parallel state. (D. Zaum, 2007, 129).

However, the scholar P. Collier in a book titled *The Implications of Ethnic Diversity* (2001) argues that ethnic diversity is not a cause of conflict itself.

On the contrary, the presence within a country of many different ethnic groups would reduce the risk of violent conflict and encourage the different ethnicities to become tolerant towards each others in spite of their differences. Therefore, not necessarily huge rates of ethnic diversity make countries more conflict-prone than those characterized by a substantial ethnic homogeneity. However, ethnic diversity is an element that can

contribute to the emergence of conflict, when it is coupled with the perception of inequality in the allocation of power, resources and privileges.

Since the Kosovo's conflict had an important ethnic dimension, the conflict prevention measures that were mainstreamed in the post-conflict reconstruction programs were aimed at changing the perception of unfairness, marginalization and exclusion of Kosovar Albanians in the distribution of benefits among different ethnic groups.

While the United Nations Mission in Kosovo (UNMIK) administration was certainly successful in ensuring a better integration of Albanians within Kosovo post-conflict society, unfortunately their integration was built at the expenses of the growing marginalization of the Serbian minority living in the province.

The ethnic geography of Kosovo, characterized by the prevalence of Albanians over Serbs falls under the category of structural causes of conflict.

During Milosevic's era, the central government of Belgrade carried out a politics of discrimination against Kosovar Albanians in terms of political participation, economic allocation of resources and cultural opportunities.

According to the scholars J. W. Burton and D. L. Horowits, there are some processes that are common to all interethnic conflicts.

In the context of their conflict theory, they have helpfully made clear that:

"In all conflicts, and especially in inter-ethnic conflicts, material root causes of a socio-economic nature constitute a potential that does not translate into actual group confrontation by some natural mechanisms. It does so because, usually thanks to successful political and ideological action on the part of the leaders, groups come to believe that the only way to guarantee their rights from the right to speak their own language to the right to have a fair share of national wealth; from the right to have their political weight recognized sometimes to the very right of survival is to use force, and preferable to constitute their own political entity. So called ethnic conflict are usually about the nation-state: which state, whose state". (J. W. Burton 1990, D. L. Horowitz, 1985).

The politics of discrimination carried out by Belgrade central government during Milosevic's era was perceived as incompatible with the permanence of Kosovar Albanians within Serbia, also as a result of the successful political and ideological action exercised by Kosovo Liberation Army and in spite of the peaceful resistance suggested by the leader Ibrahim Rugova.

Post- conflict reconstruction of Kosovar society had to take into consideration the political, economic and social marginalization suffered from Albanians as a result of the politics of discrimination carried out by Belgrade central government. The reconstruction process in Kosovo was guided by the United Nations Mission in Kosovo (UNMIK), which gradually changed its nature throughout the years following the end of the conflict. Originally conceived as 'an assistance mission', UNMIK started very soon to exercise a form of 'direct political authority over Kosovo'. (D. Zaum, 2007, 128, 132).

The reason of such a transformation should be identified in the need to overcome Kosovar institutional weakness through the reform of its institutional system.

This reform was aimed at reaching the administrative autonomy of Kosovo and its compliance to 'internationally determined standards' (D. Zaum, 2007, 127) in the sectors of human and minority rights, the rule of law, the impartiality and independence of the judicial system, the economic integration of Kosovo in South Eastern Europe and in Europe, the transition to a market-oriented economy.

The slogan that summarizes the United Nations Mission's policy on Kosovo « standards before status » (D. Zaum, 2007, 142) is the recognition of the need for Kosovo to meet 'internationally determined standards', both in terms of political democratic institutions and of administrative and economic self-sufficiency, before obtaining the recognition of a well-defined juridical status.

Indeed, the recognition of Kosovo's sovereignty was subordinated to the fulfillment of 'internationally recognized standards'.

The fulfillment of these standards was carried out by the United Nations Security Council in October 2005, before initiating to resolve the status issue. (D. Zaum, 2007, 127).

The absence of a real democracy (in line with the democratic peace theory), the ethnic conflict between Serbs and Albanians and the poor performance of Kosovar economy are the main structural causes that led to the eruption of the conflict in 1999.

The pillars of Kosovo's *state building*, which can be defined as 'UNMIK's efforts to establish and strengthen political and administrative institutions', was the double reform of the civil administration and the judicial system. (D. Zaum, 2007, 127, 144).

Since the weakness of Kosovo's institutions was regarded as one of the main structural causes of Kosovo's conflict, the United Nations Mission in Kosovo mission was mainly focused on state-building activities.

As a result of a long degenerative process, Kosovo's institutions were not able to provide basic services and security to the people living in Kosovo.

In adopting resolution 1244 on 10 June 1999, the United Nations Security Council placed Kosovo – a province of Serbia in the Federal Republic of Yugoslavia – under the Administration of the United Nations Mission, pending a resolution on its future status (United Nations Peace operations, 2008, year in review, 21).

The United Nations Security Council resolution 1244 established from the very beginning that Kosovo would enjoy a substantial autonomy within the Federal Republic of Yugoslavia.

The United Nations Mission's mandated tasks included the civil administration of the territory of Kosovo (judiciary and police) and overseeing its elections, the massive rebuilding of Kosovo's infrastructures, the establishment of Kosovo's of democratic self-government, the maintenance of the public order, assisting Kosovo's economic reconstruction (United Nations Security Council Resolution 1244, 10 June 1999 par. 10) and "all executive, legislative and judicial powers (were) vested in the Special Representative of the Secretary General for Kosovo". (United Nations Peace operations, 2008, year in review, 21).

