Araştırma Makalesi / Research Article

The Concepts of the Responsibility to Protect and Human Security within the United Nations: Return on the Meanings*

Birleşmiş Milletler'de Koruma Sorumluluğu ve İnsan Güvenliği Kavramları: Anlamlara Dönüş

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ABSTRACT

Since their emergence, the concepts of the responsibility to protect and human security have been subject to a particular thinking and practical attention of the whole international community. The United Nations, which is the epicenter of this phenomenon, had inescapably to take an official position on the meanings of these concepts. This paper revisits the sense of these meanings and mainly based on the normative production of the United Nations and General Assembly, it postulates that they rest only on the principles of the current world order embodied by the United Nations Charter, summing up in the responsible sovereignty, as the condition for international stability. Thus, beyond all the promises they seemed to bear in favor of a better consideration of human beings' interests in international affairs, the responsibility of protect and human security are just (re)expressions of the state of affairs guaranteed by the United Nations Charter, no more, no less. Comparatively, the objective substances of these concepts, by unveiling the political nature of their meanings within the United Nations, show their ambiguity.

Keywords: International Law, Responsibility to Protect, Human Security, United Nations, Responsible Sovereignty.

ÖZ

Koruma sorumluluğu ve insan güvenliği kavramları, ortaya çıkışlarından bu

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* This article has been produced from PhD thesis named "Human Security and International Law"

Makale gönderim tarihi: 03.10.2021. Makale kabul tarihi: 20.10.2021. Hakkı Hakan Erkiner, Emerant Yves Omgba Akaudou, "The Concepts of the Responsibility to Protect and Human Security within the United Nations: Return on the Meanings", *İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi*, Cilt 8, Sayı 2, 2021, s. 387-444; https://doi.org/10.46547/imuhfd.2021.08.02.08

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yana düşünce ve uygulama anlamında uluslararası toplumun özel ilgisine konu olmuştur. Bu olgunun merkez üssü olan Birleşmiş Milletler, kavramların anlamları konusunda kaçınılmaz olarak resmi bir pozisyon almak durumundadır. Eldeki çalışma, söz konusu kavramların anlamlarını yeniden gözden geçirmekte ve esas olarak Birleşmiş Milletler ve Genel Kurul'un normatif üretimlerine dayanarak, bunların yalnızca, uluslararası istikrarın koşulu olarak sorumlu egemenlik kavramında özetlenen, mevcut dünya düzeninin Birleşmiş Milletler Şartı tarafından somutlaştırılan ilkelerine dayandığını varsaymaktadır. Bu nedenle koruma sorumluluğu ve insan güvenliği, uluslararası ilişkilerde insanlığın menfaatlerinin daha iyi değerlendirilmesi yönünde verdikleri ve tutulmuş görünen tüm sözlerin ötesinde -ne eksik ne fazla- Birleşmiş Milletler Şartı tarafından garanti edilen hususların sadece (yeniden) ifadeleridir. Bu kavramların objektif özleri, Birleşmiş Milletler içindeki anlamlarının siyasi doğasını açığa çıkararak, bir bakıma belirsizliğini göstermektedir.

Anahtar Kelimeler: Uluslararası Hukuk, Koruma Sorumluluğu, Insan Güvenliği, Birleşmiş Milletler, Sorumlu Egemenlik.

Introduction

The concepts of the responsibility to protect and human security emerged within the United Nations to urge the international community to the necessity to heed preoccupations related to human beings. These concepts have been both subject to a thinking process that has led the United Nations to take its official position.

The responsibility to protect is a concept that has interested the United Nations resolutory practice in the context of a growing assertion of the need for international intervention for the benefit of human beings. The cases of serious international crimes suffered by civilian populations throughout the 1990s have sparked debate on the theory and practice of humanitarian intervention. After the failure of the United Nations to be able to respond adequately to these human tragedies, notably in Rwanda, Bosnia, Kosovo, for the most cited, States began to demand a right of intervention to stop or prevent massive violations of human rights. Their central concern was whether the then-resolutory practice of the United Nations regarding the use of force responded to the challenges of the post-Cold War era, particularly those relating to humanitarian emergencies. Thus, States tended to admit that it was no longer possible to tolerate abuses against civilians as necessary for the formation of the State or to remain inactive in such situations. If, however, the rights of the State remained the central tenets of international order, it was necessary to determine how populations affected by massive human rights violations could be protected.[1]

1 Cristina Gabriela Badescu, *Humanitarian Intervention and the Responsibility to Protect Se-*

At the 54th Session of the United Nations General Assembly, Secretary-General Koffi Annan called on States to prevent a new Rwanda and to reach a consensus on the issue of humanitarian intervention. This was the starting point for research into the definition of a normative framework for humanitarian intervention by the United Nations. This response was the creation of the "Responsibility to Protect" developed by the International Commission on Intervention and State Sovereignty (ICISS) set up by the Canadian Government. In December 2001, this Commission issued its Report entitled: *Responsibility to Protect*.[2]

As regards the meaning of the responsibility to protect, it is necessary above all to point out the Commission's preliminary clarification: "*This report is about the so-called "right of humanitarian intervention": the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protecting people at risk in that other state. At least until the horrifying events of 11 September 2001 brought to center stage the international response to terrorism, the issue of intervention for human protection purposes has been seen as one of the most controversial and difficult of all international relations questions. With the end of the Cold War, it became a live issue as never before. Many calls for intervention have been made over the last decade – some of them answered and some of them ignored. But there continues to be disagreement as to whether, if there is a right of intervention, how and when it should be exercised, and under whose authority*"[3].

According to the ICISS, the Responsibility to Protect refers to "*the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states*"[4]. The Responsibility to Protect according to this commission is based on two principles: [5]

a. State sovereignty implies responsibility, and it is the State which has the primary responsibility to protect its populations;

b. Wherever a population suffers from serious distress, as a result of a civil war, a rebellion, or a State decline and the State in question does not want or

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curity and human rights, Routledge, London and New York, 2011, p. 2.

2 International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility To Protect*, National Library of Canada cataloguing in publication data, Ottawa, December 2001.

3 ICISS Report, p. vii.

4 ICISS Report, p. viii.

5 ICISS Report, p. xi.

cannot stop or prevent them, the principle of non-intervention converts to the responsibility to protect.

According to the iCISS, the Responsibility to Protect is based on:[6]

a. Obligations inherent in the concept of sovereignty;

b. The responsibility of the Security Council under Chapter VII of the Charter of the United Nations relating to international peace and security;

c. Specific legal obligations in the field of human rights and human protection declarations, conventions and treaties, international humanitarian law and national law,

d. The constantly evolving practice of States, regional organizations, and the Security Council itself.

Regarding its elements, the substance of responsibility includes three responsibilities:[7]

a. The responsibility to prevent, consisting in acting on the root and direct causes of internal conflicts and all anthropogenic crises creating a risk for populations;

b. Responsibility to react consisting in responding to critical situations with appropriate measures which may include coercive measures, such as international sanctions and prosecutions and in extreme cases, military intervention;

c. The responsibility to rebuild, which consists of providing, after a military intervention, the necessary assistance for recovery, reconstruction, and reconciliation, addressing the causes of the harm that the intervention aimed to contain.

Concerning the principles for military intervention, the ICISS's Report mentions that humanitarian intervention for human protection is an exceptional and extraordinary measure. For it to be legitimized, it must be a danger to human life or a serious risk thereof, which corresponds to:

a. Situations of large-scale human loss with or without genocidal intent and which is the product of either deliberate state action or state negligence or its inability to act or a state decline situation;

b. Large-scale ethnic cleansing, whether perpetrated by murder, forced eviction, acts of terror, or rape

Military intervention is based on precautionary principles:

6 ICISS Report, p. xi.

7 ICISS Report, p. xi.

a. Of the just intention of stopping or preventing human suffering manifested in multilateral operations;

b. Of last resort, that is to say, the use of force is only legitimized after all other preventive measures or peaceful resolution of the crisis have failed;

c. Proportional means, that is to say, the humanitarian intervention must be the minimum necessary to protect populations;

d. Of reasonable expectations, that is to say, one should normally expect the intervention to stop or prevent human suffering, without creating a worse situation than that justified

The concept of the responsibility to protect was afterward supported in the 2004 Report of the United Nations High-Level Panel on Threats, Challenges and Change entitled: *A More Secure World: Our Shared Responsibility*[8] and in the Report of the Former Secretary-General entitled: *In Larger Freedom: Towards Development, Security and Human Rights for All*[9]. The United Nations adopted its official position regarding the Responsibility to Protect at the 2005 World Summit[10] enshrined in the Outcome of that Summit in his paragraphs 138 and 139. [11] The Security Council of Nations subsequently adopted Resolutions under this label.by its intervention.

The Responsibility to Protect then came to clarify the meaning to be given to humanitarian intervention in international affairs. However, to protect people, another terminology was used which mentioned "intervention", in particular military intervention. Faced with the reluctance of humanitarian workers in any association of "military" and humanitarian action, the term "responsibility to protect"[12] was preferred. This compromise is understandable given the context of some considerations related to humanitarian intervention. Indeed, since military intervention is highly political, it can then serve political interests, which can cast doubt on its neutrality. Neutrality is one of the cardinal principles of humanitarian assistance which has often proved crucial for access to victims. Humanitarian assistance through military intervention can therefore lead to a great deal of suspicion from parties to the conflict, which can consequently limit humanitarian access, to the detriment of victims. Since, in

8 High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, United Nations, New York, 2004.

9 United Nations, General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, A/59/2005, 21 march 2005.

10 United Nations, General Assembly, *2005 World Summit Outcome*, Resolution A/RES/60/1, 24 October 2005, paras. 138-14.

11 2005 World Summit Outcome, p. 33.

12 *2005 World Summit Outcome*, p. 9

all cases, it is a question of humanitarian intervention, the conceptual positioning of the responsibility to protect makes it possible to distinguish the humanitarian response through politics it signifies, from the humanitarian response through the "humanitarian assistants" or "humanitarian helpers".

As regards Human Security, its advent within the United Nations, it was marked with the 1994 Report of the United Nations Development Program (UNDP).[13] It begins by noting that "*The concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust. It has been related more to nation-states than to people. The superpowers were locked in an ideological struggle-fighting a cold war all over the world. The developing nations, having won their independence only recently, were sensitive to any real or perceived threats to their fragile national identities. Forgotten were the legitimate concerns of ordinary people who sought security in their daily lives. For many of them, security symbolized protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression, and environmental hazards. With the dark shadows of the cold war receding, one can now see that many conflicts are within nations rather than between nations*".[14] This paragraph is a kind of reminder of the context in which an emergency of human security is felt. It made it clear that security was not only a matter of concern about the State, including territorial integrity but also a matter of concern of individuals. What this report confirms is that "*Human security is not a concern with weapons - it is a concern with human life and dignity*"[15].

The UNDP Report identified four essential characteristics of human security: Human security is a *universal* concern, the components of human security are *interdependent,* Human security is *easier to ensure through early prevention,* Human security is *people-centered*.[16] In addition, two main aspects can be noted: "*It means, first, safety from such chronic threats as hunger, disease, and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life-whether in homes, in jobs, or in communities. Such threats can exist at all levels of national income and development*"[17]. These aspects are summarized in a general definition: "*There have always*

13 United Nations Development Programme, *Human Development Report 1994*, Oxford University Press, New York - Oxford, 1994, Chap. 2.

14 Human Development Report 1994, p. 22.

15 Human Development Report 1994, p. 22.

16 Human Development Report 1994, pp. 22-23.

17 Human Development Report 1994, p. 23.

been two major components of human security: freedom from fear and freedom from want".[18] The immediate clarification of the United Nations position about this definition is highly significant: "*This was recognized right from the beginning of the United Nations. But later the concept was tilted in favor of the first component rather than the second. The founders of the United Nations, when considering security, always gave equal weight to territories and to people*".[19] In this definition of the UNDP, human security is linked to seven dimensions to which correspond specific types of threats:[20]

a. Economic security, covering access to employment and resources, is threatened by poverty;

b. Food security, meaning material and economic access to food for everyone, at all times, it faces the threat of hunger and famine;

c. Health security and access to medical care and better health conditions has to deal with injuries and illnesses;

d. Environmental security faces the threats of pollution, degradation of the environment endangering human survival and the exhaustion of resources;

e. Personal security is thwarted by threats which can take several forms: threats from the State, foreign States, other groups of people (ethnic tensions), threats against women or children because of their vulnerability and dependence;

f. Community security meaning that most people who get their security of belonging to a social group (family, community, organization, political grouping, ethnic group, etc.), maybe threatened by tensions often occurring between these groups due to competition for limited access opportunities and resources;

g. Political security, which must guarantee respect for fundamental rights and freedoms, is threatened by arbitrariness and repression.

The 1994 UNDP Report is generally considered by doctrine as giving the account of the broad[21] conception of human security. In 2005, in his report *In Larger freedom: Development, Security and Respect for Human Rights for All*, former United Nations Secretary Kofi Annan, although not specifically referring to the concept of human security, echoed the summary definition of

18 Human Development Report 1994, p. 24.

19 Human Development Report 1994, p. 24.

20 Rajaona Andrianaivo Ravelona, *Sécurité humaine: Clarification du concept et approches par les organisations internationales Quelques repères*, Document d'information, Organisation Internationale de la Francophonie, Janvier 2006, p. 7.

21 Sakiko Fukuda-Parr, Carole Messineo, *Human Security: A critical review of the literature*, Centre for Research on Peace and Development, Working Paper no. 11, KU Leuven, January, 2012, p.2.

this concept in the 1994 UNDP Report: "*Larger freedom implies that men and women everywhere have the right to be governed by their own consent, under law, in a society where all individuals can, without discrimination or retribution, speak, worship and associate freely. They must also be free from want - so that the death sentences of extreme poverty and infectious disease are lifted from their lives — and free from fear - so that their lives and livelihoods are not ripped apart by violence and war. Indeed, all people have the right to security and to development*"[22].

