Interactions between the Responsibility to Protect and the Veto System in the UN Security Council: Limits, Consequences and Ongoing Perspectives

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Abstract and keywords

During the last decades, the meaning of sovereignty has been expanded, and nowadays it is perceived not only as a right of states but also as a responsibility towards their people. In this spirit, a doctrine of human protection was born, the Responsibility to Protect, with the aim of responding to mass atrocities. However, the political nature of the Security Council and the veto power of its permanent members can hinder the application of the doctrine. The objective of this thesis is to spell out the dysfunctional dynamics between the veto and the doctrine and explore in what way the Security Council decisions could be subjected to a set of principles in R2P cases. The recent examples of Libya and Syria will be used to manifest how two very similar cases can been dealt with diametrically differently due to the veto use.

Keywords

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Glossary of Abbreviations

ACT	Accountability, Coherence and Transparency group
BRICS	Brazil, Russia, India, China, South Africa
CNN	Cable News Network
GPTF	Genocide Prevention Task Force
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ISIS	Islamic State of Iraq and Syria
IWG	Working Group on Documentation and Other Procedural Questions
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organization
ONUC	United Nations Operations in the Congo
P3	Permanent Three (United States, United Kingdom, France)
P5	Permanent Five
R2P	Responsibility to Protect
RN2V	Responsibility Not To Veto
RP	Responsible Protection
RwP	Responsibility while Protecting
S5	Small Five (Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland)
UNAMID	African Union/UN Hybrid operation in Darfur
UNAMIR	United Nations Assistance Mission in Rwanda
UNEF	United Nations Emergency Force
UNGA	United Nations General Assembly
UNPROFOR	United Nations Protection Force in Former Yugoslavia
UNSC	United Nations Security Council
UNSMIS	UN Supervision Mission in Syria
VCLT	Vienna Convention on the law of treaties
WMD	Weapon of Mass Destruction

Introduction

The central aspiration of the project at hand is to present the interaction between a remarkable doctrine of human protection, the Responsibility to Protect, and the veto privilege of the five permanent members of the UN Security Council. The Responsibility to Protect is a novel concept founded upon the idea that sovereignty is not only a right, but, most importantly, implies responsibility. Consequently, every state in its individual capacity, has the responsibility to protect the human rights of its citizens. In this effort, it should be assisted by the international community (preventive element). If it fails to do so, this responsibility is transferred to the international community, which is expected to respond to situations of compelling human need with the appropriate means that may include coercive measures like sanctions and international prosecution, and in extreme cases, military intervention (reactive element). If it comes to a military intervention, the international community has the derivative responsibility to rebuild, namely provide full assistance with recovery, reconstruction and reconciliation in order to prevent the reappearance of the root causes that resulted in the mass atrocities in the first place.

It is globally accepted that the responsibility to react falls into the authority of the UN Security Council, as it is the most appropriate body in the international order to decide upon the use of force or other coercive measures. The problem is that if the P5 cast their veto, the R2P cannot be applied and any response to mass atrocities is blocked. This way, the international community stays paralyzed before urgent situations of humanitarian crises that it should resolve.

I drew my inspiration for this theme from two main sources. First and foremost, the ongoing situation of the Syrian crisis made me wonder what could be done in order to break the deadlock of UNSC inaction and reverse the devastating effects of the humanitarian catastrophe in this country. My second source was Anne Peter´s article "Humanity as the A and Ω of Sovereignty".[1] In it, she argues that "The normative value of sovereignty is derived from and geared towards humanity". Indeed, the rapid normative and institutional evolution of international human rights during the last decades evinces a humanization of sovereignty,

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[1] See PETERS A., "Humanity as the A and Ω of Sovereignty", *European Journal of International Law* (2009), Vol. 20, no. 3, pp. 513-544.

which is no longer seen as absolute or inviolable, nor is it a "license to kill" without consequences.

Structure of the project

The following project has been divided in three chapters and each of them in subchapters in order to achieve greater conceptual clarity. At the beginning of each chapter there is a brief introduction to guide the reader through the content that will follow. Moreover, most of the subchapters are concluded with specific thoughts on the subject that was analyzed. Of course, at the end there are some concluding remarks as well, but they are general considerations of a more global character, based on the chapters that preceded it.

The first chapter is dedicated to the veto of the permanent members in the Security Council. At first, I try to illustrate the historical aspects of the veto as a privilege of a great power oligarchy. Later on, I intend to make a summary of how the veto has been used and abused during the Cold War, with a special mention to the *Uniting for Peace* Resolution. Afterwards, I refer to the Security Council reform proposals in order to pinpoint that the vast majority of UN member states has always been at odds with the institutionalized privilege of the veto, and lately that it has been used in R2P situations to block any kind of response to humanitarian catastrophes, even more so. In the last subchapter, I provide an overview of the dynamics in the Council and the behavior of each permanent member so that we can understand today´s realities in their historical context.

Chapter II refers to the second main topic of the project, the Responsibility to Protect. At first, I explain how the international community responded to humanitarian crises before the emergence of R2P and the "right" of humanitarian intervention is being put under scrutiny. After that, I provide a somewhat detailed account of how the R2P came to existence, how it evolved and became accepted in the 2005 World Summit outcome document. In the final part of this chapter, I present two R2P cases that had very similar characteristics but were treated in a very dissimilar manner, in order to illustrate the difference that a veto can make in these situations. After this comparison, I draw some conclusions on the current status of the doctrine and try to sketch its future based on personal estimations.

The third and final chapter is probably the most important one, on the grounds that I explore the possible ways of ending mass atrocities and materialize the content of the very famous slogan "Never Again". I argue that this can be done in two ways: either by means

of improving the Responsibility to Protect with the addition of two initiatives, or by resorting to alternative and ambivalent paths that would bypass or deactivate the veto power in R2P situations.

In the closing lines of the project I present some concluding remarks that are meant to summarize some of the basic ideas expressed throughout the text and to illustrate my personal point of view on what the Council´s inaction before mass atrocities could mean for its future.

For the realization of this project I used a wide variety of sources that I adduce in detail in the bibliography section. For all information relevant to the veto I referred to individual or collective works on the Security Council (both in paper format and e-books). For the Responsibility to Protect, the initiatives pertinent to it and the possible alternatives, I found extensive data in scholarly articles, specialized websites, thematic reports, journalistic sources, opinion articles and in UN documentation.

Chapter I

The history of veto in the United Nations and Security Council realities

In this first Chapter I will try to provide an overview of how the veto power in the Security Council was born and evolved during the Cold War era and in the immediate post-Cold War years. In this time-travel journey I will begin with a brief history of how the veto came to existence after long and difficult negotiations. Afterwards, I will attempt to describe how the early realities of the Security Council led to an abuse of the veto during the Cold War. Special attention will be given to the *Uniting for Peace* Resolution, as it was an effort of cardinal importance to change the institutional balance and circumvent the veto power. After that, I will shortly summarize the Security Council reform proposals, in order to highlight the fact that the permanent membership and the veto have been an intertemporal reason of discontent among UN members, and how these proposals affect the current crises concerning mass violations of human rights. In the closing part of the Chapter, I will try to provide a statistical overview of the voting trends of the permanent five on a state-by-state level, in order to explain what the dynamics in the Council were, during the Cold War and in its aftermath, so that we can have a somewhat clear picture of the complexity that surrounds the UN´s decisive body.

A. The birth of the veto: early negotiations and the visions of superpowers

Although World Politics and International Relations are knitted in a web of manifest intricacy and perplexity, usually a turning point can be spotted that fuels radical changes, whose reflections can expand for generations. Indubitably, events such as the Russian Revolution of 1917, the atomic bombs dropped on Hiroshima and Nagasaki and the fall of the Berlin Wall are great examples of historical moments that shaped the world. Perhaps one of the most underestimated, yet extremely crucial occurrence, was the military strike of American naval bases in Pearl Harbor by the Imperial Japanese Navy. December 7 of 1941 is arguably one of the milestones of the past century. Had the Japanese known that this attack would unchain a dormant behemoth, they would have probably reevaluated their war tactics. That provocation was used by the US foreign policy as a springboard to a new reality. It woke up the country from its decades-long slumber and convinced Roosevelt

that Monroe´s doctrine of isolationism had withdrawn America from the world and thus allowed the calamitous rise of Nazi Germany and imperial Japan (BOSCO, 2009: 14).

With United States now actively engaged in warfare, the tides of war started to change and the balance of power was increasingly leaning towards the Allied superpowers. After 1943 it became rather clear that the Axis powers were on the defensive and a stunning defeat was imminent. As the war drums were losing their vibrant rhythm and the, until recently, seemingly unparalleled military supremacy of the Axis powers was abating, the emerging victors, meaning the United States, Great Britain and the Soviet Union, initiated formal talks about the future of the postwar world.

A number of calculated negotiations were preparing the ground for a new World Organization that would substitute the failed experiment of the League of Nations. These deliberate steps started with frequent bilateral consultations between American and British experts over the course of 1942 and 1943, including a bilateral summit in Quebec. Subsequently, of paramount importance was Roosevelt´s strategic approach to Stalin at the Teheran summit conference in November 1943 and the invitation extended to the Republic of China to participate in the Dumbarton Oaks deliberations. Last but not least, Roosevelt, Churchill and Stalin met one last time in Yalta in order to iron out unsettled issues from Dumbarton Oaks, including the scope of the veto and the number of Soviet places at the table (LUCK in LOWE et al., 2008: 78). After these meetings, great part of the United Nation´s Charter had already been agreed upon and, together with some minor details, the biggest step left, was to multilateralize and legitimize the process in San Francisco.

To tell the whole story about the Charter´s drafting process is well beyond the reach of this project. But, in any case, it would be very useful, if not indispensable, to pinpoint the ideological stimulus and the principal realities of that time, which led to the Article 27(3) of the United Nations´ Charter. This provision, a monument of perennial controversy, envisaged a decision-making center within the World Organization, where practically a Big Power oligarchy would call the shots. Apropos, the use of the term "veto" is not official Charter language, but it summarizes what in 27(3) stands as: "…shall be made by an affirmative vote of nine members including the concurring votes of the permanent members…".

a. Three diverse visions

With the United Nations´ Charter in the making, the three victorious leaders were meeting quite regularly, exchanging letters and phone-calls in order to cushion any differences that popped-up. As two Russian historians put it, "By the end of the war the Big Three behaved almost as a private club, with shared memories and jokes that only they could understand"(ZUBOK and PESHAKOV, 1996: 25). This extended feeling of deep connection and camaraderie between them blurred, at times, the disparate worlds they came from.

The Soviet Union, a colossal country with a revolutionary and communist background, now led by an autocratic and authoritarian leader, had every reason to distrust the nascent United Nations. The collective memory of the confounded experience in the League of Nations was still fresh. The Soviet Union will stay in history as the only member state that was expelled by the League when the Red Army invaded Finland. So, it comes as no surprise that the Soviets were suspicious of their western, capitalist counterparts and skeptical about the new World Organization.

Stalin himself, was convinced that the United Nations would only be of some use if it worked as a concert of Great Powers, similar to the template of the Concert of Europe. Needless to say, he had no regard for economic and social development or human rights, agendas that sometimes appealed to Western politicians and activists. First and foremost, the organization should serve as an instrument for securing the country´s borders (BOSCO, 2009: 18). In such a plan, a veto granted to the Soviet Union in order to block any decision contrary to its interests, was a non-negotiable prerogative.

The United States being thousands of miles away from the main stage of terror, had the opportunity to grow militarily and thrive economically, while at the same time numerous European, African and East-Asian peoples were being devoured by the scourge of war. As both the French and British empire were losing their glitter and their predominance was shrinking, as the Soviet Union suffered human and material losses of biblical proportions, the United States was becoming more and more conscious that the moment had come, to assume a central role in world politics, economy and security.

Already in 1942, the State Department had rejected the idea of regional committees to keep the peace and proposed a centralized structure with global responsibility. President Roosevelt was ecstatic with the thought of creating a coalition of

Big Powers that would act as "policemen" to manage world affairs, cracking down violence and aggression wherever they emerged. In his speech to the nation on Christmas Eve 1943 he explained his vision: "Britain, Russia, China and the United States and their allies represent more than three-quarters of the total population of the earth. As long as these four nations with great military power stick together in determination to keep the peace there will be no possibility of an aggressor nation arising to start another war"(BUHITE and LEVY, 1992: 278). Roosevelt was so consumed by this idea and his grandiose ambitions that he went as far as suggesting that the great powers disarm all other countries and place garrisons across the globe to maintain order. The small powers, the president said, "should have nothing more dangerous than rifles" (EDEN, 1965: 431).

What created some unease between the three allies during the negotiations was America´s insistence on introducing the Republic of China in their elite club. Chiang Kai-shek´s government was in a precarious position, squeezed between Mao Zedong´s aggression and Japan´s threat. To make matters worse, Chiang wasn´t even able to control the country´s territory, let alone assume the role of global policeman and contribute to world security. Roosevelt, of course, was aware of that but he expected that China would offer great services in the long run. He saw a triple benefit in attributing a great-power status to them. Firstly, bolstering a weak Chinese government was part of America´s strategy against Japan (BOSCO, 2009: 24). Secondly, Chiang Kai-shek could intercept the communist´s advance towards positions of influence and thirdly, the gratitude of this puppet government could be expressed by supporting the American positions in the future Security Council.

The Soviets felt uncomfortable with the idea of accommodating the Republic of China in their small power-circle. For one thing, they´d rather wink at the communists of Mao due to their ideological propinquity and on a second level, they weren´t willing to accept more supporters of the American standpoint. Likewise, the British were hesitant about extending the circle to new unmerited members. Notwithstanding their initial skepticism, they didn´t expostulate in any obstreperous manner because they planned a member addition of their own.

As far as Britain´s situation was concerned, we should mention that it was experiencing a severe identity crisis and had to adapt to a hard, new reality. In a matter of few decades it went from being an unequaled giant to occupying only the third position among the superpowers in the Second World War and postwar scenario. The colonial

system was losing favor and Great Britain was trying tooth and nail to hold on to it. If they were to remain relevant in the years to come, they couldn´t afford to lose their imperial-power status. According to this British notion, the new World Organization was very desirable as long as it allowed Britain to retain, if not expand, its possessions. Hence, it´s hardly a surprise that Jan Smuts was so influential in British politics. This man was the South African premier and architect of white settler nationalism, whose segregation policies would eventually lead to the apartheid system (MAZOWER, 2009: 9). He regarded colonialism as a kind of depoliticized guidance of "backward countries" toward higher standards of living (ibid: 56) and the United Nations was the ideal means of consolidating this practice. In any case, it is a smirch in United Nations´ history that a man of such ideas was the one to redact the Charter´s preamble. ´

One remarkable difference between Great Britain and its two allies had to do with the structure of the Organization. Churchill alighted to the idea of regional councils as the basis of postwar security. He envisioned a European council, an Asian council, and one for the Americas – a "three-legged stool", he termed it (BOSCO, 2009: 16). According to this plan, a council of the Great Powers would oversee the function of the regional councils but its mandate would be limited to the most egregious breaches of the peace. Contrary to Roosevelt´s idea of a roving council that would patrol the world, the British prime minister argued for a minimalist version of a Great Power council, whose role wouldn't equal to ruling the nations, but to prevent tearing each other in pieces.

This British proposal never went through but Churchill did achieve to include France in the circle of power. Just as China had a sponsor in the United Stated, General Charles De Gaulle had the firm support of the British. Beyond the solicitousness of one European colonial power to another and the British need for an ally in a Council hostile towards colonialism, Churchill´s insistence had its roots in geostrategic reasons. Britain could not maintain an army in Europe to keep the peace indefinitely, and France´s revival would provide an essential counterweight to a possibly recidivist Germany and an encroaching Soviet Union (BOSCO, 2009: 26). "The prospect of no strong country on the map between England and Russia was not attractive", wrote Churchill (RUSSEL, RUTH B. and MUTHER, 1958: 107).

One more country that was considered as a valid candidate for the Council´s inner circle was Brazil. Apart from being the most powerful country in South America, it was

one of the very few allies from Latin America that had contributed troops against the Axis. Roosevelt was inclined to support Brazil´s candidacy but Great Britain and the Soviets were categorically opposed and the Americans stepped back. So, the decision was final: What was at first the Big Three, became the "Four Policemen" and finally the Permanent Five (BOSCO, 2009: 27-28).

b. The Dumbarton Oaks deliberations

In late August of 1944 the Big Three and China gathered in Dumbarton Oaks in order to give shape to what would become the United Nations. As the Soviet delegation emphatically refused to sit on the same table as the Chinese diplomatic staff, it was decided to hold two different rounds of talks. The first conference would be between the Big Three and in the second, the Chinese would occupy the Soviet seat.

After the obligatory welcoming festivities and speeches, the delegates sat down and put hands at work. Quickly they agreed on the basic architecture of the Organization. A council of the leading powers would have sole responsibility for the maintenance of peace and security. The three delegates agreed that they were entitled to a special regime by virtue of their exceptional responsibility for world security. This new Security Council, as was named following a Soviet suggestion, would fulfil two roles. When a dispute arose between States, the Council would act in order to facilitate peace negotiations and encourage mediation between the feuding parties. The Council´s advice in this capacity would be non-binding but, hopefully, influential. The second role would be that of the enforcer. As a peace enforcer the Security Council would have virtually endless possibilities. It could take "any means necessary" in order to restore security, including, but not limited to, severing diplomatic and economic relations, imposing blockades and deploying air, naval and ground forces.

Capable wordsmiths molded the Charter´s language in such way that it, quite astutely, evaded mentioning if the Security Council should deplete all diplomatic means, before entering in the enforcer´s shoes. Also, the text produced in Dumbarton Oaks didn´t *require* the Security Council to do anything. All of the weighty phrases that would trigger forceful action – a "threat to the peace", a "breach of the peace" or an "act of aggression"- were open to interpretation and would only be defined on a case-by-case basis by the Security Council (BOSCO, 2009: 22). All these, clearly show that the major powers

envisioned a Universal Organization but they designed the Security Council in such a way that it institutionalized the difference of status between the permanent members and all the other member states.

The delegates of course knew that the body had to have at least a handful more states other than the major powers. But then again, they wouldn´t harm the interests of the permanent members as they were deprived of two basic advantages. The outsiders would not be permanent nor would they have the power to veto any Council decisions. When it came to the Council´s voting procedures the Big Three showed signs of discord. The Soviets were adamant that the rule of unanimity should apply always, even on procedural matters. The Americans also favored a great-power veto on most matters, but at least they were willing to consider its restriction when the matter at hand involved one of the permanent members. The British on the other hand, were more resistant to the idea of veto as their diplomats were in constant communication with smaller states that made up the British Commonwealth.

Above all, Canada and New Zealand deemed the veto as a downright injustice as great powers could run the world through the Security Council, yet immunize themselves with the veto. That double standard was assailing the British. Recognizing the complexity of the issue, the Big Three decided to further discuss it in the next conference (ibid: 24). Needless to say that the second round of deliberations with China were just for appearances, as the major issues had already been decided. In the Dumbarton Oaks, France was totally absent.

c. From Yalta to San Francisco

In February 1945, Roosevelt, Stalin and Churchill met in the Crimean Peninsula to discuss some burning issues. Among them was the future of Germany and Poland, the Soviet embroilment in the war against Japan and two great topics that had remained unresolved in Dumbarton Oaks: the X-Matter and some voting details about the veto. The X-Matter was a code name given by the Americans to a Soviet request concerning the number of seats occupied in the General Assembly. The Soviets had demanded sixteen seats in the Assembly, one for each of its constituent republics, but for the other two superpowers handing over such great privilege was out of the question. When the negotiations came to

that, the Soviet Union made a concession and accepted a mere three seats, one for the U.S.S.R, one for Ukraine and one for Belarus (Bosco, 2009: 31)

As far as the veto was concerned, the three men didn´t have any great discrepancies and soon reached a compromise. The so-called "Yalta formula" allowed all permanent members to veto decisions on "substantive" matters but not on procedural questions. That meant practically that the P5 couldn´t vote against a mere discussion of a controversy or dispute in the Security Council, but they could veto any draft resolution that resulted from that discussion. Furthermore, the formula proposed a majority of seven votes for the adoption of resolutions, a solution that was believed to give more flexibility to the Council compared to the League of Nations, as the rule of unanimity wouldn´t apply here but for the permanent members (ibid: 29-30).

After Roosevelt´s untimely demise, only two weeks before the formal deliberations for the creation of the United Nations began, it fell on Harry Truman´s shoulders to be the new president and host the San Francisco Conference. Apart from the future permanent five, forty-five more nations were asked to attend the negotiations. Without a doubt the Big Powers that had laid the foundations of the Charter in their previous elite meetings expected, to some extent, that some demurrers would step up and challenge the Dumbarton Oaks draft. However, to their great surprise, they had to cope with both internal and external "threats".

The French were the first to question the Dumbarton Oaks draft and they even started to circulate one of their own, which proposed a number of amendments. De Gaulle was aware that France wasn´t being seen as equal among the powerful and thus decided to play his cards in an unexpected way. He attempted to champion the cause of the mid-sized states at the Conference. France suggested narrowing the veto power, allowing the smaller states more input into Council military operations and expanding the powers of the General Assembly.

Soon another perilous setback hampered the negotiations. A senior member of the Soviet delegation, Andrei Gromyko, notified that the Soviets no longer accepted the idea that the Council could debate any issue brought before it and wanted to extend the veto´s outreach to procedural issues. Finally, both the French and the Soviets backed down and withdrew their demands. Perhaps the big powers realized that the small-state

insurgency that emerged during the veto debate was far more tumultuous than expected and only united could they fend off the usurpers of their privileges.

Probably the most boisterous dissenter was the Australian foreign minister, Herbert Evatt, who saw the veto power as a provocative privilege that would leave all small and mid-sized powers on the sidelines. As he wrote later, the proposed Council "had grave defects and showed obvious signs of having been drawn up in the exclusive interests of major powers, preoccupied with problems of military security, and inclined to ensure for themselves special privileges to which they deemed themselves entitled by reason of their contribution to victory in World War II"(Evatt, 1948: 14). Evatt proposed more than a dozen amendments to the veto rules, including getting rid of the veto entirely for disputes that didn´t involve armed force. In this way, he helped convince a number of already skeptical Latin American Nations to challenge the veto power and they compiled a list of twenty-three questions about how it would work in practice.

