

Vasilka Sancin

Are we »manifestly failing« R2P?

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Ljupcho Stojkovski*

1. INTRODUCTION

The question of right authority or who should evaluate whether there is a mass atrocity and who should decide of the appropriate measure to be taken in this case, is one of the most discussed questions surrounding R2P. Although the Security Council is far from perfect, there is a broad agreement that it is the right authority of the international community to decide in R2P cases. This status derives from the UN Charter, according to which the Council has the primary responsibility for maintaining international peace and security (Art. 24), the Council is the one who assesses whether there is a threat to peace, breach of peace or an act of aggression and the one who decides whether and what kind of measures (without or with force) should be taken to deal with the situation (Art. 39, 41 and 42). In addition, all member states have agreed to accept and carry out its decisions (Art. 25). A recognition that the Council is the right authority of the international community even for Responsibility to Protect (R2P) cases, aside from the Charter comes from paragraph 139 of the World Summit Outcome Document of 2005.¹ Nevertheless, unlike the R2P version of 2001 which offers ways to improve and alternatives in cases when the Council is blocked, the accepted R2P version from 2005 does not mention anything in regards to the question – what should be done in situations when there are mass atrocities and the Security Council is blocked due to the use of veto by a permanent member?

Bearing in mind that R2P is considered to be a normative standard and a moral imperative of the international community, the question of how should the five permanent states (P5) use their veto in cases of mass atrocities logically follows. The multiple use of the veto by Russia and China in the six year war in Syria, which already took more than 400.000 victims and led to 11 million displaced persons²,

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1 World Summit Outcome Document, A/Res/60/1, 24 October 2015.

2 Syria envoy claims 400.000 have died in Syria conflict, UN multimedia, <<http://www>.

has renewed the calls for limiting the use of the veto in these types of situations. The Security Council is responsible to protect the populations from the four R2P mass atrocities and to authorize measures, including Chapter 7 measures, when the national authorities manifestly fail in their responsibility. As a consequence of this responsibility follows the expectation and the demand that the veto should not be used to block an action in these situations.

This paper deals with the idea of Responsibility not to veto (RN2V). The paper is divided into five sections. At first, it examines the history of the idea to limit the use of veto in mass atrocity situations. The second part focuses on the latest two initiatives – the French proposal and the proposal by the ACT group. In the third part, an analysis of the advantages and disadvantages of these proposals is conducted, often calling upon other (unofficial) initiatives for restraining the veto. The next part makes an assessment of the prospects for success of these RN2V initiatives by analyzing the overall mood of the permanent members on this question. It concludes that the initiatives do not have a real chance to succeed any time soon. Nonetheless, even if they are unsuccessful, in the final part of the paper three reasons are offered why the RN2V debate is important and therefore it should continue: the debate could improve the question of right authority for R2P; the debate signifies a search for a new moral and political agreement for Pillar 3 of R2P; the debate shows the need for upgrading “R2P-lite” from 2005.

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2. HISTORY OF THE RN2V IDEA

Calls for restricting or even eliminating the veto available to the five permanent member states of the Security Council are as old as the UN itself. In relation to the limitation of the veto in cases of mass atrocities, the International Commission on Intervention and State Sovereignty (ICISS) called the permanent five on “constructive abstention” of the use of the veto in situations of mass atrocities. Emphasizing that the “capricious use of the veto or threat of its use [is] likely to be the principal obstacle to effective international action in cases where quick and decisive action is needed to stop or avert a significant humanitarian crisis”, and that,

unmultimedia.org/radio/english/2016/04/syria-envoy-claims-400000-have-died-in-syria-conflict/#.WKHJgIErIdU, accessed 15.02.2017; About 450 thousand were killed and more than two millions were injured in 69 months of the start of the Syrian revolution, Syrian observatory for Human rights, <<http://www.syriahr.com/en/?p=56923>>, accessed 15.02.2017; Syrian Arab Republic, United Nation Office for the Coordination of Humanitarian Affairs, <<http://www.unocha.org/syria>>, accessed 15.02.2017.

as it was often the case in the past, there “is the possibility that needed action will be held hostage to unrelated concerns of one or more of the permanent members”, the Commission proposes a “Code of conduct” for the P5.³ In accordance with this Code of conduct – which was suggested to the Commission by former French minister of Foreign Affairs Hubert Védrine – the permanent five should not use the veto and obstruct the passage of an otherwise majority resolution, unless their vital national interests are involved.⁴ The inclusion of the “vital national interest”, as an additional standard and possible exception, is necessary in order to make the proposal realistic and practical and not only “intellectual”.⁵ The proposal is not calling for any Charter amendments but for the P5 to reach “a more formal, mutually agreed practice to govern these situations in the future”.⁶

Nevertheless, the idea of restraining the use of veto in situations of mass atrocities was not part of the R2P version that was adopted at the 2005 World Summit. Although in the Report by the High-level Panel on Threats, Challenges and Change in December 2004 a similar proposal was included, it was not accepted at the Summit the following year. In the report it was stressed that “as a whole the institution of the veto has an anachronistic character that is unsuitable for the institution in an increasingly democratic age”, therefore the Report urges that its use “be limited to matters where vital interests are genuinely at stake”.⁷ In addition, it calls upon the permanent five states “to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses.”⁸

None of these recommendations were included in the R2P section of the Outcome Document at the 2005 World Summit.⁹ Even though in the draft version of the Outcome Document from 5th of August 2005 there was a paragraph in which the P5 were invited “to refrain from using the veto in cases of genocide, war crimes, ethnic

3 Report of International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, International Development Research Centre, 2001, p. 51 .

4 Ibid.

5 Supplementary Volume of the Report of International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Research, Bibliography, Background*, International Development Research Centre, 2001, p. 378,379.

6 *The Responsibility to Protect*, (n 3), p. 51, 75.