The Outcome of the 2005 World Summit in its paragraph 143 also enshrine human security in these terms: "*We stress the right of people to live in freedom and dignity, free from poverty and despair. We recognize that all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential. To this end, we commit ourselves to discussing and defining the notion of human security in the General Assembly*"[23]

Until 2005, human security has then been fundamentally understood as freedom from fear and freedom from want, the former referring to freedom from all situations of violence and the latter, the capacity to meet one's needs, at least the most essential. The Report of the Secretary-General, issued in 2010,[24] took stock of the progress made in the promotion of this concept since the 2005 World Summit. It considered the debates devoted to human security, of the various definitions which were given and of the link existing with the sovereignty of States and the duty to protect and presented the principles and approach aimed at promoting human security, as well as the application of this concept to the current priorities of the United Nations. Thus, recalling several definitional contributions from different groups and international organizations, that report detects their common denominator on three constituent elements of human security: "*First, human security is in response to current and emerging threats — threats that are multiple, complex and interrelated and can acquire transnational dimensions. Second, human security calls for an expanded understanding of security where the protection and empowerment of people form the basis and the purpose of security. Third, human security*

22 *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, A/59/2005, p. 5.

23 *2005 World Summit Outcome*, p. 31.

24 United Nations, General Assembly, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, Follow-up to the outcome of the Millennium Summit, *Human Security*, Report of the Secretary-General, A/64/701, 8 march 2010.

does not entail the use of force against the sovereignty of States and aims to integrate the goals of freedom from fear, freedom from want, and freedom to live in dignity through people-centered, comprehensive, context-specific, and preventive strategies"[25]. In this undertaking of understanding of the concept of human security, this Report is concerned with reporting on the difference that would exist between human security and the responsibility to protect: "*As agreed in paragraph 143 of the World Summit Outcome, the purpose of human security is to enable all individuals to be free from fear and want, and to enjoy all their rights and fully develop their human potential. The use of force is not envisaged in the application of the human security concept. The focus of human security is on fostering Government and local capacities and strengthening the resilience of both to emerging challenges in ways that are mutually reinforcing, preventive and comprehensive*".[26] This paragraph then established a distinction that the fundamental difference between human security and the responsibility to protect is in the use of force.

About the principles and approach of human security, the same Report is instructive: "*Moreover, human security underscores the universality and primacy of a set of freedoms that are fundamental to human life, and as such it makes no distinction between civil, political, economic, social and cultural rights, thereby addressing security threats in a multidimensional and comprehensive manner. (...).*[27] *Contained in scope, human security informs policies that, while comprehensive, are nevertheless targeted, and capture the most critical and pervasive threats that are relevant to a particular situation. For example, some human security challenges are specific to the internal dynamics of a particular community, such as lack of access to resources and opportunities, while others are transnational, such as pandemics, climate change, and financial and economic crises. The consideration of the scope of human security is important in formulating policy and operational recommendations and calibrating them to particular contexts*".[28]

In these paragraphs, the universal, global, and multidimensional nature of concerns relating to human security is highlighted, which confirms the synthesis of the various definitional contributions of human security developed so far. Very important is the precision which is brought concerning the bearer of the human security responsibility. "*Human security is based on a fundamen-*

25 *Human Security*, Report of the Secretary-General, A/64/701, Parag. 19, p. 6.

26 *Human Security*, Report of the Secretary-General, A/64/701, Parag. 19, p. 6.

27 *Human Security*, Report of the Secretary-General, A/64/701, Parag. 26, p. 7.

28 *Human Security*, Report of the Secretary-General, A/64/701, Parag. 27, p. 7.

tal understanding that Governments retain the primary role for ensuring the survival, livelihood, and dignity of their citizens. It is an invaluable tool for assisting Governments in identifying critical and pervasive threats to the welfare of their people and the stability of their sovereignty."[29] To the international community has been devolved a complementary or supporting role to States.

As in the case of the responsibility to protect, all the thinking process about human security will be reflected in the Secretary-General's second Report[30], which afterward will propose the United Nations understanding of human security. In the end, the United Nations General Assembly adopted the official position of the organization regarding Human security.[31]

We assume in this paper that the meanings the concepts of the Responsibility to Protect and Human Security received within the United Nations depend on its founding principles, which sum up on responsible sovereignty. These concepts have everything in relation to this conception of state sovereignty and States could not mean them beyond what they have already agreed in the framework of the current world order embodied by the United Nations Charter (I). However, the concepts of the responsibility to protect and Human Security bear in themselves objective meanings, which evidence the ambiguity of the meaning they are subject to within the United Nations and therefore question the current "way" of the world order (II).

I. The Concepts of the Responsibility to Protect and Human Security within the United Nations and the Principles of the Current World Order

The current world order is the one made of the United Nations Charter which is indubitably state-based and therefore rests on state sovereignty.[32] It is a fact that since the Treaties of Westphalia state sovereignty has been the

29 *Human Security*, Report of the Secretary-General, A/64/701, p. 1 (Summary).

30 United Nations, General Assembly, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, Follow-up to the outcome of the Millennium Summit, *Follow-up to General Assembly resolution 64/291 on human security*, Report of the Secretary-General, A/66/763, 5 April 2012.

31 United Nations, General Assembly, *Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome*, Resolution A/RES/66/290, 10 September 2012.

32 Francis Harry Hinsley, *Sovereignty*, Watts, London, 1966, p. 26; Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community*, Legal Aspects of International Organization, Vol. 51, Martinus Nijhoff Publishers, Leiden, Boston, 2009; Winston P. Nagan, Craig Hammer, "The Changing Character of Sovereignty in International Law and International Relations", *Columbia Journal of Transnational Law*, vol. 43, no. 143, 2004, pp. 154-159.

basis of international relations and international law.[33] The world order of the United Nations Charter is precisely new because it enshrines state sovereignty in a new way, that is, no longer absolute but moderate sovereignty, both in domestic and foreign relations of States.[34] In reality, the new world order rests on the clarification of the sense of sovereignty, that is, not an attribute of license, that can be utilized for whatever purpose States could decide individually, according to their whims, but an attribute of liberty, that is to be utilized in the sense that is not harmful to the state itself and for other states.[35] The harmful experiences of world wars are evidence of that. Indeed they were caused by facts accounting for licentious sovereignty, which ruled both domestic and foreign relations of States. Because of the regrettable consequences, States had to resolve themselves to reconsider sovereignty in a way that ensures peace and security to each of them. Thus the United Nations Charter enshrines the principle of responsible sovereignty, on which it grounds the meanings it affords to the responsibility to protect and human security (A). That is confirmed in the legal worth attached to these concepts (B).

A. The Meanings of the Responsibility to Protect and Human Security within the UN and the Principle of Responsible Sovereignty

The principle of responsible sovereignty can be considered as the general principle enshrined by the United Nations Charter pursuing international peace and security.[36] That principle emphasizes the clear meaning of sovereignty in the interstate world order.[37] According to this one, the only meaning of sovereignty is responsibility, that is, responsibility outside and inside the State.

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33 Martin Belov (ed.) Global Constitutionalism and Its Challenges to Westphalian Constitutional Law, Hart, 2018; Richard A. Falk, Cyril Edwin Black, (eds.), *The Future of the International Legal Order*, Vol. I, Princeton University Press, New Jersey, 1969; R. H. Cooper, J. Voïnov Kohler "Introduction The Responsibility to Protect. The Opportunity to Relegate Atrocity Crimes to the Past, in Richard H. Cooper, Juliette Voïnov Kohler (ed.), *Responsibility to Protect. The Global Moral Compact for the 21st Century*, Palgrave Macmillan, New York, 2009, p. 3.

34 Gareth Evans, "The Responsibility to Protect From an Idea to an International Norm", in Richard H. Cooper, Juliette Voïnov Kohler (ed.) *Responsibility to Protect. The Global Moral Compact for the 21st Century*, Palgrave Macmillan, New York, 2009; Winston P. Nagan, Craig Hammer, p. 154.

35 Winston P. Nagan, Craig Hammer, p. 154.

36 Rasool Soltani, Maryam Moradi, "The Evolution of the Concept of International Peace and Security in light of the United Nations Security Council Practice (End of the Cold War-Until Now)", *Open Journal of Political Science*, no 7, 2017, p. 135.

37 Chris Brown, "Universal Human Rights: A Critique," in Tim Dunne and Nicholas J. Wheeler (eds) *Human Rights in Global Politics*, Cambridge University Press, Cambridge, 1999; Robert H. Jackson, *Quasi-states: Sovereignty, International Relations and the Third World*, Cambridge University Press, Cambridge, 1990; Mohammed Ayoob, "Humanitarian Intervention and State Sovereignty," *The International Journal of Human Rights*, vol. 6, no. 1, 2002, pp. 81-102

Thus Sovereignty as responsibility is the guarantee for international stability.[38]

Sovereignty as responsibility inside the State as a matter of international peace and security is a commitment for the benefit of human beings living within the State. States have to manage public affairs in a way resulting in the well-being of their populations.[39] The merit of democracy is to enshrine governance on that, according to the famous assertion of Abraham Lincoln "Democracy is government of the people, by the people and for the people". Even if democracy was spread in the 1990s, five decades later after the adoption of the United Charter, the shocking precedent of the Holocaust undoubtedly has contributed a lot to the interest of the human fate within this Charter. Thus, sovereignty as responsibility inside the State means that its primary purpose is to satisfy the interests of its populations.[40]

This sense of sovereignty as responsibility inside the State goes in harmony with sovereignty as responsibility outside the state, for it implies respect of other sovereignties. This is the principle of the sovereign equality of States.[41] As far as sovereignty is concerned, equality means that none has any kind of authority over another without its consent no matter what particular characteristics they could display.[42] This principle has as a corollary, the principle of non-intervention.[43] The first part of Article 7 (2) of the United Nations Charter states that

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38 Francis M. Deng, *Protecting the Dispossessed. A Challenge for the International Community*, 1993; Sadikiel Kimaro, Terrence Lyons, Francis M. Deng, Ira William Zartman, Donald Rothchild, *Sovereignty as Responsibility, Conflict Management in Africa*, 1996.

39 W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law"*, American Journal of International Law*, Vol. 84, 1990; Christian J. Tams, *Individual States as Guardians of Community Interests, in* From Bilateralism To Community Interest: Essays In Honour of Judge Bruno Simma, no. 379, pp. 400-01.

40 Anthony D'Amato, "There is no Norm of Intervention or non-intervention in International Law", *International Legal Theory,* Vol. 7, no. 1, 2001; Peter Hilpold, "R2P and Humanitarian Intervention in a Historical Perspective", Responsibility to Protect (R2P), in Peter Hilpold (ed.), *A New Paradigm of International Law?* Brill Nijhoff, Leiden, Boston, 2015, p. 109.

41 "The Organization is based on the Principle of equal sovereignty of all its members", Art. 2 (1) of the UN Charter. Franz Cede, Lilly Sucharipa-Behrmann, *The United Nations, Law and Practice*, Kluwer Law International, The Hague, 2001, p. 18.

42 "*The principle of sovereign equality of all members of the UN corresponds to one of the central elements of international law. It affirms that States as the main actors on the international stage are endowed with equal rights irrespective of all their factual disparities. According to this principle States as the principle subjects of international law possess the attributes of external sovereignty. They have all essential characteristics of statehood. These consist of three elements of territory, people and an effective government. The principle of sovereign equality finds its expression in the fact that each Member State, regardless of its size, has only one vote in the GA*", Franz Cede, Lilly Sucharipa-Behrmann, pp. 18-19.

43 Franz Cede, Lilly Sucharipa-Behrmann, p. 23; Jianming Shen, "The Non-Intervention Principle and Humanitarian Interventions under International Law", *International Legal Theory,* Vol. 7, no. 1, 2001; Raymond John Vincent, *The Principle of Non-Intervention and Interna-*

"*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the members to submit such matters to settlement under the present Charter…*" Sovereignty is an attribute of self-determination. It means for States, the potentiality to manage their affairs in whole independence, in the way they deem adequate and to support on their own, the consequences resulting from that. Due to that, it is an attribute of independence and since none would accept unauthorized interference into his attribute sphere, none, therefore, interfere with one of the others. In that logic, everything within the domestic jurisdiction of a State is under its responsibility.

If the principle of responsible sovereignty is the general principle of the United Nations world order pursuing international peace and security, then it implies interstate cooperation. Experience from the world Wars has shown that international cooperation is necessary to face common concerns. Therefore solidarity of sovereignties is crucial for international peace and security, including both integrity of States and human beings.[44] Thus, one of the purposes of the United Nations according to Article 1 paragraph 3 is "*to achieve international cooperation in solving international problems of an economic, social and cultural or humanitarian character, and in promoting or encouraging respect of human rights and freedom for all without distinction as to race, sex, language, religion*". Since States can face difficulties to satisfy and to respond to matters related to interests of individuals, and if that can undermine the peace and security of other States, interstate cooperation becomes, if not highly encouraged, simply a necessity.[45] This necessity cannot contradict state sovereignty for it is based on the consent of States.[46]

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tional Order, PhD Thesis, Australian National University, September 1971, p. 53; Eric David, "Portée et Limite du Principe de Non-Intervention", *Revue Belge de Droit International*, no. 2, Éditions Bruylant, Bruxelles, 1990, p. 350.

