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THE EUROPEAN WAY TO HUMAN SECURITY♦

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ABSTRACT: Human security is the founding concept of the R2P doctrine accepted within the UN system. In this context human security and R2P are inextricably tied and the only purpose of the R2P is humanitarian, i.e. to protect populations from large-scale atrocities. To date, States are not however willing to confer a legal character to third States' obligations/responsibilities under this doctrine in case national authorities be unwilling or unable to protect their populations. The responsibility of the international community to take action has only a more general and moral sense and no obligation to intervene for the international community, the Security Council or individual States seems to have crystallized under international law. Assessing the EU conducts during the armed conflict in Libya (2011) or the political unrest in Ukraine (2013/2014) and the EU policy documents (i.e., the EU Global Strategy of 2016), someone might wonder if there is only one concept of human security and which is the real purpose of EU external action worldwide. We contend that, according to the EU interpretation, the concept of human security is decoupled by the R2P doctrine and it is instead linked to the "right to democratic governance" for the purpose of promoting the "European way of life" in the wider world. As a matter of progressive development of international law, the EU might eventually claim new legal entitlements to intervene in international/internal crises for democratic purposes in lieu of the moral responsibility to intervene for humanitarian purposes that the UN interpretation of the R2P only envisages.

KEYWORDS: Responsibility to Protect; Human Security; EU Global Strategy; European Way of Life; UN World Summit; Global Strategy for Democracy.

CONTENTS: 1. The ICISS Report on the R2P. – 2. The implementation of the R2P within the UN system. – 3. The EU vision on sovereignty and intervention: the global strategy for democracy. – 3.1. The EU approach to Libyan crisis. – 3.2. The EU approach to Ukrainian crisis. – 4. Conclusions.

1. The concept of the Responsibility to Protect (R2P) was systematically drawn up by the International Commission on Intervention and State Sovereignty (ICISS) established by Canada in 2000 to answer the question posed by the UN Secretary-General Kofi Annan on how the international community should respond to gross and systematic violations of human rights without infringing upon State sovereignty. The dilemma on the right and lawful balance between State sovereignty and external military intervention for human protection purposes has long divided the international community and the very existence and content of the so-called "right of humanitarian intervention" in general international law is deeply controversial. On December 2001 the ICISS presented its Report on the R2P which soon became being discussed within the UN system.

The Report introduces new ideas and re-characterizes old concepts of the political and legal discourse about the humanitarian dilemma. In a globalized world the understanding of the meaning of sovereignty should be updated and it should no longer include "any claim of the unlimited power of a state to do what it wants to its own

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people” (*sovereignty as control*). The modern understanding of sovereignty implies the responsibility “to respect the dignity and basic rights of all the people within the state” (*sovereignty as responsibility*)¹.

The political and legal focus of the R2P is the new concept of “human security”, i.e. “the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms”². Yet, the narrow interpretation of human security only implies the protection of peoples from large-scale atrocities such as genocide, ethnic cleansing, crimes against humanity and war crimes. Human security broadens and complements the traditional concepts of national and international security and States should put its implementation at the top of their agenda. Should a particular State be clearly either unable or unwilling to fulfill its R2P and protect the (narrowly interpreted) human security of its peoples, the “residual responsibility” of the international community should be “activated” according to a logic of complementarity. A new legal duty of intervene in lieu of the old legal right to intervene would therefore burden on the other States and the principle of non-intervention should yield to the international R2P.

The ICISS was aware about the high risk of States or groups of States misusing the R2P for inappropriate purposes. The humanitarian pretext could have facilitated external military interventions in States’ internal affairs and put in jeopardy international peace and security. Accordingly, the ICISS set up strict principles and thresholds for military intervention for human protection purposes. Only the most serious and irreparable violations of the narrow concept of human security (large scale loss of life and ethnic cleansing) do legitimate the military intervention. Any other violation of the broader concept of human security (including, for instance, economic and social well-being, respect for human dignity, protection from poverty, pandemic, natural disasters, etc.) must be addressed by the international community, through the UN, with peaceful and appropriate diplomatic, economic, political and humanitarian means³.

