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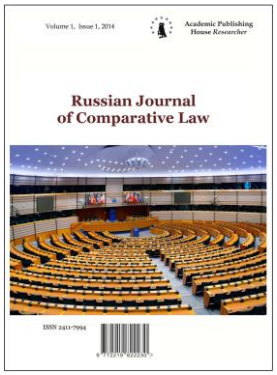

Articles

The Crime of Enforced Disappearance of Persons When Political Organisations Commit Crimes against Humanity

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Abstract

The paper identifies an inconsistency that exists in the definition of the international crime of enforced disappearance of persons. The Rome Statute (hereinafter – RS) and the 2006 International Convention on Enforced Disappearances differ in the acceptance of political organisations that fight against the State as perpetrators of the crime. Through the analysis of this apparently minor inconsistency, we address the question if leaders and members of political organisations other than the official government of the State may hold criminal responsibility for gross human rights violations and international crimes.

The International Law of Human Rights (hereinafter – ILHR) and International Criminal Law (hereinafter – ICL) converge at integrating the international system of protection of the human being and humanity. Beyond their characterizing differences, they are part of a system and as such they are expected to maintain a minimum of coherence. We forward the opinion that any contradictory development regarding definitions of international crimes should be solved in the benefit of the victims and Humanity as a whole. Thus, the narrow definition of the crime given by the ILHR shall match the wider concept set by ICL.

Reasons are given to accept political organisations as eventual perpetrators of international crimes to consolidate the international legal system of human rights protection. But to come to this aim, a major change in the human rights approach should take place, recognizing other subjects different than the State and its proxies as eventual perpetrators of human rights gross violations. The paper ends with a prospective that wonders whether this accommodation is likely to happen.

Keywords: enforced disappearance, international human rights, international criminal law, victims, perpetrators.

1. Introduction

The crime of enforced disappearance of persons is part of the crimes against humanity. Its unique character is based on multiple violation of rights and victims. Regardless whether the perpetrator is the State or any other political organization that fights against it, all victims suffer equally. However, there are two types of definitions of the crime. While international human rights law only considers the State as a possible perpetrator, international criminal law includes any political organization. While the first approach leaves the victims of enforced disappearance

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unprotected when the perpetrator is a political organization different than the State, we believe that the solution is to unify definitions, accepting political organizations that fight the State or fight between them, as also their leaders and members, as possible perpetrators of the crime, expanding access to justice for all victims equally.

2. Materials and methods

The material used to carry on the study is composed of both international legislation related to the specific crime of enforced disappearance of persons and the case law of international and regional bodies of human and criminal law such as the UN Human Rights Committee (actual Council), the Interamerican Court of Human Rights and the European Court of Human Rights. We also use the doctrine as a source of law through the writings of international jurists. The research methodology is based on general and specific scientific methods of cognition (the dialectical method, methods of analysis and synthesis, deduction and induction and comparative and historical legal methods).

3. Discussion

3.1. Different approaches to international crimes

International Law of Human Rights (hereinafter – ILHR) and International Criminal Law (hereinafter – ICL) play different roles in protecting the human being and combating impunity. It was argued that the complex phenomenon of the enforced disappearance was 'conceived precisely to evade the legal framework of human rights protection' (Tayler, 2001: 22). Thus, to face this phenomenon it is wise to make use of different approaches that belong to each of the intertwined subsystems. We start assessing the offence from each perspective.

3.a. The International Law of Human Rights subsystem

Historically, the ILHR considered relations between unequal entities forbidding violations of rights perpetrated by the State against its subjects. The modern concept of human rights is '*rooted in the experiences of legal lawlessness when crimes are committed with the authorization of the law and when some human beings were denied their status as such*' (Piechowiak, 2002: 3). Precisely, the emergence of the ILHR was an answer to these situations. It is easy to infer that according to this approach the involvement of the State is a natural element of any violation of rights. A human rights approach prevailed in the consideration of the crime of enforced disappearance along the last decades of the XX century. This perspective is 'victim – centred' in the sense that its main concern spans around the protection of the individual who suffers persecution from the government and is eventually disappeared. The ILHR proceedings also protect the *relatives* of the immediate victim from further sufferings and ill treatment. This 'victim centred' methodology still prevails in the legal consideration of human rights violations. An example is given by the creation of the UN Working Group on Enforced Disappearances (hereinafter – UN WGED), the first and most important thematic body on the subject. It '*(…) only deals with disappearances for which governments can be held accountable and it does not accept cases arising from armed conflict*' (Economic and Social Council, 2005: 13).

At present, this narrow approach that only considers the State as a possible author notably stands against the evolving and widened character of authorship set by the Rome Statute and ICL.

3.1.b. The International Criminal Law subsystem

ICL is the newest subsystem, aiming at integrating the preceding perspectives of human rights and humanitarian law. It affirms the existence of a set of basic human rights whose violation triggers the prosecution and eventual punishment of individual perpetrators. To achieve this end, ICL sets the elements of the crimes that must be present at the time of the commission. In the opinion of Meron (Meron 1998: 266):

'*Without doubt, however, the offences included in the ICC statute under crimes against humanity and common Article 3 (of the Geneva Conventions) are virtually indistinguishable from major human rights violations. They overlap with violations of some fundamental human rights, which thus become criminalized under an instrument of international humanitarian law.*'

Nowadays through the ICL subsystem, the individual becomes a centre of international obligations. The RS does *formally* criminalize violations of the ILHR in order to give access to the jurisdiction of the Court. Robinson remarks that '*all delegations* [at the Rome Conference] *agreed that the court's jurisdiction relates to serious violations of international criminal law, not*

international human rights law.' (Robinson, 1999). ILHR provides for certain '*international goods*' to be protected while ICL criminalises acts that violate them in a widespread and systematic way. In the ILHR view, the individual is treated as a victim needing protection *from the State,* while under the ICL perspective, the individual is a possible perpetrator of international crimes deserving punishment.

Anyhow, ICL has *distinctive* features. Considering the list of acts regarded as crimes against humanity by the RS, the distinction between such crimes from any other serious violation, it is their notoriousness and systematic nature. So, there are some grave, wrongful acts which are internationally punished under the label of crimes against humanity, which incidentally *happened* to be the most important human rights breaches as considered by international customary law.

We set the question: could definitions of these crimes differ depending on the approach we take?

3.2. An inconsistency in the definition: a clash between approaches

Of all the crimes against humanity, enforced disappearances typify gross violations of ILHR as expressed in the RS. As Meron (Meron, 1998: 265) notes, *'whereas at Nuremberg only persecution committed on political, racial, or religious grounds in execution of or in connection with any crime within the Tribunal's jurisdiction constituted a crime against humanity, at Rome the grounds were expanded to read: "political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court". '*

3.2.a. Main characteristics

The crime of enforced disappearance constitutes a global phenomenon. More than 50,000 individual cases have been transmitted by the UNWGED to governments in more than 90 countries since its creation. It can be considered as a global menace to political opponents not restricted to any particular area of the world. These facts turn it into an international crime that according to the ILHR approach is mainly characterised by three elements: *deprivation*, *involvement* and *refusal*. Thus, there must be:

(a) an unlawful deprivation of liberty;

(b) a direct involvement of governmental authorities or their indirect participation by acquiescence, and a refusal to acknowledge the detention and/or disclose the fate and whereabouts of the disappeared person.

The paper disputes the second requirement as it was initially set by the ILHR. Both ILHR and ICL under certain circumstances agreed on calling it a crime against humanity, since it aims to eradicate an ideology from the surface of the earth by physically eliminating political opponents. The case law of the Inter American system of human rights refers to it as a complex crime, while it encompasses multiple violations of internationally recognized human rights. The 1992 UN Declaration on Enforced or Involuntary Disappearance (hereinafter - UNDED) states that any act of enforced disappearance, *'constitutes a violation of the rules of international law guaranteeing (...) the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life'.*

In the case law of the Inter American Court of Human Rights (hereinafter – IACHR), it *"constitutes a multiple and continuing violation of a number of rights protected by the (American) Convention"* as it was stated in Blake v. Guatemala. Its complexity is also evident as regards different levels of *victims* who may suffer from an act of enforced disappearance.

Last but not least, it is a continuous offence. The refusal of perpetrators to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of the victims is a basic element of the crime. While the refusal persists, the commission of the crime only ends when the disappeared person appears alive, its fate is known or its remains are found. The continuing character was analysed in the Blake v. Guatemala case before the IACHR, when the Court stated that 'relatives of Mr. Blake (...) had been uncertain about his fate for seven years due to the *continuity* of the crime'.

3.2.b. Comparing definitions

The RS represents the first binding codification of international crimes. It includes the acts of enforced disappearance as a crime against humanity. Crimes against humanity comprise part of customary international law (Mugwanya, 2007). Their customary character means that they

impose an obligation on the international community to prosecute, punish or extradite offenders with the same force of a treaty, surpassing a State's conventional or treaty-based obligations. Bassiouni expresses '*as a jus cogens international crime, crimes against humanity are presumed to carry the obligation to prosecute or extradite, and to allow States to rely on universality for prosecution, punishment, and extradition*' (Bassiouni, 2001). Before the adoption of the RS, the closest approximation to a codification of crimes against humanity, existed in the numerous separate conventions and treaties proscribing individual crimes. We noticed that every criminal behaviour that appear in the RS giving jurisdiction to the ICC has its matching international human rights or humanitarian document underpinning its placing there. Comparing the definitions of crimes that appear in international specific documents and the RS, there are almost no differences among them. But when the time comes to incorporate the acts of enforced disappearance of persons, the definition of ICL does not match the preceding definitions of the same crime as conceived in ILHR documents.

In 1992 the UN General Assembly approved the UN Declaration on Enforced Disappearance (hereinafter – UNDED, 1992), stating the first important definition, depicting the acts as when '*persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law'*.

When committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, the crime of enforced disappearance constitutes a crime against humanity as we read in article 7(i) of the Rome Statute. Concerning authorship, the UNDED required the *active involvement* of the State through its agents and authorities or its passive involvement through its acquiescence.

The Organisation of American States General Assembly (OAS GA) was the first regional body in passing a binding document on the subject. The 'Inter American Convention on Forced Disappearance of Persons' (hereinafter – IACFD, 1994) considers the crime: '*to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees'*.

A new, the direct or indirect *involvement* of the State as the author is mandatory.

Finally, the series of '*human rights law*' definitions end with the latest piece of discussion: the UN 'International Convention for the Protection of All Persons from Enforced Disappearance' (UNCED, 2006). Enforced disappearance is considered *'to be the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law'*.

As we read, the presence of the State is a basic element of the crime.

On the contrary and assessing the ICL view, none of the Statutes of the International Criminal Tribunal for the former Yugoslavia (hereinafter – ICTY) or International Criminal Tribunal for Rwanda (hereinafter – ICTR) specifically provided for a definition of the crime. Notwithstanding this, the pertinent case law submitted the acts within the residual category of *'other inhuman acts'* as provided in the Statutes of both Tribunals (Cassese, 2004: 259). None of these documents makes direct reference to the authorship. The only document that recognizes a wide authorship is the RS of the International Criminal Court (RS, 1998). At the Rome Conference in 1998, '*delegations agreed that enforced disappearance, also previously identified as a crime against humanity in international instruments, was an inhumane act similar to the other acts in character and gravity, which warranted specific acknowledgment. The inclusion of enforced disappearance (...) explicitly acknowledges two types of inhumane act that are of particular concern to the international community*.' (Robinson, 1999: 43).

The RS defines crimes against humanity as certain 'acts when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack' including among other acts, the '... (i) enforced disappearance of persons' (article 7). The definition is further developed by the Elements of Crime. It is noteworthy that article 7 was developed through multilateral negotiations involving 160 states instead of being imposed as preceding definitions. This fact is relevant when talking about the relationship about this crime and ius cogens. With respect to authorship, the RS reads as follows: '*enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time*' (article 7.2(i)). Recognizing a possible authorship on behalf of the chain of command of political organisations other than the State, the door is open to protect any victim and not only civilians affected by criminal acts in which the State has been involved.

3.2.c. The inconsistency about authorship

From the first definition of the crime adopted by the UN Working Group on Enforced or Involuntary Disappearances to present, there has been a slow but continuous assertion of the offence as an international crime and particularly as a crime against humanity. As compared to the 1998 RS, the provisions of the 2006 UNCED merges elements of the two different subsystems (ILHR and ICL) but clashes when dealing with authorship. An inconsistency is evident when the ILHR emphasizes a narrow approach to authorship that contrasts with the wide ICL approach. The inconsistency spins around accepting or denying the status of political organisations other than the States as perpetrators of the crime. States are reluctant to give international recognition to political organisations different than States. As we see, the definition given by the RS includes crimes committed by non-State actors in the context of a political organisation, even though there is no clear definition of what *it* may mean. A political organisation may encompass from a political party through a movement of national liberation to a terrorist group so wide it can be. The inconsistency is also reflected in the legal treatment and the case law, as we will see now.

3.3. Enlarging authorship

Both ILHR and ICL provide for a definition of the crime. From the ILHR subsystem we consider definitions provided by the 1992 UNDED, the 1994 Inter American Convention and the 2006 International Convention while ICL brings the RS definition. Judicial interpretation plays a significant role in the evolution of the crime. The lack of specific legal documents make the judges rely on other international conventional law, when identifying possible victims and rights violated.

3.3.a. A crime with a plurality of victims

There is consensus on stating that apart from the disappeared person itself, other people may qualify as a victim. There is no specific binding document which provides for a definition of 'victim' of an enforced disappearance. First, this lack of legal basis makes any violation of rights depend on other binding documents that mostly belong to the ILHR approach, namely the International Bill of Rights. Second, if the enforced disappearances are committed within an armed conflict, then International Humanitarian Law (hereinafter – IHL) will apply. Third, in case the crimes are committed as part of a widespread or systematic attack against a civilian population with knowledge of the attack, ICL will apply. We see that the three international legal approaches are intertwined.

The IACFD does not bring a specific definition of victim. Eventually, there is the 1992 UNDED and the 2006 UNICED. Both documents refer to the qualification of 'victim'. The 1992 UNDED reads: '*The victims of acts of enforced disappearance and their family shall obtain redress...*' (art. 19). This is the original narrow approach that considered the disappeared person as the only victim. Presently, the 2006 UNCED defines a victim as the '*disappeared person and any individual who has suffered harm as a direct result of an enforced disappearance*' (art. 24(1)).

This is the current broad 'victim-approach' which contrasts with a narrow 'author-approach' that prevails in the same document. Thus, the immediate victim is the disappeared person but there are other individuals who suffer harm as a direct result of the crime. First, any relative who alleges and proves to have suffered harm would be entitled with the rights of a victim. Second, a special situation is created when children are born during the captivity of their mothers or have been kidnapped with their parents. The new born is often given in adoption and maybe removed to

another country. Third and closely intertwined with the latter, there are the grandparents who shall be entitled to look for and bring back their grandchildren into their real family life.

3.3.b. A crime with a plurality of rights' violations

Human rights bodies are important at the time of identifying the rights that may be violated by an act of enforced disappearance. Both UN Human Rights Committee and adjudicatory bodies such as the European Court of Human Rights and the Inter American Court of Human Rights have interpreted the violations committed. For the purposes of our paper, we will group the rights violated in three categories according to the 'specific good' they intend to protect.

3.3.b.1. Rights related to the physical liberty and integrity

Including the right to personal liberty and security and eventually the right to life; the right to legal personality; the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; the right to humane treatment; and the protection of family life. There is a tendency to broaden the scope of protection admitting other rights such as the right not to be disappeared and the right to know the truth.

At the UN level, in Bleier, the first communication received by the UN Human Rights Committee related to a disappearance case, as well as in Quinteros Almeyda, there were found breaches of the International Covenant on Civil and Political Rights (ICCPR) related to 'torture or cruel, inhuman or degrading treatment or punishment' (article 7), and the 'right of liberty and security of person' (article 9), and even '*serious reasons to believe that the ultimate violation of article 6 has been perpetrated by the Uruguayan authorities*' (Economic and Social Council, 2002: 12). In Quinteros Almeyda, the Committee referred to the right to know the truth. Other pronouncements repeated the scope of violations as it happened in Sanjuan Arevalo and Mojica.

In America, Velasquez Rodríguez became the leading case of disappearances, containing a far-reaching pronouncement on the principle of State responsibility for enforced disappearance in the absence of full direct evidence. The IACHR found breaches of the 'right to life', the 'right to humane treatment' and the 'right to personal liberty' (articles 4, 5 and 7 of the American Convention on Human Rights, ACHR). The failure of Honduras to investigate the disappearance was a breach of the generic 'obligation of States to respect rights' (article 1 (1) of the ACHR). In Bamaca Velasquez the Court dealt for the first time with the right to enjoy a legal personality under article 3 of the ACHR in a disappearance case. It was decided that since the IACFD '*does not refer expressly to this right among the elements that typify the complex crime of forced disappearance of persons*', the right had not been violated. With respect to the right to know the truth, the IACHR emphasized that '*The right to truth (…) implies to know the reality of certain facts. From them on, a juridical, political or moral consequence of a different nature will be built. On one side the right is assigned to the society in general, on the other side, the right is entitled to the direct or indirect victim of the human right violation.*' A consistent and evolving case law made the Inter American Court the most active judicial body in dealing with the subject as Durand and Ugarte, Trujillo Oroza and Caracazo cases revealed.

In the European system, Kurt constituted the leading case. The European Court of Human Rights (ECtHR) found a violation of the 'right to liberty and security' (article 5 of the European Convention on Human Rights, hereinafter – ECHR) in respect of Mr. Kurt, but held that it was not necessary to decide on the alleged violation of the 'right to life' and the 'prohibition of torture' (articles 2 and 3). Anyhow, it found a breach of the 'right to an effective remedy' (articles 3 and 13) in respect of his mother, considering that she had been left with the anguish of knowing the fate of her son over a prolonged period of time. The Kaya case was submitted in 1993 by Dr. Kaya's brother to the European Commission of Human Rights, which referred it in 1999 to the ECtHR. Although the Court concluded that there was insufficient evidence to support a finding beyond reasonable doubt that State officials had carried out the disappearance and killing of Dr. Kaya, it held that Turkish authorities had '*failed to take reasonable measures available to them to prevent a real risk to the life of Hasan Kaya*'. This failure was considered as a violation of the right to life (ECHR), and the ECtHR also found a violation of the prohibition of torture on the basis that Turkey had not taken adequate measures to protect Dr. Kaya against inhuman and degrading treatment. Other judgements referred to the crime in similar terms. In Tas the Court found violations of article 2 ECHR on the grounds that '*Mushin Tas must be presumed dead following his detention by the security forces*', engaging State responsibility and that 'the investigation carried out into the disappearance of the applicant's son was neither prompt, adequate or effective

and therefore discloses a breach of the State's procedural obligation to protect the right to life'. The ECtHR found a violation of article 3 in respect of the father. In Hamsa Cicek who submitted an application in respect of her two sons and her grandson, the Court found similar breaches.

3.3.b.2. Rights linked to the guarantees of the due process of law.

Here we include the right to an effective domestic remedy and the right to a fair trial and judicial protection which encompasses the right to be treated with humanity and respect for human dignity. In the case of detainees, the case law has established violations involving the right to personal integrity especially when the person is imprisoned.

In Mojica, the UN Human Rights Committee referred for the first time that according to the ICCPR each contracting party undertakes to ensure 'an effective remedy' (article 2 (3), ICCPR). This matter was further developed in Bautista and in Laureano. In Bautista, the Committee found violations of articles 6, 7 and 9 of the ICCPR, adding that in the event of serious human rights violations '*purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies*'. In Laureano, the Committee found that Ana Laureano's right to life had not been effectively protected by Peru and concluded on violations of articles 7 and 9 of the ICCPR. Both in Bleier and in Quinteros Almeyda, the UN Human Rights Committee found a breach of article 10 (1) of the ICCPR which states that '*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*'.

