Is sovereignty dead? The transformation of international politics

Ivan, Ruxandra

Is Sovereignty Dead?
The Transformation of International Politics*

RUXANDRA IVAN

Understood in its most widely accepted sense in the legal doctrine, as exclusivity of jurisdiction and non-intervention in another state's internal affairs[1], sovereignty is challenged nowadays both from domestic politics and the international – and, what is more, even this distinction between domestic and international has become blurred. The purpose of this article is to document the way in which the transformation or the emergence of different institutions, practices and discourses lead to the transformation of the content of the notion of "sovereignty", as well as the consequences of this process for international politics. We will thus develop an argument about the challenges to which state sovereignty is subjected, as well as about the reaction to those challenges. This argument will unfold into four steps. We will show the way in which the emergence of certain international institutions, such as international jurisdictions and the doctrine of the responsibility to protect, is challenging sovereignty in both its internal and external dimensions. Then, we will argue that the phenomenon of globalization actually undermines the ontological foundations of sovereignty: the territorial nature of the modern state, and the cohesiveness of its body politic. Finally, the counterweight to these processes, which is an attempt to re-institute sovereignty through a tighter control of the state over society, will be discussed. We will conclude with a reflection upon the consequences of this process, which fundamentally affect the very relation between the individual, the state and the international system.

International Jurisdiction

The exclusivity of jurisdiction of the state over its citizens is undermined by the emergence of two different types of international courts. The European Court of Human Rights (ECHR) can judge complaints by individuals against the state. The International Criminal Court (ICC) can judge, in the name of a universal jurisdiction, certain categories of crimes against mankind. Both courts are acting on the basis of a body of law which is not part of, neither hierarchically linked to, international law: human rights.

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[1] Ian BROWNLIE, *Principles of Public International Law*, 5th edition, Oxford University Press, Oxford and New York, 1998, p. 268. See also Kalevi J. HOLSTI, *Taming the Sovereigns. Institutional Change in International Politics*, Cambridge University Press, Cambridge and New York, 2004, pp. 112-142, for a similar definition.

Paul Magnette draws the attention that the ECHR is an "unprecedented protection mechanism", however based on a "relatively little original"[1] text which is the European Convention on Human Rights, signed in 1949. The acceptance, by the signatory States, to submit to the jurisdiction of the ECHR is, historically, the first voluntary limitation of their right to exclusive jurisdiction. The Court can be referred to by states, individuals, non-governmental organizations or groups of individuals[2]. It is true that the ECHR steps in only after the exhaustion of all domestic remedies[3], but this only reinforces the challenge it puts to the content of sovereignty as traditionally understood. The Court can rule against the State Parties and its final decision is binding. This is why we are witnessing

> "a fundamental institutional innovation. The principle of this device consists in the recognition by the state of some binding limits to their *internal sovereignty*, by placing these fundamental rights above their legislative powers. Its form consists in the assignment, to a superior court, of the task of ensuring compliance with these rights, which can be interpreted as a self-limitation of their *external sovereignty*..."[4].

The gesture of placing a body of law above the legislative powers of the sovereign is, on the one hand, a confirmation of sovereignty as the right to decide exception, but on the other hand, it fundamentally undermines sovereignty in its dimension of never submitting to a higher authority.

The case of the ICC is different in its technical aspects from that of the ECHR, but it is linked to the same process of erosion of the exclusivity of jurisdiction. The ICC does not condemn states in order to protect individual rights, but condemns individuals for criminal offenses in the name of universal human rights.

The ICC was established through the Rome Statute, signed in 1998 and entered into force in July 2002. At the moment, there are 121 States Parties to the Rome Statute, out of the 193 UN member States. But several important "pillars" of the international system are missing from this list, such as the USA, the Russian Federation, or China – all of them permanent members of the UN Security Council and thus having a veto right.

The Court can judge four types of crimes: genocide, crimes against humanity, war crimes and the crime of aggression (Rome Statute, art. 5). The Statute is more ambiguous in what concerns *whom* it is competent to judge. Article 12 explicitly states that two cases can be taken into account: the Court can judge either nationals of the Sates Parties, or nationals of third states who committed crimes on the territory of States Parties. This means an explicit renouncement by states to their exclusivity of jurisdiction, defined both territorially and in terms of citizenship. But the ambiguity of this provision comes from elsewhere. Let's take the following fictive example: if a Chinese citizen commits crimes against humanity on the Cambodian territory (which is a Party to the ICC), it can be deferred to the Court. Moreover, the third paragraph of article 12 indefinitely extends the area of jurisdiction of the Court, by

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[1] Paul MAGNETTE, *Europa, Statul și democrația. Suveranul îmblânzit*, Romanian transl. by Ruxandra Ivan, Institutul European, Iași, 2005, p. 47.

[2] European Convention on Human Rights, art. 33, 34.

[3] *Ibidem*, art. 35.1.

