



Cesáreo Gutiérrez Espada

Professor in International Law, Universidad de Murcia. E-mail: cgutesp@um.es

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THE RESPONSIBILITY TO PROTECT AND THE RIGHT OF VETO IN THE SECURITY COUNCIL: SOME RECENT EXAMPLES

As currently conceived, and to ensure its better practical application, the concept of the Responsibility to Protect requires a reform of the right of veto. The French proposal dating from 2013 on this subject warrants in-depth consideration. In any case, the responsibility to protect remains in effect, as proven by UN Security Council Resolution 2127 (2013), adopted as a response to the conflict in the Central African Republic.

Security Council, right of veto, Libya, NATO, responsibility to protect, Syria, African Union, use of force, Central African Republic

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INTRODUCTION

A civil war – an internal armed conflict, if one prefers – has been ongoing in Syria since 2011. Syria undoubtedly represents the dark side of the Arab Spring; darker even than that of Egypt, where the current situation is emerging from a change of direction driven by the force of arms.

This civil war was born, just as in Tunisia, Libya, Egypt and Yemen, from the revolts of a people who wanted to free themselves from the totalitarian regimes that governed them, expressing a desire for freedom. Freedom that, according to many observers, doesn't seem to have been fully achieved, despite the electoral processes that have taken place. Here I am not referring solely to Egypt, but also to the other countries that have been the protagonists of the so-called Arab Spring. The complexity involved in analysing this phenomenon means that we will not be able to examine it in this paper. Instead, we will focus on the legal status of the responsibility to protect and its repercussions in international legal systems.

It will be useful to reflect on two concepts, both relating to the eventual use of force by the international community to bring an end to humanitarian disasters – as is now happening in Syria - , key to the geopolitics of the Middle East. I am referring to the legal use of force against the Syrian regime and the responsibility to protect.

1. The legal use of armed force against the Syrian regime

The Syrian civil war has been ongoing for two and a half years. During this period, chemical weapons have been used at least once, as we will see later on in this paper. This fact confirms the widespread perception that the conflict poses a serious threat to regional peace and international security.

Currently engaged in combat on Syrian soil are the Hezbollah forces, considered by

some to be a terrorist organisation – at least the military wing¹, supporting the Syrian regime against rebel forces. We must bear in mind that this organisation is acting in the Middle East, aligned with the Islamic Republic of Iran². If we add into the mix the fact that Tehran strongly supports the Syrian regime against the rebels³, there would appear to be no doubt that the Syrian internal conflict will be one of the determining factors for the future of the region, as well for the development of international security in the medium term.

The Security Council, the main body of the United Nations responsible for peace according to the Charter (art. 24), could have acted as provided for in article 39 of the founding document of the UN. This would have constituted a first step before the adoption of coercive measures – without excluding armed measures – which would have brought an end to the conflict or brought it back to less disastrous proportions. This is what happened in Libya in 2011, although that internal conflict was less serious than the one we are seeing in Syria. In Resolution 1973 (2011) of 17 March, the Council authorised states and international organisations prepared to intervene (in practice NATO was tasked, launching Operation ‘Unified Protector’) to use force. This meant, therefore, that, pursuant to the text of article 27.3 of the Charter⁴, authorisation was given for the use of armed force to protect civilians in Libya. This would protect the no-fly zone that the resolution established in order to prevent Colonel Al Khadafi’s regime from attacking the civilian population from the air, as well as protecting the civilian population from any other attack⁵. It should be remembered that, according to news reports from the agency France Press reporting from Damascus, Syrian aerial bombing of the northern city of Aleppo caused more than 300 deaths in 8 days, including 87 children and 30 women. A security source from Damascus explains that the army resorts to aerial bombing in this province to support its troops on the ground

1 *Vid.* FERNÁNDEZ MARTÍN, A.: “EU declaration of the ‘Hezbollah military wing’ as a terrorist group”, *Opinion Document*, 83/2013, 11 September 2013. pp. 1-11 Available under: http://www.ieee.es/Galerias/fichero/docs_opinion/2013/DIEEE083-2013_DecisionUE_Hezbollah_A_Fdez_Martin.pdf The decision was supported by Spain, who has continued to maintain their position; a decision that is not believed to jeopardise Spanish troops, according to Foreign Minister García Margallo, www.europapress.es, 22 July 2013) (consulted: Saturday 21 December 2013).

2 This explains why, on the very same day as the European Council announced their decision, Iran denounced the EU’s decision, with Foreign Minister Ali Akbar Salehi declaring that Europe was defending the “illegitimate [interests] of the Zionist regime” (“Iran condemns the EU’s decision on Hezbollah”, www.diario-octubre.com, 23 July 2013, 5:30pm.) (consulted: Saturday 21 December 2013).

3 *Vid. infra* para. 9, letter B

4 Described as general practice by the ICJ in its advisory opinion of the 21 June 1971 on Namibia, para. 20-22, *ICJ Reports 1971*, p. 16.

5 *Vid. ad ex.* GUTIÉRREZ ESPADA, C.: “Sobre el núcleo duro de la resolución 1973 (2011) del Consejo de Seguridad y acerca de su aplicación en la práctica”, *Anuario Español de Derecho Internacional*, 27 (2011), pp. 57-75 (pp. 58-66).

as they don't have enough means to launch a land offensive, even if the rebel positions "are among the civilians"⁶.

In the case of Syria, the Security Council did not act in the way outlined above. It dealt with the issue very late on because Russia and China, both permanent members of the Council, refused recourse to the *responsibility to protect* on three occasions.

Russia and China abstained from the vote on the adoption of Resolution 1973 (2011). They did not take the same decision in the case of Syria, however, as they were still disgruntled by the consequences that resulted in practice from the authorisation of the use of force in Libya and the "overflow" from NATO⁷.

If, in conformity with chapter VII of the Charter, the Security Council had authorised an armed intervention with the aim of stopping the fighting and protecting the population, this use of force in Syria would have been fully legal, in accordance with the Charter of the United Nations.

Due to the veto – or the mere threat of its use – it was not possible to implement this in the Syrian conflict.

2. The responsibility to protect

Another form does exist, however, that could have been implemented in Syria, even opening up the possibility for an armed intervention on humanitarian grounds in order to protect the civilian population.

I am referring here to the *Responsibility to Protect* (hereafter referred to as the RtoP).

It should be clear that my aim is not to study or evaluate in depth this concept⁸,

6 Hoy digital, 23 December 2013, 8:44am. (www.hoy.com.do) (Consulted: Tuesday 24 December 2013); also www.elpais.com of 23 December 2013, 8:52pm (Consulted: Tuesday 24 December 2013).

7 GUTIÉRREZ ESPADA, C.: "Sobre el núcleo duro..." cit., pp. 66-73.

8 For an in-depth study of the concept *vid.* BERMEJO GARCÍA, R. and POZO SERRANO, P.: "la communauté internationale face à la crise de Darfur: de l'échec Dans la prévention à la responsabilité de réagir", in KOHEN, M.E. (Edit.): *Promoting justice, human rights and conflict resolution through International Law. La promotion de la justice, des droit de l'homme et du règlement des conflits par le Droit international. Liber amicorum Lucius Caflish*, Leiden, Martinus Nihjoff Publisher, 2007, pp. 93-127; CERVELL HORTAL, M^a.J.: *Naciones Unidas, Derecho internacional y Darfur*, Comares, Granada, 2010, pp. 45-154; BERMEJO GARCIA, R.: "De la intervención humanitaria a la responsabilidad de proteger: fundamentos, similitudes y diferencias", in GUTIÉRREZ ESPADA C. (Dir.) y M^a.J. CERVELL HORTAL (Coordinadora): *Darfur, el conflicto inacabable*, Thomson Reuters-Aranzadi, Cizur Menor (Navarra), 2012, pp. 209-321; PATTISON, J.: *Humanitarian*

but rather to contextualise the proposal by France regarding the UN Security Council permanent members' right of veto. Three issues emerge here: the definition of the RtoP, the legal possibilities of this form and why it has not been implemented in Syria.