This challenge between small-states and a great power oligarchy, brings in mind a famous phrase of George Orwell´s book *Animal Farm*: "All animals are equal, but some animals are more equal than others". The same applied for the relations of big powers and small states. The economic and military disparities between states, influence their negotiating capacities and usually powerful states get their way. This was, more or less, the way this dispute was resolved. A quick research in the United Nations website about the history of the UN Charter leads to a section about the debates on the veto, where it states that the response of the great powers was the following: "But the great powers unanimously insisted on this provision as vital, and emphasized that the main responsibility for maintaining world peace would fall most heavily on them"[2]. This wonderfully crafted sentence is a great example of telling hard truths with beautiful words.

Of course there is no lie in the aforementioned phrase, but the verbs "insisted" and "emphasized" definitely embellish the shameful power demonstration that took place. Basically, the Big Four and France informed the delegates of all states that without a veto there would be no Organization at all. US senator Tom Connally expressed this idea in the most theatrical way by tearing the draft Charter in shreds before the committee debating the veto as he said: "You may go home from San Francisco if you wish and

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[2] See *1945: The San Francisco Conference*, retrieved July 11, 2016, from www.un.org/en/sections/history-united-nations-charter/1945-san-francisco-conference/index.html

report that you have defeated the veto. Yes, you can say you defeated the veto, but you can also say: "We tore up the Charter" (CONNALLY, 1954: 283).

Unnerved by the near collapse of the Conference, some of the states that opposed the veto wavered. At the end of the day, all states agreed through gritted teeth that even a Charter with the provision of a veto is better than no Charter at all. As would happen many a time in the future, the little nations had their say but the big powers got their way. The Charter was ratified on June 26, 1945 and a new era for the world was inaugurated.

B. The veto abuses during the Cold War and the *Uniting for Peace*

In its first few months of existence, the United Nations was still looking for a new home. Before settling in its current establishment in New York, it wandered for some time. In the beginning the newfound organization opened its temporary quarters in London and, before too long, it landed in the gymnasium of Hunter College in the Bronx. A few months later, it moved to the Henry Hudson Hotel and after only a few weeks of hotel life, the band of diplomats moved to a converted gyroscope factory at Long Island´s Lake success, where it remained until 1952 (BOSCO, 2009: 43).

On January 17, 1946, the Security Council met for the very first time ever in London. With the hope that the dark days of war belonged to the past, there was a widespread agreement between all representatives in the Council that the mistakes and weaknesses of the League of Nations should not be repeated by the new World Organization. US Ambassador Edward Stettinius expressed this common sentiment as clearly as possible: "This time we cannot afford to fail" (ibid: 41). It was just one month later when the first ominous clouds appeared, foreshadowing the difficult decades that would follow.

On February 16, 1946, the Soviet Union cast its first veto on an issue of seemingly minor national interest. The Security Council had been preparing for several weeks a resolution for the withdrawal of British and French forces that were stationed in Syria and Lebanon. Although the final text of the draft resolution was negotiated in a way that could accommodate the Soviet objections, Vishinsky announced that the Soviet Union would vote against it. Many observers were left benumbed and wondering after this veto. The Soviets had a very different idea than the Western Permanent Members as to how and when they should use their institutionalized privilege.

In the view of the US, France, Great Britain and the Republic of China (that was highly dependent on the US and with a very pro-Western government) at that time, the veto should be a safety valve for the defense of the most *fundamental* national interests, not an instrument to achieve perfect solutions (ibid: 43). According to Western idealists, the P5 had a positive duty to work tirelessly for the promotion of international peace and security. In order for that to happen, they needed to be fairly representative of the collective interests and set aside their own national interests, as long as the matter discussed, wasn´t of *vital importance* to them. The Soviets had a totally different viewpoint. They were minimalists, practical and unsentimental: the Security Council was the place were great powers meet to discuss issues and deliver unanimous solutions that cannot be contrary to their national interests.

Apart from any self-interested motives, the Soviet Union was making use of its veto power so frequently because it wanted to make a point. In a western dominated Security Council, the Soviets were largely isolated and treated like an enemy. Casting their veto was their way of declaring that they would not tolerate any scenario that promoted a western leadership around the world in detriment of the Soviet Union´s superpower status. This rationale was vividly illustrated in the words of, Andrey Vishinsky: "The veto, they say, has been applied 50 times. It may well be applied 150 times in such conditions, because it is a means of self-defense against the pressure, the dictation which the states that believe themselves to be strongest and mightiest […] are trying to exercise against other states in international affairs"[3].

Undoubtedly, while the Security Council was making its first steps, the western permanent members had to come in terms with the fact that the Soviet Union´s presence in it would not facilitate a harmonious symbiosis. Under these circumstances, they had to use any tool of compromise available in order to avoid the absolute paralyzation of the body. In view of the new realities, they couldn´t afford to stay faithful to a commitment they had made to small states during the San Francisco Conference. During the veto negotiations, the P5 had been asked whether an abstention would be possible during the voting in the Security Council. At the moment, they declared that all Council members would have to vote for or against a resolution. However, the early realities convinced them that the flexibility and room for maneuver that came with the right of abstention were important

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[3] Quoted in Rupert Emerson and Inis Claude, "The Soviet Union and the United Nations: An Essay in Interpretation", *International Organization* 6, no I (Feb. 1952), pp. 8-9.

elements for the Council´s functionality. Consequently, this practice was agreed upon (though it was never codified).

a. The *Uniting for Peace* Resolution

In this climate of generalized tension in the Council, the United States instrumentally pulled the strings to its benefit and pushed for the adoption of General Assembly Resolution 377, or commonly known as "Uniting for Peace". This resolution was one of the most important attempts during the Cold War to change the institutional balance between the Security Council and the General Assembly, at a time when the former was deadlocked by the Soviet vetoes[4], and the latter dominated by pro-Western states that gave the US the possibility to steer majorities to its benefit.

It all started in January 1950, when the Soviet Union decided to boycott the Security Council in protest over the occupation of the China seat by Chiang Kai-shek´s pro-American Republic of China (MALKASIAN, 2001: 16). Joseph Stalin was determined to do anything in order to push for its substitution by the communist People´s Republic of China. Eight months later, by the time the Korean War broke out, the Soviets still hadn´t lifted the boycott. Their absence gave the Americans a golden opportunity to secure Council´s authorization for a US-led military coalition to assist South Korea in repelling the North Korean attack (ZAUM in LOWE et al., 2008: 156).

Realizing that their boycott had failed to paralyze the UNSC, the Soviets returned in August 1950 and took up the Presidency, with the intention of preventing any further action in the Korean War by manipulating the Council´s agenda and vetoing all draft resolutions on the conflict. Meanwhile, in anticipation of the Soviet comeback the Americans were looking for alternatives that could circumvent the Soviet veto tactic. In September 1950, the General Assembly convened for its regular session and US Secretary of State, Dean Acheson, expressed his intention to turn to the General Assembly to respond to aggression and other threats to international peace and security, if the Security Council was prevented from fulfilling its obligations because of a veto (ibid: 157).

On November 3, 1950, the General Assembly passed Resolution 377 after extensive debate and closely followed Acheson´s original suggestions. It stated that:

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[4] Until August 1950 the Soviets had already vetoed forty-five draft Resolutions.

If the Security Council because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures including in the case of a breach of the peace of acts of aggression the use of armed force when necessary to maintain or restore international peace and security. If not in session at the time the General Assembly may meet in emergency special session within twenty-four hours of the request thereof. Such emergency special session may be called if requested by the Security Council on the vote of any seven members, or by a majority of the United Nations.

In the text of this Resolution it is not stated at any point that the General Assembly could ever authorize the use of force against any member state. It only mentions the possibility of making "recommendations to Members for collective measures". So, we see that the authorization of the use of force remains a prerogative of the Security Council.

In the following decades, *Uniting for Peace* became an instrument of manipulation of the Council´s collective will and served specific political purposes at the time. It was used on several occasions, although not too often, and all things considered, we could say that it has been of service sometimes. Probably its most enduring contribution came in 1956.

That year, the Egyptian President Gamal Abdel Nasser decided to nationalize the Suez Canal Company (of British and French interests) in execution of previous threats against Israel. Although the British explored the prospect of using force against Egypt (considering that it had a right of self-defense), the Suez crisis was finally discussed in the Security Council (LOUIS in LOWE et al., 2010: 281-282). As was expected, the French and the British vetoed a draft Resolution that was calling upon Israel to immediately withdraw its armed forces behind armistice lines. Then, the US considering that the Security Council was blocked by the vetoes and therefore unable to fulfill its duty of maintaining international peace and security, it made use of Resolution 377 and transferred the issue to the General Assembly (this is considered a procedural matter and subsequently it´s not subject to veto). The General Assembly, on November 7 of 1956, passed the historical Resolution 1001 that established the UN´s first major peacekeeping force, the UN Emergency Force (JONES in LOWE et al., 2010: 305). It was an emergency session of the General Assembly under *Uniting for Peace* that gave birth to UN´s peacekeeping operations, a tool that would progressively gain a prominent position in UN´s arsenal.

Truth be told, after the end of the Cold War, *Uniting for Peace* was largely extinct. The improved relations between the P5 and the impressive reduction in the number of vetoes have led to a more functioning and effective Security Council. Besides, the permanent members increased their use of informal consultations, something that has contributed to the marginalization of both non-permanent members[5] and the wide UN-membership and has made it very unlikely that the P5 would leave important matters of international peace and security to the hands of the General Assembly (ZAUM in LOWE et al., 2010: 163-165).

C. UN Security Council reform

For the purpose of understanding the contemporary Security Council realities related to the permanent membership and the veto, I think it would be valuable to succinctly outline the permanent request for reform, a subject of critical importance both during the Cold War and after it.

Many states feel today that the composition of the Council is not representative, neither reflects the power realities of our world, be it economic, military or political. Of course, the revisionist voices aren´t a new phenomenon that came out of the blue. In the 60s, as decolonization swelled the ranks of the United Nations with new African and Asian states, an eleven-number Security Council that apportioned only one non-permanent seat for Africa and Asia, was simply outdated and needed to be expanded. The Latin American countries were the first to propose an expansion, probably out of fear that the newborn countries would push for a repartition of the elected seats, something that would decrease the Latin American presence in the Council (BOSCO, 2009: 101-102).

The P5 were anything but receptive of such proposal and tried to stall any debate on it. They were claiming that a small Council was essential so that it could act quickly in a crisis. However, given the body´s limitations at that time, this argument wasn´t really persuasive. As the pressure for an expansion and fairer reallocation of non-permanent seats was mounting, the P5 saw that they could postpone the request but only for so long. Soon they accepted the unavoidable and turned their attention towards the scope of the reform, by determining their red lines: the permanent membership and the veto privilege would

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[5] For a more detailed account on the relationship between permanent and elected members see Kishore Mahbubani´s essay "Permanent and Elected Council Members" in (Malone, 2004: 253-266.)

have to remain untouched. So, in other words, they would only accept new non-permanent members. In August 1965, the proposed revisions to the Charter secured the needed ratifications and the Council membership for elected members was extended from six to ten. Now the Council would need nine positive votes and the lack of any veto in order to adopt a resolution (ibid: 102-103).

This partial reform of the Council´s non-permanent membership left everyone, more or less, satisfied and until the end of the Cold War no other serious reform proposals emerged. However, in the early 90s, the generalized jubilation and hopes for the bright future that lied ahead, created high expectations for a more effective Security Council and reform proposals came once again to the fore. In 1993 the Council established an Informal Working Group on Documentation and Other Procedural Questions (IWG) in order to come up with proposals of innovative working methods. Though the IWG remained quite inactive and didn't generate any significant change, the Council expanded its work into new areas very rapidly during the 1990s. It established international criminal tribunals and thematic discussions of threats to international peace and security. It created new types of peacekeeping operations, expanded the reach of the sanction committees and took on innovative proposals for the improvement of its working methods like the Arria Formula[6], the Open Thematic Debates[7], the Wrap-Up Sessions[8] and the "Horizon Scanning"[9] initiative, among others (WENAWESER in VON EINSIEDEL et al., 2016: 176-179). So, if the Council improved in so many ways, why is it that there are still several initiatives to reform it?

The majority of the existing reform proposals concentrates, mistakenly in my opinion, on the expansion of the Security Council and on the veto prerogative, rather than trying to further improve its working methods. Already in 1993, the General Assembly established an Open-Ended Working Group to deal with all matters relating to Security Council reform. The early years of this working group were the most constructive, inspiring

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[6] The Arria Formula was proposed in 1992 by Venezuelan Ambassador in the UN, Diego Arria and makes it possible for the Council to meet with individuals with expertise who could be of interest for its work.

[7] In 1990 the UNSC established a practice of discussing thematic questions in an open format, thus expanding its agenda to new key challenges.

[8] The Wrap-Up Sessions were introduced in 2000, and their aim is to create an interactive discussion between all Council´s members on the body´s performance during the preceding month.

[9] It is an informal briefing of the Council on matters that could potentially become a threat to international peace and security, something like an early-warning mechanism. The briefing is provided by the Department of Political Affairs, thus being a soft application of the secretary general´s competence under Article 99.

the Razali Proposal[10], but later its importance diminished. In 2005, the G4 initiative (of aspirants to permanent membership Germany, Japan, Brazil and India) sought to create support for an expansion plan that suggested six new permanent seats (without the veto-power), combined with four elected members. A counterproposal put together by regional rivals of those aspirants (Pakistan, Mexico, Argentina and the Republic of Korea), known as the Uniting for Consensus Group, divided the supporters of the reform initiative and, finally, the G4 proposal didn´t even make it to the World Summit debates of 2005. The final serious reform proposal was undertaken by the group of countries called the Small Five (S5) but it also failed to achieve its ambitious goals[11] (ibid: 181).

What we have learned so far is that a further expansion of the permanent membership is far from easy. The extension of veto to new members, or its abolition for the P5, even less so. Nevertheless, most reform efforts revolve around the Council´s expansion in detriment of the improvement of its working methods. If the Council members rise to 25, there is no guarantee that the body´s performance will ameliorate. If something, it will probably become even less flexible and sluggish. In my mind, the Security Council could significantly advance its role and boost its legitimacy if it was to subjugate its decision-making mechanisms to substantive rules, at least in specific cases of gross violations of human rights. That would lessen the pressure on the P5 for radical changes in the working methods of the Council and satisfy a big number of states and non-state actors (humanitarian organizations, NGO´s etc).

Provided that the permanent members decide to take off some pressure of their backs and accept a gradual regulation of the Council´s working methods, a rule-based response to crises originated by large-scale violations of fundamental human rights, would be an ideal starting point for two reasons: one, because such humanitarian crises affect key interests of the international community, and second, because they fall within a thematic area that has enjoyed a remarkable normative development on an international level, and thus it could provide the fundamental norms for the determination of a situation as a humanitarian crisis.

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[10] The Malaysian Ismael Razali, president of the General Assembly in 1997, elaborated a comprehensive reform proposal of the UNSC. In short, it suggested the creation of five new permanent seats without the veto right and tried to discourage the P5 from using their veto under Chapter VII. Finally, this proposal wasn´t put to vote, because its success seemed uncertain. However, it was well-thought proposal and remains until today a work of reference.

[11] In Chapter 3, there will be a more detailed account of the S5 efforts.

D. State behavior and Security Council dynamics in numbers

Without a doubt, numbers can always be manipulated in order to tell comforting lies or convenient stories. But if we take a good look at certain Security Council and veto-related statistics, we could get a grasp on the evolution of thought and practice of the P5 and understand how the Security Council woke up from its Cold War hibernation and passed from a frozen status to an era of relatively high effectiveness.

In the next paragraphs, I will try to draw some conclusions about the veto use during the Cold War, and after its end, by analyzing basic statistical data. Later on, I intend to sketch the motives and foreign policies that determined the votes of the P5. I certainly don´t aspire to describe all the Cold War highlights, dynamics and realities. This paper is not about contemporary history, nor a panorama of UN´s successes and miscarriages. My endeavor will focus on transferring the climate and differing views of the permanent members. In this way, the evolution of veto will be illustrated and the realities of the 21st century will be put in their historical context.

Although historically disputed as to when the Cold War started and finished[12], for reasons of convenience we will consider that it lasted from 1947 until 1990. In this period, 185 draft resolutions were vetoed. Compared to the 31 vetoed drafts since 1991 till this day, one can understand why the Security Council was practically paralyzed during the Cold War. Another impressive statistic that can give us a pretty good idea of how much the Council´s effectiveness has grown since 1991, is that of resolutions passed. Since the creation of the United Nations until the end of the Cold War, the Security Council had passed only 683 resolutions. Since then, in just 26 years, it has passed an amazing sum of 1,630 resolutions[13]! Further, the shift becomes even more striking if we look at the most weighty Council decisions, those adopted under Chapter VII. During the first forty-five years of UN´s existence, the Council adopted a little more than 20 Chapter VII resolutions, compared to the well over 600 since 1991 – thirty times as many Chapter VII resolutions in half the time. This means that on average, the annual number of Chapter VII resolutions

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[12] Generally, the moment that initiated the Cold War is believed to be either the Truman Doctrine in 1947 or the blockade of Berlin in 1948. The fact that signifies the end of the Cold War is considered to be either the Fall of the Berlin Wall in November 1989 or the dissolution of the Soviet Union in December 1991
[13] The last resolution adopted by the UNSC by the time I was redacting this subchapter was S/RES/2313 (October 13, 2016). The last UNSC resolution of 1990 was S/RES/683 (December 22, 1990). With a simple deduction, we can find out how many resolutions were adopted since 1991 onwards.

since 1991 is higher than the total figure of such resolutions during the Council´s previous history (WALLENSTEEN and JOHANSSON in VON EINSIEDEL et al., 2016: 29).

This explosion of Chapter VII resolutions shouldn´t surprise us. Apart from the increased unity between the P5 and the steep drop in the use of vetoes, there are several other reasons that can explain this phenomenon: let's see the most important ones. First and foremost, in the post-Cold War era, a huge shift has occurred in the protection of human rights domain. Before 1990, civil wars were regarded as a strictly internal affair and, therefore, the UN Security Council refrained from taking any action against governments who systematically violated the human rights of their citizens. After the end of the Cold War, serious civil wars that threaten the local populations with extermination, are no longer kept off the Council´s agenda. By invoking Chapter VII the Council emphasizes that certain civil wars can pose a threat to international peace and security (ibid: 31).

A second explanation could be found in the ever growing agenda[14] of the Security Council. New threats and security challenges, linked to the advancement of technology or to new ways of waging war against civilians, call for the organ´s adaptation. Resolutions on, for example, international terrorism and nonproliferation are often adopted under Chapter VII, signaling the Council´s commitment on these particular issues. Other reasons why Chapter VII language has been used so often, include the Council´s will to convey resolve (even in the absence of agreement on substantive action) and the fact that its agenda has been flooded with conflicts located in Africa, a region of relatively small interest to the P5, which makes the invocation of Chapter VII easier than in other regions (ibid: 31).

Following, I think it is of great value to briefly examine the use of veto by each permanent member. This process can reveal the evolution of thought, status and policies of the P5 with the lapse of time, which in its turn can shed some light on the contemporary state behavior of the veto-bearers.

From 1945 through 2016, the permanent members have cast 272 vetoes, therefore preventing the adoption of 225 draft resolutions (the total number of vetoes is higher because in many occasions vetoes have been cast jointly). The distribution of vetoes cast by country is: Soviet Union/Russia, 128; the United States, 83; the United Kingdom, 30;

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[14] See Stewart Patrick´s interesting evaluation of UN´s overexpanded agenda in his article "World Weary: Evaluating the United Nations at 70", *Foreign Affairs* (October 20, 2015).

France, 18 and China, 11.[15] As a general comment, before going into further details, it should be noted that in the post-Cold War era the permanent members, with the exception of China, have used their veto significantly less than they used to before 1990. But let´s see separately the behavior of the permanent members in the Council:

- **The United States**, sometimes quite hyperbolically denominated the "Permanent One"[16], has always had a peculiar relation with the Security Council. Although it was the principal proponent of the World Organization and its collective security system, the US never really reserved any prominent position in its foreign policy for the UN´s multilateralism (STEDMAN in VON EINSIEDEL et al., 2016: 57). All US foreign policy makers and US bureaucracy, at least during the Cold War, were trained to prioritize bilateral and alliance diplomacy, while political circles in Washington insistently favored a weak commitment to the Council, maintaining that multilateralism is desirable as long as it doesn´t try to limit the American right to unilaterally defend its vital interests (ibid: 58).

  Although it may sound harsh, the truth is that for the most of its life, the Security Council has been of tangential importance to the aims and conduct of the US foreign policy, this being especially obvious during the Cold War. At that time, the paralyzed state of the Council didn´t really bother the US. It was rather satisfied with using the UN´s decisive organ as a negative instrument and treated it as a place to exercise its veto on behalf of its interests or the interests of its allies. Only occasionally did the US take central stage during the crises of that time (STEDMAN in VON EINSIEDEL et al., 2016: 57). For the biggest part of its concerns, it preferred unilateral action and never really felt like being obliged to consult with the Council prior to its use of force. Numerous military interventions, both by the US and other great powers, to prop up friendly regimes or change hostile ones was considered relatively justifiable in view of the Council´s impotence to function properly (ibid: 58-59).

  Since the 1990s that the Council was unblocked and started to deliver results in the area of collective security, the US multilateralism has garnered much more scrutiny. Unavoidably, the world´s most powerful state had to adapt, and US policymakers have increasingly learnt to value the imprimatur of a Security Council. The last three

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[15] See Table 1 in the Appendix.
[16] See David Bosco´s commentary in VON EINSIEDEL et al., 2016: 75.

decades, the US has shown interest in gaining the Council´s authorization for sanctions, for the use of humanitarian force and the use of force in pursuance of key national interest. However, that doesn´t mean that it has renounced completely the possibility of acting alone if circumstances call for it; all the contrary (BOSCO in VON EINSIEDEL et al., 2016: 79).

Especially with regards to its veto power, the US showed remarkable restraint during the first twenty-five years of UN´s existence and never used its privilege. The first US veto was cast in 1970 (along with UK´s fourth), against a draft resolution condemning the UK for refusing to use force to overthrow the white minority government in Southern Rhodesia[17]. Since then, the US vetoes increased exponentially. This trend can partially be explained by the Israeli occupation of the West Bank, the Gaza Strip and other areas in 1967, adding a new dimension to the structure of the Arab-Israeli conflict (over 40 percent of the US vetoes from 1970 to 1989 were cast in order to protect Israel from resolutions that were considered too harsh), and partly by the People´s Republic of China taking over the Chinese seat on the Council in 1971, affecting the balance of powers within it (WALLENSTEEN and JOHANSSON in VON EINSIEDEL et al., 2016: 29).

