

OBSERVARE 1st International Conference

16 - 17 - 18 November, 2011

I Congresso Internacional do OBSERVARE

16 - 17 - 18 Novembro, 2011

INTERNATIONAL TRENDS and Portugal's Position



AS TENDÊNCIAS INTERNACIONAIS e a posição de Portugal

Actas

Universidade Autónoma de Lisboa | Fundação Calouste Gulbenkian

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Responsabilidade de Proteger: uma doutrina sem prática?

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Palavras chave: Nações Unidas, Intervenções Internacionais, Direitos Humanos, Democratização

O artigo estuda os fundamentos teóricos que alicerçam as intervenções internacionais das Nações Unidas.

O conceito de intervenção internacional encerra em si a hipótese de «ter que se fazer a guerra para se ter a paz». Neste sentido, para esclarecer o processo através do qual «fazer a guerra para salvar estranhos» - com causas e fins legítimos - passou a ser um imperativo que recai sobre o projecto das Nações Unidas, será traçada a evolução histórica dos conceitos de *Guerra Justa*, *Soberania* e *Direito Internacional*. Nesta perspectiva, é possível verificar a existência da doutrina da *Guerra Justa* nos pressupostos ideológicos das intervenções internacionais das Nações Unidas - cuja doutrina última recai sobre a *Responsabilidade em Proteger* -, uma vez que para além do tempo histórico em que foram pensadas e da ordem por que foram enunciadas, poucas serão as diferenças entre as premissas da *Guerra Justa* e as premissas da *Responsabilidade em Proteger*.

Aprovada durante a Assembleia-Geral das Nações Unidas em 2005, enterrada nas areias do Iraque com a invasão de 2003 e embrulhada com a intervenção militar na Líbia em 2011, será a doutrina da *Responsabilidade em Proteger* relevante para o futuro?

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Responsibility to Protect: a doctrine without practice?

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Keywords: Just Wars, United Nations, International Interventions, Responsibility to Protect

Introduction

This paper studies the theoretical foundations that underpin the international interventions of the United Nations and how its ultimate doctrine rests on the *Responsibility to Protect*.

The concept of international intervention carries with it the possibility of «having to go to war to have peace». In this sense, to clarify the process by which «to make war to save strangers» - with causes and legitimate purposes - it has become an imperative to the United Nations structure, we must take into account the historical evolution of the *Just War* concept.

In this sense, firstly, it will be demonstrate the existence of *Just War* theory in the ideological assumptions of the *Responsibility to Protect* doctrine. Secondly, it will be outlined the empirical context that gave rise to the *Responsibility to Protect* and how it evolved institutionally since 2001. And finally, it will be shown how the *Responsibility to Protect* was presently applied to the Libya situation.

II - Just War Theory and Responsibility to Protect Doctrine

The concept of *Just War* has its roots in Christian thought developed by Saint Augustine, in the early fifth century. In *The City of God*, the Bishop reflects that the wise man "undertake only just wars" (Augustine, p. 1899) and, in this sense, he makes the distinction between just wars - "is, in fact, the inequity of the adverse party requires the wise men to undertake a just war" (Augustine, p. 1899) -, whose conduct is justifiable before certain assumptions grounded in Christian moral imperatives, and unjust wars, which in any case can't be initiated by wise men "because if they were not fair, he would not undertaking it" (Augustine, p. 1899). Accordingly, under these circumstances, empirical verification of the justifiable reasons is needed, Augustine argues, and exceptionally, the necessity of war as a means to achieve peace is defensible.

The pioneering idea of Saint Augustine would be reclaimed and developed by Saint Thomas Aquinas in the thirteenth century. In his work *Summa Theologica* and in response to the question "whether it is always sinful to wage war?", the abbot of Dominican vocation systematizes that a *Just War* requires, *a priori*, the existence of three conditions, namely: i) only "the authority of the sovereign" is legitimate to declare war, ii) it demands a "just cause" in the sense that "those who are attacked should be attacked because they deserve it in response to a fault committed" iii) to initiate and to conduct a war, "the belligerents should have a rightful intent" (Aquinas). Thus, the thought of Aquinas systematized the Augustinian Christian doctrine of *Just War*, formulating the necessary conditions for the legitimacy of war.