The concept of the RtoP was formulated for the first time in 2001 and accepted, at least in substance, by the Summit of Heads of State and Government of the Member States of the United Nations, called the Millennium Summit (September 2005). It was implemented for the first time in the civil war in Libya (between March and October 2011).

A) It was the result of an initiative launched by the International Commission on Intervention and State Sovereignty (ICISS), a group of experts brought together on the initiative of the government of Canada and some foundations, to try to respond to the challenge raised by the then Secretary-General of the United Nations, Kofi Annan. The idea of the RtoP was proposed. How can the international community, questioned the Secretary-General – moved by the genocides committed in Srebrenica and Rwanda (1995 and 1994)⁹, ensure that these types of horrors never happen again?

The ICISS understood that the concept of the RtoP was being consolidated in international law, whereby:

- In the case of mass crimes (genocide, ethnic cleansing, war crimes, crimes against humanity).
 - If the state in which the crime is being perpetrated cannot, does not want to, or is incapable of preventing it, the international community has a duty to protect these people.
 - And to adopt all measures necessary, starting with the least aggressive: preventive measures (diplomatic, political, legal...); coercive (non-armed); and, if needed, and fulfilling the established requirements, military measures (armed intervention for the cause of humanity) following the required order and protection.

The RtoP is based on three elements: the duty to prevent, the duty to react and the

intervention & the Responsibility to Protect. Who should intervene?, Oxford University Press, Oxford, 2012; BERMEJO GARCÍA, R.: “La responsabilidad de proteger y el Derecho internacional: ¿mito o realidad en la práctica internacional?”, in DÍAZ BARRADO, C.M., FERNÁNDEZ LIESA, C.R. Y RODRÍGUEZ-VILLASANTE PRIETO, J.L. (Dir): *Derecho Internacional Humanitario y Derechos Humanos. Reflexiones sobre el conflicto Colombiano*, Civitas-Thomson Reuters, Cizur Menor (Navarra), 2013, pp. 179-214.

⁹ Report presented by the Secretary General in conformity with General Assembly Resolution 53/35. *The fall of Srebrenica* (A/54/549), 15 November 1999.

duty (if armed force is used) to reconstruct¹⁰.

B) The High Level Panel appointed by the Secretary-General of the United Nations to make proposals on the reform of the Charter within the framework of the “Millennium Summit” (2005), recognised in its report (2004) the presence of the concept of the RtoP in international law, as well as its topicality and importance¹¹.

The Secretary-General made similar statements in his 2005 report that he presented to the Heads of State and Government of the Member States of the Organisation during the Summit. The Secretary-General drafted his report bearing in mind the conclusions that the High Level Panel had reached, as well as his own experience¹².

The Summit outcome document, adopted by the states in September 2005, also accepts the concept of the RtoP¹³.

What does the RtoP allow for and how is it applied in practice?

A) The ICISS established that this enhanced protection would be valid only in particularly serious situations of humanitarian crisis and that, where needed to avoid or redirect such situations, humanitarian armed intervention would be legitimised. The latter case requires that very strict requirements be fulfilled to cover the use of armed force:

- Just cause (genocide, ethnic cleansing, crimes against humanity and war crimes).
- Last resort.
- Proportionality of means.
- Reasonable possibility of success.

The Commission also provided that the decision to carry out an armed intervention lies, in principal, in the hands of the UN Security Council. But in order to be consistent with the reality of the right of veto enjoyed by the five permanent members of the Council, and bearing in mind, above all, the use that has been made of this privilege

10 *The Responsibility to Protect. Report by the Interational Commission on Intervention and State Sovereignty*, December 2001, p. 15 (para. 2.32). The report is reproduced as an annex to the letter dated 26 July 2002 from the Permanent Representative of Canada to the United Nations addressed to the Secretary-General of the United Nations, A/57/303, 14 August 2002.

11 *A More Secure World: Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges and Change*, A/59/565, 2 December 2004 p. 63 (para. 203).

12 *In larger freedom - towards development, security and human rights for all. Report of the Secretary-General* A/59/2005, 21 March 2005, p. 39 (para. 135).

13 World Summit Outcome Document 2005, A/RES/60/1, 16 September 2005, p. 33 (para.138-139).

in practice, the ICISS considered that in clear situations where the above-mentioned requirements are fulfilled, the permanent members of the Council should commit themselves to renouncing this right and not obstructing the body's decision when the protection of civilian victims of an armed conflict is at stake¹⁴.

However, envisaging that their conclusions and recommendations may not be shared by the permanent members of the Council, the Commission considered that existing law, together with the new concept of the RtoP, allowed for two alternatives:

a) The provision that allows the UN General Assembly, within the framework of Resolution 377 (V) of 3 November 1950, to recommend coercive measures – including armed measures – in the case of paralysis of the Council due to the veto.

b) Humanitarian armed intervention by a regional organisation that seeks the endorsement of the Security Council *a posteriori*¹⁵. Here it is worth recalling that the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* of 9 July 2002 (in force from 26 December 2003) established the African Standby Force (*Force Africaine en Attente*) with competency to intervene “in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h) of the Constitutive Act” (art. 4, j). The *Constitutive Act of the African Union* of 26 May 2001 (in force from 15 August 2001) provides that the Union “has the right to intervene” in the case of the aforementioned crimes if the international community does not react. Originally it was foreseen that the African Standby Force would be operational in the field by the end of 2010, but now it is looking like it will be 2015, at the earliest. In any case, and in a decision that the Ethiopian Prime Minister Hailemariam Desalegn, President-in-Office of the African Union, declared as “historic”, the 21st Summit of the African Union (25-27 May 2013) decided to create a Rapid Reaction Force as a provisional measure, until the African Standby Force is ready¹⁶.

B) In its 2004 report, the High Level Panel supported and defended the authority of the Security Council to authorise armed interventions in these situations, when

14 *The Responsibility to Protect...* cit., p. 46 (para. 6.21).

15 *Ibidem*, pp. 47-48 (para. 6.29-6.35). As regards the second option, the ICISS recalled the existence of the practice (p. 48, para. 6.35 and pp. 42-43, para. 6.5).

16 *Vid. ad ex.* PIERNAS LÓPEZ, J.J.: “¿Regionalismo o universalismo en acción?: Unión Africana, Unión Europea y Naciones Unidas en Sudán”, in C. GUTIÉRREZ ESPADA (Director) and M^a.J. CERVELL HORTAL (Coordinadora): *Darfur, el conflicto inacabable*, Thomson Reuters-Aranzadi, Cizur Menor (Navarra), 2012, pp. 53-94 (pp. 71-90); BRUSIL MIRANDA, M.: “L’Union Africaine décide de se doter d’une Force de Réaction Rapide”, *Sentinelle*, bulletin n^o. 350, 2 June 2013, pp. 1-8. The Constitutive Act of the African Union and the Protocol Relating to the Establishment of the Peace and Security Council can be consulted on the African Union website (www.au.int, click on tab “Resources”).

all of the mentioned requirements are fulfilled, together with the decision that the permanent members of the Council would commit to renouncing their right of veto in these cases. The panel did not, however, raise the possibility of other alternatives, unlike the ICISS¹⁷.