7 Report of the High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, A/59/565, p. 68.

8 Ibid.

9 For an account of the possible reasons of this as well as the compromises made on the request primarily by the P5, see Alex J. Bellamy , *Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, *Ethics & International Affairs* (2006), 20(2), pp.143-169.

cleansing and crimes against humanity”, this was watered down in the subsequent draft version (P5 are “invited to consider...”) and prepared for deletion in the draft version of 6th of September.¹⁰

In spite of this missed opportunity, the initiatives to restrain the veto in R2P situations have continued after the 2005 Summit. The following year, the S5 group of states (Costa Rica, Jordan, Lichtenstein, Singapore and Switzerland) launched an initiative to improve the working methods of the Security Council in which it stated that “[n]o permanent member should cast a non-concurring vote in the sense of Article 27, paragraph 3, of the Charter in the event of genocide, crimes against humanity and serious violations of international humanitarian law.”¹¹ Additionally, the S5 are the first which have demanded an explanation from the P5, if a veto is to be used in these situations and that explanation should be circulated to all members of the UN.¹²

Three years later, in his first R2P report, Secretary General Ban Ki-Moon urged the permanent members “to refrain from employing or threatening to employ the veto in situations of manifest failure” in order to meet their obligations concerning R2P and therefore calls them “to each a mutual understating to that effect”.¹³

In 2012, the S5 group started a similar initiative on the Council’s working methods, where once again it called on the P5 to refrain from using the veto in cases of genocide, war crimes and crimes against humanity and to explain their reasons for resorting to a veto in relation to the purposes and principles of the UN Charter.¹⁴ Similar to other proposals for a UNSC reform in the past, this initiative was also unsuccessful.

10 Ariela Blätter and Paul D. Williams, *The Responsibility Not To Veto*, *Global Responsibility to Protect*, (2011) vol.3 iss.3, pp.301-322; Revised draft outcome document of the High-level Plenary Meeting of the General Assembly of September 2005 submitted by the President of the General Assembly, A/59/HLP/CRP.1/Rev.2, 5 August 2005.

11 *Improving the Working Methods of the Security Council*, A/60/L.49, 17 March 2006 p.4.

12 *Ibid.*

13 *Implementing the Responsibility to Protect: Report of the Secretary-General*, A/63/677, 12 January 2009, p.27.

14 *Enhancing the Accountability, Transparency and Effectiveness of the the Security Council*, A/66/L.42./Rev.2, 15 May 2012, p. 4,5.

3. CURRENT INITIATIVES

3.1. The French proposal and French–Mexican Declaration

Faced with, as of then, four double vetoes by Russia and China on the situation in Syria, in 2013 France renewed the calls to restrain the veto in cases of mass atrocities. Firstly, it was French president Hollande that called the P5 to collectively renounce their veto powers in the event of a mass crime and to agree upon a Code of good conduct.¹⁵ These calls were later affirmed and developed by the then French foreign minister Laurent Fabius in an op-ed in the New York Times. According to the French proposal:¹⁶

- there will not be any formal amendments to the Charter, but
- the change would be implemented through a mutual commitment from the P5 to voluntarily suspend their right to veto in cases of mass atrocities;
- UN Secretary General will determine whether there is a R2P situation or not;
- The procedural trigger will be the request of at least 50 member states of the UN General Assembly made to the Secretary General to determine the situation, and
- The Code would exclude cases where the vital national interests of a permanent member of the Council are at stake.

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Proceeding to promote this initiative, in 2015, on the margins on the 70th session of the General Assembly, France together with Mexico prepared a political Declaration on the suspension of the veto in case of mass atrocities. The Declaration reiterates the pledge made in the Charter that the UN “were created to save succeeding generations from the scourge of war and to protect the dignity and worth of the human person as well as the fundamental human rights.” Confirming the primary role of the UNSC in maintaining international peace and security, the Statement reaffirmed the 2005 R2P responsibility of the international community, under which it (through the Council) should take collective action, in a timely and decisive manner, when national authorities fail to protect their populations from genocide,

15 Statement by Mr. François Hollande, <https://gadebate.un.org/sites/default/files/gastatements/68/FR_en.pdf>, accessed 15.02.2017.

16 A Call for Self-Restraint at the U.N., New York Times, <<http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html>>, accessed 15.02.2017.

crimes against humanity or war crimes. As a result, the supporters of the Declaration “consider that the Security Council should not be prevented by the use of veto from taking action with the aim of preventing or bringing an end to situations involving the commission of mass atrocities”.¹⁷ As of June 2016, the Declaration has been signed by 96 states.¹⁸

3.2. ACT’s Code of Conduct

The failure of the S5 initiative did not discourage this group of states to seek further ways to improve the Security Council working methods. In 2013, these states, now reorganized together with 20 others small and middle size states, created the ACT group with a similar purpose – to propose reforms in order to address the “internal functioning of the Council as well as its relations to the broader UN membership. The goal is to improve the accountability, coherence and transparency (ACT) of the Council and for it “to carry out its mandate with maximum efficiency, effectiveness and legitimacy.”¹⁹

On this line, in 2015 the ACT group promoted its “Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes”. Emphasizing and reaffirming the main purposes and principles of the UN Charter as well as R2P commitments from the 2005 World Summit, the Code of conduct contains:²⁰

- a general and positive pledge to support Security Council action aimed at preventing or ending genocide, crimes against humanity and war crimes which are prohibited under customary international law and can constitute a threat to international peace and security;
- a specific pledge not to vote against credible draft SC resolutions that are aimed at preventing or ending these three crimes;
- the specific pledge includes both permanent and non-permanent members;

17 Political Statement on the Suspension of the Veto in Case of Mass Atrocities, <http://www.franceonu.org/IMG/pdf/2015_08_07_veto_political_declaration_en.pdf>, accessed 15.02.2017.

18 List of Supporters, of the Political Declaration on Suspension of Veto, Global Centre for Responsibility to Protect, <<http://www.globalr2p.org/resources/894>>, accessed 15.02.2017.

19 fACT Sheet, the Accountability, Coherence and Transparency Group – Better Working Methods for today’s UN Security Council, <<http://centerforunreform.org/sites/default/files/FACT%20SHEET%20ACT%20June%202015.pdf>>, June 2015, accessed 15.02.2017.

20 Explanatory Note on a Code of regarding Security Council action against genocide, crimes against humanity or war crimes, <<http://www.centerforunreform.org/sites/default/files/Final%202015-09-01%20SC%20Code%20of%20Conduct%20Atrocity.pdf>>, 1 September 2015, accessed 15.02.2017.

- there is no procedural trigger for the code to apply; instead, the facts on the ground would be the trigger and will lead to a Security Council action;
- every state that has expressed its commitment to the Code of Conduct will determine on its own when there is a situation for the Code to be applied, but
- the Secretary-General, making full use of the expertise and early-warning capacities of the United Nations System, in particular the Office of the High Commissioner for Human Rights and the Office on Genocide Prevention and the Responsibility to Protect, would also evaluate the situation; therefore
- states pledge to fully and promptly take into account such an assessment by the Secretary-General.