The systemic interpretation of the R2P provides clear guidance on other aspects that strictly circumscribe scope and purpose of the R2P. It is essentially a humanitarian doctrine and its natural and inseparable logical, political and legal counterpart is the concept of human security. Human security justification is neither a blank check for overthrowing non-democratic regimes, nor a constituent premise of an emerging “right to democratic governance”. For instance, the ICISS clearly stated that military intervention in the name of the R2P is not allowed “in relation to cases where a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over”⁴. The only “emerging practice” – not related to “the emergence of a new principle of customary international law [but only to] an emerging guiding principle” – is that “intervention for human protection purposes, including military intervention in extreme cases, is supportable” only in exceptional circumstances⁵. The rationale behind this very restrictive implementation of the R2P is two-fold: 1) human security is not directly related to the exercise of political rights. It only protects peoples from gross violations of human rights, not from obstacles to the free exercise of their political rights. It is about human rights, not about political systems; 2) democratic governments should virtually guarantee human security but the reverse is not always true because human security may be provided even by governments that are not democratic. In other words, the R2P is a politically neutral concept: it only protects human security from large-scale atrocities regardless of the political form of the government. There is no conceptual and legal overlapping between the concepts of human security/R2P and the international democracy-building.

2. The ICISS Report generated much interest within the UN system. Since then the UN Secretary-Generals have adopted several reports with the aim of implementing both the broad and the narrow concept of human se-

¹ ICISS (2001), *The Responsibility to protect*, Ottawa: International Development Research Centre, § 1.35, p. 8.

² Ivi, § 2.21, p. 15.

³ “If it comes to be thought that ‘R2P’, and in particular the sharp military end of the doctrine, is capable of being invoked in anything other than a context of mass atrocity crimes, then such consensus as there is in favor of the new norm will simply evaporate in the global South” (EVANS, *Facing Up to Our Responsibilities*, 12 May 2008, available at <https://www.theguardian.com/commentisfree/2008/may/12/facinguptoourresponsibilities>).

⁴ ICISS (2001), *The Responsibility to protect*, § 4.26, p. 34.

⁵ Ivi, §§ 2.24-2.25, pp. 15-16.

curity and “fully developing the UN strategy, standards, processes, tools and practices for the responsibility to protect”⁶. The UN Secretary-General’s High-level Panel on Threats, Challenges and Changes addressed the R2P in its Final Report of 2004. It endorsed the R2P as an “emerging norm” establishing “a collective international responsibility to protect [...] authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to protect”⁷.

Reactions of States to the implementation of the R2P were much more cautious.

During the 2005 UN World Summit many States objected that the content of the concept was too generic and left room for misuses and military interferences in internal affairs. There was a general consensus that the R2P was not of a legal character and, accordingly, the international community, or the Security Council, or individual States, had no legal obligation to intervene under international law. As a result, the two paragraphs of the Outcome Document of the World Summit about the R2P reflected the views of States rather than of the ICISS (the R2P as “an emerging guiding principle”) or of the High-level Panel (the R2P as “an emerging norm”). Following the spirit of the US proposed amendments (i.e., the host state has a legal responsibility to protect its populations from atrocities but the international community has only a responsibility to act only “in a more general and moral sense” and its responsibility “is not of the same character as the responsibility of the host”)⁸, paragraphs 138 and 139 of the Outcome Document stated that “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity” but that the international community is only “prepared to take collective action” through the Security Council “in accordance with the Charter, including Chapter VII”, on a case-by-case basis pursuant to a principle of complementarity (if “national authorities are manifestly failing to protect their populations”) and as a last resort (“should peaceful means be inadequate”)⁹. The language of the World Summit Outcome avoids creating a legal obligation of the international community and instead assert a mere faculty to intervene grounded on a more general and only moral responsibility to act.

Subsequent practice of the Security Council is in line with the approach of the World Summit. The R2P has been seldomly mentioned in resolutions under Chapter VII. In the non-binding Preamble of Resolution 1556 (2004), the Security Council “recalls” that the Sudanese Government “bears the primary responsibility to respect human rights while maintaining law and order and protecting its population”. In the Resolution 1674 (2006) on protection of civilians in armed conflict, the Security Council “reaffirmed the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”: the general policy content of this provision and of the Outcome Document does not however strengthen the legal value of the R2P in the Security Council practice and, if anything, is much more relevant than in the Resolution 1973 (2011) on the Libyan situation the Security Council authorized the use of force for humanitarian purposes (see § 3.1) without recalling the R2P (except for a line in the Preamble “reiterating the responsibility of the Libyan authorities to protect the Libyan population”).