C) The outcome document approved by the Heads of State and Government participating in the Millennium Summit followed the more conservative lead of the report presented to them by the Secretary-General (2005). It accepted the existence of the RtoP but considered the Security Council, in its existing formation and decision-taking procedures – once again the right of veto – as being the only legitimate authority to decide on armed intervention in application of the concept of the RtoP¹⁸.

Ultimately, we are inclined to reject the claim that positive international law may allow the use of force on humanitarian grounds, even in the situations that the RtoP addresses, without prior authorisation from the Council. This would require that none of the five permanent members had used their right of veto. From this point of view, we regret how there appears to be an adjustment to reality from the side of those who consider that the concept of the RtoP – which hasn't been accepted in a generalised way as a new exception to the prohibition on the use of armed force in international relations – only “reflects an evolution in the way in which the Security Council evaluates or considers its powers according to articles 39 to 24 of the Charter”¹⁹.

The suggestion would seem to be that the concept of the RtoP would justify, per se, implementing coercive measures by the Council, including those that would imply a use of military force, beyond the requirement of a prior and perceptive formal declaration, ex article 39 of the Charter, that “a threat or breach of peace” has occurred. And this, incidentally, without the existence of any rule for obligation in this regard.

It should also be noted that where the Council is blocked by the use of veto – when the RtoP parameters analysed above are fulfilled –, certain rules are rendered useless; rules that are generally accepted today and that protect the vital interests of the international community as a whole. Rules such as those banning genocide, committing war crimes or crimes against humanity, or the mass violation of human rights. We will come back to this point in the conclusion of this paper.

17 *A more secure world...* (A/59/565) cit., p. 68 (para. 256).

18 Outcome Document... cit., p. 33 (para. 138-139). For a more detailed analysis of the concept of the RtoP in the Reports quoted and in the Outcome Document *vid. ad ex.* GUTIÉRREZ ESPADA, C.: “The ‘use of force’ in the reports of the High Level Panel (2004), the Secretary-General (2005) and finally in the Summit of Heads of State and Government Outcome Document (United Nations, New York, September 2005)”, in *Anuario de Derecho Internacional*, XXI (2005), p. 13-49 (p. 39-49).

19 Case of Professor James CRAWFORD: *Brownlie's Principles of Public International Law*, Oxford University Press, Oxford, 2012 (8th ed.), p. 756.

Why has the RtoP not been implemented in Syria while it has in the Libyan Arab Jamahiriya? Stated clearly: because Russia and China, permanent members of the Council, prevented it by using their right of veto, ignoring the fact that the conditions required for the application of the RtoP were present in Syria.

Indeed, we are seeing a civil war that, since the start of 2011, has caused a humanitarian disaster of a scale great enough to invoke this legal status, as done by the Security Council with Resolution 1973 (2011). Once again, in Syria its implementation has not been possible due to Russia and China's vetoes. In this regard, the following paragraph is somewhat enlightening:

“The Security Council is appalled at the unacceptable and escalating level of violence and the death of more than 100,000 people in Syria [...]. It is gravely alarmed by the significant and rapid deterioration of the humanitarian situation in Syria.” “The Security Council expresses its deep concern at the consequences of the refugee crisis caused by the conflict in Syria, which has a destabilising impact on the entire region [...] more than two million refugees [...] have fled Syria”²⁰.

Valérie Amos, Under-Secretary-General of Humanitarian Affairs and Emergency Relief Coordinator, made the following statement to the Security Council on 25 October 2013:

“On 2 October, this Council called on all parties to the Syrian conflict to immediately cease and desist from all violations of international humanitarian law and violations and abuses of human rights and to take all appropriate steps to protect civilians. Yet, three weeks later, we continue to receive reports of [...] the occupation of, and indiscriminate attacks against, civilian infrastructure, including schools, hospitals, power plants and water points”²¹.

Although the Security Council, as can be read in its annual report to the General Assembly (2012-2013), dedicated 28 sessions to the issue and published 4 press releases, it was unable to take a decision to avoid humanitarian disaster. Only following the use of chemical weapons²² was it able to adopt Resolution 2118 (2013) of 27 September. This resolution does not even provide for the adoption of specific measures, in keeping with the need and gravity of the case, in the event of non-compliance with

20 Statement by the President of the Security Council [S/PRST/2013/15], 2 October 2013, pp. 1-4 (pp. 1 and 3).

21 S/PV/7049, 25 October 2013.

22 *United Nations Mission to investigate allegations of the use of chemical weapons in the Syrian Arab Republic. Final Report*, p. 18 (para. 108) (“The United Nations Mission concludes that chemical weapons have been used in the ongoing conflict between the parties in the Syrian Arab Republic”) (<https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/12/report.pdf> en www.un.org) (consulted: Monday 23 December 2013).

the resolution by the parties to the conflict. Instead, it limits itself to using the standard formula once again²³.

The opinion we staunchly defend in this paper²⁴ regarding the inaction from the side of the Council in the case of Syria is also the opinion that has been clearly voiced by the Member States at the United Nations:

A) *Through declarations*, such as the ones made by the representation of Germany on the occasion of the debate in the General Assembly on the Security Council's report 2012-2013. They considered that the vetoes of the draft resolution on Syria raise a question mark as to the relevance of the Council and added that the French proposal for self-regulation of the right of veto and the renunciation thereof in the case of mass crimes should be studied at a later date. In a similar vein, the Maldives penned a petition at the UN calling for a ban on the right of veto in situations where the Council is facing mass crimes. The representative of the Maldives added that if Member States are not capable of protecting their citizens, it is down to the United Nations to take on this responsibility²⁵.

B) Also through *actions*, as demonstrated by Saudi Arabia who, having been elected as a non-permanent member of the Council, resigned the following day, alluding to the body's incapability to face up to its responsibilities to world peace, and citing explicitly the text circulated by the national news agency SPA on the (in) action in the civil war in Syria²⁶. The General Assembly elected Jordan as a substitute for Saudi Arabia on the 6 December 2013. The United Nations News Centre expressly stressed that the representatives of Saudi Arabia justified their country's resignation in categorical terms: "due to not being in agreement with the actions of the Council regarding the situation in Syria..."²⁷.

23 "Decides, in the event of non-compliance with this resolution, including unauthorized transfer of chemical weapons, or any use of chemical weapons by anyone in the Syrian Arab Republic, to impose measures under Chapter VII of the United Nations Charter", S/RES/2118 (2013), para. 21.