44 "*From today's perspective the activities of the UN in the areas of economic and social cooperation are no less important than the system of collective security whose creation was the main ambition of the founders of the UN (…) In Art. 1 (3) the principle of international cooperation is formulated in a very general way. It calls on Member States to promote international cooperation in every respect. Such a broad agenda makes the UN competent to deal practically with each and every issue, which is not essentially within the domestic jurisdiction of this State* (alone). *This wide interpretation of the UN mandate makes it possible, for instance, to put nearly all matters within the framework of the UN*". Franz Cede, Lilly Sucharipa-Behrmann, pp. 13, 17.

45 Anthony D'Amato, p. 33.

46 By becoming members of the United Nations, States have consented to all its principles and dispositions.

As far as peace and security are ultimately concerned, and at the risk of not being respected, the principle of responsible sovereignty cannot only be subject to the appreciation of individual States which would respect or enforce it according to their desiderata. The high value promoted by this principle implies for it to be subject to an enforcement mechanism. If this one is lacking, the principle of responsible sovereignty could be flouted because States could appreciate not to have another option, as it occurred in a lot of cases leading to world wars or in the course of wars.[47] Of extreme necessity was, therefore, the last part of the United Nations Charter article 1 paragraph 3, according to which the principle of non-intervention into internal affairs will not prejudice the application of enforcement measures under Chapter VII, which is titled "Action with respect to Threats to the Peace, Breaches of the Peace and Acts of aggression. By becoming parts of the UN Charter world Order, States agreed, according to its article 24 paragraph 1 that "*to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility, the Security Council acts on their behalf*". Thus if sovereignty is no longer responsible, either due to deficiencies or to an openly dangerous behavior towards other sovereignties or towards populations who are supposed to benefit from it, the United Nations, through the Security Council, must intervene.[48] In such a case, the United Nations intervention cannot be understood as undermining state sovereignty, but as acting to restore state sovereignty in its meaning of responsibility inside and outside the State.

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47 We can note the invasion of Manchuria by Japan in 1933, see Frank Mcdonough, *The Origins of the First and Second World Wars*, Cambridge University Press, Cambridge, 1997, p. 62; the aggression of Abyssinia by Italy, see Geo W. Baer, *Test Case: Italy, Ethiopia, and the League of Nations*, Hoover Institution Press, Stanford, 1976; the repression of the Kurdish populations in northern Iraq under the authority of President Saddam Hussein which resulted in the displacement of millions of civilians to neighboring Turkey, see UN doc. S/22435, 2 April 1991; the Holocaust, see H. Feingold, "How Unique Is the Holocaust?" in A. Grobman, D. Landes (eds.), *Genocide: Critical Issues of the Holocaust*, Simon Wiesenthal Center, Los Angeles, 1983, pp. 399-400; . See also Paul Mojzes, *Balkan genocides: holocaust and ethnic cleansing in the twentieth century*, Rowman & Littlefield Publishers, Plymouth, 2011, p. xv.

48 The United Nations Security Council, in Resolution 1296 of 19 April 2000, noted "that the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security"; In the matter of protecting civilians in armed conflict, see the first resolutions of the Security Council in Rossana Deplano, *The Strategic Use of International Law by the United Nations Security Council. An Empirical Study,* Springer, London, pp. 37-40; Jared Genser, Bruno Stagno Ugarte (eds.) *The United Nations Security Council in the Age of Human Rights*, Cambridge University Press, Cambridge, 2014, pp. 1-32; Vaughan Lowe, Adam Roberts, Jennifer Welsh, Dominik Zaum, *The United Nations Security Council and War, The Evolution of Thought And Practice Since 1945*, Oxford University Press, New York, 2008, pp. 1-60; Kenneth Manusama, *The United Nations Security Council in the Post-Cold War Era Applying the Principle of Legality*, Martinus Nijhoff Publishers, Leiden, Boston, 2006, p. 3.

The meaning the concepts of the responsibility to protect and human security received within the United Nations are grounded on the general principle of responsible sovereignty at the heart of the United Nations Charter.[49]

As far as the concept of the responsibility to protect is concerned, the Outcome of the 2005 World Summit states in paragraph 138 that "*Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.*"

Based on the attribute of sovereignty, States are the first responsible to protect their populations from acts that endanger their lives. Thus the United Nations enshrined that the matter of the responsibility to protect is international serious crimes.[50] This is understandable, for the concept of the responsibility to protect was raised in the context of increased human sufferings in the course of numerous internal conflicts and for which intervention of the international community was highly expected.[51] The Rwanda episode of genocide in 1994 and particularly the United Nations' behavior before its perpetration is one of the facts that led to questioning on a responsibility to protect human persons from acute distress.[52] Let us not forget the Holocaust which is one the most outstanding event of human life destruction that could not have missed to influence the post-World War order. The United Nations Charter's reference to the human person is undoubtedly made with an eye back to that event.

So we can note that mass atrocities are since their early occurrence at the heart of the questioning related to a responsibility to protect.[53] Regarding the position of the United Nations, which is deemed as the very meaning of the responsibility to protect within the United Nations and the whole international society, it is grounded on the principle of the current world order that is responsible sovereignty. Indeed people are located within the borders of a territory

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49 See also, Erkiner, Hakkı Hakan; Akoudou, Emerant Yves Omgba, "Human Security as Final Cause of Political Society", *Marmara* Üniversitesi *Hukuk Fakültesi Hukuk Araştırmaları Dergisi*, 2021 - Volume: 27 Issue: 1, pp. 120-153.

50 Alexander J. Bellamy, "The Responsibility to Protect, A Wide or Narrow Conception?" in Peter Hilpold (ed.), pp. 38-59.

51 Aidan Hehir, *Hollow Norms and the Responsibility to Protect*, Palgrave Macmillan, London, 2019, Chap. II.

52 Hans-Georg Dederer, "Responsibility To Protect" and "Functional Sovereignty", In Peter Hilpold (ed.), p. 158.

53 David Scheffer, "Atrocity Crimes Framing the Responsibility to Protect", in Richard H. Cooper, Juliette Voïnov Kohler (ed.), pp. 77-98.

under the rule of a government. Thus sovereignty as responsibility inside the State implies that States have the primary responsibility to protect their people from mass atrocities[54] for which the intervention of the international community was advocated.

This conclusion is still justified taking into consideration the commitment of States for human rights. Indeed, States negotiate, sign, ratify human rights treaties, and are responsible for giving them concrete form within the national territory. Mass atrocities are nothing else than a matter of human rights,[55] what has been confirmed in several resolutions of the United Nations Security Council and Human Rights Reports qualifying them as human rights violations.[56] Since States have the primary responsibility to guarantee human rights within their borders, they are therefore the primary actors to bear the responsibility to protect against mass atrocities. It is thus unacceptable for a State to inflict to its own populations, distress amounting to genocide, war crimes, ethnic cleansing, and crimes against humanity. Also, the State should be able to protect its populations from these acts perpetrated by other actors, such as private military groups challenging State authority.

However, it is proven from a lot of experiences that States can be unable to fulfill this responsibility due to a deficiency of capabilities, either to prevent or react to them.[57] In such cases, the solidarity of sovereignties as an implication of the principle of responsible sovereignty is foreseen. According to paragraph

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54 Former United Nations Secretary General Kofi Annan has pointed out that "*the State is now widely understood to be the servant of its people*" in Press Release SG/SM/7136, 20 September 1999: Secretary-General presents his annual report to the General Assembly. Francis Deng has also assumed that, "*Sovereignty…carries with it the responsibility of States to provide for the security and well-being of those residing in their territories*", in F. M. Deng, *Internally displaced persons*, Report of the Representative of the Secretary-General, un Doc. E/CN.4/1996, 52, 22 February 1996; According to Sadako Ogata, then High Commissioner for Refugees, "*Sovereignty involves a responsibility to meet the needs of the population… Any government that systematically flouts its humanitarian obligations to its people, and refuses access to those in need, calls into question its own sovereign rights*." UNHCR, *The State of the World's Refugees 1993 - The Challenge of Protection*, 1993, p. 75; The ICISS noted that "the sovereignty of States implies responsibility, especially the responsibility of States to protect their own people", in ICISS (fn. 24), paras. 1.35, 2.15.

55 Monica Hakimi, "Toward a Legal Theory on the Responsibility to Protect", *Yale Journal of International Law*, Vol. 39, iss. 2, no. 3, 2014, p. 247; also Steven R. Ratner, Jason S. Abrams, James Bischoff, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy,* Clarendon, Oxford, 1997, p. 3.

56 Rossana Deplano, *The Strategic Use of International Law by the United Nations Security Council. An Empirical Study*; Paolo Vargiu, Rossana Deplano, "human rights dimension of UN Security Council resolutions", in *Essays on human rights: A celebration f the life of Dr. Janusz Kochanowski,* Jo Carby-Hall, (ed.), Warsaw, Ius et Lex. 2014, 520-541.

57 We can note the cases of the Democratic Republic of Congo since 1999, Burundi in 2003, Côte d'Ivoire in 2004; for details see Susan Carolyn Breau, *The Responsibility to Protect in International Law. An Emerging Paradigm Shift*, 2016, pp. 218, 221, 227.

138 of the Outcome of the 2005 World Summit: "*The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability*". One of the purposes of the United Nations according to Article 1 paragraph 3 is "*to achieve international cooperation in solving international problems of an economic, social and cultural or humanitarian character, and in promoting or encouraging respect of human rights and freedom for all without distinction as to race, sex, language, religion*". The support the international community can provide to States to fulfill their responsibility to protect their populations is then well adjusted on the United Nations Charter whose aim is to frame and enshrine responsible sovereignty. That international support to States is very understandable since it is evidence that States can be unsuited to protect their populations from mass atrocities which in turn are a serious concern for international peace.[58] That support emphasizes the necessity of solidarity between sovereignties.[59] The international community here gathers a wide range of actors, including the Individual States, the United Nations, and the other regional organizations.[60] All of them are called, necessarily based on the United Nations Charter to support States in protecting their populations from mass atrocities.

In particular, even being part of that same international community, the United Nations should receive, from other members the support to establish an early warning capability. The purpose of this one is clearly for the benefit of States.[61] An early warning system of mass atrocities is a necessary tool to

58 We can note the ECOWAS intervention in Sierra Leone, see Kenneth Manusama, pp. 276-279, in United Nations Organization Mission in the Democratic Republic of Congo (MONUC) established by Security Council Resolution 1279 (1999) on 30 November 1999. Resolution 1291 of 24 February 2000 expanded MONUC's mandate, including: 7(g) to facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children and demobilized child soldiers, as MONUC deems within its capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organizations and non-governmental organizations. See S. Breau, p. 218; we can also note the case of Burundi with the United Nations Peacekeeping Operation in Burundi authorized in 2003 by the UN Security council in face of continued massacres. The Resolution 1545 of 2004 defines the large assistance mandate of the United Nations in Burundi (ONUB), See S. Breau, pp. 221-223; we also have the Resolution, 1528 of 2004, authorizing, the peacekeeping mission of the United Nations Mission in Côte d'Ivoire (UNOCI), See S. Breau, pp. 227-228.

59 See the list of the United Nations Assistance Missions in www.un.org/en/peacebuilding; See also Vaughan Lowe, Adam Roberts, Jennifer Welsh, Dominik Zaum, Appendixes 1 and 2.

60 S. Breau, pp. 221-22; Solomon Ayele Dersso, "The African Union" in Gentian Zyberi (ed.), *An Institutional Approach to the Responsibility to Protect* Cambridge University Press, Cambridge, 2013, pp.220-246.

61 "*Effective atrocity prevention means doing everything possible to help countries to avert the outbreak of atrocity crimes*", in United Nations, General Assembly, Security Council, Follow-

prevent them, by making available useful information, from which adequate measures are envisaged. Thus, as far as international assistance is concerned regarding the responsibility to protect, the support the United Nations could beneficiate for establishing an early warning system contributes to helping States to fulfill their primary duty to spare their populations mass atrocities.

In another part, mass atrocities are matters of international concern. Their prohibition is so strong that it is a norm of *jus cogens,* that is, a norm to which any kind of derogation is unacceptable.[62] It is why mass atrocities are a matter of international peace and security, what has come to recognize the United Nations through the Security Council. Then it justifies the wording of paragraph 139 of the Outcome of the 2005 World Summit "*The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out*."

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up to the outcome of the Millennium Summit, *Responsibility to protect: from early warning to early action*, Report of the Secretary-General, A/72/884–S/2018/525, june 2018, p. 3; Ernesto Verdeja, "Predicting Genocide and Mass Atrocities," in *Genocide Studies and Prevention: An International Journal,* Vol. 9: Iss. 3, 2016, pp. 13-32.

62 Andrea Gattini, Responsibility to Protect and the Responsibility of International Organizations, in Peter Hilpold (ed.), p. 221; John Heieck, "Emerging Voices: Illegal Vetoes in the Security Council–How Russia and China Breached Their Duty Under Jus Cogens to Prevent War Crimes in Syria,"; *Opinio Juris*, at http://opiniojuris.org; Jutta Brunnée, "International Law and Collective Concerns: Reflections on the Responsibility to Protect," in Tafsir Malick Ndiaye, Rüdiger Wolfrum (eds), *Law of the Sea, Environmental Law and Settlement of Disputes*, Martinus Nijhoff, Leiden, 2007, p. 51; Cristina Gabriela Badescu, *Humanitarian Intervention and the Responsibility to Protect Security and human rights*, Routledge, Abingdon, 2011, p. 133; S. Breau, p. 276; Melissa Labonte, *Human Rights and Humanitarian Norms, Strategic Framing, and Intervention. Lessons for the responsibility to protect*, Routledge, Abingdon, 2013, p. 13.