As an end note to this brief summary of the US views and policies relative to the UNSC, it should be pinpointed that under the Obama´s administration, the United States has shown relative restrain in the unilateral use of force and the aggressive policies[18], at least compared to the first years of the new millennium. Whether it's because of the operational weariness of the previous years in Iraq and Afghanistan or a result of a reorientation of the US foreign policy to a less engaging model (in the absence of a direct interest), we can only assume.

- The **Soviet/Russian** attitude towards the Security Council, has always been a reflection of Moscow´s views of the global order, and of Russia´s own national interests. The Soviet Union and later on, its successor Russia, never abandoned the premise upon which the UN Security Council was built. The idea of it being a factor of balance between the world´s most powerful states, still remains remarkably compelling.

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[17] S /9696 (March 17, 1970).

[18] Of course, that doesn´t mean that it abandoned unilateral action altogether. The United States hasn´t sought Council approval for its drone strikes in Pakistan, Yemen or other countries. It didn´t seek authorization for the cross-border raid into Pakistan that killed Osama bin Laden, or even notify the Council of its action after the fact either. Instead the US situates these activities as a continuing exercise in self-defense that does not require Council involvement (BOSCO in VON EINSIEDEL et al., 2016: 79).

Consequently, in order that the superpowers can exercise joint leadership and tackle international issues, while guaranteeing the protection of their national interests, the veto power is a *conditio sine qua non* (TRENIN in VON EINSIEDEL et al., 2016: 105). The status of a permanent, veto-wielding member in the Council gives Russia the prestige of a global power and the capacity to regulate, to a certain degree, world politics and international law.

From a historic point of view, the Soviet Union had felt, already since the early days of the World Organization, isolated and under contempt in a western-dominated, hostile Security Council. Under these circumstances, it never saw a point in hiding its intention to use the Security Council only in rare cases that Soviet interests wouldn´t be affected by its resolutions. In this spirit, it made use of its veto power more than a hundred times in the first twenty years of UN´s existence, thus, with few exceptions, paralyzing any substantial action from being taken. To be fair, not all Soviet vetoes were destined to block the Council from assuming a more robust role in matters of international peace and security. Until 1970, half[19] of the Soviet vetoes concerned the admission of new members (WALLENSTEEN and JOHANSSON in VON EINSIEDEL et al., 2016: 35). But still, we could say that the Soviet Union was the main blameworthy for the inactivity and blocked status of the Council during the Cold War.

The end of the Cold War and the breakup of the Soviet Union brought about radical changes. At first, the Security Council did seem to be transformed from a crucible of permanent confrontation and crude conflict to a body that actually resolved issues for the benefit of the international community. But these high hopes didn´t last for long. In the mid-1990s, it became clear to Moscow that its interests, and those of the western powers, diverged in a number of issues, and therefore, its progressive integration into the West was unrealistic. The expansion of NATO with the inclusion of former Warsaw Pact allies in Central and Eastern Europe, only made matters worse (TRENIN in VON EINSIEDEL et al., 2016: 107).

Additionally, two cases, in which the United States made use of force in defiance of international law and Russian objections, were very worrisome for Russia. Specifically,

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[19] Forty-eight vetoes against the admission of new members, to be exact. As it was to be expected, the other permanent members were also voting against the admission of Soviet-friendly states (in more than 20 occasions), but these votes never counted as vetoes because these proposals failed to even achieve the number of positive votes required by both permanent and elected members.

the first bombings of Serbian forces in Bosnia and the NATO-led use of force in former Yugoslavia, convinced Moscow that the militarization of the US foreign policy and the domination of military force in global politics, at a time that US was militarily unequalled and in favor of unilateralism, had come to pass because the US military might was no longer held in check by a rival power (ibid: 107). On the impulse of filling this vacuum, Russia decided to adopt a more rigid approach towards the US.

For a short period after the terrorist attacks of 9/11 a certain rapprochement of the two states occurred and Russia showed its solidarity by actively supporting the US operation Enduring Freedom in Afghanistan. However, these days of "friendship" soon came to an end, when the US invaded Iraq in 2003 without the authorization of UNSC. Russia was unhappy with Saddam Hussein´s dodgy tactics toward UN weapons inspectors looking for WMD-related activities in Iraq, but resolutely rejected the use of force against Baghdad. The US indifference to legality and its disregard of the Russian positions, led to a general hardening of the Moscow´s foreign policy, including in the Security Council, where Russian representatives became less restrained in the use of the veto (ibid: 108).

To sum up, the Russian detachment of the western political orbit has triggered a, once again, unscrupulous use of the veto and drove to a Sino-Russian affinity for Council behavior that shows their rejection of US global supremacy, in promotion of a more balanced international system. In addition to that, this unholy alliance has been promoting lately a return to a non-negotiable respect for sovereignty and the rule of nonintervention, subverting their increasing relativization that was brought about by an important doctrine, the "Responsibility to Protect".[20]

- Coming next to **China**[21], we should point out a paradox. The Asian giant has been the only Council member to make more use of its veto privilege in the post-Cold War era than during the previous decades. I won´t come into details about the period between 1945 and 1971[22], as the Republic of China, with Taipei as its capital, was a puppet state that heavily depended on the United States and didn´t really have any important weight, neither demographic, nor military or political. Only when the People´s Republic of

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[20] I will refer to this subject, in more detail, in Chapter 2.

[21] As was explained at an earlier point, it was Chiang Kai-shek´s Republic of China that occupied the Chinese seat in the Security Council until 1971, that it was replaced by People´s Republic of China.

[22] The Republic of China only cast one veto in 1955, concerning the admission of Mongolia.

China, with Beijing being its capital, took the Chinese Council seat, in 1971, did this permanent member start to be seen as a considerable power.

Of course, during the 70s and 80s Beijing adopted a passive stance that can be explained once put in its context. At that time it was still in a relatively weak position in international politics, and thus it preferred to abstain. In order to make up for its inexperience it had to watch and learn as a diligent apprentice how the institutions worked (WUTHNOW, 2011: 23). But still, China´s evolution is impressive. It has progressed from a near-rejectionist stance in the 70s, which took the form of unwillingness to participate in many processes, to that of a world power participating actively in the Council´s life, where China´s representatives, although disinclined to take the lead on international security crises or thematic discussions, are today very influential (WENQI and XINYU in VON EINSIEDEL et al., 2016: 83).

China´s progressive integration into the international institutional order, its growing realization of the benefits that came with it, and the possible effects of its multilateral socialization, became increasingly visible at the end of the Cold War, when China didn´t stand in the way of a more activist Security Council, despite its principled objections of a western-backed expansion of the Council´s interpretation of what falls within the scope of "threats to international security" (ibid: 87).

In general terms, China has made very clear during the last three decades its aversion to sanctions or any other action that undermines the rule of nonintervention. However, it has displayed remarkable pragmatism and flexibility, by choosing to abstain on a considerable number of draft resolutions, even in cases that clash with its strict interpretation of sovereignty.[23] On the contrary, on the rare cases when China saw its own sovereignty and territorial integrity under threat, it did not hesitate to make use of its veto power and sacrifice peacekeeping operations[24] and their host countries´

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[23] Although China opines that the international community should not intervene in internal conflicts, it has gone along with the establishment of 12 separate sanction regimes that were designed as a response to internal unrests, notably in former Yugoslavia, Somalia, Cambodia, Liberia, Haiti, Angola, Rwanda and Sierra Leone.

[24] I am referring to the cases of UNMIH in Haiti, MINUGUA in Guatemala and UNPREDEP in FYROM. In the first two cases Haiti and Guatemala had recognized Taiwan in 1956 and 1960 respectively. In retaliation China initially threatened to veto or vetoed (in the case of MINUGUA) the extension of the peacekeeping operations and only stepped back after the commitment of the two countries that they would stop supporting moves to put Taiwan´s status on the UNGA agenda. The case of FYROM was different. The Balkan country recognized ROC in 1999, in return for a lucrative investment deal with Taipei, when it naively gambled that Beijing would bow to US pressure not to cast its veto (Wenqi and Xinyu in VON EINSIEDEL et al., 2016: 89-90).

stability when the latter dared to cross Beijing´s non-negotiable red line: the respect for its "One China" policy (WENQI and XINYU in VON EINSIEDEL et al., 2016: 87,90).

In a nutshell, China´s performance in the Council has been, at least until recently[25], rather unsurprising. The Asian country is knowingly fond of soft power, quiet diplomacy and a steadfast supporter of state sovereignty and the rule of nonintervention. For the foreseeable future it is expected to stick to these principles and any drastic reorientation of its foreign policy towards a more liberal model that prioritizes the protection of human rights over the inviolability of sovereignty, is unlikely to happen (ibid: 100). If something is to be expected, that´s the strengthening of Sino-Russian relations to counterbalance the US unipolarity. The fact that all Chinese vetoes since the new millennium have been cast in concert with Russia, is a strong indicator of this trend.[26]

- **France** and **United Kingdom** will be examined in the same section as they share many common features: they are both postcolonial, medium-sized, nuclear powers, members of the European Union and NATO (TARDY and ZAUM in VON EINSIEDEL et al., 2016: 121), and quite importantly, the only two permanent members that haven´t used their veto power[27] in the post-Cold War era but remain surprisingly active in the Council (MAHBUBANI in MALONE, 2004: 258).

Though today they have a lot in common, those two states gained their status as permanent members under very different circumstances. The United Kingdom belonged among the victors that had helped actively to win the Second World War and had took part in all negotiations prior to the creation of the United Nations. France on the other hand, was a wreck after the War and it only become one of the P5 due to the British insistence. However, as the decades passed and the decolonization was stripping them of their immense economic and military benefits, France and the UK were becoming very similar in terms of power and status.

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[25] The vetoes it has cast jointly with Russia in the case of Syria have largely surprised the international community, but this issue will be discussed later on with further detail.

[26] This, of course, doesn´t mean that China uses its veto every time that Russia does. In spite of its increased use of the veto, China still remains sparing and reticent to use it, in case it doesn´t have a strong and direct interest in the case at play.

[27] Arguably, one of the most important reasons for not using the veto is that it would highlight the privilege that permanent membership accords them, and that would erode the legitimacy of their claim for a position in the Council.

In the post-Cold War, they have generally been considered to be the most active members of the Council, playing a prominent role in drafting resolutions, leading debates and shaping its agenda. Although this kind of activism is very welcome, it is driven by self-interest. France and the United Kingdom are struggling to justify their seat in the select club and to demonstrate that because of their contribution, they deserve their privilege of being a permanent part of the world´s most important mechanism of global security governance (TARDY and ZAUM in VON EINSIEDEL et al., 2016: 121). Of course, this is very understandable. The Security Council provides prestige and power that compensate for the inexorable decline in power of the two ex-colonial giants.

In support of their contention that they deserve their permanent membership, they have developed a proactive policy in the Council, and they have contributed significantly to UN peacekeeping operations, especially in the Balkans (and France in Africa). This comradeship between them is reinforced by their voting trends, where only in rare occasions do they diverge[28] (ibid: 123-124).

In the context of their general convergence, the two countries do differ on certain issues debated in the Council. For example, it was the Iraq case in 2003 that divided the French and the British. The latter aligned with the United States and was in favor of an invasion, while Paris was clearly against it. Since then, the "British-French axis" has also been tested in a series of votes on the Israel-Palestine issue, when the British abstained and the French voted in favor of draft resolutions that were later vetoed by the United States.

When it comes to the protection of human rights and the veto, both countries have been supportive of initiatives that call for a reform of the working methods in the Council. Notably, French foreign minister Hubert Védrine has endorsed a "code of conduct" for the use of the veto in R2P cases. Nevertheless, it should be noted that Paris and London seem positive to reform proposals, as long as they don´t threaten their status as permanent members or the veto prerogative. But, whatever their motives, these two countries remain considerable allies for any reform effort. With their global diplomatic

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[28] Over the past three decades the United Kingdom and France have proposed and supported an average of two thirds of the draft resolutions adopted by the Council. Furthermore, operating as allies in over 800 resolutions tabled since 2000 their votes have diverged only eleven times (TARDY and ZAUM in VON EINSIEDEL et al., 2016: 124).

networks and political influence they can push for a change or support reform initiatives that the other permanent members cannot keep on ignoring forever.

Chapter II

Humanitarian crises and the veto: from a right to intervene to a global responsibility

In the second Chapter, I will make an extensive reference to a very important doctrine, the Responsibility to Protect, and explore how its dependence on the Security Council veto affects it. At first, I will briefly mention the idea of humanitarian intervention as it stood before the creation of R2P and approximate key moments of history that were inadequately treated due to the lack of a rule-based response to mass atrocities. Afterwards, I will attempt to guide the reader through the doctrine´s process of creation, acceptance, coming of age, implementation and contestation, with the help of contemporary examples of humanitarian crises where R2P had or should have had a crucial role.

A. The notion of humanitarian intervention: implementation and criticism

The humanitarian intervention terminology, though largely vague, wide and open to interpretations, could be defined as a guide for state behavior that argues for the existence of a "right to intervene" militarily, against the will of the government of the country in question, in order to avert large-scale violations of human rights and mass killings.

Its most influential advocate, during the 1990´s, was the French doctor, non-governmental leader and government minister, Bernand Kouchner. Of course, this proposed behavior was not a groundbreaking conception of that decade: "humanitarian intervention" language had been first used –with more or less its modern sense of military force deployed across borders to protect civilians at risk- as early as 1840[29]. But it was in the dark context of the Bosnian and Rwandan genocides and the NATO intervention in Kosovo that it engendered great controversy and fierce debates. Its use, abuse and the justified criticism of this doctrine made more apparent than ever the need for an institutionalized, principled and rule-based alternative to the "humanitarian intervention".

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[29] For a more detailed analysis on the subject, see sources cited in International Commission on Intervention and State Sovereignty (ICISS), The Responsibility to Protect: Research, Bibliography, Background (Ottawa: International Development Research Center, 2001), pp. 16-17

a. The uses of the notion

During the 1990´s, a series of cases triggered Security Council debates on humanitarian intervention. Instances of humanitarian intervention did occur before 1990, but we will focus on the post-1990 cases for two basic reasons. First, in the pre-1990 cases, when the Security Council was involved, it was to simply condemn or condone unilateral interventions that had *already* been carried out (SANDHOLTZ and STONE in REUS-SMIT, 2004: 262-263). Relevant examples are the invasion of India in East Pakistan, France in Central Africa, the overthrow of Uganda´s fearsome dictator Idi Amin Dada by Tanzanian military and the full-scale invasion of Vietnam in Cambodia in December 1978. In contrast, throughout the 1990´s the Security Council was asked to consider multilateral interventions under UN mandate *before* the fact.

Second, we should bear in mind that prior to 1990, namely during the Cold War, the superpowers would veto any proposed intervention out of politico-strategic concerns. In a few selected cases, however, the Council, acting pursuant to Article 39, has found a state's violations of human rights to constitute a threat to the peace and has consequently adopted mandatory sanctions against that state.[30] The first case occurred in 1966, when the Council imposed mandatory, albeit selective, economic sanctions against Southern Rhodesia.[31] Eleven years later, the Council again invoked the "threat to the peace" rationale in order to impose a mandatory arms embargo against South Africa.[32]

With the arrival of the 1990´s and the end of Cold War many things changed. The relations of the P5 passed to a new stage and the prevailing assumptions about non-intervention came under scrutiny for the first time and. The interstate wars ceased to be the quintessential peace and security problem. Bloody civil wars and internal violence perpetrated on a massive scale became the new center of gravity. With the break-up of various Cold War state structures and the removal of superpower constraints, conscience-shocking situations repeatedly arose, above all in former Yugoslavia and Africa.

Unfortunately, the international community had a hard time digesting this cosmo-gonic change, which resulted in erratic, incomplete or counter-productive responses to grave humanitarian crises. As Gareth Evans and Mohamed Sahnoun noted in an article:

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[30] See Richard Lillich, "The Role of the UN Security Council in Protecting Human Rights in Crises Situations: UN Humanitarian Intervention in the Post-Cold War World", *Tulane Journal of International and Comparative Law* (1994), No 1, Vol. 3, p. 5.

[31] See S/RES/232 (December 16, 1966) and S/RES/253 (May 29, 1968).

[32] See S/RES/418 (November 4, 1977).

"the UN action taken (if taken at all) was widely perceived as too little too late, misconceived, poorly resourced, and poorly executed or all the above"[33]. Let´s see some of the most characteristic cases of the 1990s that the international response to humanitarian crises was problematic:

Somalia (1992-1993)

In January 1992, the UNSC determined that civil strife and famine in Somalia constituted a threat to the peace and imposed an arms embargo[34]. Later that year, the UNSC authorized a UN-led peacekeeping force[35] as well as a second, US-led force with a broad mandate to "use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations"[36]. One year later, the killing of 18 US Army Rangers prompted a public outcry in the United States that led to the collapse of both the US- and the UN-led operations.

Bosnia (1992-1995)

As Yugoslavia disintegrated, Bosnia Herzegovina became the theater for hideous exercises in ethnic cleansing. Such crisis in a European state, alarmed the West and became a great source of preoccupation. In 1992 the UNSC used Chapter VII to establish a Protection Force in Former Yugoslavia (UNPROFOR) to provide basic peacekeeping[37]. One year later UNPROFOR´s mandate was extended to include the creation of safe havens for Bosnian civilians[38] and with Resolution 836, NATO aircrafts were authorized to bomb Serbian weapons and supply lines. This resolution was important as it showed the UNSC´s readiness to authorize force for humanitarian ends. In the end, the cocktail of a shortage of political will, the operational reluctance and a complex mandate that proved ineffective, drove to a great humiliation for the United Nations in 1995, when more than 7,000 (according to other sources the estimated victims were 8,000) Muslim men and boys were slaughtered in Srebrenica as UN peacekeepers stood by and their pleas for NATO air support remained unanswered.

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[33] See Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect", *Foreign Affairs*, 2002.
[34] See S/RES/733 (23 January 1992).
[35] See S/RES/775 (28 August 1992).
[36] See S/RES/793 (3 December 1992).
[37] See S/RES/743 (21 February 1992).
[38] See S/RES/819 (16 April 1992).

Rwanda (1994)

The Rwandan genocide is a textbook case of inappropriate response to an ongoing humanitarian tragedy. As the Rwandan genocide began in April 1994, the commander of a small UN peacekeeping operations (UNAMIR) desperately requested more troops. The UNSC responded by reducing his force from 2,500 to 270 peacekeepers, and under no circumstances can this withdrawal be attributed to lack of knowledge. As reports of the genocide spread, the Security Council voted in mid-May to supply a more robust force, including more than 5,000 troops. By the time that force arrived in full, however, the genocide had been over for months. When former U.N. Secretary-General Boutros Boutros-Ghali was asked to make an evaluation of the UN response to the case of Rwanda, he responded: "The failure of Rwanda is 10 times greater than the failure of Yugoslavia. Because in Yugoslavia the international community was interested, was involved. In Rwanda nobody was interested"[39].

b. A blatant case of abuse: Kosovo (1999)

In 1999, NATO countries launched an air campaign to protect the population of Kosovo from Serbian paramilitaries. The intervention took place without authorization by the Security Council and despite the objection of Russia, China and numerous developing countries. The United Kingdom was the first to stand up for this arbitrary operation by claiming a right of "unilateral" (meaning without Security Council authorization) humanitarian intervention. The United States avoided direct confrontation and insisted on referring to "humanitarian concerns", but never explicitly claimed a third exception to the rule of the prohibition on the use of force. Even if we accept that United Kingdom´s claim is morally justifiable, it is, in any case, legally indefensible.[40]

Through worried whispers around the world many states expressed their fear of powerful states abusing any new right to intervene. After the Kosovo war, these whispers became a concerned scream and the "right of unilateral humanitarian intervention" was heavily attacked.

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[39] This statement is to be found in the website of the PBS news program "Frontline", available at: www.pbs.org/wgbh/pages/frontline/shows/ghosts/etc/synopsis.html

[40] For the elaboration of the cases I consulted Chapters 1,2 and 6 (THAKUR and MALEY,2015).

In 1999 and 2000, the 133 developing states of the Group of 77[41] twice adopted declarations that unequivocally affirmed the illegality of unilateral humanitarian interventions that lacked the explicit authorization of the Security Council[42]. And although the Group´s anathematization of the "right to intervene" may have a limited political weight, the same can´t be said if it comes from the formal lips of the Secretary General of the United Nations. In 1999, Kofi Annan acknowledged that no norm of unilateral humanitarian intervention had achieved legal status and that any such norm could have undesirable consequences for the international order as it would undermine international law: "What is clear is that enforcement of action without Security Council authorization threatens the very core of the international security system founded on the Charter of the UN. Only the Charter provides a universally accepted legal basis for the use of force".[43]

c. Main criticisms

The first argument against the "doctrine of humanitarian intervention" has already been exposed and it has to do with its illegality. In the UN Charter there are only two legitimate grounds for the use of force, which otherwise is strictly prohibited (Article 2.4). First is the case of self-defense (Article 51) and the second exception of the general rule is activated when international peace and security are at stake (the Security Council can activate the Chapter VII provisions when there is a threat to the peace, breach of the peace or act of aggression). Nothing in the Charter implies a third exception (THAKUR, 2006: 268).

Another impeachment against the doctrine was related to the sincerity of purpose of the intervening. To use an already cited example, did Vietnam *really* invade Cambodia on the basis of humanitarian motives, or did such claimed incentives simply provide a convenient cover for an intervention carried out for different purposes? (THAKUR and MALEY, 2015: 7)

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[41] The Group of 77 is a coalition of 134 developing states within the UN, who seek to promote their collective economic interests and create an enhanced joint capacity for negotiation in the UN.

[42] See Ministerial Declaration, 23rd Annual Meeting of the Ministers for Foreign Affairs of the Group of 77, 24 September 1999, paragraph 69, at http://www.g77.org/doc/Decl1999.html and Declaration of the Group of 77 South Summit, Havana, Cuba, 10-14 April 2000, paragraph 54, http://www.g77.org/summit/Declaration_G77Summit.htm

[43] See Kofi Annan, Annual Report on the Work of the Organization (United Nations, 1999), Chapter I "Achieving peace and security", paragraph 66, p. 8, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/246/59/PDF/N9924659.pdf?OpenElement

A third preoccupation had to do with the consistency of the doctrine. Without a detailed framework, without principles and objective criteria of action, the right of humanitarian intervention would simply magnify asymmetries of power in the international system, with states that had long seen themselves as meeting some standard of "civilization" becoming the moral policemen for fragile or younger states only recently freed from colonial domination (ibid: 7).

