UDC 327.56
Manuscript received: 09.02.2012.
Accepted for publishing: 03.04.2012.
Original scientific paper

Serbian Political Thought
No. 1/2012, Year IV,
Vol. 5
pp. 49-65

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”Responsibility to Protect” from Aggression

Abstract

In this article the author discusses about the relationship between a ”Responsibility to protect” doctrine and crime of aggression, advocating further doctrinal development. The R2P doctrine is a new norm based on the idea that sovereignty is not a privilege, but a responsibility of states to protect civilians from horrors of genocide, war crimes, crimes against humanity, and ethnic cleansing. Debatable in R2P doctrine is the fact that even if the crime of aggression is a part of the contemporary international criminal law, it is not part of the R2P. Pondering over the reasons for the exclusion of aggression, the author examines types of the aggression's responsibilities, juxtaposes them to doctrinal goals and objectives, and perceives the crime of aggression as an additional control mechanism for the implementation of a R2P doctrine.

Key words: responsibility to protect, aggression, sovereignty, international law, crimes against humanity, war crimes.

”*We would be wrong to believe, based on the traditional scheme, that a generalized war, which exhausts itself in its own contradictions, ends by giving up violence and acceptance to abolish itself in the laws of civil peace. The norm [...] enables an endless, repeated initiation of the game of dominance; it brings onto the stage violence repeated in detail. The desire for peace, the gentleness*

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This paper was developed within the project ”Democratic and national capacities of political institutions in the process of international integrations” (number 179009), funded by the Ministry of education and science of the Republic of Serbia.

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of compromise, tacit acceptance of the laws, are all far from being great ethical milestones, or calculated interest, which have led to the creation of rules; they are merely a result of this norm, or, in fact, its perversion" *(Foucault 2010: 72).*

When in 2005, on the 60th anniversary of the United Nations, Paragraphs 138 and 139 were included in the World Summit Outcome Document, the world was presented with a new doctrine: "Responsibility to Protect". Known as R2P or RtoP, this doctrine makes it possible for the international community to intervene in cases where sovereign states fail to shield their populations from the horrors of genocide, war crimes, ethnic cleansing and crimes against humanity, in a manner and through practices enshrined in the United Nations Charter (World Summit Outcome, 2005). Although the principal aim of this doctrine is worldwide peacemaking and the upholding of human rights, originally, R2P is a norm authorising a violent response to violence. The doctrine itself integrates three main pillars which perceived as: (1) responsibility to prevent, (2) responsibility to react, and (3) responsibility to restore, while the very core of its existence lies in the responsibility to react through the use of armed force.

Given the fact that the World Summit Outcome Document in paragraph 77 contains a declared intention of the international community's collective response in instances of actual or purported threat to peace, namely aggression, the absence of the crime of aggression from the panoply of crimes set forth in Paragraphs 138 and 139 of the Document requires some elucidation. The more so as the crime of aggression, aside from genocide, war crimes and crimes against humanity, is one of the four recognized international crimes stricto sensu. Since R2P doctrine was conceived to extinguish violence by violence though the authority of the enforcing organisation and since aggression constitutes the ultimate form of violence, its non-inclusion points to a logical inconsistency which we have attempted to clarify. Hence, the purpose of this paper is not to explain the parallels between aggression and R2P, nor is it to identify the complementarities and distinctions between the two acts, but rather to present possible reasons for the non-inclusion of the crime of aggression among the most atrocious crimes encompassed by the doctrine, its potential importance and the prospects for its integration.

1. "Responsibility to Protect"

Despite views that the theoretical basis for the development of R2P doctrine was generated by the collapse of the Socialist Federal Republic of Yugoslavia and the international community's involvement in conflict resolution in this territory, particularly in Srebrenica (Von Feigenblatt

2010: 268-269), there is consensus that, historically, RtoP evolved as a theoretical foothold for the NATO states' humanitarian intervention in Kosovo. "In his 1999 address before the UN General Assembly [Kofi Annan] 'called upon member-states to unite in creating more effective policies to end mass killing and wanton violations of human rights'. The central idea of his speech [introducing what was later to be termed "Responsibility to Protect "] drew upon the distinction between state sovereignty and individual sovereignty" (Wong 2009: 226). By regarding the state as a servant to the individual, and by postulating human rights as a prerogative to the enjoyment of fundamental freedoms, Kofi Annan's address is today considered the conceptual turning point in the evolution of the concept of the state's accountability to citizens. "The intellectual and political roots of R2P are grounded in the concept of 'sovereignty as a responsibility', that was articulated by the UN Special Rapporteur on Internally Displaced Persons, Francis Deng, and by Robert Cohen, senior partner in the Brookings Institution" (Bellamy 2009: 2).