Through this paragraph, the United Nations recognizes its secondary responsibility to protect state populations from mass atrocities. This responsibility is not lesser for it goes up to coercive measures within a sovereign State.[63] The message is clear: when it comes to matters related to international peace and security, such as mass atrocities, the United Nations becomes the ruler. In such situations, the evidence is noted of a sovereignty that became irresponsible through an unacceptable attack against civil populations, or a sovereignty that is not able to be responsible to avoid such attacks from others actors. It is, therefore, necessary, either to correct the trajectory of the irresponsible sovereignty so that it comes back to order or to support it so that it can normally be responsible.

As we see it the meaning the responsibility to protect received within the United Nations is grounded on the principles of the United Nations Charter. We can even say that the United Nations, by determining the sense of the concept of the responsibility to protect, reaffirmed the principles of the United Nations Charter.

Regarding Human security, the United Nations General Assembly adopted on the 10th of September 2012 a Consensus on Human Security. This consensus stands as the United Nations' understanding of the concept of human security. It is the result of a long debate that began with the 1994 UNDP Report. Like the responsibility to protect, the meaning of Human Security within the United Nations is grounded on the principle of responsible sovereignty.

As regards the substance matter of the concept of human security, according to paragraph 3 of the consensus*, States agreed that Human Security is an approach to assist member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood, and dignity of their people. Based on this, a common understanding on the notion of human security includes the following:*

a. The right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential;

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63 Karin Oellers-Frahm, "Responsibility to Protect, Any New Obligations for the Security Council and Its Members?" in Peter Hilpold (ed.), p. 186; Mindia Vashakmadze, "Responsibility to Protect", in Bruno Simma et al. (eds.), *The Charter of the United Nations, A Commentary*, 3rd ed., 2012; the United Nations Security Council resolutory practice regarding the responsibility to protect from 2006 to 2011 has been commented by Jared Genser, "The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement," *Chicago Journal of International Law*: Vol. 18: no. 2, Article 2, 2018; See also Alexander Bellamy, "The Responsibility to Protect: Added value or hot air?", in *Cooperation and Conflict*, vol. 48, 2013, p. 333.

b. Human security calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities;

c. Human security recognizes the interlinkages between peace, development, and human rights, and equally considers civil, political, economic, social, and cultural rights;

From these paragraphs, we can note that human security summarizes in freedom from fear and freedom from want.[64] These are the basic requirements for human nature to preserve itself. These requirements include, in a comprehensive way, every matter interesting human lives. Thus, the United Nations confirms that no sphere or area of affairs is not within the scope of human security and that by itself and naturally, human security is an all-encompassing concept.[65]

That way, human security is undoubtedly part of the State's fundamental responsibilities. As we saw with the responsibility to protect, people being the heart of governance, then States are responsible for guaranteeing security in that broadest sense to each of their members. Therefore, by acknowledging a principle of human security, States have just accepted or confirmed that their natural duty is to work for the benefit of people, or to satisfy the requirements related to human lives, that sum up in human security. Accordingly, the first part of paragraph 3 (g) states that "*Governments retain the primary role and responsibility for ensuring the survival, livelihood, and dignity of their citizens*". This is an affirmation of the principle of responsible sovereignty. A responsible Sovereignty is the one that works for achieving the purpose it is established for: guaranteeing well-being to each member of its population.

However, as in the case of the responsibility to protect, States can face difficulties to satisfy human security, either individually due to structural deficiencies or by being collectively subject to matters of common challenges, that

64 Sadako Ogata, Statement of Mrs. Sadako Ogata United Nations High Commissioner for Refugees at the Asian Development Bank Seminar, "Inclusion or Exclusion: Social Development Challenges for Asia and Europe", 27 April 1998; Ramesh Thakur, "From National to Human Security", in Stuart Harris, and Andrew Mack (eds.), *Asia Pacific Security: The Economics-Politics Nexus*, Allen and Unwin, Sydney, 1997, Louise Frechette, *Deputy Secretary-General Addresses Panel on Human Security Marking Twentieth Anniversary of Vienna International Centre*, 12 October 1999, Press Release DSG/SM/70; Kofi Annan, *Secretary-General Salutes International Workshop on Human Security in Mongolia*, Two-Day Session in Ulaanbaatar, May 8-10, 2000. Press Release SG/SM/7382.

65 Thus the United Nations officially adopted the broad definition of human security that was early advanced by UNDP since 1994, See the 1994 UNDP Report, op. cit. For a complete review of literature on Human Security, including broad and narrow formulation, as well as academic and policy debate, see S. Fukuda-Parr, C. Messineo.

none individually could overcome.[66] Thus the last part of paragraph 3 (g) of the United Nations Consensus on Human Security states also that "*Governments retain the primary role and responsibility for ensuring the survival, livelihood, and dignity of their citizens. The role of the international community is to complement and provide the necessary support to Governments, upon their request, so as to strengthen their capacity to respond to current and emerging threats. Human security requires greater collaboration and partnership among Governments, international and regional organizations, and civil society*". This paragraph affirms the commitment of the United Nations States Members to the solidarity of sovereignties at the service of the principle of responsible sovereignty.

That is still confirmed in the paragraph h of the Consensus: "*Human security must be implemented with full respect for the purposes and principles enshrined in the Charter of the United Nations, including full respect for the sovereignty of States, territorial integrity and non-interference in matters that are essentially within the domestic jurisdiction of States. Human security does not entail additional legal obligations on the part of States*". But unlike the responsibility to protect, Human security is not understood within the United Nations as entailing intervention measures like the kind that can be taken under Chapter VII of the Charter. It means that according to the United Nations, matters within the scope of Human Security are not matters of international peace of security. That is why they imply assistance cooperation. In the case of mass atrocities, it will not be a matter of human security but of the responsibility to protect. Thus as far as human security is concerned the principle of responsible sovereignty is understood or trust enough to essentially be limited to a matter within the jurisdiction of States, in which there cannot be any interference. Even in that case, there is still a confirmation of the sense of the United Nations world order.

The concepts of the responsibility to protect and human security, as we have seen have received their meaning within the United Nations according to the general principle of responsible sovereignty that grounds the current world order, embodied by its Charter. That is still confirmed in the legal worth of these concepts.

66 Berma Klein Goldewijk "New Wars" and The State: The Nexus Religion-Human Security", in Georg Frerks and Berma Klein Goldewijk (eds.), *Human Security and International Insecurity*, Wageningen Academic Publishers, Wageningen, 2007, p. 68.

B. The Legal Worth of the Concepts of the Responsibility to Protect and Human Security within the United Nations

The legal worth of the responsibility to protect and human security within the UN confirms the kind of meaning they were endowed with, that is, grounded on the United Nations Charter general principle of responsible sovereignty. We will check this legal status based on the sources of international law.

Based on article 38 of the Statute of the International Court of Justice, the sources of international law are conventions, custom, general principles of law, judicial decisions, and teachings of the most highly qualified publicists. We will not consider the last two since they are considered as subsidiary means for the determination of rules of law.

Are the responsibility to protect and human security subject to a convention, that is, a set of rules, expressly agreed by States?[67] A simple look in the repertoire of treaties and conventions whether general and particular leads to conclude that none enshrines both of them.

Are the responsibility to protect and human security customary norms? Custom can be the result of two kinds of juridical phenomena. The first one, well-known, is the absence of express law, entailing as a consequence to determine if there is one in the form of a practice sustained as being (compliance to a) law.[68] The second one is a rule already existent which, based on a permanent and an invariable reliance and confidence from States, amounts to a higher level of binding status. Thus such a rule reaches the customary status. For example, we can note early Conventions on international humanitarian law.[69] The

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67 Hugh Thirlway, *The Sources of International Law*, Oxford University Press, Oxford, 2019, pp. 37-59

68 David Kennedy, "The Sources of International Law", *American University International Law Review*, Vol.2 no 1, 1987, not. 4; Michael Akehurst, « Custom as a Source of International Law », *British Yearbook of International Law*, Vol. 47, no. 1, 1974-1975, pp. 157-200; Anthony D'Amato, *The Concept Of Custom In International Law*, Ithaca and Cornell University Press, London, 1971; Paul Guggenheim, « Les deux *éléments* de la coutume en droit international », in *La Technique et Les Principes Du Droit Public, Etudes En L'honneur De Georges Scelle*, 1950; Michael Byers, Custom, Power and the Power of Rules, International relations and Customary International law, Cambridge University Press, Cambridge 1999, pp. 129-147, David Lefkowitz, "Sources in Legal-Positivist Theories: Law as Necessarily Posited and the Challenge of Customary Law Creation", in Samantha Besson and Jean d'Aspremont, (eds.), *The Oxford Handbook of the Sources of International Law*, 2017; H. Thirlway, pp. 64-91.

69 We can read from a relevant Report of the UN-Secretary General that "*while there is international customary law which is not laid down in conventions, some of the major conventional humanitarian law has become part of international customary law*", in UNSC, Report of the Secretary-General pursuant to para. 2 of Security Council resolution 808, 1993, UN doc. S/25704, paras. 33, 34, quoted by H. Thirlway, p. 221, not. 117; See also, Theodor Meron, The Geneva Convention as Customary Law, The American Journal of International Law, Vol. 81, no. 2, April 1987, pp. 348-370.

customary status of such a rule is worth general custom and is part of general international law which binds generally[70], unlike the first one which only binds participating countries and not those which constantly showed their opposition or reluctance to such a practice from the beginning.[71] Are the responsibility to protect and human security belong to any of these categories?

Regarding the first category, we have to recall the principal requirements for an international custom, that is, state practice (material element) under the knowledge of compliance to a rule (moral element or *Opinio Juris*).

As far as the responsibility to protect is concerned, and regarding the material element, that is, state practice, it is difficult to conclude in the sense of a general behavior of States before the 2005 world summit. The Resolution, which is the outcome of this summit provides the meaning the international community affords to the responsibility to protect. Even if there is a kind of practice of the United Nations before 2005 comparable to the responsibility to protect, that is, its humanitarian intervention in favor of acute distresses facing civilians within national territories[72], that practice has proven non-uniform, on a case-by-case basis[73]. Now for State practice to amount to a customary status, it has to be an identified and meant behavior, constant and invariable. The responsibility to protect lacks before 2005, a consensual meaning, and thus is not really *identifiable* as a practice. Even if the practice which took place before 2005 has grounded the subsequent resolute meaning of the responsibility to protect, it would still lack invariability. After 2005, there are some interventions of the United Nations Security Council on the account of the responsibility to protect[74], but these also are on a case-by-case basis and variable[75]. So we

70 The previous UN secretary-General Report further mentioned regarding the competence of the International Critminal Tribunal for the Former Yougoslavia (ICTY) that "the international tribunal should apply rules of international humanitarian law which are beyond doubt part of customary law, so that the problem of adherence of some but not all States to specific conventions does not arise", UNSC, Report of the Secretary-General, quoted by H. Thirlway. See also Lassa Oppenheim, *Oppenheim's International Law,* Sir Robert Jennings, Sir Arthur Watts, (eds.), 9th Edition, Vol. 1, 1992, p.4.

71 See the notion of "persistent objector" in H. Thirlway, pp. 99-102; See also M. Byers, p. 102-105.

72 We can note the the cases of Northern Irak (UNSC Res. 688, 1991), Somalia (UNSC Res. 794, 1992), Haiti (UNSC Res 940, 1994), Rwanda (UNSC, Res. 918, 1994). See Jennifer M. Welsh, "The Security Council and Humanitarian Intervention" in Vaughan Lowe, Adam Roberts, Jennifer Welsh, Dominik Zaum, *The United Nations Security Council and War, The Evolution of Thought And Practice Since 1945*, Oxford University Press, New York, 2008, Chapter 4, pp. 538-548.

73 The Kosovo case, for example has not been subject to the intervention of the Security Council, see J. Welsh, pp. 548-550.

74 The successful cases are Libya, Cote d'Ivoire, Mali, See J. Genser.

75 The unsuccessful cases are Yemen, Syria, Myanmar, North Korea, See J. Genser.

can therefore conclude that there is not a state practice amounting to a customary status. But what is most important about those practices is that they were based on the United Nations Charter. Since the way of formation of customary law in this framework supposes the inexistence of an express law grounding the state practice we have therefore to conclude that the responsibility to protect does not stand as a custom.

Unlike the responsibility to protect, human security has almost been meant as a domestic matter, reducing the role of the international community to free cooperation, at the request of the State. Thus, investigating human security as an international custom is from the start, hardly thinkable. State practice would be equivalent to the daily management of public affairs for the benefit of the people. Such a sense of the state practice cannot be the true one as far as international law is concerned. In that framework, it has to be understood as rules States acknowledge in their relations, and not the same kind of practices that are seen performed within the territory of each one. Therefore human security could not be concluded as a kind of state practice resulting in any international custom.

Regarding the second way of formation of an international custom, having noted the responsibility to protect and human security as expressly not being subject to any convention, they could not, therefore, amount to a higher (conventional) law that has reached the customary status.

Regarding the moral element or the "*Opinio Juris,*" it is not necessary to investigate it since the state practice is not established.

Afterward, are the responsibility to protect and human security general principles of law recognized by civilized Nations? General principles of law are considered as principles established in almost all domestic juridical systems. They are general because they are enshrined the same way everywhere or almost.[76] Thus since they receive agreement in every country or a majority of them they are useful as a rule of interstate relations.[77] Then transposed into international society, they become General principles of international law. Now we have to advance a fundamental distinction within these principles which has an extension on the international plane. Among general principles, there are some which belong to a category of legal formalism that is, useful for a good or just administration of law, and those which belong to a category of law finality, that

76 H. Thirlway, p. 108; See also Mehmet Emin Büyük, "*A Survey of Doctrinal Debates on "The General Principles of Law Recognized by Civilized Nations""*, Law and Justice Review, Issue 18, June 2019, pp. 55-114.