Francisco de Vitoria and Francisco Suarez, natural law authors of the sixteenth and seventeenth, respectively - strongly marked by the heritage of the thought of Aristotle and St. Thomas Aquinas -, would formalize the *Just War* Christian doctrine and Hugo Grotius would later take it into account in his major work *De juri belli ac pacis*, in which the Dutch jurist systematizes the idea of the Law of War and the Law of Peace.

Later, in the twentieth century, Michael Walzer (1977) and John Rawls (1993) would recover the founding ideas of *Just War* theory and would applied it to the Vietnam war and others that followed, as Kosovo in 1999.

It would also be the events in the 90s decade that would give rise to the doctrine of *Responsibility to Protect*, whose report by the *International Commission on Intervention and State Sovereignty* (ICISS) would create.

Accordingly, it was stipulated that "state sovereignty implies responsibility (...) for the protection of his people" and if the state "did not want or were not unable" to deal with critical humanitarian crises, "the principle of non-intervention gives rise to international responsibility to protect" (ICISS report). In this sense, the 2001 ICISS report would recommend four principles to a United Nations *Responsibility to Protect* intervention, namely i) the existence of a just cause, as "the large-scale ethnic cleansing"; ii) preventive principles, such as "fair intentions" to intervene with "proportional means" to the threat always in a "last resort" and "reasonable chance of success"; iii) the "legitimate authority" for discuss the option of intervening rests with the Security Council and iv) "clear mandates and unambiguous" (ICISS report). This report would be approved by the General Assembly in 2005, establishing itself as the fundamental doctrine for international interventions.

In this perspective, it can be easily perceived that in addition to the historical time in which they were conceived and the order in which were listed, there will be little difference between the assumptions of the *Just War* theory and the premise of the *Responsibility to Protect* doctrine.

III – Responsibility to Protect: creation and evolution

In the 90's, even with the evolution of the international interventions concept (Boutros-Ghali, 1992; Brahimi Report, 2000), the international community was criticized when it decided to intervene, "as in Somalia, Bosnia and Kosovo" and when it didn't intervene "as in Rwanda" (Evans and Sahoun, ICISS report). It was in this context that Kofi Annan intervened, in September 1999, claiming the defense of the «individual sovereignty» against the «state sovereignty», arguing the following: "if humanitarian intervention is an unacceptable attack on sovereignty, how can we respond to cases as Rwanda or Srebrenica?" (ICISS report). In response to the call of the Secretary-General it was established the ICISS, in September 2000, which presented its report - *The Responsibility to Protect* - in September 2001.

The United National General Assembly in 2005 would approved the ICISS report which established the *Responsibility to Protect* doctrine and would emphasized its central goal in two paragraphs present on the World Summit outcome document. If in the first paragraph, all States presented in the 2005 General Assembly agreed that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity [and that] This responsibility entails the prevention of such crimes, including their incitement (...)" (paragraph 138), in the second paragraph it is also agreed between the States that "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 protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity [whenever] national authorities manifestly fail to protect their populations" (paragraph 139).

Although the doctrine of *Responsibility to Protect*, with this two paragraphs in the final outcome document, was acknowledged and accepted by the States present in the World Summit of 2005, the *Responsibility to Protect* as a norm, instituted in the practice of States and even in the Security Council's response to the critical humanitarian crises was still a mirage.

