



INÊS ANTÓNIO DE ALMEIDA AFONSO

**WHY THE RESPONSIBILITY TO PROTECT (RtoP) OUGHT TO BE APPLIED
TO UKRAINE: IS RtoP STILL A VALID CONCEPT IN INTERNATIONAL
LAW?**

Dissertation to obtain a Master's
Degree in Law, in the speciality of
European and International Law.

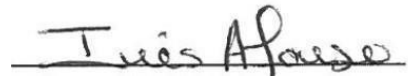
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I hereby declare that the work I present is my own work and that all my citations are correctly acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a severe ethical and disciplinary offense.

A handwritten signature in black ink, reading "Inês Afonso", written over a horizontal line.

Inês Afonso

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Acronyms and Abbreviations

CEWS – Conflict Early Warning Systems

ECOSOC – Economic and Social Council

EU – European Union

EUCO – European Union Council

ICC – International Criminal Court

ICISS – International Commission on Intervention and State Sovereignty.

ICJ – International Court of Justice

ICRC – International Commission of the Red Cross

ISIL-K - Islamic State Khorasan

NAM – Non-Aligned Movement

NATO – North-Atlantic Treaty Organisation

OECD – Organization for Economy Co-operation and Development

OHCHR – Office of the Higher Commissioner of the Human Rights

PRC –People’s Republic of China

RES - Resolution

UN – United Nations

UNAMA – United Nations Assistance Mission in Afghanistan

UNSC – United Nations Security Council

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Abstract

This dissertation is focused on the United Nations Security Council (UNSC) commitment from 2005 called “Responsibility to Protect” (RtoP) and why its applicability would make a difference in the current Russian-Ukrainian conflict, since February 2022. The study aims to analyse the future of International Law along with the current context of international relations, focusing on the eastern European conflict, highlighting states' role and new factors raised by the event. This dissertation examines the UN's development, international action, current conflict situation, law, new challenges, and previous conflicts for the RtoP role development. It concludes that some solutions are permissible and functional, but obstacles will persist, necessitating changes in principles, scope of action, and UN structure. The goal is, taking it all into consideration, to respond to the main question: Should the RtoP norm ought to be applied in this specific conflict, being considered a still valid concept on the International Law sphere?

Key-words: Responsibility to Protect, Ukraine, Russia, United Nations, Conflict, International Law.

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Abstrato

A presente dissertação centra-se no compromisso do Conselho de Segurança das Nações Unidas (CSNU) de 2005 denominado “Responsabilidade de Proteger” (RtoP) e no porquê da sua adoção faria diferença no atual conflito russo-ucraniano, desde o seu início a fevereiro de 2022. O estudo tem como objetivo analisar o futuro do Direito Internacional tendo em conta o atual contexto das relações internacionais, com foco no conflito do Leste Europeu, destacando o papel dos Estados e os novos fatores levantados pelo evento. Esta dissertação examina o desenvolvimento da ONU, da ação internacional, da situação do conflito atual, da legislação, dos novos desafios e dos conflitos anteriores para o desenvolvimento do papel da RtoP. O objetivo será, tendo todas essas esferas em consideração, responder à questão principal: deve a norma RtoP ser aplicada neste conflito específico, sendo ainda considerada um conceito válido na esfera do Direito Internacional?

Palavras-chave: Responsabilidade de Proteger, Ucrânia, Rússia, Conflito, Nações Unidas, Direito Internacional.

Caracteres: 150 733.

Introduction

On February 24, 2022, after weeks of military and diplomatic tension, Vladimir Putin's planned mind game to provoke the West came to reality. Russian Forces led an assault on Ukraine's sovereign territory, a move that can only be described as illegitimate according to International Law.¹ And indeed, the Russian Federation's actions reminded us that war is not a utopian concept, but a tool and a trump card.

Every day, appalling news come out of Ukraine, and this conflict has brought war and conflict back into Europe since the Cold War's end.² It is important to understand the developments and changes that international community has done regarding conflict resolution since the Cold War, such as the creation of the Responsibility to Protect concept. Principles like RtoP have the power to sustain a framework for prevention, a wake-up call for institutional changes, a general but logical procedure for the times where usually none of the international actors know how to start.³ In this sense, the present dissertation proposes to investigate if the application of the RtoP principle has a future in international law.

Such question can be divided in two parts: the origin and substance of the RtoP concept, chosen as the focus of this thesis due to its relevance on this century as a turning-point on the sense of states' sovereignty and their acknowledgement of their responsibilities; and the Russian invasion to Ukraine, coming as a context of application of the principles, as it presents a current conflict, geographically close to us and with increasing influence in world affairs. In the presented analysis, there is a significant importance on taking a close look on the current conflict with an awareness of the long way that International Law has come to find its ways to respond to similar events and violations, which eventually led to RtoP as a possible answer for potential future conflicts. This change took place in the beginning of the twentieth-first century, and now, almost twenty years later the occurrence of this invasion and so many others conflicts appear to indicate which road to cross now.

The goals of this dissertation can be divided in the following sections and its sub-questions:

¹ Mestvedthagen 2023.

² Mankoff 2022, 1.

³ Evans, 2020.

- 1) The Ukrainian conflict as a new type of conflict and its consequences: does this conflict represents an alarming situation for the RtoP norm?
- 2) The International Action on the conflict, taking into consideration the RtoP concept: Regarding the international actor's actions, is there any sign compatible with what RtoP asks to be done?
- 3) The United Nations Security Council as the body with the power to authorize the use the RtoP principles and, especially, the use of force: taking into consideration the current scenario, is it the UN structure efficient on providing the means to adopt a norm like RtoP into practice? What does the UNSC represents for the norms' obstacles? Have the UN done everything it could regarding Ukraine?
- 4) The changes that took place in the international context and in International Law: how can a norm based on the previous century's events still make sense and find its way into the international community?
- 5) Examples of conflicts that exposed the advantages and disadvantages of the RtoP, such as the Libyan Civil War and the Afghanistan Crisis: what can be learned from the past for this conflict? Would the applicability of RtoP still make sense?
- 6) The actions and measures that could have been – and ought to be - adopted towards the invasion in order to comply with the RtoP: Would the adoption of RtoP concept help to fill the breaches of this conflict? And if so, how?

To sustain this work, the chosen method was a qualitative one, being the research based on the analysis of texts, books, articles, reports from NGOs and international institutions, in order to sustain the analysis in the most reliable and accurate way. Since the conflict is still on process with no prediction of its end, the period of analysis goes until May of 2023.

This dissertation presents a structure of 5 main chapters, with internal sections in some of them. The first chapter stands on the description and presentation of the Russo-Ukrainian conflict, its origin, its characteristics, and the international actions towards the conflict; The second chapter includes the International Law context on such type of conflicts, also mentioning the “use of force” debate and the United Nations' role to comply with conflict resolution. The third chapter is focused on the RtoP's origin and description. The fourth chapter takes two past conflicts as examples to highlight and study the advantages and possible pitfalls of RtoP: Libya as the turning point for RtoP's commitment practical side and, on the opposite side, Afghanistan, an ongoing conflict with no signs of RtoP present

in its international debate. And, at last, the fifth chapter presents the signs of RtoP in the Russo-Ukrainian conflict, explaining the measures taken that complied with the principles, without invoking it.

After this followed order, the dissertation concludes with a positive note on the importance of RtoP in this conflict, highlighting the relevance of this conflict and the world's reaction to it as the main proof for the norm's existence and value on International Law.

Chapter 1 – Ukraine: a new conflict, a new question

The bond between Ukraine and the Russian Federation come from a long-distanced past that brought both countries into an incredibly controversial reality on the current days.⁴ In this sense, this chapter focuses on the historical context of Ukrainian territory since 1922, examining the long road since the beginning of the twentieth century.⁵ The main goal is to understand the conflict's roots, and how does this specific context creates awareness for a norm like RtoP, as a possible assistance measure if not the solution. Ukraine's situation is not the same as previous ones where the adoption of RtoP was considered. Indeed, it is not a conflict based on an internal issue such as the Rwandan Genocide or the Yugoslavia war.⁶ Instead, it is a case revolving around an external aggressor State, linked with a historical past that sustains most of the conflict's causes.⁷ It is a valid point to mention this difference, however it is also important to question what is the main subject of a norm like RtoP: the origin of the conflict, or the state's sovereignty?

Shane Reeves and David Wallace described the events in Ukraine of 2014 as hybrid (from a political perspective, not legal) sprouting from a mix of conventional and unconventional tactics, with different instruments of economic, political, and social spheres.⁸ The diverse characteristics within the employed technology, nuclear energy threats, information manipulation, and the recent past linking both countries present a challenging context for analysing and finding peace within International Law principles, a point in which the RtoP will be well raised for the discussion.

⁴ Franco 2023.

⁵ The year that Ukraine got incorporated into the USSR. Benjamin and Davies 2022, 18.

⁶ Mueller 2000.

⁷ Sardica 2023.

⁸ Szpak 2017, 271; Reeves and Wallace 2015.

In a first level of analysis, this dissertation aims to discuss if this conflict presents a context for the RtoP norm to be applied. Regarding the section 1.1. in particular, the challenging part will be set on discovering how the Soviet past linked to Ukraine is related to the main question of this conflict, and how the peculiarity of this invasion raises and works along with the reason why the RtoP principles exist, mainly in terms of the first pillar of the norm, focused on the prevention of the conflict.

Secondly, it aims to expose how did the world – mainly the states and NGOs - reacted (and acted) upon the conflict, highlighting any potential signs of RtoP within their actions and reactions.

Section 1.1. The Origin and Growth of the Conflict and Its Peculiarity

Historical factors present a very important position on understanding the current situation between Ukraine and Russia, as well as the reasons behind Vladimir Putin's speeches about the two states being one entity.⁹ The Ukrainian national identity is a key point for both sides, attracting Russia's attention and generating one of Ukraine's weaknesses: it fosters Kyiv's desire to break away from Soviet influence, causing social divisions and internal conflicts between those who still feel a greater attachment and cultural proximity to the Soviet era, and those who want indeed a break from that time.¹⁰ If national identity is a matter of disagreement, then the sovereignty subject is an even more despaired topic, and an even more important one for this dissertation. This point is relevant for this discussion since the RtoP's plan of action is focused on events which might led to a state lose its sovereignty.¹¹ There were enormous identity crisis among all the territories resulted from the former Soviet Union after its collapse in 1991, separating into pieces and letting the real Soviet concept fade away.¹² The Russian perspective has not changed through time, as it aims to restore unification of identity and combat potential threats to gain power and influence among other states.¹³ This problematic have been used also linked with the mention of "discrimination against Russian Federation" as a justification for the invasive actions.¹⁴ The issue of this goal from the Russian Federation is that only

⁹ Mankoff 2022.

¹⁰ Gessen 2022.

¹¹ International Commission on Intervention and State Sovereignty 2001.

¹² Benjamin and Davies 2022, 20.

¹³ Ashby, How the Kremlin Distorts the 'Responsibility to Protect' Principle 2022.

¹⁴ Ashby, How the Kremlin Distorts the 'Responsibility to Protect' Principle 2022.

works through the detriment of Ukraine's sovereignty, as it will be analysed with this current conflict.

Indeed, this history goes thousands of years behind,¹⁵ full of implemented cultural prohibitions, religious pressure, and economic dependence which, all combined, acted as the imposed boundaries that always defined the context of subjugation within this relationship.¹⁶ It is possible to notice the pattern throughout all these years, culminating on the present situation.

It was in the twentieth century that everything culminated, and the first signals of the current conflict were built. In general, the last century was characterized by chaos and destruction since the beginning, marking international history forever, albeit with some different perspectives from the Western and Eastern sides that have always walked along with history, evenly distant from one another.¹⁷

As a result of the Communist Revolution of 1917¹⁸, Ukraine suffered and fought a civil war in order to combat its influence and attempt to control the territory, a step towards its possible sovereignty.¹⁹ It did not last long, however, ending up with action from Soviet forces that led to Ukraine being submitted to and undertaken by the Soviet Union's control in 1922.²⁰ After this event, with a relevant contrast from Ukraine's will and desire towards its result, only dreadful things happened to that territory and its people. Between a massive famine brought millions of deaths to the Ukrainian people, persecutions, doomed a very unstable territory barely surviving under the soviet leadership.²¹ This matter of sovereignty could not be discussed during this time, since it was never established. Nevertheless, these events started to feed the desire of independency and a sovereign away from Russia. During World War II, another twist in History happened when the Ukrainian territory was occupied by Nazi Germany, which resulted in enormous devastation to the country.²² This post-Ukraine's independence event has significantly influenced the current conflict, particularly in terms of Russia's view on Ukrainian

¹⁵ Benjamin and Davies 2022, 17.

¹⁶ Mankoff 2022.

¹⁷ Kershaw 2005. Gilbert 2010.

¹⁸ Conant 2023.

¹⁹ Mankoff 2022.

²⁰ Benjamin and Davies 2022, 18.

²¹ Mankoff 2022.

²² Mankoff 2022.

westernization and "Nazification," as Putin repeatedly mentions.²³ It is heavily defended on the Eastern side the influence of the Nazi Germany on Ukraine as a trigger for its recent proximity towards the West and how it can represent a major menace for the Russian Federation. A threat to Russian's identity through the Ukrainian sovereignty. However, a window was open for Ukraine with the dissolution of the Soviet Union in 1989.²⁴

Ukraine's independence was declared, with an accord on the end of the Soviet Union between Ukraine, Belarus and, the henceforth called Russian Federation. In the same year, the Soviet borders were reshaped and new nations were released.²⁵ With the Budapest Memorandum of 1994, Russia supposedly agreed on accepting Ukraine's position regarding its independence and national identity, which, as it is known from the nowadays events, was not respected.²⁶

Ukraine faced significant challenges after its independence, becoming a divided society and numerous issues to address from its past. The Western side of Ukraine, historically less influenced by Russian influence, developed a more westernized and near-democratic perspective. Over the decades, the division faced political, economic, and social challenges, a road that other countries born from the fallen Soviet empire had to go through as well, including corruption, power changes, and public manifestations. Many problems for a recent and fragile sovereign state.

Among those problematic events, elections have always represented a large amount of controversy²⁷, with popular acts in the mixture, such as the most well-known Orange Revolution (2004-2005).²⁸ The Russian Federation had, at that time, publicly discussed the situation as a potential call for RtoP action, particularly the first and second pillars,²⁹ arguing for the possibility of a genocide against Russian ethnicity, a vulnerable group in

²³ Ripp 2022. *"In the Russian narrative, Bandera became a figure of particular hate, his willingness to collaborate with the Nazi invaders held up as evidence of the link between Ukrainian nationalism, ethnic cleansing, and foreign manipulation."* Mankoff 2022.

²⁴ Mankoff 2022.

²⁵ Benjamin and Davies 2022, 25.

²⁶ Borba 2022.

²⁷ Benjamin and Davies 2022, 27-28.

²⁸ Benjamin and Davies 2022, 28.

²⁹ The first pillar of the RtoP is based on "Each state has the responsibility to protect its civilian populations from mass atrocity crimes" and the second pillar states "The international community has the responsibility to support states in meeting this protection responsibility" International Commission on Intervention and State Sovereignty 2001.

Ukraine. The Kremlin described it as a threat,³⁰ while the rest of the population is adjusting to international principles. This is where the story suffers a turning-point regarding the RtoP and the Russian willingness on adopting it, to be applied on a country which would be invaded by Russia some years after.³¹ A typical change of behaviour according to the political interests of a state.