In Blake, the IACHR ruled that the right to a fair trial 'recognizes the right of Mr. Nicholas Blake's relatives to have his disappearance and death effectively investigated by the Guatemalan authorities; to have those responsible prosecuted for committing said unlawful acts; to have the relevant punishment, where appropriate, meted out; and to be compensated for the damages and injuries they sustained' (article 8, ACHR). In Street Children, the IACHR found breaches of the right to judicial protection (articles 8 and 25, ACHR) to the detriment of the victims and of their close relatives. It established that article 25 'assigns duties of protection to the States parties through their domestic legislation, from which it is clear that the State has the obligation to design and embody in legislation an effective recourse and also to ensure the due application of the said recourse by its judicial authorities'. Similar situations were identically solved as it happened in Bamaca Velazquez, Durand and Ugarte and Trujillo Oroza.

3.3.b.3. Rights related to the special situation of children

Rights related to the special situation of children include *the right to special measures of protection*; the *right to know their real identity* and the *rig*ht to education. Grandparents are entitled with the right to know the fate of their grandchildren. In Laureano case, the UN Human Rights Committee concluded that Ms. Laureano had not benefited from the special measures of protection she was entitled to on account of her status, confirming the violation of the right of every child to special measures of protection, including the recognition of the child's legal personality (article 24 (1), ICCPR). In this case, the communication had been submitted by her grandfather.

3.3.c. Multiple victims and violations, but are members of the State the only possible perpetrators?

First, it is possible to identify four groups of victims:

(a) the immediate victim or disappeared person;

(b) the close relatives;

(c) children abducted or born in captivity and

(d) grandparents.

Second, concerning *fundamental* rights, there is agreement on the existence of breaches of the right to life, liberty and security, the prohibition of torture and other cruel, inhuman and degrading treatment or punishment. However, there is no agreement on fully recognizing the violation of the prohibition of torture with respect to relatives.

Third, concerning *procedural guarantees*, there is agreement on the existence of an obligation of States to implement within their domestic legal systems effective measures to turn operative those rights recognized in international documents.

Fourth, concerning *the rights of the child*, the numbers of documents that refer the situation of children imply important differences amongst States as regards ratification and implementation. Here we find from the UN Convention on the Rights of the Child adopted by Resolution 44/25 of the G.A. 1989 to the Convention on the Civil Aspects of International Child Abduction, adopted in The Hague on 25 October 1980.This turns difficult to provide a coherent set of rules. As a

consequence, the legal status of their grandparents is also disputed.

Assessing the case law we have made reference to, it is evident that the complexity that ILHR recognises with respect to victims and eventual violations of rights is not reflected as regards authors. The only exception to the principle of multiplicity that governs this crime is given by the consideration of its authorship. All the case law we made reference to imply cases in which the State appears as the direct perpetrator. In very few cases there is the presence of paramilitary forces acting with the acquiescence of the government. There is no case in which the perpetrator has been a political organisation that opposed the State. It could not be other way since the administrative and judicial bodies apply an ILHR legal framework. Consequently, the ILHR approach leaves internationally unprotected those civilian victims of acts committed by authors in the context of political organisations not affiliated to the State while the RS criminalizes their acts.

According to the ILHR approach *there is not access to international justice* for any victim whenever the crime is committed by political organisations which fight the State or against each other. Consequently, there will *not be international investigations or truth commissions neither report on the situation*. Humanity will remain ignorant of the criminal facts which would remain within the domestic jurisdiction of the concerned State. The whole international system of *prevention, protection and punishment* is flaw. Of course as we could see in the case law cited, victims could resort to States' responsibility for failing their general obligation to protect people who inhabit their territory. But a broader recognition of authorship accepting political organisations as eventual perpetrators of international human rights violations constitutes a step forward in the protection of the human being. To denounce a State for failing to comply with its general obligation of protecting rights will never mean to prosecute leaders and members of political organisations who are responsible for perpetrating criminal acts.

In brief, the consequences of persisting on a narrow concept that comes out from a consideration of a single authorship may be detrimental to the international system of justice as a whole.

3.4. Is the inconsistency important?

Up to now we have identified an inconsistency about the authorship of the crime of enforced disappearance of persons by contrasting ILHR and ICL approaches to international crimes. It spins around the recognition of political organisations as possible perpetrators of this international crime. We believe that the inconsistency goes far beyond the mere crime of enforced disappearance to tackle a bigger matter related to the acceptance of political organisations which fight the State as eventual perpetrators of gross human rights violations.

3.4.a. Why is it necessary that political organisations be recognised as perpetrators?

The State has been the traditional perpetrator of the acts of enforced disappearance. The origins of the crime go back to the Nazi regime when it tried to get rid of hostile political opponents. Thus, from the very beginning some kind of State involvement was considered as paramount when attempting to typify the offence. The ILHR framework and its case law set the initial characterisation when international NGOs assuming the defence of fundamental rights opposed the State criminal activity based on the international bill of human rights. In time, this requirement entered undisputed as a main constitutive element and persists still today. This is the ILHR perspective: '*… enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law (…)*' (UNDED, article 5); '*… forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state (…)*' (IACFD, article 2); '*… enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State (…)*' (ICED, article 2).

The criminal phenomenon started in Latin America, and it was revealed through a governmental policy planned and executed with the clear intention of 'cleansing' any political opposition: '*The phenomenon reappeared as a systematic policy of State repression during the late 1960s and early 1970s in Latin America, starting in Guatemala and Brazil*' (Economic and Social Council, 2002: 2).

Political activism against the official authorities plays a central role in deciding the perpetration of the crime in a systematic and widespread basis. Cases submitted to the UN WGED during the 80s involving Latin American authoritarian political regimes are a proof that one basic aim of the crime points to silence the political opposition. According to the UN Commission on Human Rights they all have a political factor as a *nexus causae* between the crime and the targeted victims (Economic and Social Council, 2004).

In every case, the policy planned and executed by the Latin America military juntas was the answer to revolutionary movements which tried to gain power (Calvocoressi, 2001: 786). The relationship was established between political activism and massive and gross violations. So, the mediate aim of the crime of enforced disappearance is directed to conquer or retain power.

Under circumstances of fighting for power using political violence as a means any party to the conflict may resort to the wrongful acts which characterised the crime. The commission presupposes (a) the existence of at least two antagonistic political organisations; (b) the impossibility of coexistence among them; (c) the determination to commit the crimes enforced through a policy of political cleansing. The latter is obviously concealed and could be mostly revealed through the widespread or systematic commission of the acts.

The existence of a policy is essential since no 'political cleansing' could be executed through isolated efforts of individuals who eventually happen to perpetrate the crime at their own risk. And even if it happened the acts will not be considered a crime against humanity. The RS demands the crime to be committed as part of a *widespread or systematic* attack against any civilian population to be considered a crime against humanity (article 7, paragraph 1). Thus, the recognition of a '*premeditated policy aimed at the commission of disappearances*' helps when trying to prove a systematic or widespread perpetration.

'Once the existence of a widespread or systematic practice directed to eliminate the political opposition by disappearing people and later covering and destroying the evidence has been established, it is possible by means of using circumstantial or indirect proof or both, or by pertinent logical inferences to demonstrate the disappearance of a person which other way would be impossible, by the nexus that the disappearance has with the systematic practice referred.'

In only a few cases, the judges make reference to the existence of a 'planned policy' pointed to the perpetration of the disappearances or to impede victims their access to justice afterwards. This absence of reference greatly limits the subsequent State responsibility.

As an exception, the IACHR considered that circumstantial and presumptive evidence was especially important in this crime, due to the attempt to suppress all information about the victim that characterises it. Other judgements of the IACHR lead the way to accept indirect evidence to declare the existence of a policy, such as it was stated in Velasquez Rodriguez, Godinez Cruz, Bámaca Velasquez and Massacre of Ituango.

The European system looks reluctant to recognize the existence of a policy. In Kaya the applicant maintained that Turkish authorities '*had adopted a policy of denial of breaches of the (European) Convention of Human Rights, thereby frustrating the rights of victims to effective remedies. As a consequence of this policy, allegations of unlawful killings are either not investigated at all or are processed in a biased and inadequate manner.*'

Anyhow, the ECourtHR did not find the existence of an administrative practice of the kind. In Kurt, the applicant argued that in south-east Turkey there was an officially *'policy of denial of incidents of extra-judicial killing, torture of detainees and disappearances and of a systematic refusal or failure of the prosecuting authorities to conduct investigations into victim's grievances.*' Even though the Court did not confirm the existence of a policy, Judge Pettiti in his dissenting opinion, affirmed: '*The Kurt case concerns a presumed disappearance. Under the ordinary criminal law, disappearances may involve cases of running away, false imprisonment or abduction. Under public international law, a policy of systematic political disappearances may exist, as occurred in Brazil, Chile, Argentina, etc.'.*

Few more cases run the same fate as it happened in Ergi.

In brief, a previous and deliberate plan becomes a natural element of the perpetration when the crime is considered as a massive violation of rights. The enforcement of the plan exposes the existence of an organisational criminal policy which demands to be executed in a systematic or widespread way against political enemies. This circumstance is contemplated by ICL when it takes care of massive and gross violations but under the same conditions it is basically neglected by the ILHR approach.

If we acknowledge the existence of a political driving force which underpins the perpetration, then it will be easier to accept that any of the parties to the dispute for power may commit the crime and therefore should be held responsible. Notwithstanding this fact, as we have seen neither the international legal framework nor the case law reflects the importance of the political factor in order to lead the way to the accountability of political organisations who planned and carried out policies of '*political cleansing'*.

3.4.b. Political organisations not affiliated to the State may have a policy to commit enforced disappearances

In this particular crime, victims have historically been targeted due to their shared character of political opponents of the perpetrator group which *happened* to be the State. Nowadays, the State is no more the only perpetrator in the exercise of a '*public criminal service*'. There are clandestine groups, groups of extermination and militias that fight against the State and also against each other without the involvement of the State. Any of them could commit acts of enforced disappearance. Civilian populations are at their mercy. There is no reason to forbid the civilian population to enter international justice when they become victims of criminal acts committed by people in the context of political organisations who opposed the State. And if the prohibition comes from the ILHR the solution is *less* understandable.

Considering authorship, the big difference between the State and any other political organisation lies in the legal use of force that the former is entitled to and the latter lacks. When ILHR refers to 'perpetrators' of an enforced disappearance, the legal framework is modelled thinking of an individual who takes advantage of the State machinery in order to commit the crime or a private perpetrator who acts knowing he will not be punished because he counts on the authorisation or acquiescence of the State. But when we turn to the same acts committed by any other civilian who politically opposed the government of the State, we lack the component of the legal use of the State machinery for illegal purposes.

Clandestine groups, groups of extermination and the like may monopolise force *de facto* but nevertheless their acts will always be illegal. Under this circumstance, should perpetrators be held internationally and individually responsible for their criminal acts or not? The ILHR answers on the negative since the State machine is not used and the State is not involved neither directly nor indirectly. ICL responds differently: perpetrators shall be punished. Both approaches *should* match.

3.4.c. Why is it that definitions should match?

There are four arguments for asking definitions to match. First, if we understand the RS as a codification of the most representative international crimes that come to be considered as such because they previously existed as part of international customary law, then our assumption could only be that definitions shall match.

Second, the focus of attention of each approach is the protection of the *human being* and *humanity*. In order to come to that end, they all establish rights which belong to both present subjects -former objects- of international law. Subsequently they also set up mechanisms to enforce that protection together along with international bodies which institute their own procedures to solve controversies by negotiation or adjudication. This main mission of protecting the human being and humanity allows them to propose different ways to come to the end, but *forbids* them to enter into any significant contradiction.

Third, if we conceived the international system of justice as a whole, we must recognize that human rights, humanitarian law and criminal law are only different perspectives which apart from serving special aims they all have an overarching purpose as part of that international system.

Fourth, while international tribunals start growing up both in number and quality of their decisions, contradictions between judgements start appearing. But on the other side, there is a consistent trend on behalf of international adjudicatory bodies to read, know, interpret and make use of the case law of similar bodies in analogue cases. The crossed references of the Inter American Court of Human Rights, the Inter American Commission of Human Rights and the European Court of Human Rights are a good example. This tendency is also evolving vertically: domestic tribunals make current use of decisions of international tribunals. The evolution should probably go on horizontally when international human rights tribunals and international criminal tribunals make use of precedents set up by their peers.

Thus, if we are prone to solve the inconsistency, then we should ask the ILHR approach to accept political organisations as eventual authors. But we face a problem. This apparently minor

requirement strikes directly one of the pillars of international law: the sovereignty of States principle. It is here where our paper turns from presenting an inconsistency of definitions to consider some ways to solve it and eventually the necessity of updating basic concepts of the ILHR.

3.4.d. Consequences of solving the inconsistency

Enlarging the notion of authorship would be useful to attain some basic developments that otherwise will not be produced.

First, a wider notion will enlarge international protection and widen the access to international justice. The international system of protection of the human being basically takes into consideration any victim of a breach of an ILHR document. However we have seen that to uphold a narrow approach to authorship leaves aside civilian victims of criminal acts performed by people in the context of political organisations who have no affiliation to the State machine. An inclusive notion of authorship will serve to enlarge the international scope of protection entitling those civilian victims with access to international administrative and adjudicatory mechanisms of protection which otherwise would be closed. This way the scope of victims is enlarged while the whole system gains certainty.

Second, an inclusive definition will serve to improve the trust in the international system as a whole. An effective international system shall recognize three basic steps which are *prevention*, *protection* and *punishment*. ILHR has traditionally taken care of the first and second step while IHL basically deals with protection and ICL is mainly related to the punishment of individual perpetrators. Anytime the preventive and protective mechanisms fail, justice is done through punishment. Anyhow, ICL only constitutes a kind of symbolic punishment since only very few of the gravest breaches of rights will be prosecuted before an international criminal tribunal. The incorporation into the ILHR of political organisations different than the State will improve the standards of protection since their illegal activity could be internationally outlawed. This will stand as a symbol of effectiveness and enforcement of international law and the international legal system of protection of human rights.

Third, an enlarged notion is useful to increase guarantees for civilian people. Every right which is part of the ILHR framework needs to be exercised in order to give trust to the whole system. International mechanisms constitute real guarantees when establishing proceedings by which a person may obtain redress from a breach of a right internationally recognised that could not be protected domestically. The redress may consist of civil reparation or of an order given to the political organisation to do or to abstain from doing something, leaving for ICL the eventual condemnation of the individual criminals.

Fourth, the acceptance of a wider definition will help to face global menaces like any violent political organisation –even terrorist ones- within the rule of international law. This is surely an arguable concept. Since many political organisations that fight against the State use violent methods and do not distinguish between civilian and military targets, they are to be called 'terrorist or criminal organisations' by the government against which they fight. At the international level there is still no agreement on the qualification of terrorism. As a global menace, terrorism shall be faced within the rule of international law. This may mean to make use of every approach to include it within the international proceedings, opening a subsidiary and complementary regional or international jurisdiction, what is initially forbidden for simple domestic crimes. At present the qualification of what a terrorist act is remains within each domestic legal system. Enlarging authorship will serve to bring members of these organisations which perpetrate acts of enforced disappearance to international civil and eventually criminal justice, making them accountable for their crimes and including them as actors of the international legal system.

Fifth and finally, the enlargement will facilitate the fight against international impunity. A narrow approach to authorship will leave the punishment of the individual perpetrators and the political organisation to which they belong at the discretion of the concerned State. This way, the State (a) may determine to prosecute and punish the authors within the rule of the law or *not*, depending on the kind of government that is running at the time; (b) may decide to pass amnesty laws or to concede a general pardon to pacify the situation or (c) may decide not to act institutionally, leaving each victim to start a proceeding or not depending on personal circumstances. In none of these situations, victims have an international way out since ILHR bodies will not admit any presentation in which the State is not party.

4. Results

4.a. Compounding ambiguities in the benefit of justice

The study of the international crime of enforced disappearance of persons gave us an opportunity to link the major subsystems that converge on the subject: ILHR and ICL. While their basic aim is the same, they all must respect a coherency as regards their definitions of crimes. And they do, except as far as the crime of enforced disappearance of persons is concerned. And there is a simple explanation for this. ILHR could not accept up to the present any other subject different than the State as an eventual perpetrator of international breaches. The contrary would mean to recognize that the State has given up its domestic sovereignty, together with a possible intromission of international bodies in domestic policy and maybe paving the way for the overthrown of the government. As we see reasons for denying the acceptance are extremely powerful. It is probable that ILHR keeps on its narrow approach to the crime of enforced disappearance of persons. But this situation is detrimental to the international system of human rights (namely the ILHR perspective) which tries to prevent and protect, as well as to the international criminal system (namely the ICL approach) which tries to prosecute and punish.

Holding a narrow approach, *some victims* will not be considered as such, *some political leaders* acting in the context of political organisations will not be prosecuted before international criminal tribunals while *some political organisations* will not be held responsible before international human rights tribunals.

4.b. Changes to be done

ILHR should recognize political organisations not affiliated to the state as eventual perpetrators of the crime. Apart from this, the international scheme would need some practical changes in order to be prepared. First, political organisations should be strictly defined in order to avoid ambiguities when trying to denounce the activity of any of them before an international jurisdiction. Second, regional systems should accept the allegation of political organisations as perpetrators of human rights breaches. Third, these organisations should be granted the guarantees of the due process of law in order to establish a channel of dialogue between them and the international community. Fourth, the proceedings should also try to find out the name of individuals who have taken part in the wrongful acts that are under investigation which could be useful for a subsequent criminal investigation. Fifth and finally the judgments of international human rights tribunals condemning the political organisation –and not the individual themselves – should mention the kind of reparation it ought to afford. The condemnation could be from a simple recognition of the wrongful doings to monetary reparation through an order to do or to abstain from doing something. In due time the relevant findings of the ILHR proceedings may serve to ICC or any other ICL tribunals when trying to convict individual perpetrators. The whole system of protection would gain in strength and trust matching the basics of ILHR and ICL approaches.

For the ILHR approach it is difficult to recognize any other perpetrator of human rights violations different than the State. The next step forward to the consolidation of a sustainable system of international justice will consist of the mixing of principles between the global approach of human rights and the territorial perspective of criminal law. The former will lose its narrow consideration of the State as the only possible perpetrator of human rights. The latter will have to consolidate a unique procedure which takes into account the different criminal proceedings that composed the ICL system.

4.c. Prospective

Since its inception the crime of enforced disappearance was inextricably linked to its political grounds that differentiated it from common offences of international or domestic law. The acts of enforced disappearance of persons violate a plexus of rights and freedoms and generate a plurality of victims precisely because they were originally thought to escape any formal criminal classification. In this crime the dispute for political power becomes paramount. Its commission is merely one of various means used in order to come to or retain power. The crime itself is generally linked to a historical situation that takes place in a particular region where territorial power is being disputed among two or more political factions, being the State one of them *or not*.

Compounding some ambiguities among the perspectives that have incidence upon the subject will help to start a coherent approach to the crime. If egregiousness and the systematisation of the acts are differentiating characteristics to make it become a crime against humanity, then the recognition of its political grounds turns to be fundamental to prove the existence of an

organisational criminal policy. In due time this fact will lead to accept a multiple concept of authorship that encompasses political organisations which fight the State and even against each other, making those organisations accountable before human rights tribunals and their individual members accountable before the ICC or any other international criminal tribunal.

5. Conclusion

We firmly believe that an imperative of justice demands to apply equal terms to equal situations. Individual perpetrators should be punished in case they are found guilty but the political organisations to which they belong should also be condemned by international human rights tribunals. This fact would help not only in the international fight against impunity but also to integrate them into the system of international justice in an effort to bring violent organisations within the rule of law when the domestic dialogue with local authorities is broken. In this way ILHR tribunals could also perform the mission of a broker.