In an environment that advocated the hegemonium of human rights and subordination of sovereignty, R2P made its début in the world of international relations. The doctrine was institutionally acknowledged through the adoption of the UN Security Council Resolution 1674 (2006), and first implemented by Resolution 1706 (2006) and the deployment of 17, 300 peacekeeping troops in Darfur, Sudan. R2P gained broader institutional endorsement by the European Parliament's declaring of its position that the UN doctrine of Responsibility to Protect "makes it possible for others to assume responsibility to provide the necessary protection when national governments manifestly fail to protect their citizens from genocide, war crimes, ethnic cleansing and crimes against humanity". With this assertion, international interventionism took precedence over sovereignty.

The best known example hitherto of R2P implementation is the management of the contingent humanitarian disaster in Libya. By adopting Resolution 1970 of February 2011, the UN Security Council, arguing that Moammar al Gaddafi`s government repression against opponents of his regime may lead to crimes against humanity, reacted responsibly to the events in this African country. The said Resolution recalled the doctrine of R2P, referred the situation in Libya to the International Criminal Court for investigation and imposed an arms embargo. The neutrality of the Security Council Resolution 1970 was complicated by Resolution 1973 from March of the same year, which, recalling Chapter VII of the United Nations Charter called for an absolute cease of hostilities in order to protect civilians and populated

areas. The consequence of the non-compliance with these demands was the international community`s military intervention.

The particularity of Resolution 1973, according to some authors, is not in the authorisation of the use of force, but in the explicit usage of `R2P jargon' justifying a military intervention pursuant to Chapter VII of the United Nations Charter, and in the creation of the legal basis for an indefinite number of military interventions against legitimate governments (Pippan 2011: 164-165). Postulating that the Libyan authorities were unable to assume responsibility for the protection of their own people, joint responsibility of the international community was necessary and its presence in the world of violence a prerequisite for the implementation of R2P doctrine and the basis of its distinction from humanitarian intervention. Namely, despite claims that "Responsibility to Protect" and humanitarian intervention are two facets of the same coin, the assumption is that R2P has both a broader and narrower meaning than humanitarian intervention. R2P includes "three basic responsibilities - responsibility to prevent, responsibility to react and the responsibility to restore. Military intervention is part of the responsibility to react" (Pattison 2010: 13). On the other hand, R2P is narrower than humanitarian intervention since "humanitarian intervention can be initiated in response to different types of humanitarian disasters and is not subject to the authorisation of the Security Council" (Pattison 2010:13).

Advocating the idea of sovereignty as responsibility, the United Nations Secretary General Ban Ki-moon in 2009 further explained the three pillars of this doctrine. "First, governments unanimously affirmed their commitment to the primary and continuous legal obligation of states to protect civilians - whether their own citizens or not - from genocide, war crimes, ethnic cleansing and crimes against humanity and from incitement to these crimes. They declared - and this is the basis of R2P - "We undertake responsibility and shall act accordingly". The second pillar represents an innovation in terms of institutional capacity and comparative advantage of the United Nations. The World Summit underscored the obligation of the international community to assist states in meeting their commitments. Our aim is to assist states to succeed and not only to react when they fail to prevent and fulfil their duties. It would not be ethical, nor would it be wise policy, to reduce the scope of the world to watching the slaughter of innocent people, or to the sending of troops. The magnitude of these four crimes and offences requires early, preventive steps - and those steps should not be subject to the unanimity of the Security Council [sic] or to appalling images of crime that would stir up the world's conscience. The third pillar has been

broadly debated, but is generally understood too narrowly. It implies the commitment of the Member States to respond by adequate and resolute action, consistent with the United Nations Charter, in order to help protect populations from all four crimes. The response might include a broad spectrum of UN instruments, whether peaceful as in Chapter VI of the Charter, coercive as in Chapter VII, and / or cooperation with regional and sub-regional organizations, as in Chapter VIII. The key point lies in an early and flexible response, adjusted to suit a particular situation". (Secretary General's Report 2008)