Demonstrations of a shattered country and an attempt to leave its eastern past fuelled Russian strategy in the current conflict, expecting a ruptured country to fall apart with invasion and swift annexation of former Soviet territory.³²

The westernization process in Ukraine was a significant concern for the Russian Federation, leading to political and security decisions regarding Ukraine's potential NATO membership.³³ After threats, Russia materialized the West's worse fears and invaded Ukraine on February 24, 2022, breaking Ukraine's sovereignty, making the country unable to sustain itself.³⁴

Moscow believes Ukraine and Belarus should adopt a political direction similar to the Russian Federation's.³⁵ Ukraine's recent departure from its Soviet past, despite of the instability of its social and economic sphere, has led President Vladimir Putin to accuse it of being "artificially shaped"³⁶ by Western ideology and politics, arguing that this change is not a simple shift from the country but rather a manipulation from the West. Also, the "Russophobia"³⁷ concept started to echo as a *"rejection of the civilizational status of Russia, Russian culture, and carriers of that culture. (...) an ideology that was created and disseminated artificially and purposefully"* as it was affirmed by Kirill Vyshinsky, a Russian journalist that has spoken in a UNSC meeting.³⁸ Many ideas were shared due to this conflict, but indeed none mentions the sovereignty broken by the invasion, and its illegality. The historical background has prepared the world for this event, but the prevention took time to be processed. These details can provide a very

³⁰ Ashby 2022.

³¹ Sardica 2023.

³² Korb 2022.

³³ Korb 2022.

³⁴ Roth 2021.

³⁵ Mankoff 2022.

³⁶ Mankoff 2022.

³⁷ Benjamin and Davies 2022, 148.

³⁸ United Nations Security Council (UNSC) PV 9280 (14 March 2023) UN Doc S/PV/9280, p. 2.

similar origin with the RtoP concept, being indeed a situation subjected on the norm's scope: Ukraine lost its sovereignty and can't maintain it.

One thing that is also important to adopt a norm like RtoP on a conflict is the adherence of other states on adopting it, in order to be efficient. Since the invasion's first day, the West has shown a wave of rejection towards Russian Federation, exacerbated by information warfare and media pressure on Russia, reaching unprecedented levels of aversion and hatred towards the conflict.³⁹ Information shapes people and creates powerful movements, and it was one of the novelties brought by this war. It highlighted the strength of accessible information and its possible manipulation. This conflict underlines the difficulty in creating opinions due to controlled and planned access to information, which can shape opinions and influence political decisions.⁴⁰ The usage of this cyber domain has become the norm. Whoever controls the information, controls the narrative, having in its hands the ability to shape people's perceptions and opinions, but this concept shall be examined in greater detail further ahead. It is presented as a new factor that, at some point can be useful and also an enemy to RtoP. It can be used as a mean to react and rebuild from a conflict, or, it can be a threat to sovereignties, just like Russia tried to do with Ukraine.

Taking the perspective towards Ukraine, there is a lot in common between both countries culturally, with a still very considerable percentage of population with Russian ascendance in the territory.⁴¹

The strategic decision on Ukraine's future was based on a limited historical and conservative belief among Russian elites, which hinders the development of a well-structured national identity.⁴² The conflict in Ukraine demonstrates that despite its challenging identity, social structure, and political system, it has improved over time as obstacles were overcome. These ideas that are typically described from the Russian side are theorized by the "*politics of eternity*"⁴³, as Timothy Snyder calls it, and represents a major sign of awareness for a RtoP action: the phenomenon of when the politics of

³⁹ Benjamin and Davies 2022, 119.

⁴⁰ "*The information space opens wide asymmetrical possibilities for reducing the fighting potential of the enemy.*" Ingram 2016, 7.

⁴¹ The last census made in Ukraine were in 2001, with a result of 17,2 percent of the population was Russian, the second biggest ethnic group in the country. Minority Rights Group International 2008.

⁴² Mankoff 2022.

⁴³ Snyder 2019.

inevitability⁴⁴ does not occur in every spot in the world, and so the blank space is filled with a very repetitive and cyclical process in which “*time is no longer a line into the future, but a circle endlessly returns the same threats from the past.*”⁴⁵ This definition explains the Russian posture and also a pattern that could be analysed from the RtoP first pillars’ perspective: prevention, in order to detect easily this type of possible actions. There is a notable re-use of language and argument from former Soviet leaders on Putin’s speeches regarding Ukraine and its identity, which shows the desire of a Soviet implementation but also a wide oblivion from the Russian Federation’s oligarchs that the Soviet Union did dissolve, the Iron Curtain did fall and Ukraine did become independent, an oblivion that sustains and holds the Kremlin and all its decisions.⁴⁶ An oblivion that brought this invasion and could have been prevented.

In 2014, Ukraine experienced severe events that escalated on both sides of the debate. Western supporters initiated the Maidan Revolution, while Eastern supporters faced difficult months and a violent coup, leading to anti-coup demonstrations and the Russian annexation of Crimea. This is indeed considered the pre-beginning of the current conflict⁴⁷ and somehow the world was still not ready when the invasion happened eight years after. The former Soviet Union President Nikita Khrushchev gave the Crimean territory to Ukraine,⁴⁸ but with the Soviet Union’s dissolution, the territory was again discussed and a referendum passed in which 94 per cent of the population showed its will on turning Ukraine independent, which made Crimea join Ukraine, by the Crimean Parliament decision.⁴⁹ The 2014 coup in Crimea sparked a new political debate and a very alarming one, with the Crimean Parliament expressing its intention to break away from Ukraine and turn towards Russia.⁵⁰ Around 97 percent of voters approved joining the Russian Federation.⁵¹ This was followed by the rejection of the annexation’s acknowledgement and validity by the international community because it was deemed to

⁴⁴ “*the politics of inevitability— a sense that the future is just more of the present, that the laws of progress are known, that there are no alternatives, and therefore nothing really to be done.*” Snyder 2018, 1; expression used to describe the western position ever since the collapse of USSR in 1991.

⁴⁵ Snyder, Vladimir Putin’s politics of eternity 2018

⁴⁶ Mankoff 2022.

⁴⁷ Mankoff 2022.

⁴⁸ Mankoff 2022.

⁴⁹ Mankoff 2022.

⁵⁰ Mankoff 2022.

⁵¹ Mankoff 2022.

be clearly against the fundamental principles of international law,⁵² a decision that Russia never got over. The Crimea annexation, despite its international controversy, sparked internal concerns as regions like Donetsk and Luhansk began requesting independence from Ukraine. As Medea Benjamin and Nicolas J.S. Davies affirm in their book called *“War in Ukraine”*,

*“It sent a chilling message to Ukrainians across the country that any challenge to the legitimacy of the new order might be met with brutal violence.”*⁵³

With this event, Ukraine’s credibility as an identity or as a sovereign state, was lost. However, with such horrific events⁵⁴ it was possible to unlock certain senses of unity and of community within Ukraine, strengthening the Ukrainian bonds and identity, which have become their major brightside towards the recent interventions.⁵⁵ These Ukraine’s staged occurrences, resulted in a united and concrete national identity, despite the various movements and divisions within the country, despite the differences in its origins.⁵⁶ However, the biggest event concerning the Western influence on Ukraine would only appear in 2022.

The Russian Federation invaded Ukraine, supported by the ongoing hostilities in Crimea and discussions with NATO for Ukraine's adherence in early 2022.⁵⁷ According to the Russian Federation's rational, one may assume that an EU membership is "merely" Ukraine choosing a different economic path, one which might lead to a stable democratic regime, but that, at the same time, does not flinches its neutrality, and may still give a leeway for Russian influence. This represents a direct attempt to influence Ukraine from Russia’s behalf.⁵⁸ There is a pattern on this sense, giving the case of Hungary⁵⁹ and Bulgaria⁶⁰, both of which, despite being NATO Allies as well, suffered from the Russian Federation's influence and frequently act as opposites to proposed measures that intend to hinder Russian action in Europe. In Ukraine's particular case, knowing the recent

⁵² General Assembly resolution 68/262, *Territorial integrity of Ukraine*, A/RES/68/262, 01 April 2014, available from digitallibrary.un.org/record/767883

⁵³ Benjamin and Davies 2022, 45.

⁵⁴ *“Of an estimated 14,400 people killed between 2014 and 2021(…)”* Benjamin and Davies 2022, 48.

⁵⁵ Mankoff 2022.

⁵⁶ Mankoff 2022.

⁵⁷ Benjamin and Davies 2022, 99.

⁵⁸ Petrov 2023.

⁵⁹ Avramenko 2023.

⁶⁰ Tcherneva 2023.

history and taking into account their border, the possible appliance to NATO is understood as a direct obstacle to Russia via an entrenchment orchestrated by the organization. In December, Russian Federation affirmed its commitment to prevent NATO from engaging in any military activity in Ukraine, ensuring a binding agreement before the invasion.⁶¹ The fact that the Soviet Union was the main cause for NATO's formation and origin,⁶² helps explaining how this rivalry was a relevant trigger for the invasion, combined with the geostrategic importance that Ukraine sustains due to its perfect localization for one side to dominate and leave the other side vulnerable.⁶³ Indeed, all these factors present a very heavy influence on Russia, and the sovereignty of Ukraine was just the price to pay.

The “undermining military efficiency”⁶⁴ from Russia's side was crucial to extend this conflict until the current day, and as the time goes by, the attempt of a civilized solution gets harder to be formed.

With the sovereignty, the social sphere also started to obviously fail on this conflict, and the consequences are immeasurable. Belligerent parties have been causing severe humanitarian crises and human rights violations, targeting domestic systems, cultural monuments, and public infrastructures.⁶⁵ Regarding the severity of the events, and according to the UN database, around 14 million people got displaced, 7.6 billion left Ukraine and went to neighbour countries, and at least 6 655 civilians were dead, getting the number higher every day that goes by.⁶⁶ Many documents and reports made on the field have presented war crimes and crimes against humanity committed by the aggressor state on the Ukrainian borders, including indiscriminate attacks, torture, and sexual and gender-based violence⁶⁷ in some of the main cities such as Kyiv, Chernihiv, Kharkiv, and Sumy, while both sides have committed accountable crimes.⁶⁸

⁶¹ Tétrault-Farber and Balmforth 2021.

⁶² “We also know the main adversary of the United States and NATO. It is Russia. NATO documents officially declare our country to be the main threat to Euro-Atlantic security. Ukraine will serve as an advanced bridgehead for such a strike.” Putin, Address by the President of the Russian Federation 2022.

⁶³ Störk 2015, 17-39.

⁶⁴ Jones 2022.

⁶⁵ Global Centre For The Responsibility to Protect 2022.

⁶⁶ Global Centre For The Responsibility to Protect 2022.

⁶⁷ Global Centre For The Responsibility to Protect 2022.

⁶⁸ Global Centre for The Responsibility to Protect 2023.

It is possible to affirm, that war crimes and crimes against humanity were committed. Crimes which, are censored by the International Law and the RtoP principles (if invoked). In this conflict the analysis goes beyond several threats made by the Russian Federation to the sovereignty of Ukraine throughout the years, war crimes and crimes against humanity occurred. The threats escalated throughout the conflict, and more than a question of sovereignty it has become an issue of survival.

One of the most predictable peculiarities of this conflict already introduced previously was the manipulation of information factor.⁶⁹ As the former U.S. diplomat Chas Freeman stated:

*“This war in Ukraine is the most intense information war humanity has ever seen. There are so many lies flying about that it’s totally impossible to perceive the truth.”*⁷⁰

This perspective has been already highlighted from the internal and international posture of Russia towards other countries and international matters.⁷¹ In this specific conflict, it has shown its potential as a mean of influence and of threat, with a certain importance for the RtoP implementation and progress. Indeed, the manipulation of information is dramatic, but can benefitate of prevention (if taken cared previously) and of direct or indirect action towards the atrocities and violations committed.

The Russian side uses information to influence perceptions, turning international events into a strategy of control and dominance mainly over the West.⁷² Ukraine's freedom of expression has been impacted by Russian propaganda, leading to the spread of various historical versions, creating a middle ground. This issue presents signs like the "De-Nazification" concept, stems from the country's post-WWII Nazi occupation.⁷³

This possible strategy from the Russian Federation’s behalf would be used in order to “undermine cohesion”⁷⁴ on the Ukrainian population and also in the Western perception of the conflict, which in this case, was not successfully accomplished.

⁶⁹ Barber, What Does the "Responsibility to Protect" Require of States in Ukraine? 2022.

⁷⁰ Benjamin and Davies 2022, 119.

⁷¹ McGeehan 2018.

⁷² McGeehan 2018.

⁷³ Barber, What Does the "Responsibility to Protect" Require of States in Ukraine? 2022.

⁷⁴ «The adversaries’ objectives are defined as “to undermine cohesion, to erode economic, political and social resilience, and to compete for strategic advantage in key regions of the world.”» Humphreys and Paeglkalna 2022, 3.

Nevertheless, another sense of ignorance was felt by the Russians with the lack of notion and knowledge on their mission of fighting in Ukraine, which also regards the information issue. Many Russians were taken to the neighbour's territory without any insight of their goal or the real motives for such action making them fight with nothing to fight for but a blind allegiance to their motherland.⁷⁵

This conflict was also the stage for other factors, such as the use of private militias, like the Wagner Group. It was an integrated part of the conflict and was also a representation of an opened door for war tools that are not conventional for a conflict like this one.⁷⁶

The consequences of the conflict kept emerging with the crisis on the food and energy sectors affecting several states; the reappearance of nuclear weapons threats;⁷⁷ also the affirmation of the cyberspace as a war domain.⁷⁸ Every conflict is built on many layers that develop along through its time, and in this invasion specifically, the cyberspace introduced itself in this spectrum.⁷⁹ The stage has changed due to all those factors, but the main core of the conflicts is the same as the ones that occurred in the end of the preceding century: the lack of capacity of sovereignty, a party trying to be dominant over other, crimes, and terror.

All in all, what have seen over and over again is a tale of two countries which, in reality, are fighting for the exact same objective: to assert its sovereignty and preserve its core identity.⁸⁰ The bilateral relationship's history serves as a warning for potential future conflicts, as it provides a foundation for new threats in the future. In this case, for a long time the wounds from the past were not healed correctly. Indeed, it is a conflict that brings awareness for a factor that usually is not used on a preventive perspective: the historical background of a conflict, which was not well treated nor solved in the past, leaving a gap for a possible threat to both countries.⁸¹

For sure, this is a conflict that calls for RtoP implementation. Not only for the action needed to restore the sovereignty in Ukraine, but also due to the lack of protection that the international community and the UN did not provide during all the process of

⁷⁵ Humphreys and Paeglkalna 2022, 1-2.

⁷⁶ Divsallar and Roknifard 2023.

⁷⁷ Chatham House 2023.

⁷⁸ Mueller, et al. 2023.

⁷⁹ Mueller, et al. 2023, 2.

⁸⁰ Mankoff 2022.

⁸¹ Benjamin and Davies 2022, 24-49.

stabilization that the country has been going through since its independence in 1922. As if it was not enough, war crimes and crimes against humanity occurred, being a direct call for justice, and for the RtoP norm.⁸² The new factors and influences based on technology, information, different versions of the same story and globalization⁸³ are all new steps that were not used efficiently to prevent this invasion, while history just played rewind to some decades ago. A new century, a new context, an adaptation and improvement must take place, a new eye-opener. The base in which this type of problematics gave origin to was already built and it's called RtoP, only needing some adjustments to be even more accurate and efficient to these new challenges on conflict analysis. It is possible to affirm that this conflict presents threatening factors to bring an alarm to RtoP's applicability, in order to aid its resolution.