24 Most bibliographical opinion appears to share this view: *vid. ad ex.* PONS, RAFOLS, X.: "Naciones Unidas y Siria: idea y realidad", ANUE (magazine of the United Nations Association of Spain), n.º. 43, May 2012, pp. 5-14; ANDRÉS SÁENZ DE SANTAMARÍA, P.: "Las Naciones Unidas ante el conflicto de Siria", *Opinion Document*, 93/2012, 18 December 2012, pp. 1-15 Available under: <http://www.ieee.es>; WECKEL, PH.: "Crise en Syrie, la relance du processus politique", *Sentinelles*, bulletin 348 of 19 May 2013, pp. 1-12 (and 18 other contributions from Professor Weckel on the subject over the past two years are quoted on pp. 11-12, 2011-2013) (www.sentinelles-droit-international.fr); BERMEJO GARCIA, R.: "La responsabilidad de proteger y el Derecho internacional: ¿mito o realidad en la práctica internacional? cit.", pp. 203-209.

25 *Vid.* BRUSIL MIRANDA, M.: "L'Assemblée générale critique les méthodes de travail et le fonctionnement du Conseil de Sécurité", *Sentinelles*, bulletin n.º. 368, 1 December 2013, pp. 1-7 (p. 6).

26 www.internacional.elpais.com, Ángeles Espinosa, 18 October 2013 (Consulted 30 October).

27 www.un.org, UN News Centre, consulted 9 December 2013.

3. “Code of Conduct”: French proposal on the right of veto of the permanent members.

Proposed at the end of 2013, it is made up of three parts spearheaded by the Head of State, the Minister for Foreign Affairs and the French Deputy Permanent Representative to the United Nations:

A) On the 24 September 2013, speaking in the opening debate of the 68th session of the General Assembly, President François Hollande, in the context of his reference to the danger of inaction in the areas of international security, nuclear proliferation, development or climate, succinctly proposed adopting “a code of good conduct for the Council’s permanent members: in the case of mass crimes they must renounce their right to a veto”²⁸.

B) Following that, Laurent Fabius, French Minister for Foreign Affairs, published an article in *Le Monde* in which he outlined specific relevant points regarding the proposal: *On the one hand*, he clarifies something that was already implicit in the President of France’s simple proposal: the question of clarifying whether “this process would be carried out without modification to the Charter”. *On the other*, he indicates the criteria for application. And *finally*, the Minister specifies something that could not have been foreseen in President Holland’s proposal: this code of conduct would exclude cases in which a permanent member of the Council considers his vital national interests to be in danger²⁹ (See section 12.C).

C) Finally, the Deputy Permanent Representative of France to the United Nations, speaking on 7 November 2013, clarified that the French proposal was open to other possible final agreements, and that the specific idea suggested by his country should not be taken as a final decision. This applied both to what is actually considered as a mass crime, as well as to the practical modalities that, in general, would allow the application of the proposed code of conduct. In short, France urged the permanent members of the Security Council to come to an agreement on these points, particularly regarding the concept of mass crime, bearing in mind the following:

“The 2005 World Summit Outcome and numerous international treaties, including the 1948 Convention on genocide or even the Rome Statute, could guide us”³⁰.

28 “AGNU: Discours du Président François Hollande. Débat d’ouverture de la 68ème session de l’Assemblée Générale. Intervention de M. François Hollande, Président de la République”, www.fr.ambafrance-us.org/spip.php?article4926, pp. 1-3 (p. 3) (Consulted: 11 November 2013).

29 “Suspendre el derecho al veto en los casos de crímenes masivos. Tribuna de Laurent Fabius”, 4 October 2013”, pp. 1-2, www.diplomatie.gouvfr/es (Consulted 11 November 2013)

30 “Nations Unies- Réforme du Conseil de Sécurité- Intervention du représentant permanente

The French proposal comes in a context in which the status of the RtoP is underpinned, given that it is aligned in a clear and direct way with the internal armed conflict that has been being played out in Syria since the first quarter of 2011, and with the very serious humanitarian crisis that the country has experienced since then. This was made clear in the speech given by the President of France to the UN General Assembly:

“The UN has a responsibility to take action. And whenever our organization proves to be powerless, it’s peace that pays the price. That’s why I am proposing that a code of good conduct be defined by the permanent members of the Security Council, and that in the event of a mass crime they can decide to collectively renounce their veto powers”;

“And in Syria, the situation is urgent. Urgent because 120,000 people have died in the past two and a half years, 90,000 in the last year alone. A quarter of the population has been displaced. Millions of Syrians have become refugees. And the country has been destroyed”³¹.

France’s proposal suggested self-limitation regarding the use of the right of veto from the side of the permanent members of the Security Council, particularly in exceptional situations (which would be defined through a determined procedure). A safeguard clause would, however, exist. There are three elements to the proposal:

A) The permanent members of the Security Council, proposes France, will renounce their right of veto, as conferred upon them by the Charter, in cases of particular gravity. This would involve the agreement of the five states (United States, Russia, United Kingdom, France and the People’s Republic of China) on a code of conduct.

It should be noted that the agreement that would be reached starting from the Gallic proposal would have a political content that would generate moral – and political – obligations; it would not be an enforceable agreement in legal terms³².

Equally, it would appear that there may be an agreement of this kind by the permanent members of the Security Council, prior to the drafting of a case. If the proposed

adjoind de la France auprès des Nations Unies. New York 07/11/2013”, in WECKEL, PH.: “Conseil de Sécurité, le nécessaire débat sur la limitation du droit de veto des membres permanents”, *Sentinelle*, bulletin n°. 365, 10 November 2013, pp. 1-3 (pp. 1-2), www.sentinelle-droit-international.fr (Consulted: 12 November 2013).

31 “UNGA: Speech by President François Hollande...” cit., pp. 3 and 1 respectively.

32 In the words of Tunisian Habib SLIM, is it a “gentlemen’s agreement” that adopts a “kind of moral code that completes the Charter”: “A propos de la récente proposition française de réforme du droit de veto au Conseil de Sécurité”, *Sentinelle*, bulletin n°. 362, 20 October 2013, pp. 1-6, p. 2, www.sentinelle-droit-international.fr (Consulted: 11 November 2013).

mechanism were to be accepted, the renouncement of the right of veto would be applied automatically. The comments made by the Minister of Foreign Affairs on the specific suggestion by the President of the Republic to the General Assembly of the United Nations is also enlightening:

“Once the Secretary-General has given his opinion, the code of conduct would be applied immediately”³³.

B) Self-limitation of the right of veto by the permanent members of the Security Council is only partial in the French proposal, as it would only be used in the case of *mass crimes*. Of course, here it would also be necessary to reach an agreement, for example: as of how many victims should we consider it to be a mass crime? We have already explained that France seems open to the negotiation of an alternative proposal. The Deputy Permanent Representative of France, speaking to the Security Council, left the decision on this subject open, referring to the agreement between the permanent members of the Council and citing some international texts that could be of interest. France proposed that the decision of establishing when a mass crime has been committed be left to an authority external to the Security Council itself, and therefore, external to the permanent members as well. And France suggested that this authority should be the Secretary-General of the United Nations, under article 99 of the UN Charter (which authorises him to “bring to the attention of the Security Council” any situation that “in his opinion” could “place peacekeeping and international security in danger”). However, the Secretary-General could not act on his own initiative, but rather at the request of 50 Member States of the United Nations.

C) However, the French proposal also includes an important and wide-reaching safeguard clause which could be implemented by calling upon a sense of “realism”. The compromise that the permanent members of the Council would take on:

“would exclude cases in which the vital national interests of a permanent member of the Council would be placed in danger”³⁴.

Finally it should be noted that the French proposal suggests an “informal” reform of the right of veto, whereby its adoption by the permanent members of the Council would not demand formal amendment of the Charter, with everything that that would entail. Speaking on the 7 November 2013, the Deputy Permanent Representative of France explained that the suggested code of conduct:

“would not imply a reform of the UN Security Council”³⁵.