This provisory administration was characterized by a consistent international civil presence: "The United Nations Mission in Kosovo has included judges, agricultural and health specialists, corrections experts, human rights specialists, electoral specialists and monitors, public information production teams, economists, civil administrators, political advisers, and staff from many other fields…at one stage, the The United Nations

Mission in Kosovo was staffed by some 3.300 international police and thousands of international and local civilians". (United Nations Peace operations, 2008, 22).

The first two pillars of the mission, centered on the management of the most important sectors of public administration, were under the direction of the United Nations.

The first pillar was "responsible for the humanitarian affairs, in particular the coordination of emergency aid and the 'winterization' of accommodation of Kosovar families returning to their destroyed homes, and was led by the United Nations High Commissioner for Refugees". (D. Zaum, 2007, 134).

The second pillar was headed by the United Nations and was responsible for 'the day- to day running of the civil administration, the police and the justice system'. (D. Zaum, 2007, 134).

According to Prof. D. Zaum, the United Nations Mission in Kosovo's international administration was informed on the concept of sovereignty as responsibility, which "influences state-building policies providing both a blueprint to build institutions and a justification for the continued governance of post-conflict territories by international administrations". (D. Zaum, 2007, 141).

The concept of sovereignty as responsibility is based on the assumption that a strong connection exists between sovereignty and legitimacy.

Sovereignty is legitimate when it is recognized by the international community of states.

This recognition stems from the fulfillment by the sovereign state of a set of responsibilities both towards its own subjects and the international community.

The purpose of this new way to conceive sovereignty is the achievement - by the Kosovar political community - of certain standards of civilization, such as respect for human rights and the rule of law and the establishment of democratic institutions.

Indeed, only under this condition, the international community would be willing to recognize the political authority of Kosovo over its territorial entity and population.

This recognition would have allowed the evolution of the status of Kosovo from that of an autonomous political community to a legitimate sovereign state.

The fact that from June 1999 to April 2006, Kosovo was not recognized as a state but only as a political community can be imputed to the concern that the model of Kosovo can provoke a chain reaction in the world.

Actually, the recognition of Kosovar sovereignty would have represented a dangerous precedent for many autonomous provinces - such as Ossetia and Abkhazia - that vindicate the right to secede.

Another reason that might help to explain the reluctance to recognize the juridical status of Kosovo as an independent state is that the independence of Kosovo was "the result of a war fought to address a humanitarian crisis, not to advance secession". (D. Zaum, 2007, 131).

However, "against a background of continuing deadlock in the Council, the Kosovo Assembly declared independence in February 2008, and more than 50 countries have since recognized Kosovo as an independent country. (United Nations Peace operations, 2008, 22).

This recognition has promoted the juridical status of Kosovo from an independent province (before the conflict) and an autonomous "political community with its own political and administrative institutions" (D. Zaum, 2007, 127) to an independent state.

The attainment of European standards about human rights, the rule of law and the creation of democratic institutions, was the goal of the Organisation for Security and Cooperation in Europe's mission in Kosovo.

The third pillar of the mission, focused on institution building and the democratization and control of the institutions, was under the direction of the Organisation for Security and Cooperation in Europe (OSCE).

The OSCE played a central role in the establishment of the judicial system, partly through the identification of judges and partly through monitoring the compliance of the judicial system with international human rights standards.

The reform of the judicial system, which is probably the most difficult challenge faced by the United Nations Mission in Kosovo administration, was characterized by the division of labor between UNMIK international mission and the Organisation for Security and Cooperation in Europe's regional mission.

The goal of the reform of the judicial institutions was to enhance their legitimacy, independence, impartiality and effectiveness. (D. Zaum, 2007, 128).

The legitimacy of the legal system depends on its reflection of the goals and purposes of a society, while its effectiveness is the ability to promote these goals. (D. Zaum, 2007, 144).

Moreover, "the effectiveness of a judiciary describes the extent to which courts are able to conduct trials speedily in a procedurally appropriate manner, observing international rule of law standards. Thus, effectiveness is not only concerned with the outcome (i.e. the number of cases successfully addressed, but also with judicial procedure, and is consequently linked to the issues of judicial independence and impartiality". (D. Zaum, 2007, 150).

The United Nations Mission in Kosovo tried to address the problems of effectiveness and capacity in three ways: a) internationalization of the judiciary; b) reorganization of the judiciary; and c) legal training for judges, prosecutors, and defense lawyers. (D. Zaum, 2007, 150).

The 'procedural legitimacy', is the ability of the legal system to promote the goals and purposes of a society in an independent and impartial fashion. (D. Zaum, 2007, 144).

Independence and impartiality, as conditions of the legitimacy of the judicial system, are requirements that should be met by governments under international law. (D. Zaum, 2007, 145).

"The legal order is a constitutive element of modern states and an essential condition for the exercise of the authority" and "if the scope of the authority is not defined, the government is characterized by arbitrariness and lack of accountability". (D. Zaum, 2007, 144).

On the contrary, according to the same author, the United Nations Mission in Kosovo mission was informed by the concept of sovereignty as responsibility.

Moreover, if the judiciary is not protected by the influence of the political power, it is unlikely that there is equality of the citizens before the law, and the judicial system risks to become rather an instrument of control over individuals, than an institution aimed at protecting their rights. (D. Zaum, 2007, 145).

The efforts to reform the judicial system that have been made in Kosovo were aimed to increase its legitimacy first through the clarification of the applicable law and ensuring its compliance with the minimum human rights standards; (in December 1999, the United Nations Mission in Kosovo declared as applicable the law that was in vigor the 22 March 1989, before the central government of Belgrade revoked Kosovo's autonomy); and secondly, trough the reform of the judicial system. (D. Zaum, 2007, 144).