As of October 2016, this Code has the support of 112 states, including two of the 5 permanent members – France and United Kingdom.²¹

4. ANALYSIS OF THE CURRENT INITIATIVES

What is common for both initiatives is their demand that the veto be restrained in cases of mass atrocities. Both proposals are highlighting the responsibility that all states composing the Security Council (and particularly the permanent members) have in maintaining international peace and security and in protecting the populations exposed to mass atrocities. The two initiatives also believe that being a Council member, and especially a permanent member, represents a privilege but also a responsibility. Therefore, any state that is or will be a part of the Council should express readiness to carry that burden and should behave appropriately. Taken separately, each initiative contains some advantages and some disadvantages.

4.1. The French proposal

The fundamental and most positive advantage of the French initiative is that it comes from a permanent member of the Security Council. By doing this, France is showing leadership and is giving hope that the attempts to reform the Council does not always need to be obstructed by those that enjoy the biggest privileges. Another

²¹ List of Supporters of the Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes, as elaborated by ACT, <http://regierung.gmgnet.li/files/medienarchiv/header/List_of_supporters_2016-10-17.pdf>, 17 October 2016, accessed 15.02.2017.

advantage is that the proposal does not call for a formal amendment of the Charter – which would be practically highly difficult to achieve and it would open a whole other set of questions – but calls upon the consciousness of the P5, which should be expressed in some sort of a gentlemen’s agreement not to use their veto in R2P situations.

Nevertheless, the proposal also contains three main problems that need to be addressed. First, the proposal assigns a significant role to the Secretary General. He/she is the one who should evaluate whether a situation qualifies as genocide, ethnic cleansing, war crime or crime against humanity and whether the national authorities are “manifestly failing” to protect their populations. This is problematic on several grounds. Firstly, historically speaking, the idea of strengthening the role and the figure of the Secretary General, this time by assigning him/her the role to determine an R2P situation, has not enjoyed support in the eyes of big powers.²² As Chesterman points out, powerful states’ (such as USA, China and Russia) preference is for the Secretary General to play more of an administrative rather than a (strong) political role. In other words, they prefer for him/her to be more a “secretary” than a “general”.²³ In regards to R2P, some permanent members have already publicly opposed this part of the French proposal.²⁴ Second, the Secretariat does not possess the financial means nor the information-gathering and analysis capacities that some (powerful) states have.²⁵ Additionally, having in mind the Secretary’s “ongoing role as a diplomatic broker, it might be preferable to avoid putting him [/her] in the position of making a quasi-judicial determination”.²⁶

A possible solution to this problem could be to ascribe the role of the authority that shall make the R2P determination to an informal conglomerate of multiple, already existing, institutions. This way, the burden will be shared among several institutions, the advantages and specialties of every institution would be maximized, and the difficulty if only one institution would be in charge will be neutralized. This is the

22 See for example, Simon Chesterman (eds.), *Secretary or General: The UN Secretary General in World Politics*, New York University School of Law, 2007.

23 Simon Chesterman, *Relations with the UN Secretary-General*, in Sebastian von Einsiedel, David M. Malone and Bruno Stagno Ugarte (eds.), *The UN Security Council in the Twenty-First Century*, Lynne Rienner Publishers, 2016, p. 444.

24 See the Statement made by Russia, Statements Delivered at 2014 Ministerial Side-Event on Regulating the veto in the event of Mass Atrocities, Global Centre for The Responsibility to Protect, <<http://www.globalr2p.org/resources/773>>, accessed 15.02.2017.

25 Chesterman (n 23), p. 448.

26 The French Veto Restraint Proposal: Making it Work, Gareth Evans, <<http://www.gevans.org/speeches/speech564.html>>, accessed 15.02.2017.

suggestion made in the Global Centre for R2P's (GCR2P) proposal for RN2V.²⁷ According to this proposal, the authority that will determine whether there is a R2P situation would be comprised of: the UN Office of the Special Advisers on Genocide Prevention and the Responsibility to Protect, the Office of the High Commissioner for Human Rights and minimum 50 member states of UN General Assembly. These three instances, independently from each other, would assess whether there is a R2P situation, and if their assessment is affirmative, would send a written notification to the Secretary General. The Secretary General, without making a determination himself/herself and in accordance with Article 99 of the Charter, would then bring the matter to the Security Council. After that, the RN2V obligation would be activated but the Security Council would still have to make a decision about the situation and (at least) nine out of fifteen votes would still be required.

In GCR2P's proposal, the Special Advisers and the High Commissioner give their expertise and impartiality, whereas the member-states of the General Assembly give the political dimension of the issue. Although the mere written assessment by the member states will exclude the deliberative aspect of the political process, their involvement is preferable in comparison to the alternatives of total exclusion of the Assembly and the transferring of that role solely to the Offices of the Special Advisers and the High Commissioner or to the Secretary General. Furthermore, excluding the debates in the General Assembly in these types of situations, when there could be a need for an urgent response, is to some extent necessary. States could still express their views about R2P on the annual Assembly sessions or at the Informal Interactive dialogues on R2P. In any case, member-states of the General Assembly would not decide for the appropriate measure to be taken but only evaluate the potential R2P situation. The inclusion of the Security Council in the process also adds to the political aspect of the equation – the Council is still the instance that will discuss and decide what kind of measure should be used to address the R2P situation.

The second main difficulty with the French proposal is the number of 50 states of the General Assembly? How is this number chosen and why? Is perhaps 50 states a too low request, considering that virtually every permanent member could assemble that number at any time? Is the political dimension of the assessment satisfied with 50 states? And why 50 states and not, for example 97 (1/2 of UN membership) or 129 (2/3 of UN membership) states? Furthermore, even if 50 is the number,

27 The Responsibility not to Veto, Global Centre for Responsibility to Protect, <<http://www.globalr2p.org/media/files/2015-january-adams-veto-restraint-remarks.pdf>>, 21 January 2015, accessed 15.02.2017.

should there be any sub-criteria or any 50 states will be enough? For example, Evans suggests that in those 50 states at least five states should come from each of the five recognized regional groups.²⁸ If these regional sub-criteria are accepted, how should the overall number be changed if more than 50 states are included?