77 H. Thirlway, p. 109.

is, which give the general sense of law. They are axiomatic and for that, they have a much broader feature than the first category. These categories in force within domestic law, extend to international law. In the first category of general principles, we have for example the principle of the special law has priority over the general one, good faith, that become the same in international law. In the second category of general principles, we have for example the principle of equality or (individual) liberty in domestic law which extends to the principle of equality of states. The principles of liberty and the relative effect of contract cannot be in the same rank because the first one gives the sense of the whole legal system itself what entails, as a consequence, to enshrine principles of good or just administration of law, among which there is good faith.

Both principles imply legal consequences that are not the same. The good or just administration category of general principles of law are usually enshrined in international law and have all their sense in the framework of interstates disputes submitted before the International Court of Justice. The law finality-category of general principles of law "*may also be invoked by the International Court of Justice without any apparent need to prove its origin or existence, and how, in his opinion, it is the sense of obligations held by States that counts, rather than a sense of obligation, derived from a treaty or custom*"[78]. Furthermore, unlike the custom, that requires state practice, the law-finality category of general principles only requires state consent.[79] This one can be evidenced from various means of expression which can include abstract ideas, derived from treaty law, judgments of international courts, statements of State representatives, and the United Nations General Assembly Resolutions.[80]

Regarding specifically General Assembly resolutions, while they are considered as recommendations, which are almost considered as not having any binding legal effect, they are, in another point of view, deemed to have juridi-

78 Andrew Clapham, *Brierly's Law of Nations, An Introduction to the role of International Law in International Relations*, 7th Ed. Not. 24, p. 64.

79 Bruno Simma, Philip Alston, "The Sources of Human Rights Law", *Australian Yearbook of International Law Vol.* 12 no. 82, 1992, p. 103.

80 Kunadt, quoting Niels Petersen, "Der Wandel des ungeschriebenen Völkerrechts im Zuge der Konstitutionalisierung", *Archiv des öffentlichen Rechts*, Vol. 46, 2008, no. 502, p. 512, in Nadja Kunadt "The Responsibility to Protect as a General Principle of International Law" *Anuario Mexicano de Derecho Internacional*, Vol. 11, 2011, not. 190, p. 216.

cal consequences.[81] One of them is their law interpretative authority.[82] On this matter very edifying is the point of view of an eminent author that will further enlighten the status of the responsibility to protect and human security through the Resolutions which enshrine their meanings:

"*Because each of the "law-government" institutions in the international community, including such bodies as the General Assembly, have a role to play in the formation of rules to govern international conduct, the status of many of these resolutions may, in fact, be greater under existing international law than the disagreements on their law-making authority would seem to suggest. There is in fact considerable support to be found in the existing rules of international law and in the practice of states to demonstrate that "recommendations" like those of the General Assembly should be considered at two levels of operation. On the one hand, when these resolutions emerge in the form of "declarations" or other statements "interpreting" the provisions of the organic instrument which orders the operation of the organization, a good case can be made out for recognizing these declarations or statements as the only definitive "legal" definitions of these instruments, in certain circumstances. At the second level, although a resolution may not purport to interpret the organic instrument of the organization it may, under the existing law creating structure of international law, become a potent source for the establishment of international legal obligations. In considering the legal status of the interpretive functions which may be carried out by international bodies, like the General Assembly, some of these resolutions which carry out this task may be in fact the only definitive rulings which can set standards with respect to the empowering provisions of a legal instrument like the United Nations Charter. In the case of the General Assembly and with respect to the Security Council, too, neither body is bound by the decisions of the International Court of Justice on the interpretation of the Charter and neither of these bodies is under any obligation to seek the opinion of the Court on the meaning of the Charter. Added to this, in the case of these United Nations bodies there is strong support for the contention that each principal organ of the world body was always intended to carry out its own interpretation of the terms of the Charter which relate to the organ's sphere of activities, subject to voluntarily seek-*

81 See important trends of this debate in D. Kennedy, pp. 30-33, Obed Y. Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations*, Martinus Nijhoff, The Hague, 1966, M. J. Petersen, The United Nations General Assembly, (Global Institutions Series), Routledge, Taylor and Francis Group, London, New York, 2006, not. 6, 7, 8 and 9 p. 8.

82 Alex C. Castles, "Legal Status of UN Resolutions", *The Adelaide Law Review,* Vol. 3, no. 68, 1967, p. 79.

ing "advice" from the International Court on a controversial question. Even if there was authority vested in the International Court of Justice to make binding and authoritative interpretations of the United Nations Charter there are almost certainly provisions in this instrument which are not susceptible to traditional legal analysis under the existing Statute of the Court. The reasons for this are not hard to find. First. *the Charter is not a precisely worded document in manv places and indeed it would have been difficult, if not impossible, to get agreement at San Francisco on a document which did not contain many ambiguities and references to "aims", "principles" and "purposes"(...) Secondly, even without reference to these aims, principles, and purposes, a number of provisions are hortatory in their content and may not be susceptible to traditional legal analysis by bodies such as the International Court of Justice. The fact that a provision in the Charter may not be susceptible to legal analysis does not mean, however, that the opinions of a political organ in interpreting such a provision cannot be law-making in their effect. Where provisions are interpreted in the light of aims and principles or when they are hortatory in their content, as in Chapter XI of the Charter and to some extent in Chapter XII, political judgment seems to be required by the Charter itself to determine, through resolutions of the appropriate United Nations organs, the meaning to be ascribed to these provisions. These resolutions, for* the time *being, set the standards which are required by the international organization for implementing the terms of its authority. In these circumstances, the judgments of the political bodies which are empowered to do this are paramount and in the case of the General Assembly resolutions and those of the Security Council, these are, in the absence of advice being sought from the International Court of Justice, the only rulings which can be given on the meaning of these provisions.*[83] This point of view clarifies the legal binding status of United Nations General Assembly Resolutions and in the same way, clarifies that the law finality-category of general principles bears a law interpretative authority.

The Outcome of the 2005 world Summit and the Consensus on Human security which are United Nations General Assembly Resolutions, respectively provided the sense of the Responsibility to Protect and human security, which needed clarification and what no other institution than the General Assembly could do. So these Resolutions are not merely recommendations, they signify these concepts within the world order of the United Nations Charter. Thus they have an interpretative force of international law. Taking into consideration the content of the meanings they provided, the responsibility to protect and human

83 A. C. Castles, pp.79-80.

security cannot be considered as belonging to the legal formalism category of general principles of law, but rather have to be considered at the rank of the law finality general principles of law. The responsibility to protect gives the true account of sovereignty in relationship with the commitment against international serious crimes. Human security gives an account of the sense of state governance and the international part of it at the benefit of human persons. Thus both signifies, in a certain way, the current general international law.

After concluding that the responsibility to protect and human security are principles of international general law, we have to deal now with their authority. Is the way they allow us to understand existing international law binding? Is their interpretive authority binding? Asking that is in fact asking if the international community is bound by the way the responsibility to protect and human security signify current international law, through the resolutions which enshrine them. On this matter, let us immediately learn that "*although a variety of arguments may be advanced (...) to show that many resolutions of a body like the General Assembly may be binding and authoritative under international law, this does not mean of course that they have, in the normal course of events, any marked degree of enforceability. Steps are possible to make them directly enforceable by the Security Council taking up a matter dealt with by the Assembly*"[84]. This point of view is relevant as far as the responsibility to protect and human security are concerned. According to the Outcome of the 2005 World Summit, the responsibility to protect bears primarily on the State and secondarily on the international community. Since it just reminds States of their well-known responsibility to protect their citizen from mass atrocities, it is not adding anything new in the international law favorable for individuals (human rights, refugee, humanitarian law). The part of the responsibility of the international community also reminds the United Nations responsibility under the Charter, in its chapter VI, VII, VIII. Most important in that matter is the role of the Security Council, regarding international peace and security and it well clarifies that is on a case-by-case basis that it will act, as usual.

Regarding the responsibility to protect, the *Note by the General Assembly President on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*[85] sheds light on the legal scope and value of this concept in international affairs. Its entry is un-

84 A. C. Castles, p. 83.

85 United Nations, General Assembly, Follow-up to the outcome of the Millennium Summit, *Concept note on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*, Note by the President of the General Assembly, A/63/958, 9 September 2009.

equivocal: "*The five main documents in which responsibility to protect has been articulated are the High-Level Panel's "Report on Threats, Challenges and Change"; the Secretary-General's report "In Larger Freedom"; the Outcome Document of the World Summit 2005; United Nations Security Council Resolution 1674; Secretary General's report on "Implementing the Responsibility to Protect". None of these documents can be considered as a source of binding international law in terms of Article 38 of the Statute of the International Court of Justice which lists the classic sources of international law*"[86]. This point of view immediately enables to understand that the legal worth of the Responsibility to protect, at least as it emerges from the meaning that it is assumed within the General Assembly, is that of soft law, and if one dares not simply to speak of a "common intention" of States. Edifying and rightly is the continuity of this note from the General Assembly:

"*At the negotiations on the World Summit Outcome Document, the then United States Permanent Representative John Bolton stated accurately that the commitment made in the Document was "not of a legal character". The Document is carefully nuanced to convey the intentions of the member States. Paragraph 138 when it deals with the individual State's responsibility to its own people is clear in its commitment. When it comes to the international community helping States, the phrase used is a general appeal — "should as appropriate". Paragraph 139 continues this nuanced approach. The language is clear and unconditional when it speaks of the "international community through the UN" having the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI and VIII of the Charter". The Document is very cautious when it comes to responsibility to take action through the United Nations Security Council under Chapter VII. Paragraph 139 uses at least four qualifiers. Firstly, the Heads of State merely reaffirm that they "are prepared" to take action, implying a voluntary, rather than mandatory, engagement. Secondly, they are prepared to do this only "on a case by case basis", which precludes a systematic responsibility. Thirdly, even this has to be "in cooperation with regional organizations as appropriate". Fourthly, this should be "in accordance with the Charter" (which covers only immediate threats to international peace and security). Finally, the Heads of State emphasize "the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law (empha-*

86 UN, A/63/958, Annex, p. 3.

ses ours). It is therefore, amply clear, that there is no legally binding commitment and the General Assembly is charged, in terms of its responsibility under the Charter to develop and elaborate a legal basis."[87]

This view correctly points out that the Responsibility to Protect only has a legal worth within the framework of the powers recognized to the Security Council under Chapter VII of the UN Charter. If this eminent institution qualifies, in accordance with article 39 of this Charter, the existence of a threat to the peace, of a breach of the peace or an act of aggression, situations of massive violations of rights human rights, including serious crimes against civil populations, it can then intervene, if it so decides. The nature of the intervention may or may not be military, in accordance with article 39. Thus, the Responsibility to protect only comes under international law when the Security Council decides to intervene, at its discretion, to protect civilian populations from massive violations of their rights, presenting themselves as serious international crimes. In other words, if, in its discretion, the Security Council does not find all situations of large-scale human distress as a threat or a breach of international peace and security, then there can be no substantial actions taken in this respect, engaging the entire international community. In line with these considerations, the Security Council effectively dealt on a case-by-case basis with situations of human distress. We can cite in particular the Resolutions 1962 regarding Côte d'Ivoire and 1973[88] and 1973 regarding Libya[89] which noted the State responsibility to protect its populations from serious international crimes, the threat to international peace and security that constituted situations of human distress in these countries, and the responsibility of the United Nations to intervene.

As we see, the responsibility to protect is not a novelty within both current domestic orders and the international order. Instead of bringing news rules binding the international community, it is rather an interpretative principle or which signifies the current international law. It is an expression of a commitment of the international community, already enshrined in the United Nations Charter. Furthermore, as we have seen, mass atrocities are also evidence of gross human rights violations. So the responsibility to protect is an appeal to more serious respect of International law favorable for human beings. Thus, it is an affirmation of the sense of various branches of the existing international law centered on the general principle of responsible sovereignty. It could also perform as a principle that can inspire the elaboration of new binding norms.

87 UN, A/63/958, Annex, p. 3.

88 United Nations, Resolution, 1962, S/RES/1962, 20 December 2010.

89 United Nations, Resolution 1973, S/RES/197, 17 March 2011.

As regards Human security, the same reasoning applied for the Responsibility to Protect can apply for it. The United Nations consensus on Human security, even if it has some interpretive authority, is not enforceable. The sense of general international law it clarifies regarding general governance for human beings within the state at the charge of each of them and subsidiary at the charge of the international community cannot be considered as binding. The Consensus well confirmed that at the end of paragraph 3 (h): "*Human security does not entail additional legal obligations on the part of States*". The non-binding legal status of human security is less questionable, due to its all-encompassing character. Even if there is a need, it could not be invocated before a court. Rather, various branches of international law, human rights, international criminal law, refugee, health, humanitarian, can be called forward for guaranteeing human security. Therefore Human security has a much higher purpose of recalling the true sense both of domestic and international law, that is, responsible sovereignty.

From all these developments we can note that the legal status of the responsibility to protect and human security confirms that the meanings they received within United Nations are the expression of the current world order of the United Nations Charter, nothing more, nothing less. However, from another standpoint, that is, the objective substances of the responsibility to protect and human security by themselves, these meanings can show some ambiguity which truly signifies the real sense of the current world order.

II. The Ambiguity of the Meanings of the Responsibility to Protect and Human Security within the United Nations

The meanings of the Responsibility to Protect and human security within the United Nations show some conceptual ambiguities which reflects on the kinds of responses they are supposed to entail.

A. Conceptual Ambiguities of the Meanings of the Responsibility to Protect and Human Security Within the United Nations

The signification of the responsibility to protect and human security within the United Nations shows conceptual ambiguity on the distinction between the two concepts and on human security specifically.