The United Nations Mission in Kosovo opted first for the incorporation within the domestic legal system of a wide range of international human rights standards, secondly for the introduction of international judges and prosecutors and finally for the establishment of some independent institutions in charge of recruiting judges, in order to effectively prevent corruption. The United Nations Mission in Kosovo tried also to establish a civil administration able to provide Kosovar citizens with some functioning public and basic services, such as education, health care and transports.

The Organisation for Security and Cooperation in Europe focused instead on capacity-building for the Kosovo Chamber of Advocates (KCA), the legal aid system, and the Kosovo Bar Association. Following a detailed assessment of the legal community, the Organisation for Security and Cooperation in Europe helped kick-start the Kosovo Chamber of Advocates in 2000 and continues to provide technical assistance, legal education and training to Kosovo Chamber of Advocates' members, material and logistical support.

The Organisation for Security and Cooperation in Europe has created a number of institutions that support the legal community. Two have transitioned to full local ownership: the Kosovo Judicial Institute, which trains judges and prosecutors, and the Ombudsperson's Office, which investigates complaints concerning human rights violations and abuse of authority by officials.

The scope of the judicial system's reform was the creation of an impartial judicial system, independent from the local elites.

Despite the substantial efforts made by the United Nations Mission in Kosovo and the Organisation for Security and Cooperation in Europe to reform Kosovar institutions, Kosovo is far from reaching European standards in terms of human rights' and rule of law's respect.

"Despite their progress, Kosovo's judicial institutions remain fragile, and can only live up to the human rights and rule of law requirements, in particular with regard to minorities, with continued international support and involvement". (D. Zaum, 2007, 151).

The reconstruction of Kosovo's local economy, economic development and the creation of a prosperous market economy were instead under the direction of the European Union.

Within the United Nations Security Council resolution 1244, which established the United Nations Mission in Kosovo, the creation of a free market economy, which was a central objective of Kosovo's state-building process, was mentioned only indirectly.

The key elements of the transition towards a free market economy were the limitation of the role of the state in the management of the economy and the creation of the necessary legislative framework for the development of the private sector.

The effort to create a free market economy in Kosovo reflects Western standards of civilization, and particularly the political and economical values of liberalism.

However, since liberalism is strictly associated with the self-determination principle, the imposition of a liberal economic system is self-contradictory.

The meaning of the principle of self-determination has been clarified by one the main representatives of classical liberalism, the English philosopher J. S. Mill.

In line with the definition provided by John Stuart Mill, people have the right to choose their own political and governmental institutions that cannot be imposed from the outside.

But, in the case of Kosovo, the right to self-determination has been sacrificed to the creation of effective governance institutions. (D. Zaum, 2007, 135).

The reconstruction of the Kosovar society was built on "an understanding of sovereignty that predominantly considers the effective delivery of certain services by the state, ranging from protection to public services, rather than the existence of an ethnically and territorial defined political community and its right to self-determination as the major source of sovereign authority". (D. Zaum, 2007, 134).

Since the economic and political institutional system of Kosovo has been imposed from the outside, the creation of a liberal order was impossible.

The Kosovar political and economic order resulting from the building and reconstruction efforts made by international (the United Nations Mission in Kosovo) and regional (the Organisation for Security and Cooperation in Europe and the European Union) agencies was not the fruit of the exercise of the right to self-determination.

However, international actors justified the imposition of a liberal order over Kosovo on the basis of the consideration that the enjoyment by Kosovar citizens of the right of self-determination would be possible only as a consequence of the creation of those institutions that are considered necessary to guarantee the self-determination of the individual.

At the beginning of its mission, the United Nations denied to transfer its administrative powers to local institutions.

This denial can be understood in the light of the fact that - given the ambiguity of Kosovo's juridical status - its local institutions were not recognized yet by the rest of the international community.

For this reason, the legitimacy of the United Nations international administration started to be questioned, in spite of the fact that, after this initial phase, the United Nations Mission in Kosovo transferred many of its functions to local institutions.

Questioning the legitimacy of the United Nations' international administration is problematic for different orders of reasons.

First, because the United Nations Mission in Kosovo was authorized by a resolution of the United Nations Security Council (United Nations Security Council Resolution 1244).

Secondly, because Kosovar local institutions acquired the capability to administer the territory only thanks to the presence of the United Nations' international civil administration.

Finally, because during the ten years that preceded the outbreak of the conflict, in the province of Kosovo there was a vacuum of power.

This vacuum caused the collapse of the local political and administrative institutions and a serious socio-economic decline.

The exercise of the United Nations' political authority can be legitimized by referring to several factors as the inability of the local political elites to be in compliance with Western standards and the absence of legitimate national institutions.

UNMIK mission crossed three different phases from the institution building to the interaction with local institutions and from this interaction to the transfer of the United Nations' administrative functions to local institutions.

The transfer of the political authority from the hands of the United Nations' international administrators to local actors reflected more the need to involve local actors in the administration of Kosovo and to establish an effective control over the territory than

the acquisition of an actual self-governance capacity by Kosovar local institutions.

Actually, the transfer of the political authority to local institutions, started much before they were able to effectively administer the political community and definitely before the achievement of standards as functioning democratic institutions, respect for laws, freedom of movement, respect for minorities, return of refugees, economic development and clear property rights.

"The handover of political authority has not been determined by the fulfillment of specific criteria by local institutions displaying their ability to exercise governance functions, but rather by the United Nations' inability to govern without local cooperation and its willingness to honor local demands for self-government" (D. Zaum, 2007, 143).

Other considerations may help to explain the transfer of the political authority to local institutions before the achievement of European standards.

The first consideration is that the local exercise of the political authority is central to the development of the capabilities of the local government.