Although broadly argued in academic circles, still unresolved is the issue of the moment of initiation of R2P pillars two and three, or the point when responsibility to prevent becomes responsibility to react. Some authors see the initiation of implementation in recalling "justified grounds", which implicitly leads to the question of who can react (Pattison 2010: 18-23). The official position of the International Commission on Intervention and State Sovereignty (ICISS) charged with the implementation of R2P can be taken as guidance and states that military intervention should be undertaken exceptionally and with the exclusive authorisation of the Security Council. Thus, it is resorted to in the case of a grave violation of human rights resulting in: "A) massive loss of life, actual or imminent, whether with the intent to commit genocide or not, whether premeditated or caused by the negligence of state and its incapacity to react, or in the case of failed state; or B) mass-scale 'ethnic cleansing', actual or imminent, whether or not accompanied by killing, forced expulsion, terror or rape" (Secretary-General`s Report 2008: XII).

Hitherto, R2P has been most developed in the segments pertaining to pre-emption and prevention of genocide and ethnic cleansing. Paradoxically, the first responsibility to react was exercised in response to the threat of possible crimes against humanity in Libya. In view of the fine line between sovereignty and responsibility, R2P was presented as a doctrine which must be "narrow, yet profound" (GCR2P 2009) and so, its limitation to the four crimes is a consequence of the traditional quest for the preservation of sovereignty.

And yet, regardless of the official position that these four acts represent the most atrocious of all crimes of international scope, the normative approach gives us a different impression. Namely, in the modern and institutionalized international criminal law, the Rome Statute introduces four principal international wrongdoings *stricto sensu* recognised as the most severe crimes. These wrongdoings are: genocide, war crimes, crimes against humanity and crimes against

peace, or aggression. In the Statute of the International Criminal Court, ethnic cleansing is a practice of genocide intent, and consequently, it is accepted in legal circles as an act of crime of genocide. The distinctiveness of determination of ethnic cleansing introduced by the R2P doctrine may create confusion in the response of international bodies.

The politicisation of normativity, which, by elimination of contradictory sovereignty, allows for arbitrariness in the interpretation and classification of wrongdoings, appears as a serious obstacle to the standardisation of the corpus of international crimes. It is an obvious paradox that any international body, by recalling the UN Charter, could introduce a new classification and designations of international crimes. That is, by separating ethnic cleansing from the category of crimes of genocide, the 2005. Document produced confusion within the fundamental and recognized international crimes. An additional issue that is critical to our examination is the reason why aggression, albeit one of the four basic international crimes, is not an element for the international community`s practice of responsibility. And thus, what sequence of the legal discourse and the position of aggression within this discourse can result in such exclusion.

Since the normative strength of R2P draws upon the idea of the state`s irresponsibility for protecting its own population from atrocities, or on a shared responsibility of the entire international community and since the essential feature of aggression is a dual and simultaneous responsibility of the state and the individual for its commitment, joint responsibility of all states in the international community is a logical recourse for the protection of civilians where a state fails to deliver. On the other hand, the exclusion of aggression gives scope for the elimination of the control mechanism of R2P doctrine, which in turn potentially opens the way for the manipulation of force consistent with the UN Charter.[3] On this basis, in the following two sections of this paper, we will attempt, by identifying the types of responsibility for aggression, such as normative responsibility, responsibility of commission, and responsibility of determination, to determine the responsibility for the protection from it through the protection from R2P.

3 This is particularly important because responsibility to react as part of "Responsibility to protect" is practiced through the same means as the crime of aggression itself. Namely, from experience in the implementation of Responsibility to protect in Libya it is observed that it is implemented by the acts of bombing, support to insurgents, port and road blocks, attack on the sovereignty and territorial integrity of a UN Member-State. All these actions are also those of the crime of aggression.

2. Types of Responsibilities for Aggression

Responsibility for the commission of aggression, as the link between the perpetrator and an act of crime, is one in a series of responsibilities arising from the normative framing of this crime. The basis for this lies in the fact that aggression is a capital crime and its commission, prevention, prohibition, or processing implies the involvement of numerous international actors. It would not be presumptuous to say that the very struggle itself against the commission and for the prohibition of this crime is the keystone of the United Nations and world order as we know it today. The paradox is all the greater since all measures, including R2P, are not exercised to prevent any hint of possibility of aggression. The reasons for this can be sought in multi-layered responsibility inherent in aggression, namely responsibility as normative, criminal and determinative responsibility, as well as in the similarities existing between the acts of the "Responsibility to protect" and the commission of aggression.