Section 1.2. The International Action and Reaction to the Conflict

As Jeffrey Mankoff remarks, the invasion of Ukraine constitutes the most terrifying conflict and is the one with the highest level of threat to Europe's peace and security since the culmination of Cold War⁸⁴. Due to the current globalized context, this feeling was easily spread in the West.⁸⁵ The current conflict highlights the need to determine if there is a correlation between RtoP expectations and actual implementation by international actors. The main topic of this section is to address if the international context reflects the nature of the RtoP concept. By understanding the current context, it will be possible to determine how valid a norm like RtoP is for the international community, and if there is any correlation.

On an evaluative perspective, it is logical to affirm that, regarding this conflict, the prevention stage presented by RtoP as the first pillar was crucial but was completely ignored. Before February 24th, 2022, various research areas debated "what if" scenarios for the future of the countries related to this conflict. The main question that should have been carefully addressed must have been "What if the Russian Federation does indeed invade Ukraine?".⁸⁶ A simple question that everybody thought about in the previous

⁸² International Commission on Intervention and State Sovereignty 2001, 33.

⁸³ Mcglinchey 2022.

⁸⁴ Mankoff 2022, 1.

⁸⁵ Benjamin and Davies 2022.

⁸⁶ Gessen 2022.

months of the invasion, but never acted upon, and this was the first step on failing with the use of RtoP guidance, regarding the first pillar on prevention.⁸⁷

Since 2014, everyone knew there was a chance, increasing with Russian Federation President's speeches threatening asymmetrical responses to as a reaction to any kind of attempt to doubt or take Russia as weak.⁸⁸ These were combined with rumours painting Ukraine as a possible new NATO joiner, rumours of military investments from the U.S., among others.⁸⁹ Everyone could have anticipated the conflict, but the historical fear of war prevailed over prevention and practical anticipation, as the belief that war either was a thing from the past or would never be the same prevailed. To imagine such tragedy, such brutality, was no longer one option given how much the world had advanced since the turn of the century.

Nevertheless, the reaction appeared at some point and it was remarkable. The world wants to react and wants to solve. The reaction was the demonstration needed to be even more certain regarding RtoP's existence and importance on this conflict, and also, on the international law's sphere. Since the beginning of the Russian invasion on Ukrainian territory, a wave of contest emerged on many Western countries, worried and angry about this conflict.⁹⁰ In this sense, the following paragraphs will report such actions that took place as a response to this conflict.

The European Commission's President Ursula von der Leyen blamed Vladimir Putin for bringing war back to Europe,⁹¹ while French President Emmanuel Macron emphasized the turning point in Europe's history.⁹² Fear grew, but containment relied on severe economic sanctions was the main choice of action, continued to be applied until this day.⁹³ The prediction of another wave of refugees in the Western side and an energy and food market crisis could pose also other significant threats to Europe.⁹⁴ The Russian Federation

⁸⁷ International Commission on Intervention and State Sovereignty 2001, 19.

⁸⁸ *"We really do not want to burn bridges. But if someone mistakes our good intentions for indifference or weakness and intends to burn or even blow up these bridges, they must know that Russia's response will be asymmetrical, swift and tough. Those behind provocations that threaten the core interests of our security will regret what they have done in a way they have not regretted anything for a long time."* Putin, Presidential Address to the Federal Assembly 2021.

⁸⁹ Benjamin and Davies 2022, 73-74; 80.

⁹⁰ BBC 2022.

⁹¹ BBC 2022.

⁹² BBC 2022.; Rodley 2016, 14.

⁹³ Benjamin and Davies 2022, 148.; BBC 2022.

⁹⁴ European Council 2023.

has been suffering from some effects as well, but apparently not in a way as drastic as the West was anticipating, in order to stop the conflict. However, the long-term impact of this crisis is expected to be based on an unprecedented internal repression, economic lockdowns, reminiscent of the Soviet Union's collapse.⁹⁵ In fact, the Russian Federation's lack of sanctions' immediate impact is due to its preparation since the Crimea Annexation,⁹⁶ allowing it to develop preventive measures and limit external flows.⁹⁷

Ukraine sought legal aid in the conflict, starting a procedure on the International Court of Justice against Russian actions under the Genocide Convention, aiming to force Russia to suspend its military operations in Ukraine.⁹⁸ The ICJ development on the process is longing, as its lack of independence makes its measures and all the process have many limitations and factors, not to mention the inexistence of any entity capable to effectively enforce a potential decision coming from the ICJ. During the same phase, help started to be provided to the Ukrainian government, especially with investments on military aid; weapon supplies and equipment from the US, UK and other Western countries, or the fact that NATO members allowed training of Ukraine forces in other countries,⁹⁹ and have been providing intelligence assistance.¹⁰⁰

The International Criminal Court (ICC) initiated an inquiry into Russian Federation's actions, releasing an arrest to Vladimir Putin and Maria Lvova-Belova on March 17, 2023, for crimes of unlawful deportation and population transfer from Ukrainian territories.¹⁰¹

The International Committee of the Red Cross (ICRC)¹⁰² and the Organization for Economic Cooperation and Development (OECD) have provided aid and services to

⁹⁵ Williamson 2023.

⁹⁶ When the Western sanctions started to be imposed on the Russian Federation.

⁹⁷ “(...) Russia's central bank took dramatic measures, temporarily spiking interest rates to 20 percent and imposing strict controls to restrain capital flight. Companies that exported or did business abroad had to convert 80 percent of their foreign exchange revenues to rubles. Government regulations also limited the amounts of money Russians could transfer abroad or withdraw from foreign currency accounts.” Benjamin and Davies 2022, 149.

⁹⁸ United Nation News 2022.

⁹⁹ Benjamin and Davies 2022,

¹⁰⁰ Beaumont and Borger 2022, 89-90

¹⁰¹ International Criminal Court 2023.

¹⁰² International Committee of the Red Cross 2023.

Ukrainian refugees during the humanitarian crisis, while the OECD has established a new OECD-Ukraine Liaison office in Paris and Kyiv.¹⁰³

Many European countries have individually taken international action, providing aid to Ukraine's people, particularly women and children, by sending necessary materials for basic necessities.¹⁰⁴ This mobilization has been remarkable and some flexibility was seen from the European Union side.¹⁰⁵ Since the very first moment, the Union has presented its position against Russia's action and has stood by its commitment of complete support to Ukraine to ensure Kyiv survives this conflict.¹⁰⁶ Alongside this commitment, the European Union was quick and permissible to activate the Temporary Protection Directive for Ukrainian refugees, allowing them to remain inside European Union states without visas.¹⁰⁷ This landmark solution turned out to be a very helpful action, but it also brought along some controversy, as it exposed the current double standards in the European countries towards refugees coming from Europe or outside Europe:¹⁰⁸

Non-Governmental Organizations (NGOs) play a growing role in world affairs, exemplifying great means to be adopted by the international community to reach the RtoP concept. The world is literally watching through NGOs active engagement in politics and in the international agenda in its own way, influencing decisions, keeping track of all the failures governments and international organizations have been making. Their position supports RtoP principles, enhancing awareness and information from NGOs' reports and research, thereby enhancing credibility in a technological world characterized by threats of disinformation and information manipulation.¹⁰⁹ In this sense, the role of secondary actors can make a difference regarding all the three pillars: prevention, reaction and rebuild, by providing the tools (informative ones) needed to implement the action.¹¹⁰

¹⁰³ Organization for Economic Cooperation and Development Council 2022; Organization for Economic Cooperation and Development Council 2022.

¹⁰⁴ Human Rights Watch 2023.

¹⁰⁵ Williamson 2023.

¹⁰⁶ BBC 2022.

¹⁰⁷ Williamson 2023.

¹⁰⁸ "Governments in Europe and elsewhere need to take the next step, ending the double standards towards refugees. Refugees from Ukraine are welcomed at Poland's border with Ukraine, yet Afghans, Syrians, and others are beaten and turned away at Poland's border with Belarus." Williamson 2023.

¹⁰⁹ "the NGOs play an important role because they help the transformation of international law and they contribute the development, judicial application, interpretation and enforcement of international law." Sabattini 2014, 3.

¹¹⁰ Council of Europe s.d.

NGOs are actively collecting reports on Ukraine's situation, addressing issues, recalling people and states, and recalling the aid both domestically and internationally provided to its people.¹¹¹ Giving the example of two NGOs, Human Rights Watch and Amnesty International, both are concurrent when saying that International Humanitarian Law has been broken and war crimes have been committed during the conflict. Amnesty International's article "*Ukraine: Ukrainian fighting tactics endanger civilians*" highlighted the dangers of Ukrainian forces establishing bases and operating weapons in residential areas, ignoring alternatives like military bases and wooded areas.¹¹² These alleged Ukrainian actions not only exposed the more residential areas to retaliatory fire, but it also made Ukrainian civilians to become even more vulnerable targets.

The list of crimes and allegations collected throughout this first year of war has no end, and the urge for accountability is deafening. The Human Rights Watch has presented its World Report 2023 in which reviews the human rights current situation in 100 countries and the Executive Director Tirana Hassan affirms that a lot has changed, and it is no longer feasible to rely on a small number of governments, largely from the global north, to protect and maintain human rights.¹¹³ Amnesty International has brought a more controversial perspective on its reports regarding the war, with a catch on the crimes and alleged violations committed, combined with an analysis of the action and harm made also by the Ukrainian side.¹¹⁴ The global mobilization around the war highlights the potential of governments respecting human rights on a global scale, recognizing individual responsibility and implementing a human rights framework.¹¹⁵ The share of such information is important for a RtoP context, as it brings impartiality and transparency on a world where the manipulation of information has come to stay, providing to NGOs a very crucial position to work towards the country's restoration.

Another relevant step taken by some countries were the diplomatic measures. A classic module that have been helping conflicts for ages, and it is indeed included in the RtoP structure of response. As General Mark Milley, current US chairman of the Joint Chiefs of Staff once said "*when peace can't be achieved, seized it*"¹¹⁶ and it is crucial for the

¹¹¹ Prokscha 2022.

¹¹² Amnesty International 2022.

¹¹³ Human Rights Watch 2023.

¹¹⁴ Amnesty International 2022.

¹¹⁵ Human Rights Watch 2023.

¹¹⁶ Chessa 2022.

course of a conflict if the diplomatic mechanisms for negotiations and clearance were used and wasted before any military attempt. Many wars took place due to a lack of negotiations and diplomatic relations, and diplomacy has developed throughout the centuries in order to be a helper in situations like the presented one.¹¹⁷

To what Europe is concerned, its main power-axis, France and Germany, has been having different postures, though united in presenting a strong stance against the Russian Federation. France, mainly through its President, Emmanuel Macron, has bet consistently on dialogue.¹¹⁸ Macron's efforts to bring Vladimir Putin to the negotiations table, his endless phone calls and early travels to Moscow will go down in history as strong belief in diplomacy.¹¹⁹ Despite his tremendous efforts, those, bore nothing palpable. It is also worth to note Macron's efforts to change minds of other important players, and there is no better example of it than his visit to China, with the European Commission's President, Ursula von der Leyen, both of which met with the Chinese President, Xi Jinping.¹²⁰

Berlin's strategy combines strong condemnation and military support with internal reorientation and reprioritization of its defense sector, and a significant reconsideration of its relationship with Moscow.¹²¹ In February 2022, German Chancellor Olaf Scholz proposed a significant break in relations with Russia and increased defence spending, disrupting a tradition of underfunding military forces.¹²² As researcher Bernhard Blumenau puts it, the Zeitenwende Speech "marked Germany's waking up to the geopolitical realities of 2022".¹²³

Due to an enormous and general effort from the Western main powers to aid Ukraine, a month after the conflict turned a year of duration, the European Union Council (EUCO) reunited on a General Secretariat of the Council Delegations which discussed and approved the speed up of the delivery and joint procurement of ammunition for Ukraine in a relatively near future.¹²⁴

¹¹⁷ Wade 2022.

¹¹⁸ Ministère de L'Europe et des Affaires Étrangères 2023.

¹¹⁹ Ministère de L'Europe et des Affaires Étrangères 2023.

¹²⁰ Hawkins and Chrisafis 2023.

¹²¹ Dempsey 2023.

¹²² Mehrer 2022.

¹²³ Blumenau 2022.

¹²⁴ European Union Council 2023.

With the analysis on this section, it is possible to say that there is more than one mode to help the invaded country on defending from a blatant aggressor as states and international organizations have shown and proved.¹²⁵ Undoubtedly, some will bore more results than others, but the key to success may lie in how these modalities will entangle and complement each other.¹²⁶ Indeed, RtoP suggests that victory depends on combined efforts, using international actors to sustain aid spheres. Passive measures and making diplomacy function purposefully can lead to wider responsibility, higher awareness, and a higher probability of positive results or less consequences. The context that this invasion has shown is the loudest alarm on how RtoP is still valid on International Law. Besides the technicality, criteria and scope of the norm, the willingness and identification from the type of international community with the RtoP is crucial for its performance and adoption.

Chapter 2 – International Law and State’s Obligations on humanitarian violations

When RtoP concept is discussed, it is crucial to remember the complex but binding conjecture of international law that allows other type of actions and positions in which states must oblige, and, on the other hand, identify more easily where the violations are. Indeed, the RtoP has arrived to the international community in 2005¹²⁷, but for years the main principles were already conducted through other patterns of international law.¹²⁸ This chapter has the goal to provide a continuous informative answer on how the RtoP is still valid and applicable into the Ukrainian conflict, focusing on how the international law context provides support to the actions aimed to be applied by following the RtoP norm. The investigation will aim to answer if it is needed a norm like RtoP. Still inside this topic, there is the analysis of the UN (more specifically the UNSC) which constitutes the body that carries the norm and represents the means to be invoked and applied.¹²⁹ Taking into consideration the current context of the world and international relations, is it the UN structure efficient on providing the means to put a norm like RtoP

¹²⁵ Humphreys and Paeglkalna 2022, 1-2.

¹²⁶ Barber 2022.

¹²⁷ United Nations, General Assembly. 2005 World Summit Outcome. New York, NY: UN, 2005.

¹²⁸ Sarkin 2018.

¹²⁹ “*The UN also became the principal international forum for collaborative action in the shared pursuit of the three goals of state building, nation building and economic development. The UN was therefore the main arena for the jealous protection, not the casual abrogation, of state sovereignty*” International Commission on Intervention and State Sovereignty 2001, 13.

into practice? What are the obstacles the UNSC poses to the norm? Has the UN done everything it could regarding Ukraine?

Ideally speaking, International norms provide a global standard for safeguarding nations' and peoples' rights, supervised by entities like the UN and Tribunals. However, every law has its own general-purpose to form a conjuncture of order, and in terms of conflicts there are many spheres of law that interfere on each other's.

Taking into consideration the “war crime” definition, the International Military Tribunal Charter states in a more general perspective that “*war crimes are violations of the laws or customs of war*”¹³⁰, just as the International Criminal Court Statute on Article 8(1) affirms:

*“Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention”*¹³¹.

Turning the focus to the four types of crimes that are described in the ICISS' report¹³², where the RtoP principles were constructed, there is the Convention on the Prevention and Punishment of the Crime of Genocide (also known as the Genocide Convention), implemented in 1951 has its base on the UN resolution A/RES/96 stating genocide as a crime under international law, signed and ratified by the Russian Federation and Ukraine.¹³³ In this convention, it is affirmed that every state has a responsibility to prevent genocide,¹³⁴ which can be interpreted as whenever this legal document is promulgated by the states, it becomes their duty to do everything they can to prevent any type of event that can be predicted as a possible genocide¹³⁵, just as it is mentioned in the description

¹³⁰ Article 6 (b), Charter of the International Military Tribunal 1945.

¹³¹ article 8(2), Rome Statute of the International Criminal Court 1998.

¹³² United Nations, General Assembly. 2005 *World Summit Outcome*. New York, NY: UN, 2005., 31.

¹³³ United Nations General Assembly (UNGA) Res 96(I) (11 December 1946) UN Doc A/RES/96(I).

