Responsibility To Protect: An Argentine Perspective

Ricardo Arredondo

Introduction

The question of humanitarian intervention was a central theme of the international agenda between the end of the Cold War, and up until the events of September 11, 2001. After the NATO intervention in Kosovo in 1999, the Secretary-General of the United Nations ("UNSG") at the time posed an interrogation to the UN: How should the international community react when human rights violations occur within a State, bearing in mind the traditional principles of sovereignty and non-intervention in internal affairs?[1]

Events such as those in Somalia, Rwanda, Bosnia-Herzegovina, Haiti, and Kosovo, among others, exemplify the lack of response from the international community to these mass atrocities. The rejection of humanitarian intervention by a large number of States evidenced the need to start looking for a different answer to these types of situations.

More than a decade after the emergence of the Responsibility to Protect ("RtoP") principle[2] and ten years after its endorsement[3] by the international community, recent events have once again emphasized both the importance and challenges of ensuring timely and decisive responses to the four core crimes covered by the principle.[4] These events have stressed the need to further operationalize the principle in order to implement it effectively and prevent mass atrocities (Arredondo, 2009).

Recent events related to specific crises such as those in Sri Lanka and Cote d'Ivoire, the intervention in Libya, the ongoing conflicts in Syria and the Central African Republic ("CAR"), among others, demonstrate the persistent challenges involved in reaching a common understanding on how to ensure the timely and effective implementation of the RtoP principle. At the same time, it is difficult to generate a common political will and an effective capacity to prevent or stop genocide, war crimes, ethnic cleansing, and crimes against humanity, whether committed by national and local authorities or non State actors. These discussions are not absent in Latin America and the Caribbean, as this special issue of *Pensamiento Propio* shows. As a matter of fact, this region has taken lead on the RtoP debate by bringing about its own experiences and perspectives that shape a unique reading of the international community and its responsibilities when dealing with the State's inability to protect its own people and prevent mass atrocities.

In light of such difficult questions, this article analyzes Argentina's past and present stance on the RtoP principle. However, any discussion on this matter should start by briefly considering what we are talking about when we say "responsibility to protect" Arredondo 2012a), what this principle encompasses, and finally the current situation regarding the historical and political context which has determined the stance taken by Argentina when implementing its foreign policy decisions.

Foreign Interventionism Or Protection Of Human Rights?

The dilemma was-and remains-between the sovereign right of a nation to be free from outside interference and the right of other

states to defend and protect human dignity on a universal basis.[5] This tension has been greatly exacerbated by the globalization process (Hardt and Negri, 1992).

This is a time when the globalization of markets and finance, not to mention other challenges such as climate change, piracy, and terrorism, test the strength and authority of the State. This notion of sovereignty, which is the traditional base of international politics,[6] is going through a prolonged crisis of identity and purpose (Brotóns, 2001: 137-138). Furthermore, the growing global media coverage of mass atrocities and the increasing involvement of civil society (a phenomenon that some authors call "empathy without borders") (Fiott, 2012) are also playing an important role. All of these factors have led to discussions about foreign intervention that are even more acute and controversial than in the past.

Faced with this dilemma, following a Canadian-Australian initiative, the International Commission on Intervention and State Sovereignty ("ICISS") was established, and by the end of 2001 it issued a report titled "The Responsibility to Protect".[7] The ICISS report sought to find a way out of the paradox posed by the Secretary-General, which proposed to introduce a fundamental change in perspective by considering the issue in terms of "responsibility to protect" rather than "humanitarian intervention".[8] The report concludes that sovereignty not only gives the state the right to "control" their affairs, but also confers upon it the primary "responsibility" to protect the population within its borders.[9] Likewise, the report states that when a State fails to protect its people, due to lack of ability or willingness, the international community should take on that responsibility.[10] The RtoP principle has been further defined to encompass three different dimensions: (1) the responsibility to prevent; (2) the responsibility to react; and (3) the responsibility to rebuild.[11]

The RtoP concept was subsequently incorporated in a series of UN documents (although non-binding from a legal standpoint). In its report, *A More Secure World: A Shared Responsibility: Report of the High-level Panel on Threats, Challenges and Change*, the UN echoed the ICISS Report and stressed that more than a right to intervene, the States have an obligation *erga omnes* to take all measures in their power to prevent or put an end to serious and massive human

rights violations as soon as possible.[12] The report argues that it is a collective international responsibility, "exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing, and serious violations of international humanitarian law which sovereign governments had proved powerless or unwilling to prevent". The Panel stated that in order to legitimize the use of force by the Security Council of the UN, certain basic criteria should be considered, such as the seriousness of the threat, proper purpose, last resort, and proportionality of the response.[13] As Focarelli noted, it is almost commonplace to observe that the conditions or precautionary principles developed by the ICISS and collected in the UN Report[14] faithfully reflect those made by the Christian theological tradition of just war, although he acknowledges that the problem is not the guidelines themselves but how they are interpreted in each particular case (Focarelli, 2008: 191; 191-193; 196).