The fourth criticism focused on the ethics of consequences and suggested that humanitarian intervention provided no guarantee that the "beneficiaries" would ultimately be better off than if no intervention had occurred (ibid: 7).

Last but not least, the application of the doctrine in practice has been problematic, to put it kindly. The double standards and the sporadic nature of Western powers´ interest in the protection of human rights in the Middle East, Africa, Latin America or Asia, as compared to humanitarian crises in Europe, shows that noble principles are convenient cloaks for hegemonic interests (THAKUR, 2006: 269).

B. Responsibility to Protect: from Canada to the 2005 World Summit

Despite its multiple shortcomings, the notion of "humanitarian intervention" did not fall from the sky, but it rather seemed to fill a need. The initial euphoria in the aftermath of the Cold-War was clouded by developments that seemed to create anew the need for some morally defensible form of international action to shelter the vulnerable. The ambitious idea was, at least in theory, a troubleshooter. However, the prohibition of unilateral use of force is absolutely fundamental for the system of collective security as it was established in the UN Charter. So, it comes as no surprise that the vast majority of states remained firm in their characterization of the notion as illegal and rejected it altogether. But the need for a doctrinal response was still omnipresent and set the scene for a conceptual innovation, free from the burdens and fallacies of its predecessor.

In the twilight of a troublesome decade, stained by extensive massacres and bloodshed, the vivid debate on the outcome of a collision between state sovereignty and human rights protection was inconclusive. On the one hand, sworn proponents of the right to humanitarian intervention were promoting the relativization of state sovereignty in cases of obscene violations of human rights. On the other hand, defenders of the traditional

prerogatives of state sovereignty, insisted that internal events were none of the rest of the world´s business. Curiously enough, hardly anyone talked about prevention or less extreme forms of engagement and intervention, the post-intervention future of the states didn't seem to be a top priority and there was no system of international criminal justice to which anyone could resort.

This was the environment which drove UN Secretary-General Kofi Annan to make his despairing and heartfelt plea to the General Assembly in his 2000 Millennium Report (ibid: 19): "if humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?" and he continued: "We confront a real dilemma. Few would disagree that both the defense of humanity and the defense of sovereignty are principles that must be supported. Alas, that does not tell us which principle should prevail when they are in conflict".[44]

In this context of discordance and division, the idea of "the responsibility to protect" (commonly found as R2P) came as manna from heaven. It was a very serious effort that sought to generate new consensus about how to respond to situations such as those that puzzled and assailed the international community in the 1990´s.

a. Formalization of the R2P notion

In September 2000, the Canadian Government, on the initiative of Foreign Minister Lloyd Axworthy, launched the International Commission on Intervention and State Sovereignty (ICISS) and provided it with the material support which was necessary for a commission of this kind to be able to operate. It was articulated by an eminent group of scholars and practitioners and was tasked to wrestle with the whole range of questions – legal, moral, operational and political- rolled up in this debate, to consult with the widest possible range of opinion around the world and to bring back a report that would help the Secretary-General and everyone else find some new common ground (EVANS in THAKUR and MALEY, 2015: 19).

In just one year, in December 2001, the ICISS produced and published a 90-page report and 400-page supplementary volume of research essays, bibliography and

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[44] http://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf, p. 48.

background material under the title *The Responsibility to Protect*[45]. The timing was not the most appropriate, as it came out just after the 9/11 attack, namely in a troubled era when the limelight fell on the war against international terrorism. This shift in interest was in theory a bad omen, threatening to make the response to humanitarian crises a secondary preoccupation in the global agenda.

Fortunately, this was not the case and the R2P managed to stay afloat. One of the principal reasons for that was the persistence of the ICISS members. As mentioned one of the most influential members of the Commission, Ramesh Thakur: "the work of the Commission´s members did not cease when it presented its report. On the contrary, a number of the members of the Commission have been active contributors to ongoing debates about the evolution of the idea of a responsibility to protect, not simply as 'keepers of the flame', but as sources of further innovative thinking" (THAKUR and MALEY, 2015: 9).

A second positive development for the promotion of the doctrine was the work of the UN secretary general´s High-Level Panel on Threats, Challenges and Change. This body produced a report in 2004, *A More Secure World: Our Shared Responsibility*[46], that endorsed "the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign Governments have proved powerless or unwilling to prevent". According to a member of this very Panel, Gareth Evans, a support that mattered a great deal for the future of the R2P was that from Chinese member, former Vice Premier and Foreign Minister Qian Qichen. Without his immense prestige in Beijing being in play, it is difficult to believe that, given the traditional strength of its concerns about non-intervention, China would have been quite as relaxed on this issue as it proved to be at the World Summit (EVANS in THAKUR and MALEY, 2015: 23).

The crucial next step for the promotion of R2P was made with the inclusion of High Level Panel´s recommendations in the Secretary General´s own report to the General Assembly, that was designed to compile all credible UN reform proposals in circulation. Kofi Annan in his report, *In Larger Freedom: Towards Development, Security and Human*

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[45] Available at www.globalr2p.org
[46] High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility (New York: United Nations, 2004) p. 106: accessible at: https://goo.gl/dHLI8p

Rights for All, published in 2005, mentioned: "While I am well aware of the sensitivities involved in this issue... I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it".[47]

Besides these developments that are, more or less, known to the wide public, a somewhat underscored contribution to the making of R2P came from the African continent. As the co-chair of ICISS, Algerian diplomat Mohamed Sahnoun, noted: "For Africans, the vow to which our leaders subscribed in 2005 was not new. Five years earlier they had already adopted the norm of non-indifference to mass atrocities in the African Union's Constitutive Act. The idea itself of "sovereignty as responsibility" was developed by the Sudanese scholar and diplomat, Francis Deng. And, unlike other regions, our legal systems have long acknowledged that in addition to individuals, groups and leaders having rights, they also have reciprocal duties. So the responsibility to protect is in many ways an African contribution to human rights".[48]

Indeed, the African Union Constitutive Act puts the interest of people at the center of its goals. One of its main objectives is to "achieve greater unity and solidarity between the African Countries and the peoples of Africa". It also recognizes the "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity".[49] The African contribution to the R2P is especially striking when someone looks at the attitude of Asia and its regional bodies towards it. With the exception of brilliant proposals such as the "Constructive Intervention" or the idea of "Flexible Engagement" the Asia countries received the doctrine with aloofness. None of their progressive ideas about diluting sovereignty came close to advocating military intervention or even hard peacekeeping of the kind advocated by African leaders and policymakers (ACHARYA in THAKUR and MALEY, 2015: 68-69).

With all those factors in its favor, the R2P doctrine made it to New York where the final negotiations took place. Contrary to what many supporters of the R2P might have

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[47] Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All,* Document A/59/2005 (New York: United Nations, 2005), paragraph 135, accessible at: www.un.org/en/ga/search/view_doc.asp?symbol=A/59/2005

[48] Mohamed Sahnoun, ´Uphold the Continent´s Contribution to Human Rights´, available at http://bit.ly/2bLCdOc (last accessed in December 2016).

[49] The two quotes can be found in *The Constitutive Act of the African Union*, Lome, Togo, 11 July 2000, Articles 3(a) and 4(h), respectively.
Available at http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf

hoped, the deliberations were not a walk in the park. After months of in-house wrangling about the Secretary General´s sixty or so recommendations appeared several stumbling blocks. From the one side, the arrival on the scene of the famously ideological and combative new US ambassador, John Bolton, with some 700 spoiling amendments threatened to throw all the painstaking negotiations into chaos. On the other side, a fearsome rearguard action was fought by a small group of developing countries and Russia that denied any limitation on the full and untrammeled exercise of state sovereignty. [50] Fortunately, the Secretary-General´s recommendation that the concept of R2P be endorsed survived almost unscathed (although not his proposals for agreed criteria to govern the use of force). What unblocked the situation and carried the debate in the end was the persistent advocacy of sub-Saharan African countries, led by South Africa, supplemented by key Latin American countries (EVANS in THAKUR and MALEY, 2015: 24).

At the end of the day, the doctrine of the Responsibility to Protect was unanimously endorsed and appeared as paragraphs 138 and 139 of its outcome document.[51] Since then, the R2P has undergone criticisms, proposals for a more effective implementation and degrading interpretations, but it´s still very much alive. Although a detailed account of its existence eludes the purpose of this paper, it would be useful to refer to some of its key features.

b. The innovative elements of the R2P

The first change brought about by R2P was presentational: re-characterizing a "right to intervene" as a "responsibility to protect" was an important first step for the creation of larger consensus. This terminological differentiation was clearly stating that the response to mass atrocities should not be seen as a right, particularly of large and powerful states to throw around their military weight, but rather as a responsibility of each state to protect their own and other peoples at risk of suffering from large scale violation of their human rights (EVANS in THAKUR and MALEY, 2015: 21).

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[50] For a more detailed account of the debate, see Alex J. Bellamy, ´Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit´ *Ethics and International Affairs* 20 (June 2006), pp. 143-169.

[51] *World Summit Outcome,* Document A/RES/60/1 (New York: United Nations, 24 October 2005), available at http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf

It is important to understand that the language used by policy-makers and politicians is never random or light-heartedly articulated. Behind any particular choice of words lie concepts and interests. Such was the case when the phrase "humanitarian intervention" started to spread. The policy hidden behind *intervention* was that of reactive, direct, unilateral, military response. Therefore, it excluded any options of proactivity. The Commission´s proposed doctrine was certainly different. As was stated in the main document of the ICISS: "responsibility to protect means not only ´responsibility to react´, but the ´responsibility to prevent´ and the ´responsibility to rebuild´ as well".[52] So, instead of a narrow-minded approach of an exclusively reactive response, the ICISS proposed a three-leveled responsibility that deemed the reactive approach as the *ultimum refugium,* provided that all previous steps fail.

Undoubtedly, this new choice of words shifted the interest from the supposed right-holders of the intervention to the right-owners of the protection. In other words, the evaluation of the issues was bound to be seen in the future from the point of view of those seeking or needing support, rather than those who may be considering intervention. With a new script, actors have to change their lines and think afresh about what the new issues in the play really are (EVANS in THAKUR and MALEY, 2015: 22).

The doctrine´s second novelty was to increase the spectrum of actors. The right to intervene focused just on the international actors that were willing, but above all able, to apply military force, thus practically transforming this "global right" into an elitist judgement about whether a situation was worthy of their attention and expenditure or not. The new R2P formulation definitely spread the responsibility. Starting by the recognition of the innate obligation of each sovereign state to protect its people from harm, it went a step further by insisting on the responsibility of all other states to assist those that were having difficulties and were willing to receive assistance. Then and only then, if a state was manifestly failing to protect its people as a result of incapacity or ill-will, the responsibility shifts to the wider international community to respond more robustly (EVANS in THAKUR and MALEY, 2015: 22).

Another significant contribution of the Commission was its insistence on broadening the range of responses. As was exposed earlier, the right of humanitarian

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[52] International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Center, 2001), p.17.

intervention flourished in an environment of total disregard for alternative responses other than the use of military force. Contrary to that monolithic notion, R2P involves multiple elements in the response continuum: preventive action, both long and short term; reaction when prevention fails; and post-crisis rebuilding aimed anew at prevention (meaning this time the recurrence of the harm in question). Even the R2P step that refers to reactive measures was enhanced and nuanced. Instead of immediately resorting to military operations and the use of force, different levels of reaction would come in play, according to the doctrine. Starting with persuasion, moving to non-military forms of coercion of varying intensity (such as sanctions or threat of international criminal prosecution), and only as an absolute last-resort solution, after multiple criteria were satisfied, would coercive military force be contemplated as necessary and acceptable (ibid: 22).

Last but not least, ICISS didn´t opt for an oblique, non-transparent and open to inter-pretation framework for the use of force, as was the case with the right of humanitarian intervention. In the case of an unwanted but unavoidable military option, a set of principles should apply. The initial criterion was *legality*: any action involving the use of force would only be deemed as legal provided that it had previous authorization of the Security Council. The ICISS was aware of the dysfunctionalities and weaknesses of the UNSC but, in the final analysis, it did recognize that the UNSC is the highest authority in this context. Rather than searching for ways to bypass it, all efforts should be focused on the improvement of its working methods.

This criterion by itself would not be enough and needed to be supplemented. For this reason, the ICISS recommended five criteria of *legitimacy*: seriousness of the harm being threatened, the motivation or primary purpose of the proposed military action, whether there were reasonably available peaceful alternatives, the proportionality of response and the balance of consequences[53] (ibid: 22).

C. Syria after Libya: a case showing the limits

The R2P is indubitably a remarkable creation with revolutionary elements that, in theory, could contribute to global peace and security. However, the political nature of the Security Council can lead to a quite problematic implementation of the doctrine. If the

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[53] An analogous of the *primum non nocere* (or "Do No Harm") principle that derives from the Hippocratic Oath and is used today as a leading humanitarian principle.

Council members (primarily the P5) were to subject their discretionary political power of assessment to a set of principles and steps, the response to humanitarian crises would become far more coherent, foreseeable and thus, effective. The suspension of the veto power in R2P cases, could be a great starting point. As long as the P5 cast their veto based on their national interests and mainly under political (instead of moral) considerations, the Responsibility to Protect will have a hard time proving its utility. Contrary to what happened in Libya, the recurring vetoes in the Syrian case have aggravated the humanitarian catastrophe in the country. It is obvious that a successful implementation of the doctrine in question highly depends upon a restriction of the veto prerogative. A further analysis of two very similar cases that were treated in a diametrically opposite way due to the use of veto, could make apparent the usefulness of this very project.

a. Libya (2011)

The Arab Spring revolutions in Tunisia and Egypt in late 2010 inspired peaceful protests in Libya against the excesses of Gaddafi's regime. In February 2011 the unforgiving dictator responded to these protests by massacring at least several hundreds of his own people. Surprisingly enough, given previous examples of cumbersome reactions, the UN Security Council didn´t turn a blind eye to these hideous incidents and unanimously adopted Resolution 1970[54], which specifically welcomed the earlier criticisms of the Libyan government by the Arab League, the African Union and the Organization of Islamic Conference and underlined the Libyan government's responsibility to protect its population. Acting under Chapter VII of the UN Charter, the Council demanded an immediate end of the violence, urged Gaddafi´s government to ensure safe passage for humanitarian and medical supplies, referred the situation in Libya to the prosecutor of the International Criminal Court, established an arms embargo on the country and travel bans on sixteen individuals of the Libyan government, froze the assets of some of them, established a committee to monitor the implementation of these sanctions and called upon UN Member States to make available humanitarian and related assistance to Libya.

Muammar al-Gaddafi chose to ignore Resolution 1970. He rejected any demands and refused to permit humanitarian aid convoys into besieged towns such as Misrata and Ajbadiya. Secretary-General Ban Ki-moon himself contacted the Libyan leader and in a 40-

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[54] S/RES/1970 (Feb. 26, 2011).

minute conversation tried -without success- to convince Gaddafi to comply with the Council´s demands. At that point, it became a general conviction that diplomatic means wouldn´t be able to deter large-scale massacres should the rebellion´s epicenter, Benghazi, fell (BELLAMY and WILLIAMS in VON EINSIEDEL et al., 2016: 702).

Without further ado, the fifteen states that occupied the Security Council seats at that time, initiated deliberations on what should be the next move in order to prevent massive massacres. Specifically it was debated whether to authorize the use of force, to establish a no-fly zone and protect civilians. One of the central arguments made in the Council was that the situation in Libya was an ongoing threat to international peace and security because both the internal armed conflict and the humanitarian crisis were likely to become significantly worse without urgent and decisive action (ibid: 703).

Although one would think that a consensus would be easy to achieve under these circumstances, this was not the case. Some Council members, mainly South Africa, Brazil, Russia, China and India were concerned as to how some aspects of Resolution 1973 would be implemented on the ground. This skepticism however found little diplomatic room for maneuver since the Security Council had unanimously accepted the legitimacy of international engagement with the adoption of Resolution 1970. As a result Resolution 1973 was adopted with a majority of ten affirmative votes and five abstentions (Brazil, China, Germany[55], India and Russia). All things considered, there were at least four additional factors that were calling for rapid consensus (ibid: 705-706).

First and foremost, the situation on the ground provided the Security Council with a clear threat of atrocity crimes facing Benghazi. Gaddafi went as far as publicly declaring that "officers have been deployed in all tribes and regions so that they can purify all decisions from these cockroaches", and that "any Libyan who takes arms against Libya will be executed". As a result, many drew an analogy between the Libyan case and the Rwandan genocide of the Tutsi, a mistake that the United Nations wouldn't want to repeat. As for the plausibility of Gaddafi´s words, his regime had an appalling human rights record and a long history of using force to repress its own citizens, so these threats couldn´t be taken lightheartedly.

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[55] It should be mentioned that Germany´s abstention was the result of calm calculations and thoughtful considerations. Its disapproval of a forceful engagement was based on a justified doubt whether an intervention could resolve more problems than it would create.

The second factor was the limited timeframe for actions. There wasn´t really time for long discussions and debates over the implementation of Resolution 1973 as the fall of the Benghazi stronghold was a matter of days, if not hours. Only a diplomacy of light-striking speed and robust decision-making could save the day. This is what ultimately happened, after just a week of frantic diplomacy, a course of action was agreed upon.

A third element that proved to be a diplomatic game-changer was the Gaddafi´s regime condemnation by the regional actors. The Arab League, the Organization of the Islamic Conference and the Gulf Cooperation Council called for the imposition of a no-fly zone. Without the backing of these organizations, it is doubtful that the United States would have embarked upon military operations in the area, and very likely that China and Russia would have vetoed any draft solution (ibid: 708).

Last but not least, it should be noted that, with a few exceptions, Gaddafi was isolated and out of friends. The dictator´s history of meddling in the internal affairs of neighboring countries by backing armed groups in a variety of cases, dissuaded any strong support for his regime. Gaddafi didn´t have many friends in the Middle East either; he had personally offended many leaders and his erratic policies on the Palestinian issue had left him devoid of important allies. Adding to that his loose ties with Russia and China, it becomes clear why no one was very eager to protect the Libyan regime. Even France and Italy that were the main Western partners of Libya, with strong economic and political ties, were among the most committed advocates of the use of force against Libya (ibid: 708).

All in all, up to this point the international community had reacted in an seemingly exemplary way. In the face of a threat to international peace and security that also threatened the local population with dreadful humanitarian consequences, the R2P principle was followed to the letter. At first, there was a huge effort to implement non-coercive diplomatic measures of prevention and when Gaddafi made clear that there was no communication channel or the chance to reach a pacific solution, the international community sought an institutionalized, multilateral consensus on a reactive approach that could deter mass killings. And as should happen in all cases, the Security Council managed to avert a humanitarian catastrophe by adopting significant Resolutions. As Gareth Evans put it: "Libya…was a textbook example of how R2P is supposed to work in the face of a rapidly

unfolding mass atrocity situation during which early-stage prevention measures no longer have any relevance". [56]

i. Implementation of Resolution 1973 and severe doctrinal criticism

Sadly, the tale for R2P didn´t have a happy ending. The Western-led military intervention that was designed and executed mainly by the US, UK and France, was widely seen as going beyond limits. Apparently, the persecution of Gaddafi, the extermination of his regime´s forces and the material assistance (intelligence, arms, training, etc) to the rebels were conceived as exceeding the narrow civilian protection mandate of Resolution 1973. The 'BRICKS' countries were very unhappy with NATO´s course of action and came to claim that the military alliance was seeking since the very beginning a regime change, rather than caring for the protection of civilians.

Whether the NATO and the three Western Permanent Members actually had a secret agenda for a regime change is certainly debatable and both sides have a wide range of arguments in support of their claims. Unfortunately, the debate on those military operations had a collateral victim. It wasn't long before the R2P came under fierce attack and a doubt was cast upon it. Although it had functioned ideally up to a degree, many voices of intense criticism deemed it as a failure. For sure, the third aspect of the R2P, the responsibility to rebuild (and consequently prevent future recurrence) was never put in play adequately. R2P is a three-dimensional concept and its complete success indeed requires the implementation of all its aspects. But can we really blame the R2P as a failure? Was its partial implementation an insignificant advance or brought a revolution in the Council´s decision-making?

According to some analysts the R2P became a harmful Trojan Horse in the hands of NATO powers and the broad interpretations of Resolution 1973 created the perception that the doctrine cleared the way for an unstated goal of regime change, which in its turn has created a permanent chaos in Libya and recurring civil wars that put civilians´ lives under constant danger.[57] Others have even challenged the doctrine´s moral standing under the argument that the Western rationalism and progressive outlook might provide solutions

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[56] Gareth EVANS, "Responding to Mass Atrocity Crimes: The Responsibility to Protect After Libya and Syria", public lecture, Central European University, Budapest, October 24, 2012.
[57] See Daniel Larison, "Overreach Could Mean the End of R2P", *World Politics Review* (June 28, 2011).

for the problems of human existence that cannot be forced upon non-Western societies who reject those solutions. Therefore, "For all its moral certainty, the R2P doctrine offers no real answer to that fundamental moral question".[58]

ii. Evaluation of R2P´s future after Libya

The intervention in Libya under the auspices of the Security Council was a huge step forward at the moment, but it has also presented considerable dangers for the future of R2P. Whether the doctrine survived with just small scratches or has suffered irreparable damage, only the future can tell. It is hard to make any predictions due to the small temporal distance, but an evaluation of its standing would be useful.

It is a well-known fact the Responsibility to Protect is a concept that was created with the ultimate goal of the protection of civilians against genocide, ethnic cleansing, crimes against humanity and war crimes. Insofar as the citizens of Benghazi were spared the massacre, that in all likelihood awaited them, the Libyan R2P operation succeeded. However, it was not just the military win that served to secure R2P as an international political doctrine of very considerable importance. The Libyan case presented a number of novel aspects, each of which can be said to have consolidated the doctrine's gains.

Unlike all previous humanitarian interventions, this one was the first to be authorized by the Security Council. In this way the Council asserted its position as the unique legitimate global actor to decide upon the use of force. All previous unilateral Western interventions had damaged the UNSC´s prestige and had undermined its legitimacy and importance in world politics. The Libyan intervention fell squarely within the terms of the UN Charter and subsequently enjoyed an airtight legal status. In the event, another positive development was the conciliatory stance of certain permanent members (Russia and China) who settled for criticism and abstention rather than the use of veto. This abstention, suggested at that critical moment that the persistent request, from a great number of international actors, that permanent members abstain from the use of veto in cases of mass atrocities and large-scale killings had achieved some resonance[59].