To bridge this gap, between the «existence of the norm» and the «institutionalization of the norm into practice», it was created *The Global Centre for the Responsibility to Protect* in 2008 and the *International Coalition for RtoP* in 2009. Both organizations were created outside the United Nations structure; both work to gather the expertise of several other western and nonwestern Non Governmental Organizations (such as Oxfam, Human Rights Watch, etc) in a network to

identity, to prevent and to react to crisis; the first receives governmental funds and the second doesn't but both aim to promote the institutionalization of *Responsibility to Protect* as a norm. Although, even with the work of the two centre created to promote the institutionalization of the doctrine into a norm and the increased role of the United Nations Secretary-General Ban Ki Moon in endorsing the *Responsibility to Protect*, for instance, crises like Burma/Myanmar deficient response after Nargis Cyclone and the violence that spread after the elections in Kenya, both in 2008, still didn't had a response based on the *Responsibility to Protect*. Both situations were *Responsibility to Protect* cases because both heads of State/governments were failing in protecting its populations and were unwilling to receive international support to help them fulfilling their responsibility. And the same situation would be applied to Darfur, obviously.

IV – Responsibility to Protect: the Libya case

However, the 2011 Arab Spring context and the Libya situation gave rise to a political consensus in the Security Council, which culminated in emergence of the *Responsibility to Protect* as a norm putted into practice and resulted on the adoption of the more severe measures contemplated in the «*responsibility to react*».

Firstly, with the resolution 1970, approved in February 26th, the Security Council directly recall “the Libyan authorities’ responsibility to protect its population” and considered the actions undertaken by the Libyan regime as “crime against humanity” and threatened Libya political/military elite with further “investigation or prosecution (...) by the Prosecutor of the International Criminal Court”, along with “arms embargo”, “travel bans”, and “asset freeze” (SC Resolution 1970 on Libya).

Secondly, with the resolution 1973, approved in March 17th, the Security Council once again reiterated “the responsibility of the Libyan authorities to protect the Libyan population” and decided to authorize Member States “to take all necessary measures (...) to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory”. In this sense, it was established a «No Fly Zone» which consisted in “a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians” to be ensured by “regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights” (SC Resolution 1973 on Libya).

Crucial to assemble the political will of the Security Council on resolutions 1970 and 1973 was the gathering of the support from the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference, which contributed to the regional acceptance of the military intervention by NATO to impose the «No Fly Zone». However, nothing in the resolution 1973 authorized Member States “acting nationally or through regional organizations or arrangements” to help the rebel forces with arms or through the surgical bombing of military buildings or residences from the Qadhafi family. If that was the case, surely resolution 1973 would not have had the support from China and Russia, as well as from the League of Arab States, the African Union and the Organization of the Islamic Conference.

Nevertheless, that was what happened just a few weeks after the approval of the resolution 1973, which only consented the establishing of a «No Fly Zone». Not only China, Russia and regional Arab/African organizations were condemning NATO operations in Libya but also Gareth Evans - one of the *Responsibility to Protect* «founding fathers» - clearly stated that NATO was stretching Security Council mandate on Libya and that “until another Security Council resolution can be negotiated putting the military intervention on a broader «international peace and security» rather than just *Responsibility to Protect* footing”, resolution 1973 was being expanded “to the absolute limit” (Evans).

V - Final remarks

After the Libya NATO intervention is still the *Responsibility to Protect* doctrine relevant for the future? This was the main concern of the defenders of *Responsibility to Protect*, once NATO operations in Libya clearly was being labeled with «regime change» rather than with the «responsibility to protect populations», that only time can answer.

However, looking into the evolution of the *Just War* concept it was possible to trace the theoretical basis in which underlies the United Nations international interventions, as it was clear in the comparison between the assumptions of the *Just War* theory and the *Responsibility to Protect* doctrine.

Once there is a direct association of *Responsibility to Protect* with *Just War*, it can be concluded that the *Just War* theory, in its historical and contemporary design, is not a pacifist doctrine but a theory that legitimate war in defense of peace, always when certain assumptions are verified, namely, genocide, ethnic cleansing, war crimes and crimes against humanity.