¹³⁴ Barber 2022. Article I, Convention on the Prevention and Punishment of the Crime of Genocide 1951.

¹³⁵ “*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.*” Article II, Convention on the Prevention and Punishment of the Crime of Genocide 1951.

of RtoP's pillar two: *responsibility to act*¹³⁶. This Convention indeed is very relevant for the grounds in which RtoP grew on, since it is required the stipulation of necessary legislation in order to give the effectiveness of this Convention in prevention and also action during such crime.¹³⁷

Moving to the next legal document, the 1945 United Nations Charter presents an important link with RtoP's origin, but also its future. The Charter provides answers and obstacles to the UN's objectives and functions in the current global context, being the centre of the organization but also probably the main obstacle to RtoP implementation due to its interpretation regarding the veto power. The articles highlighted are Article 24 (1,2) where the functions of every member of the UN are stated with the goal of maintaining "international peace and security"¹³⁸ and how the UNSC must function according to the purpose and principles of the institution.¹³⁹ By analysing the UN's purpose (which is also incorporated in article 24.2), it is possible to understand an alarming amount of principles and values which were violated by the Russian Federation in the current conflict.¹⁴⁰ Including equal rights and self-determination of peoples – for example by promoting the unlawful integration of certain Ukrainian regions into Russia.¹⁴¹ Indeed, the one of the main important point to highlight on the Article 1.4. regarding this conflict is where it affirms:

*"All the Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the UN"*¹⁴².

¹³⁶ "(...) those actions defined by the framework of the 1948 Genocide Convention that involve large scale threatened or actual loss of life;" International Commission on Intervention and State Sovereignty 2001, 33.

¹³⁷ Article V, Convention on the Prevention and Punishment of the Crime of Genocide, 1951.

¹³⁸ "1. In order 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." Article 24, UN Charter 1945.

¹³⁹ "2. In discharging these duties, the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII." Article 24.2, UN Charter 1945.

¹⁴⁰ Bellinger 2022.

¹⁴¹ Bellinger 2022.

¹⁴² Article 1.4., UN Charter 1945.

Proving that this invasion states a clear violation of the Charter, and a clear situation needing the implementation of the RtoP, as a concept originated to situations in which state's integrity is in cause, mainly its sovereignty.

On rules of aggression and the use of force, the UN Charter presents a first position on prevention regarding such situations in which is the members' duty to formulate provisional measures¹⁴³ and also to take a position of availability into calling for special agreements, armed forces, assistance in order to comply with the rights of passage to sustain the UN's purpose.¹⁴⁴ This is another point extended in the RtoP, mainly on its first pillar where the means to prevent a conflict where would jeopardize a state's sovereignty to happen are crucial.

As it was mentioned in the Section 1.2., some states acted accordingly with the RtoP commitment and, due to such adoptions, the support and aid was bigger, which is a result expectable with the applicability of this norm. Unfortunately, it was not the general case among the states. In case of a commitment to use force on the UN's behalf, it is based on a self-defence perspective, which in this specific case is important due to Ukraine's position as the invaded country.¹⁴⁵

Indeed, the importance of understanding how the international law is built to be effective but also very general in order to be supported and applied by the biggest number of states possible, is a particular mix characterized by a high complexity and a strict leeway to allow any change. Its simplicity can present breaches for different cases, and in the case of Ukraine and the Russian Federation's conflict, it is possible to see the gap allowing different interpretations, being also able to interpret the laws according to each perspective and take them into each sides' advantage. The Russian President Vladimir Putin has been acclaiming the RtoP commitment as one of the reasons why the country is taking such an active position towards some events in other neighbour countries,¹⁴⁶ disguising it as a national obligation to protect and defend Russian communities, even if placed beyond Russia's internationally recognized borders.

¹⁴³ "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic relations" Article 41, UN Charter 1945.

¹⁴⁴ Article 43, UN Charter 1945.

¹⁴⁵ Article 51, UN Charter 1945.

¹⁴⁶ "Russia has distorted those principles, twisting them instead to justify its intervention in the internal affairs of countries such as Estonia and Kazakhstan and, in the case of Ukraine, outright invasion." Ashby 2022.

However, as Gareth Evans explains, this is not the type of threat targeted by the RtoP concept, as it is only sustained by the lack of responsibility from the sovereign state to protect and provide inside its borders.¹⁴⁷ A RtoP adoption from the UN's behalf in the first place on the conflict would be a helpful measure in order to contradict those type of mentioning of the norm, directing to the right direction of action.

It is the result of the natural evolution of international law and Humankind towards the prevention of conflicts as it happened in many international organisations, adopting structures and instruments that aims such goal.¹⁴⁸ The law must align with society's development and emerging threats, revealing flaws and gaps over time, guiding the path towards improvement. In the beginning of the current century, an urge to answer the atrocities that took place in the 1990's was a priority. This is still a priority, as it was possible to analyse with the international action on this conflict (mentioned in the Section 1.2.). In this sense, the RtoP emerged due to the need for a defined norm for prevention, action, and rebuilding¹⁴⁹ following the violent aftermaths of conflicts like Rwanda, Kosovo, and former Yugoslavia. This conflict has just shown that the concept itself is still very accurate for the current context on the international scope.

In the end, considering all the existing and internationally agreed laws and conventions, why is the RtoP necessary? The norm's origin emphasizes its importance as a voluntary commitment to protect states from sovereignty threats.¹⁵⁰ International actors' efforts call for RtoP principles, as they present a structure and plan of action. Indeed, not all norms must be coercive, and states' liberty of commitment is a positive aspect of the RtoP norm and also a point in common with the UN Charter, being an even more current nowadays, showed by this demonstration of aid willingness from many states and organizations.¹⁵¹

¹⁴⁷ Evans 2008.

¹⁴⁸ "The UN, the OSCE, the EU, the OECD, the AU, ECOWAS, SADC, IGAD, ASEAN, the G8, the IMF and the World Bank all adopted some type of commitment to conflict prevention." Ramsbotham, Woodhouse and Miall 2016, 163.

¹⁴⁹ "The Responsibility to Protect (...) gave a distinct new impetus, with an emphasis on preventive action to protect civilians but also a call for military intervention if other measures failed." Ramsbotham, Woodhouse and Miall 2016, 163.

¹⁵⁰ International Commission on Intervention and State Sovereignty 2001.

¹⁵¹ "The Charter of the UN is itself an example of an international obligation voluntarily accepted by member states. On the one hand, in granting membership of the UN, the international community welcomes the signatory state as a responsible member of the community of nations. On the other hand, the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature." International Commission on Intervention and State Sovereignty 2001, 13.

Section 2.1. The United Nations – Security Council’s origin, structure and functions

In fact, the UN is the body to conduct the RtoP principles, and it is important to explain how its role represents a crucial but also a challenge for the future of the norm.

The UN shares its point of origin with most of the Western-born institutions, such as NATO and the European Union, as a result of the horrific events that marked the twentieth century.¹⁵² Indeed, the world needed peace so, in 1945, the United Nations was born with six principal organs: the General Assembly, the Economic and Social Council (ECOSOC), the Trusteeship Council (currently inactive), the International Court of Justice (ICJ), the Secretariat and the UNSC.¹⁵³

The UNSC was part of the main structure born out of the restructuration of the organization with the ratification of the Charter of the United Nations. In 1945, by the five permanent members of the UN, regarded as the “winners” of World War II, established its purpose for the UN as “*the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.*”¹⁵⁴

The idea behind the current configuration of the UNSC is a “hybrid” and, arguably, an outdated one. It is where the functional and authority component of the United Nations is better reflected, and of the RtoP character as well.¹⁵⁵ Even though the General Assembly does possess some tools to partially circumvent the UNSC inaction, it is in this body, on the other hand, where rule actually resides, it is the embodiment of the UN’s realistic component, and the main body for the RtoP’s invocation.¹⁵⁶ It is composed of 15 members, five of which are Permanent Members (also known as P5) with veto power,¹⁵⁷ representing the biggest obstacle for many resolutions, open debates and also, the RtoP’s applicability.¹⁵⁸

¹⁵² Gilbert 2010.

¹⁵³ Article 7, UN Charter 1945.

¹⁵⁴ Article 23 UN Charter 1945.

¹⁵⁵ International Commission on Intervention and State Sovereignty 2001, 49-50.

¹⁵⁶ International Commission on Intervention and State Sovereignty 2001, 49-50.

¹⁵⁷ Council on Foreign Relations 2023.

¹⁵⁸ “*The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.*” International Commission on Intervention and State Sovereignty 2001, XIII.

The calls for a reform of this organ are neither new nor few. The sense that the P5 benefit from some impunity regarding some of its vote directions, and more than that, that the P5 use the UNSC as a spear or shield, depending on the issue at stake to propel or safeguard its national interests.¹⁵⁹ Giving the example of all the blocked resolution regarding Syria by the Russian Federation and the People's Republic of China (PRC), are crystal clear examples of this argument, even though the despair and atrocities committed are beyond any reasonable doubt.¹⁶⁰

All the articles and norms mentioned in Chapter 2 regarding the UN Charter (1945) present a united front of what the UN stands for, and the reasoning behind its origin on the prior century. Everything gets complicated when the functions of the UNSC and its Members are introduced, presenting the Permanent Five Members of the UNSC¹⁶¹ detaining veto power over every decision taken in the Council, which ironically is not written on the UN Charter, but rather results from its interpretation.¹⁶²

There are a number of proposals within the academic and political realms on providing some modifications related to this matter, combined also with intergovernmental negotiations that are taking place in the General Assembly of the United Nations.¹⁶³ The willingness for change demonstrated from the states it is also a sign of hope for the RtoP's future, developing the structure to be able to handle situations like this conflict, with the right support of norms, like the RtoP principles. Portugal, for example, supports Japan, Germany, Brazil, and India's inclusion in permanent Council members due to their economic importance and the need for diverse geographical and cultural representation.¹⁶⁴ The Portuguese argument itself tracts from a British-French proposal of enlargement on a new category.¹⁶⁵ Besides Japan, Germany, Brazil and India, the British-French proposal also included the more generic presence of Africa and possibly

¹⁵⁹ "The veto affects the work of the Council in ways that transcend its actual use during voting. It is not unusual for a draft resolution not to be formally tabled because of the threat of a veto by one or more permanent members." The Security Council Report 2015.

¹⁶⁰ Nichols 2019.

¹⁶¹ United Kingdom, United States of America, France, China and the Russian Federation (taken the seat of the former Soviet Union since its dissolution). The Security Council Report 2015.

¹⁶² According with the interpretation of Article 27 UN Charter 1945.

¹⁶³ General Assembly of the United Nations 2023.

¹⁶⁴ Botelho 2021.

¹⁶⁵ "Among the Western permanent members, France and Britain have been the most forward leaning on reform, aware of their relative vulnerability and critiques of Europe's overrepresentation on the council. Since 2009, they have promoted a sort of interim solution: a new category of longer-term seats that could eventually become permanent (albeit without the veto)." Patrick, et al. 2023.

an Arab state. Recognizing such a reform would not be achieved from day to night, as Ripert explained in his statement:

*“France and the UK support the option of an intermediate reform that would temporarily provide for seats with terms longer than two years and immediately renewable. At the end of this initial phase (that could last 15 to 20 years), a review conference should evaluate the impact of the reform and the necessity of completing the first phase of reform.”*¹⁶⁶

Despite the enlargement solution, there have been put forward some proposals to limit the usage of vetoes or to demand a threshold of vetoes to block a resolution, and this case would definitely change the debate inside the body that was made to help on conflict resolution. France, one of the P5, for example, during François Holland’s term as President of France, had proposed to regulate the usage of the veto power by the Permanent Members. The French President proposed that the P5 would voluntarily and collectively refrain from vetoing a UNSC Resolution when faced with mass atrocities, including genocide, crimes against humanity, and large-scale war crimes.¹⁶⁷ In 2015 a proposal with the support from Mexico came out on France’s behalf, entitled “Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocity” as a continuation of what François Holland had started.¹⁶⁸ France’s rationale was simple and understandable, albeit a bit utopic: force the Nations to stop treating the veto power as a “privilege”.¹⁶⁹ Indeed, this “privilege” has been blocking many attempts of resolution, and taking it into consideration, many topics weren’t discussed deeply enough until now to present an efficient response to disastrous events, overshadowing norms like the RtoP on providing possible actions.¹⁷⁰ The essence of the proposal relied on the voluntary character of the measure, which would avoid a revision of the UN Charter. This voluntary compliance, as seen in experiences drawn from non-binding international documents, and also the case of RtoP’s adoption, tends to earn more easily the support from Nations, who feel released from the pressure of a theoretically ironclad international commitment. Nevertheless, one

¹⁶⁶ Patrick, et al. 2023.

¹⁶⁷ Ministère De L’Europe et Des Affaires Étrangères s.d.

¹⁶⁸ Global Centre for the Responsibility to Protect 2015.

¹⁶⁹ Global Centre for the Responsibility to Protect 2015.

¹⁷⁰ “(...) its (UNSC) legal capacity to authorize military intervention operations; its political will to do so, and generally uneven performance; its unrepresentative membership; and its inherent institutional double standards with the Permanent Five veto power. There are many reasons for being dissatisfied with the role that the Security Council has played so far.” International Commission on Intervention and State Sovereignty 2001, 49.

must consider that this voluntarism made French diplomats unable to accurately define the criteria to activate self-regulation, initially referring to the potential role of the Secretary-General in the spirit of the Charter's Article 99.¹⁷¹

The year is 2023 and the French proposal it is still on process.¹⁷² It might have drawn from the voluntary approach of non-binding international documents, but such a move would crash onto some of the P5 main national interests on highly disputed shatter belt regions. UN reform aims to diversify nations, promote openness to principles like RtoP, and reduce power concentrated in five pairs, easing legal acceptance of such principles. It is important to be conscious, though, that to change the *status quo* will not be a simple, nor quick task. Nevertheless, the fact that so many Nations, including UNSC's permanent members, are coming forward with proposals to reform the Council, is in itself a sign of a wider awareness of the obstacles that UN's own structure present to its principles, norms and values.

The UNSC's broad structure may pave the way for humanitarian intervention on UN's behalf, acknowledging potential violations as obstacles to international peace and security.¹⁷³ However, this is seldom the reality, with permanent members generally putting its national interests ahead of justice, peace and security in a given region or state. This situation brings out more attention to the matter in a clearer and opened-up way, and it represents one of the major limitations which has been the main justification for the lack of action from the UNSC concerning different past conflicts which were not considered as consequential to interfere with international peace and security.¹⁷⁴

Indeed, the RtoP principle was born in the United Nations¹⁷⁵, following its principles and its willingness to provide peace and security in the world.¹⁷⁶ However, it is difficult to read one without the other, and the obstacles of the UN's structure have become the norm's obstacles indirectly.

¹⁷¹ Ministère De L'Europe et Des Affaires Étrangères s.d.

¹⁷² "As of July 2022, 104 member states and 2 UN observers have signed the declaration." Global Centre for the Responsibility to Protect 2022.

¹⁷³ "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security." Article 34 UN Charter 1945. Rodley 2016.

¹⁷⁴ International Commission on Intervention and State Sovereignty 2001, VIII, 49.

¹⁷⁵ United Nations, General Assembly. 2005 World Summit Outcome. New York, NY: UN, 2005., 31.

¹⁷⁶ Article 1, UN Charter, 1945.

It is crucial to mention how the RtoP norm by itself was the result of impartiality (as it is a general applicable norm) and willingness from the states to address such concerns in a more complete way, and it will be the same way, independently of the structure that conducts it.¹⁷⁷ The structure only limits its application, and the main example is, indeed, the Ukrainian conflict, as the Russian Federation would never allow a resolution invoking RtoP or, in a last resource, a military intervention against itself.¹⁷⁸ Does it mean that the norm is not applicable anymore?