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[58] See Robert Jackson, "R2P: Liberalizing War", *World Politicks Review* (June 28, 2011).
[59] See Spencer Zifcak,"The Responsibility to Protect after Libya and Syria", *Melbourne Journal of International Law* (2012), volume 13, p.10.

In the military aspect of the Libyan R2P operation there was also a notable advancement. In paragraph 139 of the outcome document of the 2005 World Summit, emphasis is put on the *timely and decisive* manner of the collective actions. This is exactly the kind of action that was undertaken by the Security Council in the Libyan case. Its authorization for the use of force was given after just a week of deliberations and NATO´s intervention followed some days later. The extensive delays that had characterized previously authorized interventions in Rwanda, Darfur and Côte d'Ivoire for example, were not repeated in Libya. This operational novelty suggested that the international community could act rapidly to stop impending massacres and systematic human rights abuse, were certain critical preconditions (such as rapid deployment of a coalition force under a unified leadership) to be met[60].

For these reasons, one may fairly claim that the Libyan intervention advanced the cause of the R2P doctrine. On the other hand, its partial abuse for the completion of a secret agenda of regime change might prove that the Libyan case was a high water mark for R2P instead of consolidating its role as a respectable global norm[61].

The first line of arguments against the doctrine´s implementation accentuate the rapid shift from preventive measures of civilian protection to full-scale military operations. In the middle of the last decade, the proponents of R2P had emphasized before the UN its non-military aspects and insisted that the use of force would be a rare last resort[62]. However, skeptics opine that in Libya[63], the NATO aircrafts took flight before all non-military measures had been depleted. Subsequently, priority was immediately given to what the doctrine deemed as a scenario to be avoided. In this way, R2P was disposed of the elements that made it different and was reduced to something similar to the "right to intervene". The accusation of such a perversion should be seriously taken into account. But in all fairness, the use of force was the second step of the Security Council´s reaction, as it followed the robust preventive measures of Resolution 1970.

The fiercest advocates of the doctrine´s demise, attribute its cause of death to NATO´s role as a regime changer. As was described earlier, NATO stretched its "Responsibility to Protect" mandate to the absolute limit, and maybe beyond it. Gareth

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[60] ibid, p.11.
[61] See David Rieff.,"R2P, R.I.P", *The New York Times* (November 7, 2011).
[62] Ibid.
[63] See for example Washington´s Blog article "Libya War Was Based on Lies, Bogus Intelligence, NATO Supported and Armed the Rebels. British Parliamentary Report", *Global Research* (September 12, 2016).

Evans, speaking for the majority of the R2P supporters, said: "Many of us would have been much more comfortable if NATO had confined its role, after neutralizing the Libyan air force and halting the ground forces moving on Benghazi, confined itself essentially to a watching-brief role: maintaining the no-fly zone and being prepared to attack whenever civilians or civilian areas were being put at risk by reachable targets, but stopping short of moving into full war-fighting, regime-change mode, and being prepared to wait for rebel military pressure, regional and international diplomatic pressure, targeted sanctions and the threat of ICC prosecution, to take their course. It may have taken longer to get a result, but it would have placed much less stress on R2P"[64].

Last but not least, perhaps the international community´s most remarkable failure was noted in the rebuilding process. Very little has been done since 2011 in order to help Libya stand on its feet again. The *responsibility to rebuild* has been given little attention and that may further debilitate the doctrine. Five years after Gaddafi was deposed in a popular revolution, the country remains trapped in a spiral of deteriorating security[65], economic crisis[66], and political deadlock. Trust in the nation's weak government institutions has fallen to an all-time low as political elites, unable to agree on even a governmental structure, deploy armed militias to control territory and economic assets.

In a nutshell, we should probably have mixed feelings about the implementation of R2P in Libya. We shouldn't rush into cheers of joy nor despair based on this bittersweet flavor that it left. With the adoption of Resolution 1973, the Security Council entered uncharted waters by adding further conditionality to the sovereign prerogatives of modern states. It could be said that this was a crucial turning point in Council´s practice as it set a precedent that an authorization of the use of force against a UN Member State would be thereon possible for protection purposes (BELLAMY and WILLIAMS in VON EINSIEDEL, et al., 2016: 713). Of course, it remains to be seen whether this practice could be solidified in the future or it was only a fortuitous result of the alignment of all diplomatic stars against the Libyan dictator. Undoubtedly, the norm took a big blow when the NATO forces exceeded the mandate of Resolution 1973 and many started to announce its fading importance. In all

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[64] Gareth Evans, "Interview: The "RtoP" Balance Sheet After Libya", September 2001, p.10.
[65] For a more comprehensive analysis on the proliferation of firearms and armed militias, see Rebecca Murray,"Libya anniversary: 'The situation is just terrible'", *Aljazeera* (February 16, 2015).
[66] For a more comprehensive analysis on the situation of Libyan economy and infrastructures after the intervention, see Borzou Daragahi "Reconstructing Libya: In a ruinous state", *Financial Times* (November 17, 2011).

probability, R2P can recuperate and reach its destination in the future. But in order for that to happen, R2P should be reformed and enhanced in such a way that it would drastically limit the possibilities of its misuse and ill-implementation.

b. Syria (2011 - …)

The Arab uprisings in Tunisia, Libya and Egypt inspired protests against the regime of Syrian president Bashar al-Assad on January 26, 2011. Two months later, the escalating manifestations of discontent against the regime were met with violent repression from state security forces. The use of force against civilians provoked further demonstrations and the peaceful protests that had begun with demands for greater freedom and political and economic reforms, soon transformed into calls for the downfall of the Assad regime (SHAIKH and ROBERTS in VON EINSIEDEL, et al., 2016: 718)

These early realities in Syria had a very strong resemblance to the Libyan situation. In both countries, peaceful protests, inspired by the Arab Spring, were met with excessive state violence and turned into an open demand for regime change. A striking difference between them was that colonel Gaddafi was erratic and largely isolated, while al-Assad counted on the help of powerful allies, primarily Russia and Iran. This fact might seem of little relevance to the average observer but world politics proved once again that state interests can lead to an utterly different treatment of similar cases, as long as certain strategic benefits and geopolitics are at play. So, important questions arise *ex post facto* for Libya: what was the driving force for the intervention? A genuine care for the protection of human rights or the international community´s absolute indifference for Gaddafi´s regime that was translated into a golden opportunity to sell a profile of humanitarianism? What was different in the Syrian case? In the following lines I will attempt to provide an answer.

During the first eighteen months of the Syrian conflict the Security Council members made serious efforts to come up with a proposal. However, all meaningful resolutions concerning the cessation of violence, with consequences of noncompliance, never went all the way. They were all thwarted by joint vetoes of Russia and China. Specifically, between spring of 2011 and summer 2012, the Security Council activity could be resumed in three vetoed attempts to adopt Resolutions and a short-lived UN observer mission that was withdrawn almost as soon as it was deployed (SHAIKH and ROBERTS in VON EINSIEDEL, et al., 2016: 718). Since the third veto, the Council has practically entered

a paralyzed status, being unable to agree on any course of action because of the competing Russian and US interests.

Meanwhile, Syria has turned into the biggest theater of horror in 21st century. With Assad clinging to his position of power, what began as a protest became an obnoxious civil war in which more than 250.000 people have lost their lives (at least half of them are believed to be civilians), more than 6.6 million people are internally displaced, approximately 5 million people have been registered or are awaiting registration by United Nations High Commissioner for Refugees and whole villages and cities have been reduced to debris[67]. As if all these weren´t enough, Syria has gradually become the epicenter of the region´s greatest proxy conflict. Saudi Arabia and Qatar of Sunni majority and leadership have formed a coalition against Iran and its regional partners, Hezbollah in Lebanon and the Shiite-led government in Iraq who support the Assad regime. Adding to that, the US and Russian interests in the area and the apparition of an ever-growing terrorist group, the ISIS, we can understand that the Middle East is currently a time-bomb and in this blizzard of threats, it's always the unarmed and innocent civilians who pay the price.

i. The Russian and Chinese vetoes

In August 2011, the Western P3 with the support of elected Council members Germany and Portugal, circulated a draft resolution calling for an asset freeze and a travel ban on President al-Assad and other senior regime officials, as well as an arms embargo on Syria. However, Russia, China, Brazil, India and South Africa, bitter by NATO´s recent implementation of Resolution 1973, didn´t even want to hear about a new dynamic response. Although the taboo of state sovereignty as a sacred attribute had partially been broken under the impulse of the Responsibility to Protect and the Libyan intervention, old habits die hard. Those states have traditionally believed that the principles of state sovereignty and non-intervention should be respected and argued for dialogue and negotiations instead of sanctions. To address their concerns, the P3 watered down the content of the draft resolution by softening the language and removing the threat of sanctions. All references to accountability and human rights violations were substituted by phrases that underlined the need of coming up with a peaceful solution. Only the

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[67]Those macabre statistics are to be found in the website of one of the most renounced NGOs for humanitarian aid, Mercy Corps: https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis (last accessed on September 29, 2016).

condemnation of Syria´s excessive use of force was of some value after these concessions. Everyone expected that, under these circumstances, the resolution[68] would be unanimously accepted. But alas, on October 4 2011, the draft resolution was put to vote and was vetoed by both China and Russia, with the abstention of Brazil, India, South Africa and Lebanon (SHAIKH and ROBERTS in VON EINSIEDEL, et al., 2016: 721).

After the first failed attempt to tackle a conflict that was becoming worse by the day, a new initiative came up. Morocco, a newly elected Council member, submitted a draft proposal that reflected the Arab League´s recent proposal for a gradual political transition process in Damascus[69]. The P3 welcomed this initiative, with the hope that an Arab-led call for action would make it very difficult for Russia and China to cast their vetoes. That had worked in the Libyan case but now circumstances were different. In November 2011 the Arab League had suspended Syria´s membership, accusing it of failing to implement an Arab peace plan that involved the delegation of power from Assad to his vice-president (DERGHAM in VON EINSIEDEL, et al., 2016: 742). This action had decisively undermined the Arab League´s role as bridge-maker between the P5 and it could no longer aspire to have an influential and persuasive role in the Council.

Morocco's initial draft resolution used a language much harder than Russia could ever accept, including the threat of sanctions and a call for political transition. That last requirement made Russia, China and non-permanent members like India, Pakistan, Azerbaijan and South Africa unease, as it was ringing a very familiar bell. Fearing an attempt of forcible regime change, as happened in Libya the previous year, those states engaged in harsh negotiations calling for the explicit exclusion of any scenario that involved the use of force. The possibility of sanctions remained possible but the final text of the draft resolution stated that nothing in it authorized measures under UN Charter Article 42. After addressing this concern it seemed that a compromise had been reached and that the resolution would be voted upon, so that the Syrian crisis could finally be mitigated. However, Russia caught everyone by surprise and vetoed the resolution, while China followed suit. Their position was largely isolated as all other members voted in favor of the draft, but little did that concern Moscow and Beijing.

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[68] S/2011/612 (October 4, 2011).
[69] S/2012/77 (February 4, 2012).

After this second veto, it became obvious that the Security Council was trapped in a quicksand effect. Every move it made towards a solution was only sinking it more a more into an immobilizing state. As the crisis deepened, the General Assembly appeared as a divine intervention and tried to steer the developments. In this regard, it created the mandate for a special envoy. Former Secretary-General Kofi Annan was chosen to lead the mediation efforts and to create a degree of unanimity between the UNSC members. He succeeded in his role as demonstrated by the presidential statement that was adopted by the Council in support of Annan´s six-point peace plan[70] (SHAIKH and ROBERTS in VON EINSIEDEL, et al., 2016: 723).

For the implementation of this plan, the Security Council authorized[71] the deployment of an advance team of unarmed military observers to report on the cessation of armed violence by all parties involved. A week later the Council adopted Resolution 2043[72], establishing a UN Supervision Mission in Syria (UNSMIS) for 90 days, calling for the urgent implementation of Annan´s plan (ibid: 723). UNSMIS was suspended in less than two months after coming under attack. The P5 foreign ministers, alongside Kofi Annan and regional representatives, met in Geneva and issued a communiqué that called for all parties to recommit to the six-point plan, mapping out a Syrian-led political process that would lead to a mutually agreed political transition (ibid: 724).

The UK circulated a draft solution on July 11 that endorsed the Geneva communiqué, renewed UNSMIS and threatened the Syrian government with sanctions. Once again, Russia commenced a hide-and-seek game with proposals and counter-proposals, with the intention to exclude reference to Chapter VII provisions. If Annan´s plan was to have any real teeth, Chapter VII could not be off the table. That, of course, was a deal-breaker for Russia and the draft resolution seemed to be doomed to failure and so it happened. On July 19, Russia and China cast their third joint veto.

As the P3 were running out of political solutions, they had only one last card to play, to pursue the accountability track by referring the situation to the International Criminal Court. It was between April and May of 2014 when this scenario was brought to the negotiation table. In the meanwhile (between 2012 and 2014), tens of thousands more had died, Assad had used chemical weapons against civilians, millions were internally displaced

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[70] S/PRST/2012/6 (March 21, 2012).
[71] S/RES/2042 (April 14, 2012).
[72] S/RES/2043 (April 21, 2012).

or left their country and other terrible war crimes and crimes against humanity had gone unpunished. During the deliberations on the ICC referral the US and Russia expressed their concern on the scope of ICC´s jurisdiction. Once their demands were accommodated and the tailor-made referral redacted, the draft resolution[73] was put to vote. The fourth joint veto by Russia and China was a fact.[74]

ii. Why did Russia and China veto all attempts to promote peace in Syria?

A fairly common explanation for the Council´s utter failure to provide a response to the Syrian crisis is controversy between the Permanent Members over post-conflict Libya[75]. NATO´s pursuit of regime change in the name of protecting civilians became a very convenient excuse in the hands of Russia and China for their fourfold use of the veto. By blocking all Western efforts to intervene and impose a political transition, they were actually hitting two birds with one stone. They could reaffirm their longstanding tradition of respecting the principles of state sovereignty and non-intervention[76], while at the same time they could protect their strategic friendships and interests in the zone.

So the previous unfortunate experience in Libya appeared as a compelling public argument for the vetoes in the Syrian conflict, but by no means was it the sole or even dominant factor in Russia´s ongoing defense of the Assad regime, nor in China´s backing of the Russian veto (SHAIKH and ROBERTS in VON EINSIEDEL, et al., 2016: 719).

The inconvenient truth is that Russia is acting bluntly on self-interest. To begin with, it is known that it maintains a very lucrative partnership with Damascus, exporting arms and military equipment. But economic interests don't stop here. If Assad was to be replaced by a pro-Western leader[77], this would probably pose an existential threat for Russia. For

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[73] S/RES/348 (May 22, 2014).

[74] A few weeks after this paragraph had been redacted, Russia cast its fifth veto concerning the situation in Syria. The vetoed draft resolution was S/2016/846.

[75] See, for example, Mark Leon Golberg´s article "How Libya´s success became Syria´s failure", *UN Dispatch*, (January 19, 2012).

[76] By posing as global protectors of state sovereignty and non-intervention, Russia and China have managed to curry favor with authoritarian regimes, mainly in Africa and Asia. Dictators and authoritarian rulers are more likely to "do business" with those two superpowers as a token of their appreciation.

[77] For the sake of objectivity, it should be noted that the interest of the western P3 for decisive action in Syria isn´t purely humanitarian. In the same way that Russia casts its veto in order to promote its political agenda, the western permanent members favor action in pursuance of their own interests. By arguing for a solution in Syria, they seek to demonize Russia (and to a certain extent China), to construct a moral profile for themselves and, possibly, to promote the substitution of Assad´s regime by a pro-western one. Whatever the case, the nature of all considerations in the Council remains essentially political. If Russia and China are more criticized in this project, it is not to sketch a "saint profile" for the western P3, but rather to fault

some years now, Qatar is pursuing the construction of a gas pipeline that would reach Europe, passing through Saudi Arabia, Jordan, Syria and Turkey. Considering that 70% of Russia´s gas is exported to Europe, a Qatari pipeline would bring about a huge shift in the supply chain and that would be translated in a loss of several billions of dollars for the Russian economy. As long as Assad stands in the way, this pipeline will remain an ambitious plan[78].

Economic factors aside, Russia has military interests in the area. By protecting the Assad regime it protects its only access to the Mediterranean that goes through Tartus, a Syrian port city which serves as Russia's unique military facility outside of ex-Soviet space. All things considered, we should not leave out of the equation Putin´s personal aspirations and illusions of grandeur.[79] Record shows that he sees himself as the absolute leader who will recuperate Russia´s status of superpower, the one that faded after the collapse of the Soviet Union.[80] Putin shows great interest in challenging America´s military supremacy and its status as a global regulator.[81] It becomes obvious that he won´t abandon his last castle in the Middle East. He did everything in his power to take advantage of Obama´s policy of disassociation with the Syrian conflict and America´s fatigue after the enduring involvement in Afghanistan and Iraq, and he seems determined to keep up his adamant support for the Syrian president.

The reasoning on the Chinese side is not as obvious. Of course, there are economic interests at play; a few years ago China became Syria´s largest supplier of imported products and has invested quite a lot of money in Syria´s oil sector. However, given the scale of the Syrian economy and oil production, such economic interests are not significant enough for China to protect Assad's government. Another widely circulated realist viewpoint suggests that China's support for Syria is an act to protect its strategic interests in the Middle East. The logic goes as follows: since Syria is a close ally of Iran, by keeping the Syrian regime

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the Sino-Russian stance before a specific case and to overall decry the political nature of the Council even before humanitarian disasters.

[78] See Robert Kennedy´s article "Syria: Another Pipeline War", *EcoWatch* (February 25, 2016)

[79] See Aurel Braun´s article "Tougher Sanctions Now: Putin's Delusional Quest for Empire", *World Affairs* (July/August 2014).

[80] See for example articles like "A hollow superpower", *The Economist* (March 19, 2016), John Simpson´s article "How Putin conned us into thinking Russia is a superpower again", *NewStatesman* (September 5, 2016) and Leon Aron´s article "The Putin Doctrine: Russia's Quest to Rebuild the Soviet State", *Foreign Affairs* (March 8, 2013).

[81] See Edward P. Joseph´s article "Putin and Obama Go Head-to-Head: Why the United States Should Not Accept Russia's Plan in Syria", *Foreign Affairs* (September 29, 2015).

intact, or more importantly, preventing a pro-western replacement, China is in fact ensuring that Iran retains its regional support and will not fall prey to a western-led invasion[82].

Some specialists who weren´t convinced by the previous arguments, have looked for alternative interpretations that rest on China´s voting trends in the Security Council since the creation of the United Nations. The Asian giant has used its veto only on eleven occasions. So it comes as a surprise that it would cast it four times in a case of, virtually, small direct interest. That has led those analysts to approach the Chinese position as a tactical *quid pro quo* in the Security Council – a way to bank on reciprocal support from Russia when needed in the future (SHAIKH and ROBERTS in VON EINSIEDEL, et al., 2016: 732).

iii. Preliminary remarks

As the title of this sub-chapter goes, Syria has been a case that shows us the limits. By limits, I mean the prevalence of world politics over international law and human security; the prevalence of national interests and geostrategic worries of few over any ethical and moral imperative to protect human rights and promote peace. As long as the first prevail over the second, no matter how many well-intended doctrines (like the Responsibility to Protect) are created, the result will be the same.

We have witnessed in the past a great number of cases where *Realpolitik* and competing national interests were proven more important than thousands of human lives. But the Syrian crisis has, in some way, been more shocking. Perhaps it´s the extensive coverage of the atrocities and the information we receive in real-time that has moved the World Public Opinion. Or maybe it´s because of the expectations created by the international community´s response to the Libyan humanitarian crisis. For a fleeting moment, the leaders of global superpowers gave the impression that they genuinely cared for the protection of civilians under threat of extinction. But soon enough, we were reminded in the most appalling way that human rights are still a secondary issue in the global agenda and the protection of human lives is a priority so long as it doesn´t collide with politics and interests.

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[82] See Nicholas Wong´s article "China´s veto on Syria: What interests are at play?", *Open Democracy* (July 25, 2012).

However, every political choice comes with a price. The Security Council´s stalemate in the Syrian case has reinforced the widespread perception of the UN´s growing marginalization in world affairs (SHAIKH and ROBERTS in VON EINSIEDEL, et al., 2016: 739). Other writers went a step further and heavily criticized the UN´s top decisive organ. Ragida Dergham wrote: "Syria was poised to go down in history as a testimony to the utter bankruptcy of the Security Council, as this body, entrusted with safeguarding international peace and security, became an accomplice to atrocities and impunity".

The Security Council´s legitimacy leak is growing by the day and the UN inspires severe criticism instead of leading the effort towards a peaceful world with respect for human rights. Any hope of reverting this situation, passes through the partial depoliticization of the Council. Politics are always going to be decisive in this body, but certain legal restrictions are long overdue. The first step could be made with the restriction of the veto power in cases where there is a Responsibility to Protect civilians against genocide, war crimes or crimes against humanity. Had this simple procedural rule been accepted beforehand, the Syrian crisis would never have unfolded. But it´s never too late; the Responsibility Not to Veto and the Responsibility while Protecting are two initiatives that gain more and more traction and could largely contribute to the efficacy and applicability of the R2P. These initiatives and other possible alternative ways forward, will be discussed in detail in the next chapter.

Chapter III

Favoring peace and law instead of politics: towards an effective and responsible Security Council

In this last Chapter, I intend to propose possible ways of assuaging the devastating effects of humanitarian crises, by restricting the veto power of the P5 when mass atrocities are committed against a civil population and the state doesn´t live up to its responsibility to protect its people. Firstly, I will refer to recent veto restriction proposals that add up to the RN2V initiative that could empower once again the Responsibility to Protect and externalize all its positive aspects. Afterwards, I will analyze a second influential initiative: the Responsibility while Protecting, and finally, I will try to present two alternative ways forward that could bypass or deactivate the veto, in case the P5 continue to turn a deaf ear to all calls for its self-restriction in R2P cases. At the very end, I examine if it´s possible to argue for a political accountability of the Council and what it would practically mean.