2.1. Normative Responsibility

Although the term normative responsibility finds its broader use in philosophy, its reference in law derives from the very etymology of the word. In its philosophical meaning, normative responsibility denotes the responsibility of an individual to make an adequate normative assessment of action from the positions of morality, ethics, or rationality (Audi 1993: 232). But also to assess his duty to act (Audi 1993: 233), since normative responsibility appears as a synthetic framework for a deliberate influence on the actions of others. Further, normative responsibility is viewed by some authors as the kind of responsibility of every normatively responsible person, or as the "special obligation one has toward one`s own family members and others with whom they are in a close relationship" (Scheffler 2001: 36). In this way, this type of responsibility is construed as the responsibility for action, shortcomings in action and a special obligation to the people with whom we have strong bonds. Transposed to the world of law, such responsibility corresponds to the legislative and supervisory, i.e. control function of the state. However, since aggression is more an international than a national issue, normative responsibility should be sought among international organisations and in the international sphere.

Due to the world`s centricity, complications arise already with the first type of normative responsibility, i.e. its determination. Namely, since

there are two accepted definitions of aggression to date, one adopted by UN General Assembly Resolution 3314 and another created for the use by the International Criminal Court in June 2010 in Uganda, it is assumed that the normative framework for the determination of this act is already in place. However, given the fact that since 1974, when Resolution 3314 was passed, the Security Council, as the competent body, has not determined a single act as aggression and that excessively high goals were set by the adoption of the definition of aggression for the International Criminal Court in Uganda, normative responsibility for the determination of aggression has not been fulfilled. In the second step, the supervisory or control function remains void.

In this respect, normative responsibility for aggression is in the position of self-denial. Since two international bodies different in their character, roles and jurisdictions contained in their constitutional acts are responsible for its determination, normative responsibility for aggression finds itself in a conflict of jurisdictions. Additionally, given the fact that the Security Council in accordance with the UN Charter has a primary role in the determination of aggression and the International Criminal Court, which by its Statute has the jurisdiction to define and process aggression, represent control mechanisms for each other, their inaction blocks the responsibility in the international arena and places the normative responsibility in a vicious circle.

2.2. Responsibility for Commission

At the very first reference to aggression in an international document, a duality of responsibility is observed, since a physical person and a state are considered its simultaneous perpetrators. This duality of responsibility is evident in Articles 227 and 231 of the Treaty of Versailles which designate as responsible for the commission of aggression and the outbreak of World War I Wilhelm II, as a ruler, and Germany, as a state.

Regardless of such historical background of the doctrinal development of the responsibility for the commission of aggression, this ambivalence is eliminated with the founding of the United Nations and the responsibility of state now becomes ”more equal” in character. Of major relevance for this transfer of responsibility are, inter alia, Articles 1, 24 and 39 of the United Nations Charter on the strength of which precedence in the determination of aggression is handed to the Security Council. This primacy of the Security Council has been understood by some authors as its stance that the Security Council is the

single international organ with the power to establish the occurrence of the crime (Yengejeh 2004: 126) and, thus, responsibility for the commission of aggression is narrowed down to the state. However, with the support of the International Court of Justice Decision (ICJ 1962), although primarily responsible for determination of aggression, the Security Council is not the sole international organ with such jurisdiction, the important role of an individual in the commission of aggression was given equal footing, which subsequently set the course for the International Criminal Court's jurisdiction and for the institutional affirmation of the dual responsibility for the commission of aggression.

The state is responsible for the commission of this crime on the basis of the UN Charter and Security Council`s decision, but the character of its responsibility is determined by the Draft Articles on State Responsibility for International Wrongful Acts, presented by the United Nations Commission on International Law in 2001. Under these articles, the basis for state responsibility is in the violation of some norm of international law, regardless of whether the said norm belongs to a series of norms that are bilateral or multilateral in character. The essence of provisions regulating state responsibility is that it presumes an act by the state which is in contravention of the norms of international law, which aggression evidently is.