[4] Paul MAGNETTE, *Europa, Statul și democrația*...cit., p. 48.

allowing a state which is not a Party to the Statute to accept the jurisdiction of the Court for a particular case. For example, if an American citizen commits one of the four incriminated acts on the territory of Russia, the latter can accept the jurisdiction of the Court for the case in point. This virtually makes possible even for the countries that have not accepted the jurisdiction of the Court to be, to some extent, subject of the Rome Treaty. The state as such is not concerned, as subject of international law; but the situation described above implies that virtually all non-signatory states lose exclusive jurisdiction over their nationals, without having accepted this[1]. Sovereignty is thus limited even for those states that did not accept the Rome Statute. This is why the USA has been signing, since 2002, bilateral treaties with as many countries as possible in order to make sure that its nationals would not be deferred to the Court in any case[2]. This appears to be the only legal possibility for a state to exempt its citizens from ICC jurisdiction and therefore preserve its sovereignty untouched. However, signing such bilateral treaties is a profoundly political issue, because the USA has more means to "convince" its partners to do so than have other states. It can be hardly imaginable that many countries would sign non-extradition treaties with Afghanistan, for example. This is how international law now offers a framework in which some states can be "more sovereign" than others[3].

A situation can be referred to the Court by a State Party (art. 14), by the Security Council acting under Chapter VII of the Charter (art. 13b), or by the initiative of the Prosecutor of the Court (art. 15). The latter case significantly extends the area of competence of the Court, since bringing a criminal before justice does not depend anymore on the authority of any state, or group of states. The Court thus gains an important autonomy with respect to those who created it – the states – and escapes their control. This is one of the evolutions against which some of the states which took part in the negotiations of the Rome Statute drew the attention of the international community. But others considered it to be desirable from the point of view of the independence of the Court.

The Rome Statute is the result of hard negotiations between the signatory states. Even non-signatories, such as the USA, have participated in negotiations (and have only decided later that they would not ratify). This is why sometimes the terms of the Treaty are softer than one would have been expected from a universal jurisdiction.

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[1] The 1969 Vienna Convention on the Law of Treaties, art. 34-38, poses the principle that only states that are Parties to a Treaty should be bound by its terms. This is one of the main principles of international law.

[2] A list of the States that signed such a Treaty can be found at http://www.amicc.org/usinfo/administration_policy_BIAs.html#countries (accessed on 22 April 2007): there are 95 states that signed bilateral agreements with the USA which are into force, out of which 49 are State Parties to the Rome Statute. The complete texts of the agreements are also available at the same URL.

[3] The idea of "more" and "less sovereign" states has also been developed by Jacques DERRIDA, "The Reason of the Strongest (Are There Rogue States?)", in IDEM, *Rogue. Two Essays on Reason*, Stanford University Press, Stanford, CA, 2005, *passim*, with other examples. However, this point of view differs from that of Holsti, according to which "Sovereignty is a distinct legal or juridical status. A state is either sovereign or it is not. It cannot be partly sovereign or have 'eroded' sovereignty no matter how weak or ineffective it may be" (Kalevi J. HOLSTI, *Taming the Sovereigns*...cit., p. 114). Indeed, in legal terms, being sovereign is a black-or-white status; in the meantime, as Derrida would say, in "ontotheological" terms, a subject can be more or less sovereign (Jacques DERRIDA, *Rogue*…cit., p. XIII).

But nevertheless, the Treaty creates limits for state sovereignty, both for States Parties and non-Parties, in several ways. For the States Parties, the Treaty creates an area in which they loose jurisdiction over their nationals and over their territory (while exclusive jurisdiction is one of the main features of sovereignty). Moreover, in a way, the individual becomes directly linked to the international level, trespassing the national one, which renders obsolete the assumption that there is no higher authority than the state and thus undermining the external dimension of sovereignty.

The situation is even worse for states which are not parties to the Treaty, as they may loose jurisdiction over their nationals without having accepted it. In the words of David Scheffer:

> "Article 12 of the ICC treaty reduces the need for ratification of the treaty by national governments by providing the Court with a jurisdiction over the nationals of a non-party State. Under article 12, the ICC may exercise such jurisdiction over anyone anywhere in the world, even in the absence of referral by the Security Council..."[1].

The two types of international jurisdiction discussed above pose a double problem. The first concerns the linkage between international law, domestic law and human rights law. The second concerns the individual as subject of an international jurisdiction. Two types of questions are salient with respect to this double problem: first, how is it possible to link, in the legal doctrine but also from a philosophical point of view, international law and human rights law in the same legal order?; second, what is the meaning of this evolution? Whom does it serve, how did it take place and with what consequences on the evolution of the international environment?