The second consideration is that the consensus over the public politics is an important aspect of the democratic political process. The democratic political process helps to create local support for policies and institutions, which are essential for their sustainability. The involvement of Kosovar in government is crucially important to enhance the legitimacy of the state-building project. (D. Zaum, 2007, 135).

A perceived need to impose particular institutions and policies indicate the absence of a national political consensus on the objectives of the reform and, at the same time, a lack of willingness to realize the reform by local politicians.

Their support is important for the sustainability of the institutions once there will be the exit of the international administration, regional organizations (such as the European Union and the Organisation for Security and Cooperation in Europe) and the exit of the military force (NATO/KFOR), which at the beginning

"(also through air strikes) drove Yugoslav forces out of Kosovo". (United Nations Peace operations, 2008, 21).

Since the conflict in Kosovo risked destabilizing the whole region, (especially because of the risk of massive refugee flows), ensuring the security of South East Europe was among the objectives of the United Nations' mission in Kosovo.

The conception of security that informed the United Nations' mission was based upon the values of democracy, human rights, rule of law and a free market economy.

European security would be guaranteed by certain kind of European states, stable, with functioning institutions and incorporating the different elements of the civilization standards.

This European identity is defined in the clearest way by the Copenhagen criteria:

-        the stability of the institutions that guarantee democracy, rule of law, human rights and the respect and protection of minorities;

-        the existence of a functioning market economy;

-        the ability to fulfill the obligations of the European Union's membership, which is an effective administration that can realize European legislation.

One of the main goals of the United Nations' mission in Kosovo was the achievement of the security within and outside the province. To reach this goal it was necessary to make out of Kosovo an authentically democratic political community.

However, the political authority of the United Nations' mission in Kosovo faced different orders of challenges.

First, the legitimacy of the mission was questioned by the demands for self-governance made by local political elites in virtue of the self-determination principle. Independence was considered by local political elites as the only acceptable form of self-governance.

Secondly, due to the insufficient planning of its activities, the United Nations' mission in Kosovo was hold as ineffective in administering the territory of Kosovo, despite the great deal of financial and human resources devoted to the mission (with the biggest per capita of all missions in the world).

Finally, the capacity of the United Nations' mission in Kosovo to implement an effective public policy was undermined by insufficient information about local conditions, customs and circumstances.

The fourth pillar, related to reconstruction and economic development, was run by the European Union. The mandate of European Union mission in Kosovo, incorporating the basic reconstruction, was aimed to reduce the consequences of the conflict occurred in 1999 on the one side, and to improve the disastrous economic conditions consequent to Milosevic's era, on the other.

Purposes of the fourth pillar were the modernization of Kosovar economic framework and the establishment of the basic institutions for creating an efficient market economy and preparing Kosovo in its path towards the European Union. (D. Zaum, 2007, 166).

Satisfactory progresses have been made in terms of economic integration within the regional and European markets and in terms of creation of the necessary institutions for the development of a competitive market economy.

In addition, the fourth pillar has undertaken a massive privatization programme.

During the privatization process, the European Union faced serious challenges.

For instance, the lack of knowledge about property rights delayed both the drafting of the legislation and the implementation of the process. (D. Zaum, 2007, 167).

In spite of the progresses made in the field of reconstruction and economic development, Kosovo is still far from reaching economic self-sufficiency and the international community is not willing to support Kosovo *ad infinitum*.

From these considerations, follows that to improve the effectiveness of the mission, it would be necessary a better planning of the mission and a more rapid deployment of the necessary personnel, in order that the mission can rapidly face the problems that afflict post-conflict society rather than its own organizational problems.

The effectiveness of international administrations can be improved in several ways.

First, through a better gathering and management of the information about the societies that should be administered.

Secondly, through a careful consideration of the lessons learnt from those missions that were successful in state-building activities and in the establishment of legitimate and stable institutions.

Finally, through making the international administration more accountable towards the local population, for instance by extending the jurisdiction of the supreme local tribunals also over the acts of the international administration. (D. Zaum, 2007, 152).

However, we should not underestimate the side effects that each international administration might have in terms of creating a culture of political dependence, contrary to the goal of reaching the administrative autonomy of the territory and undermining the sustainability of governance's reform. Political dependence could be the result of the imposition of the legislation by the international community. (D. Zaum, 2007, 168).

Local politician can feel exonerated from the responsibility to make difficult and politically sensitive decisions. In order to avoid this dependence, they should be encouraged to assume their own political responsibility. (D. Zaum, 200, 166-68).

Besides the political dependence, another side-effect of the international administration can be economic dependence. "An extensive development aid can lead to the dependence from donors". (D. Zaum, 2007, 163).

The efforts made by the European Union in the direction of mitigating the problems of rising poverty and underdevelopment had only a limited impact. Particularly, many of the problems related to poverty, such as underemployment and massive migration, remain unsolved. The partial failure of the process of reconstruction and economic development undermined the credibility of European Union mission.

One of the main limits to mainstream and implement the preventive dimension of the Responsibility to Protect in post-conflict reconstruction programs is the significant gap that exists between conflict prevention strategies and development policies:

"Differences in the culture and background of experts in these two fields have rendered it difficult for conflict prevention analysts and development cooperation policy makers to find common ground (…); conflict prevention has always been considered as a distinct and separate discipline from development cooperation (…). Although necessary, this union of distinct cultures makes achieving consensus on policies and strategies more difficult. On the one hand, authorities on conflict prevention rarely understand socioeconomic vulnerability, as their focus is on the political shocks that cause conflict rather than on dynamic and long-term risk factors; on the other hand, development cooperation policy makers are overly concerned with the physical realization and outcome of individual development co-operation projects, without enough consideration of their effects in a broader context. Not surprisingly, these differences in background reflect differences in analytical methodologies. While conflict prevention analysis employs the early warning system methodology to assess the impact of risk factors on political crises, development co-operation policy relies almost exclusively on traditional long-term economic analysis.