3. In the last years the EU has been playing a very active political role in the crisis (and subsequent armed conflict) in Libya (February/October 2011) and in the early phase of the Ukrainian crisis (November 2013). The High Representative of the Union for Foreign Affairs and Security Policy also published in June 2016 the Global Strategy for the EU’s Foreign and Security Policy, a political document that aims at making the EU a global pro-

⁶ UNGA, *Implementing the responsibility to protect. Report of the Secretary-General*, A/63/677, 12 January 2009, p. 1.

⁷ UNGA, *A more secure world: our shared responsibility. Report of the High-level Panel on Threats, Challenges and Change*, A/59/565, 2 December 2004, § 203, p. 57.

⁸ United States (The Representative of the United States of America to the United Nations), *Letter from Ambassador Bolton to UN Member States Conveying U.S. Amendments to the Draft Outcome Document Being Prepared for the High Level Event on Responsibility to Protect*, available at http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05%5B1%5D.pdf.

⁹ UNGA, *2005 World Summit Outcome*, A/60/1, 16 September 2005, §§ 138-139, p. 30.

vider of security¹⁰. A systemic interpretation of EU conducts, declarations and treaty rules suggests that the EU is advancing its own peculiar interpretation of the concept of human security by decoupling it from the R2P doctrine and by linking it to an aspirational right to democratic governance. Should this practice eventually become a general practice accepted as law by the international community, the long-term consequence might be the emergence of a new set of international principles and rules authorizing the (coercive or peaceful) ‘democratic intervention’ in lieu of the humanitarian intervention. In fact, the EU approach to the balance between State sovereignty and intervention as well as to the concept of human security is quite different from the one envisaged by the ICISS and the World Summit.

To better understand the EU vision on human security and intervention in foreign States, one should refer to some fundamental provisions of the Treaty on European Union (TEU) of 1992. In fact, the EU seeks legitimacy and authority for its global strategy in the field of foreign affairs by resting on the general assumption that its fundamental values enshrined in Article 2 of the TEU (human dignity, freedom, democracy, equality, the rule of law and respect for human rights) are universal, absolute and imperative. Accordingly, “in its relations with the wider world, the Union shall uphold and promote its values” (Article 8(1)) and will seek “to advance [them in order to] consolidate and support democracy, the rule of law, human rights and the principles of international law (Article 21). This attitude is even stronger with the neighboring countries that are EU’s partners in the European Neighborhood Policy (ENP). In this case, in fact, the EU aims at establishing “an area of prosperity and good neighborliness, founded on the values of the Union” (Article 8(1)). Subsequent documents such as the EU Global Strategy of 2016 (EUGS: see § 4) confirm the approach set forth by the binding provisions of the TEU¹¹.

Summing up, the EU external action in the wider world aims at promoting and implementing the “European way of life”, a concept made up of political (EU-style) democracy and economic neo-liberalism: in other words, the EU Global Strategy is actually a real global strategy for democracy. All these legal rules, political declarations and strategic goals have been matched by ‘operational’ conduct of the EU during the Libyan and Ukrainian crises.

3.1. All along the course of the Libyan political unrest (February 2011) and armed conflict (March/October 2011), the UNSC and NATO’s legal and political narratives had a humanitarian character. As a matter of international law, the inclusion of the situation in Libya on the Security Council agenda and subsequent resolutions and measures, including the authorization for use of military force, had a humanitarian purpose. The repression of peaceful demonstrators and the violations of human rights were invoked as the legal basis for Resolution 1970 (2011) while in Resolution 1973 (2011) the subsequent non-international armed conflict between the Libyan State and Benghazi-based armed opposition forces justified the authorization for Member States “to take all necessary measures [...] to protect civilians and civilian populated areas under threat of attack”¹². At least on paper, the international military intervention was humanitarian and politically neutral, i.e. it did not seek or promote regime change and it did not support or control military actions of either of the parties to the non-international armed conflict¹³. No reference was made to any alleged right of democratic intervention or governance.

The EU paid lip service to the humanitarian narrative of the Security Council but its political statements revealed a completely different purpose. Implementing its global strategy for democracy, the Extraordinary European Council of March 2011 openly disclosed the objective “to rapidly embark [Libya] on an orderly transition to democracy” and, to this end, the European Council: *a*) urged Colonel Khadafi to “relinquish power immediately [having] lost all legitimacy and [being] no longer an interlocutor for the EU”; *b*) “welcom[ed] and encour-

¹⁰ *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy*, June 2016, at eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf.