The technical peculiarities of the ICC cover a wide range of aspects. It directly judges the perpetrators – that is, individuals, being a jurisdiction which is established in the name of a universal competence – and not a inter-governmental one. Although the ICC is established by a Treaty signed by states, the body of law which it applies is not international law, but human rights and criminal law; it also acts in the name of a "universal" jurisdiction. Thus, the inter-national, the universal/transnational and the domestic dimensions are intertwined in this relatively new and hybrid form of international jurisdiction. However, bringing a body of domestic law (in this case, criminal law) onto the international level constitutes an awkward evolution[2].

There are other, more philosophical questions related to the jurisdiction of the ICC, such as the problem of the articulation between the fundamental norm of the international system – that is, sovereignty – and the fundamental norm of human rights – that is, the right to life. More generally speaking, this is a problem of linkage, or hierarchy, between two bodies of law: international law and human rights law.

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[1] David T. SCHEFFER, "The US and the International Criminal Court", *The American Journal of International Law*, vol. 93, no. 1, January 1999, pp. 12-22/p. 18.

[2] This evolution might also be interpreted as a hypostasis of the process of "constitutionalization of international law", a process that has been documented, among others, by Jan KLABBERS, Ann PETERS, Geir ULFSTEIN, *The Constitutionalization of International Law*, Oxford University Press, Oxford and New York, 2009; Erika DE WET, "The International Constitutional Order", *International and Comparative Law Quarterly*, vol. 55, no. 1, 2006, pp. 51-76; Jeffrey L. DUNOFF, Joel P. TRACHTMAN (eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance*, Cambridge University Press, Cambridge, 2009.

Which is the relation between human rights law and international law? That is, if we accept, following Kelsen[1], that any legal system has a hierarchy of norms, what hierarchical relation can be established between these two bodies of law?

Traditionally, international law – *jus gentium* – is a body of law whose subjects are the states. States sign treaties, conventions and agree to be bound by norms in a society which is structurally anarchical, with no authority capable of enhancing the law. Individuals are not – or were not, until recently, considered subjects of international law. The Nuremberg trials have introduced a breach in this logic, by allowing individuals to be tried by a jurisdiction other than the national one. A blank period followed during the Cold War, when the bipolar structure of the system did not allow for the emergence of a consensus over the issue of an international human rights jurisdiction. But the establishment, in 1993, of the International Criminal Tribunal for Yugoslavia, and then, in 1994, of the International Criminal Tribunal for Rwanda opened the way for the development that culminated, in 1998, with the signing of the Rome statutes.

The theoretical justification of the possibility of existence of an international human rights jurisdiction is not yet very clear – although it is quite widely accepted nowadays. It nevertheless raises several questions – to which we don't pretend to have an answer, but which are important to be aware of. *First*, the relation between the body of international law and that of human rights remains blurred. A hierarchy between these two bodies of law cannot be convincingly argued, since they differ in nature, scope, and form. From this point of view, an international human rights jurisdiction cannot be quite *inter-national*, because its subjects are not states, but individuals. (A more accurate word would probably be *universal* criminal justice, but the claim to universality is, itself, contestable.) Thus, *second*, another issue to be clarified is the statute of the individual as subject of international justice – and hence of international law. The implications of this evolution are quite troubling for the future of world politics. The erosion of the state as an international actor has already been emphasized by research in international political economy (as linked to the incapacity to control markets)[2] or migration and borders (as linked to the porousness of borders)[3], but the penetration of the individual into the international might be a sign of the constitutionalization of international law, in legal terms, and of the world becoming a single polity, in political terms. The state level is more and more affected and is becoming less and less relevant. *Third*, and directly related to our previous comment, we should again ask the question of the transformation of the meaning of *sovereignty*. It is now possible for citizens of a European state to appeal to a Court

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[1] Hans KELSEN, *Pure Theory of Law*, University of California Press, Berkeley, 1967. International lawyers might argue that one cannot invoke Kelsen on this matter because his theory of the hierarchy of norms is valid only in *constitutional* legal orders. To this objection, we can respond that, in fact, putting together human rights and international law (through the creation of the ICC, for example) is precisely a hypostasis of what has been called *constitutionnalization of international law* (see, for ex., Erika DE WET, "The International Constitutional Order", cit.; Antonio SEGURA SERRANO, "The Transformation of International Law", *Jean Monnet Working Paper* 12/09, 2009).

[2] Susan STRANGE, *The Retreat of the State. The Diffusion of Power in the World Economy*, Cambridge University Press, Cambridge, 1996.

[3] John RUGGIE, "Territoriality and Beyond: Problematizing Modernity in International Relations", *International Organization*, vol. 47, no. 1, 1993, pp. 139-174.

when they consider themselves injured by the State, and that this Court takes a stand against the state; it is now possible for a Court to prosecute individuals even though the state whose nationals they are does not agree: aren't these obvious examples of a certain *erosion* of sovereignty, as traditionally accepted?