Simply put, the norm's nature and validity as a concept remains completely intact, according with the type of international context presented nowadays. Nevertheless, for it to be actually put in practice, it depends on the willingness of states and begs for the right mechanisms to be activated. If the right mechanisms are in place and are respected, then the states' mere willingness becomes secondary, as they should oblige by the international mechanisms design. Therefore, a reform of the UNSC that cut down on the veto's weight would be a major step towards RtoP's adoption, ensuring that states would not be able to block it out of disdain.

Section 2.1.1. The use of force

Regarding the controversial topic of use of force as a possible measure from the RtoP, the law is clear under Chapter VII, affirming that the UNSC has the function to authorize such action.¹⁷⁹ However, the issue of state sovereignty needs a reflection on when and how a state can coercively act on a third party without its consent.¹⁸⁰

The first step taken by the UNSC regarding the use of force occurred with Resolution 1973 regarding the Libyan situation¹⁸¹ – a topic to be developed and explored in Chapter 4 –, where the Council approved the use of force in spite of the existence of a non-consensus on the matter, especially from two permanent members, China and the Russian Federation, which had always shown reluctance¹⁸² due to the different links and interests on Libya with the member-states.

¹⁷⁷ “(...) there has to be, as always, the willingness to apply those measures – the issue of “political will.” International Commission on Intervention and State Sovereignty 2001, 20.

¹⁷⁸ United Nations News 2022.

¹⁷⁹ UN Charter, 1945.

¹⁸⁰ Rodley 2016.

¹⁸¹ United Nations, Security Council. 1973, S/RES/1973 (17 March 2011)

¹⁸² Gifkins 2016.

The RtoP concept was built on a sense of state's sovereignty combined with a humbler and conscious perspective to look after, a need for a responsibility to be upheld in relation, primarily, to its people's well-being. The use of force is one of the possible measures by the RtoP-related means. Nevertheless, it is also important to mention the intention behind the permission of use of force, since it is allowed as a last resource within the eyes or the purpose mainly of the UNSC and the UN in general, as it is described in Article 1 of the Charter.¹⁸³ Indeed, the UNSC's permissible function is a legal counterargument, as it contradicts other Charter articles, such as Article 2.4, which allows armed forces for self-defence and individual rights protection.¹⁸⁴ Article 51 also sustains this affirmation.¹⁸⁵

Accordingly, with this second perspective on the Charter and the jurisdiction that sustains the UNSC, the idea of humanitarian intervention, overriding state sovereignty and all the boundaries in the name of human rights, is not a good enough reason for such action onto the states involved in a given quarrel.¹⁸⁶ After acknowledging this matter, it is possible to state that the use of force through the UNSC's authorization would always be reserved for the worst situations regarding human rights, in which cases like the Russo-Ukrainian conflict might fit in.¹⁸⁷ It is a door that must be open in case of necessity, which without the RtoP's adoption, becomes difficult to understand the steps taken and when is the time to implement such actions.

Section 2.1.2. UN Security Council and Responsibility to Protect

The appearance of the RtoP was a clear necessity in the beginning of the century, as before its appearance the role of the UNSC had been negligent towards major conflicts with so many accountabilities to be made.¹⁸⁸ Unfortunately, this scenario still stands nowadays. As it was mentioned in a UN's 2004 report:

¹⁸³ "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;" Article 1.3. UN Charter 1945.

¹⁸⁴ Article 2.4. UN Charter 1945.

¹⁸⁵ Article 51 UN Charter 1945.

¹⁸⁶ Rodley 2016.

¹⁸⁷ "Last resort: Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded." International Commission on Intervention and State Sovereignty 2001, XII.

¹⁸⁸ International Commission on Intervention and State Sovereignty 2001, VII.

*“The Security Council so far has been neither very consistent nor very effective in dealing with these cases, very often acting too late, too hesitantly or not at all.”*¹⁸⁹

Indeed, its response was not met with the appropriate amount of intensity when comparing with the proportions of so many atrocities that could have had different outcomes or less consequences if the organ had acted efficiently upon it.¹⁹⁰ But, it is because of situations like these that a norm like RtoP exists. A certain consciousness was also needed from the UN taking according to its Charter, and so, the RtoP also arrived to promulgate such responsibility on the UNSC to address such issues when the states fail to protect individual human rights.¹⁹¹ The UNSC’s action on the conflict in Darfur around 2006¹⁹² was very meaningful, since it was the first resolution mentioning the RtoP¹⁹³, which had led to a gradual implementation of the norm, slowly acquiring international recognition. It was still a new language that shattered the *status quo* and collided with the traditional understanding of sovereignty, but it was also a simple and evolutive one, providing responses to the context and its needs.¹⁹⁴ The language used in this type of context is a major factor, as Jess Gifkins mentioned in 2016, there were “*distinct phases of engagement with R2P by the UN Security Council*” explaining how the process of introducing a new concept works, and how long it took.¹⁹⁵

As it was already introduced in the previous sections, many ideas of UN reform have been developed. Going back to the François Hollande’s a proposal stating that the P5 had to abstain voluntarily and collectively from using the veto power in Humanitarian-related situations¹⁹⁶, as a response to the inaction of the UN on the previous conflict in Syria, in which the RtoP failed to be addressed, again.¹⁹⁷ Holland’s proposal has a great relevance towards the issue that sustains this dissertation, demonstrating the urge to regulate the use of the veto on the UN and stop this vicious cycle of numbness and incoherency of the UN, allowing the RtoP to be invoked freely from structural obstacles.¹⁹⁸ This type of

¹⁸⁹ United Nations 2004, 66.

¹⁹⁰ International Commission on Intervention and State Sovereignty 2001, 49.

¹⁹¹ Sarkin 2018.

¹⁹² Gifkins 2016.

¹⁹³ United Nations Security Council Resolution S/RES/1706 (31 August 2006).

¹⁹⁴ International Commission on Intervention and State Sovereignty 2001, 13.

¹⁹⁵ Gifkins 2016, 8.

¹⁹⁶ Rodley 2016.

¹⁹⁷ Fabius 2013.

¹⁹⁸ Why France wishes to regulate use of the veto in the United Nations Security Council s.d.

initiatives would bring the responsibility and sense of duty of RtoP to the P5, implemented by the urge of conscience, and to give continuation to the international development which had been taking place up until that point in time.

The Russian-Ukrainian conflict shows how the current context of international relations does not need the use of veto as a way to act on international conflicts and in order to maintain international peace and security. Indeed, the conclusions taken from the current context are the complete opposite of such, blocking the possible resolution and implementation of norms that present coherency towards the current scenario.¹⁹⁹

Despite the great values defended by the UN, a State cannot undervalue its interests and political needs over an institution, an ideal, or other states, and with the powers given inside the organization that statement is highlighted. Indeed, the permanent members structure is not the most efficient nor fair one. It is a system with a reason of origin, but that reason does not match and faithfully reflect reality anymore. The possibility of a military intervention through ways of the RtoP it is a very legitimate concern from many points of view, but the RtoP concept is way more than just a way through for a legal use of force. Represents a legal form of a responsibility that should be inherent in every government but has failed to persevere. It is a proof of evolution and a response to it as well, and presents a logic that the states must follow individually (despite the international decisions) in order to get better chances on solving conflicts and repairing states' sovereignty.²⁰⁰ It is fair to say that this structure is an obstacle to the invocation of the RtoP norm, currently, and specifically to the Russo-Ukrainian conflict.

Section 2.2. UN's Action on Ukraine

Despite the non-application of the RtoP norm, the invasion topic has not been deleted from the UN's bodies, as its discussion has been quite regular combined with all of the obstacles that restrain most of the effective action that could have been placed.²⁰¹ However, after knowing of the obstacles mentioned previously, it is impossible not to wonder if the UN has done everything it could. Was the RtoP norm not necessary in this conflict? In order to address the UN's actions without the RtoP invocation, it will be reported some of the main events regarding the Russo-Ukrainian conflict.

¹⁹⁹ Fabius 2013.

²⁰⁰ International Commission on Intervention and State Sovereignty 2001, VIII.

²⁰¹ United Nations 2022.

The UNSC passed a resolution three days after the conflict began, calling for an emergency special session for collective action in response to Ukraine's situation.²⁰² In March, the Human Rights Council established an international Commission of Inquiry (also known as COI) to investigate the alleged violations committed in Ukrainian territory within the context of the Russian invasion.²⁰³ The UN General Assembly also adopted a resolution to suspend the Russian Federation from the UN Human Rights Council on the 28th anniversary of the Rwandan Genocide. This decision brought a certain debate on whether the international community is following the norms and sense of justice, or if it is cutting relations with the Russian Federation, dividing the world once again.²⁰⁴ As Justice Richard Goldstone stated “[Russia’s removal from international bodies] is an appropriate response to its criminal conduct. It does not preclude diplomatic solutions to put an end to the war”²⁰⁵, a thought that could be more easily impartially defined by the RtoP’s applicability, and the Head of the EU Delegation, Olaf Skoog, stated that “*the rare decision this Assembly has taken today sends a strong signal of accountability and hopefully will help preventing and discouraging more violations of human rights*”²⁰⁶, reflections that, until now, represent a similarity with what the RtoP has to offer.

In March 2022, the eleventh Emergency Special Session of the General Assembly approved a resolution condemning Russian aggression on Ukraine and calling for its prompt withdrawal in accordance with international law.²⁰⁷ This is a very important resolution despite its lack of reinforcement, as the political weight of the UN General Assembly is still very representative, especially in situations where the UNSC has nothing but obstacles to block its action on the case.²⁰⁸ The fact that these type of resolutions are becoming only from one body from the UN presents a very direct obstacle for efficiency, as the UNSC should be the main ruler of an event like this, making it impossible to norms like RtoP be applied.

²⁰² Security Council resolution 2623, *on convening an emergency special session of the General Assembly on Ukraine*, S/RES/2623 (27 February 2022, available at digitallibrary.un.org/record/3958818)

²⁰³ Human Rights Council Resolution 49/1, *Situation of human rights in Ukraine stemming from the Russian aggression*, A/HRC/RES/49/1 (04 March 2022).

²⁰⁴ Chessa 2022.

²⁰⁵ Chessa 2022.

²⁰⁶ United Nations News 2022.

²⁰⁷ The 11th Emergency Special Session of the General Assembly started at 28th February 2022.

²⁰⁸ The 11th Emergency Special Session of the General Assembly started at 28th February 2022.

Another moment in which the role of UNSC was necessary was in the next month, the Resolution ES-11/3 regarding the suspension of the Russian Federation's membership on the UNHRC was adopted.²⁰⁹ In October, the invalidity and illegality of the Russian annexation of the regions of Luhansk, Zaporizhzhia, Kherson and Donetsk, was recognized by the international community.²¹⁰ A reinforcement was made in February 2023, when the Resolution ES-11/L.7 took place, regarding the withdrawal of the military forces in Ukraine and the maintenance of the internationally recognizable Ukrainian borders, with no exception of new changes accepted.²¹¹ It is certain that this withdrawal did not bring many effects, as the power of reinforcement is not obtained from the UN General Assembly.

In October, it was declared in the UN General Assembly the invalidity and illegality of the attempt on annexing Ukraine according to international law scope.²¹² In November 2022 a more RtoP related action was implemented, a text was adopted calling on the remediation and reparation for the aggression taking place in Ukraine.²¹³ An initiative which might have been one of the few resolutions regarding this invasion²¹⁴ that combines the anticipation of putting into practice with the main substance of the third pillar on rebuilding without mentioning the RtoP principles. Through 2023 many briefing meetings were called by state members to review and hear the members regarding the Ukrainian situation, in which some of them were requested by the Russian Federation.²¹⁵

On January, Secretary-General António Guterres addressed the UNSC, highlighting the Russian and Ukrainian conflict and justifying the urge for adherence to the Rule of Law nowadays, and how “we’re at grave risk of the Rule of Lawlessness”²¹⁶. Indeed, the main signal of such effect is how the UNSC kept locked on a several conflict like this, blocking

²⁰⁹ United Nations General Assembly Resolution ES-11/3, *Suspension of the rights of membership of the Russian Federation in the Human Rights Council*, A/RES/ES-11/3 (7 April 2022), available at UN docs.

²¹⁰ United Nations General Assembly Resolution ES-11/4, *Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations*, A/RES/ES-11/4 (13 October 2022), available at UN docs.

²¹¹ United Nations General Assembly Resolution ES-11/L.7, *Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine*, A/ES-11/L.7 (16 February 2023) available at UN docs.

²¹² United Nations 2022.

²¹³ “This responsibility has three integral and essential components: not just the responsibility to react to an actual or apprehended human catastrophe, but the responsibility to prevent it, and the responsibility to rebuild after the event.” International Commission on Intervention and State Sovereignty 2001, 17.

²¹⁴ United Nations 2022.

²¹⁵ Security Council Report s.d.

²¹⁶ United Nations 2023.

the way of functional and possible solutions to this conflict like the RtoP.²¹⁷ This critical situation created the need for a meeting that was supposedly a predicted and preventive measure regarding the Russian Federation considering the other meeting proposed by Japan's representatives with the topic of the Rule of Law among nations.²¹⁸ But once again, not much action was truly made, showing the need for a mechanism to trigger the conflict resolution. The inability of the UNSC's role due to the permanent membership of the invader state of this conflict is presented by the Russian ambassador affirming being afraid that this meeting might have an anti-Russian inflexion, showing its opposition on requests for meetings with such goal.²¹⁹

After a year of meetings, of some decisions and some obstacles, the question posed by Kofi Annan in 2000 still remains: *"If humanitarian intervention is, indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?"*²²⁰ Indeed, many efforts were made by the states within the UN's instances, but Annan's question is still perfectly pertinent, as it is possible to see many channels of action remain blocked, mainly the UNSC. However, this context allows us to add a small difference to the question: how can UN respond and apply its principles and values described on the Charter, if the main obstacles of its action are inside its structure? The answer is not a positive one, since it represents a direct paradox, becoming even more evident as the years go by. The importance of the RtoP norm prevails, and the relevant point in this chapter is the separation between the norm and the structure that transports it.

Chapter 3 – The “Responsibility to Protect”

A commitment that was the answer begged for in a period where the urge for a legal context to prevent mass atrocities, war crimes, massive killings and human rights violations, was crucial.²²¹ Indeed, the idea of a “responsibility” taken by the states as the main actors on international context was a turning-point, redirecting the lens from the

²¹⁷ International Commission on Intervention and State Sovereignty 2001, 49.

²¹⁸ United Nations 2023.

²¹⁹ United Nations 2023.

²²⁰ Office on Genocide Prevention and The Responsibility to Protect s.d.

²²¹ International Commission on Intervention and State Sovereignty 2001, VII.

states to their responsibility.²²² The RtoP principles represent significant changes and development in society and human perspective, emphasizing the importance of sovereignty and commitment to power shifting from governments to the people.²²³ In this chapter the main goal is to address the norm, the current international context, and at the same time find the answers to how can a norm based on the previous century still make sense and find its way into the international community?