In brief, we conclude that anytime the international crime of enforced disappearance of persons is committed as part of a widespread or systematic attack against a civilian population and with knowledge of the attack, there is a plan to end political opposition which openly expresses a policy of political cleansing. Therefore, with due respect to principles of subsidiarity and complementarity, members of any political organisation who perpetrate the criminal acts should be individually held accountable before an international criminal tribunal. But this solution is incomplete if the political organisations to which they belong do not go through a civil procedure and eventual condemnation before an international human rights tribunal.

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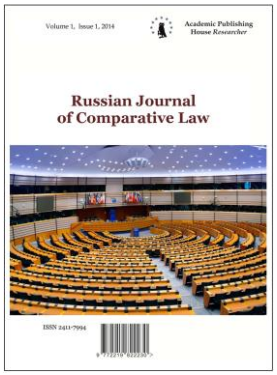

The Concept of «Tolerance»: Lingvo-Legal Rationale for the Need to Amend UN documents in English and Russian

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Abstract

The analysis of UN and UNESCO documents in Russian and English revealed the clear content contradictions of the concept of "tolerance" and its analogues. These contradictions in the English-language documents of the UN and UNESCO indicate signs of the UN superficial approach in relation to the idea of "tolerance" and its promotion as a whole. In addition the UN documents in Russian-language version do not contain a single approach to the translation of the word "tolerance" from the UN working languages into Russian. This fact creates additional difficulties for understanding the idea of tolerance by readers of UN documents in Russian, including scientists and politicians. The article shows that the effectiveness of promoting the idea of tolerance will continue to decline if the contradictions in the UN and UNESCO documents related to the concept of "tolerance" will not be eliminate. The main purpose of the article is to substantiate the amend UN documents in order to eliminate the contradictions related to the concept of "tolerance" and its foreign-language counterparts in the UN and UNESCO documents. The article contains both such substantiation and an approach to making the amendments in the UN documents as a whole and in their Russian-language versions as well.

Keywords: tolerance, basic meaning, optimal principle of the relationship, UN, UNESCO, immanent characteristics, declaration of principles of tolerance, “terpimost'”, “tolerantnost'”.

1. Introduction

Universal human rights take priority over human rights defined by the characteristics of religious, racial, gender, political, linguistic, national, territorial and other belonging that divides people into groups (hereinafter referred to as «immanent characteristics»). That is why harmony is important in relations between people with different «immanent characteristics», which is called upon to ensure by the international political and legal institute, designated in the working languages (Rules of Procedure, 1946) of the United Nations (hereinafter – the UN) by the terms «tolerance» and «la tolerance», as well as their foreign-language counterparts. The same terms are also used to denote the principle of relationships between people with various «immanent characteristics» that is optimal from the UN point of view.

The events of 2020 showed the inefficiency of the functioning of the institute "tolerance". One of the reasons for this, in our opinion, is the inconsistency of the UN documents containing the term "tolerance" and its foreign-language counterparts. This, at the very least, prevents people from being informed about the real content and significance of the idea of "tolerance".

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The main purpose of the article is to substantiate the amend UN documents in order to eliminate the contradictions related to the concept of "tolerance" and its foreign-language counterparts in the UN and UNESCO documents.

2. Materials and methods

2.1. The main sources for writing this article became the official documents of the UN and UNESO in English and in Russian, well-known events of 2020, materials of the Russian science publications.

2.2. The study used the basic methods of cognition: the problem-chronological, historical and situational, systemic, linguo-legal and the method of comparative law. Author's arguments are based on problem-chronological approach. The use of historical and situational method allows to reproduce the historical variability of the approach of the UN and UNESCO to characterizing the content of the concept of "tolerance". The linguo-legal method allows to choose the optimal Russian-language concept, corresponding in its meaning to the English-language concept of "tolerance". Method of comparative law shows the difference in the characteristics of the content of the concept of "tolerance" in the documents of the UN and UNESCO. A systematic method makes it possible to supplement the linguo and legal analysis of the concept of "tolerance" in the documents of the UN and UNESCO with elements of an intersectoral, sociological, managerial and psychological approach.

3. Discussion

A comparative analysis of the content of the Resolutions of the UN General Assembly (hereinafter – the UN GA) related to the concept of "tolerance" led to the discovery of two contradictions in the UN and UNESCO documents that need to be overcome.

3.1. The first of contradiction in the UN and UNESCO documents

This contradiction in the UN and UNESCO documents concerns their content in all six official languages of the UN. The contradiction are as follows. In the UN documents the meaning of "tolerance" is not consistent with its meaning in the UNESCO Special Declaration where the characteristic and the content of this concept as the optimal principle of the relationship between people and groups of people with different «immanent characteristics» (hereinafter – the "optimal principle of the relationship"). Consider the current situation and a typical example.

«Tolerance» as a concept, expressing the views of the UN about the "optimal principle of the relationship" included in the UN Charter from 26.06.1945, where the preamble, reads: «We the peoples of the UN determined ... to practice "tolerance" ...» (Charter, 1945). In the paragraph 6 of the special UN GA Resolution No. 48/126 of 14.02.1994 "United Nations Year for Tolerance" (hereinafter referred to as "Resolution 48/126"), it is stated that the UN GA "... Requests the United Nations Educational, Scientific and Cultural Organization to prepare, in accordance with its General Conference resolution 5.6, a declaration on tolerance" (United Nations Year, 1994). Pursuant to paragraph 6 of "Resolution 48/126", on 16 November 1995, UNESCO adopted the "Declaration of Principles of Tolerance" (hereinafter referred to as the "Declaration"), which characterizes tolerance in detail as «the optimal principle of the relationships». Paragraph 1.1 of the "Declaration" offers a definitional characterization of the concept of "tolerance". Here, in particular, it is stated that «tolerance» is «... respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human» (Declaration of Principles on Tolerance, 1995). The meaning of the concept of "tolerance" in the "Declaration" can be called the basic one (hereinafter referred to as "basic meaning"). Note that the concept of "respect" is included as an element in the "basic meaning" of "tolerance".

Also note that the meaning of "tolerance" in most UN documents differs from the «basic meaning». For example, UN GA Resolution № 69/312 of 06.07.2015 (hereinafter referred to as "Resolution 69/312") contains the text: "...encouraging tolerance, respect, dialogue and cooperation..." (United Nations Alliance, 2015). As ones can see the meaning of the concept of "tolerance" in the example does not correspond to the "basic meaning" of the concept. If we assume the opposite, then the homogeneity of such members of a sentence as "tolerance" and "respect" in this sentence is excluded. To confirm, let us replace "tolerance" in the "Resolution 69/312" with the definition of the concept of "tolerance" from the "basic meaning", followed by a rearrangement of the sentence members. As the "simulated" phrase we have the next combination of words: "...

encouraging *respect*, *respect*, acceptance, appreciation, dialogue and cooperation ...". The phraseological absurdity of the "simulated" phrase is obvious, since the noun "respect" is included twice in this phrase as homogeneous member of the sentence. The mismatch between the "basic meaning" and the "current meaning" of the concept of "tolerance" in the "Resolution 69/312" is also obvious. The mismatch between the "basic meaning" and the "current meaning" of the concept of "tolerance" in the "Resolution 69/312" is also obvious.

Note that this example is typical. So, we found more than eighty official UN documents adopted after the adoption of the "Declaration", in which the current meaning of the concept of "tolerance" does not correspond to the "basic meaning".

So far, we consider it possible to talk about the reasons for this mismatch only hypothetically. However, despite the fact that these reasons are hypothetical, they, in our opinion, might be combined into two mutually exclusive groups.

The first group of hypothetical causes is based on the «human factor». Among them are hypothetically he stereotypical thinking, bad faith and illiteracy, etc. of UN documents drafters, combined with total indifference of controlling officials to the content of documents. The existence of such reasons is supported, for example, by the fact that the old patterns of using the concept of "tolerance" in UN documents adopted before 1995 have been transferred unchanged to documents adopted after 1995. Typical is the UN GA Resolution № 36/55 of 25.11.1981 (hereinafter referred to as "Resolution 36/55"), which, in particular, states: «... Considering that it is essential to promote understanding, tolerance and respect in matters relating ...» (Declaration on the Elimination, 1981). If we compare "Resolution 36/55", adopted before 1995, and "Resolution 69/312", adopted after 1995, then the immutability of the logical patterns of using the concept of "tolerance" is obvious.

The second group of hypothetical reasons for the mismatch between the meaning of the concept of "tolerance" in the "Declaration" and the meaning of the concept of "tolerance" the UN documents adopted after 1995 is based on the "documentary-hierarchical factor". The relevant explanation of UN officials may be as follows. "Resolution 48/126", which contains the request of the UN GA to UNESCO for the development of a" Declaration", formally concerns only the year of "tolerance" in 1995 and therefore is not taken into account in the documents, adopted after 1995. The "Declaration" by itself is also not taken into account, since it is not formally a UN document. That is why the concept of "tolerance" is used in UN documents in the sense that corresponds to the "UN Charter". With the approach described, the use of such homogeneous terms as respect, acceptance, recognition, correct understanding, etc., next to the term "tolerance" in the wording of UN documents, seems absolutely appropriate. In our opinion, the hypothetical causes of this group are closer to explaining the current situation. So, even the assumption of the possibility of the existence of the first group of causes seems inappropriate, while ignoring the "basic meaning" is consistent with the formal legal approach, although, in our opinion, with some absolutization of the significance of legism.

Meanwhile, whatever the reasons, the obsolete meaning of "tolerance" in the UN documents significantly reduces the positive social potential, which could be in the case of blanket "binding" of the concept of "tolerance" in UN documents to the description and meaning of "tolerance" in "Declaration". There are also prerequisites for evaluating the UN position about the "optimal principle of the relations" as not worthy of attention, since this position contradicts the "Declaration". In addition, there is obvious damage to the idea of "tolerance" itself, as coming from a clearly inconsistent subject (UN). This makes it possible for opponents of the idea to promote other principles, including those based on tension, of relations between carriers of various «immanent characteristics».

We also may talk about an extremely low level of information support for the idea of "tolerance", limited in UN documents by a semantic "reference" only to the UN Charter. This level is much lower than the possible level with the systematic promotion of the content of "Resolution 48/126" and "Declaration". For example, in the above-mentioned "Resolution 69/312", only the UN Charter and the Universal Declaration of Human Rights are mentioned among the basic documents for modern civilization. At the same time, the "Declaration", which fully reveals the concept of "tolerance" as the "optimal principle of the relationship" between all people and all groups of people, is not mentioned. Thus, the meaning of the concept of "tolerance "in" Resolution

48/126 " in connection with the reference only to the UN Charter from the standpoint of modern knowledge is incomplete.

In general, it can be concluded that today the UN does not provide an information basis for the proper institutionalization of the optimal principle of relations described in the" Declaration", which creates obstacles to its implementation. This negative circumstance was fully manifested in the "pandemical" 2020, including in a number of countries of the "first world", as a lot of conflicts based on differences in «immanent characteristics» of people and their groups.

In our opinion, the necessary measure to correct the situation is to reflect the idea of "tolerance" in its "basic meaning" in UN documents. To do this, it would be appropriate to supplement all UN documents adopted after 1995 with a reference to the "Declaration" as an element of the system of documents about the basis of a civilized world order. At the same time, the meaning of the concept of "tolerance" in the UN documents of this period should be brought into line with the "basic meaning" of the concept. Also, taking into account that UNESCO's formal status is lower than the UN status, in order to increase the level of rating significance of the "optimal principle of the relations", it might be worth adopting a special resolution of the UN GA on the approval of the "Universal Declaration of Tolerance", based on the content of the "Declaration".

3.2. The second contradiction in the UN and UNESCO documents

This contradiction in the documents concerns the use of the concept of "tolerance" in the Russian-language versions of documents. In them as the analog of the English-language concept of "tolerance" both the concept of «tolerantnost'» and the concept of «terpimost'» are used.

It should be noted that such an ambiguity arose only with the adoption of UN GA Resolution No. 73/128 of 12.12.2018 "Enlightenment and Religious Tolerance" (hereinafter referred to as "Resolution 73/128"). So, until December 2018, that is, during the seventy-three years of the UN's existence, the term "tolerance" in the English-language versions of the UN documents corresponded to only the term «terpimost'» in the Russian-language versions. As for the "Declaration", the term “tolerance» in its English version also corresponds to the term «terpimost'» in the Russian version of the document. Thus, for the first time in the UN history in the Russian version of "Resolution 73/128", the term «tolerantnost'» was used as an Russian analogue of the English term "tolerance" (Enlightenment, 2018).

Special attention should be paid to the fact that according to "Resolution 73/128" «tolerance» («tolerantnost'») refers to the relationship of people who differ not only in religious, but also in other «immanent characteristics». Also note that in the UN documents adopted after "Resolution 73/128", the English-language "tolerance", as well as before "Resolution 73/128", corresponds to the Russian-language «terpimost'». Meanwhile, in our opinion, this fact does not affect the characterization of the substance of the second contradiction in the UN documents regarding the use of the concept of "tolerance".

Thus, the concept of "tolerance" in UN documents in English simultaneously corresponds to two different concepts in Russian. The first concept is «terpimost'»; the concept is used in many UN documents in Russian; the content of this concept is described in the Russian version of the "Declaration". The second concept is «tolerantnost'»; the concept is used in "Resolution 73/128"; the content of the concept in the Russian-language segment of UN or UNESCO documents is not characterized; the concept is extended by "Resolution 73/128" to the relationship of all persons and their groups with all kinds of «immanent characteristics».

In this regard, the community of users of UN documents in Russian as a whole raises the question of which of the two concepts – «terpimost'» or «tolerantnost'» – is more suitable for designating the English-language concept «tolerance» as the "optimal principle of the relationships". To answer the question, in our opinion, correctly proceed from the following. Regardless of the Russian-language equivalent of the English-language concept of "tolerance" used in UN documents, the content of the "optimal principle of the relationships" is described in detail in the "Declaration". In this regard, we considered it appropriate to compare some semantic elements of the Russian-language concepts of «terpimost'» and «tolerantnost'» with each other, as well as with the content of the "Declaration". In our opinion, It is that of the concepts that more closely corresponds to the content of the "Declaration", should be considered an adequate Russian-language analogue of "tolerance".

In the Russian-speaking research community, there are three groups of approaches on the relationship between tolerance and tolerance-coincidence, inclusion and difference. For example, A. P. Danilov (Danilov, 2015: 25) and E. N. Yarkova (Yarkova, 2017: 29) consider that the concepts of «terpimost'» and «tolerantnost'» coincide in meaning. I. A. Sternin, pointing out that " ... the «tolerantnost'» is the «terpimost'» ... and the respect for other people's ... beliefs ... " (Sternin, 2014), actually considers «tolerantnost'» as a composite concept that includes «terpimost'» as one of its elements. V.M. Zolotukhin consideres that «terpimost'» requires a certain measure of psychological discomfort that is not characteristic of «tolerantnost'» (Zolotukhin, 2003: 99-100) and, thus, distinguishes «terpimost'» and «tolerantnost'». So does A. Rylova, pointing out, in particular, the presence in «terpimost'» " ... non-resistance to unpleasant or unfavorable factors ... «Tolerantnost'» ... consists in approving, supporting the diversity of the world and the right to differ in the difference of people and opinions ..." (Rylova, 2015).

In our opinion, we should agree with those authors who believe that it is necessary to clearly distinguish between the Russian-language concepts of «terpimost'» and «tolerantnost'». Moreover, we consider it is possible to propose our own characteristic by which the concepts of «terpimost'» and «tolerantnost'» can be distinguished. Have been comparing religious «terpimost'» and religious «tolerantnost'», we came to the conclusion that religious «terpimost'» is based on the awareness of one's own religious superiority and this differs it from religious «tolerantnost'». (Kirillov, Sechenova, 2019: 82). We believe that it is acceptable to extrapolate this conclusion, formulated in the analysis of interreligious relations, to the relationship between the carriers of all different immanent characteristics. And therefore we consider that the characteristic feature of «terpimost'» is the awareness of the person of his superiority over the carriers of different immanent characteristics, while «tolerantnost'» excludes such superiority, since «tolerantnost'» is based on the recognition of the equal merits of the carriers of all «immanent characteristics».

Based on the above, the English-language concept of "tolerance", the content of which is described in the" Declaration", corresponds to the Russian-language concept of «tolerantnost'» and does not correspond to the concept of «terpimost'».

It should also be noted that the reference in the Russian-language versions of official UN documents to the encourage of «terpimost'» (United Nations Alliance, 2015), in our opinion, should be considered as propaganda of the superiority of carriers of the «immanent characteristics» over carriers of different «immanent characteristics». Sometimes such propaganda is explicitly prohibited by UN documents (International Convention, 1965). In Russia, such a propaganda is prohibited by article 29 of the RF Constitution (RF Constitution, 1993, 2014, 2020).

In addition, for Russia and the Russian post-imperial territories, the Russian-language concept of «terpimost'» has a negative historical connotation. This applies, for example, to the category of “religious «terpimost'»”, which for several centuries was a reflection of religious discrimination (Yakutin, Kniazev, 2010: 21).

Returning to what was said in the first part of the article, we emphasize that the concept of «terpimost'» in the current UN documents in Russian also has no relation to the "basic meaning" of the concept of «terpimost'» from the Russian version of the "Declaration". Therefore, the concept of «terpimost'» in the UN documents in Russian is identified by readers with its "traditional" content, which includes a sense of the person's superiority over the carriers of different «immanent characteristics».

Thus, of the two Russian-language analogues of the concept of "tolerance", the content of the "Declaration" corresponds to the concept of «tolerantnost'». The Russian-language concept of «terpimost'» is incorrect to combine with the English-language concept of "tolerance", since semantically the concept of «terpimost'» includes a sense of personal superiority of a person, excluding the attitude to the carrier of "otherness" as an equal. Therefore, it seems reasonable to replace the term «terpimost'» with the term «tolerantnost'» in the Russian-language versions of all UN documents.

4. Results

4.1. The obsolete meaning of "tolerance" in the UN documents significantly reduces the positive social potential, which could be in the case of blanket "binding" of the concept of "tolerance" in UN documents to the description and meaning of "tolerance" in UNESCO "Declaration of Principles of Tolerance". There are also prerequisites for evaluating the UN official

position about the "optimal principle of the relations" as not worthy of attention, since this position contradicts the "Declaration of Principles of Tolerance". In addition, there is obvious damage to the idea of "tolerance" itself. This makes it possible for opponents of the idea to promote other principles, including those based on tension, of relations between carriers of various «immanent characteristics».

4.2. We might talk about an extremely low level of information support for the idea of "tolerance", limited in UN documents by a semantic "reference" only to the UN Charter. In general, UN does not provide an information basis for the proper institutionalization of the optimal principle of relations described in the "Declaration of Principles of Tolerance", which creates obstacles to its implementation. This negative circumstance was fully manifested in the "pandemical" 2020, including in a number of countries of the "first world", as a lot of conflicts based on differences in «immanent characteristics» of people and their groups.

4.3. The necessary measure to correct the situation is to reflect the idea of "tolerance" in its "basic meaning" in UN documents. To do this, it would be appropriate to supplement all UN documents adopted after 1995 with a reference to the "Declaration" as an element of the system of documents about the basis of a civilized world order. Also since the formal status of UNESCO is lower than that of the UN, it may be worth adopting a special resolution of the UN GA on the approval of the" Universal Declaration of Tolerance", based on the content of the UNESCO "Declaration".

4.4. Of the two Russian-language analogues of the concept of "tolerance" presented in the UN and UNESCO documents, only the concept of «tolerantnost'» corresponds (does not contradict) to the content of the "Declaration". The Russian-language concept of «terpimost'», on the opposite, is incorrect to combine with the English-language concept of "tolerance", since semantically the concept of «terpimost'» includes a sense of personal superiority of a person, excluding the attitude to the carrier of "otherness" as an equal. Therefore, it seems reasonable to replace the term «terpimost'» with the term «tolerantnost'» in the Russian-language versions of all UN documents.