The issue of the individual becoming a subject of international law has numerous implications. It is linked, as mentioned above, to the declining role of the state as an international actor in the globalizing world. As frontiers become more and more permeable, and thus more and more irrelevant, the founding distinction laying at the bases of the identity of the state – the distinction inside/outside – becomes blurred[1]. This allows for the diffusion of power – initially residing *inside* the state – towards the outside – but the problem is that, outside, there is no single entity capable of assuming the functions of the state. International criminal justice takes over an object – populations, that have to be protected – and a subject, the perpetrator, by precisely leaving aside the state, and by performing a particular technique of power. What has been, until now, "international politics" is becoming, in the words of G. Agamben, "politics contaminated with law"[2].

How can we explain that the international criminal jurisdiction only covers one of the natural rights presented in the doctrine throughout the centuries? Why is the right to life considered superior to all others, and why is life more universal than liberty? We think that one possible answer to this question is biopolitics. In the light of this hypothesis, we might further push Agamben's expression and say that the developing regime of international criminal justice can be considered *law contaminated with bare life*. Because all other attributes, except the fact of being alive, have been taken away from the victims of the crimes punished by international criminal justice. The victim is not perceived as an individual or citizen endowed with rights – be they natural or positive: the only feature that seems to characterize these "populations", as they are most frequently called, is their bare life. Actually, it is biological life that is protected by international criminal justice, and not necessarily human rights – which include quite more than the right to life. Or, this preoccupation for biological life might not be anything more than a technical requirement of governance intended to produce a stable environment.

Thus, coming back to our earlier discussion, in legal terms, the result of the articulation between international law and human rights law is precisely what we call international criminal law. But, on the other hand, in political, or rather bio-political terms, the result of this articulation is a transfer of the paradigm of governmentality[3] from the national, state-level, to the international level (or we should rather call it "universal" level, because it is based more on the affirmation of some general moral values, that on inter-governmental practices).

Michel Foucault has made an argument about the way in which, historically, the State has begun, since the end of the 17th century, to treat its subjects – the citizens – in terms of "populations" while the power is more and more exercised as a power over the bare

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[1] R.B.J. WALKER, *Inside/Outside: International Relations as Political Theory*, Cambridge University Press, Cambridge, 1993.

[2] Giorgio AGAMBEN, *Homo sacer. Puterea suverană și viața nudă (I)*, transl. from Italian by Alexandru Cistelecan, Idea Design and Print, Cluj-Napoca, 2006.

[3] The physical limitations of an article do not allow us to develop on this notion; but we understand "governmentality" in the sense given by Michel FOUCAULT in *Securitate, teritoriu, populație*, Romanian transl. by Bogdan Ghiu, Cluj-Napoca, Idea Design & Print, 2009.

life. Series, statistics and probabilities are some of the means by which the state *manages* the population, with the purpose of ensuring its "security". Thus the space where the state exercises its power becomes a space populated by masses, and not by individuals. The *political* concept of "citizens" is replaced by the statistical idea of "population". The new technology of power – bio-power – is taking in charge the population, as a whole, as a totality. Biopolitics is, thus, politics that is ordered, structured, organized by the principle of security – not security of individuals, but of *populations*[1].

Or, the cases taken into account by international criminal justice – genocide, ethnic cleansing, crimes against humanity – are precisely the types of offense that are threatening the security of *populations* in their biological dimension. We are thus witnessing a process of shifting of the bio-power paradigm from the national to the international – or should we say, universal? – level. Gradually, the international politics is no longer politics among states (or, as Morgenthau put it, among nations[2]), but politics of managing populations. The state is left aside, overlooked, excluded from this paradigm of exercising power.

But, while in the domestic realm, the mechanisms of bio-power lay within the state, for the international level it is not at all clear which is the instance that exercises this bio-power. When a state fails to protect its subjects, or to do justice to the populations affected by mass murders, and cannot claim sovereignty anymore, it is a fictitious "international community" who should take over the moral duty, the responsibility to protect. But is this a moral duty, or is it merely a technical requirement of disciplining the international political space? The international repercussions of genocide-type events are sometimes very important – waves of refugees, regional instability, economic problems. The Rwandan genocide, for example, spilled over the entire region. The interest of the so-called "international community" is, first and foremost, maintaining stability and order.

International Intervention As "Responsibility"

The reflections developed above apply not only to international criminal justice, but also to another emerging institution of world politics. The idea that fundamental human rights (and most of all, the right to life) should be protected at any price evolved not only in the direction of justice *post factum*, described in the previous section, but also in the direction of the prevention of human rights catastrophes. This is one of the rationales of the development, in the 2000s, of the notion of *responsibility to protect* (R2P). Again, the responsibility to protect addresses only the right to life – and, moreover, it does not concern *individual* lives, but lives of *populations*.