Section 3.1. An individual-centred world

The end of the 20th century saw a shift towards individualism, with the individual becoming more prominent in humanitarian concepts during a conflictual, unstable time.²²⁴ This context has not change until now, and the urge for norms like RtoP to prevent mass atrocities is a bigger necessity due to such focus on the humanitarian effect.²²⁵

Before the norm was founded, another type of actions took place regarding the use of force towards certain conflicts. As the humanitarian sphere expanded, the demand for funds and legal support²²⁶ increased due to the growing urgency to intervene in previously untouchable atrocities.²²⁷

In 1999, NATO intervened in the conflict that was occurring in Kosovo, and even after this action, humanitarian intervention was not established as a right.²²⁸ Kosovo is a glaring case of international intervention to halt a crisis encompassing war crimes and similar atrocities. Indeed, Kosovo's case was a paradoxical example. From what started as a flawed operation with noble intents flourished a successful and lasting solution promoting peace and avoiding the repetition of the atrocities committed during that conflict.²²⁹ The Kosovo intervention example, as such, may have provided guidelines for the international

²²² "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." International Commission on Intervention and State Sovereignty 2001, VIII.

²²³ International Commission on Intervention and State Sovereignty 2001, VIII.

²²⁴ Dagi, 2017.

²²⁵ "The second notion of sovereignty to which he refers should not be seen as any kind of challenge to the traditional notion of state sovereignty. Rather it is a way of saying that the more traditional notion of state sovereignty should be able comfortably to embrace the goal of greater self-empowerment and freedom for people, both individually and collectively." International Commission on Intervention and State Sovereignty 2001, 13.

²²⁶ Rodley 2016.

²²⁷ Rodley 2016.

²²⁸ Rodley 2016, 5.

²²⁹ Solana 1999.

community to know how to act correctly, and what to evade, drawing from the good aspects of the operation, and recalling the rotten ones, until the origin of RtoP.²³⁰

The UN's first instance on the humanitarian intervention has demonstrated lack of competence in the beginning, as exposing national policies or events in international context was unimaginable and illogical until the 1960s.²³¹ Before this gradual turning point, the first two decades of the United Nations as an institution, its mission could not embrace a topic that was in such a primordial phase, with such long walk ahead towards its fulfilment as human rights. The goal in 1945 was to recover from such costing events (with lasting social, political and economic consequences) and to prevent another great war.²³² It was this preparation that took the world to a more individual-centred one, urging for norms and mechanisms that could address such important factor for the international context, and mainly, states' responsibilities as its guardians.

The UN Charter emphasizes people's importance through state representation, sovereignty, territorial integrity, and political independence, while maintaining states' sovereignty and territorial integrity.²³³ Indeed, it is considered the “*central principle of modern international system*.”²³⁴ The goal might have been built from an international lens, but the consequences and effects of its action would and will always be the populations' rights and needs. Without its maintenance and progress, there would be no international peace nor security to support, which brings more importance to norms that were created with those goals in mind, like the RtoP.

Indeed, this matter can still be considered recent in our societies and in political agendas, as the world developed and grew towards it. In this sense, the globalization and use of technology have brought a whole unification of the world that empowered the individual, and a more awareness to tools that can aid to prevent, act and rebuild events with unimaginable costs to Humankind.²³⁵

²³⁰ International Commission on Intervention and State Sovereignty 2001, VII.

²³¹ Rodley 2016.

²³² Dagi, 2017.

²³³ Dagi, 2017. “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*” Article 2(4) UN Charter 1945.

²³⁴ Dagi 2017.

²³⁵ International Commission on Intervention and State Sovereignty 2001, 3.

It is possible to affirm awareness of human rights violations has grown, consolidated into agendas, and spread across international organizations, leading to a world where people consistently discuss human rights and the importance to protect people from atrocities.²³⁶ It is a priority because society and the law, along with the historical events, have walked towards such end, and the same happens with RtoP principles. If the RtoP was previously relevant regarding the states' sovereignty perspective, the norm gains greater value with the crimes focusing on the victims.

On today's context, the West depends on the people more than ever, and as Timothy P. McGeehan wrote "*people are the ultimate decision-makers*".²³⁷ It is undeniable the growth day by day since throughout the end of the last century of the people's individual influence and independent power, hoping to chase mechanisms like the RtoP that can help to combat the humanitarian obstacles as well.²³⁸

This specific paradigm creates some difficulties to decisions taken at an international level. The Russian Federation's strategies, aided by increased access to cybernetic tools, present a double-edged sword.²³⁹ While it may recruit more individuals and use advanced technologies to expand its propaganda network, it is not the only international actor with these resources, being susceptible to backfire. Moreover, those traditionally target by the Russian Federation are much more aware today of Moscow's intentions and modes of operating. More and more Western nations have their own counter disinformation strategies, weakening the Russian Federation's impetus, and indeed, it can be something in which the RtoP could develop on, taking into consideration the new warfare factors.²⁴⁰

The manipulation of states through its people has existed for centuries. However, the importance of people's voices has never expanded as much as today. In "*The Peloponnesian War*", written by Thucydides, it is possible to see what today could be considered as the first steps of a democracy (in this case represented by Athens) and how the power that people yield varies depending on the established regime, and can, accordingly, influence the state's conduct.²⁴¹ A structure like the RtoP norm is flexible enough to be useful for these new factors, without overvaluing people's role, and by

²³⁶ International Commission on Intervention and State Sovereignty 2001, 6.

²³⁷ McGeehan 2018.

²³⁸ International Commission on Intervention and State Sovereignty 2001, 13.

²³⁹ McGeehan 2018.

²⁴⁰ International Commission on Intervention and State Sovereignty 2001, 3-6.

²⁴¹ Thucydides 2020.

providing measures and steps of actions that can take this new spheres into consideration.²⁴²

It is, by far, the most effective way to interfere with a State, from bottom to top, starting by its pillars (like society) and widening throughout the structure. It is an idea that exists in the world of war since the first studies on war strategies.²⁴³ As Richard Humphreys and Lauma Paegļkalna present this issue in their article regarding the current conflict on the following manner:

*“The changing nature of both society and warfighting have had a mutually reinforcing influence, creating a vulnerability in democratic nations at the level of popular support for involvement in conflict.”*²⁴⁴

The concept of war and conflict is thus diluted, especially in democracies that advocate more “diplomatic” means and relationships. However, even in those situations, a norm like RtoP is necessary. This expansion of the international community in a context in which every individual has its importance and value can create just as many obstacles as easy ways to be influenced by any information that arrives.²⁴⁵ The ease on technology and information becomes a problem when it is considered the many Russian campaigns made throughout social media in order to passively impact the enemy’s side and to turn its perceptions around as a form of possible control.²⁴⁶ A battle of opinions, of ideas and of narratives, taking the place of guns and bullets sometimes with a greater impact. The use of civilians without government or military affiliations may seem less controlled, but their detachment from the central state makes it difficult to trace malign intentions back to the government. The principle of attribution²⁴⁷, a pillar of International Humanitarian Law, is, thus, nullified. The goal must be to adapt and develop the tools already created from the international community along with the evolution of the times. The foundation of RtoP is solid and concrete, with potential of becoming even more greater and efficient with those adaptations in mind. The importance of prevention (the first pillar of RtoP) also

²⁴² International Commission on Intervention and State Sovereignty 2001, 13.

²⁴³ It is also mentioned in the “*Art of War*” written by Sun Tzu.

²⁴⁴ Humphreys and Paegļkalna 2022, 3.

²⁴⁵ International Commission on Intervention and State Sovereignty 2001, 13.

²⁴⁶ McGeehan 2018.

²⁴⁷ “*There is an internationally wrongful act of a State when conduct consisting of an action or omission*” United Nations General Assembly Resolution 56/83, *Responsibility of States for Internationally Wrongful Acts, with commentaries* (28 January 2002) A/RES/56/83.

presents a very crucial view on this sense, since these actions and new factors need a preparation and prediction to be functional.²⁴⁸

This new perspective has a great importance on this conflict, and despite being a different paradigm as the one existed when RtoP was created, it brings a more conscious sense, and proximity from the international community and its people that goes beyond borders. The states and communities are supportive and want to help Ukraine by providing humanitarian aid to the country.²⁴⁹ This type of movement was only possible due to the new means of communication, having the power to develop a sense of responsibility from the ground to the top, spreading this sense of action to the governments which have been complying to such manifestations (and consequentially to RtoP).²⁵⁰ It is only necessary to apply the change based on previously created instances and standards.

Section 3.2. Responsibility to Protect: the idea and the reality

As it was mentioned throughout this dissertation, the world has been through major changes because of its numerous crises, and with those changes, the states' sovereignty and its obligations as national and international actors have shifted as well.²⁵¹ However, the importance of states as a link between people and international context, combined with laws and treaties, is still crucial, as its maintenance must adapt to the current developed situation in order to grow.

The main causes for the origin of RtoP were all the atrocities and cruel events that occurred in the previous century (described in the previous sections 1.1. and 2), and the context has not changed since, despite of the predictions of a completely different century. The commitment was approved in 2005 in the stage of the United Nations General Assembly's World Summit Outcome Resolution²⁵², in which a consensus was obtained among the states in order to submit the RtoP norm. It aimed to protect populations from the crimes acknowledged by the Geneva Convention – genocide, war crimes, ethnic cleansing and crimes against humanity – referred to as atrocity crimes.²⁵³ As Rebecca Barber mentions also as a very important but controversial concept, being subject to

²⁴⁸ International Commission on Intervention and State Sovereignty 2001, 21.

²⁴⁹ Humphreys and Paeglkalna 2022, 1-2. BBC 2022.

²⁵⁰ BBC 2022.

²⁵¹ International Commission on Intervention and State Sovereignty 2001.

²⁵² United Nations, General Assembly. *2005 World Summit Outcome*. New York, NY: UN, 2005.

²⁵³ Barber, What Does the "Responsibility to Protect" Require of States in Ukraine? 2022.

debate since its origin.²⁵⁴ The rising urge for state responsibility in protecting human rights has sparked an awakening, emphasizing that sovereignty is more than just power; it is a weighty responsibility.²⁵⁵ Hence, if a state cannot fulfil its responsibility, the international community and other actors have the duty to ensure protection against negligence. The main focus is a “new consensus on how to act, as it is mentioned in the final report published in December 2001.”²⁵⁶

Taking into account the speed that international law was developing, some years after the creation of the areas of International Criminal Law, International Humanitarian Law, and International Human Rights Law, the UN, and more specifically the UNSC, felt obliged to address the matter by starting the process that concluded with the RtoP.²⁵⁷

The RtoP is founded by three pillars mentioned in the official document “*Responsibility to Prevent; Responsibility to React; Responsibility to Rebuild*”.²⁵⁸ These three pillars work as a trial and error system, in which one has three areas of procedure as answers to different periods of the crimes: previously, during and afterwards.²⁵⁹ This separation of the principles shows the importance of a good and efficient intervention when it is reported since the first pillar: prevention, but also, the flexibility to take action, even if the crimes were already committed, like the current situation of the Russo-Ukrainian conflict.

Indeed, the RtoP principles provide a wide and diverse length of contexts to implement the principles, which has been also more often used to increase the uncertainty and insecurity on applying the steps of RtoP.²⁶⁰ The concept and its discussion have become very pragmatic due to its structure, as it is not very clear on in which contexts should be applied.²⁶¹ In this situation the free debate on its applicability inside UNSC’s walls is crucial to respond efficiently to any focused situation. The ICISS report mentions situation in which the right authority, just cause, right intent, last resort, proportional means and reasonable prospects are the criteria used to apply the principles.²⁶² Principles

²⁵⁴ Dagi, 2017.

²⁵⁵ Dagi, 2017.

²⁵⁶ International Commission on Intervention and State Sovereignty 2001, XI.

²⁵⁷ Rodley 2016.

²⁵⁸ International Commission on Intervention and State Sovereignty 2001.

²⁵⁹ International Commission on Intervention and State Sovereignty 2001.

²⁶⁰ Rodley 2016.

²⁶¹ Sarkin 2018.

²⁶² International Commission on Intervention and State Sovereignty 2001.

in which it is possible to analyse the conflict's situation through its lenses, being a very flexible one.

RtoP may include a military intervention approved to the conversation the worst-case scenario, which would include a by the UNSC.²⁶³ Nigel Rodley presents both sides of the discussion by explaining how one of the sides stands by the right for a military intervention within such framework, since it is “*a temporary measure aimed at rescuing the population*”²⁶⁴ with no political or any other dimension presented as a justification for the action itself, and then, on the other side there is an interpretation of the article 2 paragraph 4 of the Charter in which express how the use of force must be the last, almost untouchable, resource to solve a conflict, having as exception a self-defence or humanitarian situation.²⁶⁵ The way the concept is structured is just as important as its interpretation, and these two views have been colliding and preventing the “domino” effect of using RtoP to aid conflicts’ resolution. Nevertheless, both perspectives are important to analyse any conflict, as it is important to not close ways of action without ponderation nor without special attention to each conflict’s specifications. In the case of the Russian invasion in Ukraine, the use of force cannot be put out of the debate due to its durability and lack of pacific resolution in the near future.

The generality of the RtoP principles and its lack of practicability takes it to possibilities of manipulation and wrong use of the same, just as the Russian Federation twistedly used in order to justify its actions in favour of the Russian ethnic groups,²⁶⁶ and this use of the international law shall be an alarming situation for the UN as a wide organization which must prevent this type of manipulation in the future, used merely for an argument to invade and militarily act.²⁶⁷ The need for a UN’s proactive action towards this conflict is great to prevent these type of attempts to happen, and the preventive stage presented by RtoP could a solution to create such means to achieve that goal.²⁶⁸

²⁶³ “*There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.*” International Commission on Intervention and State Sovereignty 2001, XII.

²⁶⁴ Rodley 2016.

²⁶⁵ Rodley 2016.

²⁶⁶ Ashby, How the Kremlin Distorts the ‘Responsibility to Protect’ Principle 2022.

²⁶⁷ Ashby, How the Kremlin Distorts the ‘Responsibility to Protect’ Principle 2022.

²⁶⁸ “*Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.*” International Commission on Intervention and State Sovereignty 2001, XI; 19-23.

The norm's generality may pose challenges in its applicability, and the potential for forceful actions may raise doubts among states about its invocation. It has not been invoked as much as it would be expected, and this is why is so important to address this norm, to bring it back to life and to the debates. The goal to be achieved by the norms' principles is present and valid, the means however are the ones which bring most doubts, but again, they can be debated. Through its applicability, precedents can be created and a better understanding of the norm. The current context is propitious to this norm and its improvement, and so, it can only be excepted such changes on addressing what is limiting the norm of becoming more active in conflict resolutions.

Chapter 4 - The RtoP's Practicability: the cases of Libya and Afghanistan

Following the implementation of the norm, conflicts arose regarding its practicability, potential obstacles, and areas lacking in its applicability. Since this dissertation main focus is the RtoP's applicability on a specific conflict and its validity on international law, it is important to understand what those previous events taught about the norm.

The conflicts that will provide this background on why the RtoP principles ought to be applied on the Ukraine are the Libyan Civil War²⁶⁹, which started in 2011, and the Afghan crisis (2021-currently).²⁷⁰ It is important to underline all the bright sides and difficulties of each one of these conflicts on working alongside with this concept (or in the case of Afghanistan, not working at all), but mainly why these principles had a certain amount of difficulties in operating in these conflicts, which matched the conceptualization and relevant criteria which RtoP was designed for.²⁷¹ In sum, what can be learned from these conflicts and the action on complying with the RtoP adoption? What lessons can be taken from these conflicts to bring for the Ukrainian situation? Is the RtoP norm truly applicable?

The Libyan Civil War, the first conflict to use the concept of RtoP for military intervention, is a recognizable and controversial one among scholars of RtoP.²⁷² In 2011, the government led by Muammar Qaddafi started a brutal campaign as a response to a popular insurrection from the people against the dictatorship.²⁷³ The campaigns resulted

²⁶⁹ McKernan 2020.

²⁷⁰ Center for Preventive Action 2023.

²⁷¹ International Commission on Intervention and State Sovereignty 2001, VII.

²⁷² United Nations Security Council 2011.