5. Conclusion

In studying official UN documents containing the concept of "tolerance", we have identified contradictions that, in our opinion, need to be eliminated as soon as possible. Without this, the effectiveness of the functioning of the international political and legal institution of tolerance will remain low, and the idea of tolerance will cease to be perceived as serious by the world community after a while.

The main purpose of the article was to substantiate the amend UN documents in order to eliminate the contradictions related to the concept of "tolerance" and its foreign-language counterparts in the UN and UNESCO documents. The article contains both such substantiation and an approach to making the amendments in the UN documents as a whole and in their Russian-language versions as well. Therefore, we believe that the purpose of the article has been achieved.

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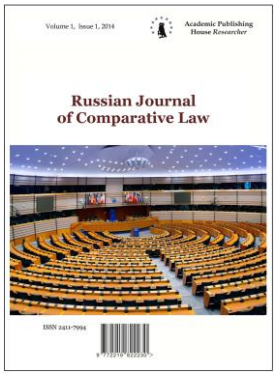

The Three Pillars of the Responsibility to Protect

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Abstract

The Responsibility to Protect principle, as shall be seen, incorporates within its framework three distinct but simultaneously related to each other phases. The objective of this paper is therefore to examine the purpose and importance of each of these phases in more details, which will thereby help us understand both the weaknesses and the potential the principle has for further development.

The said pillars are: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild, respectively. Here, I shall separately analyze the causes and tools available for the prevention of the crisis, but also less coercive and more coercive tools when the matter comes to *reacting* to the crisis. The paper will also examine *"just cause"* criteria and the *"precautionary principles"* which are necessary when dealing with the question of "when and who should intervene?", along with the 'Moderate Instrumentalist Approach' developed by James Pattison, which is important from the standpoint of understanding the effectiveness of the intervener. Further on, the work is devoted to the last phase of the Responsibility to Protect. Here, I shall primarily analyze the questions of who should undertake the rebuilding process and who has the right capacity to do that. These are the questions of the utmost importance, for if the rebuilding process is avoided or done improperly, the crisis will gain control again. And in this respect, I will argue that it is the international community in the face of the United Nations which is best fit to carry out the rebuilding process.

Keywords: responsibility to protect/R2P, ICISS Report, UN, responsibility to prevent, responsibility to react, responsibility to rebuild.

1. Introduction

Winston Churchill called it *"a crime without a name"* (Lemkin, 1946: 227). It is the crime of genocide. The end of the 20th century compelled us to feel the horrific vicissitudes of this crime more than once. This period proved to be a step toward a change in the nature of armed conflict. The result came with violent internal conflicts replacing massive inter-state wars. The horrors in Cambodia, Rwanda, Srebrenica and elsewhere demonstrate only too well the colossal failures and the disdainful behavior of the international community to prevent massive slaughters in a timely and decisive manner.

In his Millennium Report to the General Assembly in 2000, the then Secretary-General of the United Nations Kofi Annan posed the well-known question: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our

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common humanity?" (Secretary-General, 2000). From this question it becomes apparent that there are two conflicting principles: state sovereignty on the one hand, and the protection of human rights, on the other. And the question that arises further in this respect is: "Which principle should prevail when they are in conflict?" (Secretary-General, 2000).

What happened by way of response to Annan's appeal was a major breakthrough in international relations. The principle of the Responsibility to Protect was developed.

The principle was outlined in the Report provided by the International Commission on Intervention and State Sovereignty (ICISS) in December 2001. It all started with a simple question which was, if states are sovereign, how can we nonetheless protect populations? And the Responsibility to Protect came to remind us that sovereignty is a principle not to prevent populations from being protected, shielding them from international concern, but rather, sovereignty entails responsibilities, and that responsibilities are shared not only by the territory State to its population, but also international actors have a responsibility to protect as well.

This paper will argue that the Responsibility to Protect principle is neither a myth on the one hand, nor a panacea to massive slaughters, genocides and other crimes against humanity on the other, but it is just one institution which We the People, the international community can make use of for the building of a better international order. We have to admit that crimes are inherent in human nature and they have always been recurrent in human history. My proposition is based on the conviction that the Responsibility to Protect principle does not provide a silver bullet to all these crimes, and the question that needs to be answered is how we can hold these crimes within their confines and not let them proliferate like a disease, a disease which is contagious and which may ultimately lead the world to a condition hitherto unknown to mankind.

2. Materials and methodology

In the course of writing this work, both general scientific methods were used (analysis, synthesis, analogy, modeling, comparative approach, systemic method, induction and deduction methods, historical method) and private scientific methods (formal legal and comparative legal).

The general theoretical and special research base of the present work constitute the following foreign (European and American jurists) authors: Alex J. Bellamy & Stephen McLoughlin, Gregory H. Stanton, Jennifer M. Welsh and Serena K. Sharma, James Pattison, along with many others.

The empirical basis of the study is comprised of universal, regional and bilateral instruments, drafts of international organizations, and official positions (historical and contemporary) of states.

3. Discussion

A. The Responsibility to Prevent

As already illustrated, the Responsibility to Protect principle is comprised of three sub-responsibilities, the first of which is the responsibility to prevent. It is said in the ICISS Report that, "Prevention is the single most important dimension of the responsibility to protect: ...and more commitment and resources must be devoted to it" (Report..., 2001: XI). Indeed, I am also an adherent of such a proposition as the research elucidates this within a number of reasons, the two of which are particularly noteworthy.

First, prevention is preferable to the other two constituent parts of R2P in that it is far cheaper (McLoughlin, 2009: 10). As the Carnegie Commission's Report on Preventing Deadly Conflict (1997) indicates, "Prevention entails action, action entails costs, and costs demand trade-offs. The costs of prevention, however, are miniscule when compared with the costs of deadly conflict and of the rebuilding and psychological healing in its aftermath" (Commission, 1997: XLVI). The ICISS Report itself recalls the Carnegie Commission's Report, stating that during the period of 1990s the international community spent over $ 200 billion on seven major interventions, but could have saved $ 130 billion by dint of effective preventive measures (Report..., 2001: 20).

Second, prevention may save much more lives than reaction. Indeed, even the most decisive, rapid and timely undertaken military intervention cannot be as effective as prevention in terms of saving as many human lives as possible (McLoughlin, 2009: 9). In other words, preventive measures if undertaken with due consideration may not only avert the crisis from escalation but it may even produce no loss of human lives, whereas by the time of military intervention no matter in what fashion undertaken most of the losses would have already occurred. This is further supported

by the analysis concerning the Rwandan genocide. Here, it is said, that even if the international community responded in a rapid and effective way to the genocide, still at least 600,000 human beings would have been killed in any case (Stanton, 2004: 222).

In fine, for prevention to be effective, there are a number of conditions that should be satisfied. Among those are, development of early warning capacity, building and applying appropriate preventive tools, cooperation between states, international organizations, and regional organizations, and, of course, the willingness of states to actualize these conditions. Indeed, I consider the willingness of states to pose a particular importance, and I would regard it as a starting point, for if willingness is present and rightful, the fulfillment of the rest of the conditions would inevitably follow. Indeed, the practice proves the veracity of these words.

1. Developing Early Warning Capacity

Early warning is a crucial element to preventive measures since it contributes to the reduction of the risk of human rights violations. It should be emphasized, however, that so far early warning system has been rife with disadvantages and flaws, partly because it has been unstructured and inconsistent. The ICISS Report particularly indicates that, "More often than not what is lacking is not the basic data, but its analysis and translation into policy prescription, and the will to do something about it" (Report..., 2001: 21).

The actors engaged in the early warning system have been abundant, including regional organizations, embassies, non-governmental organizations, intelligence agencies, UN peacekeeping forces, the ICRC, and many others. One organization, however, plays a particularly important role in developing early warning and effective prevention capacity. It is the International Crisis Group (ICG). Here, as observed by Gareth Evans in his presentation, there are three distinct dimensions wherein the ICG poses a particular importance (Evans, 2012).

First, in terms of identifying the right policy responses, the ICG provides reports and briefings which examine challenges and opportunities for good policy in regard to all the stages of the conflict: long-term and short-term prevention, managing and settling the conflict, and post-conflict rebuilding (Evans, 2012).

Second, the ICG provides early warning through the monthly *CrisisWatch* bulletin which summarizes developments of current or potential conflicts, assesses the overall changes of the situation, warns of a particular risk of new or significantly escalated conflict, and summarizes the reports of the International Crisis Group (Evans, 2012).

And third, the ICG is in charge of suggesting new strategic and tactical avenues for intractable conflicts and crises (Evans, 2012).

Here, it is similarly important to mention the supplementary role of such organizations as the Human Rights Watch (HRW) and Amnesty International (AI), which complement the work of the International Crisis Group. More specifically, these organizations have expanded their commitments, thereby including early warning activities about conflicts and crises that have the potential of leading to genocide and other mass human rights violations (Report..., 2001 : 21).

Furthermore, the Report of the Panel on United Nations Peace Operations (2000) considers the UN headquarters to be the domain where early warning should be centralized. Particularly, it states "the need to have more effective collection and assessment at UN headquarters, including an enhanced conflict early-warning system that can detect and recognize the threat or risk of conflict or genocide" (The Report of the Panel..., 2000: 1).

Finally, the involvement of regional organizations in early warning activities should also be considered noteworthy. Regional organizations are better accustomed to the characteristics of the tensions in the region, and are thus better fit to provide timely and accurate information about the potential escalation of the conflict and crisis. This in its turn may help apply the appropriate tools and methods to avert the conflicting situation which may otherwise have resulted in mass human rights violations. For these reasons, the ICISS recommends that a substantial amount of resources should be made available to support regional conflict prevention efforts as well as improving the effectiveness of regional organizations in peacekeeping, peace enforcement and intervention operations (Report..., 2001 : 22).

2. "Root Cause" Prevention and Direct "Preventive Toolbox"

It is to be noted that crimes against humanity do not happen accidentally and they always reflect the underlying causes deeply entrenched in a particular society and taking place over a long

period of time. At this, it is pivotal to address the root causes of a conflict and thereby understand the preventive strategies and mechanisms targeted at quelling such causes from upheaval. As maintained by the former Secretary-General Kofi Annan in his *Prevention of Armed Conflict*, such 'root causes' comprise socio-economic inequities and inequalities, denial of human rights, systematic ethnic discrimination, disputes over political participation or long-standing grievances over land and other resource allocation (Annan, 2001: 7). He further mentions that a deep and careful understanding of local circumstances and traditions is therefore of great importance (Annan, 2001: 7). Similarly, the Carnegie Commission's Report indicates that, "whatever model of self-government societies ultimately choose, and whatever path they follow to that end, they must meet the three core needs of security, well-being, and justice and thereby give people a stake in non-violent efforts to improve their lives. Meeting these needs not only enables peoples to live better lives, it also reduces the potential for deadly conflict" (Commission, 1997: XXVIII). Here, it is necessary to address the three phases that may ultimately lead the situation to mass human rights violations, (as epitomized in the diagram below) (McLoughlin, 2009: 17).

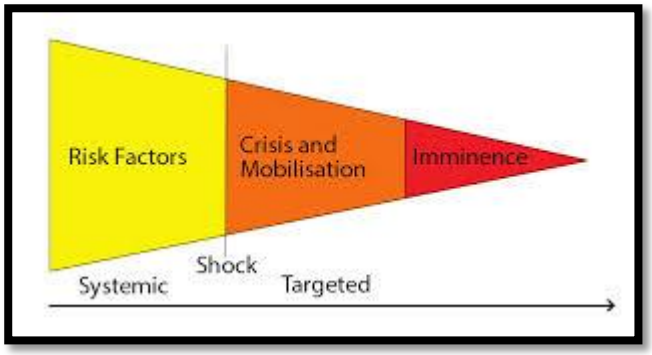

Fig. 1. Temporal view of systemic and targeted prevention)

The risk factors, as illustrating the first phase, may encompass poverty, uneven allocation of resources, cleavages between different groups of a particular society, socio-political disparity, the absence of the rule of law and weak democratic structures (Sharma, 2012: 6). It is true that such factors provide a possibility and the potential for further mass human rights violations, but it should equally be emphasized, that these risk factors alone evidently do not suffice to result in such violations. The preclusion of these factors, however, should also be noteworthy.

In the phase of crisis and mobilization, the risk factors, as mentioned in the first phase, increase the likelihood of the crisis (Sharma, 2012: 6). This may be triggered by some shock or crisis, e.g. economic, political or even natural factors, which may increase the probability of mass human rights violations (Sharma, 2012: 6). The assassination of a president or a severe economic crisis may serve as such triggering factors for further mass atrocities (Sharma, 2012: 6). Still, it is to be noticed, while this second phase escalates the tension within the society, it is not sufficient for atrocity crimes to take place. For this to happen, there should always be explicit signs of organization and mobilization, which may to a certain extent be evident in the last third phase (Sharma, 2012: 6).

During the imminent emergency, the third phase, human rights violations and increased number of violent clashes become more and more intense and stringent, and thereby indicate the possibility of mass human rights abuses to start, shall preventive measures fail to be undertaken (Sharma, 2012: 6).

The diagram above further provides two important preventive strategies in regard to the analyzed three phases. Those are systemic and targeted preventive strategies. Systemic strategies are designed to address the first phase (risk factors), and thereby develop resilience and capacity in those societies where the risk factors are most evident (Ruben Reike, 2013: 7). In contrast, the last two phases require targeted preventive strategies which pursue two aspects in this regard: first, such strategies deal with a particular society in general and not a group of a society, and second, they address a specific matter, such as the availability of weapons for potential perpetrators (Ruben Reike, 2013: 7).

Additionally, the ICISS Report itself provides a number of propositions for root cause prevention. Particularly, the Report indicates the need to strengthen the rule of law, promote civil society, promote economic growth and opportunity, provide better terms of trade and permit greater access to external markets for developing economies, and protect the independence of the judiciary (Report..., 2001 : 23).

Considering the direct preventive tools, it should be observed, that unlike the root cause preventive measures, the former may take the form of positive and negative inducements and even threats to resort to force as *ultima ratio*. More specifically, direct preventive tools may include mediation, dialogue, international appeals or promises of new funding or investment, which illustrate positive inducements (Report..., 2001: 23-25). *A contrario*, negative inducements may encompass diplomatic isolation, suspension of organization membership, "naming and shaming", travel and asset restrictions on targeted persons, withdrawal of investment, threats to withdraw IMF or World Bank support, no-fly zones or safe havens, ICC, ICTY or ICTR referrals, and other measures (Report..., 2001: 23-25).

In fine, addressing root cause prevention is much more favorable than direct prevention for two main reasons. First, root cause prevention is much easier than direct prevention since the tension has not yet risen to a critical level. And second, direct prevention has shorter time available to make a difference than root cause prevention (Report..., 2001: 23).

B. The Responsibility to React

When preventive measures produce no favorable results in precluding the crisis and the territory state is unwilling or unable to redress the critical situation, the international community may exercise interventionary (*reactive*) measures to rectify the situation, which as such contain coercive measures. These measures include political/diplomatic, economic, judicial, and military measures, with the latter operating as *ultima ratio*, that is exercisable only in extreme cases, as a last resort. Indeed, the 2005 World Summit Outcome Document itself acknowledges the vital importance of the responsibility to react in its paragraph 139. More specifically, the Document reads, "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should the peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (G.A. Res. 60/1, 2005 : 30). When the matter comes to the responsibility to react, it should be emphasized, that less coercive measures should be applied first, and only when the latter ones give no result, should more coercive and intrusive measures be applied (Report..., 2001: 29). Furthermore, the threshold for less coercive measures is set lower, whereas for military intervention to take place the threshold must be higher. This higher threshold becomes evident when we start to deal with the just cause criteria and the precautionary principles, as encapsulated in the ICISS Report (Report..., 2001: 29).

1. Measures Other Than Military Intervention

Measures other than military intervention are more preferable than military intervention itself, since the latter actually displaces the domestic authority of the territory state for a period of time and thereby exercises the intervention for human rights protection purposes. For these reasons, the ICISS Report provides alternative sanctions in a number of areas, particularly, military, economic, and political areas (Report..., 2001: 29-30).

In the framework of military sanctions, the ICISS mentions arms embargoes, ending military cooperation and training programs, which may induce the perpetrator to comply with international norms and thus ensure human rights protection in its territory (Report..., 2001: 30).

In the economic area, the Commission provides financial sanctions, restrictions on income generating activities (such as, oil and drugs), restrictions on access to petroleum products, and aviation bans (Report..., 2001: 30). The Report, however, stresses that blanket economic sanctions have been discredited for they tend to have great disproportionate impact on the civilian population and may thus exacerbate the critical situation even further (Report..., 2001: 29).

And finally, in the political and diplomatic area, the ICISS Report provides the following sanctions: restrictions on diplomatic representation, restrictions on travel, suspension of membership or expulsion from international or regional bodies, and refusal to admit a country to a membership of a body (Report..., 2001: 30-31).

The Report above all else also emphasizes that sanctions targeted at leadership groups and security organizations which are in charge of mass human rights abuses, now pose increasing importance as alternative to general sanctions (Report..., 2001: 29-30).

2. The Question of Intervention

When less coercive measures, as analyzed above, do not succeed to stave off the humanitarian crisis, military intervention may come into play, provided that the necessary requirements are satisfied. Military intervention is undoubtedly the part of the Responsibility to Protect principle subject to most discussion, and which thus opens the gates for acrimonious debates. As the ICISS Report makes it clear, the starting point in this respect should be the principle of non-intervention from which any departure has to be justified (Report..., 2001: 31). Indeed, the principle of non-intervention serves as a platform whereby states are encouraged to solve their own internal problems and prevent these problems from transforming into a threat to international peace and security. Nonetheless, there may be exceptional circumstances wherein such internal problems may destabilize the international order and the need to react to these situations by the international community of states through military actions will be considered. Interestingly, the ICISS notes that even in states which strongly support the principle of non-intervention and reject any infringement on state sovereignty, there appears to be 'general acceptance that there must be limited exceptions to the non-intervention rule for certain kinds of emergencies' (Report..., 2001: 31). The Commission then goes further to indicate that, 'these exceptional circumstances must be cases of violence which so genuinely "shock the conscience of mankind," or which present such a clear and present danger to international security, that they require coercive military intervention' (Report..., 2001: 31).

What is to be analyzed thereinafter in this regard are the just cause criteria and the precautionary principles which the Commission deems necessary when addressing the decision to exercise military intervention.

3. The "Just Cause" and "Precautionary Principles"

The "just cause" element examines the level of harm sufficient for military intervention to take place. The ICISS is of opinion that for such an intervention to be warranted and thereby override the principle of non-intervention, 'there must be serious and irreparable harm occurring to human beings, or imminently likely to occur' (Report..., 2001: 32). The Commission further provides two sets of exceptional circumstances where such a harm takes place and wherein military intervention for human rights protection purposes is to be justified. Those are *large scale loss of life* or *large scale "ethnic cleansing"* (Report..., 2001: 32). The existence of either or both of these conditions is sufficient for the "just cause" element to be satisfied.

The ICISS Report further analyzes what is included in and excluded from the scope of the two exceptional circumstances. More specifically, these conditions include: 1) actions, as enshrined in the 1948 Genocide Convention, 2) the threat or occurrence of large scale loss of life, whether the product of genocidal intent or not, and whether or not involving state action, 3) crimes against humanity and violations of the laws of war, as defined in the Geneva Conventions (GCs) and Additional Protocols (APs) and elsewhere, which involve large scale killing or ethnic cleansing, 4) different manifestations of "ethnic cleansing" (e.g. systematic killing of members of a particular group, systematic physical removal of such members, acts of terror, systematic rape), 5) situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war, 6) and, overwhelming natural or environmental catastrophes resulting in the threat or occurrence of significant loss of life (Report..., 2001: 33). Here, it is also important to recall that the 2005 World Summit Outcome Document limited the threshold for the "just cause" to four international crimes which are genocide, war crimes, ethnic cleansing, and crimes against humanity. And despite such a restriction, we have to admit that the Outcome Document makes the "just cause" element more precisely defined (G.A. Res. 60/1, 2005: 30).