Bibliography

- AGOSTINHO, Santo - *A Cidade de Deus*. Volume III, Livro XVI a XXII. Tradução: João Dias Pereira. Lisboa: Edições Fundação Calouste Gulbenkian, 2008, 3ª edição.
- AQUINO, São Tomás de - «The Summa Theologica. Part II, Question 40».
- AXELROD, Robert; KEOHANE, Robert O. - «Achieving Cooperation Under Anarchy: Strategies and Institutions». In David A. Baldwin (ed) *Neorealism and Neoliberalism: The Contemporary Debate*. New York: Columbia University Press, 1993.
- BODIN, Jean - *On Sovereignty – four chapters from Les Six Livres de la République*. Julian H. Franklin (ed). Cambridge: Cambridge University Press, 1992 (12ª ed. 2008).
- CUNLIFFE, Philip (ed) - *Critical perspectives on the Responsibility to Protect – interrogating theory and practice*. London: Routledge, 2011.
- DEFARGES, Philippe Moreau - «Seattle: naissance d'une société civile mondiale?». In *Défense Nationale*. Mars. Paris: Comité d'études de Défense Nationale, 2000.
- ECONOMIDES, Spyros; BERDAL, Mats (eds) - *United Nations Interventionism, 1991-2004*. New York: Cambridge University Press, 2007.
- EVANS, Gareth - «NATO stretching UN Libya mandate: Evans». In *Sidney Morning Herald*. 4 May 2011.
- GROTIUS, Hugo - *The Rights of War and Peace*. Book I, II, III. Richard Tuck (ed.). Indiana: Liberty Fund, 2005.
- HINSLEY, F. H. - *Sovereignty*. New York: Cambridge University Press, 1986, 2ª ed. (New York: Basic Books, 1966).
- HOFFMAN, Stanley (ed) - *The Ethics and Politics of Humanitarian Intervention*. USA: University of Notre Dame Press, 1996.
- KANT, Immanuel - *A Paz Perpétua e Outros Opúsculos*. Tradução: Artur Morão. Lisboa: Edições 70, 1995.
- LAIDI, Zaki - «Um Mundo Privado de Sentido». In *Nação e Defesa*. N.º 87, Outono-Inverno. Lisboa: Instituto de Defesa Nacional, 1998.
- MEARSHEIMER, John J. - «The False Promise of International Institutions». In *International Security*. nº 3, volume 19; 1994/1995. Harvard: Harvard University Press, 1995.
- ORFORD, Anne - *International Authority and the Responsibility to Protect*. Cambridge: Cambridge University Press, 2011.
- PARIS, Roland - *At War's End: Building Peace after Civil Conflict*. Cambridge: Cambridge University Press, 2004.

PATTISON, James - *Humanitarian Intervention and the Responsibility To Protect: Who Should Intervene?*. Oxford: Oxford University Press, 2010.

RAWLS, John - «*The Law of Peoples*». In *Critical Inquiry*, Vol. 20, No. 1. Chicago: University Of Chicago Press, 1993.

THAKUR, Ramesh - *The Responsibility to Protect – norms, laws and the use of force in international politics*. Londres: Routledge, 2011.

STROBEL, Warren P. - *Late-Breaking Foreign Policy: the News Media's Influence on Peace Operations*. Washington: United States Institute of Peace Press, 1997.

WALZER, Michael - *Just and Unjust Wars – a moral argument with historical illustrations*. New York: Basic Books, 1977.

WEIGEL, George - «The Just-War tradition». In *The National Review*. 12 December 2009.

WHEELER, Nicholas J. - *Saving Strangers: Humanitarian Intervention in International Society*. Oxford: Oxford University Press, 2000.

Institutional documents

«An Agenda for Peace - Preventive diplomacy, peacemaking and peace-keeping». New York: United Nations, 17 June 1992.

Convention (III) relative to the Treatment of Prisoners of war. Geneva, 12 August 1949.

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

«Report of The Panel on United Nations Peace Operations». New York: United Nations. August 2000.

Resolution 1970 (2011), Security Council - «Libya». 26 February 2011.

Resolution 1973 (2011), Security Council - «Libya». 17 March 2011.

The Responsibility To Protect. Report of the International Commission on Intervention and State Sovereignty. September 2001.

«World Summit Outcome», General Assembly. 15 September 2005.