33 FABIUS, L.: “Suspende el derecho de veto...” cit., p. 1.

34 FABIUS, L.: “Suspende el derecho de veto...” cit., p. 1.

35 “United Nations- Reform of the Security Council- Intervention by permanent representative...” cit, p. 2.

The French representation had already spoken about this in 2005, and had already suggested the following, in the same institutional framework:

A) In 2001 the ICISS Report that we referred to above stated:

“The Commission supports the proposal put to us in an exploratory way by a senior representative of one of the Permanent Five countries, that there be agreed by the Permanent Five a “code of conduct” for the use of the veto with respect to actions that are needed to stop or avert a significant humanitarian crisis. The idea essentially is that a permanent member, in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct the passage of what would otherwise be a majority resolution. [...] It is unrealistic to imagine any amendment of the Charter happening any time soon so far as the veto power and its distribution are concerned. But the adoption by the permanent members of a more formal, mutually agreed practice to govern these situations in the future would be a very healthy development.”³⁶

Although the Commission does not explicitly mention in its report the Council permanent member whose high representative suggested the self-limitation of the right of veto to be agreed by the permanent members of the Security Council, I believe that I would coincide with the reader when saying that, in light of the French proposal that we have been examining, in the United Nations (including the safeguard clause dealing with vital interests) everything points to it being this country.

B) The High Level Panel also state in their report (2004):

“We see no practical way of changing the existing members’ veto powers. Yet, as a whole the institution of the veto [...] is unsuitable [...] in an increasingly democratic age and we would urge that its use be limited to matters where vital interests are genuinely at stake. We also ask the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses”³⁷.

The report presented to the Millennium Summit (2005) by the Secretary-General, drawing in part on the report presented by the High Level Panel, calls upon the Security Council to authorise the use of armed force when necessary, including preventively to avoid the commission of genocide, war crimes, crimes against humanity or mass violations of human rights. The report also calls upon the Council to approve a resolution that would indicate the criteria that the Council should take into account when authorising armed intervention on the cause of humanity and in which the Council would commit itself to applying to said armed intervention. The Secretary-General, certainly, takes up the concept of the Responsibility to Protect coined by the

³⁶ *The Responsibility to Protect. ICISS Report cit.*, p. 51 (para. 6.21).

³⁷ *A More Secure World: Our Shared Responsibility (A/59/565) cit.*, p. 68 (para. 256).

ICISS, but does not propose any type of limitation to the right of veto enjoyed by the permanent members of the Security Council³⁸.

The outcome document approved by the Heads of State and Government of the members of the United Nations accepts the concept of the RtoP but is very ambiguous as regards the reform of the Council and its methods for taking decisions on this issue. There is no reference whatsoever to a possible limitation or self-limitation of the right of veto for the permanent members³⁹.

C) During the follow-up process to the outcome of the Millennium Summit, Costa Rica, Jordan, Lichtenstein, Singapore and Switzerland, the “Small Five (or S-5) presented a draft resolution to the General Assembly on an *Improvement of the Working Methods of the Security Council*. They asked that “*No 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*”⁴⁰.

The reform of the Security Council and its decision-making methods continue to be stuck in what appears to be a “never-ending story”⁴¹.

On 2 May 2013, a new group called ACT (Accountability, Coherence and Transparency) made up of 21 states and coordinated by Switzerland⁴², declared its intention to continue the efforts made by the “Small Five” (S-5) over many years on an improvement to the procedures for the adoption of decisions by the Security Council. It particularly underlined the draft resolution of May 2012⁴³ that was withdrawn under intense pressure from the five permanent members⁴⁴. Specifically, it stressed efforts to obtain the adoption of paragraph 20 of the S-5’s document L.42 that called upon the Council’s permanent members to abstain from using their right of veto to block Council actions aimed at avoiding or ending crimes against humanity or large-scale

38 *In larger freedom...* (A/59/2005) cit., pp. 57-59 (para. 6 and 7).

39 World Summit Outcome Document cit., p. 30 (para. 138 and 139).

40 A/60/L.49, 17 March 2006, Annex: measures on working methods proposed to the Security Council for examination, para. 14.

41 RIQUELME CORTADO, R.: “La interminable historia de la reforma del Consejo de Seguridad”, *Revista Española de Derecho Internacional*, LVII (2005), n.º. 2, pp. 745-776.

42 Austria, Costa Rica, Chile, Estonia, Finland, Gabon, Hungary, Ireland, Jordan, Lichtenstein, New Zealand, Norway, Papua New Guinea, Peru, Portugal, Saudi Arabia, Slovenia, Sweden, Switzerland, Tanzania [obs.] and Uruguay.

43 Doc. A/66/L.42/Rev. 2

44 *Vid.* DEEN, TH.: “Los ‘cinco grandes’ de la ONU aplastan cuestionamiento de naciones”, pp. 1-5 (p. 4), www.voltairenet.org/article174657.html (Consulted: 20 November 2013).

war crimes⁴⁵; or, at least, the adoption of paragraph 19 that, in a separate document, called for an explanation of the reasons for using the veto, particularly its conformity with the UN Charter.

In the report presented to the General Assembly on 7 August 2013, in accordance with Resolution 67/175, the independent expert Alfred-Maurice de Zayas, faced with the inevitable reality that “it is not likely that a bargain could now be struck that would allow eliminating the veto privilege by simple Charter amendment”, takes on the proposal recently suggested in literature⁴⁶ that it should be phased out in stages; this would demand a gradual reduction of the range of subjects to which the veto may apply. The first step could be to prohibit a veto by any of the permanent five members in a case in which that member itself is a principal party. He then adds:

“Subsequently, vetoes might be proscribed if they concern egregious violations of human rights, especially in respect to genocide and crimes against humanity”⁴⁷.

The President of the General Assembly, John Ashe, in the sixty-eighth session (2013), invoked the commitment and flexibility that all Member States of the United Nations should demonstrate in the on-going debate on the reform of the Security Council and its working methods. Thus he created an Advisory Group with the purpose of identifying the best way to advance in this process⁴⁸.

Finally, and within the framework of the yearly examination of the Security Council Report (01/08/2012-31/07/2013), the General Assembly criticised the functioning of the Council and its working methods. It is worth highlighting the interventions of three countries that took the floor: *Germany* considered that the French proposal should be examined by the Council; *Hungary* agreed with this remark and also criticised the lack of reference to it in the Security Council Report; and finally *Maldives* expressed its unequivocal support of the French proposal⁴⁹.

The French proposal as a whole is positive and is an initiative worthy of praise. Its simplicity, by not forcing a formal amendment to the Charter, as explained by the permanent representative of France, has an undeniable attraction: deal with the

45 PACE, W.: “21 member States launch new initiative to improve the working methods of the Security Council”, 12 May 2013, pp. 1-10, www.centerforunreform.org/node/500 (Consulted: 21 November 2013).

46 SCHWARTZBERG, J.E.: *Transforming the United Nations System. Designs for a workable world*, United Nations University Press, Tokyo- NuevaYork- París, pp. 89-90.

47 DE ZAYAS, A.M.: *Report of the Independent Expert on the promotion of a democratic and equitable international order*, A/68/284, 7 August 2013, p. 7 (para. 20).