Finally, the Commission's Report provides situations which are excluded from the scope of the two exceptional circumstances. Particularly, those are: 1) human rights violations falling short

of outright killing or ethnic cleansing (e.g. systematic racial discrimination or systematic imprisonment), 2) situations where a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over, 3) the use of force by a state to rescue its own nationals on foreign territory, and the use of force in response to a terrorist attack on a state's territory and citizens (Report..., 2001: 34).

Apart from the "just cause" requirement which addresses the type and level of harm, the ICISS Report also provides a number of precautionary principles for military intervention to be justified and which are worth our attention. Among those principles are: 1) right authority, 2) right intention, 3) last resort, 4) proportional means, 5) and reasonable prospects (Report..., 2001: 32).

Right authority principle deals with the question as to who has the proper capacity and resources to exercise military intervention. It is to be emphasized, that the UN Security Council is seen as the most appropriate body in this respect. Indeed, its authority flows both from the UN Charter and all of the Reports analyzed so far. But the question that is of huge concern here is, what if the Security Council fails to act (e.g. because of the veto power of the P5) and respond to mass human rights violations. Are there other alternative institutions to address the question of military intervention should the Security Council stand by? The ICISS and the Report of the Secretary-General on Implementing the Responsibility to Protect provide an opportunity for the General Assembly to actually address this question pursuant to its "Uniting for Peace" procedures (Report..., 2001: 53). More specifically, if the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly may make a decision which, 'if supported by an overwhelming majority of member states, would provide a high degree of legitimacy for an intervention which subsequently took place, and encourage the Security Council to rethink its position' (Report..., 2001: 53). In addition, regional organizations may also undertake military intervention, however, again through the Security Council authorization (Report..., 2001: 53-54). The question becomes more complicated when a regional organization intervenes in the territory of a non-member state, as it indeed happened in the practice of NATO in regard to the intervention in Kosovo (Report..., 2001: 53-54).

NATO argued, however, in support of its actions that if the intervention had not taken place the conflict in Kosovo could have spilled over the territories of NATO members thereby causing severe disruption (Report..., 2001: 53-54).

For the principle of right intention to be satisfied, the primary purpose of the intervener, irrespective of other motives, must be to halt or avert mass human rights violations. For this to happen, it is better to have multilateral intervention, as opposed to a unilateral one (Report..., 2001: 35-36).

The principle of last resort requires that every possible non-military measure (along with positive and negative inducements) should be undertaken before coercive military use of force is applied (Report..., 2001: 36-37).

The requirement of proportional means implies that the scale, duration and intensity of the planned military intervention be the minimum necessary to secure the human rights protection objective (Report..., 2001: 37).

And finally, the principle of reasonable prospects requires the military intervention to have a reasonable chance for success. As the Commission's Report makes it clear, 'military intervention is not justified if actual protection cannot be achieved, or if the consequences of embarking upon the intervention are likely to be worse than if there is no action at all' (Report..., 2001: 37).

In fine, it should be acknowledged that in case both the "just cause" threshold and the precautionary principles are met, the decision to intervene will be justified. Nonetheless, here it is similarly noteworthy to notice that even if some of these requirements are not satisfied, the intervention may still be justified, at least considered legitimate, as shall be demonstrated further in this work.

4. The Moderate Instrumentalist Approach

The Moderate Instrumentalist Approach, as developed by James Pattison, tackles the question of effectiveness of the intervener (Pattison, 2010: 69). Indeed, the most important factor to be considered is not whether the intervener has the UN Security Council authorization, but rather the effectiveness of the intervener which justifies its legitimacy (Pattison, 2010: 69). To illustrate this approach, we need to break down effectiveness into three types: *'local external effectiveness'* (I), *'global external effectiveness'* (II), and, *'internal effectiveness'* (III) (Pattison, 2010: 74).

For local external effectiveness to be present, the intervener must promote the enjoyment of human rights of those in the political community that is subject to its intervention (Pattison, 2010: 74). Thus, for instance, if the intervener exercises military intervention in a particular state, then it is necessary that the aggrieved population of that state would benefit from the intervention (Pattison, 2010: 75). On the contrary, if military intervention exacerbates the situation of the population, the intervener would be locally externally ineffective, and thus considered illegitimate (Pattison, 2010: 75).

Global external effectiveness requires the intervener to promote the enjoyment of human rights in the world as a whole (Pattison, 2010: 76). In the meantime, this type of effectiveness excludes double enjoyment of human rights by those that fall under local external effectiveness and internal effectiveness (Pattison, 2010: 76). In other words, global external effectiveness promotes the enjoyment of human rights in the world at large, except for the intervener's citizens and those that are directly subject to its intervention (Pattison, 2010: 76). Global external effectiveness should not be undermined for it can ultimately have serious ramifications for the international political landscape. This may be the case when military intervention results in a mass refugee flow. Despite the fact, that intervention may at some point help the victimized population of the target state ('local external effectiveness'), it may nonetheless lead to a large refugee flow and thereby harm the enjoyment of human rights in the neighboring states as well (Pattison, 2010: 76). Interestingly, as one may reminisce here, this type of effectiveness is largely in harmony with the Utilitarian War theory, which propagated the idea of *'the greatest happiness for the greatest number'*. Similarly, global external effectiveness is partly also tackled with promoting or at least not harming the enjoyment of human rights in the world as a whole.

Finally, the third type of effectiveness, which is internal effectiveness, requires that intervention be undertaken in such a manner so as to promote, or at least not to harm, the intervener's own citizens' enjoyment of human rights (Pattison, 2010: 77). It can be observed, that internal effectiveness poses less importance than the latter two ones, nonetheless, it should similarly be complied with for intervention to be effective overall (Pattison, 2010: 77).

It is to be emphasized, that all three types of effectiveness should operate together, since the absence of even one type, regardless of its importance over the rest, may render the intervener ineffective and, thereby, illegitimate.

5. The Responsibility to React in Practice

It would certainly be remiss not to introduce the practical application of the responsibility to react, for one reason because in practice it may have different manifestations subject to various interpretations. It is important to analyze a number of practical situations in order to understand how the responsibility to react actually works. It will be observed that in practice the responsibility to react may not be in full concordance with the requirements provided in the ICISS and other reports, more specifically, it may lack the Security Council authorization when the mater comes to military intervention, but it may still at some point be considered legitimate. What follows are practical examples wherein different *reactive* measures have been employed in different situations.

Kosovo

The end of the 1990s triggered intense conflicts between different ethnic groups within the former Federal Republic of Yugoslavia (FRY), which afterward escalated into civil war, thereby resulting in mass human rights violations across the region (Calic, 2000: 19). This compelled the Security Council, after failing to prevent human rights abuses in the Balkan states, to pass a number of consecutive enforcement resolutions to address the situation in Kosovo which posed a threat to international peace and security, pursuant to Chapter VII of the UN Charter (More specifically, S.C. Res. 1160, UN Doc. S/Res/1160, Mar. 31, 1998, (imposing an arms embargo); S.C. Res. 1199, UN Doc. S/Res./1199, Sept. 23, 1998, (calling for a ceasefire); S.C. Res. 1203, UN. Doc. S/Res./1203, Oct. 24, 1998, (calling for cooperation with OSCE and NATO verification missions)).

Apart from these enforcement resolutions, the Security Council's indecision to take more coercive measures to avert the atrocities in Kosovo induced the NATO states to exercise intervention for human rights protection purposes instead. More specifically, the NATO states were considering an air bombing campaign against the Serbian forces that were in charge of mass human rights violations, with the United States maintaining that NATO independently possessed

the legitimate use of force, with no need to secure authorization from the Security Council (Judah, 2000: 121). Later on, when all possible less coercive measures (particularly, diplomatic) were exhausted, with no positive results, the NATO states actualized the considered bombing campaign in Kosovo (Thakur, 2000: 4). What happened further was Russia's and China's severe condemnation of NATO actions, particularly qualifying these actions as a 'flagrant violation of the United Nations Charter' through a draft resolution submitted to the Security Council by the Russian government (S.C. Res. 328, 1999). The resolution was, nonetheless, further defeated by twelve votes to three, with only Russia, China and Namibia voting for it (SC/6659, 1999).

What is even more, when NATO's bombing campaign came to an end, the United Nations created the Independent International Commission on Kosovo (IICK) to investigate the intervention in the region (Kosovo, 2000). Upon completion of its work, the Commission stated that the NATO military intervention was "illegal but legitimate. It was illegal because it did not receive prior approval from the United Nations Security Council. However, the Commission considers that the intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule" (Kosovo, 2000).

Kenya

In 2007, Kenya experienced ethnic violence caused by a disputed presidential election (Williamson, 2013: 15). The announcement of the results of the election led to widespread and systematic violence with 1,200 people killed and more than 600,000 internally displaced (Williamson, 2013: 15). Due to emergency mediation undertaken by the former UN Secretary-General Kofi Annan under African Union (AU) auspices, a potentially larger humanitarian catastrophe was averted (Williamson, 2013: 15). These well-timed diplomatic efforts led to the signing of a power-sharing agreement on 28 February, 2008 (Williamson, 2013: 15). The agreement established, *inter alia*, three commissions—the Commission of Inquiry on Post-Election Violence (CIPEV), the Truth, Justice and Reconciliation Commission, and the Independent Review Commission on the General Elections (Williamson, 2013: 15). And it was exactly due to these commissions, along with the United Nations, and African and European diplomats, that further political events that took place in Kenya, particularly the adoption of the new Constitution in 2010 and presidential elections in 2013, were largely accompanied with no violations (Williamson, 2013: 15).

This rapid and coordinated reaction to the situation in Kenya by the international community was praised as a "model of diplomatic action under the Responsibility to Protect" (Williamson, 2013: 15).

Libya

In early 2011, an intense conflict was triggered as the opposition protests challenged the legitimacy of Muammar Qaddafi's regime in Libya (Hehir, 2013: 1-11). The conflict quickly spread across the region as General Qaddafi urged his forces to fight to the 'last drop of blood', and with dozens of demonstrators killed as a result of such violent clashes (Hehir, 2013: 1-11). In response to these atrocities, the Security Council passed Resolution 1973 to authorize a no-fly zone and undertake 'all necessary measures' to protect the suffering population (S.C. Res. 1973, UN Doc. S/Res/1973, Mar. 17, 2011. Russia and China abstained from voting on the resolution. Press Release, Security Council, Security Council Approves "No-Fly Zone" over Libya, Authorizing "All Necessary Measures" to Protect Civilians, by vote of 10 in favor with 5 abstentions, UN Press Release SC/10200, Mar. 17, 2011).

It then followed the NATO's military intervention through airstrikes, exercised by the United States, the UK, and France (Kirkpatrick, 2011). In addition to this, the International Criminal Court (ICC) issued a warrant for the arrest of Qaddafi and his son (Williamson, 2013: 16). In support of the NATO actions, the United States State Department Legal Advisor Harold Koh stated before the American Society of International Law in Washington D.C., that Qaddafi's "illegitimate use of force not only is causing the deaths of substantial numbers of civilians among his own people, but also is forcing many others to flee to neighboring countries, thereby destabilizing the peace and security of the region. Qaddafi has forfeited his responsibility to protect his own citizens and created a serious need for immediate humanitarian assistance and protection, with any further delay only putting more civilians at risk" (Harold Koh, 2011). Moreover, upon completion of the NATO's intervention and its ultimate triumph over Qaddafi's regime, the International Commission of Inquiry on Libya

concluded in its Report that NATO "conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties" (Report of the International Commission..., 2012).

Nonetheless, Russia and China again severely confronted the NATO's actions in Libya, stating that NATO's intervention was a pretext for Libyan regime change, and that they could merely limit Qaddafi's military operations instead (Tisdell, 2011). NATO's defenders, on the contrary, argued that it was impossible to restore stability in the region without Qaddafi's removal from power.

C. The Responsibility to Rebuild

The Responsibility to Protect principle, among *preventive* and *reactive* measures, also includes rebuilding processes, which, as the ICISS Report makes it clear, are supposed 'to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert' (Report, 2001 : XI). These rebuilding processes may imply that the intervener, after accomplishing its military intervention, should continue its physical presence in the territory state to implement peacebuilding and rehabilitating operations. But above all else, there need to be sufficient funds and appropriate resources and cooperation with local people for these rebuilding processes to be effective (Report..., 2001: 39).

It is true that the responsibility to rebuild has been insufficiently recognized and less discussed than the first two pillars of the Responsibility to Protect, but it should equally be emphasized that its analysis and development is of paramount importance, for one significant reason that its avoidance may bring mass atrocities back again. For these reasons, I shall, first, address the areas where the responsibility to rebuild is most needed, and then tackle the question of who shall or who has the right capacity to undertake these rebuilding operations.

1. Objectives of the Responsibility to Rebuild

In his 1998 Report on *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, the former Secretary-General of the United Nations indicates that, "the crucial underlying need in post-conflict peace-building situations is the security of ordinary people, in the form of real peace and access to basic social facilities. In pursuing these peace-building objectives, a number of requirements are clear. First, time is of the essence. Second, a multifaceted approach, covering diplomatic, political and economic factors, must be adopted. Third, the effort must be adequately financed. Fourth, there must be high-level strategic and administrative coordination among the many actors" (Secretary-General R. o., 1998: 64). Thus, a well-timed approach with a multilateral effort and appropriate resources is indispensable to an effective rebuilding process.

The Report then goes further to illustrate the priorities of post-conflict peace-building. More specifically, it mentions that, "societies that have emerged from conflict have special needs. To avoid a return to conflict while laying a solid foundation for development, emphasis must be placed on critical priorities such as encouraging reconciliation and demonstrating respect for human rights; fostering political inclusiveness and promoting national unity; ensuring the safe, smooth and early repatriation and resettlement of refugees and displaced persons; reintegrating ex-combatants and others into productive society; curtailing the availability of small arms; and mobilizing the domestic and international resources for reconstruction and economic recovery. Every priority is linked to every other, and success will require a concerted and coordinated effort on all fronts" (Secretary-General R. o., 1998: 66). A similar approach is suggested in Chapter XII of the UN Charter, Article 76 of which notes that the basic objectives of the system is to promote the political, economic, social, and educational advancement of the people of the territory state, to encourage respect for human rights and for fundamental freedoms, to ensure equal treatment in social, economic, and commercial matters for all the nationals of the UN member states, and also ensure equal treatment in the administration of justice (Charter: art. 76).

The ICISS Report is more specific on this matter and provides three most crucial areas that the intervener has the responsibility to rebuild: security (I), justice (II), and economic development (III) (Report..., 2001: 40).

Within the security area, it is essential that the intervener provides basic security and protection for the entire population of the territory state, regardless of their ethnic origin or relation to the previous source of power in the territory (Report, 2001: 40-41). Furthermore, the

Commission considers the need that the intervener shall address such issues as *disarmament, demobilization and reintegration* of local security forces, and also have an *exit strategy* for the intervening troops themselves (Report..., 2001 : 41).

The justice area most of all needs a properly functioning judicial system, with both the courts and police (Report..., 2001: 41). Otherwise, it would be impossible for the intervening force to bring the violators to justice, thereby rendering the whole operation ineffective. For these reasons, a number of non-governmental bodies have developed "justice packages" which include, *inter alia*, a standard model penal code, thereby allowing the intervener to detain persons responsible for mass human rights violations (Report..., 2001: 42). Also, an important question to be dealt with concerns the *legal rights of returnees*, who, upon return, have largely suffered because of an inadequate protection of property rights (Report..., 2001: 42). Here, the ICISS stresses the need to provide a sizeable amount of new housing stock throughout the country and donor funded projects to alleviate the needs of returnees (Report..., 2001 : 42).

And finally, economic development implies, among other things, the recreation of markets and ensuring sustainable development (Report..., 2001: 42-43). As the Report emphasizes, 'economic growth not only has law and order implications but is vital to the overall recovery of the country concerned' (Report of the International Commission..., 2001: 42).

2. "You Broke It, You Own It" Thesis

"You broke it, you own it" thesis is said to derive from the speech by the former U.S. Secretary of State Colin Powell addressed to President George W. Bush, concerning the consequences of the United States military action in Iraq (Woodward, 2004: 150). According to the proponents of this thesis, the one who intervenes takes the responsibility to rebuild and reconstruct the harm caused by the military intervention. In other words, the duty to bear the whole rebuilding process is imposed solely on the agent who exercised military intervention for human rights protection purposes. What is even more, the adherents of this thesis maintain the idea that the one who intervenes bears the duty to rebuild in order for the entire intervention to be considered morally justified (Pattison, 2013: 2).

Nonetheless, there are a number of drawbacks inherent in the "you broke it, you own it" thesis that are worth pointing out. First, the thesis implies a unilateral action, which is fraught with certain risks. It may well be said, that just as the responsibility to intervene should be carried out with a multilateral effort, the duty to rebuild should also be discharged multilaterally. This is for the reason, that unilateral actions may seek to impose a state's personal objectives and there is a danger of turning the aggrieved situation of the state into a neocolonialism. If so, this may ultimately render the whole operation, the whole principle of the Responsibility to Protect, ineffective, illegitimate and unjust.

Second, as James Pattison illustrates in his work, it seems to be unfair that when an intervener undertakes a just military action to save the lives of others and avert further mass atrocities, to bear the entire costs of the rebuilding process alone (Pattison, 2013: 4). The situation becomes even more unfair if one has to observe it from the standpoint of global external effectiveness (as analyzed above). That is to say, if the intervener undertakes a military action, and thereby averts the humanitarian catastrophe in the territory state, but also promotes the enjoyment of human rights and precludes the catastrophe from spilling across the neighboring states, this may be morally unfair for the intervener to perform the rebuilding operation all by itself.

Third, the intervener, particularly after long-lasting military actions, may run short of further appropriate resources to carry out its duty to rebuild. Such a situation may call for external assistance to supplement the responsibility to rebuild. Nonetheless, such assistance may be lacking and may thus again render the whole operation ineffective and illegitimate.

3. The Collective Duty to Rebuild

It will be argued here that it is the international community in the face of the United Nations which is best fit to undertake the rebuilding process. Indeed, just as the responsibility to react seems to be more appropriate and just when it is exercised by the United Nations, the responsibility to rebuild should equally be carried out by this organization. To illustrate its legitimacy and appropriateness, a number of factors come into play.

First, the United Nations is comprised of both culturally and historically diverse nations and may thus cope with the duty to rebuild more comprehensively and impartially (Pattison, 2013: 24).

It may also be recalled that regional organizations tend to be better accustomed to the region and are thus better fit to perform the rebuilding operation. Nonetheless, it should equally be recalled that the likelihood of partiality with the risk of imposing personal objectives and interests and turning the situation into a neocolonialism, significantly undermines the legitimacy and appropriateness of regional organizations (Welsh, 2009: 136).

Second, the United Nations performs the rebuilding process with a multilateral effort which is crucial to the element of right intention.

And third, the United Nations possesses more appropriate resources to rebuild.

Above all else, the United Nations has a number of peacekeeping institutions designed for rehabilitating operations. Thus, the Peacebuilding Commission (PBC), as established in 2005 by the UN General Assembly and Security Council resolutions, deals with post-conflict peace building, rehabilitating and development issues (United Nations General Assembly, 2007). Although the Commission does this mainly through recommendations, its role is vital in coordinating the relevant actors in the exercise of their duty to rebuild.

4. Results

The responsibility to prevent has without doubt serious effects on the condition of a conflict. It is important in terms of building a strong early warning capacity and addressing root cause and direct cause preventive measures. But more importantly, we should acknowledge that the responsibility to prevent provides an opportunity to save more human lives and dispense with costly resources. At this, I would say that the further status of the conflict is conditional, for if the responsibility to prevent is undertaken with due consideration, the conflict shall not intensify. However, if it is not undertaken properly the situation may aggravate, thereby leading to the second pillar of the Responsibility to Protect principle, which is the responsibility to react.