In its 2005 report, *In Larger Freedom: Towards Development, Security and Human Rights for All*, the Secretary-General of the UN affirmed that the international community "must also move towards embracing and acting on the 'responsibility to protect' potential or actual victims of massive atrocities".[15] In this regard, he proposed that in order to authorize the use of force, a set of criteria must be fulfilled such as "the seriousness of the threat, the proper purpose of the proposed military action, whether means short of the use of force might reasonably succeed in stopping the threat, whether the military option is proportional to the threat at hand and whether there is a reasonable chance of success".[16]

The 2005 UN World Summit Outcome provides, for the first time, a common definition of the principle of RtoP.[17] The principle of RtoP, embedded in paragraphs 138 and 139, represents an important step forward by establishing the obligation of states to protect their populations against genocide, war crimes, ethnic cleansing, and crimes against humanity. Similarly, it embodies the obligation of the international community to help States assume this responsibility and to react should they fail to protect their citizens against these four specified crimes and violations.[18]

Since its first report, *Implementing the Responsibility to Protect* in 2009[19], the UNSG issued reports on an annual basis to try to clarify different aspects of the RtoP principle and foster the debate among Member States. In 2010, the Secretary-General addressed an informal interactive General Assembly dialogue on *Early Warning, Assessment and the Responsibility to Protect*,[20] and the following year on *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect*.[21] On September 5, 2012, the Secretary-General presented his report on *The Responsibility to Protect: Timely and Decisive Response*,[22] in 2013 he published his fifth report, *State Responsibility and Prevention*,[23] and on 12 August 2014, the Secretary-General released his sixth report *Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect*, on the Second Pillar of the Responsibility to Protect.[24]

As the Secretary-General explained, the principle of RtoP is based on three pillars, namely: (1) the State bears the primary responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing; (2) the international community must assist States in fulfilling their protection obligations; and (3) when a State manifestly fails to protect its population or is in fact a perpetrator of these crimes, the international community has a responsibility to take collective action.[25]

The RtoP principle has undergone criticism that it is humanitarian intervention under a different name (Marks and Cooper, 2010: 91-93). In particular, it has been said that it gives powerful countries a window of opportunity to use force under their own discretion, emphasizing mainly the “responsibility to react” dimension.[26] In this regard, it must be recalled that RtoP encompasses three different dimensions which involve using all available tools under Chapters VI, VII, and VIII of the Charter, ranging from non-coercive responses to collective action.[27] This is a fundamental reflection towards the further development and the legitimacy of the principle.

The development of the RtoP principle is welcome since it clarifies and strengthens the existing obligations of states to ensure the protection of civilians.[28] In this regard, it represents an important step towards anticipating, preventing, and responding to genocide, war crimes, ethnic cleansing, and crimes against humanity. Furthermore,

it upholds fundamental principles of international law, in particular international humanitarian, refugee, and human rights law. The principles should be applied as consistently and uniformly as possible, to which effect it is crucially important that early warning and assessment should be conducted fairly, prudently, and professionally and that the use of force should remain the measure of last resort. As the European Union put it, the principle has been considered to be "critical for the survival of the community of nations".[29]

The development of the RtoP principle, particularly its prevention component, can advance global efforts towards a more peaceful world. This is bearing in mind that many mass atrocity crimes occur during periods of violent conflict, and these situations evidence the necessity to create effective capacities for structural and operational conflict prevention.[30] Furthermore, in this way, it is possible to minimize the need to recourse to the use of force, leaving it as the last resort.

Argentina, Human Rights, And Interventionism

Before considering its present stance regarding the RtoP principle, it is important to bear in mind Argentina's history and its strong support of non-intervention (Brotóns, 2007: 138; Yepes, 1935: 55). In addition, it is also relevant to analyze the well-built Argentine tradition regarding human rights (Pinto, 2007). In my view, the combination of these elements is essential to understanding the current foreign policy positions of the States of the region *vis-á-vis* the RtoP principle.

Additionally, it is also important to note that while many observers are accustomed to think of Latin America as a monolithic subject, the region shows a healthy political and ideological diversity that is reflected in the foreign policy positions taken by their governments which do not necessarily agree with positions held by these countries in the past (Oelsner, 2005).

The new political and ideological diversity "affects certain regional alliances to the extent that hemispheric geopolitical tensions translate

into 'ideological frontiers'" when addressing issues that take up the foreign policy agenda of our countries (Arredondo, 2011). At the same time, there seems to be two muscular elements of continuity in the Latin American agenda: human rights and the principle of non-interventionin internal affairs.[31]

Latin American foreign policy was built gradually during the Nineteenth and early Twentieth Century based on six principles: (1) sovereign equality of all States; (2) no intervention; (3) territorial integrity; (4) self-determination; (5) peaceful settlement of disputes; and (6) respect for international law (Petrella, 2013). Successive Inter-American Conferences from 1899 strengthened these principles, rejected interventionism, and set up exemplary humanitarian practices such as asylum and convinced the United States to inaugurate the policy of the "good neighbor", which led to greater cooperation and understanding within the hemisphere.