The final major problematic aspect of the proposal is the inclusion of “vital national interests” of the P5, as a ground for the use of the veto even in these cases of mass atrocities. According to minister Fabius, the inclusion of this phrase is in order to make the proposal “realistically applicable”. However, even though the Security Council was envisioned to be a Big Powers club which should jointly decide about questions of world security, that did not mean that they could simply use the veto as a mean to suit their national interests. The use of the veto should be in line with the rules and principles of the Charter and as a “safety-valve” to prevent a major *international* crisis or a *world* war. If this broad exception for the use of veto in mass atrocity situations is allowed, then the interpretation of the national interests will again be an obstacle for action. Ironically, if in the past this was due to very narrow interpretation of what counts as ‘national interest’, now there might develop a pretty wide interpretation which will serve as an excuse for the use of veto, and consequently – inaction. This is why, as The Elders’ RN2V proposal suggests, when some of the permanent members use their veto in cases of mass atrocities, they should provide an explanation of its use, and that “explanation must refer to international peace and security, and not to the national interests of the state casting the veto, since any state casting a veto simply to protect its national interests is abusing the privilege of permanent membership”.²⁹ In addition, the veto casting state(s) should also propose “a credible and efficient way to protect the populations in question”. Also, The Elders call upon the other states that will not cast a veto, to “undertake not to abandon the search for common ground but to make even greater efforts to agree on an effective course of action.”³⁰

These are some of the main issues in the French proposal that need to be addressed. It is encouraging that France has shown openness and willingness to hear the criticism and refine its proposal in order to achieve the goal of avoiding Security Council paralysis in mass atrocity situations.³¹

28 The French Veto Restraint Proposal: Making it Work, (n 26).

29 A UN Fit for Purpose, The Elders - Independent group of global leaders working together for peace and human rights, <<http://theelders.org/un-fit-purpose>>, accessed 15.02.2017.

30 Ibid.

31 The Veto: Reseach Report, Security Council Report, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf>, No.3, p.6, 19 October 2015, accessed 15.02.2017.

4.2. ACT's Code of Conduct

The main advantage of the ACT's Code of Conduct is that the proposal encompasses all members of the Security Council – permanent and elected. Although it is more than clear that the veto-holders have the biggest power and hence the biggest responsibility for the functioning of the Council, the initiative rightly includes all members of the Council. The chief reason for this is the fact that the elected members are holders of the so called “sixth veto”, meaning that for any decision to be made aside from the concurring votes of the five permanent members, there is the need for at least four (out of ten) votes of the elected members. At the same time, the initiative indicates that the secondary responsibility to protect populations from mass atrocities rests at the international community as a whole, and every state – in its own capacity and power – should live up to this responsibility.

Another positive aspect of this initiative is its flexibility and the lack of complex procedures. Firstly, the proposal frees the Secretary General of the delicate role to make a final R2P determination. Although it assigns him/her a serious function and calls on states to take into account his/her assessment, it leaves “the facts on the ground” and states themselves to be the arbiters of the manifest failure in the four R2P cases of mass atrocities. Second, in this proposal there is no procedural trigger for the activation of the Code. Finally, there is a possibility for an exception and the use of veto in these situations. The ACT group suggestion is that the veto should not be used to block “credible” draft resolutions and not every single draft resolution on mass atrocities.

Nonetheless, this flexibility could also happen to be its biggest weakness. The lack of specific and procedural conditions could highlight some of the already existing problems in terms of implementing R2P. Leaving “facts on the ground” and states themselves to evaluate whether for example there is genocide or not could lead to different and contending interpretations (like for Darfur). If one adds to this the absence of a concrete number of states necessary to activate the RN2V Code, this could generate the well-known West-non-West or North-South divisions among states over R2P.

5. ASSESSING THE CHANCES FOR SUCCESS

The aforementioned proposals are primarily targeting the permanent five members of the Security Council. Consequently, their acceptance of the RN2V idea is essential. However, their attitudes towards these initiatives differ.

5.1. France

France is the only permanent member that publicly supports RN2V. France is the initiator of one of the current proposals and has also signed ACT's Code of Conduct. France believes that the permanent membership and the veto should not be considered a privilege but a responsibility. Therefore, the Security Council should be an institution that will find solutions and not an institution that will paralyze them.³² While speaking at the 70th session of the UN General Assembly, French president Hollande made an undertaking that "France will never use its veto power where there have been mass atrocities".³³ As noted above, although France's proposal has some shortcomings, France has shown openness to new ideas and readiness to adjust its proposal and be a leader of RN2V.

5.2. United Kingdom

The UK generally supports the idea not to use its veto in cases of mass atrocities. Similarly to France, UK also stresses that it "will never vote against a credible Security Council action to stop mass atrocities and crimes against humanity".³⁴ UK has signed ACT's Code of conduct but it has not signed the French-Mexican Declaration. One possible reason for this could be the insertion of the qualification "credible" (under British suggestion) to characterize the type of draft resolutions that should not be blocked (as opposed to any type of resolution).³⁵ Another possibility could be UK's perspective that "[w]hile today's realities differ in many ways to the challenges that face the world in 1946", the veto continues to fulfill its function of maintaining international peace and security and the UN as an organization.³⁶ Therefore, "in order to achieve the objective behind this [RN2V] initiative we need the commitment of all five permanent members".³⁷ Anyway, UK is positively inclined towards RN2V and is ready to accept the limitation of the veto usage in cases of mass atrocities under certain conditions.

32 See Statement by France, Statements Delivered at 2014 Ministerial Side-Event on Regulating the veto in the event of Mass Atrocities, (n 24).

33 Address by President Hollande to the UN General Assembly, Permanent Mission of France, <https://gadebate.un.org/sites/default/files/gastatements/70/70_FR_en.pdf>, 28 September 2015, accessed 15.02.2017.

34 Statement by Ambassador Matthew Rycroft of the UK mission to the UN at the ACT Group Event on the Code of Conduct, Foreign & Commonwealth Office, <<https://www.gov.uk/government/speeches/im-proud-to-say-that-the-united-kingdom-is-signing-up-to-the-act-code-of-conduct>>, accessed 15.02.2017.