The term "R2P" made its appearance in the international political and legal language at the turn of the millennium, as the result of a semantic evolution which begun with the notion of "humanitarian intervention". But the word "intervention" was – and still is – too powerful for states to accept it as a legal norm. During the academic and political debates around this issue in the 90s, the concept of

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[1] *Ibidem.* See also IDEM, *Trebuie să apărăm societatea*, Romanian transl. by Bogdan Ghiu, Idea Design and Print, Cluj-Napoca, 2009, pp. 189-205.
[2] Hans MORGENTHAU, *Politics Among Nations*, Alfred A. Knopf, New York, 1948.

"humanitarian intervention" has evolved into 'human security[1], and finally reached its present form of "R2P"[2]. This evolution is the result of the efforts that have been made to reconcile the idea of sovereignty with the idea of intervention, and it was possible thanks to an interpretation of sovereignty in which it does not only confer rights to its holders – the states – but also bestows obligations upon them, and above all, the obligation to protect their citizens.

In September 2000, the Canadian Government created a commission for reflection upon the possibility of international intervention in cases of massive violations of human rights. The International Commission on Intervention and State Sovereignty (ICISS) worked for twelve month and published its report under the title *Responsibility to Protect*[3]. This is the first occurrence of this concept intended as a possible legal basis for an international intervention in order to prevent massive violations of human rights in the states that lack the capacity or the will to fulfill their duty of protection. A second step of the reflection upon the issue is the report of the High-Level Panel on threats, challenges and change, in the framework of the broader debate about the UN reform: *A More Secure World. Our Shared Responsibility*[4]. Unlike the ICISS Report, this report has been endorsed by the General Assembly of the UN[5], and one of the reasons might be precisely that it treats the subject in a more ambiguous manner, not using the word "intervention". In 2005, in the outcome document of the World Summit, the issue was positively approached by the UN in the 139th paragraph of the World Summit Outcome Document (A/60/L1).

The most important steps forward in what concerns the legitimation of the international reaction have been made after 2008. One of them is the Report of the UN Secretary General *Implementing the responsibility to protect* and its endorsement by the UN General Assembly[6]. The latest important development is UN SC Resolution no. 1973/17.03.2011 concerning the situation in Libya. It "reiterates the responsibility of the Libyan authorities to protect the Libyan population" and imperatively asks for the end of the violence and abuses against the civilians. It also authorizes member states, after notification of the Secretary General and acting either "nationally or through regional organizations or arrangements" to "take all the necessary measures" to protect civilians[7]. It is the first time when the Security Council takes position on an internal issue of one of the UN member states by allowing intervention *without the consent* of the concerned state, and it is also the legal basis for the NATO intervention in Libya. This document is even more salient given that the Security Council was always reluctant to getting involved in the discussion about the responsibility to protect, precisely because it is such a politically sensitive issue.

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[1] A.A., V.V., *Francophonie et relations internationales*, Éditions des Archives Contemporaines, Paris, 2009.

[2] We have explained in depth this transformation in Ruxandra IVAN, "Deconstructing Security", *PolSci. Romanian Journal of Political Science*, vol. XI, no. 2, 2011, pp. 105-128.

[3] *The Responsibility to Protect. Report of the International Commission on Intervention and State Responsibility*, International Development Research Center, Ottawa, 2001.

[4] *A More Secure World. Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges and Change*, New York, UN, 2004, http://www.un.org/secureworld/report2.pdf , retrieved on 20 February 2012.

[5] UN General Assembly A/59/565.

[6] *Implementing the Responsibility to Protect. Report of the Secretary General*, 12 January 2009, A/63/677.

[7] UN Security Council Resolution no. 1973, 17 March 2011, S/RES/1973 (2011), par. 4.

The most controversial issues in the debate on the responsibility to protect concern the legitimacy of interventions (on what legal basis?), the actors (who should react? who should intervene on the field?), and the criteria required to launch an intervention. We will briefly address these issues after elucidating the meaning of the notion.

The "R2P" was invented in order to avoid terms such as "intervention". It was intended to promote the idea that sovereignty not only entails rights of the state, but also obligations; the most important, the obligation to protect the citizens. But to protect them from what? Long debates around this issue led to the inclusion, in the official documents, of four situations that engage the obligation to protect: genocide, war crimes, crimes against humanity and ethnic cleansing. The doctrine of the R2P foresees three main pillars of the notion: first of all, it is the state itself who is responsible to protect its citizens; if the state is not able to do it, it may appeal to the international community; and finally, if it is neither able, nor willing to do it, the responsibility is moved to the international community[1]. The international reaction is thus the ultimate resort both from a legal and a political point of view: legally, it is a suspension of the norm of sovereignty in favor of the principle of intervention; while politically, it is an answer to a situation in which the state loses its main function, which is, in Weberian terms, the monopoly over legitimate violence[2].