On the other hand, the responsibility of an individual for the commission of aggression is enacted by Article 5 of the Statute of the International Criminal Court establishing the jurisdiction of this judicial organ over persons responsible for the commission of aggression, and by Article 25 stipulating the procedure for the determination of criminal responsibility. Key document in the determination of individual criminal responsibility is Resolution 6, adopted in June 2010 at the First Review Conference of the International Criminal Court in Kampala, Uganda.

Although the process of determining the culpability of a state or individual reflects these differences in the course of determination of the responsibility for aggression, crucial to our examination is the understanding of the seriousness and complexity of international administration involved in a potential commission of this crime. Namely, since aggression is the only crime implying compulsory simultaneous responsibility of the state and of the individual, and given that it involves the engagement of myriad international bodies, the manner of its commission represents a complete legal precedent and, considering its particular evolution and development, points to the need for the prevention of its commission. Although dual responsibility exists for

some other acts, nowhere else is it simultaneously required. Thus, the concept of responsibility for the commission of aggression progresses towards the distinctiveness of its own law. Being dual, it requires the specific responsibility and specific measures of protection from it.

The central focus of such a concept of responsibility is expressed by the fact that responsibility of one perpetrator is assessed by the responsibility of the other, whereby the lack of evidence of the responsibility of one can lead to the lack of responsibility of the other. Since neither perpetrator - state or individual, is exclusive in the commission of the crime of aggression, it implies the need for optimal resolving of the issue of responsibility for the commission of this crime. If the focus on commission were shifted from the perpetrator and the act itself to the consequence i.e. threat to the lives of civilians, the dual responsibility for aggression would not be an obstacle for its determination.

2.3 Responsibility of Determination

It is from the previous two forms of responsibility that its third form is derived - responsibility of determining an act as being one of aggression. As the focal point of the issue of determination is the evaluation whether it happened, organs with the normative responsibility and capacity to identify the perpetrators of this crime -the Security Council and the International Criminal Court - are the bodies which should determine an act as aggression.

Despite the fact that basic documents of the two international bodies contain their obligation to identify an act as a crime against peace, the problem is the absence of practice in the determination of aggression and in the reaction of the two bodies.[4] In addition, potential difficulty for the determination of aggression is a conflict of competencies between the Security Council and the ICC. Although different competencies should not pose a problem, the precedence of determination turned out to be the greatest obstacle to defining the crime of aggression.

4 Since 1974, in its 30 Resolutions (Resolutions: 326 (1973), 385 (1976), 386 (1976), 387 (1976), 405 (1977), 411 (1977), 419 (1977), 428 (1978), 447 (1979), 454 (1979), 455 (1979), 466 (1980), 475 (1980), 527 (1982), 530 (1983), 535 (1983), 546 (1984), 554 (1984), 567 (1985), 568 (1985), 571 (1985), 572 (1985), 573 (1985), 574 (1985), 577 (1985), 580 (1985), 581 (1986), 602 (1987), 611 (1988), 667 (1990)), the Security council ephasized being strongly concerned, convinced, shocked, saddened, distressed or horrified by the acts of aggression. In some of these 30 Resolutions, SC affirmed, strongly condemned or condemned, solemnly declared, ordered or demanded that some acts of aggression must stop, but it has never determined a single act as aggression as prescribed by Resolution 3314.

By Resolution 6 from the First Review Conference of the International Criminal Court which passed the definition of aggression an attempt was made to resolve the dilemma of the relationship between the International Criminal Court and the Security Council, to establish the sequence of determination, a system for the initiation of jurisdiction and to resolve the conflict of interests of the two bodies (RC/Res 6 2010). Thus, under this Resolution, for the Court to exercise its jurisdiction in a trial for aggression, in cases where suspected commission under Article 13 of the Rome Statute has been brought to the attention of the Court by the State Party, or the Prosecutor initiates an investigation proprio motu, reasonable grounds that a crime in question constitutes aggression must exist. However, regardless of the grounds for suspicion, in his assessment the Prosecutor of the International Criminal Court, under the Resolution, is not independent and his assessment is contingent on the determination of the act delivered by the Security Council. If the act has been determined by the Security Council as aggression, there are no legal obstacles to proceed with the previously initiated investigation. Conversely, when the Security Council did not determine an act as aggression and when ”no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression , provided that the Pre-Trial Division has authorised the commencement of the investigation” (RC/Res.6 2010).