1. The Ambiguity of the Distinction Between the Responsibility to Protect and Human Security

The official position of the United Nations on the responsibility to protect was enshrined in the 2005 World Summit Outcome, notably in paragraphs 138 and 139, under the title "*Responsibility to protect populations from genocide,*

war crimes, ethnic cleansing and crimes against humanity". The responsibility to protect within the United Nations only concerns serious international crimes and this corresponds to the narrow conception of human security which inevitably shows ambiguity.

The responsibility to protect can be considered as emphasizing the United Nations' political humanitarian intervention to distinguish it from the apolitical humanitarian assistance. The question we will answer here is the following: Doing the responsibility to protect is it not doing human security?

The UN Secretary General's Report[90] on the *Responsibility to protect: timely and decisive response* noted that "*The need for a collective response to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity was founded on the brutal legacy of the twentieth century, marred as it was by the Holocaust, the killing fields of Cambodia, the genocide in Rwanda, the mass killings in Srebrenica and other events. These and other tragic events, which underlined the profound failure of individual States to live up to their responsibilities and obligations under international law, as well as the collective inadequacies of international institutions, led my predecessor, Secretary-General Kofi Annan, to take a series of steps that resulted in the development of the concept of the responsibility to protect*"[91]. The development of the Responsibility to Protect was necessary given the serious consequences of violent conflicts on civilian populations. The evidence that people are often subject to abuses due to their direct targeting or that they are very often collateral victims during violent conflicts necessitated measures for their protection. From the start, violent conflicts have always been linked to serious international crimes through massive human rights violations. It is precisely them that led the United Nations to recognize their responsibility to intervene for the protection of civilian populations within the borders of sovereign States. It has to be noted that human security also emerged, through the 1994 UNDP Report, in the context of those early acute human distress within States. But a curious distinction has been established between human security and the responsibility to protect.

The main international characteristic of international core crimes including genocide, war crimes, ethnic cleansing, crimes against humanity, regarding the

90 United Nations, General Assembly, Follow-up to the outcome of the Millennium Summit, *Responsibility to protect: timely and decisive response*, Report of the Secretary-General, A/66/874–S/2012/578, 25 july 2012.

91 UN, A/66/874–S/2012/578, Parag. 4, p. 2.

responsibility to protect, is that they are against the essence of humanity.[92] This is why they are often considered as flouting the conscience of humanity.[93] That justifies the universal nature of these crimes[94] and clarifies that they are crimes against human nature.[95] Since this is an identity gathering all the members or individuals who belong to it, it is, therefore, a question of crimes against the very essence of man or crimes against mankind. These considerations are part of human security which means the security of the human.[96] Accordingly, security is the state of well-being consubstantial with human nature. Thus Human security is in the order of the fundamental requirement of human nature, and it is therefore essential to it, so that it is not enough to be a human being but to be in security. So since Human security can be considered as giving the account or embodying the true reality of human nature, as they flout this nature in its very essence, what consequently justifies the interest of the whole international community, serious international crimes can only be crimes against human security. Just as we speak of human nature in the case of serious international

92 Those crimes are summing up in the generic of "crimes against humanity", which "*are said to be crimes against the human status or condition* (Otto Kirchheimer, *Political Justice*, *The Use of Legal Procedure for Political Ends*, Princeton University Press, Princeton, 1961), *against the human person or personality* (Eugène Aroneanu, *Le Crime Contre l'Humanité*, Dalloz, Paris, 1961), *against the nature or the essence of mankind* (Jean Graven, "Les Crimes Contre l'Humanité", *Recueil des Cours* Vol. 76, 1950, pp. 433), *against the essential attributes or essential rights of human beings* (Robert H. Miller, "The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity", *American Journal of International Law*, Vol. 65, 1971, p. 476). *They are acts "destructive of a person's humanity"* (Steven R. Ratner, Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, Oxford University Press, Oxford, 2001, p. 3), in Norman Geras, *Crimes against Humanity. A birth of a concept*, Manchester University Press, Manchester and New York, 2011, p. 52.

93 Preamble of the Rome Statute of the International Criminal Court. The International Court of Justice recognised that it had been the intention of the United Nations "*to condemn and punish genocide as a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to the spirit and aims of the United Nations (Resolution 96 (I) of the General Assembly, December 11th 1946)*", See International Court of Justice (ICJ), *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 28 May 1951, *I.C.J. Reports 1951*, quoted in Terje Einarsen, *The Concept of Universal Crimes in International Law*, Torkel Opsahl Academic EPublisher, Oslo, 2012, p. 145.

94 Einarsen, p145; Geras, p. 59; David Luban, "A Theory of Crimes against Humanity", *Yale Journal of International Law*, Vol. 29, pp. 85-167, 2004, p. 90.

95 "*What harms them [the direct victims], harms us all … because we are in some way, due to our common human nature, implicated in their suffering*" Eve Garrard, "Forgiven, quess and the Holocaust', *Ethical Theory and Moral Practice* Vol. 5,2002, pp. 147–65, at 159; quoted in Geras, p. 58.

96 Barbara von Tigerstrom, *Human Security and International Law, Prospects and Problems*, Oxford and Portland, Oregon, 2007, p. 5.

crimes, so we speak of human nature concerning human security. We can simplify as follows:

a. Human nature = Serious international crimes = Responsibility to protect (UN meaning)

b. Human nature = Human security (Objective meaning)

c. Human security = Serious international crimes = Responsibility to protect

So we realize that if the United Nations signifies serious international crimes as a concern that is managed under the label of the responsibility to protect and not of human security, there is an ambiguity. Obviously, this is a decreed (political) definition.

The most basic definition of human security that comes out of all the international thinking process is freedom from fear and freedom from want.[97] Serious international crimes undoubtedly are related to freedom from fear. This implies the protection of all violent events bearing harmful consequences on the physical and moral integrity of human beings. The level of fear that serious international crimes can inflict on individuals is unimaginable. The responsibility of States and international society consists precisely in guaranteeing individuals the freedom from that fear. This responsibility, concerning the responsibility to protect and human security, as they are enshrined within the United Nations, rests mainly with the State and secondarily to the United Nations, except that the regime of the intervention of the United Nations is different in the two cases: the sovereign decision of the UN Security Council regarding the responsibility to protect and a state request for support to the international community regarding human security. In either case, how could we think that implementation of the responsibility to protect populations from international core crimes cannot help in guaranteeing them freedom from fear? Since it cannot be said, it is still clear that the responsibility to protect is a matter of human security.

According to the report of the ICISS Report, the responsibility to prevent consists of eliminating both the root and the direct causes of internal conflicts and other man-made crises that endangered populations.[98] The Secretary General's Report entitled: *Responsibility to Protect: State Responsibility and Prevention*,[99] "*Since economic deprivation or real or perceived dispari-*

97 "*In UN documents and debates, human security is often characterized as incorporating the two pillars of the UN charter whichare the foundations of human rights instruments: "freedom from want" and "freedom from fear",* in Fukuda-Parr, Messineo, p. 6.

98 UN, A/RES/66/290, Parag. 3 b) and c).

99 United Nations, General Assembly, Follow-up to the outcome of the Millennium Summit, *Responsibility to protect: State responsibility and prevention*, Report of the Secretary-General,

ties constitute risk factors for atrocity crimes, a range of political, economic and social measures can be taken to increase actual or perceived equity in the distribution of resources, assets, income, and opportunities among groups and to promote overall economic development and prosperity. Relevant measures to promote horizontal equality could include employment and safety net programmes for marginalized populations, including young people, as well as fiscal reforms to enhance transparency and equity. Anti-discriminatory initiatives and policies aimed at reducing corruption, including corruption or favoritism linked to identity, can complement these reforms. Since corruption and inequity undermine the legitimacy of State, such reforms can contribute to mitigating grievances that create instability"[100] This paragraph is related to the preventive component of the responsibility to protect from serious international crimes and includes multidimensional measures which may be political, economic or social. This range of measures is well suited to the global and contextual nature of government responses to the benefit of human security, which also emphasizes prevention.[101] How then can one do the responsibility to protect without doing human security? This is only possible from and through a decreed (political) definition.

The reactive component is further highlighted within the responsibility to protect. When preventive efforts have failed to preclude the occurrence of crisis, then duty bearers must react. This reaction effectively consists of protecting populations from mass violence. Protection is also the other component of human security. According to the Report of the Secretary-General *Follow-up to General Assembly resolution 64/291 on human security*, it is noted that "*human security aims at ensuring the survival, livelihood, and dignity of people in response to current and emerging threats — threats that are widespread and cross-cutting. Such threats are not limited to those living in absolute poverty or conflict. As evidenced by the recent earthquake and tsunami in east Japan and the financial and economic challenges in Europe and the United States of America, today, people throughout the world, in developing and developed countries alike, live under varied conditions of insecurity. These threats seriously challenge both Governments and people, and call for a rethinking of security where the protection and empowerment of individuals form the basis for achieving stability, development, and human progress*".[102] Protecting

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A/67/929–S/2013/399 9 july 2013.

100 UN, A/67/929–S/2013/399, Parag. 45, p. 12.

101 UN, A/RES/66/290 66/290, Parag. 3 (b).

102 *Follow-up to General Assembly resolution 64/291 on human security*, Report of the Secretary-General, A/66/763.

populations from mass violence is effectively working for their survival. When such crises do occur, they are in fact, before reaching the saturation point that is the crisis, existing threats because they involve serious risk of acute distress on civilian populations and that is why protection is crucial. The Consensus on Human Security also mentions in paragraph 3 (b) that "*Human security calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities*". We can still see the responsibility to protect and human security equally. Concluding then to a difference between the two concepts can only come from an international political decree. Let us note it again in the aforementioned report of the Secretary-General *Follow-up to General Assembly resolution 64/291 on human security*.

Indeed: "*the notion of human security is distinct from the responsibility to protect and its implementation. While human security is in response to multidimensional insecurities facing people, the responsibility to protect focuses on protecting populations from specific cases of genocide, war crimes, ethnic cleansing, and crimes against humanity. As such, human security has broader application, bringing together the three pillars of the United Nations system, whereas the responsibility to protect centres on the aforementioned situations*".[103] The word "difference" means that there is no general similarity between two things. If the concerns for human security are among the multidimensional situations that individuals face daily, then when they are subject to mass violence, as was a certain daily in Rwanda in 1994, in Srebrenica in 1995, or Libya in 2011, these are human security concerns. What this report says is that the responsibility to protect deals specifically with serious international crimes. So, since these are facts that also come under human security, then the responsibility to protect becomes a specific element or a component of human security. This analysis is confirmed in the Report's own words, particularly, the broad scope of human security and the specificity of the responsibility to protect. Human security is therefore the general and the responsibility to protect, the specific. But there can be no question of seeing a difference, but rather the wholeness of human security and a part of it which is the responsibility to protect. At this level, one can still certainly say that doing the responsibility to protect is doing human security. So there is no difference.

Another indication is important in this explanatory passage: the interests in the three pillars of the United Nations, namely peace, human rights, and development, are put in the account of human security, this, without being specified

103 UN, A/66/763, p. 6.

for the Responsibility to protect. So one would ask whether the responsibility to protect does not also include these three pillars. Referring to the point of view of the ICISS, we can note this link between the responsibility to protect and these pillars:

"*The current debate on intervention for human protection purposes is itself both a product and a reflection of how much has changed since the UN was established. The current debate takes place in the context of a broadly expanded range of state, non-state, and institutional actors, and increasingly evident interaction and interdependence among them. It is a debate that reflects new sets of issues and new types of concerns. It is a debate that is being conducted within the framework of new standards of conduct for states and individuals and in a context of greatly increased expectations for action. And it is a debate that takes place within an institutional framework that since the end of the Cold War has held out the prospect of effective joint international action to address issues of peace, security, human rights, and sustainable development on a global scale.*"[104]

"*This Commission certainly accepts that issues of sovereignty and intervention are not just matters affecting the rights or prerogatives of states, but that they deeply affect and involve individual human beings in fundamental ways. One of the virtues of expressing the key issue in this debate as "the responsibility to protect" is that it focuses attention where it should be most concentrated, on the human needs of those seeking protection or assistance. The emphasis in the security debate shifts, with this focus, from territorial security, and security through armaments, to security through human development with access to food and employment, and to environmental security".*[105]

"Prevention of deadly conflict and other forms of man-made catastrophe is, as with all other aspects of the responsibility to protect, first and foremost the responsibility of sovereign states, and the communities and institutions within them. A firm national commitment to ensuring fair treatment and fair opportunities for all citizens provides a solid basis for conflict prevention. Efforts to ensure accountability and good governance, protect human rights, promote social and economic development and ensure a fair distribution of resources point toward the necessary means"[106]

These three paragraphs highlight that peace, human rights, and development are of interest under the responsibility to protect. The preventive component of

104 ICISS Report, p. 3.
105 ICISS Report, p. 15.
106 ICISS Report, p. 19.

it necessarily includes these pillars. If human rights are fully guaranteed in all their interdependence, it is almost plausible that society would not turn against itself. If there is peace in a society, then this is evidence of the absence of internal conflicts. Development, which is generally defined as the extension of individuals' capacities of choice allows in conformity with human rights principles, the satisfaction of these, and social peace. Thus, concerning the pillars of the United Nations, the explanation of the Report of the Secretary-General would have focused only on the "reaction" component of the responsibility to protect, which as such would imply certain measures that would not include human security. That would be ambiguous when we know that the reaction is not the only measure signifying the Responsibility to protect. If this one includes in its specific character, the three pillars of the United Nations, precisely in its preventive component, in the same way as human security in its general character and if the reaction to protect populations from mass violence serves to provide them with freedom from fear, an essential component of human security, then and again the responsibility to protect and human security mean each other.