¹¹ See, for instance, European Commission-High Representative of the Union for Foreign Affairs and Security Policy (Joint Communication), *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean*, Brussels, 8.3.2011, COM(2011) 200 final.

¹² United Nations Security Council, Resolution 1973 (2011), adopted on 17 March 2011, § 4.

¹³ The non-international armed conflict was therefore qualified as “legally separate” and “coexistent” to the continuing international armed conflict between NATO (and other foreign States involved in the international military action) and the Libyan State. See Human Rights Council, *Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya*, A/HRC/17/44, 1 June 2011, § 66, p. 31.

ag[ed] the interim national council based in Benghazi [considered as a] political interlocutor”; c) stood “ready to help Libya build a constitutional state and develop the rule of law”¹⁴. This approach matches a completely different political and legal framework for international (military) actions whose objectives and consequences are no longer humanitarian and neutral but turn into democratic and interventionist.

Should this practice become general and accepted as law by the international community as a whole, a new general rule of international law conferring the right to foreign States to launch democratic interventions against authoritarian regimes that grossly violate human rights might emerge and consolidate within the international legal system.

3.2. The EU approach to the early phase of the Ukrainian crisis (November 2013) is also quite telling of how the EU implements its global strategy for democracy. The crisis started on 21 November 2013 when the Ukrainian Government suspended temporarily the signing of the political and economic agreements with the EU following talks with Russia concerning an alternative trade agreement. Pro-EU opposition and civil society immediately staged public protests, demonstrations and rallies against this decision and occupied the main square in Kiev which was promptly renamed ‘Euromaidan’ (‘Eurosquare’) by media. Situation swiftly turned into protracted unrest, riots and clashes between protesters and police with many casualties on both sides. In any case, months of unrest and riots (from November 2013 until February 2014) never triggered the application of humanitarian international law because their effects, intensity and modalities did not develop into a non-international armed conflict. As a matter of international law, the situation qualified as one of internal disturbances and riots to which the “duty not to intervene, directly or indirectly, for any reason whatever, in the internal affairs” strictly applied to third States¹⁵.

Since the beginning, however, the EU expressly supported the pro-EU opposition by directly addressing those “Ukrainian citizens”. For instance, on 25 November 2013 a Joint Statement by the Presidents of the European Council and the European Commission declared that “the EU stands ready to be more open and more supportive to those who are willing to engage in reforms and modernization” (the pro-EU protesters), recognized that “Ukrainian citizens have again shown these last days that they fully understand and embrace the historic nature of the European association” and expressed the will “to accompany our common neighbors towards modern, prosperous and rule-based democracies”¹⁶. The political purpose to promote a (more) EU-style form of democracy and a (more) EU-oriented government than the democratic government of President Yanukovich is confirmed by the Statement released on 21 March 2014 by the President of the European Council at the occasion of the signing ceremony of those agreements once suspended by the former President Yanukovich and instead promptly signed by the new pro-EU government. According to the Statement, in fact, the Association Agreement recognized the “aspirations of the people of Ukraine to live in a country governed by value, by democracy and the rule of law [...] and the popular yearning for a decent life as a nation, for a European way of life”¹⁷.

Taking into account that, throughout the crisis, disturbances and riots were internal for international law and the former Government was however a democratic one, the EU unconditioned and explicit political support to pro-EU opposition casts some doubts about its compliance with the duty not to intervene in the internal affairs of another State. One might argue that the EU is trying to promote an evolutionary interpretation of this duty ac-

¹⁴ By the way, the international military intervention achieved the ‘democratic’ purpose set out by the EU (the Libyan regime has been changed and democracy installed) rather than the ‘humanitarian’ purpose set out by the Security Council.

¹⁵ “Internal disturbances are marked by serious disruption of domestic order resulting from acts of violence which do not, however, have the characteristics of an armed conflict. They encompass, for example, riots by which individuals or groups of individuals openly express their opposition, their discontent or their demands, or even isolated and sporadic acts of violence. They may take the form of fighting between different factions or against the power in place” (Marion Harroff-Tavel, *Action taken by the International Committee of the Red Cross in situations of internal violence*, in *International Review of the Red Cross*, May-June 1993, No. 294, pp. 203-204).