Although both are integral to the understanding of conflict and development, respectively, neither is sufficient to understand the link between the two". (J.J. Kirton, R. N. Stefanova, 2004, 188).

Indeed, one of the lessons learnt from the United Nations Mission in Kosovo is that the separation in pillars proved to be unproductive, since "they (the international and regional agencies operating in the territory of Kosovo) have worked very independently, with their own bureaucratic cultures, separate reporting mechanisms, independent structures in the regions and municipalities and only limited cooperation between them". (D. Zaum, 2007, 134).

The division in pillars has been the source of serious problems of communication between international and regional agencies, for instance, the United Nations (in charge of state-building) and the European Union (in charge of reconstruction and economic development). It would be necessary a better integration of the views and methodologies of conflict prevention experts and development policy makers and a better coordination between international and regional agencies involved in the reconstruction process.

Conclusion

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From its original formulation within the 2001 ICISS report to the publication of the Secretary General report on *Implementing the Responsibility to Protect* in January 2009, the idea of the Responsibility to Protect has been subject to considerable evolution.

In the original articulation that this idea received in the 2001 ICISS report and in the 2004 High Level Panel on Threats Challenges and Changes Report, the Responsibility to Protect had the configuration of a guiding principle aimed at orienting the behavior of the United Nations Security Council and General Assembly in matters related with the use of force.

However, the formal endorsement of the Responsibility to Protect within the Outcome Document of the 2005 United Nations World Summit, demonstrates that the status of this idea has dramatically changed: in the Outcome Statement the Responsibility to Protect became a general emerging norm of the international law.

Explicit reference to this idea can be found also within the two United Nations Security Council's resolutions n. 1674 on the Protection of Civilians in Armed Conflict and n. 1706, where the Security Council expands the mandate of the United Nations mission in Sudan to include Darfur.

The idea has recently appeared also in the last report produced by the Secretary General Ban Ki Moon on *Implementing the Responsibility to Protect* (January 2009).

In the documents produced between 2001 and 2005, the idea of the Responsibility to Protect should be regarded as some sort of commitment towards the implementation of the three complementary obligations to protect, react and rebuild.

The proponents of this idea, the representatives of the World Federalist Movement and International Crisis Group, many legal and political theorists and international actors are struggling for making out of this general emerging norm a full-blown rule of international law.

However, before the Responsibility to Protect reaches this status, a lot of work remains to be done.

First it would be necessary to generate consensus on its legal meaning among world leaders.

Secondly, it would be necessary to reach an agreement on how the Responsibility to Protect should be implemented to face humanitarian crises.

Finally, the Responsibility to Protect should be incorporated in a binding normative system, since the United Nations' documents in which the Responsibility to Protect was endorsed can not be regarded as a traditional source of law (this is the process of institutionalization).

Also according to Finnemore and Sikkink (1998), "newly emergenging norms generally proceed through three stages – the awareness rising and advocacy stage; the acceptance and institutionalization of a norm; and the internationalization of a norm (see Finnemore and Sikkink, 1998). In terms of its growth process, the Responsibility to Protect is still situated at the first stage, and has not yet been able entirely to make the transition to the second stage (see A. Ackermann, 2003). In particular, in order to say that the norm of the Responsibility to Protect has been institutionalized, it would be necessary to incorporate the Responsibility to Protect in a binding legal normative system (either a charter or a treaty) and in order to complete the process

of internationalization, the Responsibility to Protect needs to be recognized as a binding international legal norm by the whole international society of states.

The present study was aimed at proving that the Responsibility to Protect can be regarded at the same time as a moral principle and as an emerging legal norm and that having the responsibility to protect endangered civilians is equivalent to have the duty to protect them rather than the right to intervene in a sovereign state with humanitarian purposes.

With respect to the content of the Responsibility to Protect, there has been an involution, in the sense that the current idea of the Responsibility to Protect has been subject to a progressive restriction when compared to its original legal, political and moral meaning.

As a result of this involution, the Responsibility to Protect lost the original predominance of its preventive component.

The Outcome Document of the 2005 United Nations World Summit recognised the growing role attached by the international community to regional agencies for the implementation of the Responsibility to Protect.

This role has been already recognized thirteen years before by the Former United Nations Secretary General B. B. Ghali in the work titled "An Agenda for Peace" (1992), where he suggested that "not only could regional actors lighten the burden of the Security Council, but also, as a matter of decentralization, delegation and cooperation with United Nations efforts, their involvement could contribute to a deeper sense of participation, consensus and democratization in international affairs". (P. Martin, 1998, 1).

Regional and subregional organizations, as P. Martin has made clear, have a more extensive knowledge of the situation on the ground than international institutions might have. This deeper knowledge stems from the fact that regional agencies "are closer to the scene of a potential conflict and have a greater access to the major actors and problems, and consequently, they can act more quickly". (P. Martin, 1998, 1).

Because of their extensive knowledge of the details of the conflict, regional organizations should be involved in conflict analysis, in the identification of structural and proximate causes of the conflict, in the collection and analysis of the information and in the elaboration of an effective conflict prevention strategy that should be country-context specific in order to be effective.

Regionalism has a number of advantages over global action, in spite of the fact that "none of the regional organizations has the United Nations' level of resources, institutional capacity, prestige or experience in dealing with threats to international peace and security". (P. Martin, 1998, 20). In terms of financial considerations, the same P. Martin has observed that "in some cases regional organizations will have existing resources, and thus will not have to wait for voluntary contributions from more or less interested member States". (P. Martin, 1998, 20).