A. Supporting the implementation of R2P´s policy agenda

As was exposed in detail earlier, the R2P is a threefold doctrine which argues that the international community has a responsibility to contribute to the prevention of mass atrocities against civilians, and only when it is absolutely verified that the prevention measures cannot avert a humanitarian crisis, is there a responsibility to react, and a subsequent responsibility to rebuild. The prevention element is what really makes this doctrine unique and differentiates it from bellicose ideas that favor straightforward military interventions without further considerations (such as the "right" of humanitarian intervention). Moreover, I gather it has become sufficiently clear by now that the doctrine´s protection mechanisms necessarily go through the Security Council.[83]

Since the R2P was endorsed by more than 150 Heads of State and Government (including those of the permanent members) in 2005 and was included in the outcome document of the 2005 World Summit, the international community as a whole, but more

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[83] The proponents of the R2P principle, had made it clear in their Report that: "[…] the Commission is in absolutely no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection issues". Indeed, the prohibitions against intervention are explicitly spelled out in the Chapter, and since there is no "humanitarian exception" to these prohibitions, the Council´s role becomes of paramount importance.

crucially the Security Council and the permanent members, have assumed a double responsibility. For one, to take action and prevent or stop mass atrocities, and secondly, a negative responsibility not to block potential humanitarian protection actions from being undertaken. Therefore, in order to construct a fully operational R2P, the P5 should reach an agreement to abstain from the use of veto in cases when the civil population of a country is under threat of mass atrocities. For the moment, the veto hangs as a damoclean sword above the doctrine and can easily block its implementation, as is the case in Syria.

So, what could be done to increase the implementability and functionality of R2P? The first obvious solution would be to seek the commitment of the P5 to a parallel Responsibility Not To Veto in support of the Responsibility to Protect. A second proposal that has attracted serious attention is the Responsibility while Protecting as it surfaced after the Libyan intervention. Let´s examine these two proposals:

a. The Responsibility Not To Veto

The RN2V is an idea that has been discussed in various international forums for more than a decade as a crucial element of the Responsibility to Protect, and has grown considerably amongst a wide variety of UN member states and respected international commissions and panels. Let´s see briefly how this concept has originated, evolved and what other proposals it has inspired.

i) Origins, content and evolution of the proposals

On 23 May 2001 a roundtable discussion with French Government officials and Parliamentary officials was held at the Canadian Cultural Center in Paris, as part of many consultations the ICISS held at venues all over the world. During these meetings, French Foreign Minister Hubert Vedrine proposed a "Code of Conduct" for the use of the veto by the P5. The hope was that this would allow the Security Council as a whole to react more quickly to crises, even when one of the P5 is involved. [84] This proposal was endorsed by the ICISS and later included in the Report on the Responsibility to Protect. [85] The idea was

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[84] International Commission on Intervention and State Sovereignty (ICISS), The Responsibility to Protect: Research, Bibliography, Background (Ottawa: International Development Research Center, 2001), pp. 378-379.
[85] International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Center, 2001), p. 51, paragraph 6.21

essentially that a permanent member, in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct the passage of what would otherwise be a majority resolution.

Although this idea is generally welcome as it set the bases for subsequent proposals, we cannot ignore that it includes a precondition which practically cancels the code´s functionality. The meaning of the phrase "in matters where its vital national interest were not claimed to be involved" implies that a permanent member that wants to use its veto, can do so by simply declaring that its national interests are at stake. There is no explanation or further specification as to what the "national interest" entails, so the P5 would virtually have limitless capacity to interpret any situation as relevant to it. This proposal was of limited practical value but it definitely contributed to the cause by manifesting France´s proactive disposition to advance the R2P concept and accept a certain restriction of the veto.

The idea of a Responsibility Not To Veto was further advanced during 2003 and 2004. In September 2003, Secretary-General Kofi Annan reported to the General Assembly that he had appointed a High-Level Panel on Threats, Challenges and Change. The High-Level Panel produced in 2004 a report that referred to the institution of veto as having "anachronistic character" and called for the permanent members "in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses".[86]

After a brief period of certain inaction regarding the RN2V, the debate made a dynamic comeback on the global agenda in 2008. That year, the US Holocaust Memorial Museum, the American Academy of Diplomacy and the US Institute of Peace established the Genocide Prevention Task Force, which was co-presided by former Secretary of State Madeleine Albright and former Secretary of Defense William Cohen. The Task Force was assigned to create a blueprint for the incoming administration to procedurally and structurally align the US government to prevent genocide and mass atrocities worldwide.

In the final document produced, called "Preventing Genocide: A Blueprint for US Policymakers", the Task Force concluded that: "Too frequently, one of the five permanent members of the UN Security Council has made effective collective action virtually impossible by threatening veto, implicitly or explicitly. This has led to either watered-down,

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[86] High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility (New York: United Nations, 2004) p.82, paragraph 256.

ineffectual resolutions, or no resolution at all. Uniquely empowered by the UN Charter, the five permanent members have unique responsibilities to fulfill the mission of the charter". And in order to prevent or stop mass atrocities, the P5 should aim at producing an informal, voluntary mutual restraint in the use or threat of a veto. And the innovative formula that was proposed, suggested that unless three permanent members decide to veto a resolution, all should abstain from doing so. Furthermore, they added that: "The P5 should also agree that a resolution passed by two-thirds of the General Assembly finding that a crisis poses an imminent threat of mass atrocities should add further impetus to an expeditious Security Council response without threat of a veto".[87]

Soon after the remarkable effort of the Genocide Prevention Task Force, the RN2V concept enjoyed an important status boost in 2009. That year, Secretary-General Ban Ki-moon presented his report on "Implementing the Responsibility to Protect" to the General Assembly.[88] In it, he called for reform of the way the P5 wielded their veto power. Citing a global attitude shift since the massacres in Cambodia, Rwanda, Srebrenica and elsewhere, Ban Ki-moon stated that the political costs had risen domestically and internationally for "anyone seen to be blocking an effective international response to an unfolding genocide or other high-visibility crime relating to the responsibility to protect".[89] Describing the P5 veto power as a privilege of tenure, he outlined how these States had particular responsibility "to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect" in situations of genocide, war crimes, ethnic cleansing and crimes against humanity.[90]

In the RN2V context, special mention should be made of the Small Five (S5) efforts for the reform of the Council´s working methods, including a strong recommendation to the P5 to refrain from the use of a veto to block Council action aimed at preventing or ending genocide, war crimes, and crimes against humanity (WENAWESER in VON EINSIEDEL et al., 2016: 184). The Small Five was a group of small states (Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland), created in late 2005. The S5 was genuinely interested in the Security Council reform but focused more on the improvement of its working methods,

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[87] Genocide Prevention Task Force (GPTF), Preventing Genocide: A Blueprint for U.S. Policymakers (Washington DC: The US Holocaust Memorial Museum, The American Academy of Diplomacy, and the US Institute of Peace, 2008), p.106.
[88] A/63/677 (12 January 2009)
[89] See A/63/677, Report of the Secretary-General, *Implementing the Responsibility to Protect* (12 January 2009), paragraph 61.
[90] Ibid: paragraph 61.

accountability, legitimacy and transparency than on the enlargement issues. This group became very influential over time and gained the respect of an overwhelming amount of UN members. Its insistence on reform even led to the adoption of Presidential Note 507 by the Council, which accepted a wide range of measures on working methods, aiming to enhance the Council´s transparency and the interaction between permanent and elected members (ibid: 182).

However, Note 507 was poorly implemented as the P5 treated it as a menu to choose from, contrary to the S5 view that saw it as commitment to concrete measures. To increase the pressure, in 2012, the S5 decided to submit a draft resolution[91] to the General Assembly that called the Security Council to enhance the implementation of the Note 507 and to consider the measures contained in the annex of the draft resolution. One of these measures was the restriction of the veto in R2P cases. This draft attracted a lot of support and the S5 engaged in important lobbying in order to secure the necessary votes in the General Assembly. Nevertheless, the P5 were adamantly opposed to the adoption of the resolution and did everything in their power to undermine it.[92] Under the enormous pressure of the permanent members and the reduced possibilities to achieve all the necessary votes, the S5 withdrew the draft resolution, putting an end to six years of intense and consistent advocacy for improving the working methods of the Council.

During the next year, the efforts to restrain the veto were intensified and a number of actors, calls and exhortations put on some additional pressure. Firstly, on April 18, the European Parliament called for "European Consensus" on the Responsibility to Protect and made recommendations to the Security Council.[93] It proposed, *Inter alia*, the adoption of a voluntary code of conduct that would limit the veto in cases of genocide, war crimes, ethnic cleansing or crimes against humanity. Some months later, in September 2013, France and Mexico created a political declaration, open to signature by UN member states, on the

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[91] UN Doc. A/66/L.42 (March 28, 2012).

[92] Firstly, they exercised strong pressure on countries that had expressed support for the text to dissuade them from voting for it (especially some African countries). Secondly, they argued for an informal legal opinion by Under-Secretary-General for Legal Affairs Patricia O'Brien that demanded a majority of two thirds for the adoption of the resolution, instead of simple majority, under unclear legal justifications. Thirdly, they arranged a meeting with representatives of the S5 in order to warn them about the consequences of a possible vote and to urge them to withdraw the draft. For a detailed account of the undermining efforts, see WENAWESER in VON EINSIEDEL et al., 2016, pp.184-188.

[93] P7_TA(2013)0180, European Parliament recommendation to the Council of 18 April 2013 on the UN principle of the 'Responsibility to Protect' ('R2P') (2012/2143(INI)), recommendation 2(f), available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2013-0180+0+DOC+PDF+V0//EN

suspension of the veto power in cases of mass atrocities[94]. All the signatories would support France and Mexico´s initiative to propose a voluntary agreement, under which the P5 would refrain from using their veto in R2P cases.

Last but not least, in October of the same year, French Foreign Minister Laurent Fabius published an op-ed in The New York Times[95] advocating that the permanent members refrain from using the veto "if the Security Council were required to make a decision with regard to a mass crime […] except in cases where the vital interests of a permanent member were at stake." In the article, Fabius laid out criteria for triggering this "code of conduct" stating that the UN Secretary-General would make the determination regarding the occurrence of a mass crime at the request of at least 50 member states.

To conclude this list of RN2V initiatives and proposals, I will refer to the two most recent efforts: the Elders´ proposal and the Accountability, Coherence and Transparency (ACT) group code of conduct. On February 7, 2015, the Elders[96] adopted a statement on strengthening the UN. Among its proposals, it called for the permanent members of the Security Council to pledge "not to use, or threaten to use, their veto" in crises in which genocide or other mass atrocities are committed or threatened "without explaining, clearly and in public, what alternative course of action they propose, as a credible and efficient way to protect populations in question." According to the Elders' proposal, the explanation should pertain to international peace and security, and not be based on national interest, as using the veto under such circumstances represents an abuse of this privilege. In cases where the veto is cast by one or more permanent members, the Elders argue that efforts must be made by the other members of the Council "not to abandon the search for common ground".[97]

In July 2015, the Accountability, Coherence and Transparency Group (ACT) circulated a "code of conduct" that calls on member states to "pledge to support timely and decisive action by the Security Council aimed at preventing or ending the commission of genocide, crimes against humanity or war crimes" More specifically, it calls Council members not to vote against "credible" draft resolutions that seek to end or prevent such crimes. The pledge is applicable to the UN's broader membership—not just the permanent

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[94] Available at: http://responsibilitytoprotect.org/ACTEnglish.pdf
[95] See Laurent Fabius, "A Call for Self-Restraint at the UN", *The New York Times* (4 October 2013).
[96] A diverse and independent group of global leaders working to promote peace and human rights currently chaired by former Secretary-General Kofi Annan.
[97] See Research Report "The Veto", *Security Council Report* (October 19, 2015), No.3, p.5.

members of the Council—as all member states are eligible to run for a seat on the Council and thus to serve as elected members. By December 14, 2015, there were 107 states that supported this code of conduct[98].

ii) Evaluation and criticism

Of course, the previous list isn't exhaustive nor detailed but I think that it gives a fairly good idea of the international community´s mobility and interest in strengthening the R2P doctrine and reinforcing the international reaction capacity against mass atrocities. International consensus on these ideas is growing and the P5 won´t be able to postpone the calls for a veto restriction in R2P cases indefinitely. Another comment that should be made at this point, is that not all initiatives that support a RN2V are identical. They share some ground but also have differences. Some of them include trigger mechanisms, additional preconditions and innovative proposals, and others don't. However, they all recognize the need to deal with mass atrocities against civilians and that the veto restriction would be an informal commitment of the P5.

According to an influential study[99] on RN2V that recompiles most of these initiatives, Blätter and Williams detect two essential elements of the concept and suggest that the permanent five members of the UN Security Council should agree not to use their veto power to block *action* in response to genocide and mass atrocities which would otherwise pass *by a majority*. In principle, this proposal sounds like an ideal troubleshooter that could empower and fortify the Responsibility to Protect. But is that really the case?

We should pay very close attention to two aspects of this proposal: first and foremost, we should wonder what the real meaning of the word "action" is, and secondly, we should reflect on what extent is a majoritarian vote for a Council resolution a quality characteristic upon which we could build an assumption for the legitimacy of an action.

As Daniel Levine remarked[100], the RN2V proposal is very generic – "the P5 should not use their veto power to block *action* in response to genocide or mass atrocities". Indubitably, there is a very strong tendency to understand this "action" as military in nature,

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[98] A/70/621–S/2015/978 (December 14, 2015), Annex II.
[99] See Blätter and Williams´s report "The Responsibility Not To Veto: A Way Forward", *Citizens for Global Solutions* (2014).
[100] See Daniel Levine, "Some Concerns About 'The Responsibility Not To Veto'", *Global Responsibility to Protect* (2011), p. 3.

and the study of Blätter and Williams does little to convince us that the RN2V refers to any other kind of action as well. And this is where the problems of the proposal may originate. For starters, if it seeks to circumvent the veto solely based on the seriousness of the abuses, without examining the characteristics of the proposed intervention, it risks making inappropriate military interventions too easy to authorize. Further, a veto-restricting proposal that only focuses on the necessity of facilitating military intervention for humanitarian reasons, not only fails to support and transmit the spirit of the R2P but also it undermines the doctrine´s non-military aspect, namely its strongest quality.

The RN2V, according to Blätter and Williams, takes into consideration a second element: the number of affirmative votes for a resolution in the Security Council. Following their logic, if a resolution is voted by a majority, this would automatically mean that it enjoys an increased legitimacy that should be respected by the permanent members. At this point we should be very skeptical as to how majorities are built in the Council.

Not infrequently, the non-permanent members are offered strong inducements by the permanent members in order to vote for a draft resolution. There is strong evidence[101] supporting that the P5 can stir majorities by offering a list of "sweeteners" like foreign aid packages and trade concessions to elected members (particularly those coming from the developing world). This happened for example during the Iraq-Kuwait War, when the US Secretary of State tempted the foreign ministers of Ivory Coast, Ethiopia and Zaire with "gifts" so that they voted for a resolution that would authorize the use of force against Iraq (BOSCO, 2009: 160).

With this in mind, we understand that the positive votes of elected members aren't always the result of their unalloyed free will. The permanent members have both the economic power and the diplomatic means of persuasion, necessary to ensure the positive votes of non-permanent members. Without a doubt, there are countries that don´t give in to such inducements but even the suspicion that the P5 can influence the votes of elected members, debilitates the condition of majority voting, as put forward by Blätter and Williams. If this condition was to be accepted as an element of the RN2V, a state that

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[101] See Ilyana Kuziemko and Eric Werker., "How Much Is a Seat on the Security Council Worth? Foreign Aid and Bribery at the United Nations", *Journal of Political Economy* (2006), vol. 114, No.5, 907. In this article they argue that poorer countries have experienced significant aid boosts when they served on the Council, particularly when there were major issues before the body.

favored an intervention would have strong incentives to lobby other Council members for support, thus automatically suspending the veto power of the others.

iii) Preliminary considerations and recommendations

Based on the previous comments and criticism, and on the strong emphasis given to the preventive nature of R2P, it could fairly be argued that any effort which aspires to strengthen the doctrine should prioritize its non-military aspect. In other words, all veto-restricting initiatives should emphasize that, at least, all Security Council coercive tools that can be used prior to an authorization of the use of force[102], should not be subject to the veto of the P5. Such tools could be the authorization of peacekeeping operations, the imposition of non-fly zones, various types of sanctions, arms and trade embargos, a referral to the ICC Prosecutor and other diplomatic deterrents that could dissuade the escalation of a crisis. In my opinion, if the P5 committed to abstain from vetoing this kind of measures, the Responsibility to Protect could successfully develop its preventive force, and only in extremely rare occasions would any regime be able to withstand or defy a partial or cumulative implementation of the above means.

The ICISS probably envisioned such extremely uncommon cases, in which the bloodthirst of a regime would not even subside after the imposition of all preventive measures. Hence, to cover all bases, they included the responsibility to react, as a last resort. This responsibility refers to the use of coercive military measures against a sovereign state that murders its own people.[103] When we examined earlier the case of Libya, we saw that Gaddafi´s counterintuitive defiance of Resolution 1970, did trigger the responsibility to react once all preventive efforts had presumably been exhausted. When the Security Council convened to discuss the military action of the coercive response, China and Russia were probably averse to an intervention as it would clash with their steadfast support for the inviolability of sovereignty. However, they didn´t veto Resolution 1973 and decided to abstain under the pressure of the Arab League and the unconditional condemnation of Gaddafi´s intentions by the international community and the world public opinion.

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[102] That is to say, the UN Charter Article 41 tools.
[103] See Simon Adams´s article "Failure to Protect: Syria and the UN Security Council", *Global Center for the Responsibility to Protect,* Occasional Paper Series No.5, (March 5, 2015), p.12.

So, for impending consideration, we should bear in mind that, when a totalitarian regime shows a total disregard towards preventive measures adopted by the UNSC and threatens its people with brutalities, the global opprobrium can be so relentless that it *de facto* discourages the use of veto. Even the strongest and wealthiest permanent members can´t always do as they please. A stance of indifference toward international clamor usually comes with a vast political cost, which could jeopardize the Council´s reputation and legitimacy. No permanent member would lightheartedly undermine the Council, and thus their own privileged position.

The following recommendations recompile the most crucial elements of any RN2V proposal and suggest that they should contain a clear definition of what comprises mass atrocities, a reasonable procedural trigger and a provision referring to the extent of the veto limitation.

Firstly, a clear definition of what the term "mass atrocities" (that could trigger a RN2V) means should be included in any final code of conduct. Otherwise the P5 members might feel suspicious of possible, politically motivated, efforts to extend the veto restriction for cases outside the human protection framework, and thus undermine the veto power as a whole. Only a sufficiently delimited range of cases in which the RN2V would apply could increase confidence in any code of conduct. The definitions of crimes included in the Rome Statute of the International Criminal Court could be a starting point in this process.

Secondly, any proposed code of conduct that wishes to have realistic chances of being accepted, should avoid proposing automatic application of a RN2V or a low-bar trigger mechanism. For example, the current French proposal suggests that upon a request of 50 member states, the United Nations secretary general could determine the nature of the crime. With the bar set so low, the other permanent members would probably back away from any commitment, because 50 is too low a number for this purpose. The current political dynamics within the General Assembly would likely make repeated and politically motivated requests aimed at Israel too easy. So, US engagement would require a much higher bar[104]. Another proposal for a trigger mechanism was that of the Task Force. They suggested that unless three states decided to veto a resolution, all should abstain from

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[104] Blätter and Williams , "The Responsibility Not To Veto: A Way Forward", *Citizens for Global Solutions* (2014), p.11.

wielding their power. Such a proposal would never be accepted by Russia and China as the number *three* hints at the western permanent members.

It becomes obvious that finding the golden mean between the P5 procedural red lines and the urge of the international community to limit the veto in R2P cases, is no easy task. A trigger mechanism that could successfully balance on this tightrope might be the adoption of a General Assembly resolution by two-thirds of the member states, recognizing that a crisis poses an imminent threat of mass atrocities. On the one hand, such a demanding majority would arguably seem as a fair and somewhat satisfying trigger to the permanent members (at least compared to a low-bar or automatic trigger). On the other hand, if a crisis is so serious, it would most probably sensitize the majority of states around the world and an UNGA resolution could achieve the necessary votes.

The final crucial aspect to consider, for any code of conduct, would be the extent of the veto restriction. As I argued previously, all the RN2V calls, initiatives and proposals should focus on the veto-restriction of all possible Security Council non-military coercive measures. I do not include the Security Council capacity to authorize the use of force, on account of the fact that the P5 regard it as the ultimate manifestation of the Council′s coercive authority. Consequently, it seems quite impossible that they would agree to limit their decisive capacity on issues pertaining to the quintessence of their privilege.

Summing up my recommendations, the RN2V should be activated as follows: when a crisis unfolds anywhere in the world, the General Assembly should discuss it immediately in order to verify if it poses an imminent threat for mass atrocities against civilians (the term "mass atrocities should be well defined). In case a majority of two-thirds of the member states votes that it does, the UN Security Council should make use of all preventive, non-coercive, diplomatic measures that could avert the mass atrocities. If it becomes obvious that these diplomatic means of persuasion won′t be enough, the Council should consider which non-military coercive measures could discourage the escalation of brutalities. This is where the RN2V comes in play; any draft resolution concerning such coercive measures prior to the use of force, wouldn′t be open to a veto and the negative vote of the P5 would have the same effect as the negative vote of elected members. Finally, in the unlikely event that such coercive measures prove to be inefficient, the Security Council should meet its responsibility to react, but this time any draft resolution meant to authorize an intervention and the use of force would be subject to a veto.

This plan, though it may sound reasonable, would not be accepted without resistance. The P5 could argue that this theoretical construction doesn´t reflect the realities on the ground and all these procedural steps could hinder the operational agility needed in unfolding cases of humanitarian crises. Moreover, Russia and China would require a lot of persuasion and pressure in order to accept a self-limiting code. Mindful of earlier experiences, as the case of pre-2003 Iraq, the two countries are skeptical even towards harsh language in resolutions involving non-military measures, for fear that they might later be construed to justify military action, on the basis of non-compliance with past Council demands (TRENIN in VON EINSIEDEL et al., 2016: 111). [105] If they are allergic to accepting the minor, they would most definitely reject the major, namely a self-restriction in their use of the veto in what refers to the use of force.

b. Responsibility while Protecting

The second set of principles proposed to *supplement* the R2P was the RwP. As was described in detail in Chapter two, the NATO efforts for a regime change in Libya were widely seen as going beyond the authorization of resolution 1973. The hard truth is that, despite initial triumphalism for the impeccable implementation of the R2P in the Libyan context, the consensus on the legitimacy of foreign intervention was weakened, not strengthened.

i) Origins and content of the initiative

To the detriment of the doctrine, many states felt that the R2P had become a synonymous with infringement in the affairs of sovereign states and the toppling of governments.[106] In that moment of dissent and polarization, Brazilian diplomats led by then Foreign Minister Patriota developed a proposal aimed at raising the level of the debate.[107] Following a statement from President Rousseff at the 2011 General Assembly, Brazil

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[105] US and the United Kingdom created an absurd legalistic construction in order to justify their invasion of Iraq in 2003. Specifically, they argued that Resolution 678 of 1990 that authorized the use of force against Iraq was still potent and could still be invoked if Iraq didn´t comply with the demands of Resolution 687.