However, in cases where, consistent with Article 13 of the Statute of the International Criminal Court, the initiation of proceedings for the crime of aggression is referred by the UN Security Council to the Court, in line with Resolution 6, there are no limitations to the action of the Court. In such circumstances, even without an investigation ”The Court may exercise jurisdiction for the crime of aggression on the basis of a Security Council`s referral in accordance with Article 13, paragraph (b) of the Statute, irrespective of whether the State concerned has accepted the Court`s jurisdiction in this regard”(RC/Res6 2010).

The development of such a procedural framework, with the overlapping jurisdictions of the International Criminal Court and the Security Council, set a shaky ground for the further development of aggression. The epicentre of the quake in this relationship is in the issue of precedence in determining the crime of aggression, in the possibility of denying the responsibility for the crime in question and, finally, in the evident supremacy of the Security Council in the determination of this crime. In addition to these obstacles, the fear of states outside the Security Council that their sporadic military or political actions may in this framework be arbitrarily labelled as aggression is not insignificant.

Due to such configuration of relations, the research community was for a long time confronted with the question of independence of the International Criminal Court, since, since, if the Prosecutor must comply with the determination of aggression passed by another body, it rouses doubts regarding the fairness of trial and abrogates the presumption of innocence. This issue was settled by Resolution 6 which specifies that: ”determination of some act as aggression by an authority outside the Court shall be without prejudice to the findings of the Court in accordance with this Statute” (RC/Res. 6 2010). Although it remains unclear how the Court will be able to keep its independence by waiting for a Security Council decision to determine an act as aggression, or when it has an ”unpostulated” obligation to conduct a trial for aggression when referred by the Security Council,[5] we can only believe that the Court will find a way to remain independent. In this respect, the fact that the Court determines the responsibility of the individual and not the state is helpful.

As we have seen from the above-said, the responsibility for determination is more a process than material issue. The material aspect is lost in the Orwellian world, where fairness is determined by the struggle of the titans, and duty to civilians is ignored by new concepts of conflicts among Big Brothers and brothers. However, the polycentric character of contemporary world dictates such a situation development. Even the relationship itself between the ICC and the Security Council should not and could not be seen in isolation. It ”must be analysed in the context of broad, extensive and largely unsystematic efforts made at the international level to accommodate the creation and expansion of general or public interest and the development of what could be seen in principle as the ordre public of the international community” (Gowlland-Debbas 2002: 195).

But, continuous effort on the systematization of order in the international community should also lead to the solution of impractical and inefficient conflicts among international bodies. Elimination of internal discord in establishing the responsibility of determination and, indirectly, normative responsibility and responsibility for commission would remove the obstacle to the progress from the primary definition of aggression to the substantive one, which is a responsibility that the international community and the state have to civilians, namely to protect them from the consequences and horrors of crimes against peace.

5 Unpostulated, because Security Council has the right to treat given affair as an act of aggression due to Head VII of UN Charter, which is obligatory for all states and organizations.

3. "Responsibility to Protect" from Aggression

Since "Responsibility to protect" arouses moral responsibility of states and governments to prevent civilian casualties as a result of atrocities, and since aggression as a codified crime and thus part of law, the link between R2P and aggression exists and can be found in their mutual complementarity. Obligation to prevent aggression is the origin of norms prohibiting the commission of aggression and imposing the obligation to protect from it and, given the sheer scale of the consequences caused by aggression, it is the responsibility of states to act as safeguards. However, it is not included in the doctrine of R2P. Why?

There are four arguments in favour and three against the inclusion of this crime in the doctrine of "Responsibility to Protect". First, since "Responsibility to Protect" in its primary form is the responsibility to prevent, this function corresponds to the preventive role of international criminal law. Indirectly, this function coincides with the very reason for including the norms prohibiting aggression in international documents. Second, the obligation to protect from aggression, stemming from the founding document of the United Nations, is an element of substantive will originating in the negation of the horrors of World War II. This implies that in the world based on denying the consequences of the greatest war in history, which was initiated by aggression, the root of the overall development of contemporary society is the protection from and prevention of aggression. Third, for the purpose of preventing aggression, the Security Council has the capacity and obligation to mobilise all the instruments referred to by the then UN Secretary-General Ban Ki-moon in his 2008 address on the implementation of the "Responsibility to Protect". These identical actions used in R2P and in aggression demonstrate the necessity to link together and merge the measures against aggression with the measures used by states in exercising their responsibility to react through the implementation of R2P. Fourth, attaching aggression to the doctrine of R2P would restore the balance in international criminal law, since all four fundamental international crimes would again be grouped together and one more form of protection would be added, which would in turn strengthen the aim of the International Criminal Court to prevent the deterioration of world peace.