After World War II, the adoption of the Charter of the Organization of American States ("OAS"),[32] along with the American Treaty on Pacific Settlement, also known as the "Pact of Bogota"[33], and the American Declaration of the Rights and Duties of Man,[34] contributed to reinforcing these principles within the region. Indeed, it must be reminded that the American Declaration of the Rights and Duties of Man preceded the UN Universal Declaration of Human Rights and many of the principles of the Inter-American system were incorporated into the Charter of the UN.[35] From these historic moments, the role of the OAS, with its lights and shadows, has served to demonstrate that countries are associated mainly for two reasons: strategic needs arising from sharing a massive geographical area, and the cultural and institutional affinities reflected in common values such as democracy, human rights, and republican principles (Lagorio, 1998: 121).

The Latin American and the Caribbean region is one with a long history of human rights violations, foreign interventionism, and political instability (Halperin Donghi, 1993). The past decade brought about a change with the implementation of democracy, the development of institutions, and the building of a unique Inter-American human rights protection system (Goldman, 2009: 856-57).

This system fosters a regional-level mechanism that contributes to preventing mass atrocities and reinforcing the responsibility of States in protecting its own people (Abramovich, 2009:11-12).

It represents an effort to overcome past failures and sets an example for the international community because it establishes preventive mechanisms to protect citizens and civilian populations[36].

However, when the odds of protecting human rights in other States arises, Argentina shows strong support for the principle of non-intervention in internal affairs and a clear reluctance to support any kind of foreign intervention (Bemis, 1943: 237). This is mainly due to historical reasons evidencing that interventionism has been used as an instrument of foreign policy in Latin America, mainly by the United States. But there are also many other examples of foreign interventions by hegemonic powers of each historical period (Caminos, 1998:196-197). In this regard, it is worth recalling the words of Argentine jurist Podestá Costa:

> Facts show that interventionism has been due to several reasons: it has been founded on the desire to maintain political balance but also to cover it up several arguments were alleged from humanitarian reasons to racial or religious persecution ... in any case, what is essential is that interventionism has been left to the unilateral and ultimate government action, that decided whether or not to use it, as it considered appropriate in each case regarding its particular interest and the political circumstances of place and time. Intervention is not a tool to be used by weaker States against the strong. It is a weapon that can only wield the powerful in certain cases when accidental circumstances so warrant .... Therefore, there is no right of intervention" (Arredondo, 2012a: 252).

Perhaps it is unnecessary to underline that Podestá Costa's words are as relevant today as when they were written more than fifty years ago. They also serve to explain why the principle of non-intervention has become a cornerstone of the Argentine foreign policy. As Caminos reminds us, the rules on non-intervention in the OAS Charter are stricter than those of the UN Charter, for they not only prohibit

the use of armed force, but also all other forms of interference or attempted threat against the personality of the State in its political, economic, and cultural elements (Caminos, 1995: 963; 976).

Similar to the UN Charter, the OAS Charter contains numerous rules on the promotion and protection of human rights. These include the principle laid down in Article 3(e) that reads:

> "Every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems".[37]

However, in light of the provisions of the OAS Charter, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Democratic Charter, and the practice of the Organization, it can be argued that human rights are no longer subject to the exclusive domestic jurisdiction of Member States of the OAS. However, the ability of the OAS and other organizations in Latin America to adopt measures for the protection of human rights and international humanitarian law depends on the applicability of the instruments referred to in a particular casea nd on the political will of Member States to adopt concrete measures to this aim (Caminos, 1995: 977). Still, it is worth noting that in Latin America, a unilateral humanitarian intervention carried out by any Member State would be considered a violation of the principle of non-intervention.

Today, Argentina, like many other Latin American and Caribbean States, continue to consider the principle of non-intervention as the cornerstone on which the framework of international relations is based and therefore sustain that the doctrine of humanitarian intervention is inconsistent with the Charters of the United Nations and OAS.

The Argentine Perspective On The Responsibility To Protect?

Latin American countries today show a divergent stance toward many issues affecting both the regional and the international agenda. In the case of RtoP, it is generally possible to draw three types of *ideological boundaries* that I call the Bolivarian, the Inter-American, and eclectic positions (Arredondo, 2011:11). The Bolivarian and Inter-American have clearly defined attitudes, while the eclectic borrows elements from the first two. The Bolivarian frontier or ALBA, which includes Cuba, Venezuela, Nicaragua, Bolivia and Ecuador, depart from what can be called an "anti-imperialist" stance that situates Latin America in an opposite position to the United States. Therefore, it seeks to strengthen the non-intervention principle, rejecting all forms of foreign interference. Therefore, the responsibility to protect is perceived as a covert instrument of the hegemon that intends to intervene to protector enforce its own interests in the region (Toro Carnevali, 2012: 135; 151-153).