¹⁶ Joint Statement by President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso on Ukraine, MEMO 13-1052, Brussels, 25 November 2013, p. 1.

¹⁷ Statement by President of the European Council Herman Van Rompuy at the occasion of the signing ceremony of the political provisions of the Association Agreement between the European Union and Ukraine, Brussels, 21 March 2014, EUCO 68/14, p. 1.

ording to which the prohibition would no longer encompass the political support to opposition parties or factions rallying for democracy (or pro-EU governments) in non-armed conflict situations.

4. The crises in Libya and Ukraine have revealed the EU global strategy for democracy which is marked by strong and open activism in support of opponents of autocratic regimes or not pro-EU democratic governments. The EU acts like a sort of ‘President Wilson of the third millennium’ that promotes in the wider world the “European way of life”, i.e. a liberal idealism based on the right to democratic governance and a new world order of democratic political systems and neoliberal economies. Yet, the global strategy for democracy needs a new legal framework that would legitimize, as a matter of international law, the ‘democratic intervention’ in Libya-like situations or the narrow interpretation of the duty not to intervene in domestic affairs in Ukraine-like situations. In fact, humanitarian frameworks – like the R2P – are useless for EU purposes because they never authorize, directly or indirectly, regime changes or interferences in domestic affairs. The EUGS of 2016 establishes this new legal framework for spreading the “European way of life” in the wider world. In the coming years the EU external action will be increasingly comprehensive, integrated and militarily proactive (“soft power is not enough”)¹⁸ so that the EU could act as a global security provider “at all stages of the conflict cycle, acting promptly on prevention, responding responsibly and decisively to crises, investing in stabilization”¹⁹. The fundamental legal basis is the concept of human security which is, however, deeply reinterpreted compared to that delivered by the ICISS in 2001 and accepted by the World Summit in 2005.

As anticipated, the ICISS concept of human security is inextricably linked – as a matter of policy and international law – to the more general doctrine of R2P and as a result: 1) only the serious violations of the narrow concept of human security legitimize the coercive implementation of the R2P and only for human rights purposes; 2) the human security prescind from the form of government: if a democracy protects the human security of the governed population (at least, on paper), the reverse is not necessarily true because even a non-democratic form of government (monarchy, theocracy, etc.) can provide human security to its people (at least, on paper).

This interpretation of human security and R2P is unsuitable for the EU global strategy for democracy: the EUGS therefore provides a deep reinterpretation of it. In the EUGS of 2016 there is no express reference to the R2P doctrine while the repeatedly mentioned concept of human security takes on the broader meaning. The most important consequence is that, once human security is decoupled from the R2P humanitarian doctrine, it may be bound in glove with democracy and economic and social welfare. As a result, to promote human security worldwide ends up overlapping with spreading democracy abroad by supporting all those people fighting or rallying for it in their homeland whether or not a humanitarian concern or situation exists²⁰.

The EU approach to human security is strongly innovative compared to international law currently in force. To date, one might argue that the EU approach is at variance with the rules both on the use of force and on the non-intervention in domestic affairs. In a long-term perspective, the legitimacy of the EU approach will depend on the possible progressive development of international law on these issues. Not casually, in the EUGS of 2016 the commitment “to a global order based on international law, which ensures human rights, sustainable development and lasting access to the global commons [...] translates into an aspiration to transform rather than simply preserve the existing system”²¹. Whereas the notion of “global order” also encompasses the international legal system, the commitment of the EU to “transform” (i.e., to change) those international rules more directly related or affected by the implementation of its global strategy for democracy is self-evident.

¹⁸ “In this fragile world, soft power is not enough: we must enhance our credibility in security and defense. To respond to external crises, build our partners’ capacities and protect Europe, Member States must channel a sufficient level of expenditure to defense” (*Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy*, June 2016, par. 4, p. 44).

¹⁹ Ivi, par. 2, pp. 9-10.

²⁰ “The EU will [...] foster human security through an integrated approach. Implementing the ‘comprehensive approach to conflicts and crises’ through a coherent use of all policies at the EU’s disposal is essential. But the meaning and scope of the ‘comprehensive approach’ will be expanded” (*Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy*, June 2016, par. 2, p. 9).

²¹ Ivi, par. 2, p. 10.