The emergence of the concept of "R2P" in international law is linked to the more and more visible process through which the individual (or rather the "population") becomes a subject of international regulation. Assessing the evolutions of the international criminal justice, as well as of the doctrine of the R2P, one can observe a slow, but certain evolution towards an articulation between the body of international public law and the body of human rights law, in which the latter is superior to the former, in principle. The problems arise when it comes to the question of the degree, or threshold, of human rights abuses that is to be considered unacceptable and that requires the trespassing of the sovereignty norm. Another theoretical difficulty arises if we try to clarify who is the subject of the duty to protect: undoubtedly, the holder of sovereignty is the state, but who is, ultimately, the holder of the duty to intervene when the state is not willing or able to do so? Of course, one might say that it is "international community", but this statement in no way diminishes the ambiguity of the problem: who is, ultimately, the international community? For the cases when the state cannot or does not want to assume this responsibility, who is responsible to react? This question can be reformulated as follows: who is the most appropriate representative of the international community? Here, the legal arguments cannot (and should not) obscure political considerations, because there are several actors and institutions that could assume this role and which are in competition with one another. The UN Charter is clear enough in what concerns the repartition of competences between the Security Council and the General Assembly; but the fact that the notion of "R2P" is absent from the Charter allows for both institutions to reclaim competence, in a logic of institutional competition which exists at the UN.

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[1] UN General Assembly, *Implementing the Responsibility to Protect: Report of the Secretary General*, A/63/677, 12 January 2009, available at http://www.unhcr.org/refworld/docid/4989924d2.html, retrieved on 20 February 2012, § 54.

[2] A state that commits human rights abuses can be categorized as a "rogue State". But precisely this labeling is a profoundly political issue. See Jacques DERRIDA, *Rogue*…cit.

This competition, added to the lack of consensus among UN member states, allows for other, regional organizations to step in. In the absence of a clear reaction from the UN, these organizations can claim the role of "representatives" of the international community and its values: it was the case of NATO in Kosovo in 1999, when its intervention was carried on without previous mandate from the UN, in the name of an international responsibility to stop ethnic cleansing. The question of the actors who should be in charge of the responsibility to react when the state fails is thus very politically significant. Knowing that political decisions are rarely motivated by moral considerations, the yet unsolved problem of the actors which should assume the responsibility to protect is becoming even more relevant from the point of view of the legitimacy of the reaction.

The responsibility to react of the international community is engaged if the state is "manifestly" incapable of assuming its own responsibility, or if it is itself the perpetrator of the four above-mentioned crimes. From this point of view, the responsibility of the international community is only *complementary* to the responsibility of the state. This raises a problem about the precise moment when the international reaction should be engaged: which is the point from which it becomes "manifest" that the state will not assume its responsibility to protect? A subsequent difficulty arises when the international community decides to act in the absence of a specific request from the concerned state, because the latter can argue that the international responsibility has been engaged too soon. On the other hand, waiting for the incapacity of reaction of the state to become "manifest" can significantly delay the international reaction, in a situation where every minute is essential for saving lives. This difficulties have become apparent in practice in the Darfour crisis[1].

Another problem is related to the qualification of a situation as being a "genocide", "war crime", "crime against humanity" or "ethnic cleansing". Defining a situation as pertaining to one of these categories is not a simple intellectual operation: it is a profoundly political gesture. Certain states can qualify an event as being a "genocide", while other can refuse to do so. None of these problems is directly addressed in the legal documents that refer to the responsibility to protect, which leads to decisions taken on a case-by-case basis, as was the case of the intervention in Libya. Consequently, there is no *legal obligation* to react of the international community, because the defining criteria for a situation that justifies a reaction are not very clear.

The concept of R2P has been criticized for two different types of reasons: on the one hand, its content; on the other hand, the ineffectiveness of the international community in managing situations that fall under this title. There is no actual consensus, among international lawyers or among decision-makers, on the content of the responsibility to protect. The concept is vague and insufficiently defined. It is not yet an international norm in the real sense of the term. When it comes to its implementation, the criteria for an international reaction are very relative and leave room for different interpretations. This is why the "responsibility to protect" can conceal great power interventionism. When the economic or strategic interests of the great powers are not a stake, there is not an authentic political will of the international community to react to massive human rights violations. In these conditions, there is a real possibility that groups of

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[1] Alex J. BELLAMY, "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq", *Ethics and International Affairs*, vol. 19, no. 2, 2005, pp. 31-54.

international mercenaries could be hired by certain interest groups in order to provoke conflicts that would request an international intervention under the "responsibility to protect"[1]. And, last but not least, the competence of the decision-making is disputed between the General Assembly and the Security Council. For all these reasons, the notion has a long way to becoming an enforceable legal norm, but it has all the chances to be rhetorically used in order to legitimize foreign intervention.