48 www.un.org/spanish/News/print.asp?newsid=27950, Consulted: 8.12.2013.

49 *Vid.* BRUSIL MIRANDA, M.: “L’Assemblée générale critique...” cit., pp. 5-7, www.sentinelledroit-international.fr (Consulted: 8 December 2013).

formidable barriers that a process of this type faces and at the same time provide a response, through a “quick, simple and effective solution”, to the need to:

“preserve the substance: the credibility of this pillar of peace and the stability that the Security Council should be”⁵⁰.

The effort made by France to try, as far as possible, to put the application of the proposal into objective terms should be highlighted. Hence the political and legal formulation that suggests that establishing when we are facing a situation of “mass crime” – a situation that could automatically lead to the suspension of the right of veto – would open a process that, at the request of a relevant number of Member States of the General Assembly (in this case 50), be done by an impartial “third party”. The choice of the Secretary-General of the United Nations, in accordance with his competencies *ex* article 99 of the Charter, does not provide the formulation with legal scope, but it does give it a marked diplomatic and political character – possibly with the aim of facilitating the acceptance of France’s proposal. This procedure reminds us of what is provided for in the Treaty on European Union (TEU) for the case of a possible “serious and persistent violation” of its basic values⁵¹ by one of its members:

One third of the Member States, the European Parliament or the European Commission may refer the issue to the Council, who should determine, before adopting any measures and after obtaining the consent of the European Parliament, whether the violation has occurred⁵².

B) Coming back to the French proposal to the General Assembly, we should also point out its Achilles’ heel. It is not acceptable that the application of the Code of Conduct proposed by France – once again both timely and correctly – should be at the mercy of the safeguard clause that it sets out. If one of the permanent members of the Council can avoid the code by invoking the existence of a vital national interest, we are taking away with one hand what we have given with the other. Doctrine has suggested that the International Court of Justice (ICJ) could be consulted to objectively define “vital national interest”, limiting its invocation to certain “extreme [situations] of legitimate defence” in which the “survival of the state”⁵³ would be in danger. We feel that it would be difficult for states to accept this legal control of such a clearly political and extra juridical concept. If the requirement were that the establishment of

50 “Suspende el derecho de veto...” cit., p. 1.

51 Human dignity, freedom, democracy, equality, the rule of law and respect for human rights, TEU consolidated version, article 2 (OJEU, C 326, 26 October 2012)

52 TEU consolidated version, art. 7.1.

53 Terms used by the Court in its advisory opinion of the 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p. 263 (para. 96-97). SLIM, H.: “À propos de la récente proposition française...” cit., pp. 3-4.

the existence of a vital national interest of one of the permanent members be assumed and recognised by at least one other member, this would be a formulation of a political nature. However, it would reflect the attempt to achieve greater objectification in the implementation of the safeguard clause, which the “*must*” would advise ignoring, as such.

C) We should not be too optimistic about this most useful and timely proposal. Not even with the safeguard clause (that I feel should be eliminated), do the other permanent members of the Council seem willing to debate the subject and accept what is proposed. The following example is useful in this respect: on the 5 February 2013, the Russian Deputy Minister of Foreign Affairs, Gennady Gatilov, made a declaration to the Russian press in which he stated that Russia was prepared to accept any proposal for reform of the composition of the Council that had majority backing⁵⁴.

He made these declarations following the ministerial meeting in Rome, on the initiative of Spain and Italy, that had as its objective discussions on the reform of the Security Council, its working methods and decision-making processes.

Regarding the Council’s decision-making methods, the Russian Deputy Minister was less conciliatory, however: without expressly referring to this issue, he explained Russia’s position – a permanent member of the Security Council – on possible self-limitation of the right of veto in certain areas:

“The imposition of provisional limits for decision-making is, however, unacceptable. This is a delicate issue whose solution could lead to a disintegration of countries instead of improving the efficiency of the Security Council, with clear negative consequences”⁵⁵.

4. Security Council Resolution 2127 (2013) on the Central African Republic: a possible change of direction?

Regarding the serious crisis in the Central African Republic, despite an important but failed – in its objectives – intervention from the side of the Economic Community of Central African States (ECCAS), based on terms such as “pregenocide”, it should

54 “Russia maintains a flexible and pragmatic position in this regard (...) we are prepared to consider both the option of increasing the number of permanent and non-permanent members, as well as the so-called ‘intermediate’ model that would involve an increase only in the number of non-permanent members”.

55 “Russia supports a reform of the UN Security Council”, pp. 1-2, www.rusiahoj.com, 7 February 2013 (Consulted: 8 December 2013).

be noted that what was considered included even⁵⁶ the authorisation that Security Council Resolution 2127 (2013) of 5 December gives to the African-led International Support Mission to the Central African Republic (MISCA) to protect people in a context marked by the impotence of the competent territorial state. What could this be considered as being, if not the application of the concept of the RtoP, this time by African forces?⁵⁷

It begs the question, then, as to whether inaction from the Council in the case of Syria has affected the attitude of all of the permanent members in this latter case. Perhaps the errors committed in Libya (excess) and Syria (shortcoming) have conditioned this decision:

- Regarding the situation in Libya, to specify in detail the object, aim and most specific objectives of the coercive armed measures that are authorised. Thus, Resolution 2127 (2013) authorises the MISCA to “take all necessary measures” for “the protection of civilians...the stabilisation of the country and the restoration of State authority over the whole territory”:

“consistent with the concept of operations adopted on 19 July 2013 and reviewed on 10 October 2013”⁵⁸.

Here, undertaking a reading of the *Report of the Secretary-General on the Central African Republic submitted pursuant to paragraph 22 of Security Council Resolution 2121 (2013)* suffices to realise the precision of the operations and phases agreed upon in order to carry out the mandate of the African-led International Support Mission⁵⁹.

We believe that the new direction that Resolution 2127 (2013) is pointing towards – it would be of upmost importance to consolidate in similar situations – shows that the concept of the RtoP is still alive. If this is the case, the considerations that we have outlined are ensnared with another one: the concept of the RtoP is an instrument that we should not overlook in contemporary international relations, including all of its elements. Not just the duty to prevent, but also the duty to react, and in this

56 On the crisis in the Central African Republic and the efforts by the African Peace and Security Architecture (based on the provisions in the Protocol drawn up by the African Union Peace and Security Council cit. in note 15 *supra*) to resolve it, vid. Emmanuel MOUBITANG: “La CEEAC et la crise centroafricaine; autopsie d’une intervention manquée”, *Sentinelle*, bulletin n°. 371, 5 January 2014, pp. 1-32 (particularly pp. 19-21) (www.sentinelle-droit-international.fr).

57 *Vid.* MOUBITANG, E.: “Crise centroafricaine: Le Conseil de Sécurité adopte la résolution 2127 (2013) autorisant le déploiement de la MISCA, avec l’appui des forces françaises”, *Sentinelle*, bulletin 370, 15 December 2013, pp. 1-19 (p. 5); WECKEL, PH.: “Observations” on the article by Emmanuel Moubitang cited above, pp. 19-20 (p. 19) (both under: www.sentinelle-droit-international.fr).

58 S/RES/2127 (2013), 5 December 2013, para. 28.

59 S/2013/677, particularly para. 15-17.

case – especially if it is an armed reaction for the cause of humanity – the duty to reconstruct⁶⁰.