35 The Veto: Research Report, Security Council Report, (n 31), p.5.

36 See Statement made by the United Kingdom, Statements Delivered at 2014 Ministerial Side-Event on Regulating the veto in the event of Mass Atrocities, (n 24).

37 Ibid.

5.3. USA

The US are officially silent on the question of RN2V. USA accept R2P including on the issue of military intervention. After some ambivalences regarding R2P during the Bush presidency, the Obama administration shifted US position on R2p “from ‘if’ to ‘how’ and ‘which’”: that is, no longer *if* the United States should adopt R2P as an international norm and genocide and mass atrocities prevention as a priority US policy objective but *how* best to do so and in *which* cases to do so.”³⁸ Nevertheless, keeping in mind the vast military power that the US enjoys before other countries, USA does not want to be restricted or controlled by the UN Security Council. And even when the Council confirms USA’s position and the US is acting through the Council, “the United States tend to reserve to itself the role of arbiter of what a Council’s yes means”.³⁹ Hence, USA does not want any type of restriction to its veto.⁴⁰ As far as RN2V initiatives are concerned, although it has publicly condemned Russia and China for their vetoes on Syria, privately it has expressed reservations to diplomats from other states about these initiatives.⁴¹ USA has not signed the French-Mexican Declaration nor the Code of conduct by the ACT group.

5.4. China

Even though it is publicly silent on the idea of RN2V, China is also not a supporter of this idea. This can be concluded if one considers China’s attitude toward R2P and the importance of the veto as an institute of international politics, as well as from its use of the veto in practice. In principle, although it has rather strict and traditional understanding regarding state sovereignty and non-interference in the internal affairs, China supports R2P. It unequivocally supports Pillar 1, while in regards to Pillar 2 it calls for a ‘constructive assistance’ on part on the international community that should include respect for the sovereignty and territorial integrity of the host country. Despite always calling for a peaceful solution first, China also supports the use of force in certain situations, only if that is conducted in a prudent way, is authorized by the Security Council and is on a case-by-case basis.⁴²

38 Bruce Jentelson, *USA*, in Alex Bellamy and Tim Dunne (eds.), *The Oxford Handbook of The Responsibility to Protect*, Oxford University Press, 2016, p. 473.

39 Stephen John Stedman, *The United States in the Security Council*, (n 23), p. 58.

40 For the role that the P3 – China, Russia and especially the USA – played in the failure of the S5 initiative for improving the working methods see for example, Christian Wenaweser, *Working Methods: The Ugly Ducking of Security Council Reform*, in suora (n 23), pp. 181-188.

41 (The Veto: Reseach Report, (n 31), p.8.

42 See for example Chinese Statement, UN General Assembly Informal Interactive Dialogue on the Responsibility to Protect: Timely and Decisive Action 2012, Global Centre for Responsibility to Protect, < <http://www.globalr2p.org/resources/278>>, 5 September 2012, accessed 15.02.2017.

Concerning the veto, China believes that the “[v]eto is the right granted to the permanent members of the Security Council which recognizes the valuable contribution and the sacrifices by the five permanent members during ... the Second World War”.⁴³ In order to maintain the UN as a collective security arrangement, “the principles for concurrence of bigger powers” should be respected as an established decision making mechanism. In addition, controversial draft resolution should not be put to vote.⁴⁴

China has not signed either of the two current RN2V initiatives. Moreover, since 1990 China has used its veto on 9 occasions, include five times on Syria, and it is the only permanent member that has used its veto more frequently after the Cold War then during this period.⁴⁵

5.5. Russia

Russia does not support the proposals to limit the use of the veto even in cases of mass atrocities. Generally, Russia believes that the status of the permanent five, including their veto, should be preserved.⁴⁶ Russia cites several reasons for this. First, the veto is one of the main pillars of the Charter and UN system. The veto is an “indispensable element of the system of checks and balances” and it stimulates seeking compromise and consensus. Second, the veto is a safeguard to the UN against “doubtful undertakings” such as the use of force over Kosovo in 1999, in Iraq in 2003 or the “pushing [of] Syria towards collapse”. Additionally, Russia believes that not vetoing Libya led to the bombing and toppling of the “legitimate government”. Furthermore, Russia emphasizes that the veto is not UN’s biggest problem, stressing that there were “vast majority [of cases] where the veto was not used [and] when the Council was in agreement, when the UN was involved, but the atrocities continued and even grew in a larger scale.”⁴⁷

43 See Statement made by China, Statements Delivered at 2014 Ministerial Side-Event on Regulating the veto in the event of Mass Atrocities, (n 24).

44 Ibid.

45 It is interesting to note the difference in Chinese, otherwise pretty consistent, statements delivered at the last two Informal Interactive Dialogues on the R2P. While China is usually pretty restrictive when it comes to Pillar 3, in these two meetings it did not even mention Pillar 3. This could imply a possible worsening of China’s view on R2P.

46 Russia to Support UNSC reform if backed by over 2/3 of member states – Foreign Ministry, Russia Today, <<https://www.rt.com/news/315510-un-security-council-reform/>>, 16 September 2015, accessed 15.02.2017.

47 See Statement made by Russia, Statements Delivered at 2014 Ministerial Side-Event on Regulating the veto in the event of Mass Atrocities, (n 24).

Russia has not put its signature on the RN2V initiatives. Furthermore, for the period 1990–2016 Russia has used the veto 15 times (right after USA with 16), including 6 times on Syria. All of this confirms their approach of unlimited use of their right to veto.⁴⁸

6. THE IMPORTANCE OF THE RN2V DEBATE

Observing P5's mood for the idea to limit their veto in cases of mass atrocities, it is becoming clear that this idea has practically no chances for success. This impression is strengthened if one looks at the unsuccessful history of attempts to reform the Security Council. Therefore, a natural question imposes itself – what is the point of insisting for the RN2V, if it is almost certain that these initiatives will not succeed?

Although the RN2V idea is not going to succeed any time soon, the debates surrounding this idea are important for R2P and they should continue. There are three significances: the debates could improve the question of right authority for R2P; they signal the search for a new moral and political agreement for Pillar 3; they show the need for further development and upgrade of R2P.