²⁷³ Rowan 2019.

in the killings of hundreds of civilians over weeks, using military force and instruments and also the use of rebel forces in different cities. In this case, the UNSC adopted resolutions 1970²⁷⁴ and 1973²⁷⁵, invoked RtoP, and authorized the use of force in order to protect the Libyan population. NATO initiated air strikes on the country shortly after, despite the significant threat and danger it posed to civilians.²⁷⁶ The Libyan government fell in August of the same year. This is a really bold choice since it reunites a political will that cuts across all social and cultural boundaries.²⁷⁷

After this event, the norm's third pillar on the rebuild after the conflict should have been activated, and yet, the transitional bodies and processes failed to find justice, to restore political and economic structure and balance, and to stabilize the country on basic spheres after the horrific conflict, being most of the processes stopped.²⁷⁸ In fact, the relevance of applying the norm on its fullness (since the prevention stage until the end of rebuilding) is crucial to provide a more efficient result, and a less consequential effects from the atrocities committed.

It is correct to say that the list of violations of International Law (especially International Humanitarian Law) has not stopped growing after this conflict.²⁷⁹ Since 2016 that war crimes and crimes against humanity had been taking place in Libya.²⁸⁰ In October 2020, a permanent ceasefire was signed in Libya, but ongoing conflict persists due to militia dominance and high-level maintenance of social hierarchy within the country. Matters of enslavement of migrants and human trafficking are still heavily present in Libya.²⁸¹

The Libya conflict prompted the acceptance of the RtoP concept among international community,²⁸² highlighting the UN's role in implementing it. However, it raised questions

²⁷⁴ Security Council Resolution 1970, S/RES/1970 (26 February 2011).

²⁷⁵ Security Council resolution 1973, S/RES/1973 (17 March 2011).

²⁷⁶ Siebens and Case 2012, 19.

²⁷⁷ Weiss 2011.

²⁷⁸ Siebens and Case 2012, 32-33.

²⁷⁹ "270 000 people being internally displaced, and 900 000 in need of humanitarian assistance" Global Centre For The Responsibility To Protect 2021.

²⁸⁰ Office of High Commissioner for Human Rights 2022.

²⁸¹ Didier, Diouf and Lee 2021.

²⁸² Sarkin 2018. "(...) a residual responsibility also lies with the broader community of states. This fallback responsibility is activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular state are directly threatened by actions taking place there. This responsibility also requires that in some circumstances action must be taken by the

about international interventions, damages, and violation of international law. RtoP was indeed applied, but its gradual structure is crucial to assist such events, and instead was a very rapid decision.

Regarding the judicial sphere, the ICC submitted many arrest warrants for individuals and political leaders, issuing also the one carried for the dictator Qaddafi, and the UN presented sanctions on individuals accused of smuggling.²⁸³ However, the UN did not enforce punishment for the crimes committed, leaving much to be done. Indeed, this is one of the questions that lacks clarification within the norm, in terms of which type of actor should take the responsibility besides the states, and if it also includes the international organizations.²⁸⁴

After the Libyan conflict, the debate regarding the importance of the RtoP norm got into a different stage, in which, with the NATO's intervention, many doubts were answered, and others were raised.²⁸⁵ The former UN Secretary General Ban Ki-moon stated:

*“In 2011, history took a turn for the better. The responsibility to protect came of age; the principle was tested as never before. The results were uneven, but at the end of the day, tens of thousands of lives were saved.”*²⁸⁶

However, this was not a unanimous thought inside the international community. Some parts contested the intervention's false grounds and incorrect use of military intervention, focusing on reaction and trusting that the norm will never be applied.²⁸⁷ In this sense, the norm's transparency must be worked on. With open discussion regarding the decisions made and its results, the norm can easily provide the clear assistance and show its means and goals of action. Nevertheless, *“the virtually exclusive emphasis on prevention in the interpretation of RtoP was politically correct but counterproductive. Libya changed that”*²⁸⁸ as Thomas Weiss affirmed.

The next conflict is the most recent one prior to the invasion of Ukraine, and probably one of the most dangerous of all due to the lack of reply from international community

broader community of states to support populations that are in jeopardy or under serious threat.” International Commission on Intervention and State Sovereignty 2001, 17.

²⁸³ Global Centre For The Responsibility To Protect 2021.

²⁸⁴ Pattison 2010.

²⁸⁵ Center for Preventive Action 2023.

²⁸⁶ United Nations 2012; United Nations 2012.

²⁸⁷ Sarkin 2018.

²⁸⁸ Weiss 2011, 1.

behalf on all of the atrocities that took place and are still taking place inside the country's borders.²⁸⁹ Indeed, it was not the Russo-Ukrainian conflict that lacked of RtoP's implementation, and the case of Afghanistan shows its importance.

The city of Kabul saw its government overthrown by the Taliban group in August of 2021, which has been considered the country's *de facto* authority.²⁹⁰ Afghans have been grappling with a cycle of failed governments, lack of international assistance, and systematic obstacles, making the current context fragile and susceptible to future issues. A specific context that would have benefited from a more preventive perspective from the UN's behalf. Following the takeover event, Afghanistan's social, economic, and political spheres have seen alarming human rights violations, including ill-treatment, arbitrary detentions, extrajudicial killings, torture, and aggressive actions against media workers, ethnic minorities, and activists.²⁹¹ The Afghan border's limitations on basic living rights, freedom, and access to resources have significantly impacted the population, particularly affecting girls and women.²⁹² All those actions are a clear proof of lack of sovereignty from the state, calling for a RtoP implementation.²⁹³

The UN sanctions and state asset freezing have complicated the Afghan economy, escalating the humanitarian situation to an enormous crisis, putting nearly 20 million Afghans closer to extreme hunger.²⁹⁴ From 2021 to 2022, the Human Rights Service of the UN Assistance Mission in Afghanistan (UNAMA) reported over 2106 civilians that were wounded or killed, mostly by the attacks perpetrated by the Islamic State in Iraq and the Levant-Khorasan, an armed group also known as ISIL-K.²⁹⁵ In 2021, the UNSC adopted Resolution 2615²⁹⁶, which allowed a response to the humanitarian aid, but without mentioning the RtoP principles.

The ironic part about this turnover is that this is not the first time the Taliban got hands onto the national sovereignty of Afghanistan. The country was ruled by the group between 1996 and 2001, until the emergence of a NATO coalition able to implement a government

²⁸⁹ Byrd 2023.

²⁹⁰ Shoib, et al. 2022.

²⁹¹ Global Centre for the Responsibility to Protect 2023. Amnesty International 2023, xi.

²⁹² Amnesty International 2023.

²⁹³ “*State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.*” International Commission on Intervention and State Sovereignty 2001, XI.

²⁹⁴ Amnesty International 2023, 19.

²⁹⁵ Global Centre for the Responsibility to Protect 2023.

²⁹⁶ United Nations Security Council (UNSC) Res 2615 (22 December 2021) UN Doc S/RES/2615.

and expel the Taliban presence in national decisive organs.²⁹⁷ Crimes have been allowed by the inaction on previous and current violations, in such a shape that has become a systematic issue, incorporated into the country's pillars.

The Afghan conflict is a complex one, with the international community seemingly overlooking its occurrence in 2021, a pattern seen in previous decades, requiring greater guidance and action. The Kabul incident, closely time-related to the Russo-Ukrainian conflict, has been overlooked in media, debates, and resolutions.²⁹⁸ The lack of a formal UNSC response taking the RtoP norm into use, and the need for a norm to guide action by an organization like the UN are two important points to highlight. Indeed, the Afghanistan situation is a clear case of one of the main obstacles mentioned in the section 2.1.: the states' political and geostrategic interests, mixed up with their international functions, provided by the UN's structure. However, once again proves that the obstacles are external from the norm, presenting a clear context for its implementation.

Up until 2022, there had been 119 resolutions mentioning RtoP from the UNSC and the General Assembly, coming to the majority from the UNSC.²⁹⁹ But when its action is limited by its structure and functions, it turns to be inefficient to mention the norm, not being able to apply the RtoP on its fullness (with very few exceptions).

Regarding Libya, there were five resolutions regarding the conflict,³⁰⁰ and only on Resolution 1973 (implemented in 2011) was possible to receive authorization from the UNSC for the use of enforcement measures in the conflict, with the applicability of a coalition between French, British and other military forces in order to protect the civilians.³⁰¹ Only China and the Russian Federation among the P5 have abstained. In terms of the Afghan conflict, only two resolutions were adopted, in which the most recent one had the goal to extend the mandate of the special UN political mission on the Middle

²⁹⁷ Pinto 2009; Harpviken and Strand 2001.

²⁹⁸ "The international community will be vital in helping Afghanistan to survive Taliban rule - but it has to start with a change of approach by the media." Shajjan 2022.

²⁹⁹ Barber, What Does the "Responsibility to Protect" Require of States in Ukraine? 202; United Nations Security Council (UNSC) Res 1973 (17 March 2011) UN Doc S/RES/1973.

³⁰⁰ Rodley 2016.

³⁰¹ Rodley 2016.

Eastern country,³⁰² and the other resolution was based on the terrorist action and practice on the country.³⁰³

It is undeniable the existence of revisionist superpower wishing to reshape the current world order not necessarily to their own image but decoupling it from the West, being another obstacle to RtoP as a concept mainly used on the UN. Major international organizations are Western-influenced, with Russia and China permanent members of the UNSC, yet non-Western nations, particularly African and Latin-American, are underrepresented.³⁰⁴ This matter also effects on these unhappy readings of the West, in particular the US, as the “police of the world”, those that come to assist everyone “in need of saving” from the clutches of what the West sees as unfit, undemocratic, uncivilized.³⁰⁵ The RtoP norm in fact suffers from such external interpretations, and its implementation has been indeed selective. The changes in the UN’s structure are crucial to improve this issue, but also a more transparent way on dealing with the norm is also relevant to its appliance and its improvement.³⁰⁶

In this sense, the main question remains: is the norm still valid taking these conflicts into consideration?

Following the analyses of both examples, on the Libyan side there is a conflict strictly criticized by its use of military intervention with the objective of solving said conflict.³⁰⁷ However, in the case of Ukraine’s situation, there is no demonstration of political advantage from one of the sides to establish a peace agreement, even under the veiled and more dangerous threat of nuclear weapons usage. In this sense, the road that RtoP provides regarding the use of force as a last resource is, simply put, crucial.³⁰⁸ On the other hand, there is the context on Afghanistan, a conflict that is still going, despite the fact that it has been almost completely erased from the news, with its coverage taken over

³⁰² Security Council resolution 2665, S/RES/2665 (16 December 2022).

³⁰³ Security Council resolution 2593, S/RES/2593. (30 August 2021).

³⁰⁴ “Member States have individually made proposals; in addition, various States have joined regional groups to present their ideas uniformly. These groups include the Non-Aligned Movement (“NAM”) and the Groups of African, Arab, Asian and Latin States.” Fitzgerald 2000, 340.

³⁰⁵ “In some parts of the world, especially in Africa, the Council was seen as a disinterested and immovable body that was only roused to action when conflicts around the world became so brutal and bloody that they could not escape the attention of the selective world media.” Fitzgerald 2000, 330.

³⁰⁶ International Commission on Intervention and State Sovereignty 2001, 49.

³⁰⁷ “Although NATO may have had the initial goal of protecting civilians, there is a substantial amount of evidence that suggests that the intervention was focused on regime change” Green 2019.

³⁰⁸ International Commission on Intervention and State Sovereignty 2001, 49.

by other conflict, the Russo-Ukrainian war, something much “closer” and pivotal to the Western powers.³⁰⁹ There is no question regarding the norm, only towards the instances that put it into practice or had the power to put it and chose not to. Indeed, the existence of an international norm such as the RtoP principles present a wider mean to address such issues, being the outside obstacles the ones limiting its applicability – such as the national, politico-economic interests and the structure based on a five permanent-members in UNSC with the power of veto.³¹⁰

Chapter 5 – The RtoP in the Ukrainian Conflict: what ought to be

The RtoP invocation throughout this conflict until now has been non-existent, a fact which has wondered many scholars and it is presented in this dissertation as the main pillar of the discussion. An eighteen-year-old norm full of general principles that can help on supporting a solving action and provide a very organized guidance towards a more effective and concrete answer to the Ukrainian sovereignty issue. However, many factors are mixed in this context, and despite the debates around the UN tables, not much action was made towards the RtoP principles due to its limitations by having the Russian Federation as a P5.³¹¹ After analysing how valid the norm is on this conflict and after learning lessons from previous conflicts, in this chapter, the analysis will be focused on what has ought to be if the norm was applied. What type of voids would it fill? Would it help to ease the conflicts consequences and its duration?

Indeed, the RtoP principles were more used to justify the Russian perspective on this conflict³¹² than by the institutions and the rest of the states that were part of the norm’s origin. It did not take much time for many states’ members to mention the Kremlin as the guilty one, pointing out its crimes in this conflict, as in February 2023, the UN General Assembly called for a cease-fire of the invasion and the preceded war, asking for immediate withdrawal of the Russian troops.³¹³ The position taken by the West was clear since the beginning, which also was a factor to justify the allegations regarding the Russian discrimination taking place in Ukraine.³¹⁴ This is probably one of the biggest

³⁰⁹ Daly 2022.

³¹⁰ International Commission on Intervention and State Sovereignty 2001, 49; 72-73.

³¹¹ United Nations News 2022.

³¹² Ashby, How the Kremlin Distorts the ‘Responsibility to Protect’ Principle 2022.

³¹³ United Nations 2023.

³¹⁴ Ashby, How the Kremlin Distorts the ‘Responsibility to Protect’ Principle 2022.

flaws that RtoP represents individually, as its ambiguity and generality can easily backfire by being used in the wrong hands, and by the wrong means.

The UN's lack of RtoP response and language usage is concerning, as it has not acted on a norm that has taken too long to exist and change the international context. Nevertheless, it is relevant to highlight the importance of action above the language used to do so. It is obviously relevant to use all the legal support that the UN has been created among all these years, but the fact that the norm was not proclaimed for this scenario does not mean that the actions and interventions asked to be made by RtoP did not take place. Measures such as the sanctions and other economic penalties that were adopted internationally³¹⁵, the diplomatic efforts made individually by the states to provide more aid and assistance to the conflict³¹⁶, and all the efforts developed by the Western countries on helping the Ukrainians through any way they could do so, representing one of the conflicts that more aid and assistance were given through a more distributed way (in spite of a normal western-related majority)³¹⁷ are according with the action asked by the RtoP norm and also the Chapter VII of the UN Charter.³¹⁸

The feeling of doing more is trapped by the consequences of the globalization, through the wave of crisis that infected the Western countries as a result of this conflict, combined with the continuous difficulty for the UNSC to receive a consensus among the states-members and the requests for a more balanced council and a fairer use of the veto power from the permanent members³¹⁹. Indeed, the RtoP's most distinguished characteristic is its gradual step-by-step system of action, which is crucial for its performance. Nevertheless, even if it is not applied since its beginning, it might provide some brightside effects.

³¹⁵ "The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention." International Commission on Intervention and State Sovereignty 2001, XI.

³¹⁶ Benjamin and Davies 2022.

³¹⁷ Bushnell, et al. 2023.

³¹⁸ "These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." Article 41 United Nations Charter 1945.

³¹⁹ Jarvis 2020.