5. CONCLUSIONS

A) There is no doubt that the humanitarian disaster in Syria constitutes a threat to international peace and security. The basic pre-requirements for the application of the concept of the RtoP are present in this conflict. Here, we share the ideas presented by Marina De Luengo Zarzoso in an article in the current issue of the Journal of the Spanish Institute for Strategic Studies⁶¹: 1. that the use of armed force, within the framework of the RtoP, is only viable as a last resort; and 2. that, in addition, it is only possible in cases where the determined and specific events outlined above are present.

The importance of prevention in this concept – an issue that the Secretary-General of the United Nations has insisted upon in all of his previous reports – led to him specify the possible “policy options for atrocity prevention”⁶² in the 2013 report.

B) For various reasons, and learning from their own mistakes, upon implementing Resolution 1973 (2011), the Security Council should have stopped the conflict earlier to protect the civilian population. This wasn’t done, however. Russia and China’s veto (or threat of veto) stopped it.

C) The concept of the RtoP requires the modification of the parameters that govern the right of veto of the permanent members of the Security Council in order to fulfil its role as it has been structured. It is with good reason, then, that a new initiative calling for the “responsibility not to veto⁶³” has started to spread.

We also share the thesis put forward by Marina De Luengo Zarzoso in her study, where she maintains that the international community can only react with authorisation from the Council including, where appropriate, with an armed intervention in the

60 *Vid. ad ex.* PATTISON, J.: *Humanitarian intervention & the Responsibility to Protect. Who should intervene?*, cit, pp. 245-253.

61 “Los retos jurídicos de la responsabilidad de proteger en el nuevo panorama de seguridad y defensa”, para. 1.2 and 3.

62 *Responsibility to protect: State responsibility and prevention. Report of the Secretary-General (A/67/929-S/2013/399)*, 9 July 2013, pp. 1-19 (pp. 8 ss., para. 30-70).

63 First proposed by *Global Solutions* in 2010: “The Responsibility not to veto: a way forward”, pp. 1-12 (www.globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf).

cause of humanity, without a modification to the right of veto. This would allow for (as shown by the case of Syria) the massacre of thousands of people to be carried out in a state protected by one of the permanent members of the Council; and, therefore, for national sovereignty to continue to be considered as the supreme principal of international law – over and above the principal of the protection of life and fundamental human rights. Using the words pronounced years ago by a German professor of public law, this would “deprive international law of all of its essential value”⁶⁴.

Certainly, France’s call to adopt a code of conduct that would imply the renouncement of the right of veto by the permanent members of the Council in situations described above, is an excellent opportunity to bridge the gap created by the adoption of the concept of the RtoP by the Heads of State and Government of the members of the United Nations at the Millennium Summit (September 2005).

Its adoption, together with the suggestions outlined above, would finally give the concept of the RtoP a useful effect.

D) The RtoP is a concept that is still alive. And this is probably due to the fact that, despite the inertia and resistance to the decision regarding its application (*dixit* practice), many members of the international community believe that it is an appropriate tool; necessary, even, if we want to be coherent with current recognition of the existence of rules that protect the essential interests of the international community as a whole (such as the prohibition of genocide), and of the fact that these rules must be respected by states and individuals, and that their violation must be prevented and avoided using all means necessary.

E) The RtoP is linked to the commission of what is now called “international crimes”. However, in our opinion, the statement made by Marina de Luengo in her study that this is inexorably connected to international criminal law and the international responsibility of the individual should be qualified⁶⁵. States can also commit genocide and be directly responsible under international law: the International Court of Justice (ICJ) has made this very clear. Even though Serbia was cleared of having committed this crime in Srebrenica, the sentencing decision relating to the *application of the Convention on genocide* (2007)⁶⁶ coincides with the International Law

64 TOMUSCHAT, Ch: “International Law: ensuring the survival of mankind on the eve of a new century. General Course on Public International Law”, *Recueil des Cours de l’Académie de Droit International de La Haye/Collected Courses...*, 281 (1999), pp. 9-438, p. 224.

65 “As we have pointed out, the responsibility to protect is inevitably linked to international criminal law (...). When we talk about international crimes, we are referring to those that generate the responsibility of the individual and not of the State” (“Legal challenges of the responsibility to protect” cit., para 3, pp. 17-18).

66 *Vid. ad ex.* GUTIÉRREZ ESPADA, C.: “Reflexiones en torno a la posible interacción entre

Commission (ILC) as regards states and international organisations, as well as draft articles on the *Responsibility of States for Internationally Wrongful Acts* (2001) (art. 40-41) and on the *Responsibility of International Organisations* (2011) (art. 41-42)⁶⁷. From these it is clear that there can be overlaps between both types of responsibility: that of the state and that of the individual [for example a body of the state in question] for the commission of genocide (or other types of international crimes for which the RtoP should be invoked); furthermore, the interaction between both of these types of responsibility has not been dealt with in international law⁶⁸. In any case, the central idea is clear: the commission of genocide (or other RtoP international crimes) can generate both the international (criminal) responsibility of the individual, as well as that of the state. In fact, France's proposal for the reform of the right of veto regulated by chapter VII of the Charter (a treaty between states and for states) presupposes it.

“War is the mother of all things”, said Heraclitus of Ephesus, “The Dark”, and therefore also of peace.

The United States and Russia proposed a limited ceasefire in Syria before the start of the January 2014 conference in Geneva; Iran and Turkey had already made this demand at the end of November 2013⁶⁹.

A different approach could have been taken much earlier, which would have saved much bloodshed. But if there is still any possibility, even late, of stopping its continued shedding, then the international community (lead by the United States, Russia, Saudi Arabia and the Islamic Republic of Iran) has the duty to do everything within its powers to stop it.

la responsabilidad internacional del Estado y la del individuo por el crimen de genocidio”, in C. GUTIÉRREZ ESPADA (Director) and M^a.J. CERVELL HORTAL (Coordinator): *Darfur, el conflicto inacabable*, Thomson Reuters-Aranzadi, Cizur Menor (Navarra), 2012, pp. 323-436 (p. 337 ss.).

67 *Vid. ad ex.* GUTIÉRREZ ESPADA, C.: *La responsabilidad internacional (las consecuencias del hecho ilícito)*, Diego Marín Librero-Editor, Murcia, 2005, pp. 77-130; ID.: *La responsabilidad internacional de las Organizaciones internacionales a la luz del proyecto definitivo de artículos de la Comisión de Derecho Internacional (2011)*, Comares, Granada, 2012, pp. 117-126).

68 *Vid. ad ex.* GUTIÉRREZ ESPADA, C.: “Reflexiones en torno a la posible interacción entre la responsabilidad internacional del Estado y la del individuo...” cit., pp. 402-414; CERVELL HORTAL, M^a.J.: *Genocidio, Responsabilidad Internacional e Inmunidad de los Jefes de Estado*, Iustel, Madrid, 2012, pp. 62-97.

69 “Irán y Turquía llaman a un alto el fuego en Siria”, pp. 1-2, *Red Voltaire*, 28 November 2013, www.voltairenet.org/articler81245.html (consulted: Monday 13 January 2014); “Estados Unidos y Rusia proponen alto el fuego en Siria”, p. 1, *El Mundo*, DW.DE, 13 January 2014, www.dw.de (consulta de 13 enero 2014); “Estados Unidos y Rusia piden un alto el fuego ‘limitado’ en Siria a la región de Aleppo”, pp. 1-2, París, EFE, Monday 13 January 2014, www.jnn-digital.blogspot.com.es (consulted: Monday 13 January 2014).