Regional and subregional organizations are playing a crucial role in the prevention, management and resolution of conflicts because of the fact that they may have a greater stake in the outcome and for this reason, they are more likely to intervene than the United Nations. (P. Martin, 1998, 1).

However, as the case of Darfur has sadly revealed, regional organizations belonging to the African Union Peace and Secuity Architecture, have serious limits in terms of their capacity to implement effectively the Responsibility to Protect.

From the perspective of the international criminal law, the warrant again the president of the Sudan Omar Al Bashir puts in evidence how international criminal tribunals can give a substantive contribution to the *jus post bellum* (justice after war) by putting an end to the climate of impunity and by vindicating individual responsibility for international crimes perpetrated under the jurisdiction of a sovereign state, using the sovereignty as a shield. Ending impunity should be considered as an important strategy of conflict prevention, because the punishment of the perpetrators of genocide should function as a deterrent to discourage the perpetration of the crime in the future.

Darfur's case study offered the opportunity to analyse the relation between sovereignty and human rights.

The safeguard of the principle of sovereignty, and particularly of the territorial integrity of the state, along with the promotion and the protection of human rights, are two essential elements of the United Nations' mandate.

The shift from the traditional notion of sovereignty to the notion of sovereignty as responsibility derives from the need to conciliate these two dimensions of the United Nations' mandate.

This shift has philosophically been characterised as a move from a notion of sovereignty centered on the rights and the prerogatives of the sovereignty' bearer to a notion of sovereignty focused on the protection of the human rights of the individuals.

The analysis of the traditional notion of sovereignty while compared to the analysis of the notion of sovereignty as responsibility, allows identifying points in commons and differences between the two concepts.

Actually, even though several legal experts believe that the concept of Responsibility to Protect and the related concept of sovereignty as responsibility were introduced with the aim of undermining the traditional notion of sovereignty, the parallel analysis of the two notions shows that the points in common prevail over the differences.

Both notions imply that the bearer of the sovereign power has responsibilities not only towards his own population but also towards the international community as a whole.

When these responsibilities are legal obligations, they are called 'erga omnes obligations'.

In the present work we showed that the traditional notion of sovereignty was coupled with the self-determination principle, which consists in the right of the population of the state (its citizens) to choose its own form of self-governance and economic system.

By virtue of this right, the form of government and the economic system can not be imposed on a sovereign state from the outside.

The concept of sovereignty as responsibility instead is focused on the promotion and the defense of the human rights of individuals.

The importance attached to the human rights' protection mirrors the recent and extraordinary evolution of the international human rights' law, promoted by the vast human rights' legislation promulgated since 1948 by the United Nations system.

The two notions of sovereignty differ also with regard to the way of conceving the international society of states, being the traditional notion of sovereignty grounded not only on the right of self-determination but also on the principle of sovereign equality among states.

What is more, while until Nuremberg trial and further, the way in which states treat their own popolution was considered essentially as a matter of domestic jurisdiction, today, in the light of the notion of sovereignty as responsibility, the way in which states treat their own citizens is no longer confined to their domestic jurisdiction.

This might explain while the international society of states can exercise a sort of overseeing activity on the behaviour of sovereign states towards their own citizens, when states are manifestly failing to protect them.

The recognition of the fact that the two concept of sovereignty have fewer differences than common points helps to reach a growing consensus in favor of the endorsement of the Responsibility to Protect in international law system, being the concept of Responsibility to Protect largely grounded on the notion of sovereignty as responsibility.

In the second chapter of the present work the historical evolution of the notion of sovereignty as responsibility was retraced.

The main contributions to the evolution of the concept of sovereignty as responsibility were on the one side the works produced by Prof. Deng throughout the nineties and on the other the contributions of the last three Secretary Generals of the United Nation B. B. Ghali (in "An Agenda for Peace", 1992) and K. Annan (especially in the interview titled "Two Concepts of Sovereignty") and finally, Ban Ki Moon, (report on the implementation of the Responsibility to Protect, January 2009).

In the present work many sections are devoted to the analysis of Kosovo's case study, the NATO-led military intervention in Serbia and Kosovo, the United Nations' international transitional administration in Kosovo, characterised by the division of labour among international organisations like the United Nations, and regional agencies and alliances like the North Atlantic Treaty Organisation (NATO), the Organisation for Security and Cooperation in Europe (OSCE) and the European Union (EU).

The reason why so much room is devoted to Kosovo's case study is that the debate over the legality and the legitimacy of humanitarian intervention in Kosovo was one of the first motives that later on led to the formation of the International Commission on Intervention and State Sovereignty, which proposed to replace the right of humanitarian intervention with the idea of the Responsibility to Protect.

Because the NATO-led intervention in Serbia was perceived as unlawful but, at the same time, as legitimate, the commissioners of the International Commission on Intervention and State Sovereignty tried to identify some criteria to assess the legality and the legitimacy of the use of force for humanitarian purposes.

The genocide occurred in 1994 in Rwanda and in 1995 in Bosnia led the former United Nations Secretary General K. Annan to invite the international community to reconsider the principle of sovereignty in the light

of the consideration that the international community represented by the United Nations, can not react to mass atrocities and genocide perpetrated against innocent civilians with indifference and inaction.

From the fact that the Convention on the Prevention and Punishment of the Crime of Genocide is legally binding upon all states irrespective of whether they have signed or ratified it, it seems to follow that when the crime of genocide is perpetrated within the borders of a sovereign state, and being the genocide an international crime that the international community has the legal obligation to prevent and punish, the state has not simply the right but also the duty to intervene in another state in which its own citizens are going to or are already committing genocide.

This duty is affirmed by the conclusions drawn by the International Criminal Tribunal for the Former Yugoslavia, in the occasion of the trial aimed to assess the responsibilities for the massacre committed in Srebrenica in August 1995.