The problems of including aggression in the "Responsibility to Protect" doctrine, in our view, lie in a blurry line between humanitarian intervention and aggression, which still inspires academic contemplation. Although pursued for different purposes, aggression and humanitarian

intervention make use of the same instruments and the actions involved in both are virtually identical. Further, the possibility to manipulate a just cause behind a humanitarian intervention, to manipulate humanitarian emergencies and the non-binding character of the Security Council's authorisation, give rise to contradictory views in respect of the lay and non-institutional determination of humanitarian intervention. The second reason for not including aggression in R2P is the analogy of means and methods as in the second pillar of the RtoP, or the equivalence of the act of aggression with the measures of responsibility to react. In the case of implementing the R2P doctrine in the territory of Libya, from March to September, 2011, acts committed by states correspond to actions contained in Resolution 3314 and Resolution 6, some of them prohibited as the acts of aggression. The third reason for the exclusion of aggression from R2P is the vagueness of terminology, in which sovereignty becomes a responsibility. If sovereignty implies the existence of a supreme and independent authority over a territory, the imposition of external responsibility not recognized by sovereignty implies the annulment of sovereignty itself. Furthermore, it undermines the whole concept of aggression as an attack on state sovereignty. Even the inclusion of aggression in the doctrine of R2P would create a problem, since it is the only crime where the state fails to protect civilians not from itself, but from other states. By including the concept of aggression, "Responsibility to Protect" would move from the inner to the inter level.

4. Concluding Remarks

In the course of an indeed heroic attempt to develop a doctrine that would, by imposing state responsibility, reverse the historical concept of state and give precedence to civilians over the government, the absence of aggression as a crime from which the states are due to protect becomes illogical in the very concept of the doctrine. If genocide, war crimes, crimes against humanity and ethnic cleansing are internationally prohibited acts and the state protects from those acts by duty to its own citizens, this obligation becomes additionally complex in the case of aggression. In the four crimes recognized within the R2P doctrine, the state is due to protect its citizens from arbitrary actions. Adding aggression would impose the "Responsibility to Protect" from the failure to act. The strategic point is the understanding of the development of responsibility and of the widely popular discussion of aggression.

In order to gain momentum, "Responsibility to Protect" must be widely practiced and assert itself as primary. Having emerged by

undermining unlimited responsibility, in order to be successful R2P needs to include all segments of the international protection of civilians and hold the state to account not only for its action but also for its failure to act. In the case of aggression, that would imply the implementation of R2P due to the failure of the state to protect its civilians from external intervention.

However, such a course of the doctrinal development of R2P is possible only in cases where willingness exists on the part of state, UN agencies and international bodies which coordinate its progress. The problem with the expansion of the doctrine is further negation of sovereignty, strengthening of the role of the Security Council and the collapse of boundaries delineating the scope of state authority. The inclusion of aggression in R2P could, in our view, impose a form of control, since protection from a crime through the practice of the very actions of the crime creates a subtle mechanism of self-incrimination. Thus, aggression could be a protective measure against responsible protection and a subtle form of control of the implementation of RtoP. Since, for the international community to respond to aggression through "Responsibility to Protect" the threshold for implementation of R2P should be increased. Primarily to avoid the possibility of identifying aggression with the responsibility of reacting. The value of R2P would thus be assessed by its objective effects and prevention of consequences, and not by the actions used, which would consequently, and due to a higher threshold, result in restoring the confidence in sovereignty. In this way, the relationship between the doctrine and the crime would not be that of complementarity, but rather of mutual control. Through a network of regional and sub-regional institutions, R2P would provide a framework for further eradication of aggression, and aggression would be the last level of limitation and check against the possibility for the responsibility to react as part of the "Responsibility to Protect" slipping out of control. In this way, the use of force through responsibility to react allowed to some would be controlled by many, for the purpose of protecting all.

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