The Inter-American frontier is one that brings together most of the States of the region (Uruguay, El Salvador, Mexico, Chile, Colombia, Peru, among others). These countries, while holding dear the principle of non-intervention, consider the RtoP principle is a positive tool for the protection of human rights in humanitarian crises and therefore support the consolidation of the principle.

Finally, the eclectic frontier gathers countries like Brazil and Argentina which maintain a clear assertion for the promotion and protection of human rights, however do not seem to fully support the RtoP principle.[38] Rhetorically they seem to support the RtoP principle, but they have also expressed some doubts on this issue. Brazil and Argentina maintain that RtoP needs further elaboration, particularly regarding the responsibility to react and the eventual use of force (Sainz-Borgo, 2012: 193).

In the case of Argentina, its support for the principles of national sovereignty and non-interference in the internal affairs of States is persistent in its discourse, yet Argentina is also considered an "RtoPChampion". As Kikoler points out:

> "Argentina was part of a core group of states pushing for the acceptance of the Responsibility to Protect (RtoP) at the 2005 UN World Summit. With the country's history of mass atrocities and keen understanding of Latin America's difficult history of external interference, they helped engage skeptical countries and persuaded them to support RtoP. While Argentina does not always invoke the language of RtoP, their actions in practice appear to reflect a commitment to its values" (Kikoler, 2015).

With respect to the three pillars established in this first Report of the UNSG, Argentina believes that the first pillar, which provides that each State has the responsibility to protect its own population, is not a problem. The same is true with regard to the second pillar regarding capacity building and assistance,[39] in particular Argentina has been proactive when it comes to the issue of prevention.[40] The third pillar, which upholds the necessity of a "timely and decisive response," is clearly the most controversial one as it opens the possibility of the use of force within the framework of Chapter VII of the UN Charter. In this regard, it should be noted that there remains some sensitivity to the potential risks of abuse arising from the application of the concept in practice, which proved truthful after NATO's actions in Libya in 2011.[41]

Historically, Argentina has expressed its willingness to contribute to the search for answers to humanitarian crises, as the international community has witnessed in the last decades.[42] In this regard, Argentina expressed a clear preference for the utilization of collective security mechanisms provided for in the UN Charter, and its reluctance to accept that RtoP is exercised unilaterally by a State, a coalition of States, or regional organization without the authorization of the Security Council (Arredondo, 2012c: 109; 129-130). Also, Argentina has affirmed that the UNSC has the legal framework and tools to implement the responsibility to react to cases where grave, massive, and systematic violations to human rights and humanitarian law occur.[43] This requires the will of the Member States, and in particular, the permanent members of the UN Security Council (P5) to exercise this subsidiary responsibility effectively and legitimately (Arredondo, 2012c: 130).

This position was foreshadowed in 2000, after a presentation by the UNSG on the "dilemma of intervention". At that time, Argentina stated that the principle of non-intervention in the internal affairs of a State should balance itself with the principle of non-indifference to the massive violations of human rights and humanitarian law".[44]

Following this logic, Argentina shared the opinion that the weight of RtoP falls on the Security Council, and warned about the negative consequences that would result if an intervention was carried out by a coalition or organization of States or without authorization.[45] Notwithstanding that, Argentina believed that, if possible and when necessary, Member States should be able to initiate proceedings before regional agencies, according to the conditions of Article 53 of the UN Charter, maintaining that they keep the UNSC fully informed (Arredondo, 2012a:281). Moreover, Argentina holds that the Security Council, through several of its resolutions, has created a legal framework that has substantially improved the international regime for the protection of peoples.[46] At the same time, Argentina considers that the Council has received a mandate from the UNGA which urges measures of "collective action in a timely and decisive manner to protect populations from genocide, war crimes, the ethnic cleansing and crimes against humanity".[47]

The positions mentioned above were reiterated by Argentina at the sixth Thematic Dialogues on the Responsibility to Protect, which took place between 2009 and 2014 at the General Assembly. Each of these Thematic Dialogues were preceded by a report of the UNSG that helped focus the debate on a certain aspect of the principle. A close look at the statements made by the representatives of Argentina shows that there was little to no modifications on the positions adopted by this country.

Following the Report of the Secretary-General from July 23, 2009, the Argentine government decided to join the group of likeminded countries to work together in promoting and strengthening the principle, bearing in mind the close relationship between human rights, peace and international security (Arredondo, 2012a:281-286). This decision is part of a policy to promote, protect, and respect human rights and international humanitarian law, a policy that Argentina has sustained since its return to democracy in 1983. During the past

thirty-years, Argentina has shown its concern and commitment to this area, which has earned it a prominent place in the defense of international humanitarian causes, along with active participation in causes related to prevention, cessation, and mediation in situations where gross and systematic human rights violations and international humanitarian law take place.