This specific conflict has shown that the lack of prevention³²⁰ is becoming the norm, while is the most important step of the norm.³²¹ As it was discussed in Chapter 1, the historical past between Ukraine and the Russian Federation was a well-known issue and profoundly discussed internationally since the annexation of the Crimean Peninsula in 2014, a key-event on the current Russo-Ukrainian War³²² which was also not prevented by any international institution or organization. The Crimean annexation did signal potential war between Ukraine and Russia, influenced by geostrategic importance of the Black Sea and Peninsula.³²³ Despite this clear red flag, no type of prevention was promoted. In a very synthetic way, just by following the principal logic of the RtoP, any conflict can benefit from a conflict early warning system³²⁴ (also known as CEWS), consisting of a tool for risk analysis that has the goal to predict political unrest in an effort to raise public awareness and prevent or lessen a potential conflict.³²⁵

RtoP directs itself to crimes against humanity, ethnical cleansing, war crimes and genocide, conceptions that are supported indirectly by the articles of the Geneva Conventions and its protocols (1949).³²⁶ Nevertheless, the conflict is seen as an external invasion by one country, threatening a state's sovereignty and ability to meet its citizens' basic needs, being different from the RtoP applicability's usual context. It is, thus, important to note how the core of the RtoP norm is not specific crimes, but the inability of a sovereign state answer its people's needs, and how the report of RtoP states the "duty to cooperate".³²⁷

However, it is still a humanitarian aggression and violation of the international law. This point stands on the fact that all the violations on an international context are not easily limited nor explained in order to provoke a more direct, constructive decision or action regarding the issue.³²⁸ As it was mentioned in Chapter 2, a war crime can be described

³²⁰ "(...) as Noam Chomsky put it, we saw «criminality and stupidity on the Kremlin side, severe provocation on the U.S. side. »" Benjamin and Davies 2022, 179.

³²¹ "Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it." International Commission on Intervention and State Sovereignty 2001, XI.

³²² Benjamin and Davies 2022, 23-50.

³²³ Benjamin and Davies 2022, 23-50.

³²⁴ Ramsbotham, Woodhouse and Miall 2016.

³²⁵ Rød, Gåsste and Hegre 2023.

³²⁶ International Commission ON Intervention and State Sovereignty 2001, 6.

³²⁷ International Commission ON Intervention and State Sovereignty 2001.

³²⁸ International Commission ON Intervention and State Sovereignty 2001, 47.

legally in a very subjective way,³²⁹ and taking into account all the factors and realities that international law must conceive and sustain, there is no possibility to formalize more specific legal support to these hard-making decisions and indeed the RtoP's implementation is crucial on this topic.

Moreover, there is a feeling of regret towards previous conflicts which can easily be tamed with a conscience shift. Does a conflict need to get thousands of deaths to be solved? Must a war hold on for years? Is it necessary to reach an unprecedented level of death and anguish for some action to be taken? In fact, the most important and supposedly prioritized thing that must be followed is the breaking of the law, and, in the case of Ukraine, the humanitarian violations have not stopped for more than a year.³³⁰ In this sense, it is important to understand that any humanitarian violation or demonstration of difficulty from a state's behalf on maintaining its sovereignty is even more important than looking for a very developed conflict since there is still the power to prevent it in that early stage, as RtoP suggests.³³¹ The crucial part will be to look for the means to do so.

The main point of RtoP is "states' sovereignty", and Ukraine is losing it.³³² As a matter of fact, this is the focus and the main reason for the creation of the RtoP norm, the responsibility and duty of every state to comply with the needs and rights of every individual under their sovereign power.³³³ Despite the fact that this specific conflict's nature is external, as the justifications and direct causes of the conflict are taken, it is easy to understand that the biggest issue of this conflict is the threat to a country's own independence, and the sovereignty's undervaluation of the Russian Federation towards the legitimacy of the Ukrainian state, supported by its historical past and their cultural linking points, which constitutes a right from the Russian Federation's perspective to claim its power on Ukrainian territory by the means of a so-called "necessary military intervention".³³⁴

³²⁹ Article 6 (b), Charter of the International Military Tribunal 1945.

³³⁰ Amnesty International 2022.

³³¹ International Commission ON Intervention and State Sovereignty 2001.

³³² "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect." International Commission on Intervention and State Sovereignty 2001, XI.

³³³ International Commission on Intervention and State Sovereignty 2001, 12.

³³⁴ Barber 2022.

Taking this information into account, it is logically suggested an evaluation of all the conditions that might put into cause a state's sovereignty as this was the legal perspective in which the RtoP was born, and the main type of conflict presented by the report of ICISS is mainly the internal ones.³³⁵ This specification takes out of scope a valuable collective action on situations where the international institutions might have a bigger impact if the external interventions become included, especially the RtoP, in this case.

The brightside of this conflict was built on the states' action when the UNSC failed to address the RtoP in a conflict.³³⁶ As Rebecca Barber highlights in her article "*Does the 'Responsibility to Protect' Require States to go to War with Russia?*", the ICISS report affirms that "*the consequences of action (should not) be worse than the consequences of inaction*"³³⁷, which brings a very powerful and eye-opening statement for the modern world of international relations and how they should be dictated by. One of its examples is the multiple measures presented on the Chapter VI of the UN Charter based on "peaceful measures"³³⁸, since the member-states would be just following its compromise on maintaining the international security and peace. Richard Humphreys and Lauma Paeglkalna had also developed a follow-up logic of ways to support the answer to - or just to slow down - this specific conflict, in which most of it happened and many countries have showed themselves available to stand against the invasion and aid the effects of the same.³³⁹ The RtoP is a commitment of all states, and its actions can start by taking measures towards the conflict, as many did in this conflict.³⁴⁰

It is possible to analyse how unsuccessful the application of sanctions was to combat the Russian advance in Ukraine, how a deeper and long-term effect will only appear after the conflict is over and how it will impact the West as well, failing to produce a radical and

³³⁵ International Commission on Intervention and State Sovereignty 2001, XI.

³³⁶ "*If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are: I. consideration of the matter by the General Assembly in Emergency Special Session under the 'Uniting for Peace' procedure; and II. action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.*" International Commission on Intervention and State Sovereignty 2001, XIII.

³³⁷ "*Reasonable prospects: There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.*" International Commission on Intervention and State Sovereignty 2001, XII. Barber 2022.

³³⁸ UN Charter 1945.

³³⁹ Humphreys and Paeglkalna 2022.

³⁴⁰ International Commission on Intervention and State Sovereignty 2001.

immediate stop of the Kremlin's intents.³⁴¹ The implementation of sanctions did not achieve the planned goal by the passive measures that the norm appeals, but stated a very important point that was taken from prior conflicts' analysis: the relevance of showing what the aggressor party has to lose if it continues on escalating the conflict.³⁴² Despite not being fully approved, it is also mentioned in the same report cases of individual states' intervention on conflicts where there was no UN reply.³⁴³ Hence, as it has been mentioned before, the informative war took place in this conflict, and an informative response could also have its impact on restricting the conflict's progress. An information war has the power to break the adversaries' spirit and undermine its political cohesion within the Russian people, influencing "hearts and minds" of the population by turning public the atrocities of the conflict, the means that were taken, and all the hard-facing consequences of this invasion.³⁴⁴

Another relevant matter is to deconstruct the use of force in this specific case, since a military intervention implemented by the UNSC, despite theoretically and legally possible, is realistically out of question since the Russian Federation is one of the permanent members of the Council, and the RtoP regarding this matter depends on its approval.³⁴⁵ Nevertheless, and as it was mentioned previously on this dissertation, the risks of nuclear weapons being deployed into the battlefield, and of nuclear warfare

³⁴¹ "Before the invasion, the Biden administration framed the threat of sanctions as a tool to deter Russia from invading Ukraine. But Russia invaded anyway. In the wake of the invasion, Biden reframed the purpose of the sanctions as «inflicting pain on Russia and supporting the people of Ukraine. » But the sanctions didn't stop the Russian tanks and shells from devastating Ukraine, and instead inflicted pain on millions of Russians, as well as millions of the most vulnerable people around the world (...)." Benjamin and Davies 2022, 164. "If there has been resistance to the principle of conflict prevention among some UN member states, it is in the regional organizations and, above all, in Europe, where progress has been most noticeable." Ramsbotham, Woodhouse and Miall 2016, 164.

³⁴² Ramsbotham, Woodhouse and Miall 2016.

³⁴³ "Interventions by ad hoc coalitions (or, even more, individual states) acting without the approval of the Security Council, or the General Assembly, or a regional or sub-regional grouping of which the target state is a member, do not – it would be an understatement to say – find wide favour. Even those countries involved in the Kosovo intervention, and prepared to passionately defend its legitimacy by reference to all the threshold and precautionary criteria we have identified in this report, for the most part acknowledge its highly exceptional character, and express the view that it would have been much preferable to have secured the Security Council's – or failing that the General Assembly's – endorsement. One view that has some currency is that an ex post facto authorization, of the kind that has occurred for the African regional instances mentioned above, might conceivably have been obtained in the Kosovo and Rwanda cases, and may offer a way out of the dilemma should any such case occur again in the future." International Commission on Intervention and State Sovereignty 2001, 54.

³⁴⁴ Humphreys and Paeglkalna 2022.

³⁴⁵ "Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter." International Commission on Intervention and State Sovereignty 2001, XII.

reaching an unprecedented level, have both been mentioned and used as threats (by one of the parties) ever since the beginning of this conflict proves that this is an option that cannot be out of discussion. In this sense, the RtoP has the power to provide guidance on this matter, especially on what to do before such decision, and how to proceed.

The truth is that the international community has always stated its urge to adapt and grow towards whatever path the international context and all of its factors developed from, but the most crucial changes are being left behind. There is an effort on giving responses to current conflicts based on post-World War II structure, easily linked to a “Victor’s justice”³⁴⁶ type of system which had its own reasoning of existence, but the time in which such structure is being questioned by the lack of efficiency, reply, justice, and coherency has come, and it is what this conflict has highlighted more.³⁴⁷ A norm like RtoP was created for a reason, and the current scenario proves how it is still important to put the concept into practice.³⁴⁸

It is extremely difficult to address and to be completely aware of the importance of this norm as the culmination of the moral and legal permission of not accepting inaction nor be fed by the hesitations from international community.³⁴⁹ It is the result of a very hard-facing evolution of the states, of the people, of the international context, of Humanity, and, as a conclusion of this dissertation, it is possible to understand that the lack of action is the worst behaviour or position that may be decided to take.

In order to solve conflicts, it is important to understand which path of action is blocked, and which paths can become available in order to act on the atrocities and violations that can have irreversible consequences for local, regional and international communities. The RtoP principles continue to guide international action, guiding solutions such as differentiated responses,³⁵⁰ taking into consideration the information war, legal procedures, sanctions, indirect support, and diplomatic isolation.³⁵¹ These principles

³⁴⁶ A concept that often comprises the severe or unjustifiable punishment of defeated parties and the light punishment of or mercy for misdeeds which have been considered as the victors, winners. A gap between the two sides that lacks a complete sense of justice and fairness due to the sides’ positions.

³⁴⁷ Rodley 2016, 14.

³⁴⁸ International Commission on Intervention and State Sovereignty 2001, VII.

³⁴⁹ “*The discord between great powers affects their capacity to concert their efforts.*” Ramsbotham, Woodhouse and Miall 2016, 172.

³⁵⁰ Barber 2022.

³⁵¹ Humphreys and Paeglkalna 2022; United Nations News 2022.

demonstrate the effectiveness of RtoP principles in addressing adversaries' spirit and influence.

Conclusion

According to this debate, this sense of action that it is seen as possible and helpful to the conflict's resolution, brings a sense of responsibility that the norm demands. However, if the states are already acting upon the norm's essence, then why is it the norm so important? Is it necessary?

The RtoP principle was the answer for a vast number of committed mistakes, and if there are still conflicts, or even just the mere possibility for conflicts to happen, that sustains the exact same reasons postulated in 2005.³⁵² International law is shaped by specific contexts and factors, which have not changed but have simply increased over time. Many states indeed proceeded in compliance with some points of the principles – especially in terms of pillar two -, but the concept was not fully applied.³⁵³ The RtoP principles present a preventive, an active, and a rebuilding perspective,³⁵⁴ which can only work if the concept is applied to its full extent.

In this situation, it is possible to see the need for this norm to be invoked and be applied by all the UN states that took this commitment on 2005: there are concrete measures missing, that could – and should – have been implemented or at the very least debated, measures which could have the power to change the conflict's consequences.³⁵⁵ Within these absent measures it is possible to include ideas such as the lack of a preventive plan since the Crimea annexation, and mainly, the formation of a united front from the UN's behalf, following its Charter, as it should legally be done.

Ukraine's case demonstrates states' openness to various tools, fostering mutual help and interdependence, elevating the RtoP norm in the context of the current security situation.³⁵⁶ The state's reaction proves the existence of an environment prone to RtoP's

³⁵² Global Centre for the Responsibility to Protect, n.d.

³⁵³ Barber 2022.

³⁵⁴ International Commission on Intervention and State Sovereignty 2001, XI.

³⁵⁵ “States are required to use all means reasonably available to them to halt the commission of atrocity crimes. Different things will be required of different States, depending on available means and capacity to influence. For all States, though, the obligations require bold, creative, strategic, out-of-the-box thinking.” Barber 2022.

³⁵⁶ BBC 2022.

rooting. As it has been defended throughout this dissertation, its full application is only blocked by external factors, not necessarily the structure of the norm itself.

Indeed, this conflict can help on guiding not just the UN but mainly the states' orientation and help them choose the most suited action to take regarding similar events. The focus will not be exclusively placed under the UN, since the main problem of the organization's efficiency and legitimacy towards this type of conflict is that it will be sopped by its own structure. In this sense, the intent of our conclusions is indeed to be general but helpful, from an international perspective, regarding the RtoP appliance on a foreign conflict.

The truth is that international community has always urged adaptation and growth, but crucial changes are being left behind. It is the result of a very hard-facing evolution of the states, of the people, of the international context, and of Humanity. It is possible to understand that the lack of action is the worst behaviour or position that can be taken. In this sense, it is important to elevate the matter of this conflict as it is still an ongoing conflict, and it is important not to hesitate on evolving from the consequences of the lack of capacity shown by the UNSC towards a very close conflict. Indeed, in this case, it is not possible to put the responsibility of this problem in the RtoP norm, but the structure itself of the UNSC and generally of the UN, limiting its own approved laws and decision-making by perpetuating a system from a period that is not the living one.³⁵⁷

But after all, more than a legal matter, more than an institutional issue, this is about proving to the current international context the capacity of emending past mistakes, blessed with the gift of memory and compassion. This is about moving forward with History, evolving in the right direction. To put it bluntly, it would be foolish and excessively naive to believe that the RtoP by itself is the ultimate step to solve the issues it was created to address, but it is a step in the right direction, nonetheless. To uphold principles like RtoP gets tougher and tougher – particularly considering the weight some of the aforementioned revisionist powers hold within the UNSC – but, at the same time, becomes more and more important to fight for this cause.

In order to conclude, this dissertation have answered the many questions raised along its development: how the Russo-Ukrainian conflict's past, history, factors and so many other spheres present signs of need for an RtoP action; how the world (mainly the international

³⁵⁷ “*The discord between great powers affects their capacity to concert their efforts.*” Ramsbotham, Woodhouse and Miall 2016, 172.

actors) demonstrated an active response and willingness to help Ukraine, proving the existence of the right context to comply with the norm's applicability, how the main obstacles are not in the formulation of the RtoP, but the UN's structure and the lack of impartiality inside the institution, which are the main obstacles of its invocation and its improvement; How the norm was born from an evolutive process from societies and the international order, not being enforced, but a natural development of a necessity; How the case in Libya and in Afghanistan show us the brightside of RtoP and the threats of not intervening; and finally, how the RtoP could reach a higher level of potential in this conflict by introducing different measures assuring the three pillars.

All of these questions structured a positive answer regarding the main question of this dissertation, and so, it is possible to affirm the RtoP norm ought to be applied in Ukraine, as it is still a valid concept in the International Law.

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