The second pillar, the responsibility to react, poses a particular importance in addressing mass human rights violations, when all the measures provided in the framework of the responsibility to prevent have failed. It is particularly important in terms of military intervention, which operates as a last resort, when less coercive measures have exhausted, and where most debates happen to take place. This second pillar of R2P teaches us how crucial it may be to take well-timed, rapid and decisive reactive measures to challenge a humanitarian catastrophe, but it also signifies the importance of the appropriate intervener itself. As analyzed within the Moderate Instrumentalist Approach, the intervener has far more duties to comply with to be considered effective and legitimate, as its effectiveness is by far not limited to the Security Council authorization. Particularly, it should not only save the victimized population of the state subject to its immediate intervention, but it should also promote or at least not harm the enjoyment of human rights of its own citizens and in the world as a whole.

Furthermore, the practical examples, as discussed above, demonstrate that military intervention may in some cases not completely conform to the requirements contained in the ICISS Report and elsewhere. However, interestingly, although not surprisingly, such interventions may still be considered legitimate, since they may avert potentially larger atrocities, as it indeed happened in Kosovo and Libya. Nonetheless, it is to be emphasized, that such interventions require a special approach, for they may serve a dangerous precedent for future interventions with wrongful intentions.

Also, it is noteworthy to recall two important issues (lessons) on this matter. First, for the responsibility to react to be more effective and sometimes decisive, regional and subregional organizations should also be engaged in the process (Williamson, 2013: 19). This was the case in Kenya, where the cooperation with the African Union proved its effectiveness in averting a potentially larger humanitarian catastrophe. Indeed, cooperating with regional organizations may sometimes be crucial to resolving the conflict. This is so because regional organizations are more accustomed to the situation in the region and may thus provide a well-timed response to any conflict that may lead to larger mass human rights violations. And second, accountability, which is another important contributive factor to deterring the commission of mass atrocities, may reduce the likelihood of future humanitarian catastrophes if a perpetrator is successfully prosecuted (Williamson, 2013: 19).

Lastly, regarding the third pillar, the responsibility to rebuild, it is to be recalled that history has witnessed numerous cases whereby coercive military actions are properly exercised but because of the absence of further rehabilitating operations, a new wave of mass atrocities takes over the situation again. Most of all this happens because of superficial attitude of states toward the consequences produced by their military actions, but it also happens because of the lack of strong normative regulations of the responsibility to rebuild. It is therefore important to thoroughly elaborate practical mechanisms and institutions, the scope of which would include even more functions than providing mere recommendations.

Furthermore, it is similarly important for the United Nations to take the leading role in the responsibility to rebuild, since it is more culturally and historically sensitive, more neutral, and operates with a multilateral effort and has more appropriate resources for the rebuilding process than any other organization.

5. Conclusion

As can be seen, it was not until the 2001 ICISS Report, that the Responsibility to Protect principle came to us in a reshaped and retooled fashion. The Report introduced the underlying tenets of the principle with its interrelation between other well-established principles of international law. But above all else, the Report also introduced the Three Pillars of the Responsibility to Protect, along with the "just cause" criteria and the precautionary principles, necessary to establish when addressing the question of military intervention. The principle was further endorsed in the ensuing documents adopted by the UN General Assembly, which although have significantly influenced and changed the content of the principle, nonetheless agree on the ultimate purpose of the principle, that there is a residual responsibility which rests with the international community to act for human rights protection purposes, should the territory state manifestly fail to comply with its primary responsibilities. Interestingly, the principle has also been endorsed in the UN Security Council Resolution 1674, which signifies the ever-growing need and importance of the Responsibility to Protect.

Despite the fact that the Responsibility to Protect principle has withstood harsh criticism, and despite the fact that it has so far not been agreed upon in a single treaty and has yet not elevated to the status of customary international law, it nonetheless bears substantial legal implications in the international legal order and states are therefore barred from bypassing the principle arbitrarily.

Indeed, as practice demonstrates, the Responsibility to Protect principle with all its drawbacks and inconsistencies, still proves to be pivotal in averting serious humanitarian catastrophes and saving as many human lives as possible. One may, however, quite contrarily argue, that practice similarly demonstrates the disastrous failures and the shameful indifference of the international community toward mass killings in different states. The reason for this lies primarily in the gap that exists between legality and legitimacy. But as long as mankind has not created a better and a more effective mechanism for international protective system, the Responsibility to Protect seems to be the exact principle to fill in this gap and put an end to such failures and disdainful behavior once and for all, thereby making a better and a more palatable international order.

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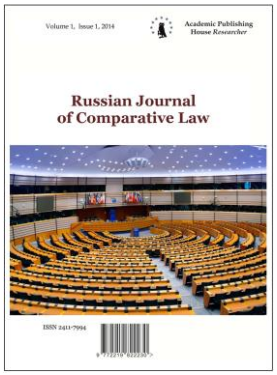

More Rights Without Law? Comparing the Models of Youth Empowerment in Russia, Finland, Norway and Sweden

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Abstract

This review focuses on models of youth empowerment in Russia and in three selected Nordic states. Of the four states under consideration, only Finland has a youth-specific national law, i.e., 2016 Youth Act. Norway and Sweden generally pursue a youth-oriented policy based on the provisions of other laws, meaning that all public activities concerning young people should be assessed with the view of mainstreaming rights of young people. Russian legislation does not currently allow for decision-making to necessarily check if these decisions will match youth rights and interests. The article is based on scrutinizing sources of law, scholarly writings, and the results of the survey of student opinion, conducted during the implementation of the project on the social inclusion of youth.

Keywords: youth rights, public participation, empowerment, inclusion, youth perspective.

1. Introduction

This study surveys legal approaches to youth empowerment and participation in Russia and in three Nordic states, Finland, Sweden and Norway. The Nordic states exemplify jurisdictions where young and especially female citizens assume key positions in the government, e.g. Sanna Marin of Finland (Nurmi, Nurmi, 2019: 74). In these jurisdictions, problems related to youth political participation reflect the *ad hoc* nature of youth participation, i.e. negotiating with young people does not follow a transparent and consistent procedure.

Moreover, the need for supporting opportunities for young people to engage in social life is important, since younger people frequently relocate from rural areas in search of education and jobs, finding themselves lonely, in an unfamiliar environment. Probably, the situation in Greenland, the Faroe Islands, and the Åland Islands differs from that of the rest of the Nordic states jurisdictions, since, with the exception of their capitals, they cannot be considered as typical urban environments with an active political culture. Yet, the issue of youth migration is relevant for these areas. In Greenland, young people migrate to the capital Nuuk or abroad to get an education (Bouckaert et al., 2017: 154). In the Faroe Islands, the emigration of particularly young females is seen as a problem (Nolsøe, 2017). In the Åland Islands, the emigration of young Ålanders is mitigated by intensified immigration from Finland, Sweden, and other states to the Islands (Spiliopoulou Åkemark et al., 2019: 3). The problems of youth marginalization remain serious due to the fact that the rural areas are sparsely populated and distances between towns and regions are considerable.

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Scholarly findings, nevertheless, suggest that even in the Nordic states, a systematic analysis of the evidence-based impact of youth empowerment is currently lacking (Knudtzon, Tjerbo, 2009). Although there are studies and projects conducted in the Nordic states on youth inclusion (see e.g. the study on youth democratic participation, and influence in Norway (Fauske et al., 2009); the study of local channels of influence for youth conducted in Norway, (Knudtzon, Tjerbo, 2009); the CAGE Nordic collaborative project on migrant youth integration through labour in the Nordic states (Gauffin, Lyytinen, 2017); the study of youth participation in legislative process (Heiskanen, Meriläinen, 2018); the ALL-YOUTH study exploring the obstacles that hamper youth engagement with society (ALL-YOUTH, 2018) or the study by the consortium of Åbo Akademi University and the University of Gävle on Promoting Social Inclusion of Youth in the Nordic States and in North-West Russia (Riekkinen, 2019a), not much is known about the outcome and impact of youth participation in decision-making in education and in the development of public services, despite the fact that, theoretically young people should be involved in relevant deliberation and consultation processes. For example, the 2009 study of the participation of youth (aged between 8 and 18) undertaken in Norway finds, *inter alia*, that while young people felt that their opinion was taken into consideration in such areas as culture and leisure activities, they did not feel a strong degree of involvement in decision-making in healthcare services, schooling and education and city/urban planning (Knudtzon, Tjerbo, 2009). Moreover, the respondents found it difficult to know if their opinions had any impact on decision- and policy-making. There may be several reasons for this. One of them concerns the lack of regular participatory opportunities emphasizing the need to engage young people in decision-making already in primary school. Thus, the problem is that the younger the person is, the less involved he is in participating in public affairs (Knudtzon, Tjerbo, 2009).

As for Russia, youth empowerment is marked by the top-down nature of youth engagement, when many youth advisory organs functions at the national and regional levels, albeit the efficacy of their actual impact on decision-making remains open (Riekkinen, 2016). The official channels for public participation appear to "pay less attention to real-life problems occurring when young people enter adulthood" (Antipov et al., 2019: 49). In all the four jurisdictions under consideration, in the vast majority of cases, the opinions of young people are vetted from prescribed options. Rarely do young people have a real opportunity to formulate an agenda for engaging in a dialogue with public authorities.

In the comparative legal field, studying this problem is complicated by a lack of a universal standard for implementing youth participation rights. The rights of youth are not taken into consideration in separate international treaties at the UN level (with the exception of underage youth covered by the UN Convention on the Rights of the Child). Even at the national level, not all states have adopted youth acts. Accordingly, national practices vary significantly, some of which follow the path of adopting separate youth acts (as in Finland), while others forego specific acts, pursuing, instead, a youth-sensitive policy based on existing legislation (as in Sweden, Norway, etc.). At the same time, program documents adopted by the European Union and the Council of Europe make vigorous and convincing statements regarding the need to include young people in decision-making processes and to expand opportunities for youth to participate in the conduct of public affairs (Riekkinen, 2019b). Drawing attention to youth-specific rights at the level of the EU and the Council of Europe can be explained not only by the 'specialisation' of international law, which gradually differentiates between different vulnerable groups based on age, such as e.g., elderly law or child law. A paradigm shift occurred in the European states in the 1990s when the costs and pressure on public welfare systems led to the need for greater public reforms. When these reforms were introduced, the urgency of rethinking the "place of youth and young people's autonomy" became apparent as significant issues, which were "never clearly thought out in these systems" (Călăfăteanu, López, 2019). Previously, families provided support for young individuals, as nowadays in Russia, which resulted in public measures of supporting young persons being "inadequately addressed by any state support schemes" (Călăfăteanu, López, 2019). Nowadays, it is common for the European public welfare systems to assist in facilitating the independence of young persons. The Nordic experiences are also relevant for Russia in this regard: the Nordic youth support system through special allowances is designed to ensure that young people receive a quality education. If a citizen cannot prove that he or she had tried to enroll in further education

after school, social benefits will cease, and the citizen will have to resort to less favorable unemployment benefits.

2. Materials and methods

This contribution is based on scrutinizing the provisions of national law taken in conjunction with scholarly reflections on this issue. The author also reports the findings of the survey included in the project conducted under her leadership, entitled "Promoting Social Inclusion of Youth in the Northern Industrial Towns: Experiences in Finland, Sweden, and Russia" with a grant from the Nordic Council of Ministers in 2018-2020 (Riekkinen, 2019a). The project aimed at reaching students, academics, and public authorities by focusing on youth social inclusion in the context of northern industrial towns (in Finland, Sweden, and Russia). The Nordic partners are Åbo Akademi University (Finland) and University of Gävle (Sweden). The Russian partners are Baltic Federal University named after Immanuel Kant (BFU, Kaliningrad), Saint-Petersburg State University of Economics (UNECON, Saint Petersburg), and Pskov State University (Pskov). The overall goal was to raise awareness in Russia of implementing youth rights, taking into account the most optimal Nordic inclusive practices. The definition of "youth" is based on the guidelines of the Council of Europe and the European Union determining that youth comprises persons between 16 and 29 years of age. Empowerment, inclusion and participation are approached in the light of the barriers young people might face in their pursuit of self-realisation and full participation in society and public affairs.

3. Discussion

3.1. Approaching Youth Empowerment in Russia

In Russia, a national Youth Act is currently lacking. The previous Law of the USSR "On the General Principles of State Youth Policy in the USSR," which regulated the main directions of youth policy at the federal level, is no longer in effect since 1 September 2013. Youth policy is, hence, regulated based on the provisions of other federal laws. At the same time, regional acts on youth policy are adopted in most constituent entities of the Russian Federation, resulting in sometimes contradictory provisions where in one region youth are those under 30 years of age, and in another region the threshold is 35. The maximum threshold for youth as an age group differs at the federal and at the regional level. Federal legislation establishes a 14-year minimum threshold for participation in youth public associations and an upper threshold for participation in youth public associations up to 30 years. Thus, according to the federal standard, youth are defined as persons aged between 14 to 30. With respect to the maximum age of young people, the legislation of the constituent entities in the Russian Federation establishes an age framework ranging from 30 to 35. The 2010 Law of the Oryol Region "On State Youth Policy in the Oryol Region" includes young people under the age of 35 in the category of youth. At the same time, Youth Acts in the Republic of Adygea, the Republic of Sakha (Yakutia) and the Krasnodar Krai consider persons between 14 and 30 years of age as youth. Such a situation is possible, since Art.72 of the 1993 RF Constitution stipulates that the issues of upbringing, education, as well as social protection, directly affecting the implementation of youth policy, pertain to the joint jurisdiction of the Russian Federation and its citizens.

The lack of a federal youth act does not mean, of course, that enabling young people to participate in decision-making is not implemented in Russia. Collating youth opinions most commonly occurs via social networks and youth associations. There are, of course, consultative youth organs in Russia, e.g., a Federal Youth Parliament as well national and regional youth chambers. the Youth Parliament operates under the aegis of the RF State Duma, and at the level of the constituent entities of the Russian Federation, one finds youth public chambers where young people participate in discussing issues of public significance. The All-Russian Public Organization "Unified Youth Parliamentary Movement of the Russian Federation" promotes the development of young parliamentarians and youth parliamentary structures in the Russian Federation, Yet the law does not contain a mechanism allowing these organs to acquire expertise by public authorities in order to mainstream youth perspectives on a systematic and consistent basis (information and critique of the official channels of youth participation in Russia can be found in Riekkinen, 2016). The same comment regarding an *ad hoc* basis of involvement applies to youth associations which under the law can be present during the sessions of public authorities. As for participating in surveys, feedback is increasingly sought e.g., when students are required to complete self-

evaluations at schools; high school students are asked to provide course feedback; patients can be asked to fill in various questionnaires upon the reception of health-care services, etc. As a result, Russian youth as consumers of public services also find themselves locked in formal paperwork, and are unlikely to find the time and energy to fill in more forms.

In addition, participation of young people in decision-making was proposed as a principle of youth policy in the draft of the Federal Law № 340548-6 "On the Basics of State Youth Policy in the Russian Federation." This draft had been rejected by the Parliament in 2015. The main reason underlying this rejection was that its provisions replicate the provisions of several other federal acts: "On the Basics of Protecting the Health of Citizens in the Russian Federation", "On Employment in the Russian Federation", "On Public Associations", etc. Since implementing youth policy is regulated by Russian law and subordinate regulation, these acts could address issues existing at the regional level and consolidate basic principles of youth empowerment in order to pursue youth-oriented decision-making.

An interesting observation on the differences in socialization between Russia and Finland is how the socialization process is handled at school. The Finnish primary school prepares the children for responsible social and political life, e.g. the ability to work in a team and the ability to express one's own opinion are graded separately. By contrast, Russian schools emphasize individual leadership qualities. Finnish pupils change their seats in the classroom to learn how to get along not only with their desk-mate, as in Russia, but also with all others pupils Later on, when reaching the minimum age for participating in public affairs, which is 16 years of age in local gatherings, the lack of regular experience of participation is manifested to a greater degree in voter turnout or antisocial protest behavior (Riekkinen, 2016). For instance, researchers Omelchenko, Maximova, Goncharova and Noyanzin in their publication "Youth Understanding of Political Protests: The Limits of Legal and Illegal" describe the results of a sociological survey of young people aged 15 to 29 years in the Altai Krai of Russia (n = 1200), conducted in December 2014 – March 2015 by the staff of the Altai State Sociology University (Omelchenko et al., 2015). Persons participating in the survey were asked to express an opinion on the possibility of using legal and illegal ways to protect their interests. The most alarming opinion was the readiness of about 1/10 of the respondents to resort to illegal methods of protecting their interests, e. g. addressing the issue to criminal leaders (15 %), blocking streets, roads (10.5 %), participation in the seizure of buildings, enterprises (10.4 %), resisting authorities with weapons (9 %). Unauthorized demonstrations can obviously lead to violence and the willful destruction of property, exemplified by the opposition protests in Moscow in the spring of 2017. Law enforcement authorities detained dozens of schoolchildren, because the rallies were not approved by the authorities, according to Russian law. Still, less than 5 % of young Russians sympathize with radical youth organizations, (the latter, nevertheless, "are very aggressive and inventive" (Gorshkov etc, 2007: 87).

One way of dealing with disaffected youth would be to design co-decisional mechanisms that allow young people to formulate agenda for discussions with authorities.

3.2. Regulating Youth Rights: Finnish, Swedish, and Norwegian Approaches

As a general observation, in the Nordic states, illegal youth protest most often manifests itself in property crimes in order to attract attention to the problems of protecting the environment or championing animal rights, e. g. breaking into the premises of mink-breeding farms or climbing on drilling stations or similar constructions, following the course of the organization GreenPeace (Litmala & Lohiniva-Kerkelä, 2005) whose followers are notorious for protesting by e.g., climbing with the mountain-climber equipment to the drilling station, perpetrating the private property regime and putting own health at risk.

The channels of communication with authorities are, as a rule, well established. The acting political parties often establish own youth departments work with young individuals. Although the constitutional systems in the Nordic states share common features (Suksi, 2018), there is no common approach in Finland, Norway and Sweden to regulating the rights of young persons. Finland opts for the model based on a national youth-specific act and the mechanisms of its implementation (Riekkinen, 2019a), while Norway and Sweden employ the existing legislation in promoting youth-friendly policies. In Finland, the 2016 Youth Act was adopted by Parliament as a means of "promoting the social inclusion of young people and provide them with opportunities to exert an influence and improve their skills and capabilities to function in society". In Finland, there

are seven different mechanisms for involving young people in the conduct of public affairs (Riekkinen, 2019b).

At the national level, there are Youth Centers of Expertise that monitor the rights of young people. Based on this Act, each new Government adopts its own youth programme every fourth year. One of the strategic mechanisms of youth empowerment is the canvassing of youth opinions regarding this plan. Nevertheless, the totality of 'Youth opinions' about the contents of the current programme was 67 opinions received via the online consultation service Lausuntopalvelu.fi. An insignificant number of opinions were received via comments on the Ministry's website in the form of a Webropol survey and by directly addressing youth via social media (Programme, 2017: 5). To deal with this and similar problems, a mechanism exists in Finland entrusted with youth affairs in accordance with the 2016 Youth Act. To canvas the opinions of youth, the State Youth Council publishes several surveys and studies of young people in cooperation with the Finnish Youth Research Society and other research actors. The FYRS has also developed a set of youth indicators that it follows and updates. This data should be assessed at different levels of policy-making which affect youth. However, no national impact study of youth empowerment has so far been conducted.