On this occasion, Argentina reiterated its support for the RtoP principle[48] on the grounds that a State has the primary responsibility to protect its population and that the international community has a subsidiary responsibility, which should be carried out through the UN in a timely and decisive manner. In this regard, Argentina expressed hat experience has shown that the UNSC has determined, in various occasions, that massive and systematic violations of human rights and international humanitarian law are a threat to peace and international security. From this, Argentina concluded that the current UN legal framework provides for an opportunity to react and to decisively end these types of situations if the UNSC has the political will to do so. Nevertheless, Argentina was reluctant to define criteria in order to guide the process of decision-making by the Security Council. On the one hand, Argentina felt that adopting criteria could lead to a procedural debate that could affect the decision-making process. However, in case of an eventual paralysis of the Council, some countries might be tempted to act unilaterally by using those criteria of legitimacy to act outside the system.

Considering that many States have expressed deep reservations about RtoP, linking the principle to humanitarian intervention, Argentina believed it would be useful to make efforts aimed at promoting the principle in developing countries, in particular, those that could potentially take place in areas with risky human rights situations. This position is based on the understanding that implementing RtoP is necessary to advance a common strategy model that will have the consensus of the wider UN membership.

When the UNSG report titled *Early Warning, Assessment and the Responsibility to Protect* was debated at the UN General Assembly in2010, again Argentina showed a favorable attitude towards RtoP. On that occasion, the representative of Argentina said that RtoP is an essential obligation of States since it combines all international

obligations to protect the human person. However, when States fail to satisfy their obligations, the UN cannot remain inactive and must take action to prevent the commission of grave crimes. The implementation of RtoP requires careful and detailed discussion, and the General Assembly is the appropriate forum for this debate. Argentina is convinced that, as stated in paragraph 139 of the Outcome Document, the UNGA should continue to examine the issue, in order to implement RtoP. Argentina considered that "the 'duty to protect' ... is nothing but the synthesis of other international obligations and reiterated the importance of prevention efforts and assistance, particularly in the case of those States that lack the infrastructure required to apply these types of international cooperation programs". With respect to the third pillar, referring to the timely and decisive response, Argentina considered the adoption of measures by the UN system in implementing RtoP to be very useful in protecting populations from genocide, war crimes, ethnic cleansing, and crimes against humanity (Pace, 2012: 13-14). However, Argentina felt hesitant to accept assumptions that unilateral actions could constitute a collective armed action, and argued that the collective security system must be activated using the mechanisms provided for in the UN Charter. At that time, Argentina's position emphasized three essential aspects: (1) the need to respect human rights; (2) the importance of early warning and assessment; and (3) the continued international commitment, through the General Assembly, on the subject. Argentina noted that political dialogue between Members should continue specifically on how to implement the strategy and stated that the UN action must be complemented by regional or sub-regional efforts.

When the situation in Libya arose in early 2011, Argentina expressed "its deep concern over the grave situation" while regretting "the loss of life and violence occurring in the fighting".[49] It urged for "a quick and peaceful settlement, within a constructive democratic dialogue that grants full respect for human rights and the will of the Libyan people".[50] Further, Argentina was deeply concerned about the serious human rights violations in Libya, and co-sponsored a special session of the Human Rights Council, called for by the UN High Commissioner for Human Rights, Navi Pillay. Mr. Pillay requested an immediate end to the grave human rights violations committed by the Libyan

authorities, and the launch of an international investigation into the violent repression of demonstrations in that country.[51] However, Argentina expressly rejected the inclusion of the proposed measures under Chapter VII of the UN Charter, which it conditioned to a corroboration of the situation by objective, serious, and concluding data (Tettamanti, 2012).

These conditions were intended to prevent the kind of action that was later triggered by the authorization granted by UNSC Resolutions 1970 and 1973, for which there is heavy criticism. These Resolutions represented the first instance in which a case of RtoP led to a military intervention. The adoption of Resolution 1973 had the support of the Arab League and the African Union, which conferred upon them unquestioned legitimacy from the beginning,[52] although two permanent Members (China and Russia) and three other Members (Brazil, Germany and India) abstained. The resolution established a no-fly zone and a naval embargo on Libya and "authorized Member States to take "all necessary measures ... to protect civilians, excluding a foreign occupation force of any form on any part of Libyan territory".[53]