[106] See WELSH J., QUINTON-BROWN P. and MACDIARMID V., "Brazil's 'Responsibility While Protecting' Proposal: A Canadian Perspective", *Canadian Centre for the Responsibility to Protect* (July 12, 2013), p.3.

[107] See TOURINHO M., STUENKEL O. and BROCKMEIER S., "'Responsibility while Protecting': Reforming R2P Implementation", *Global Society* (2016), Vol. 30, No. 1, p.137.

presented the paper "Responsibility while Protecting: Elements for the Development and Promotion of a Concept".[108]

The RwP proposal is composed of three main ideas, each raising longstanding issues associated with the use of military force for humanitarian purposes. Firstly, the paper underlines the need to improve the use of non-coercive preventive measures of the R2P, as military intervention usually does more harm and provokes more suffering than the one it was destined to forestall. In pursuing the international community's collective responsibility to prevent humanitarian crises, RwP sees a role for individual states, international organizations, NGOs, civil society, and other actors pursuing the non-coercive measures in the R2P toolbox. This includes early warning analysis, root cause prevention, fact-finding missions, the strengthening of regional organizations and of the assessment capabilities of all states. As to how it complements the R2P, this suggestion seeks to improve all three pillars of the doctrine, as they were articulated in Secretary-General´s report "Implementing the Responsibility to Protect".[109]

Secondly, the Brazilian approach stressed the need for establishing more specific criteria for the authorization of coercive intervention under R2P. This element of the proposal also echoes the debate about the relative utility of military force in solving humanitarian challenges, and the need for moderation in its use. It should be mentioned that the proposed criteria reflect on some major tenets of the just war theory, including the notions of last resort, proportionality, and reasonable prospects of success.

Finally, the proponents of RwP were concerned with the lack of practical (not formal) authority of the Security Council in managing crises once the use of force has been delegated to third parties. As Gareth Evans vividly put it: "military operations cannot be micromanaged with a 1000-mile screwdriver".[110] To address this issue, the proposal called for greater normative and institutional accountability of those intervening under the delegated authority of the UN Security Council. The last two elements of RwP no longer

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[108] See A/66/151–S/2011/701: Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General (November 2011)

[109] Secretary-General Ban Ki-moon argued that the R2P is composed of three pillars. The first pillar designates that the state carries the primary responsibility to protect civilians from mass atrocities. Its second pillar affirms the role of the international community in providing assistance to states for the fulfilment of this responsibility. Finally, pillar three calls for the international community to take collective action through the Security Council, in accordance with Chapter VII of the UN Charter, should peaceful means be inadequate and national authorities manifestly fail to protect their own civilians

[110] See Gareth EVANS ´ article, "Responsibility While Protecting", *Project Syndicate* (January 27,2012).

concern pillar one and two of the Responsibility to Protect. They pertain to the third pillar that calls for collective action, which they try to better regulate by pushing for principled engagement and greater accountability.

ii) Assessment of the initiative´s acceptance and main criticisms

The international response to the Brazilian proposal was impressing. Some states took it with a pinch of salt, while others seemed very receptive to it; but in any case, the RwP did not pass unnoticed. Simon Adams, director of the Global Center for the Responsibility to Protect, remembers that it was impossible to talk about R2P in 2012 without also talking about RwP:

> Every public speech I gave, every interview I gave to the media, everywhere I went […], I would get a question about Brazil and the Brazilian initiative. […] It came up all the time. […] It was the centre around which the entire debate revolved.[111]

At first, policy makers and analysts received it with caution, as it was hard to determine whether it was antagonistic to R2P or it should be seen as an addendum to the doctrine, and therefore as a contribution to it. Soon, most states largely agreed that the R2P remained untouched by RwP. Unsurprisingly, certain NATO superpowers, notably UK, France and the United States, fiercely criticized the Brazilian proposal. They interpreted it as a symbolic gesture showing the BRICS' disapproval of the outcome of the Western-led intervention in Libya. More broadly, there was a fear that RwP was designed as nothing more than a procedural roadblock to thwart future interventions from NATO countries.[112]

Yet, despite initial misgivings and skepticism, the principle has been gradually embraced by the UN Secretary General and the Office for the Prevention of Genocide. Subsequent UN debate has also revealed support from key countries such as India, South Africa, Costa Rica, Argentina and Russia. Even China has noted that RwP is of significance to enhancing the implementation of Security Council resolutions and thus it is worth further consideration.[113] There was even a two-day meeting in Beijing, in October 2013, meant to

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[111] Cited in Marcos Tourinho, Oliver Stuenkel and Sarah Brockmeier´s article, "'Responsibility while Protecting': Reforming R2P Implementation", *Global Society* (2016), Vol. 30, No. 1, p. 139.
[112] See Jennifer Welsh, Patrick Quinton-Brown and Victor MacDiarmid´s article, "Brazil's 'Responsibility While Protecting' Proposal: A Canadian Perspective", *Canadian Centre for the Responsibility to Protect* (July 12, 2013), p. 7.
[113] Ibid: 9.

discuss the Responsibility to Protect. In that meeting strong support was expressed for the principle of "responsible protection" (RP), [114] which had been floated by Chinese scholar Ruan Zongze and explicitly referred to and built upon the Responsibility while Protecting (EVANS in THAKUR and MALEY, 2015: 36).

Perhaps the most controverted aspect of the RwP was that it translated the legal principle of "last resort" into a strict chronological sequencing of the three pillars of the R2P.[115] In February 2012, an informal discussion organized by the Permanent Mission of Brazil on the concept of Responsibility while Protecting was held at the United Nations, co-chaired by Brazil's Minister of External Relations Ambassador Antonio de Aguiar Patriota and UN Special Adviser for the Responsibility to Protect Dr. Edward Luck.[116] During the discussion almost all of the present members criticized the idea of chronological implementation, arguing that it would make impossible the "timely and decisive action" element.

Luck said in this respect that "Responsibility entails early engagement, proactive prevention, agile employment of non-coercive instruments, careful planning, and sober judgment by the appropriate Charter-authorized organs. Delaying a response does not make it more responsible." In the same spirit, the US representative declared: "Appropriate decision-making requires not just temporal considerations but a comprehensive assessment of risks and costs and the balance of consequences".

As far as the European powers are concerned, France, UK and Germany were equally disapproving and pointed out that the various grave scenarios to be addressed under R2P occur in very different contexts, hence the flexible three-pillar-approach contained in the World Summit outcome document is the right choice. And they added: "When mass atrocities can begin and end in a span of days, as we saw in Rwanda, states need the ability to fluidly employ diplomatic, economic, and military means without delay".

Without a doubt, when thousands of lives are stake, what is needed is timely and decisive action; not philosophical debates and endless deliberations. However, the reason why Brazil favored a chronological sequencing of the pillars, was to support the preventive

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[114] See Ruan Zongze´s article "Responsible Protection: Building a Safer World", *CIIS* (June 2012).
[115] See Marcos Tourinho, Oliver Stuenkel and Sarah Brockmeier´s article, "'Responsibility while Protecting': Reforming R2P Implementation", *Global Society* (2016), Vol. 30, No. 1, p.140.
[116] All cited declarations and information relevant to the informal discussion can be found at: https://goo.gl/Nucy5q

aspect of R2P and, on second level, to emphasize that military intervention should be far from primary option. So, the optimal solution is somewhere in the middle. A flexible implementation of the three pillars is necessary for operational agility. Nevertheless, it is unacceptable to use this excuse in order to favor hidden agendas for regime change or interventions that serve other interests. The Brazilian proposal for a principled and accountable use of military force is a step in the right direction and should be further elaborated.

iii) Preliminary considerations and recommendations

Although the RwP initiative received great international attention and many applauds in a short amount of time, for unknown reasons, it doesn´t seem to be on the agenda of the Brazilian government anymore. Critics tend to attribute this passive stance to Brazil´s lack of material capacity to back its idea. The argument goes that without a large military, rhetoric on intervention is worth little at the UN. However, it is worth remembering that Canada too was a middle power when it sponsored ICISS and lobbied for R2P's successful adoption in 2005. What the world asks for in an emerging international norm is not an "owner", but a leader. This perspective makes the material concern less relevant and leaves little excuse for inaction in furthering the proposal.[117]

Brazil should take the lead again and reassure itself as a norm entrepreneur by elaborating the core ideas of RwP. In doing so, it could probably count on other BRICS members, such as India and South Africa, given that the RwP received positive reviews in these countries. First of all, Brazil should investigate and develop practical suggestions on its call for accountability mechanisms and procedures in implementing R2P. How might a new monitoring and review body operate in the Security Council? Who might compose such a body and how can its impartiality be preserved?[118]

Secondly, Brazil should invest in research and analysis on non-coercive measures. It should emphasize on measures that reduce the chances of a crisis outbreak and analyze which non-coercive tools are the most appropriate in order to avoid the escalation of crises. As in medical sciences, prevention is always less costly, both in economic terms and in

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[117] See Jennifer Welsh, Patrick Quinton-Brown and Victor MacDiarmid´s article, "Brazil's 'Responsibility While Protecting' Proposal: A Canadian Perspective", *Canadian Centre for the Responsibility to Protect* (July 12, 2013), p.11.
[118] Ibid: 12.

human lives, than intervention. So Brazil should encourage all countries to commit resources to building better capacities for early warning.

Finally, Brazil should probably underscore the rigid chronological sequencing of the R2P pillars, but at the same insist on the principle of *primum non nocere* and demand the consideration of the use of force as a last resort. The international community should avoid military coercion whenever possible as past experience shows that interventions and war usually provoke more problems than they claim to solve. The recent cases of Iraq and Libya prove that the use of force and violence for humanitarian reasons can tear a country apart, turn it into a terrorist haven, create immense flows of refugees, incite secular tensions, and in general, do more harm than they tried to avert.

According to the above concepts that were designed in order to complement and strengthen the Responsibility to Protect, we could visualize an upgraded version of the doctrine in Graphic 1 of the Appendix.

B. An alternative way to bypass the Council veto: the Uniting for Peace Resolution

Up to this point, all efforts to implement the R2P and all proposals to strengthen the doctrine took for granted, justifiably, that all reactive measures of pillar-three should necessarily go through the Security Council. Indeed, as was noted elsewhere, the UNSC is the world´s most appropriate body to decide upon the imposition of non-military coercive measures against a sovereign state and upon the use of force. Nevertheless, the international community should explore alternative possibilities for those cases that the permanent members may obstinately and narrow-mindedly give priority to their national interests, instead of caring to adequately respond to humanitarian crises. The ongoing humanitarian catastrophe in Syria and the Council´s paralyzation due to Sino-Russian vetoes is a case in point.

As the ICISS proposed already in 2001, when the permanent members block actions from being taken against a state that is failing to protect its citizens, the international community should consider the option of activating the *Uniting for Peace* resolution and transferring the matter to the General Assembly.[119] However, there are

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[119] International Commission on Intervention and State Sovereignty (ICISS), The Responsibility to Protect (Ottawa: International Development Research Center, 2001), p.53.

three great obstacles for the materialization of this proposal, at least as the ICISS envisioned it: first of all, the legal status of *Uniting for Peace* is highly controversial, and thus states are hesitant to invoke it. Secondly, in case a state considers to do so, the permanent members would most probably try to discourage it by using threats or inducements. Finally, the ICISS considered the alternative of Resolution 377 as a way to authorize the use of force, albeit the resolution´s text only prescribes the possibility to "make appropriate recommendations for collective measures".[120]

The legal status of the resolution may not be the main subject here, but it would be useful to address its main aspects, if we are even to consider *Uniting for Peace* as a viable way forward. In the following lines I will try to summarize the principal arguments on the subject and explore the real essence of *Uniting for Peace*. Did it create new powers out of thin air for the General Assembly?

According to the UN Charter, the General Assembly cannot make any recommendations with regard to issues that are on the Security Council agenda, unless it is asked to do so[121]. But in any case, these recommendations don´t have any binding legal effect[122], unlike the UNSC resolutions which can be binding according to UN Charter Article 25. The US, in the light of a Security Council paralysis in early 1950, tried to tamper with this institutional balance in order to serve its interests[123].

What should be left clear is that the *Uniting for Peace* Resolution did not breed or transfer to the General Assembly any new powers, previously inexistent. The powers of any UN organ derive *exclusively* from the UN Charter. The Resolution was apparently based on the theory of implied powers[124]. So, according to the advocates of the legality of *Uniting for Peace*, it is based on a creative reading of UN Charter Article 24(1). Specifically, they

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[120] Refer to previous comments in pp.9-10 of Chapter 1.

[121] Charter of the United Nations, Article 12(1).

[122] In principle, the UNGA Resolutions only have a binding effect only when it comes to budgetary issues or decisions that concern its *interna corporis*.

[123] The US was preoccupied about the Korean War as South Korea was a strategic ally for the contention of communism.

[124] The legal foundations of the implied powers theory are to be found in two ICJ advisory opinions: *Reparation for Injuries Suffered in the Service of the United Nations* (1949) pp.174, 182 and much later reiterated in: *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (1996), p.79. According to them, apart from the explicit powers that are awarded to the UN organs via the Charter, there can also be accepted certain implied powers in order to help them achieve their objectives. Indeed, the Charter was intentionally redacted with some creative vagueness, open to impending interpretations in order to allow a perpetual evolution and adaptation, without the need to be revised every now and then. This fact has brought about the text´s longevity and remarkable relevance even today, 71 years after its redaction.

resort to the wording "primary responsibility", that doesn´t mean exclusive[125]. This interpretation opens a window for a "secondary or residual" responsibility of the General Assembly[126]. All in all, it could be argued that Resolution 377 pretended to make explicit the implied powers of the General Assembly, in the case of a deadlocked Security Council. For this reason, it can be best described by the legal term: 'Declaratory Statute' – it declared what the powers of the General Assembly actually are, according to the UN Charter[127].

Of course, there is also a counter-argument. According to it, the *Uniting for Peace* Resolution was a *de facto* political manipulation and legal transmogrification of the UN Charter´s principals; a byproduct of sheer political carpetbaggery that took advantage of serendipitous majorities in the General Assembly. So, it shouldn't be seen as a creative interpretation of the Charter´s provisions, aiming to remedy the Security Council´s stalemate that was caused by the Soviet vetoes. Characterized sometimes as an institutional coup, *Uniting for Peace* totally lacks legal foundations as the very essence of the veto is a functional prerequisite of the Security Council. Historically, the will of the Charter´s founding states was to depend the effectiveness of the Council on the deliberations between the five Permanent Members, not on the disposition of broad and usually automatic majorities in the General Assembly (SARIGIANNIDIS, 2009: 220-221).

It becomes obvious that the Resolution´s legality has become since its very conception a perpetual field of controversy, with both sides having defensible arguments. The important question for the present study is: could a controverted, highly outdated resolution provide solutions for contemporary problems relevant to the R2P? Until now, states tend to believe that it doesn´t, considering that Resolution 377 hasn't gained any serious attention in international forums as a policy option. However, in all fairness, the *Uniting for Peace* hasn´t been completely abandoned either. There are some recent examples which show that, for certain states, the resolution might still be at the back of their minds.

For example, Canada briefly toyed with the idea of pushing for an emergency session under *Uniting for Peace* during the Kosovo crisis, in order to gain explicit authorization for NATO´s intervention by the General Assembly, when it became obvious

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[125] The ICJ came to the same conclusion, see ICJ advisory opinion *Certain Expenses of the United Nations* (n.33), 163.
[126] See Andrew J. Carswell´s article "Unblocking the UN Security Council: The *Uniting for Peace* Resolution", *Journal of Conflict & Security Law* (August 13, 2013), Vol.18, No.3, p.464
[127] See Cameron Hunt´s article "The Veto Charade", *ZNET* (November 7, 2006).

that Russia would veto any resolution meant for such authorization in the Security Council.[128] Apart from this case, Mexico offered in 1997 a didactic example of the resolution´s value, if not as a policy option, at least as a negotiating tool that can exercise pressure on the permanent members. When China vetoed the extension of the UN Verification Mission in Guatemala due to the government´s diplomatic ties with Taiwan, Mexico threat China that it would resort the *Uniting for Peace* formula and have the mission mandated by the General Assembly. Some days later, China stepped back and allowed the mission´s mandate to be renewed (WENQUI and XINYU in VON EINSIEDEL et al., 2016: 90-91).

Given that the P5 are nowadays averse to the revival of Resolution 377, the threat of its invocation in order to bypass possible vetoes which hinder the Council´s response to mass atrocities, could be an effective way of pressing for the acceptance of less radical solutions like the RN2V proposal. In fact, during the Syrian crisis some Arab states led an effort to activate the Uniting for Peace formula after the recurring Sino-Russian vetoes. It is very possible that those states deemed Resolution 377 as an instrument of expressing their disapproval of the vetoes and putting pressure on the permanent members so that they ceased to use their veto power. For the record, this initiative was successfully discouraged by the Western permanent members (SKAIKH and ROBERTS in VON EINSIEDEL et al., 2016: 723).

This brings us to the second impediment for the activation of Resolution 377: the opposition of the permanent members. It is well-known that not only do they have the persuasive capacity to discourage the invocation of *Uniting for Peace*, but also the material capability to undermine any recommendations of the General Assembly for collective action. If the P5 denied to contribute to all General Assembly mandated actions relevant to the R2P, it is very doubtful that the international community could carry out any operations and bear their material cost without the P5.

The third issue that makes the invocation of *Uniting for Peace* problematic concerns the ambiguity over the extent of the General Assembly´s mandate, once the resolution is activated. Does the General Assembly substitute the Security Council? Can it authorize the use of force? As I argued earlier, according to the resolution's text, the answer to both

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[128] However, sensing that there was residual support for Yugoslavia among the Non-Aligned Movement that could lead to a rejection of such resolution, Canada decided that it wasn´t prudent to risk a further delegitimization of NATO´s operations.

questions would be no. The General Assembly is empowered only to make recommendations for collective action, but this doesn´t mean that it replaces the Security Council in its capacity to authorize the use of force. However, this has happened before in the context of the Congolese crisis, in 1960.

The General Assembly, acting under Resolution 377, confirmed and strengthened the mandate of ONUC, and authorized actions to establish law and order in the Congo. The Soviet Union objected strongly to this use of *Uniting for Peace,* highlighting that the General Assembly had no authority to create a peacekeeping force or make any decisions on the mandate or financing of such a force, on the grounds that these matters were within the exclusive authority of the Council. Subsequently, the Soviet Union and France refused to pay their share of expenses for UNEF and ONUC. In response to that, the General Assembly requested the ICJ to give an advisory opinion as to whether these expenses were legitimate UN expenses or not. The ICJ confirmed that they were, considering that the UNGA is able to create subordinate bodies (such as a peacekeeping force) and recommend that states contribute forces to them (MATHESON, 2006: 103-104).

However, this validation of the ICJ of the Assembly´s authority to create peacekeeping operations did not, in the long run, have much practical significance (ibid: 104). The UNGA never tried to create a peacekeeping operations or authorize the use of force again. Instead, it has been used to condemn armed interventions (Suez, Hungary, Lebanon and Jordan, Afghanistan and the Golan Heights), and to call for ceasefires (Suez and India-Pakistan). It has been called upon, both by the General Assembly and the Security Council, to condemn some of Israel´s policies in the occupied territories and has been invoked to promote decolonization in Namibia (ZAUM in LOWE et al., 2010: 163). So, both the resolution´s text and practice point to the fact that *Uniting for Peace* cannot be considered as a tool to authorize the use of force.

Nevertheless, it seems that this doesn´t exclude the possibility of making appropriate recommendations for other, non-military, measures. Consequently, this means that if an emergency special session was convened under *Uniting for Peace*, notwithstanding its legal problems and the P5 opposition, the General Assembly could probably recommend appropriate non-military coercive measures in view of an unfolding humanitarian crisis, in order to prevent the escalation of mass atrocities.

In any case, this is a radical solution, mainly of theoretical interest in the quest of finding alternative solutions if the P5 were to reject all initiatives that seek to improve the Responsibility to Protect. In practice, the revival of Resolution 377 as a substitute for the Council´s inaction in the face of mass atrocities is highly improbable. Moreover, we should take into account the congenital risks of this alternative. Disrupting the institutional balance based on a sixty-six year old General Assembly resolution, could endanger all efforts for the Council´s reform, the entire decision-making mechanism of the UN and confuse the roles of the organization´s principal bodies. All in all, states seem very reluctant to call upon Resolution 377 due to the aforementioned reasons. Yet, they shouldn´t discard its utility as a diplomatic tool of pressure on the permanent members, so that the latter take on efforts to enhance and implement the Responsibility to Protect.

C. Accountability for omissions of the UNSC and political accountability

As we saw earlier, the Brazilian proposal of 2011 stressed the need for accountability mechanisms and procedures when coercive military measures are authorized in R2P cases. Building on the conviction that the use of force usually fails to ensure human protection in the long run and conscious of the side effects that an intervention may trigger, the RN2V called for greater accountability of those who use force in the name of the United Nations. However, we should bear in mind that a military intervention is only one side of the coin in the response spectrum. The other side of the coin is the absence of any response, namely total inaction as is the case in Syria (where the Security Council remains paralyzed on account of the Sino-Russian vetoes). So this raises a serious question: would it be possible to argue for the Council´s accountability due to its omission to act in R2P cases? And if the answer is positive: on what grounds could the Council be held accountable and what kind of measures could be taken in order to rectify its wrongdoing?

a. General obstacles and a specific problem

To begin with, establishing accountability mechanisms for the Council´s actions or omissions would be a very challenging effort both legally and on pragmatic-political level.

Firstly, we should take into account that nothing in the UN Charter provides a means of holding the Security Council to account. The drafting history of the Charter reveals that accountability was never put on the table as a matter of debate. The concept of "Four

Policemen" that dominated the US, UK and Soviet thinking was inimical to accountability and was based on a wholly different axiom: the victorious Great Powers carried an inherent endowment of authority for the maintenance of peace (WELSH in KNIGHT and EGERTON, 2012: 110).