Furthermore, there are important differences in the way the legal texts approach the subject, which lead to differences in understanding the content of the notion (the ICISS Report, the High-Level Panel Report, the Outcome Document of the 2005 Millennium Summit and the Report of the Secretary General)[2]. If there is indeed an agreement among states, the UN and the international civil society on accepting the fact that sovereignty entails responsibility, differences of approach come up as soon as the notion of "responsibility to protect" appears in the public discourse. This leads, on one hand, to its legal ambiguity, but also, on the other hand, to its wide acceptance as a principle, because everyone gives it the most suited meaning from their own perspective[3].

Other theorists emphasize the fact that the most important flaw of the "responsibility to react" is not necessarily its lack of legal basis, but on the contrary, the lack of political will. In the absence of political will, the utility of the concept is only marginal in international affairs[4]. The international reaction, in the name of humanitarian rationales, is undermined by two important dangers which put its legitimacy in question: the relativity of the criteria for reaction and the subjectivity of those who intervene[5].

As the Libyan case has shown, the insufficient development of the legal doctrine of the responsibility to protect, as well as its unsatisfactory codification in international law, creates an ambiguity which is used by the Security Council to decide on a case by case basis. Moreover, the field implementation of the Council's decisions is itself very little detailed in the Resolutions – leaving much room for those who act on the spot. Taking these decisions on a case by case basis makes them more flexible for ground action, but the logic of a uniform application of law is undermined: the law loses its objective and universal character. Thus, the responsibility to protect is thrown back to politics and to a logic of interest and power.

In the aftermath of the Cold War, new ways to make the state more responsible – and ultimately more accountable – are sought for. International criminal justice is one aspect of this process which has as a result the declining of state sovereignty; the doctrine of the responsibility to protect is another. In the first case, the state is overlooked in its capacity to do justice to the victims and punish the perpetrators. In the second case, the state is patronized by the international community, which takes in charge the protection of populations if the state is not able, or not willing, to

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[1] Alan J. KUPERMAN, "Rethinking the Responsibility to Protect", *The Whitehead Journal of Diplomacy and International Relations*, Winter-Spring 2009, pp. 19-29.

[2] Carsten STAHN, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?", *The American Journal of International Law*, vol. 101, no. 1, Jan. 2007, pp. 99-120.

[3] *Ibidem*, p. 118.

[4] Jean-Marie CROUZATIER, "Le principe de la responsabilité de protéger: avancée de la solidarité internationale ou ultime avatar de l'impérialisme?", *Aspects – Dossier thématique "Responsabilité de protéger"*, no. 2, 2008, pp. 13-32.

[5] *Ibidem*, pp. 22-24.

protect them. Both cases are hyposthases of the erosion of sovereignty understood as exclusivity of jurisdiction and lack of an authority superior to the state.

The Dissolution of the Political Community

The cohesion of the sovereign state is challenged further on by internal processes, such as the porousness of borders and the dissolution of the political community. These do not directly affect the two sovereignty marks discussed above, but rather its very possibility of existence. Sovereignty is exercised on a clearly delineated territory, and in the name of a political body which constitutes the state.

The sovereign state forges its identity by clearly demarcating two of its most important identity markers: territory and political community. Both are crucial for circumscribing sovereignty. Territory has been historically constituted by a sharp distinction between a domestic space, ordered, hierarchical, where the state exercises its sovereignty, and which is delineated by physical borders, and an international space which is presented as anarchic and dangerous. Political community, on the other hand, is constituted by the demarcation of symbolic borders marking "otherness": the cohesiveness of the nation is guaranteed by the shared language, culture, traditions and, eventually, ethnicity.

In order to enhance control and sovereignty, a whole range of symbolic narratives have been initiated by the state. The physical demarcation of borders is accompanied by a discourse of delineation of the domestic space with respect to the external realm. Thus, sovereignty is associated with "a rational identity; a homogeneous and continuous presence that is hierarchically ordered, that has a unique centre of decision presiding over a coherent 'self', and that is demarcated from, and in opposition to, an external domain of difference and change...", while the international anarchical space is "an aleatory domain characterized by difference and discontinuity, contingency and ambiguity, that can be known only for its lack of the coherent truth and meaning expressed by a sovereign presence"[1]. The state presents itself as the sole authority capable of safeguarding this separation between a safe domestic space and a dangerous foreign environment, and it can only do this by maintaining very precise separation lines between *inside* and *outside*. Not only the outside is dangerous, but all that comes from outside the boundaries of the state has the potential of becoming so: hence, the foreigners have always been regarded with distrust by nation states.

Territory and political community are intimately linked. The ideal of super-position between a political community conceived in terms of nationality and a clearly demarcated territory has been a constant of modern European politics. This has become an ontological link in the European mentalities: there is an ontological necessity of correspondence between the territory (*topos*) and the nation, that Jacques Derrida called "ontopology"[2]. And the fact that globalization weakens, on the one hand, the superposition between territory and nation, and on the other hand the borders between communities and between states, generates a counter-reaction of protection from the state and the political community which consists in re-inscribing

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[1] Richard ASHLEY, "Untying the Sovereign State: A Double Reading of the Anarchy Problematique", *Millennium. Journal of International Studies*, vol. 17, 1988, pp. 227-262/p. 230.