This episode highlights that Serbia should be held responsible for not preventing the massacre of 7.000 Muslims Bosnian men committed by its own citizens.

Serbia replied to this allegation that the massacre was perpetrated in the area of Srebrenica, outside Serbian domestic jurisdiction.

However, the Court established that Serbia should be anyway held accountable for the massacre committed in Srebrenica because Serbia had the duty to prevent the genocide perpetrated by its own citizens even in an area which was not under its domestic jurisdiction.

In the same trial, Bosnians made an allegation against the United Nations as co-responsible of the massacre committed in Srebrenica, for not having accomplished to its legal obligation to prevent genocide.

The reply to this allegation was more controversial being based on the fact that the United Nations' mandate was having a peace-keeping rather than a peace-enforcing character.

The Dutch military contingents who assisted to the massacre without intervening to halt it, justify themselves by observing that their mandate was limited to monitoring and aid delivery activities and the protection of civilians in safe areas.

For this reason, by virtue of their mandate the use of force was confined to very limited circumstances.

The massacre occurred in Srebrenica highlights the problematic relation between the duty to protect citizens caught in armed conflict, (which will be later on enshrined in the United Nations' Security Council resolution 1706) and the will of intervenors to keep their neutrality and do not take side between the different warring parties.

The case of Bosnia was analysed at the end of the third chapter of the present study, aimed at outlining a brief (and only partial) historical overview of humanitarian interventions' occurred throughout the nineties, realised without the consent of the state target of the intervention, in order to assess their degree of effectiveness.

This effort led to conclude that all the shortfalls of those interventions became criteria to improve the effectiveness of future interventions.

Indeed, the interventions that occurred in the last decade were grounded on the lessons learned from interventions carried out in the course of the nineties that have been used as the basis for future action plans.

In the light of the previous experience, the new generation of interventions searches for a better integration and cooperation of their civilian and military components and a conversion of the previous peacekeeping operations into peace-enforcement operations, more suitable to environments characterised by high degrees of instability and violence, where there is little chance to keep peace.

Some of the positions expressed by the International Commission on Intervention and State Sovereignty with regard to the Responsibility to React were met with resistance by governments and especially by the permanent members of the United Nations Security Council.

Among the most inpopular solutions proposed by the International Commission on Intervention and State Sovereignty there was the idea to impose restrictions on the exercise of the veto-power by the five permanent members.

This proposal was made in the light of the fact that throughout the history of the United Nations, the veto-power was mostly used by the governments that traditionally deny the existence of a right to intervene and that are today expressing diffidence towards the concept of the Responsibility to Protect, like Russia, China and India.

Another idea proposed by the International Commission on Intervention and State Sovereignty and rejected by the permanent members of the Security Council is the proposal to establish precise guidelines to orient the resolutions of the Council with respect to the use of force. These criteria would have guide the Security Council decision-making process in matters related to the use of force.

The recognition of the Security Council as the sole source of legitimacy for the authorisation of the use of force represents the best alternative to unilateralism. Those who deny the existence of a right of humanitarian intervention are particularly hostile against unilateralism. We regarded as 'unilateral' those interventions that occurred outside the system of multilateral cooperation, and namely, without the Security Council's approval.

Unilateral interventions can be realised by single states (either the United States or the United Kingdom, Russia and so on), regional military alliances (like the NATO), regional organisations (like the ECOWAS' interventions in 1990 in Liberia and in 1997 in Sierra Leone).

The concept of Responsibility to Protect, as it was formulated in the ICISS' report, did not manage to reach the unanimous consensus of the international community.

To reach this objective, a campaign to persuade the international society of states to adopt the Responsibility to Protect was needed.

The unilateral United States-led invasion of Iraq represented a further obstacle in the path towards gathering the consensus of the international community towards the acceptance of the concept of the Responsibility to Protect.

The occupation of Iraq should be inscribed rather within the logic of the War on Terror than be regarded as an historical example of Responsibility to Protect implementation.

However, the very fact that the United States justified the attack against Iraq as an intervention carried out to 'protect' Iraqi populations from the human rights' violations perpetrated by Saddam Hussein's regime, had the effect to make the international community aware of the risks inner in a concept like the Responsibility to

Protect, which is open to be abused and can increase the risk of unilateral interventions carried out by the most powerful states against the less powerful.

The poor consensus that the concept of the Responsibility to Protect managed to reach among the governements of the international community in its original articulation in the International Commission on Intervention and State Sovereignty report and the further weakening of the reached consensus as a result of the War against Iraq should be sufficient to explain why this concept was deeply modified, before its endorsement in the Outcome Document of the 2005 United Nations World Summit.

The incorporation of the principle of the Responsibility to Protect in the Outcome Statement of the 2005 United Nations World Summit represents a very important step in the historical and legal evolution of the idea of the Responsibility to Protect.

The concept as it was proposed in the International Commission on Intervention and State Sovereignty's report managed to obtain the consensus only of a limited number of governments, which are the same governments that in the course of the previous decade were already recognising the existence of a right of intervention, like the government of Canada.

Four years later, the endorsement of the concept of the Responsibility to Protect in the Outcome Statement of the 2005 United Nations World Summit meant that the idea was accepted by 191 members of the United Nations' system.

The endorsement of the Responsibility to Protect in the two paragraphs of the Outcome Statement, is the also result of the support expressed towards the idea by K. Annan in his 2005 report (*In Larger Freedom*) pursuant to the publication of the High Level Panel report on Threats, Challenges and Changes (*A More Secure World: Our Share Responsibility*), where the Panelists proposed the institutional reform of the United Nations' system, which would allow the United Nations to face the challenges of the XXIst century in a more effective fashion.