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6.1. Improving the right authority

The topic of the right authority, or who should assess whether there is a R2P situation and who should decide what should be done in such a situation, is one of the most contentious issues when it comes to R2P. The 2001 R2P version, unlike for the other five criteria of the Just War Theory which are placed in a single chapter, devotes a special chapter to the issue of right authority where various (political, legal, moral) aspects are analyzed. According to ICISS, “there is no better or more appropriate body than the Security Council” to serve as the right authority of the international community for R2P.⁴⁹ However, the Commission also suggests that if there is a situation where the humanitarian or human rights issues are significantly at stake and the Council fails to deal with a situation within a reasonable time or expressly rejects a proposal for the use of force, alternative authorities should be

48 What is worrying in regards to R2P is Russia's view expressed in their Foreign Policy Concepts of 2013 and 2016, in which it explicitly states that it will “prevent military interventions or other forms of outside interference contrary to international law, specifically the principle of sovereign equality of States, under the pretext of implementing the “responsibility to protect” concept”. See, Foreign Policy Concept of the Russian Federation, The Ministry of Foreign Affairs of the Russian Federation, <http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICk6BZ29/content/id/2542248>, 1 December, 2016, par. 26c, accessed 15.02.2017.

49 *The Responsibility to Protect*, (n 3), p.49.

involved.⁵⁰ The Commission proposes the UN General Assembly and, as a further possibility, regional organizations as alternatives to the UNSC.

RN2V initiatives are indirectly also addressing the question of an alternative to the right authority. Here, as well as with ICISS approach, the goal “is not to find alternatives to the Security Council as a source for authority, but to make the Security Council work much better than it has.”⁵¹

RN2V initiatives, nonetheless, take a different approach to the question of an alternative right authority than ICISS. In the Commission’s approach, the right authority is simultaneously carrying two roles – it *assess* if a situation qualifies as a R2P situation and it *decides* whether and what kind of action should be taken. Thus, the Security Council in accordance with Article 24 and 39 of the Charter evaluates whether a concrete situation is susceptible to one of four R2P mass atrocities and whether it presents a threat to international peace and security, and in accordance with Chapter 6, 7 and 8, it decides what sort of measures should be taken. The Commission continues with the synthesis of these two roles in the alternative right authorities it proposes. Namely, even though the General Assembly lacks the power to direct an intervention, ICISS emphasizes that it will be desirable for the Assembly to adopt a recommendation for an intervention (which means that it should previously assess the need for it) in an Emergency Special Session. Similarly, it would be preferable if a collective intervention for mass atrocities be authorized (and assessed before) by a regional organization.⁵²

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RN2V initiatives split the roles of assessment and decision-making between different authorities. The Security Council remains the only right authority that *authorizes* measures in cases of R2P, but it is the primary and not the sole authority that *evaluates* whether there is a R2P situation or not. These proposals are pointing out to an alternative, to an additional authority that will help the international community in assessing a potential R2P situation if the UNSC is blocked. This additional authority should not be regarded as a rival to the UNSC – as the P5 could possibly perceive the alternatives suggested by ICISS – because the Council is not excluded from the process and it is still the one that should decide about the appropriate action to deal with the R2P situation.

The additional authority that will determine a situation when the Council is blocked, is a further necessary development of R2P regarding the question of the

50 Ibid, p. 53.

51 Ibid, p. 49.

52 Ibid, p. 53.

right authority. Carrying on with these debates could lead to the crystallization of that additional authority and the conditions and circumstances of its functioning. Even if the RN2V initiatives fail to achieve a formal success in terms of restraining the veto in cases of mass atrocities, an agreement of the contours of this authority will have two benefits. First, the existence of an additional authority will increase UN's credibility as an organization, which in these types of situations is completely depended of the will of the P5. When mass atrocities are happening and the Council is blocked, the public perception is that the UN is failing. An evaluation of the situation by the additional authority will certainly not protect the populations in need nor will it force the Council (the P5) into action, but it will turn the spotlight and the responsibility for inaction on the permanent member(s) that used the veto. That is impossible to be done when the one who evaluates and the one who decides about a certain situation (and who also has its own interests and a right to veto) are united in the same agent. Second, an evaluation of the situation by a set of UN institutions (and not only the UNSC) could be a positive step and could move forward the debate about intervention that is not authorized by the Security Council. Despite the fact that this type of intervention is controversial and with disputed legality, the existence of an UN assessment about certain situation *before* an unilateral intervention is undertaken is far better than some "illegal but legitimate"⁵³ judgment by a UN body *after* the intervention is done, or some assessment made by the *same* agent that will conduct the intervention. In addition, acknowledging the need to consider supplementary and back-up responsibilities is "a logical extension of the understanding of R2P as a moral imperative".⁵⁴ If this is not the case, then "it would be prudent to rethink R2P's portrayal as a moral imperative".⁵⁵

Several crucial questions in regards to this additional authority need to be straightened up going forward. The primary one is of course, who should fulfill this role? The French proposal points to the Secretary General whereas the ACT initiative hints at states themselves being that authority. As it was mentioned above, both proposals have some drawbacks and a far better option would be if the solution is on the line of GCR2P's proposal – an informal conglomerate of multiple, already existing institutions. Undoubtedly, even if there is an agreement that the additional authority should be comprised of multiple and not just by a single institution, there remain many things to be addressed. For example, what are the institutions that will compose this authority? In GCR2P's proposal, aside from the Special Advisers

53 The reference was used by the Independent International Commission on Kosovo, in the evaluation of NATO bombing of former Yugoslavia.

54 Toni Erskine, *Moral Agents of Protection and Supplementary Responsibilities to Protect*, in (n 38), p. 174.

55 *Ibid*, p.181.

on R2P and on the Prevention of Genocide, the High Commissioner for Human Rights is also included. But why should not the High Commissioner for Refugees be included as well? Citing them as one of the possible indicators of manifest failure, which taken in isolation would not be a large enough trigger for a Pillar 3 action, Gallagher rightly points out that “mass IDP [internally displaced people] and refugee movements help demonstrate that the government is failing in its internal responsibilities to protect the safety and welfare of citizens as well as its external responsibility as refugees destabilize regional order”⁵⁶. Evans proposal, on the other hand, does not include either the High Commissioner for Human Rights or the High Commissioner for Refugees.⁵⁷

Second important aspect of this additional authority is the question when will it be activated? In other words, will this authority be complementary or residual to the Security Council? The alternatives suggested by ICISS are residual. Similar is the case with RN2V proposals, which call for activation “when the Council is blocked” by a veto. This implies that this authority will be a fall back option. Nonetheless, the complementarity of this additional authority would be a more logical solution, having in mind that the UNSC is still the one who should make a decision. Also, this additional authority will be comprised of some working institutions which can be (or already are) dealing with different aspects of R2P and it will merely evaluate whether there is a R2P situation or not. The complementarity would also be better from the standpoint of the populations that expect to be protected by the international community, because this would save the time that will be wasted by waiting for a UNSC blockade to happen in order to activate the mechanism. Nevertheless, knowing that the P5 do not want to share their exclusive right to evaluate situations relevant to the maintenance of international peace and security, the politically pragmatic solution inclines toward this authority being a reserve to the Council.