What is to be noted in fine is that Human security has been subject to two conceptions: a broad, reflecting all threats that can have a bad impact on human life, and a narrow, reflecting the most important threats which are the most violent. A little attention on the doing of the United Nations leads us to note that the broad conception of human security is what is enshrined as the official meaning of Human security, while the narrow conception is enshrined as the official meaning of the responsibility to protect, removing at the same time, any equivalence with human security. The international political decree, standing as the meanings of the responsibility to protect and human security within the United Nations is therefore a separation of matters within Human security and ultimately does not succeed in convincing of the absence of a conceptual identity between them.

2. The Ambiguity of the Meaning of Human Security in Itself Within the United Nations

Concerning human security mainly, the only reference to its synthetic definition of freedom from fear and freedom from want enables us to conclude that the international consensus on human security is ambiguous. Indeed, let us recall, paragraph 3 (e) provides that "*Human security does not entail the threat or the use of force or coercive measures. Human security does not replace State security*". This provision is very surprising because it inscribes the use of force outside human security. It is clearly contradictory to its component "freedom from fear". If measures are taken for the protection of public order, for the

safety of populations, as well as preventive measures, then would not human security be done? It is clear from the formulation of the international Consensus that human security cannot be done this way. This is a blatant contradiction of the freedom of fear-component of human security. How can people be protected from fear, by measures to protect and to prevent attacks on their safety without doing human security? The 1994 UNDP Report already notes that human security can be explicitly defined as "*first, safety from such chronic threats as hunger, disease, and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life-whether in homes, in jobs or in communities*".[107] What therefore is the sense of the protection implied by human security? If such protection exists without the use of force then would it be a question of guaranteeing freedom from fear only by preventive measures? That cannot be said. Human security, as recognized in the International Consensus in paragraph 3 (b), calls for global responses, adapted to the context which reinforces protection. Furthermore, the Secretary General's Report: *Follow-up to General Assembly resolution 64/291 on human security*, notes that "*human security makes no distinction between civil, political, economic, social and cultural rights and as a result addresses threats to the survival, livelihood, and dignity of people in a multidimensional and comprehensive manner*".[108] How then would such comprehensive, multidimensional, and integrated responses preclude the use of force for human security? One could not think so.

In reality, paragraph 3 (e) reflects the reluctance of the United Nations to fully assert that human security includes everything related to the conservation of individuals. So it is privileged a separation of matters, like that of paragraph 3 (e) which distinguishes human security from the security that the State must guarantee. In the understanding of the United Nations, there are several conceptions of security: human security, security through force, or more generally security of the territory or national security. It is difficult to think that within the United Nations conception, a matter of human security is a matter of national security and vice versa. Besides, from the start, the concept of human security has always been considered to be different from the traditional concept of state security, which includes military, territorial security[109]. The ambiguity of that is clearly shown by a simple reliance on the essential components enabling to define the concept of "State" in every domestic constitutional law:

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107 1994 UNDP Report, p. 23.

108 *Follow-up to General Assembly resolution 64/291 on human security*, Report of the Secretary-General, A/66/763, p. 6.

109 1994 UNDP Report, p. 24.

a population, a territory, a government. So state security is normally security inclusive of all its components, Let us schematize:

a. State = Populations (human beings) + Territory + Government

b. State Security= Populations Security + Territory Security + Government Security

c. So if Populations Security= Human beings Security = Human security,

d. Then State Security = Human security + Territory Security + Government Security.

Based on this, how can Human security be different from state security? It is only possible if State security means or means more something else or is exclusively signified by one or two components. In such a hypothesis, we have to note that among the essential components of the State, populations are the most essential since there is nothing conceivable without human beings. Thus if reference is made to the territory, does this one not have a sense just for human beings who are settled or living within it or are taking from it their ressources? If the emphasis is on the government, does this one not have a sense only for human beings for whom it is established and supposed to serve? Even if it is about ruling, a government has to rule human beings. Thus, without human beings, there is no government. At the extreme, since there cannot be in fact a distinction between "state security" and human security, that is only possible through a political decree.

Furthermore, the words used to signify human security are so inclusive that the distinctive apprehension the United Nations maintains about the so-called traditional security is betrayed: "*human security underscores the universality and interdependence of a set of freedoms that are fundamental to human life: freedom from fear, freedom from want and freedom to live in dignity. As a result, human security emphasizes the interlinkages between security, development, and human rights and considers these to be the building blocks of human and, therefore, national security*".[110] As soon as we agree to signify human security as freedom from fear and freedom from want, everything is included, the military, the non-military the territorial, the non-territorial, the use, and the non-use of force, prevention, reaction, economic, political, social, cultural, etc. This is what global, multidimensional, integrated, universal responses refer to. That is the understanding implied by the essential substance of human security.

110 *Follow-up to General Assembly resolution 64/291 on human security*, Report of the Secretary-General, A/66/763, Parag. 18, p. 5.

Indeed, human security in its essential substance allows us to acknowledge that it is the real state of human nature. Since it is an existing one, it can no longer be created or realized, since it is already real but rather is to be confirmed in what it is. In other words, the human being is devoted to its conservation or its permanent continuity in this state which accounts for his nature. This nature being one in its bi-dimensionality, namely the material and the immaterial, the logic of its conservation can only concern these two dimensions. This logic implies that everything that concerns the conservation of the human person is a natural concern for human security. That reflects in the early apprehension of human security in the 1994 UNDP Report. That broad conception of human security, which is the one the United Nations adopts effectively, is however subject, at the same time to a reduction of scope, which cannot substantively work, but through a political agreement.

The decree at work relating to the concepts of the responsibility to protect and of human security from the United Nations means that in their current states, a meaning has been decided to them, that the meaning of these concepts has been agreed upon by the different members of the United Nations. It is therefore a political consensus on the meaning of the responsibility to protect and human security, instead of the objective meaning that these concepts carry or simply are in themselves. The United Nations formulation is certainly ambiguous and it is necessary to note that because it implies practical consequences which do not always result in the conservation of the sets of individuals who constituted themselves into political societies or (politically) organized themselves for this purpose.

B. The Ambiguous Intervention under the Responsibility to Protect and Human Security Within the United Nations

The responsibility to protect and human security do not entail the same interventions or at least the same type of responsibilities. Having unveiled the ambiguity existing in the current United Nations understanding of these concepts, and having concluded in a substantial identity between them, we have come to conclude that the distinction was certainly decreed based on a certain choice of the consequences they had respectively to lead to in terms of intervention. This latter in turn could only show ambiguity.

Let's start by recalling the responsibilities under the responsibility to protect and human security. Concerning the responsibility to protect, the 2005 World Summit Outcome specifies in paragraph 138 that "*Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails*

the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it."[111] Then paragraph 139 mentions that: "*The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity*".[112]

The responsibility to protect therefore rests primarily with the State and secondarily with the international community. Only the latter's responsibility, particularly within the framework of the United Nations, will interest us since the primary responsibility of the State is a truism based on the meaning of sovereignty as responsibility. On this same basis, the secondary of the United Nations is comparatively more questionable. So far, the United Nations intervention to protect civilians from serious international crimes has been part of international peace and security. In this context, it is much more related to the reactive component of the responsibility to protect.

The United Nations' decisions in matters of international peace and security bind the entire international community. In this matter, the United Nations is considered as ruling over all States. These are required to assist in the execution of the decisions taken.[113] The Security Council, through the United Nations,

111 2005 World Summit Outcome, p. 30.

112 2005 World Summit Outcome, p. 30.

113 According to article 2 paragraph 5 of the United Nations Charter, "*All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain, from giving assistance to any State against which the United Nations is taking preventive or enforcement action*".

becomes a kind of ruler of international society, much like the executive power represents the government within states. The responsibility to protect from serious international crimes has been recognized as falling within the framework of international peace and security and thus these situations of acute violence against civilians are considered as threats to or breaches of international peace and security. The situations which have given rise to this qualification at the international level have entailed a binding intervention of the United Nations whether or not it was armed. At the same time, the preventive component of the responsibility to protect does not have the same authority. It is generally left to the full authority of the State, and the United Nations only intervenes in complementarity. However, this way of doing has a consequence on the occurrence of crises. The Secretary-General of the United Nations, in his Report: *Mobilizing collective action: the next decade of the responsibility to protect*,[114] notes that "*Despite this progress, the international community has fallen woefully short of its aspiration to prevent and respond to atrocity crimes. As noted in my report for the World Humanitarian Summit, brutal and intractable conflicts are devastating the lives of millions of people in almost every region, threatening the futures of entire generations. Today we face a more challenging context, in which some States and non-State actors routinely threaten populations and make calculated decisions to disregard their legal obligations and protection responsibilities. Some of these situations, such as in Iraq and the Syrian Arab Republic, have been the focus of sustained international attention, while others, such as the Democratic People's Republic of Korea, Eritrea and South Kordofan in the Sudan, have been kept from our view. At a moment when so many of the international norms and standards related to protection are being flouted, it is crucial that Member States remain true to the commitments they made in 2005*".[115] The United Nations resolutory practice, especially from the Security Council then becomes ambiguous.

Indeed, in the implementation of the responsibility to protect, a stronger focus on the reaction or a stronger authority recognized to it to the detriment of prevention would let understand that the latter is less important than the former. In reality, prevention is far more important than reaction because the occurrence or "realization" of the crisis is an indicator that prevention has failed since its purpose is precisely to prevent the "realization" of the crisis. Crisis prevention is used to act on the root and immediate causes of crises so

114 United Nations, General Assembly, Follow-up to the outcome of the Millennium Summit, *Mobilizing collective action: the next decade of the responsibility to protect,* Report of the Secretary-General, A/70/999–S/2016/620, 22 july 2016.

115 UN, A/70/999–S/2016/620, Parag. 4, p. 2.

that they do not reach the saturation point of the crisis. In other words, crisis prevention aims at acting on the *crisis in potential* so that the crisis does not materialize. As the increased violence against civilians has always been proven anthropogenic, its prevention is much more realist than the prevention of crisis of natural origin, given the great hazard weighing on them. The prevention of these crimes then consists of diagnosing and working to contain all the causes which could lead to serious international crimes. Successful preventive action cannot therefore result in a crisis.

The United Nations resolutory practice would therefore suggest that a greater authority of action on the effect of the cause would be more important than a greater authority of action on the cause of the effect when in reality it is quite the opposite. International peace and security are much more threatened by the causes of serious international crimes than by their effects. Because without cause, no effect. It is the failure of action on the cause that makes possible the occurrence of their effects. Addressing the causes of these crimes would result in lasting international peace and security, without mentioning the low cost involved. It is therefore the preventive component of the responsibility to protect which should benefit from a much more substantial authority or at least the same as that which benefits reaction of the United Nations resolutory practice. Since these crimes against civilian populations are a concern for international peace and security, what suggests that all States are equally offended, all the authority of the consequent resolutory practice is justified. Then the causes of these crimes which make them possible or materialize them are therefore as much a concern for international peace and security and, consequently, the measures to manage them should be invested with the same authority as the reactive measures managing the effects they produce. The ambiguity is precisely at this level: measures to manage the effects of causes have more authority than measures to manage the causes of these effects, while it is certain that focusing on that latter better secure people for whom interventive protection is undertaken and therefore better guarantees international peace and security. In other words, if international serious crimes, as a matter of international peace and security, imply such an authoritative response of the United Nations, it means that the value at stake is of higher worth, what justifies such kind of reaction, then if there is a possibility to protect this value better than the reactive intervention, how this possibility is not as authoritative as the reaction? It is clear that the lack of authority of prevention against international serious crimes cast a doubt on the real worth of the value at stake. Anyway, there is an ambiguity.

That said, for the few it is interested in, the intervention of the Security Council under the responsibility to protect populations against serious international crimes is disparate and still testifies to all the concern of this resolutory practice for the same peace and international security. Identical situations in terms of amplified violence against civilians, however, receive a difference of considerations or a different interest in intervention. Paragraphs 15 and 16 of the previous report of the Secretary-General[116] are instructive to this effect:

"*Political divisions, particularly within the Security Council, are exacerbating the move away from decisive action — whether for prevention or for response. In some contexts where atrocity crimes have been committed, or are at risk, major global Powers support opposing factions and put these allegiances ahead of their protection responsibilities. The founders of the United Nations recognized the importance of harnessing the power of key States to an effective collective security system, but they also expected members of the Security Council to use their power responsibly and in the interests of greater security for all. Today, however, Security Council deliberations frequently fail to generate common solutions and at times serve to deepen discord among Member States. The Security Council may "remain seized" of a matter, but this is of little relevance to suffering populations unless concrete steps forward are taken*"

"*Security Council disunity is particularly damaging in the early stages of a crisis, when space for dialogue is wider and when strong and united messages from the international community have greater potential to dissuade local actors from following a deadly path. In other instances, vetoes by permanent members, whether used or threatened, preclude the identification and pursuit of a common purpose. The pattern of violence during the Syrian crisis tragically illustrates the impact of this deadlock on the behaviour of the warring parties, who can feel emboldened by the lack of strong international engagement. Fighting in the Syrian Arab Republic escalated and conflict-related deaths increased dramatically following the failure of the Security Council to adopt a resolution in February 2012, particularly as a result of the intensified aerial bombardment of populated areas by government forces*"

Thus, after recognizing that the widespread violence suffered by civilian populations is a concern for international security, these situations receive a different intervention, depending on political considerations in force within the Security Council. As we can see in these lines, this is clearly not in compliance with the spirit of the United Nations Charter as it was drafted by the founding fathers of the United Nations. The fundamental reason for this disparate

116 UN, A/70/999–S/2016/620, p. 5.

trend in the United Nations resolutory practice may be the one advanced by the President of the General Assembly in his point of view about the responsibility to protect:

"*The Security Council's powers are not directed even against violations of international legal obligations but against an immediate threat to international peace and security. Collective security is a specialized instrument for dealing with threats to international peace and security and not an enforcement mechanism for international human rights law and international humanitarian law. The discretion given to the Security Council to decide a threat to international peace and security implies a variable commitment totally different from the consistent alleviation of suffering embodied in the responsibility to protect. (...) [Furthermore] In case a responsibility to protect type of situation becomes a threat to international peace and security, the question of the veto will arise. The veto ensures that any breach committed by a permanent member or by a member state under its protection would escape action. Member states, therefore, need to decide whether "a mutual understanding" among permanent members "to refrain from employing or threatening to employ the veto" in responsibility to protect situations is adequate or whether an amendment of the Charter is necessary. A "mutual understanding" implies no enduring obligation and therefore has no legal force. The problem is that if a veto has been cast, the General Assembly cannot overturn it; even without it, the General Assembly cannot take up a matter that is on the agenda of the Security Council.*"[117]

This point of view reveals a very reductive understanding of the concept of the Responsibility to Protect and all the realism that surrounds the $$$ United Nations resolutory practice concerning international peace and security. Obviously, this conception is not that which the States adopted at the end of the World Summit of 2005. Although the Security Council is not the only organ of the United Nations in charge of the responsibility to protect, between these organs, there is officially a distribution of matters concerning that responsibility. It is not because the Security Council acting for international peace and Security would manage to include, in this matter, amplified violence on civilian populations, that it would not imply consequently that this organ reinterprets what it would be supposed to consider of its mandate regarding human security in the sense of an international consensus on what it should be. Likewise,

117 *Concept note on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*, Note by the President of the General Assembly, A/63/958, pp. 4-5.

is there a valid basis for the impossibility to include the prevention of serious international crimes as a concern for international peace and security? If such a basis does not exist, it should also be thought that the veto power of permanent members could stand itself as an obstacle in terms of prevention.