Secondly, the accountability issue is further perplexed due to the concept´s elusive nature, especially when applied to international organizations, where it has no generally recognized meaning, content or consequences. In general, the accountability could be broken down to two notions: the duty to give an account (of one´s conduct), and the liability to be held to account (for one´s conduct). Applying these notions to international organizations is very complicated because of the difficulty of separating out (except at an abstract legal level) the organization from the states that compose it, and it gets even more compounded when it comes to holding accountable an *organ* of the organization (LOWE et al., 2010: 39).

As if these issues weren´t enough there is a third thorny problem: the ambiguity over the legal quality of R2P. Sadly, the doctrine´s legal status has yet to be settled and it remains controversial whether it is a hard and fast legal obligation, a political concept, soft law or an emerging legal norm.[129]

Those who support that the R2P is a legal obligation argue that it is rooted in pre-existing treaty obligations[130], notably in common article 1 of the 1949 Geneva Conventions, article 1 of the 1948 Genocide Convention and in the Human Rights Covenants which embody positive duties to protect persons from inhuman acts. This might lead someone to believe that R2P doesn´t contribute anything to the existing framework of human protection, but this is far from true. Although the idea is partly based on existing international law, it is not legally superfluous. The doctrine pulls pre-existing norms together and places them in a novel framework. So it presents a conceptual innovation where the whole is more than the sum of the parts. The R2P stated clearly for the first time

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[129] For a more detailed account on the legal status of R2P, see Anne Peters "The Security Council's Responsibility to Protect", *International Organizations Law Review,* vol. 8, 2011, pp.7-13.
[130] See Edward Luck´s "Remarks to the General Assembly on the Responsibility to Protect", New York, 23 July 2009, p.3: "[…] concept based on well-established international law and the provisions of the UN Charter."

that when the territorial state manifestly fails to fulfil its obligation to protect, it falls upon the international community[131].

A second important consideration is that the legal force of R2P defers depending on the addressees. The first to stress this out was US Permanent Representative to the UN, John Bolton, in a statement he made on a draft of the World Summit outcome document:

> "[T]he international community has a responsibility to act when the host state allows such atrocities. But the responsibility of the other countries in the international community is not of the same character as the responsibility of the host … We do not accept that neither the United Nations as a whole, nor the Security Council, or individual states, have an obligation to intervene under international law."[132]

Indeed, the Responsibility to Protect cannot be equally apportioned to the host state and the international community. So we could say that the former has primary responsibility and the latter a secondary or residual one. This happens because the treaties and conventions upon which the R2P was edified, only address the contracting parties and oblige them to protect the human rights of persons under their jurisdiction. In contrast the secondary responsibility of international organizations is hardly based on treaties, as they are not contracting parties of such and the treaties only have a limited extraterritorial scope.[133]

Consequently, any secondary responsibility needs additional support in international customary law. Is the inclusion of the doctrine in the World Summit outcome document sufficient in order to create an *opinio juris*? Considering that this was a General Assembly resolution it would not suffice in itself to establish such a binding element. However, combined with the Security Council Resolutions 1973 and 1975 of 2011 that have a binding legal effect, we could claim that the *opinio juris* condition is satisfied. When it comes to the second element of international customary law, it could be argued that the UN practice of peacekeeping operations for the protection of civilians, and arguably the establishment of tribunals for the punishment of perpetrators of core crimes, might also

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[131] According to Anne PETERS´S article cited above, the temporary transfer of a state responsibility to the international community is based upon the concept of multilevel governance and the international principle of solidarity. A combination of these two leads to the thought that international competences and obligations should be allocated to that level of governance on which governance functions can be effectively performed. This idea is apt to justify the allocation of the residual responsibility to protect to actors "above" the territorial state.

[132] Letter of the Permanent Representative of the United States of America to the United Nations (30 August 2005), available at: https://goo.gl/ZhLhvf.

[133] See Anne PETERS´s article "The Security Council's Responsibility to Protect", *International Organizations Law Review,* vol. 8, 2011, p.11.

count as relevant international practice leading to the formation of an international customary obligation to protect populations from those crimes.[134]

In a nutshell, when it comes to the legal status of R2P, I believe that it is hard legal norm for the host state and an emerging legal norm for the rest of the international community. In order to take this reasoning a step further and finally argue for the accountability of the Security Council, we need to explore how the international community´s secondary responsibility to protect is transferred to the Security Council and to the permanent members.

If R2P is a legal or at least a nascent legal principle, this would mean that the Security Council´s responsibility to respond timely and decisively to mass atrocities wouldn´t be just a moral duty, but rather a legal obligation. At this point it should be noted that although the Council is a political body, it doesn't act in law-free zone, but is subject to legal limitations. This idea was advanced as early as 1948 in the ICJ advisory opinion on the admission of new members to the UN. The majority of judges had opined that: "[t]he political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment."[135]

Moreover, already in 1949 the UN International Court of Justice declared that the organization enjoys international legal personality, which means that it is bound by international customary law and by treaty obligations it incurs. Given that the Security Council is an organ of the UN, it cannot be any less subjected to legal obligations than the organization itself.

Expanding this syllogism a bit more, I support that the Council members (especially the P5, considering their permanent seat and veto power) have a special obligation to uphold the R2P. Conscious that the Security Council is not a plenary organ, but an organ with restricted membership, those members do not only stand in a *special legal relationship* with the organization, but also in a special legal relationship with the remaining members of the organization, who are not represented in the Security Council. Members of the Security

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[134] Ibid: 12.

[135] See ICJ advisory opinion *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, 28 May 1948, p.57-64.

Council act as delegates of all other UN members, and as *trustees* of the international community.[136]

Building on the idea that the Security Council and its permanent members have a special obligation to respond to humanitarian crises and mass atrocities, we could claim that the exercise of veto in R2P situations is an *abuse of right* (PETERS in FASTENRATH et al., 2011: 315-316). The "abuse of right" doctrine is an important particularization of the good faith principle, which is established as a guide of conduct both in UN Chapter Article 2(2) and in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[137]

The abuse of right as an element of good faith sanctions an abuse of discretion. It commands that where the right confers upon its owner a discretionary power (as does the veto), this must be exercised honestly, sincerely, reasonably, in conformity with the spirit of law and with due regard to the interests of others. Put differently, the doctrine, while protecting the legitimate interests of the owner of the right, it imposes such limitations upon the right as will render its exercise compatible with the owner´s obligations (BRABANDERE and VAN DAMME in MITCHELL et al., 2015: 32).

So how could all these elements have an impact on the veto of the P5? A systemic interpretation of the procedural rule of article 27(3) of the UN Charter (which foresees unanimity among the P5), taking into account the R2P as a "relevant rule of international law" in the sense of article 31(3c) of the VCLT, would lead to qualifying an abusive refusal to concur by a permanent member either as legally irrelevant or as a mere voluntary abstention. So in both cases the negative vote of the P5 would not have the legal effect of a veto but would count as a simple vote or as an abstention that, according to Security Council practice cannot prevent the adoption of a resolution (PETERS in FASTENRATH et al., 2011: 318-319).

b. Political accountability

The previous reasoning as to how an abusive veto that paralyzes the Security Council could be deactivated in R2P cases may be defensible in legal terms, but the chances

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[136] See PETER A., "The Security Council's Responsibility to Protect", *International Organizations Law Review 8*, (2011), p.25-26.
[137] See A/RES/2625 (XXV), 24 October 1970.

of it serving as a practical solution are mainly theoretical. As the Special Adviser of the Secretary-General on the Responsibility to Protect, Jennifer Welsh, noted: "The idea that an international organization such as the UN could be held legally accountable for a failure to respond to a genocide is particularly demanding and unlikely to gain much traction in international law", and she added "The most that one could hope for is political accountability for the Security Council" (WELSH in EGERTON, 2012: 110).

The political accountability is a rather abstract concept and it doesn´t implicate any direct consequences; its meaning is more linked to the Council´s legitimacy. If the permanent members act consistently in an unlawful or immoral way, that could, in the long run, undermine the Council´s reputation and legitimacy as the top organ in the international legal order to handle issues relevant to international peace and security. It is obvious that the permanent members do not wish and cannot afford to subvert a great source of power and global influence for them. In this sense, any procedure or mechanism that can exert pressure on the P5 to endorse a fully operational R2P is a step forward.

An institutional mechanism that could hold the Council politically accountable in cases of inaction before mass atrocities, could be the advisory opinion of the International Court of Justice. According to UN Charter Article 96(a) the General Assembly can request an advisory opinion of the ICJ on any legal question. This opinion is not binding but definitely has significant legal weight and acting against it would come at great political cost. So, in theory, the General Assembly could ask for an advisory opinion on the legality of the veto in R2P cases, considering that the doctrine is an emerging norm and that the Security Council (primarily the permanent members) has an increased responsibility to respond to mass atrocities. If the ICJ was to characterize the veto in R2P situations as contrary to good faith, and thus abusive, the P5 would be bound, not legally but politically, to abstain from using it in these cases.

Although this prospect may appeal to some, it should be noted that the ICJ would probably be very reluctant to pronounce an opinion on the legality of a UNSC resolution. In the light of the extensive powers granted to the Council to act upon matters of international peace and security, and considering its discretionary capacity, the legal "review" of its resolutions is a "wholly hypothetical idea, devoid of political reality or any workable legal framework" (LOWE et al., 2010: 41).

Concluding remarks

Very often in the past, after horrifying events of mass killings and violations of human rights we have heard the trademark phrase "never again". After the Holocaust and after Cambodia. Then again after Rwanda, and just a year later, after the massacre of boys and men in Srebrenica. Far too often, the Security Council has stood paralyzed before the competing imperatives of intervention to protect human rights under imminent risk, and that of nonintervention in the internal affairs of sovereign states.

Throughout the 1990s, "no consensus at all could be reached between those in the global North who rallied to the flag of *humanitarian intervention* or the *right to intervene*, and those in the global South who were determined to defend the traditional prerogatives of state sovereignty as they saw them."[138] The latter feared that a recognition of such right would ignite the old imperialist habits of the former, and that would put their hard-won (and still fragile) independence at risk.

So, the Responsibility to Protect surfaced to break this deadlock and its intentions were encapsulated in the slogan "from non-intervention to non-indifference" (PETERS in FASTENRATH et al., 2011: 299). It was a conceptual innovation which reoriented the debate by placing it on new bases. It declared that state sovereignty was no longer only a right but also a responsibility towards the local population. Consequently, instead of serving as a *license to kill,* [139] it should be seen as a duty to protect. Moreover, it argued for an alternative wording: the protection of civilians is not the intervener´s right but a collective responsibility of the international community towards the victims. The R2P also widened the response spectrum and broadened the range of actors in the frame.

For these innovations, the doctrine has often been criticized as setting the bar too high, which is something that affects its operationalization. But, as Gareth Evans put it: "Because you can't do everything should never be an excuse for not doing anything […] if you do not pitch for the highest denominator response you are certain to end up with the lowest".[140] This is exactly how the R2P should be treated; as a fairly ambitious, yet feasible, effort to end mass atrocities. This task has been confronted with great difficulties during the

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[138] See Gareth Evans., "The Limits of Sovereignty: The Case of Mass Atrocity Crimes", *PRISM* (2015), vol. 5, no. 3, pp. 5-6.
[139] Ibid: 3.
[140] Quoted in an interview Gareth Evans gave to the SEF News, in 22 May 2008, available at: http://www.globalr2p.org/media/files/gareth-_state-sovereignty-was-a-licence-to-kill.pdf

doctrine´s existence but it has been able to survive and gain a respectable status as an emerging international norm of human protection.

Sadly, the Russian and Chinese insistence on an absolute inviolability of state sovereignty has been manifested with their use of the veto against resolutions which were meant to end mass atrocities and human suffering in Syria. Although some spoke of the early demise of the R2P, the majority of states and non-state actors have made serious efforts to improve some aspects of the doctrine and are still struggling to promote its policy agenda. Tens of proposals and exhortations seek to support the RN2V and RwP initiatives, and thus to enhance the Responsibility to Protect.

It should be noted that both of these initiatives are destined to address, among others, some thorny issues of the responsibility to react. Either they propose a restriction of the veto or a set of criteria for the authorization of coercive measures, they take for granted that there can be no substitute for the Security Council´s approval: "a rules based international order cannot accommodate too many 'coalitions of the willing".[141] The Security Council´s authority cannot and should not be questioned or bypassed. However, the ever expanding agenda of an ever evolving international community calls for renovation. The Security Council should adapt to today´s realities and modify its working methods in such a way that the political considerations of a handful of states do not arbitrarily contravene the collective interests of the most.

If the P5 acquiesced to subject their veto privilege to a set of principles in cases of mass atrocities, it would be both a huge step forward for the system of collective security and a significant legitimacy boost for the permanent members and the Security Council. Of course, any set of principles and limitations of the veto would be introduced in the form of an informal agreement of self-restriction between the P5. The prospect of including such limitations to the UN Charter by means of a revision seems like a science-fiction scenario at the moment.

Theoretically, there is also an intermediary solution between the Charter revision and an informal Declaration of intent. The Security Council could adopt a resolution, with the affirmative vote of the P5, which would declare that no veto can be cast against draft resolutions that seek to respond to R2P situations, once a series of conditions are met. Such a restriction of the veto, in the form of a Security Council resolution, would be legally

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[141] Quote from the same interview, *supra* note 140.

binding.[142] Consequently, it would be more important than a simple Declaration, and at the same time less costly or threatening than a UN Charter revision. However, even this solution would be seen by the P5 as going too far. Regardless of the possibility to revoke the content of the resolution they would, in all likelihood, insist on a formula without a legally binding effect. So, an informal agreement (in the form of a joint Declaration) is the best solution we could hope for. It would only be politically, not legally, binding, but still it´s more preferable than no restriction at all.

Contrary to the RN2V and RwP initiatives, all the alternatives that try to circumvent the veto or deactivate it, seem highly impractical and harmful to the UNSC. For starters, the *Uniting for Peace* is an obsolete resolution, a remnant of the Cold War that no state seems to consider as a viable solution. As for the second alternative, to argue that the use of a discretional political tool (such as the veto in the Council) can be characterized as an abuse of right in specific situations, is an interesting legal exercise but too complex to support and in terms of Realpolitik, it seems quite impotent to deactivate a veto.

As I argued before though, they could be of some relevance as a lever to press the permanent members to endorse the R2P initiatives. In other words, in any negotiation with the P5 for the acceptance of RN2V and RwP, alternatives such as the *Uniting for Peace* resolution, the prospect of a veto deactivation because of its abusive nature or the idea of requesting an ICJ advisory opinion on the legality of the veto in R2P situations, could be brought up[143] to pressurize the P5 into complying with the international calls for a more responsible and effective Security Council in the face of mass atrocities. In an ironical way, we could say that the inspiration for this kind of coercive diplomacy or "forceful persuasion" has come from a P5 widespread practice, the threat of veto.

An additional factor that could exercise considerable pressure on the permanent members to adequately respond to humanitarian crises, would be the mass media. For more than two decades, efforts have been made to "construct and validate a communications

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[142] But to too difficult to override, as a UNSC resolution is binding as long as it stands. A subsequent resolution on the same matter with the opposite or different content, can replace the previous one.

[143] In this spirit, the Permanent mission of Canada sent a letter (co-signed by 69 more UN member states) to the President of the General Assembly (in October 13th, 2016) requesting a plenary meeting to discuss the situation in Aleppo. This meeting would be "an important first step for Member States to explore concerted action to apply pressure on the parties to the violence and, ultimately, protect the lives of those innocent civilians who remain in harm´s way". Moreover, in the same meeting it would be determined whether to call for an Emergency Special Session of the UNGA, which insinuates the invocation of the *Uniting for Peace* Resolution. Available at: https://goo.gl/rIxwji

theory of international relations which asserts that global television networks, such as CNN and BBC World, have become a decisive actor in determining policies and outcomes of significant events"[144]. It is the so-called "CNN effect" that appeared after the first Gulf-war. In general, the CNN effect theory is very wide and is thought to encompass a vast variety of effects on the foreign policy of states. Presumably, the mass media can "force" policy on leaders, limit their options, disrupt their policy considerations, and hinder implementation, as well as enable policymakers to adopt a policy and help implementation by "legitimizing" actions and "manufacturing consent."[145]

This has led some writers to claim that the CNN effect has been exaggerated (ROBINSON, 2002: 11). However, it is hardly deniable that the mass media do have a role to play, be it as accelerants of decision-making, as an impediment or as agenda-setting actors[146]. Many claim that they can even exert decisive influence on the UN Security Council. Once, Secretary-General Boutros Boutros-Ghali, had said that: "television, with its impact on public opinion and hence, influence on policymaking, affected the work of the United Nations like a sixteenth member of the Security Council"[147]

Combining the state-tools of coercive diplomacy and the considerable influence of non-state actors like some grand NGO´s and the mass media, and I would add the modern age opinion-shaping instruments like Facebook and Twitter, might be enough to convince the permanent members to act responsibly before unfolding mass atrocities. China for example, likes to keep a low-profile in international politics and by all means tries to avoid too much media attention. So, when it finds itself in the eye of the storm, it becomes more reasonable and adopts a prudent attitude.

For instance, it is quite known that China wasn´t supportive of UN action in Soudan and since 2004 that the Council got involved in the Darfur crisis, the Asian giant followed a pattern of pressure and informal veto threats in order to weaken any sanctions-related draft resolution. China had been quite criticized for its stance on the matter, which resulted in a change of course. With the 2008 Olympics around the corner, Beijing factored in concerns

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[144] See GILBOA E., "The CNN Effect: The Search for a Communication Theory of International Relations", *Political Communication* (2005), vol. 22, Issue 1, p. 27.
[145] Ibid: 37
[146] See Livingston S., "Clarifying the CNN Effect: An Examination of Media Effects According to Type of Military Intervention", *The International Journal of Press/Politics* (1997), Research Paper R-18, pp. 2-10.
[147] See PI/978 (November 21, 1996), available at: www.un.org/press/en/1996/19961121.pi978.html.

about its international reputation into its Council decision-making on Darfur. In 2007, China strongly encouraged President Bashir to consent to the deployment of a hybrid peacekeeping mission, the United Nations – African Union Mission in Darfur (UNAMID), which Khartoum had refused up to that point (WENQUI and XINYU in VON EINSIEDEL et al., 2016: 97). Furthermore, we couldn´t but notice the recent change of Beijing´s behavior considering the Syrian crisis. As was analyzed in detail in chapter 2, China had backed the first four Russian vetoes on the matter. Notably, with respect to draft resolution S/2016/846 of October 8, 2016, China chose to abstain instead of vetoing it, due to the growing international outrage for the continuation of violence against civilians in Syria.

Unfortunately, unlike China, Russia seems able to maintain an intractable position for the moment. During the past decade Russia has been severely criticized for its aggressiveness, chiefly after invading Georgia in 2008, intervening militarily in Ukraine and annexing Crimea (in 2014), and of course for its vetoes in the Syrian crisis. Instead of reevaluating its foreign policy, Moscow seems to have become rather immune to condemnations and international criticism, and cynically insists on acting only in line with its national interests.[148] To make matters worse, Vladimir Putin signed an order to have Russia removed from the founding statute of the International Criminal Court, because the latter has classified the annexation of Crimea as an occupation and is considering to investigate the complicity of Russian military in the commission of crimes against humanity and war crimes.

Considering that Moscow signed but never ratified the statute, nothing changes in practice. So, this is a symbolic gesture to show the rejection of ICC´s authority. In the light of recent declarations by South Africa, Burundi and Gambia of their intention to pull out of the statute, Russia´s decision to remove its signature is yet another blow to ICC´s efforts to establish a global legal order for pursuing genocide, war crimes and crimes against humanity.[149]

Entering in the sixth year of warfare in Syria, the international community must act immediately. Whether through systematic pressure of state and non-state actors or with the use of the alternatives discussed above, the Syrian crisis should be resolved once and for

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[148] See GOWAN R., "International Outrage Won't Change Russia's Behavior in Aleppo", *World Politics Review* (October 24, 2016).
[149] See WALKER S. and BOWCOTT O., "Russia withdraws signature from international criminal court statute", *The Guardian* (November 16, 2016).

all, and the R2P needs to be strengthened in order to tackle future cases. It is very sad to see the whole UN membership being kept captive by the whims of just one state and the legitimacy of the UNSC diminishing by the day. The UN top body should find a way forward before it becomes completely irrelevant and, eventually, replaced by regional organizations or other coalitions of the willing. I would go as far as saying that the Security Council and, by extension, the United Nations as a whole, will be under existential threat should they keep on appearing helpless and unable to address the gravest threats to international peace and security.

Appendix

Table 1: Number of vetoes (and vetoed resolutions)

Years	China	France	USSR/Russia	United Kingdom	United States	Total number of vetoes cast	Total number of vetoed resolutions
1946-55	1	2	75	0	0	78	77
1956-65	0	2	26	3	0	31	29
1966-75	2	2	7	8	12	31	24
1976-85	0	9	6	11	34	60	41
1986-95	0	3	2	8	24	37	26
1996-2006	2	0	1	0	12	15	15
2007-16	7	0	12	0	1	20	13
TOTAL	**12**	**18**	**129**	**30**	**83**	**272**	**225**

Graphic 1
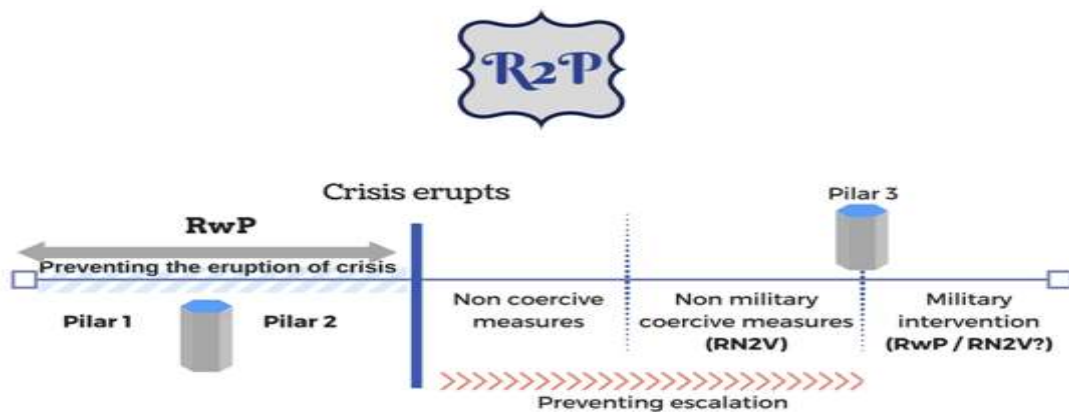
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