Norway and Sweden both lack specific youth acts. However, based on the provisions of other laws dealing with the rights of youth, these states pursue a policy of youth-oriented decision-making to assess youth rights in order to mainstream these rights. The Swedish youth policy document entitled *"Med fokus på unga – en politik för goda levnadsvillkor, makt och inflytande"*. With youth in focus – a policy for good living conditions, power and influence provides that all government decisions and actions that affect young people between the ages of 13 and 25 years must have a youth perspective. The document provides that all young individuals should have the power to shape their own lives and influence the direction and development of society. This youth perspective accepts that youth should be considered a diverse group of individuals with different backgrounds and different life conditions. In preparing the document, several meetings were arranged with young individuals in five cities: Stockholm, Göteborg, Jönköping, Malmö and Luleå. The monitoring system is based on indicators of youth living conditions, annual thematic in-depth analyses of these conditions and periodic studies of youth attitudes and values. Nonetheless, young people in Sweden remain underrepresented in decision-making bodies, although the percentage of young people aged 18-24 among those elected in municipal elections has increased from just over 2 percent in the 2002 elections to just below 4 percent in the election year 2014 (Ekman, 2016 : 3). Hence, enhancing youth participation both in society and in a representative democracy remains a priority for Sweden.

Likewise, in Norway, a youth act is lacking and legislative provisions pertaining to young people are instead found in laws governing the needs of the child (under the age of majority). In particular, Section 32 of the Children Act provides that children who have reached the age of 15 shall themselves decide their educational options and options of applying for membership in, or resigning from, associations. The Education Act, applied to primary, lower, and upper secondary education, promotes pupil participation in the school environment. Section 1.1 of this Act provides pupils with a general right to participate in education. Moreover, under this Act pupils are obligated to participate in environmental activities. The Act provides for a sophisticated system of pupil representation in educational organizations. As for exerting influence on educational matters in public decision-making, the Act stipulates a provision of empowerment in section 11-8. According to these sections, pupils' representatives in upper secondary education have the right to attend and speak at meetings of county boards, the principal organs of local self-government. Norway has, in addition, a comprehensive and inclusive youth policy. In particular, the Norwegian Ministry of Children and Equality produced a 2011 Guide on Establishing and Working with Youth Councils, which we will use as a reference for developing our instrument to measure youth empowerment (Veileder, 2011). When it comes to policy-making, there is no governmental agency or ministry that is predominantly responsible for drafting youth programmes engaging young individuals (Satsing på barn og ungdom, 2015).

As a result, Norway faces challenges pertaining to youth empowerment. In particular, consultation with youth is predominantly *ad hoc* or practiced whenever official reports or programmes are sent out for extensive consultation, albeit only if these are considered relevant to youth. The general bargaining power of youth councils is considered weak (Høyringsnotat, 2016). Moreover, no national evaluation has been made of the effects of youth empowerment (Knudtzon, Tjerbo, 2009).

3.1 Youth empowerment in Finland and in Russia: opinion survey results

Working on the project on youth inclusion (see Riekkinen, 2019a), our team conducted a survey of youth opinions on the efficacy of youth involvement in social affairs in September 2018. We collated the opinions of 140 students from Russian universities, namely the Baltic Federal University named after Immanuel Kant (Kaliningrad), Pskov State University (Pskov), and Saint Petersburg State University of Economics (Saint Petersburg). In May 2019, the second survey was conducted after holding a series of lectures and seminars on youth rights. The idea was that after students had been exposed to training in youth rights they would gain more confidence in implementing their rights.

The survey included 15 questions targeted at identifying the views of youth on (a.) specific difficulties youth may encounter in combining education, work, and social and private life and (b.) the support provided by public authorities in order to access education and the labor market. Both surveys revealed that Russian young people face specific problems in life, compared with older citizens, such as unemployment and establishing financial independence, receiving recognition from the older generations, finding one's own path in life, as well as the loss of childhood beliefs as a result of confronting the realities of adult life. As for the differences, the respondents were divided into two groups: – a general group, which accepted answers from all those young persons interested in taking part in the survey; and – a control group, which targeted those young people who took part in project events. As for *the general group*, 5 % more respondents provided accurate information on the legally established age group delimiting youth as a special category in comparison with the results of the 2018 diagnostic survey. 2 % more respondents in the general group could indicate the special channels which exist in Russia for the youth to inform public authorities of their rights and interests. This can be attributed to the impact of rigorous information-sharing campaigns, which had been waged in Russian partner universities disseminating information on youth rights and youth legislation in Russia. As for *the control group,* the differences between the first diagnostic survey and the final satisfaction survey were more significant: 40 % of respondents could correctly indicate the age limits of youth, according to Russian legislation. 50 % of respondents could name concrete channels for youth to exert influence on decision-making regarding their rights.

We also conducted a survey among the students of the universities in Turku (Finland), which revealed comparable concerns regarding the difficulties experienced by young people. Our respondents in Turku felt that young people are not taken seriously by adults and need support as they go through many different stages in their biological and mental development. Moreover, they consider that young people are not sufficiently included in decision-making, especially in making decisions about their own future. At the same time, almost all the young people interviewed in the Nordic states, with rare exceptions, were members of political parties and other public associations. The number of young people surveyed in Russia who were a member of a political party did not exceed 2 %. If we consider the statistical data in the regions of Russia, we can see that the number of young people participating in the elections varies. In the Tyumen region, where campaigns are regularly held in educational institutions aimed at increasing the prestige of participation in elections, this number reaches 40 %. Yet, in the Samara region, this figure does not exceed 28 %. This confirms the hypothesis positing the connection between the targeted involvement of citizens from an early stage in participatory processes and future electoral activity. Our findings, taken with this background information, only confirm the hypothesis that cities in northern Finland, Sweden, and Russia experience comparable challenges regarding ensuring the transition of young people from education to working life and from family dependency to autonomy.

Hence, comparing the responses to our two surveys confirms the value of education and information sharing with respect to youth rights, based on the fact that the perceptions of youth inclusion changed considerably among those respondents who have taken courses in youth rights. The respondents became more aware of youth rights and concrete channels through which young individuals can exert influence on matters regarding their rights and interests. These findings emphasize the benefit of promoting a youth perspective and mainstreaming youth rights.

4. Results

In Russia, a specialized set of laws on youth is currently lacking, akin to Norway and Sweden which, nevertheless, adhere to youth-oriented decision-making when each decision concerning

youth rights is assessed as to its relevance to the interest of young people. Finland accommodates both the national Youth Act, coupled with the practice of youth-oriented decision-making. In sum, the mere existence of the Youth Act and formal practices of empowerment, such as e.g., merely spreading feedback forms among young individuals without monitoring whether young people will ever fill in and return these forms, runs the risk of undermining such fundamental concepts as democracy, reciprocity, solidarity and inclusion. Yet in all of these states, deficiencies in effective youth empowerment can be found. The question remains what can be done? The ideal approach would be an open discussion of issues, encouraging the meaningful participation of youth as a way of resolving the conflicting interests of equal stakeholders. And this observation holds true for both Russia and the Nordic states as well.

5. Conclusion

There are many open issues pertaining to the efficacy of youth empowerment in Russia, which lacks a federal youth act but accommodates various platforms where young people can discuss issues of public significance. The examples of Finland, Norway and Sweden show that amidst the conditions where actual channels for such empowerment exist (varying from youth councils under the aegis of public authorities to supporting the activities of youth NGOs), it is difficult to identify genuine self-directed expressions of opinion by youth. We confirmed this conclusion, as mentioned before, when facing difficulties in obtaining responses to a questionnaire on youth inclusion during a tour project on youth social inclusion: in effect, young people were often not sufficiently motivated to complete the survey form.

This overview emphasizes the need for a systematic and inclusive youth policy, since although legislation in Russia stipulates that youth opinions should be sought when public bodies make decisions concerning youth rights, young people often do not believe that their views are taken seriously. This again dictates the need to address more effectively the issue of involving young people in decision-making, asking for their opinions not merely pro forma but in good faith, in order not to overlook the fundamentals of democratic governance where youth rights, empowerment and participation lead to actual exclusion from decision-making. For instance, the authorities might distribute the feedback forms but these forms never reach the addressees. The authorities consider the need for feedback but fail to encourage youth to express their genuine opinions. Even amidst the conditions of Russia's legal architecture, where a national youth act is lacking, the Nordic approach, where each decision entailing youth interests must reflect a youth perspective could be used as a basic strategy.

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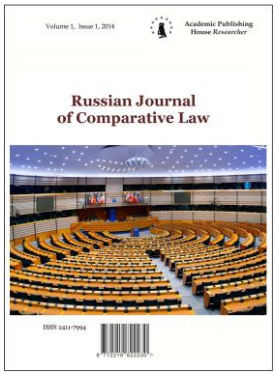

International Legal Cooperation in Combating Juvenile and Youth Crime

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Abstract

The article is devoted to the study of international legal cooperation in combating juvenile and youth crime. It is noted that children and youth largely determine the future both of individual states and of the international community as a whole. However, with the growth of juvenile delinquency it is difficult to hope for better living conditions for future generations. Juvenile and youth delinquency can be considered one of the most serious problems of the modern world. The situation with regard to juvenile and youth delinquency has been constantly deteriorating over time.

Crimes committed by juveniles and youth are becoming more and more complex, while the number of victims is rapidly increasing and their age is constantly decreasing. Violence with and without weapons is becoming more and more common. In order to combat juvenile and youth crime effectively, its causes and consequences are investigated.

The consequences of juvenile and youth delinquency are the increasing number of child gangs, teenage suicides, child marriages and divorces. Globally, children and youth are receiving less and less care and support from their families. Instead, children spend more time in front of television, computers and the Internet, which is dangerous for them and a cause of deviant behaviour.

Keywords: international legal cooperation, juvenile and youth delinquency, deviant behavior, violence.

1. Introduction

In today's world, the scale of juvenile and youth delinquency is causing mixed responses from states. Calls for the protection of children's rights and support for juvenile delinquents exist alongside the need to bring juveniles to justice.

Meanwhile, careful scientific analysis has shed light on the complex and diverse needs of children in conflict with the law. Juvenile and youth delinquency is a term widely used in scientific literature to refer to a young person who has committed a criminal offence, although its exact definition may vary from one local jurisdiction to another. The specific reasons behind these differences are not clear, but they may be due to the lack of an agreed international standard.

2. Materials and methods

A comprehensive approach was taken to the problems under study. The author was guided by the general theory of law and state and the theory of international law. In preparation of the article the following methods were used: analysis and synthesis, abstraction, generalization, deduction, modeling, comparative legal method and many others.

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International legal cooperation in the fight against juvenile and youth crime is studied in historical development, taking into account the complex process of implementation, regularities of formation and evolution. Comparative method as one of the main methods of modern jurisprudence has been used in combination with other methods of scientific cognition and has made it possible to reveal similarities and differences in juvenile and youth delinquency in international and national law.

3. Discussion

In the aftermath of world wars and global disasters, transnational and national crime has become the main threat of our times. Crime in the traditional sense continues to grow relatively faster than the population, filling niches not controlled or poorly controlled by the right (Luneev, 2004: 6).

«Minor» means a person who is legally capable of committing a criminal offence because he or she is older than the minimum age of criminal responsibility, but has not reached the age of majority when the person is legally considered an adult. The minimum age of criminal responsibility varies in different States from 6 to 18 years, but the age of majority is usually 18 years.

Children largely determine the future of both individual states and the international community as a whole. However, with the rise in juvenile delinquency, it is difficult to hope for better living conditions for future generations. Juvenile delinquency can be considered one of the most serious problems of modern society. Over time, despite the public attention, the situation in the field of juvenile delinquency is constantly deteriorating.

Crimes committed by minors are becoming increasingly complex, while the number of victims is increasing rapidly and their age is constantly decreasing. Violence with and without weapons is becoming more common, and more young people are starting to drop out of school at a younger age. Social norms and peer pressure among young offenders have led to increased use of drugs and alcohol. To deal effectively with juvenile delinquency, it is necessary first and foremost to examine the factors that play a key role in how young people are affected by crime.

Juvenile delinquency is usually based on one specific factor, such as socio-economic status or poverty, peer pressure, lack of parental influence, negative influence of parents, etc. While this is possible in some cases, it is much more likely that the cause of juvenile delinquency may be related to several factors.

Juvenile offenders are generally young people from low-income families with various educational or mental disorders (Teplin et al., 2002: 1135). These young people also exhibit high rates of relapse. Therefore, one of the main problems associated with juvenile delinquency is recidivism or, in general, the repetition of criminal behaviour or re-arrests. Although the overall youth crime rate has declined slightly over the past decade, the recidivism rate among juvenile offenders remains high and stable and it is estimated that between 70 and 90 per cent of those young people will repeat the crime (Trulson et al., 2005: 357).

It should be noted that crime is the object of study of criminology (crimeer - crime, logos - teaching), which in translation means the science of crime. The author of the term «criminology» is an Italian scientist R. Garofalo. Criminology studies crime, its types, individual criminal behavior, causes of crime and delinquency, develops methods to combat crime. In this case, crimes are socially dangerous acts prohibited by the Criminal Code. The totality of all types of crime is delinquency (Savenkov, Zhukov, 2018: 116-117, 141).

The constant growth of juvenile delinquency indicators predetermines the need to seek new guarantees of protection of children from seduction and exploitation, to increase the educational impact and to save on state coercive measures in the imposition of penalties (Grishina, 2016: 8).

Globally, for example, children engaged in prostitution and sold for prostitution have a high incidence of HIV. Between 50 and 90 per cent of children rescued from brothels in South-East Asia are infected with HIV (Ovchinsky, 2008: 6).

Juvenile delinquency, as a legal concept, is an integral part of criminology. One of the reasons for crime and its continuation in adulthood is the ineffective control and treatment of juveniles. The concept of "crime" derives from the Latin word "delinquere", meaning "go" and "linquere", i.e. to leave in this way, meaning "go" or "quit". Originally, the word had an objective meaning because it referred to parents who neglected and abandoned their children.

Crimes constitute harm to victims and may result from harm caused to the perpetrator. Many criminals were victims of abuse as children. Many lack the skills and knowledge to make their work and life meaningful (Zer, 2002: 213).

Roman law stated that a child under the age of seven was incapable of committing a crime. Boys between the ages of seven and fourteen and girls between the ages of seven and twelve (before puberty) were considered partially delinquent, and the punishment was left to the praetor. In medieval Europe, German laws were much stricter, and even children under seven years of age were sometimes considered capable of criminal intent.

Under Article 1 of the 1989 Convention on the Rights of the Child, children are human beings up to the age of 18, unless they reach the age of majority earlier under the law applicable to them.

In the United States of America, minors range in age from 16 to 21, but 18 is the most common age. In England, a child under the age of 10 cannot be subject to any criminal offence because of an irrefutable presumption of innocence.

Juvenile delinquency generally means that children do not fulfil certain obligations that society expects of them. Juvenile delinquency is the expression of a dissatisfied desire on the part of the adolescent. Whether a particular act or behaviour of a child will be deviant or not depends on different factors and varies from one State to another. A juvenile delinquent is defined as "a child trying to behave like an adult". A specific act of a child may be considered as a normal child prank, but in another specific context it may be disturbing and disturbing.

Juvenile delinquency is an expression of dissatisfied desires and motives. For juvenile offenders deviant behaviour is a normal response to their inner desires. A juvenile delinquent is a person who has been given such a decision in court, although he is no different from other children who are not delinquents. Crime is an unlawful act, behaviour or interaction which is socially undesirable.

In this regard, it should be noted that deviant behaviour by children is any behaviour contrary to the norms of society. There are many different theories about what causes deviant behaviour in children, including biological, psychological and sociological factors.

Biological theories of deviant behaviour in children regard crime as a form of disease caused by pathological factors characteristic of certain types of children. They suggest that some children are "natural criminals". The logic behind such theories is that these individuals are mentally and physically handicapped, resulting in a failure to learn and follow the rules. This, in turn, leads to criminal behaviour.

Ch. Lombroso has developed a theory of deviation, in which the physical constitution of man indicates whether a person is a "natural criminal" or not. These "natural criminals" are representatives of an earlier stage of human evolution with a physical constitution, mental abilities and instincts of the primitive man (Lombroso, 2005: 8).

There are various definitions of juvenile delinquency in the theoretical legal literature. For example, D.S. Gibbons defines juvenile delinquency in the United States as acts or offences that are prohibited under the laws of individual states. He notes that "juvenile delinquents" are young people who commit one or more such offences. The definition was restrictive in that it referred to offences prohibited by law and did not take into account acts and conduct that might become prohibited by law. Furthermore, the definition does not mention the maximum and minimum age of youth (Gibbons, 1981: 12).

У.W.C. Rekless has identified a problem with the definition of wrongdoing. He came to the conclusion that "criminal behaviour was defined in society as a social problem". It was also found in behaviour that implied an answer to the question of what types of behaviour became crimes (Reckless, 1967: 17).

У.W.K. Rekless analyzed this local problem in three different stages, namely: legal definition of crime and offence, conduct of the offender as a social problem, and cause-and-effect behaviour in relation to normative behaviour.

In the legal literature, there are many theories that explain juvenile crime. The main difference between them relates to the academic discipline in which the theorist studied. Different disciplines, such as economics, psychology and sociology, have different ideas about people and human behaviour, and this leads to different ideas about what causes juvenile delinquency.

In childhood and adolescence, the complexity of social development is one of the main objectives, which is to enable people to regulate their behaviour in an unfavourable environment.

In some European countries, such as Scotland and Portugal, crimes committed by persons from the age of 16 may be dealt with under the adult criminal justice system. In addition, in other countries juvenile offenders can be transferred from a juvenile court to an adult court, where so-called waive or transfer laws apply adult criminal law to certain offences.

Juvenile delinquency is one of the most important problems to be solved in the modern world. The definition of juvenile delinquency covers a wide range of situations where offences are committed by persons under the age of 18.

Economic problems in the world are leading to an increase in juvenile crime. This is due to political inconsistency, the deteriorating economic situation and important social institutions such as education, public assistance and facilities and, most importantly, the family. These changes lead to unemployment, low incomes, and an inefficient economy leading to a vicious circle. The low incomes of young people lead to an increase in illegal activities aimed at self-sufficiency.

Children's criminal activities are often provoked by easy access to illicit opportunities. Many minors resort to using drugs for psychological purposes or to escape the problems that surround them. Another perspective is peer pressure drug addiction, which stimulates offender behavior to support this lifestyle.

In this regard, it should be noted that Article 33 of the 1989 Convention on the Rights of the Child establishes the right of the child to protection from drug use and participation in drug trafficking. Thus, states shall take all necessary measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant inter-state treaties, as well as to prevent the use of children in the illicit production and trade of such substances.

This provision is reinforced by Article 1 of International Labour Organization Convention No. 182 concerning the Worst Forms of Child Labour, 1999 which requires states parties "to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency". Article 3 provides that the worst forms of child labour include, inter alia, "the use, procuring or offering of a child for illicit activities, in particular the production and trafficking of drugs, as defined in the relevant international instruments".

In areas with a higher population, juvenile delinquency is high. The reason for this conclusion is social control and social cohesion. From a cultural perspective, rural areas and society attach great importance to family relations and community participation, resulting in a reduction in crime rates. In cities, however, we see a more impersonal approach, judicial and legal measures that are associated with higher crime rates. Children from disadvantaged and broken families have fewer employment opportunities and are more vulnerable to social exclusion.

The consequences of juvenile delinquency include an increase in the number of teenage gangs, escapes, teenage suicides, teenage parenthood, and a number of unhappy marriages and divorces. In the world, children are receiving less and less care and support from their families. Instead, children spend more time in front of TVs, computers and watching the Internet.

In today's world, rapid population growth, lack of housing and support services, poverty, youth unemployment and underemployment, declining credibility of local communities, overcrowding in poor urban areas, disintegration of families and ineffective education systems are some of the causes of juvenile delinquency.

The practice of child-rearing is often associated, albeit to varying degrees, with juvenile delinquency, which is associated with negative experience gained during childhood and is aggravated by erroneous child-rearing practices. Some of the latter may be interpreted as evils causing asocial behaviour among children and adolescents. However, the relationship between educational practice and juvenile delinquency and its scope have not yet been studied in detail.