Among the Panelists, K. Annan appointed G. Evans, who is one of the most active supporters of the idea of the Responsibility to Protect.

This can explain why the institutional reform of the United Nations includes the creation of new institutions which are specifically devoted to the implementation of the Responsibility to Protect.

The fact that all the member states of the United Nations agreed to endorse the Responsibility to Protect in the Outcome Document proves that the consensus towards the idea was already very high. This was true especially in the African Continent.

There is indeed a deep convergence between the content of the idea of the Responsibility to Protect and the legal meaning of the 2001 Constitutive Act of the African Union, which provides for the right of intervention in circumstances that are similar to the ones indicated by the Responsibility to Protect as threshold conditions for the implementation of the Responsibility to React also through the recourse to military measures.

One of the most significant differences between the original formulation of the Responsibility to Protect and the articulation that this idea received within the Outcome Document is that the six criteria proposed by the

ICISS' commissioners for the legitimacy of the intervention ceased to be a component of the content of the idea as it was endorsed in the Outcome Statement, where these criteria do no longer figure.

Another crucial difference consists in the fact that in the original formulation of the Responsibility to Protect the international community is called to react when a state is unable or unwilling to defend its own population.

On this matter, the language of the Outcome Statement became more ambiguous and demanding at the same time.

The Outcome Statement indeed established a higher threshold of intervention in the sense that the international community should assume the Responsibility to React when the state is manifestly failing to protect its own citizens.

Moreover in the Outcome Statement the preventive dimension of the Responsibility to Protect is almost completely missed.

However, one year before the Summit the United Nations' Secretary General created the new institution of the Special Adviser on the Prevention of Genocide, who absolves a very important preventive mandate.

The prevention of genocide should be regarded as a component of the broader concept of the Responsibility to Prevent, which seems to be coincident with the prevention of armed conflict.

The relevance of this new institution for the operationalisation of the Responsibility to Protect was historically demonstrated four years later by the success the Special Adviser in preventing the degeneration of the political unrest pursuant to presidential elections in Kenya at the end of 2007.

The creation of the Special Adviser shows that the reform of the United Nations was conceived also to enhance the implementation of the Responsibility to Protect in its preventive dimension.

In the second section of the present work, devoted to the implementation of the Responsibility to Protect, we tried to clarify the role played by regional agencies by using as a case study a contemporary conflict, erupted in the Darfur region of the Sudan in February 2003.

The objective was to identify the comparative advantages between international and regional organisations in the implementation of the Responsibility to Protect.

The conclusion drawn from the analysis of the role of regional organisation in the management of civil conflicts is that these agencies seem to be more close from a cultural and georgraphical point of view to the countries in which the conflict erupt and for this reason they should be involved in the analysis of situation of the country in the conflict prevention stage.

However, we found also that the financial and logistical constraints faced by regional agencies can undermine the effectiveness of the intervention that they carry out on the basis of their own initiative. For this reason international organisations should support the efforts of regional organisations and assist them in building their military capacities.

We tried also to make clear the substantive contribution that the institutional reforms of the United Nations can give to the implementation of the Responsibility to Protect by analysing those reforms that are relevant for the operationalisation of the Responsibility to Protect, and particularly the reform of the United Nations'

Security Council, the creation of the Peacebuilding Commission and the creation of the Special Adviser for the Prevention of Genocide.

With regard to the reform of the Security Council, this reform was not able to solve the problem of the veto-power of its permanent members and there were not substantive changes in its structure and working methods. Consequently, there is little hope that the Council will be able in the near future to provide timely responses to humanitarian crises.

While clarifying in what the mandate of the Special Adviser consists, we tried to make clear that the conflict prevention theory should be further developed to specify which measures should be adopted by governments and by regional and international agencies to prevent armed conflicts. On the basis of the concept of the Responsibility to Protect endorsed in the Outcome Statement, the preventive dimension of the Responsibility to Protect is aimed to prevent four kinds of international crimes: genocide, war crimes, crimes against humanity and ethnic cleansing. The aspects of prevention that we took into consideration were mainly early warning, which is included within the mandate of the Special Adviser for the Prevention of Genocide, the preventive deployment of military forces (which is a military operation short term preventive measures), which was historically esemplified by UNPREDEP mission in the Former Yugoslav Republic of Macedonia and ending impunity, which is the function absolved by the International Criminal Court of Justice and by the ad hoc international criminal tribunals like the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia.

With respect to the PeaceBuilding Commission, this Commission represents another institution which can give a substative contribution to the implementation of the third component of the Responsibility to Protect, which is the Responsibility to Rebuild.

In the original formulation of the mandate of the Commission in the High Level Panel, the Commission was mandated also with preventive functions.

However, the experts of the Yale Center for the Study of Globalisation, who were in charge of providing a critical reading of the High Level Panel Report, suggested to exclude the preventive component from the mandate of the Commission and to encompass within its mandate only those responsibilities that are related to the post-conflict reconstruction phase (institution building and reconstruction activities).

The exclusion of the preventive component from the mandate of the Peacebuilding Commission represents another evidence of the weaknening of this component within the Outcome Statement of the 2005 United Nations World Summit, where the mandate of the Commission was defined.

The second part of the present study was also aimed to explain the division of labour between international and regional organisations in the effort of implementing the Responsibility to Protect.

To successfully operationalise the three aspects of the Responsibility to Protect the political will of the international community represents only the first step.

The operationalisation of the three dimensions of the idea requires the deployment of huge financial, logistical and human resources.

The recognition of the comparative advantages of regionalism over global action should be accompanied by an adequate support of the efforts of regional agencies by the international community, also in terms of assisting regional agencies in developing their conflict prevention capacities.

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