In July 2011, a meeting organized by the Government of Mexico for the former Special Advisor on RtoP, Edward Luck, and the Latin American "friends of RtoP," was held to discuss the third report by the Secretary-General on the matter.[54] During this meeting, the Argentine delegate supported Luck's view that in implementing RtoP, the cultural and institutional differences of each region must be taken into account and respected (Arredondo, 2012c: 125). In this regard, she recalled the development of RtoP in Latin America, where situations of massive and systematic human rights violations took place before the emergence of RtoP. Similarly, she highlighted the fact that Latin America has assigned significant value to the principle of non-intervention. Many delegations, including Argentina, agreed that the RtoP principle does not imply the emergence of a new rule, but rather summarizes existing obligations regarding the obligation of the State to protect its population in light of universal standards and regional protection of human rights and international humanitarian law mechanisms. Therefore, it confirmed the importance of second and third pillar, and reaffirmed the notion that the third pillar must

be considered a last resort in cases of grave and massive violations of human rights which can be categorized as one of the four crimes. There was also widespread agreement and concern to avoid selectivity and "regime change" as veiled objectives of powerful countries. Likewise, the important role of regional agencies in implementing RtoP obligations was addressed, considering the specific mechanisms adopted in the OAS framework as well as other sub-regional organizations. In this regard, the "democratic clause" adopted at OAS, Southern Common Market (Mercosur), Union of South American Nations (Unasur), etc., was recalled. Similarly, the precursor role of the Inter-American system for the promotion and protection of human rights and the fight against impunity was also mentioned. While regional initiatives may not have developed solutions for the fight against impunity in cases of massive and systematic violations of human rights, the lessons learned from these experiences could be the basis for regional capacity building.

On February 21, 2012, an informal meeting organized by the Permanent Mission of Brazil, Brazil's Minister of Foreign Affairs, and the UN Special Adviser for RtoP, was held on the concept of "Responsibility while Protecting" (RWP) to address the components of the concept paper submitted by Brazil. The meeting was followed by a lively debate and was marked with high participation by Member States. Argentina expressed its support for the Brazilian initiative, stressing that it represents a "substantive" contribution and "overcomes" the RtoP principle.[55] Argentina stated that this proposal "rightly captures our own vision" and "represents an opportunity to progressively develop a substantive aspect of RtoP" (Arredondo, 2012c:127). It further added that it is imperative to strengthen protection strategies on the ground with clear and predictable rules, since it is unacceptable that the very protection the international community intends to provide could result in further damage to the same innocent civilians they seek to protect. Taking into consideration that the Security Council's actions are based on a case-by-case basis, Argentina highlighted the need to establish clear rules that respond to the essential objective of protection, and consequently prevent the concept from being manipulated and misrepresented in order to implement regime change.

One of the corollaries of the armed intervention in Libya was there luctance of many Latin American countries, including Argentina, to support any kind of use of force in Syria.[56] As the Argentine representative put it:

> "The concerns risen (sic) by the coercive action in Libya include resorting to the use of force without trying other measures first, regime change, the adequacy of air strikes to protect civilians, the need for the Security Council to do a follow up of the authorized measures and accountability of those authorized use of armed force. Those reservations must be addressed in order to ensure that action by the United Nations does not cause more victims than civilians protected, that it does not incur in legitimizing political objectives beyond those of the Organization and, in the end, to ensure the legitimacy of collective action by the United Nations".[57]

Conclusions

There is no consensus in Latin America and the Caribbean on the principle of RtoP, but instead, there are three main trends amongst the countries in the region and their approach to this principle. On one hand there is a group of countries that promote a strong opposition against the concept. This group is represented by Venezuela, Cuba, and other ALBA member countries, whose criticism of the principle is based on the prevalence of state sovereignty and the principle of nonintervention. The second group of countries is characterized by a steady support for RtoP, and represented by Mexico, Panama, Chile, Costa Rica, and Guatemala amongst others. A third group, including Argentina and Brazil, two countries with a very strong human rights discourse, have a long history of support for UN lead missions and an active role in the development of RtoP, although from different perspectives.

In the case of Argentina, its support for the respect of state sovereignty and the principle of non-intervention is persistent in its discourse, yet it is also considered an "RtoP Champion", bearing in mind that it has taken an active role in promoting the principle since its inception.[58]

Within this framework, two contending juridical traditions struggle to impose their own principles to foreign policies of Latin American Governments: (1) the tradition of unrestricted respect for state sovereignty and the defense of the principle of non-intervention; and (2) a strong tradition of promotion and protection of human rights, particularly relevant after the demise of military dictatorships in the eighties.

An analysis of the Argentine position shows that while it has accepted the principle of RtoP, it is still reluctant to legalize the unilateral use of armed force on humanitarian excuses, especially in light of the abuses that have taken place in the past. In that sense, Argentina, like most States, do not feel inclined to open the norm under Article 2.4 of the UN Charter in order to include an exception for humanitarian intervention (Schachter, 1984: 1620; 1624). As Goodman clearly explains "The overriding concern about pretext wars turns on assumptions about state opportunism and the power of both law and perceived legitimacy in regulating state behavior" (Goodman, 2006: 107; 109).

The regional roundtables convened by the ICISS, as well as the subsequent consultations on the Report with NGOs and Governments coordinated by Canada and other civil society organizations, served to evidence that in most cases there was a widespread hostility towards the notion of humanitarian intervention, and a broad consensus against the idea of an alleged "right of intervention", particularly when that alleged right was associated with unilateralism (World Federalist Movement-Institute of Global Policy, 2003; Morada, 2006: 59-60).