BIBLIOGRAPHY

- ANDRÉS SÁENZ DE SANTAMARÍA, P.: “las Naciones Unidas ante el conflicto de Siria”, Opinion Document, 93/2012, 18 December 2012, pp. 1-15 (www.ieee.es).
- BERMEJO GARCIA, R.: “De la intervención humanitaria a la responsabilidad de proteger: fundamentos, similitudes y diferencias”, in C. Gutiérrez Espada (Director) and M^a.J. Cervell Hortal (Coordinator): *Darfur, el conflicto inacabable*, Thomson Reuters-Aranzadi, Cizur Menor (Navarra), 2012, pp. 209-321;
- “La responsabilidad de proteger y el Derecho internacional: ¿mito o realidad en la práctica internacional?”, in Díaz Barrado, C.M., Fernández Liesa, C.R. and Rodríguez-Villasante Prieto, J.L. (Directores): *Derecho Internacional Humanitario y Derechos Humanos. Reflexiones sobre el conflicto Colombiano*, Civitas-Thomson Reuters, Cizur Menor (Navarra), 2013, pp. 179-214.
- BERMEJO GARCÍA, R. y POZO SERRANO, P.: “la communauté internationale face à la crise de Darfur: de l’ échec Dans la prévention à la responsabilité de réagir”, in Kohen, M.E. (Edit.): *Promoting justice, human rights and conflict resolution through International Law. La promotion de la justice, des droit de l’homme et du règlement des conflits par le Droit international. Liber amicorum Lucius Caflish*, Leyden, Martinus Nihjoff Publisher, 2007, pp. 93-127.
- BRUSIL MIRANDA, M.: “L’Union Africaine décide de se doter d’une Force de Réaction Rapide”, Sentinelle, bulletin n°. 350, 2 June 2013, pp. 1-8.
- “L’Assemblée générale critique les méthodes de travail et le fonctionnement du Conseil de Sécurité”, Sentinelle, bulletin n°. 368, 1 December 2013, pp. 1-7.
- CERVELL HORTAL, M^a.J.: *Naciones Unidas, Derecho internacional y Darfur*, Comares, Granada, 2010 (particularly pp. 45-154).
- *Genocidio, Responsabilidad Internacional e Inmunidad de los Jefes de Estado*, Iustel, Madrid, 2012.
- CRAWFORD, J.: *Brownlie’s Principles of Public International Law*, Oxford University Press, Oxford, 2012 (8^a ed.).
- DE ZAYAS, A.M.: *Informe del Experto independiente sobre la promoción de un orden internacional democrático y equitativo*, A/68/284, 7 August 2013.
- DEEN, TH.: “Los ‘cinco grandes’ de la ONU aplastan cuestionamiento de naciones”, pp. 1-5 (www.voltairenet.org/articler74657.html).
- FABIUS, L.: “Suspende el derecho al veto en los casos de crímenes masivos. Tribuna de Laurent Fabius”, 4 October 2013”, pp. 1-2, (www.diplomatie.gouv.fr/es).

- FERNÁNDEZ MARTÍN, A.: “Declaración por parte de la UE de la ‘rama militar de Hezbollah’ como grupo terrorista”, Opinion Document, 83/2013, 11 September 2013, pp. 1-11 (www.ieee.es).
- GUTIÉRREZ ESPADA, C.: “The ‘use of force’ in the reports of the High Level Panel (2004), the Secretary-General (2005) and, finally, in the Summit of Heads of State and Government Outcome Document (United Nations, New York, September 2005)”, *Anuario de Derecho Internacional*, XXI (2005), pp. 13-49
- *La responsabilidad internacional (las consecuencias del hecho ilícito)*, Diego Marín Librero-Editor, Murcia, 2005 (particularly pp. 77-130).
 - “Sobre el núcleo duro de la resolución 1973 (2011) del Consejo de Seguridad y acerca de su aplicación en la práctica”, *Anuario Español de Derecho Internacional*, 27 (2011), pp. 57-75.
 - *La responsabilidad internacional de las Organizaciones internacionales a la luz del proyecto definitivo de artículos de la Comisión de Derecho Internacional (2011)*, Comares, Granada, 2012 (particularly pp. 117-126).
 - “Reflexiones en torno a la posible interacción entre la responsabilidad internacional del Estado y la del individuo por el crimen de genocidio”, in C. Gutiérrez Espada (Director) and M^a.J. Cervell Hortal (Coordinator): *Darfur, el conflicto inacabable*, Thomson Reuters-Aranzadi, Cizur Menor (Navarra), 2012, pp. 323-436.
- MOUBITANG, E.: “Crise centroafricaine: Le Conseil de Sécurité adopte la résolution 2127 (2013) autorisant le déploiement de la MISCA, avec l’ appui des forces françaises”, *Sentinelles*, bulletin n^o. 370, 15 December 2013, pp. 1-19.
- “La CEEAC et la crise centroafricaine; autopsie d’une intervention manquée”, *Sentinelles*, bulletin n^o. 371, 5 January 2014, pp. 1-32.
- PACE, W.: “21 member Status launch new initiative to improve the working methods of the Security Council”, 12 May 2013, pp. 1-10, (www.centerforunreform.org/node/500).
- PATTISON, J.: *Humanitarian intervention & the Responsibility to Protect. Who should intervene?*, Oxford University Press, Oxford, 2012, pp. 245-253.
- PIERNAS LÓPEZ, J.J.: “¿Regionalismo o universalismo en acción?: Unión Africana, Unión Europea y Naciones Unidas en Sudán”, in C. Gutiérrez Espada (Director) and M^a.J. Cervell Hortal (Coordinadora): *Darfur, el conflicto inacabable*, Thomson Reuters-Aranzadi, Cizur Menor (Navarra), 2012, pp. 53-94.
- PONS, RAFOLS, X.: “Naciones Unidas y Siria: idea y realidad”, *ANUE* (magazine of the United Nations Association of Spain), n^o. 43, May 2012, pp. 5-14.

- RIQUELME CORTADO, R.: “La interminable historia de la reforma del Consejo de Seguridad”, *Revista Española de Derecho Internacional*, LVII (2005), n°. 2, pp. 745-776.
- SCHWARTZBERG, J.E.: *Transforming the United Nations System. Designs for a workable world*, United Nations University Press, Tokyo- NuevaYork- París, 2013.
- SLIM, H.: “A propos de la récente proposition française de réforme du droit de véto au Conseil de Sécurité”, *Sentinelle*, bulletin n°. 362, 20 October 2013, pp. 1-6.
- TOMUSCHAT, Ch: “International Law: ensuring the survival of mankind on the eve of a new century. General Course on Public International Law”, *Recueil des Cours de l’Académie de Droit International de La Haye/Collected Courses...*, 281 (1999), pp. 9-438.
- WECKEL, PH.: “Crise en Syrie, la relance du processus politique”, *Sentinelle*, bulletin n°. 348, 19 May 2013, pp. 1-12 (and 18 other contributions from Professor Weckel on the subject over the past two years are quoted on pp. 11-12, 2011-2013) (www.sentinelle-droit-international.fr).
- “Conseil de Sécurité, le nécessaire débat sur la limitation du droit de véto des membres permanents”, *Sentinelle*, bulletin n°. 365, 10 November 2013, pp. 1-3.