In any case, these and many other questions related to the additional right authority and to RN2V are left for answering. Various and numerous aspects of these issues should be thoroughly debated and nuanced and even if the initiatives are not formally successful, they could reach an understanding of the outlines of this unofficial additional authority (which would be acting in the background) and thus improve the international community’s right authority for R2P.

56 Adrian Gallagher, *Syria and the Indicators of a ‘Manifest Failing’*, The International Journal of Human Rights (2014), vol.18, no.1, p. 9.

57 The French Veto Restraint Proposal: Making it Work, (n 26).

6.2. In search for a new moral and political agreement for Pillar 3

The current two initiatives which demand the limitation of the veto use in cases of mass atrocities – the French-Mexican Declaration and the ACT Code of conduct – enjoy broad support. For almost a year since their launching, both initiatives have been supported by more than half of UN member states. Wide support for these proposals comes also from the civil society – prominent organizations and groups such as Human Rights Watch, Amnesty International, International Federation for Human Rights, The Elders, International Coalition for R2P, Global Centre for Responsibility to Protect, etc. – and from numerous experts in the field.⁵⁸ Former UN Secretary General Ban Ki-Moon, also endorsed the RN2V idea in his 2009 R2P report.⁵⁹

This broad support implies that the formula for activating Pillar 3 which was accepted in paragraph 139 of the World Summit Outcome Document – the Security Council is *prepared*, in situations of *manifest failure*, to react on a *case-by-case* basis – is not satisfactory for the international community. This formula was not part of the original R2P version from 2001 nor was it included in the first three draft versions of the Outcome Document.⁶⁰ In the next draft version, however, the phrase “on a case-by-case basis” was added for the first time.⁶¹ In this same document, in place of the “unable and unwilling” national authorities to protect their populations as a condition for activating R2P for the international community, the phrase “when national authorities fail” was inserted. In the following draft version this was further modified by adding the criterion of “manifest failure” of national authorities, which ultimately became the accepted formulation for R2P.

The formula – preparedness for reaction on a case-by-case basis when there is a manifest failure – can be understood in two ways. On the one hand, it is interpreted to mean that every situation is different and specific and therefore there should not be one type of answer to these situations – no “one-size-fits-all” solution. The UNSC should carefully consider each case separately and decide for the most adequate measure for the concrete situation. On the other hand, the preparedness to react on a case-by-case basis could also mean that in certain cases, the Security Council will

58 UN Security Council Code of Conduct, Global Centre for Responsibility to Protect, < http://www.globalr2p.org/our_work/un_security_council_code_of_conduct>, accessed 15.02.2017.

59 Implementing the Responsibility to Protect: Report of the Secretary-General, (n 13), p.27.

60 The 2001 R2P version uses the criteria - “unwilling and unable” national authorities; For the draft history of the Summit Outcome Document, see International Coalition for The Responsibility to Protect, < <http://responsibilitytoprotect.org/index.php/document-archive/united-nations>>, accessed 15.02.2017.

61 Ibid.

not be prepared to react because the P5 are disagreeing on whether and how they should respond in that situation. On this line, Russia and China's decisions to veto multiple draft resolutions on Syria (although morally wrong) are perfectly in line with what was agreed in 2005.

The wide support that the RN2V initiatives enjoy, indicate that the latter interpretation is not acceptable. The Secretary General, through his R2P Reports, widely promotes only the interpretation that the phrase "case-by-case" means specific and different solutions tailored to the particular situation. As Toni Erskine points out, although the Secretary General explicitly endeavors to remain consistent with the World Summit R2P version at the beginning of his first R2P Report in 2009, he omits the qualification "case-by-case" in the later parts of the Report.⁶² The expression "case-by-case" is also not included in the French-Mexican Declaration⁶³ nor in ACT's Code of conduct.⁶⁴

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Even though in the Outcome Document this formulation is used in the context of a collective action that should be undertaken, RN2V initiatives do not aim to restrict the UNSC freedom of action. Thus, although they exclude the "case-by-case" phrase, both initiatives give room to the Council to discuss, argue and decide – including the possibility to use the veto – in order to achieve the best possible solution. The French proposal enables this with the inclusion of "vital national interest" whereas the ACT proposal does it with the opportunity to block "non-credible" draft resolutions. Having in mind the Just War Theory criteria for the use of force (primarily proportionality, force as last resort and reasonable chances for success) certain, prudent selectivity in the use of coercive measures is necessary. This does not mean that any kind of selectivity nor for any kind of reasons (like for example "national interests") is acceptable. It means, in line with The Elders' suggestion, that those who use the veto should do it for reasons of international peace and security and they should propose a solution to the crisis. In this sense, RN2V initiatives are calling for a *bona fide* use of the veto in mass atrocity situations.

RN2V proposals also do not advocate for one type of solution – let alone only and automatically military intervention – for all cases. In fact, there was not a call for the use of force in any of the six draft resolutions – including the two in which a Chapter

62 Toni Erskine, (n 54), p. 182, footnote 3.

63 See paragraph 2 of the Political Statement on the Suspension of the Veto in Case of Mass Atrocities, (n 17). Here a reference is made to paragraph 139 of the Outcome Document and it stops right before the "case-by-case" benchmark.

64 Explanatory Note on a Code of regarding Security Council action against genocide, crimes against humanity or war crimes, (n 20). Take notice of the final paragraph in the preamble.

7 reference was made – that Russia and China blocked for Syria.⁶⁵ Collective action does not automatically mean intervention. It could include, in line with Article 41, various coercive measures short of war, such as targeted sanctions, travel and financial bans, arms embargos etc. The implication and the idea of these initiatives are that in situations of mass atrocities, any type of selectivity and a blocked Council (which would result in inaction) – are unacceptable. Surely, the reaction could include – and sometimes it should include – military intervention, but the RN2V initiatives leave to the Council to discuss and decide for the most suitable solution.