In the theoretical legal literature, the main features of parental style and practice, which may serve as possible causes of juvenile crime (Hoeve et al., 2009: 751). These international features need to be studied in the light of the various national, cultural and socio-economic characteristics of juvenile delinquency. A comparative analysis of the various practices of child-rearing used in countries against the background of juvenile delinquency shows that factors capable of predicting the outcome of types of social behaviour of children are universal. However, they may operate differently in family and broader social environments and demonstrate their correlation with the social, economic and cultural conditions of a given society, community or family.

The tradition of child-rearing is an important focus for the study of some of the most important factors for the social development of children in international law. The crucial question is whether a child or young person will become a socially adequate member of society or, conversely, will follow a path that leads to juvenile delinquency. The practice and conditions of child-rearing should be understood as a set of different factors that put young people on the rails of antisocial behaviour and juvenile delinquency. Without such an integrated approach, it is too easy to exaggerate the group of factors considered and to present a biased or even distorted view of the area under consideration, regardless of whether the factors under analysis may or may not be relevant.

International law establishes judicial procedures that are appropriate for children who have shown antisocial behaviour or committed crimes. Measures taken in such cases should not only aim at creating a safer social environment by isolating child offenders, but also at correcting the behaviour of children, which is particularly important for juvenile offenders.

The problem of juvenile delinquency has been at the centre of scientists' attention for quite a long time, and some relevant approaches to research have been identified decades before. In these studies, the role of parenting and its significance for juvenile delinquency have been assessed and interpreted in different ways. For example, C.M. Bridges noted that "the factors that influence the change of children's behaviour may be very unclear, many of them are still out of sight of social scientists, psychologists and other scientists" (Bridges, 1927: 520). This statement remains true today, while the various reasons underlying juvenile delinquency remain controversial.

One theory that underlines the importance of the influence of the family environment and early childhood education strategies for the development or prevention of juvenile delinquency is that of crime control. It was developed by M. Gottfredson and T. Hirshi during their research aimed at tracing "the contours of sound public policy on crime" (Gottfredson, Hirschi, 1990: xiv).

Studies on the origin and development of child delinquency point to a lack of consistent association with peer pressure, deprivation or other reasons usually placed on adolescents and young people who start to commit crimes. Empirical studies of available data on crime have shown that they are not linked, as many researchers believe, to any inherited proclivities, defective genes or other causes. These findings highlight the impact of educational and parental practices on children's development of criminal behaviour patterns, anti-social behaviour and juvenile delinquency.

In the theoretical legal literature, attempts have been made to find an answer to the question of the impact of parental education on child crime (Cauffman et al., 2008: 701). Scientists have identified and described the main types of unsatisfactory child-rearing practices that may contribute to the growth of juvenile crime. The first type is the practice of child-rearing without parental involvement. Parents make few demands on their children. As a result, children in such families receive little emotional support. They are likely to suffer from poor and limited emotional ties and often enjoy freedom when they come home or leave home. Parents may be unaware of their children's needs and problems or simply not respond to them.

In this regard, it should be noted that crime is a problem not only for young offenders, but also for teenagers who are victims of poor parenting. These children may have serious negative consequences for their socialization process and have difficulty adapting to the norms of the wider community or society. Adolescents "compensate" for the lack of parental care and participation in society through their own retaliatory measures.

Parenting patterns that are seen as wrong in developed countries are fairly common in developing countries. For example, parents in African countries are often unaware of the impact that their child-rearing practices have on cognitive and social behaviour. Deprived from early childhood due to a lack of parental care, children in Africa are further disadvantaged by the usual constraints imposed by parents on their children. This approach to child-rearing is further exacerbated by punitive discipline and an emphasis on unconditional respect for elders and respect for religious rules. At the same time, mothers of children in Africa are more condescending of what they see in the sexual relations of their adolescent children than women in other cultures (Ensminger, 1990: 2033).

Data on parental practices commonly used in Brazil show that mothers are more involved in childrearing than fathers. Mothers who indicated that they had more difficult situations with their children also showed significantly higher levels of physical punishment and coercion of their children.

The behavioural expectations of parents towards their children show great similarities in different cultures and can be interpreted as universal. The most widely accepted of these expectations are respect and courtesy of elders and others, honesty, sharing of family values and good schooling.

It is therefore imperative to persuade individuals and institutions to commit the time, money, expertise and other resources needed to address this global challenge. A number of United Nations documents reflect a preference for a social rather than a judicial approach to combating juvenile delinquency. The 1990 Riyadh Guidelines argue that the prevention of juvenile delinquency is an important part of the overall prevention of crime in society and the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) of 1985 recommend positive measures to improve the general welfare of juveniles and reduce the need for government intervention.

There is a widespread belief that early intervention is the best approach to preventing juvenile delinquency. Prevention requires individual, group and untries use different methods to prevent crime and criminal behavior. In some countries, the focus is on punitive prevention aimed at intimidating potential offenders by making sure they understand the possibility of severe punishment or measures can be taken to prevent the recurrence of crime, which include educating the offender about the negative aspects of the crime and trying to reconcile offenders and their victims.

Children's rights in the fight against crime were developed in the twentieth century, with millions of children killed in the First World War and nearly 13 million killed in the Second World War. For that reason, the importance of children's rights was recognized (Bassiouni, 1999: 60). The Second World War was the occasion for the international regulation of human rights, and after the war the League of Nations was formed. Its goal was to try to protect the basic standards of children's rights in the fight against crime. The organization responded to violations of children's rights.

Since the beginning of the twentieth century, international efforts to promote the concept of children's rights have gone through various times of international law. The understanding of the 1989 Convention on the Rights of the Child as the current meaning as well as the prospects for its future development, requires an understanding of this historical evolution. It has also been an era in which the international community has begun to make effective use of legal instruments to strengthen its broader efforts to eradicate abuse and encourage states to take concrete measures to improve the situation of children (Alston, Tobin, 2005: 3). Although in most cases, the development of these instruments did not meet the standard set by the 1989 Convention on the Rights of the Child.

The 1966 International Covenant on Civil and Political Rights is one of the main international human rights treaties. The 1966 International Covenant on Civil and Political Rights applies to adults, children and minors, but it does not define these terms. It is the first international human rights treaty to provide special treatment and procedures for children in criminal matters. The United Nations Human Rights Committee is the monitoring body for States' implementation of the 1966 International Covenant on Civil and Political Rights. The United Nations Human Rights Committee has considered and criticized provisions on the minimum age of criminal responsibility.

Article 14 of the 1966 International Covenant on Civil and Political Rights provides that criminal proceedings should take into account age and the desirability of promoting rehabilitation when punishing minors for criminal acts (Cipriani, 2009: 41-42).

Article 10 of the 1966 International Covenant on Civil and Political Rights provides that juvenile offenders shall be detained separately from adults and shall be provided with "treatment appropriate to their age and legal status". The imposition of the death penalty on juvenile offenders is prohibited in Article 6 (5) of the 1966 International Covenant on Civil and Political Rights.

The 1966 International Covenant on Economic, Social and Cultural Rights obliges States to guarantee the full range of economic, social and cultural rights, including children's right to education, housing, health, food, work and social security. The 1966 International Covenant on Economic, Social and Cultural Rights provides for the right to free primary education. The United Nations Committee on Economic, Social and Cultural Rights monitors whether States that have ratified the treaty meet their obligations. The United Nations Committee on Economic, Social and Cultural Rights does not explicitly address juvenile justice issues.

The provisions of the 1966 International Covenant on Economic, Social and Cultural Rights amount to binding international law. The 1966 International Covenant on Economic, Social and Cultural Rights urges States to recognize the need to adopt special measures for children to protect them from economic and social exploitation.

Article 77 of Protocol I Additional to the Geneva Conventions of 12 August 1949 provides that children shall be the object of special respect and protection against all forms of indecent assault. Parties to a conflict must provide them with the necessary care and assistance, both because of their age and for any other reason. Parties to conflict should take all possible measures to ensure that children under the age of 15 do not take direct part in hostilities and, in particular, refrain from recruiting them into their armed forces. When recruiting persons who have attained the age of fifteen years but have not attained the age of eighteen years, parties to a conflict should endeavour to give preference to the eldest of them.

If, in exceptional cases, children under the age of fifteen take a direct part in hostilities and fall into the power of an adverse party, they should receive special protection, whether or not they are prisoners of war. In cases of arrest, detention or internment for reasons related to armed conflict, children should be kept separate from adults. The death penalty for crimes related to armed conflict may not be carried out on persons under the age of 18 at the time of commission of the crimes.

Juveniles aged 16 years could be convicted of criminal offences and detained. Juveniles are not detained separately from adults. States should consider raising the minimum age of criminal responsibility in terrorism cases so that it complies with generally accepted international standards in this field.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985, are the main international instruments detailing acceptable methods of juvenile justice.

In 1955, the United Nations General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners. However, they do not provide rules for the treatment of child offenders. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, convened in 1980, called for the development of the Beijing Rules, which were adopted by the United Nations in 1985. They were the first international legal instruments to provide detailed guidelines for the protection of children's rights and respect for their needs in the administration of juvenile justice.

Preliminary observation 4 of the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted by a resolution of the General Assembly of the United Nations on 17 December 2015, provides that all young prisoners who are subject to juvenile courts should be categorized as juveniles. As a rule, such young people should not be sentenced to imprisonment.

Among international human rights instruments, the 1985 Beijing Rules represent the first and most in-depth approach to juvenile justice. Rule 4 and its commentary call on States to raise their legislation to an internationally recognized level. The text of the 1989 Convention on the Rights of the Child even mentions that the comments on the Beijing Rules should apply to children in all States, even if the Beijing Rules themselves are not binding.

Rule 4 of the Beijing Rules sets out the age of criminal responsibility. In particular, in legal systems that recognize the concept of an age of criminal responsibility for minors, the commencement of that age should not be set too low, taking into account emotional, mental and intellectual maturity.

The minimum age of criminal responsibility varies greatly due to the history and culture of different states. The modern approach is to consider whether a child, because of her or his individual insight and understanding, can be held substantively responsible for anti-social behaviour. If the age of criminal responsibility was too low, or if there was no lower age at all, the concept of responsibility would lose its meaning. In general, there is a close relationship between the notion of responsibility for criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.). Efforts should therefore be made to agree on a reasonable minimum age that would be applicable at the international level.

The 1989 Convention on the Rights of the Child seeks to ensure that its provisions relating to children and criminal law, particularly with regard to the minimum age of criminal responsibility, are duly reflected in the domestic legislation of States. States should endeavour to facilitate the enactment of laws and the setting of a minimum age below which children are not expected to be in violation of criminal law. States should ensure that no child is subjected to cruel, inhuman or degrading treatment or punishment, including the prohibition of life imprisonment and the death penalty for persons below the age of 18 years.

In order to determine the minimum age of criminal responsibility, states, by virtue of paragraph 3 of Article 40 of the 1989 Convention on the Rights of the Child, should endeavour to promote the adoption of laws and the establishment of a minimum age below which children are presumed not to be in violation of criminal law. Article 37(a) of the 1989 Convention on the Rights of the Child obliges States to ensure that no child is subjected to cruel, inhuman or degrading treatment or punishment, including the prohibition of life imprisonment and the death penalty for persons under 18 years of age. r any other institution. Regulation 11 (a) states that: "Every person under the age of 18 years shall be considered a juvenile. The age limit below which no child may be deprived of his or her liberty shall be determined by law". As stated by J.E. Doek 2008. The Riyadh Guidelines and the Beijing Rules are unique international instruments, and the Havana Rules can be seen as specifically elaborating at least part of these general rules and principles (Doek, 2008: 230).

There is interest in exploring some aspects of youth crime. In particular, it should be borne in mind that, throughout history, young people have been a major resource for progress in societies and states. Youth is a period of life in which individuals already have some experience as well as enough energy to make plans. During this period, young people are vulnerable and can be involved in crime. That is why the international community needs to implement active youth policies to prevent crime among young people.

Of all population groups, young people are most vulnerable to economic development challenges, which often weaken traditional forms of social protection needed for the healthy development of the younger generation (Smirnykh, 2020: 12-13).

Educated and comprehensively developed youth is the key to the development of any state. There are currently 1.8 billion young men and women among the world's population, which is the highest number of young people in human history. This demographic situation offers unprecedented opportunities for socio-economic progress. At the same time, many young people's potential cannot be fully realized due to violations of their fundamental rights.

The period of youth is defined in different ways and there is no generally accepted concept of youth, and not all societies have a concept of youth as the life stage between childhood and adulthood. The period of youth may coincide with a phase of adolescence that occurs during the second decade of life and is associated both with physical changes in sexual maturity and with the transformation of young people's social roles and responsibilities as they move towards adulthood. While some Governments, United Nations organizations and inter-State development organizations rely on and differentiate between young people and children and adults, the criteria vary from country to country and from region to region.

The United Nations defines young people as those aged 15-24 years, but this is mainly for statistical purposes, as the meaning of the term "youth" in various societies around the world is constantly changing in response to changing political, economic and socio-cultural conditions". Other age categories used by international aid and development organizations working with children and young people include children (0-18 years), adolescents (10-19 years) and young people (10-24 years).

According to article 2 of the draft federal act on youth policy in the Russian Federation, submitted to the State Duma of the Federal Assembly on 22 July 2020, young people (young citizens) are a socio-demographic group comprising persons aged 14 to 35 years who have Russian citizenship and a permanent place of residence in the Russian Federation or live abroad.

Many countries also draw attention to youth in relation to the age at which a person is legally treated equally, often referred to as the "age of majority". In many countries, this age is usually 18 years, so once a person reaches that age, he or she is considered an adult.

Young people can be a positive force for development if they are provided with the knowledge and opportunities they need to thrive. In particular, to prevent youth crime, young people need to be educated and equipped to contribute to a productive economy. They need access to the labour market, which will enable them to realize their potential.

The United Nations has long recognized that young people's imagination, ideals and energy are vital to the further development of the societies in which they live. The Member States of the United Nations recognized this in 1965. When they endorsed the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding among Peoples.

The United Nations General Assembly celebrated 1985 as the International Year of Youth. The work of the United Nations on youth 15-24 years of age permeates the international legal order of children and adults, affecting the rights of young people in different age groups. Although in

some situations young people aged 15-17 may have attained the social status of youth or adults, under the United Nations Convention on the Rights of the Child all those under the age of 18 are considered children.

One type of juvenile and youth crime is violence that is "the intentional use of physical force or force, threatening or actual, against another person or against a group or community that either results in or is highly violent".

Violence among young people is defined as violence that occurs among people aged 10-29 who are not connected and who may or may not know each other and usually takes place outside the home. Examples of youth violence include bullying, physical violence with or without a weapon, and gang violence. However, high rates of perpetration and victimization often reach the age group 30-35 years, and this group of older young people should be taken into account when trying to understand and prevent youth violence (Mercy et al., 2002: 24).

Youth violence is closely linked to other forms of violence, including child abuse, intimate partner violence and self-management: these types of violence share common risk factors and one may be a risk factor for the other. For example, child abuse is a risk factor for subsequent involvement in youth violence. It is therefore useful to consider youth violence within a broader category of violence. Violence can be divided into different categories depending on the context in which it occurs.

Self-directed violence is divided into suicidal behavior and self-abuse. The first includes suicidal thoughts, suicide attempts and completed suicides. Self-directed violence, on the other hand, includes acts such as self-harming.

Interpersonal violence is understood as violence between people. This category is divided into family and intimate partner violence as well as community violence. The first category includes child abuse, intimate partner violence and elder abuse. Community violence is subdivided into acquaintance and stranger violence.

It covers youth violence, attacks by strangers, violence related to property crimes and violence in the workplace and other institutions. Collective violence means violence perpetrated by wider groups of people and can be divided into social, political and economic violence.

The transversal element in each of these categories is the nature of the acts of violence. The nature of the acts can be physical, sexual, emotional or psychological, and can also be negligible.

Violence among young people often occurs alongside other types of violence. For example, abused children themselves at a later age are at increased risk of either committing or being subjected to multiple forms of violence, including suicide, sexual violence, youth violence and intimate partner violence. Various types of violence are based on the same set of factors, such as alcohol use, family and social isolation, high unemployment and economic disparities. Thus, strategies that prevent one type of violence and address common underlying factors have the potential to prevent a range of different types of violence (Mercy et al., 2008: 198).

Death by violence is the most visible result of the violent behaviour ofyoung people recorded in official statistics, but represents only the tip of the pyramid. This is followed by victims of youth violence who are brought to the attention of health authorities and receive some form of emergency medical, legal or other assistance. A third, much broader layer at the base of the pyramid includes acts of violence against young people (such as bullying) that may never be reported to the public authorities. Demographic research is therefore essential to document the overall prevalence and consequences of violence among young people. However, with the exception of self-reported school surveys on youth participation in physical fights and bullying, such surveys are absent in most countries and regions.

There are many reasons for juvenile and youth crime. The most important of these seem to need to be addressed. For example, alcohol and drug use by minors and young people has a direct impact on cognitive and physical functions, and can lead to reduced self-control and ability to process information and assess risks. It can increase momentum and make minors and young people more likely to engage in violent behaviors. Young people who start drinking and drinking early are often prone to violence. At the community and societal levels, crowded and poorly managed drinking areas contribute to increased aggression among drinkers. Several studies confirm that violence often occurs in situations of alcohol intoxication (Mattila et al., 2005: 307).

The involvement of minors and youth in drug trafficking aged 14-16 has tripled the risk of involvement in violence. Access to drugs may also reflect neighbouring circumstances that provide

opportunities for and reinforce deviant behavior. The frequent use of alcohol, marijuana and other illicit drugs isclosely linked to involvement in violence.

Increasing poverty among minors and young people increases the likelihood of involvement in violence, and it has been shown that poverty, both at the community and household levels, can predict violence. Young people from families with lower socio-economic status are twice as likely to be involved in violent crime as young people from middle and high-income families. Adolescents growing up in families where one or both parents are unemployed are at higher risk of violence against young people (Farrington, 1994: 215). Poverty and economic inequality are linked to national homicide rates and that the link is particularly strong for men aged 20-24 years.

The deviant behaviour of minors and young people usually starts within the family. Parents who demonstrate antisocial behaviour are more likely to have children who do the same. In a study conducted among the Swedish population, the family relations of persons convicted of violent crimes were studied. The study found that persons with a sibling convicted of a violent crime were four times more likely to be convicted of a violent crime and twice as likely to have a cousin convicted of a violent crime. A number of studies in other geographical regions found similar results, for example, a study in Cambridge, United Kingdom, which found that 63 per cent of boys with convicted fathers had themselves been convicted of crimes (including violent crimes), compared with 30 per cent of boys whose relatives had not been convicted.

It should be noted that aggression and aggressive behaviour tend to develop at an early age, and many adolescents involved in youth violence have a history of juvenile delinquency and patterns of destructive behaviour in early childhood. Children engaging in destructive or aggressive behaviour and children diagnosed with behavioural disorders are also at increased risk of violence in young people. The emergence of aggressive behaviour before the age of 13 years invariably precedes later violence among men. Many researchers confirm continuity in antisocial behaviour from early aggression to violent crime.

Child abuse includes physical abuse, sexual abuse, emotional abuse and neglect of children. Child victims of abuse are more likely to exhibit antisocial and aggressive behaviours in childhood and adolescence than young people who have not been abused (Olds, 2008: 4).

4. Results

A study of international legal cooperation in combating juvenile delinquency has identified the need for a deeper and more detailed analysis of juvenile delinquency.

5. Conclusion

In order to improve the legal situation of children and enhance the effectiveness of international legal cooperation in combating juvenile delinquency, it seems necessary to adopt the United Nations Convention on “International Cooperation in Combating Juvenile and Youth Delinquency”, which could include the following provisions: the concept of juvenile delinquency; areas of international legal cooperation in combating juvenile delinquency; prevention of juvenile delinquency and peculiarities of juvenile justice administration.

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