But this deep skepticism towards intervention did not necessarily translate into a rejection of the underlying purpose of RtoP-the prevention of genocide and mass atrocities and the protection of vulnerable populations.[59] The adoption of a text, which focused on the rights of endangered populations rather than the alleged right of intervention, contributed to a wide range of State and civil society actors who expressed a disposition to recognize that sovereignty entails responsibilities and that an international intervention can be legitimate in certain circumstances. However, the Commission's approach to unilateral intervention and apparent openness to actions

authorized by the Security Council revealed that it was unlikely that the RtoP principle would be accepted without a careful examination (Arredondo, 2012a: 41).

The military intervention of 2011 in Libya shows the need to clarify the role of regional and sub-regional organizations when applying RtoP. Although such organizations can be both legitimizers and operational agents for the implementation of RtoP, they often lack capacities and resources to carry out operations in a meaningful way.

The three mentioned trends and established traditions raise a series of questions on the validity of the RtoP principle in this region. First, the usefulness of RtoP in Latin America and the Caribbean, taking into account the existence of a preventive system such as the Inter-American Human Rights System, even if it is applicable ex post facto. Second, the different positions that it entails for the foreign policies of the LAC countries, particularly within a very dynamic process of regionalism and regional transformation, and the prevalence of the principles of national sovereignty and non-intervention. Third, the involvement of several Latin American countries in peace operations and both the impact and influence of the LAC experience and debate on the issue of humanitarian intervention for the global agenda. Finally, the role of civil society organizations and networks in prevention in a region where democratic systems prevail.

As the representative of Argentina before the UNSC stated, "It is crucial that we put into practice regional and universal early-warning mechanisms to prevent atrocities, an aspect in which regional and national scope becomes essential to cooperation and dialogue in order for the rule of law to be strengthened".[60]

Argentina has expressed its willingness to contribute to the search for answers to the humanitarian crises, and expressed a clear preference for the use of collective security mechanisms provided in the Charter of the United Nations. It has also expressed a reluctance to accept the RtoP principle to be exercised unilaterally either by a State, a coalition of States, or a regional body without express authorization of the UNSC. Moreover, Argentina has stated that the UNSC already has the legal framework and tools to implement that responsibility to react to serious, massive and systematic violations of human rights

and humanitarian law violations. The will of the UN Security Council Member States, and in particular, the P5, is a required condition to effectively and legitimately exercise that vicarious liability imposed on the international community as a whole.

As the Permanent Representative of the United States of America to the UN eloquently stated, "The international consensus around RtoP remains a signal achievement of multilateral cooperation and a testament to our common humanity".[61] It seems that Argentina and Latin America will continue to support and foster RtoP. However, this drive will heavily rely upon how the international community, and particularly its most powerful members, use this principle in the future.

NOTES

1. See G.A. Res. 54/2000, 217, U.N. Doc. A/RES/54/2000 (Mar. 27, 2000).
2. See Int'l Comm'n on Intervention and State Sovereignty (ICISS) (2001), *The Responsibility to Protect* [hereinafter ICISS Report], p. 11-15, available at http://responsibilitytoprotect.org/ICISS%20Report.pdf (accessed 18/05/2015).
3. See G.A. Res. 60/1, # 138-39, U.N.Doc. A/RES/60/1 (Oct. 24, 2005).
4. See id. # 138.
5. See Press Release, U.N. Secretary-General, Secretary-General Presents his Annual Report to General Assembly, U.N. Press Release SG/SM/7136-GA/9596 (Sep. 20, 1999); see also ICISS Report, supra note 2, at 1-2.
6. See U.N. Charter art. 2, para. I ("The Organization is based on the principle of thesovereign equality of all its Members").
7. See ICISS Report , supra note 2, at 1-2.
8. See id. at 9, 17.
9. See id. at 13.

10. See id. at 17.
11. See id. p. 17.
12. See G.A. Res. 59/565, 1 203, U.N. Doc. A/RES/59/565 (Dec. 2, 2004).
13. See id. p. 207.
14. U.N. Secretary-General (2004). *A More Secure World: Our Shared Responsibility: Report of the High-level Panel on Threats, Challenges and Change*, A/59/565 (Dec. 2, 2004).
15. See G.A. Res. 59/2005, # 132, U.N. Doc. A/RES/59/2005 (Mar. 21, 2005).
16. See id. # 6(h).
17. See G.A. Res. 60/1, 1 138-39, U.N.Doc. A/RES/60/1 (Oct. 24, 2005).
18. See id. # 138.
19. See U.N. Secretary-General (2009). *Implementing the Responsibility to Protect: Rep. of the Secretary-General*, U.N. Doc. A/63/677 (Jan. 12, 2009) [hereinafter *Implementing the Responsibility to Protect*].
20. U.N. Secretary-General (2010). *Early Warning, Assessment and the Responsibility to Protect*,U.N. Doc. A/64/864 (July 14, 2010).
21. U.N. Secretary-General (2011).*The Role and Subregional Arrangements in Implementing the Responsibility to Protect*, U.N. Doc. A/65/877-S/2011/393 (June 28, 2011).
22. U.N. Secretary-General (2012). *Responsibility to Protect: Timely and Decisive Response*, U.N.Doc. A/66/874-S/2012/578 (July 25, 2012).
23. U.N. Secretary-General (2013). *Responsibility to Protect: State Responsibility and Prevention*,U.N. Doc. A/67/929-S/2013/399 (July 9, 2013).
24. U.N. Secretary-General (2014), *Responsibility to Protect: Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect*, U.N. Doc. A/68/947–S/2014/449 (July 11, 2014).
25. See *Implementing the Responsibility to Protect*, supra, # 1.
26. See Noam Chomsky, Statement to the United Nations General Assembly Thematic Dialogueon the Responsibility to Protect (July 23, 2009), available at http://www.un.org/ga/president/63/interactive/