Let us be a realist! If a crisis has materialized into intensified violence against civilian populations and the veto can be applied to block the reaction of international society, the veto can also block all preventive measures to addressing the root and immediate causes of the crisis. For, the veto against the reaction to a crisis, which is nothing more than the effect of a cause, is a simple indicator that the genuinely main subject is not the fate of the civilian victims. In these cases one would be talking about something else, that is to say, the interest of intervention would be quite different or elsewhere. So the root or immediate causes of these crises would surely be of some interest that the veto would also protect in case of a desire to react against them. From this, it emerges that the prevention of serious international crimes against civilian populations can itself create a problem. So we can understand the ambiguity: there may be interests more important than the fate of civilian populations while recognizing at the same time that international serious crimes are inadmissible (from a well-known past) and thus are a matter of international peace and security. The current world order of the United Nations guarantees, through the principle of responsible sovereignty, international stability. If there are interests more important than facts which are considered as damaging international peace and security, which is the indicator of that international stability, and if that is let possible by that same current world order, then this one bears contradiction and therefore is ambiguous.

Having found that the responsibility to protect is included within human security, which fundamentally involves freedom from fear and want, the current ambiguous meaning of the United Nations resolutory practice relating to the responsibility to protect is a concern for human security. The preventive component of the responsibility to protect helps manage the root and immediate causes of serious international crimes. It is therefore undoubtedly interested in the management of all these causes according to their diverse nature, be they political, economic, cultural, etc. Such measures are therefore global, multidimensional, adapted to the context; what comes out of the meaning of human security. According to paragraph 3 (g) "*Governments retain the primary role and responsibility for ensuring the survival, livelihood, and dignity of their citizens. The role of the international community is to complement and provide the necessary support to Governments, upon their request, so as to*

strengthen their capacity to respond to current and emerging threats. Human security requires greater collaboration and partnership among Governments, international and regional organizations and civil society"; and (h) "*Human security must be implemented with full respect for the purposes and principles enshrined in the Charter of the United Nations, including full respect for the sovereignty of States, territorial integrity and non-interference in matters that are essentially within the domestic jurisdiction of States. Human security does not entail additional legal obligations on the part of States*".[118]

The United Nations consensus on human security is clear on the responsibility that entails human security. It is a state matter. International society is limited only to support in such a way it is clear that its responsibility, which one can certainly assume in one way or another, turns out to be very weak in substance. It cannot, therefore, be compared to the responsibility of the United Nations concerning the responsibility to protect, in the United Nations ambiguous understanding, of course, which can lead to reactive measures based on Chapter VII of the UN Charter, dealing with international peace and security. States can well cooperate in areas of common interest, but that does not prevent it to be a matter of national appropriation or, in other words, as a domestic matter, and it is very clearly stated that there are not additional obligations towards States than those which are within their jurisdiction.[119] So human security is not a matter of international peace and security which would entail an intervention of authority from the United Nations.

The United Nations consensus on the responsibility for human security can therefore be equivocal in the sense that it supposes that freedom from fear and freedom from want are not a concern of international peace and security involving an intervention of authority from the United Nations. This consensus is ambiguous in that it notes that human security is a problem of a universal, multidimensional, global character. It was human distress resulting from the internal conflicts in Rwanda, Former Yugoslavia, and Somalia of the 1990s that inspired the 1994 UNDP report on Human Security. How can we think of human security as being all-encompassing including almost everything regarding the conservation of individuals as implying a minimal intervention of the international community concerning the interdependence to which States are willy-nilly subject to? Human security also implies a very strong emphasis on prevention, which encompasses all possible dimensions or areas of human conservation, which are characterized by their cross-border dimensions. More

118 UN Consensus on Human Security, A/RES/66/290.

119 UN Consensus on Human Security, A/RES/66/290, Paragraph 3 (h).

generally, the responsibility to protect falls within the framework of human security, the prevention of serious international crimes not receiving consistent international authority, prevention of human insecurity, therefore, do not receive consistent international authority. This is confirmed in cases of human insecurity still prevalent all over the world and not only in countries characterized by poor or developing. It is a reality of the concern for human security. So we have to think that as long as the root causes of human insecurity are not frankly addressed, human insecurity will persist and in a globalized world, its threat would weigh on all States. We must therefore believe that the United Nations resolutory practice shows that the definitional or political decree of human security which supports it is far from having the positive consequences that its objective substance would imply. There is no question of denying the leading role of the State, it is rather to highlight the ambiguity that arouses the United Nations resolutory practice about human security and to stimulate thinking relating thereto based on human security in its essential substance.

The political distinction between human security and the responsibility to protect has, in fact, all its sense in the kind of intervention from the international community they were conceived to imply: a weak intervention for human security and an authoritative intervention for the responsibility to protect, and even, on a case-by-case basis. What we can see simply that within the United Nations all threats on human security are not of the same worth, what justifies to let human security almost at the responsibility of states. Now can we evaluate what kind of suffering is happening from other kinds of threats? For example how many people have died in the context of economic immigration? How many people have involved in rebel groups and damage lives because of poor conditions of life? Furthermore, the problem of COVID-19 is clearly a matter of public international health. How many lives this pandemic has damaged? Now, is there any difference between the lives damaged by violent threats, on the account of the responsibility to protect (narrow conception of human security) and the lives damaged by “less violent” threats on the account of human security (large conception of human security)? No, we could not. Thus such a distinction within the all-encompassing content of human security is ambiguous. Are we going to say that all those threats are not matters of international peace and security? We are not going to say that, not because it is not so, but because it is how the current world order is. It is ambiguous.

Concluding Remarks

We have undertaken to reassess the meanings of the responsibility to protect and human security within the United Nations. Our thesis was that the

meanings of these concepts depend on the principles of the current world order embodied by the United Nations Charter, which sums up in the responsible state sovereignty. However, referring to their objective substances, the United Nations official position on the responsibility to protect and human security show ambiguity and therefore ambiguity of the current world order.

Our analysis enables us to reach the following concluding remarks. Since we note the conceptual identity between human security and the responsibility to protect, only the tenacity to the current World order of the United Nations Charter can justify such a conceptual distinction, which is political by nature. Its ambiguity informs us of the sense of this order of sovereignties. In the end, all being a matter of human security, such a distinction is a sign that the international community will protect it only insofar as it does not contradict or is in opposition with the current world order of the United Nations Charter, that is, of responsible sovereignty. This one means responsibility inside and outside the State. Inside the States, sovereignty means the commitment to the satisfaction of the basic requirements of individual conservation. Thus the United Nations Charter guarantees a world order where the fate of the human is let in the hands of States, primarily, regarding both human security and the responsibility to protect, and secondarily in the hands of the international community, for the responsibility to protect, and just a supportive cooperation for human security. Outside the State, sovereignty means equality between States and therefore respect of other sovereignties. This conception of sovereignty as responsibility is supposed to assure international stability, which ultimately means the stability of states. It is therefore a matter of state security, very important to underline, in the incomprehensible reductionist sense it has always been understood, in reference to the territory or government. In this sense, it is considered that if States are in security, the whole international society is in security. Then, in this logic, human security, which is *primarily* and *essentially* a matter of State Security, (for it is the most essential component of the State), becomes *secondarily* a matter of State Security, or in other words, human security is at the service of or the means for State security which is the purpose or the finality. Now if human insecurity can undermine state security, the current world order acknowledges that it is a matter of authority of international society in so far as that insecurity is evaluated as undermining international peace and security. If that human insecurity, as it happened in a lot of cases, is not thus evaluated, there would not be an authoritative intervention. So we can see that when there is a deep challenge between human security and state security in that reductionist sense, which, by the way, walks with the national interest, the latter is preferred, then clarifying the sense of the current international order.

The exact meaning of human security is to place the fate of the human at the center of whatever regards politics. Therefore it contradicts *essentially* to focus on the state. That implies to think how basic requirements of human conservation can be satisfied for each human being or what necessary means could lead to that finality. In other words, for human security, the human is the purpose, or the finality, not the State. Now the current world order is not grounded on human beings but on individual States which pursue their interests. Focusing on States and on the human cannot, have the same implications, for (inter) state stability, at least regarding the means necessary for this purpose. Even if the meaning human security receives within the United Nations recognizes well its true universal character, it cannot avoid enshrining it within state security. This can be understandable as human beings are a component of State. Thus, we can see that even the early development of human security in the 1994 UNDP Report stood for a reminder of States that State security implies an essential component of human security and not only territory or government territory. Now the details of human security this Report gives shows their all-encompassing character, that is, including even somehow territory security.[120] From that we can confirm that human security stands as the ultimate purpose of the State. For if there is no human beings who are settled or live in or have an link of affiliation with a territory, which is ruled by a government, there is no State. But since we can have human beings without or before the "State"[121], we can understand that human beings have the primacy over States. Then the clear meaning of State and its rank have to be recognized. Contractualist phi-

120 As a component of human security, an implicit reference to territory security can be diagnosed in "Personal security", by mentioning that "*Perhaps no other aspect of human security is so vital for people as their security from physical violence. In poor nations and rich, human life is increasingly threatened by sudden, unpredictable violence. The threats take several forms: (...) • Threats from other states (war) (...)*". We have to remind that territorial security has always refereed in terms of military defense for the protection of borders. So when the territory is threatened from another State and that there is a need to fight war, personal security is threatened friom that. At the same time it is evidence that the threat to state security, economic security, one other component of human security is threatened.

121 Before emergence of the State from the Treaties of Westphalia, Human beings had to organize themselves in different ways. As example we can note feudalism. For general history, see Michael Mann, *The Sources of Social Power, Volume 1: A History of Power from the Beginning to 1760 AD*, Cambridge University Press, 1986, pp. 1-34; Michael Mann, *The Sources of Social Power, Volume 2: The Rise of Classes and Nation-States, 1760–1914,* Cambridge University Press, 1993, pp. 1-23; As far as Africa is concerned, see Joseph Ki-Zerbo, (Dir.) *Histoire* Générale De *L'afrique I: Méthodologie et préhistoire africaine,* UNESCO, 1980; Gamal Mokthar, (Dir.) *Histoire* Générale De *L'afrique II: Afrique Ancienne,* UNESCO, 1980; Mohammed El Fasi, Ivan M. Hrbek, (Dir.) *Histoire* Générale De *L'afrique III: Afrique du VIIe au XII e siècle,* UNESCO, 1990, p. 9*;* Djibril Tamsir Niane (Dir.) *Histoire* Générale De *L'afrique IV. L'Afrique du XII e au XVI e siècle,* UNESCO, 1987, p. 21.

losophies[122] rightly inform us that the State have their raison d'être only to be at the benefit of human beings who make them, agree on them or constitute themselves into them. So the States is essentially a means for the finality that is human beings. It is a means to guarantee or satisfy for each of them basic requirements of conservation, or in a word, human security. It is why state security and government security have their true sense only in reference to human security. It cannot therefore be human security for state security, but rather state security for human security. If every state has for purpose human security then the true purpose of an interstate society is inter human security. That suppose that when states engage themsemselves in sustaining relations between them, they are looking for satisfying human security within their borders. But if we know, as the international consensus on human security reminds, that human security is a matter of universal character, then the true sense of international society is human security. That gives its true sense to the concept of "international community" which is a community of fate in or by human security. So international stability truly means international or universal or global human security. If that is not agreed by the current world order embodied by the United Nations Charter, which begins by "*We the People…*", then this one is a seat of ambiguity.

122 Ann Cudd, Sahar Eftekhari, "Contractarianism", *The Standford Encyclopedia of Philosophy*, First published Sun. Jun. 18, 2000, substantive revision Wed. Mar. 15, 2017, (accessed on Sept. 04, 2020); Gerald Gaus, John Thrasher, "Contemporary Approaches of the social Contract", *The Standford Encyclopedia of Philosophy*, First published Sun. Mar. 03, 1996; substantive revision Wed. May 31, 2017, (accessed on Sept. 04, 2020); Claire Finkelstein, "Contrarianism", in Gerald F. Gaus, Fred D'Agostino, (eds.) *The Routledge Companion to Social and Political Philosophy,* Taylor and Francis, New York, 2013, pp. 305-316.

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