6.3. Upgrading ‘R2P-lite’

One of the main drawbacks of the R2P version that was adopted at the 2005 World Summit is that, in comparison with the 2001 version, it is quite diluted. The ICISS version of R2P, aside from the proposals for refraining to use the veto and the alternative authorities when the Council is blocked, also comprises numerous criteria and better elaboration of R2P – how and when a situation is considered a R2P situation and what should be done to address it. Special attention, using the Just War elements, was given to the circumstances for the use of force. However, none of these elements were part of the three paragraphs dedicated to R2P in the 2005 Summit. This is why, Thomas Weiss has called the 2005 version ‘R2P-lite’ – “that is, without specifying the criteria governing the use of force and insisting upon Security Council approval”.⁶⁶

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More than a decade later, it is becoming obvious that ‘R2P-lite’ is not enough. RN2V initiatives show that it is impermissible for the veto to be used irresponsibly in mass atrocity situations. As a result, the criteria for its use in these situations should be agreed. Furthermore, RN2V proposals revive the question for an alternative authority (who this time will only have an assessment role) if the UNSC is blocked.

Brazil’s Responsibility While Protecting (RWP) initiative should be understood in a similar manner. In November 2011, in the aftermath of NATO’s intervention in Libya,⁶⁷ Brazil launched its initiative for the development and promotion of

65 The draft resolutions blocked by Russia and China: S/2011/612 from 4 October 2011; S/2012/77 from 4 February 2012; S/2012/538 (Chapter 7 reference) from 19 July 2012; S/2014/348 (Chapter 7 reference) from 22 May 2014; S/2016/846 (vetoed only by Russia) from 8 October 2016; S/2016/1026 from 5 December 2016.

66 Thomas G. Weiss, *R2P after 9/11 and the World Summit*, Wisconsin International Law Journal (2006) vol.24, no.3, p. 750.

67 For which the International Commission of Inquiry on Libya concluded that NATO “conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. See Report of the International Commission of Inquiry on Libya, A/HRC/19/68, 2 March 2012.

R2P named RWP.⁶⁸ The proposal contains criteria for the use of force, ways of improving the capacity for prevention, mechanisms for monitoring and reviewing the mandates authorized by the Security Council and for holding accountable those that use force. Although the initiative has some positive and some negative aspects,⁶⁹ it signals the need to address the questions that were not included in the Outcome Document in 2005.

Taken together, these (and similar other) initiatives and proposals point out to the necessity of further development and expansion of the accepted 2005 R2P version. The UN Secretary General alongside his Special Advisers for the Prevention of Genocide and R2P are playing a huge role in this regard with the annual R2P reports in which they give their suggestions for improving R2P. The informal interactive dialogues on R2P and the debates in the General Assembly where states present their views about R2P contribute to the further development of R2P. Similar contribution is provided by experts and the international civil society. All of this once again shows the need for upgrading 'R2P-lite' and for finding ways to improve the working of the Security Council in R2P situations.

7. CONCLUSION

This article has discussed the issue of 'Responsibility not to veto' – the idea that the permanent five members of the UN Security Council ought not to use their veto in cases of mass atrocities. After going through past and current initiatives in this regard, the article concludes that they do not have a real chance of succeeding. Nevertheless, even if they fail to succeed, the debates surrounding these proposals are important and they should proceed due to at least three reasons. Firstly, the debates regarding RN2V are indirectly reopening the question of an alternative if the UNSC is blocked, but this time they take a different approach and focus only on the assessment role of the right authority. Second, the debates show that selective – case-by-case – reaction in times of mass atrocities is not acceptable and they call for reformulation of this agreed standard for activating Pillar 3. Finally, the discussions show, once again, that there is a need for developing R2P, especially in regards to the use of force.

RN2V proposals do not intent to abolish the veto or to coerce the UNSC to adopt certain decisions (namely, military intervention) in situations of mass atrocities. The

68 Responsibility While Protecting: Elements for the Development and promotion of a Concept, A/66/551-S/2011/701, 11 November 2011.

69 For an account of RWP see for example Oliver Stuenkel, *Responsibility while Protecting*, (n 38).

purpose is to make the Council behave responsibly and avert mass atrocities from happening. Notwithstanding that the P5 have a “special dual responsibility”⁷⁰ – to maintain international peace and security and to protect the populations of mass atrocities – this is not a sufficient explanation of their use of the veto in order to maintain the global order if that order allows for mass atrocities to happen. Besides, mass suffering in any country in itself destabilizes the world order based on the respect for fundamental human rights. The disagreements about the modalities to maintain this order and the choice how to act in a concrete situation, are left to the P5 to decide. The 2005 R2P consensus could serve as a basis for further development of the elements that are missing or are disputable.

The upgrading of ‘R2P-lite’, however, should be flexible. Having in mind the vision of UN founders as well as UNSC practice, the Council is a political body that adjusts to the changeable circumstances and it should remain so. As such, the Council (and especially P5) is not inclined towards accepting various criteria, detailed rules or check-lists outside the principles and purposes of the Charter (for which it reserves the right to interpret them as it pleases).⁷¹ Furthermore, as Bellamy points out, during the negotiations over the World Summit Outcome Document, both interventionists and anti-interventionists were against the adoption of criteria for the use of force – the first because they did not want to limit their freedom of action, and the latter because they feared such criteria can be used against them.⁷² Therefore, the upgrading of R2P should not focus on the search for detailed and strict criteria but more towards the development of guidelines and mutual understandings for R2P’s key elements. These guidelines and understandings are necessary in order to make R2P more workable in practice. Conversely, if these guidelines and understandings are not attained, they could have an impact on R2P’s applicability as well as on its young normative life.

70 Justin Morris, *The Responsibility to Protect and the Great Powers: The Tensions of Dual Responsibility*, *Global Responsibility to Protect* 7 (2015), pp. 398-421.

71 Edward C. Luck, *A Council for All Seasons: The Creation of the Security Council and Its Relevance Today*, in Vaughan Lowe, Adam Roberts, Jenifer Welsh and Dominik Zaum (eds.), *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, Oxford University Press, 2008, pp. 61-86.

72 Alex J. Bellamy, (n 9), pp. 165-167.