protect/noam.pdf (accessed 18/05/2015); also Hobsbawm, Eric (2008). *Guerra y Paz en el Siglo XXI*, Barcelona, Crítica, p. xiv-xv.

27. See *Implementing the Responsibility to Protect*, supra, # 4, 9, 23.

28. See The Asia-Pacific Centre for the Responsibility to Protect (2009), *The Responsibility To Protect and the Protection of Civilians: Asia-Pacific In The UN Security Council* Update No. 1, p. 2, http://www.responsibilitytoprotect.org/files/PoC_Update_1[1][1].pdf (accessed 18/05/2015).

29. Rep. of Comm. on Foreign Affairs, Plenary Sitting, Mar. 21, 2013, Eur. Parl. Doc. A7-0130/2013 (Mar. 27, 2013) (adopting proposal on the UN Principle of the "Responsibility to Protect").

30. See id. at 6.

31. Id. at 5-6.

32. Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, 119U.N.T.S. 3 [hereinafter OAS Charter].

33. American Treaty of the Pacific Settlement, Apr. 30, 1948, 30 U.N.T.S. 55 [hereinafterBogota American Treaty].

34. American Declaration of the Rights and Duties of Man, 1948, O.A.S. Res XXX, reprintedin Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4, doc. 1 rev. 13 (2010).

35. G.A. Res. 48/141, 1 3, U.N. Doc. A/RES/48/141 (Jan. 7,1994).

36. Id. at 10.

37. OAS. Charter art. 3, para. e.

38. See Global Center for the Responsibility to Protect (2009) *Implementing The Responsibility to Protect - 2009 General Assembly Debate: An Assessment.* available at http://www.globalr2p.org/media/files/gcr2p_-general-assembly-debate-assessment.pdf(accessed 18/05/2015)

39. See Statement by Argentina at the Open Debate of the United Nations Security CouncilMaintenance of International Peace and Security:"War, its lessons, and the search for a permanent peace", 29 January 2014,Unofficial Transcript, available at http://responsibilitytoprotect.org/Argentina%282%29.pdf (accessed 18/05/2015). See also Open Debate on Protection of Civilians in Armed Conflict Statement by Mrs. RA RP, Amb. Maria Cristina Perceval, UN Security

Council, 2013, available at http://enaun.mrecic.gov.ar/en/content/armed-conflict (accessed 18/05/2015).

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41. UN General Assembly, Interactive dialogue on the Responsibility to Protect. Statement by the Argentine delegation, New York, 11 September 2013, available at http://responsibilitytoprotect.org/Argentina%2013.pdf (accessed 18/05/2015).

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43. U.N. SCOR, 61st Year, 5577th mtg. at 2, U.N. Doc. S/PV.5577 (Dec. 4, 2006).

44 See U.N. SCOR, 55th Year, 4194th mtg. at 6, U.N. Doc. S/PV.4194 (Sept. 7, 2000); U.N. SCOR, 56th Year, 4288th mtg. at 9, U.N. Doc. S/PV.4288 (Mar. 7, 2001); see also Press Release, Security Council, "Security Council Meets to Review Commitments of September 2000 Summit: Secretary-General Cites Council's 'Crisis of Credibility," U.N. Press Release SC/7024 (Sept. 3, 2001).

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47. General Assembly, Draft Resolution Referred to the High-Level Plenary Meeting of the General Assembly by the General Assembly at its Fifty-Ninth Session at 31, A/60/L.1 (Sept. 15, 2005).

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53. Ibidem.
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55. U.N. Security Council, Letter dated Nov. 9, 2011 from the Permanent Representative ofBrazil to the United Nations addressed to the Secretary-General, U.N. Doc. A/66/551-S/2011/701(Nov. 11, 2011).
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60. Statement by Argentina at the Open Debate of the United Nations Security Council(Jan. 29, 2014), available at http://responsibilityto-protect.org/Argentina(2).pdf (accessed 19/05/2015).

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