[2] Jacques DERRIDA, *Spectres de Marx*, Galilée, Paris, 1993.

borders and re-asserting cultural and national differences, in order to hold on to their ontological identity.

How are borders affected by the advent of globalization? First, the phenomena that accompany globalization have *virtualized* much of the traditionally physical exchanges – such as money transfers, communication, and even commerce. Physical borders have become irrelevant for this kind of exchanges. Moreover, the existence of the world wide web allows for the creation of *virtual communities* which are not territorially coherent. Before globalization, the very idea of community was linked to a contiguous space; this is one of the reasons for the success of the political communities based on the idea of nation in the 19th century. The internet made possible for people to federate around shared ideas, interests or principles without being conditioned by proximity and in a transnational manner. This de-territorialization, this lack of boundaries is a great blow for traditional political communities and a direct threat to the cohesiveness of the nation-state. The latter sees itself obliged to find new ways of reconstituting the borders of its political body.

Any political community needs a binding principle, an idea capable of holding it together. In Europe, since the 19th century, this role has been accomplished by the idea of nation. Being understood, in the German tradition, as community of race, culture and language, and in the French tradition as the will of living together (in the words of Ernest Renan, the nation is a "daily plebiscite"[1]), the nation has been the privileged form of political community, the depository of state's sovereignty. However, Renan's voluntary definition of the nation is somehow idealistic, since neither will, nor culture seem to be enough for holding together a nation[2]. Something else is necessary: a centralized political apparatus and an educational system that promotes the official culture that is subsequently embraced by all the members of the nation. "People wish to unite politically with (and only with) those who share their culture."[3] Moreover, the nation is a primary referent of identity for those who are part of it: in the 20th century, people define themselves first as French, Romanian, German or Italian, and only secondly with other identity marks such as European, liberal, environmentalist etc. A nation can be thought of in terms of "a politically autonomous identity community" – where an *identity community* is defined as "an autonomous human group whose members consider, explicitly or implicitly, that they belong above all to the respective community"[4]. Or, globalization not only obliterates borders, but it also transforms political communities. The nation is no longer the privileged referent of identity. "*Mourir pour la patrie*" has a totally different meaning and appeal today than it had a century ago. Loyalties shifted from the nation-state to other forms of communities, hence the growing importance of regions and local communities. Moreover, the possibility of instant communication through the Internet has allowed for the existence of *virtual* communities: thus, the idea of community is no longer territorially-dependent. One can declare oneself an anti-statalist, a Marxist, a Basque, a Berliner or a human rights activist before he/she is French, Dutch, Spanish or German. Thus, globalization has

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[1] Ernest RENAN, "Qu'est-ce qu'une nation?", conférence faite à la Sorbonne, le 11 mars 1882.

[2] Ernest GELLNER, *Națiuni și naționalism*, Romanian transl. by Robert Adam, Antet, București, 1997, pp. 85-87.

[3] *Ibidem*, p. 87.

[4] Sergiu MIȘCOIU, *Formarea națiunii. O teorie socio-constructivistă*, Efes, Cluj-Napoca, 2006, p. 41.

eroded not only frontiers, but also the identity foundation of the nation-state and has weakened the bonds that held together the national political communities. Or, the nation has been such a successful story for the 19th and 20th century states, that they continue to hold on to it with all the means available – including criminalizing the immigrant as the "illegal alien", a portrait intended to create an image of the stranger as a threat to the political community.

Even if we choose not to appeal to the concept of "nation" in order to understand the bonds of the sovereign state's political community, we nevertheless find that the state is an exclusionary form of political organization[1]. The sovereign state generates exclusion, by posing a rigid distinction between "us" and "them". In other words, it needs 'otherness' in order to constitute its own identity. Difference with respect to the stranger, as well as borders that demarcate the domestic political space, create identity.

Andrew Linklater has developed a strong argument about the "sovereignty-territory-nationality-citizenship nexus"[2]. He argues that the modern state has put in practice a totalizing project that is based on the assumption that the boundaries of sovereignty, territory, nationality and citizenship must coincide[3]. This is why boundaries have to be clearly demarcated both in what concerns territory and the political community – the nation. The result of this project is the creation of an exclusionary form of community, that Linklater calls "bounded community", which is based on the principle of difference and separation with respect to the rest of the world. Researches of the critical theorists and postmodern thinkers of International Relations lead to the same conclusion about the constitution of the modern state around the notions of territory and political community:

> "Identity […] is an effect forged, on the one hand, by disciplinary practices which attempt to normalize a population, giving it a sense of unity, and on the other, by exclusionary practices which attempt to secure the domestic identity through processes of spatial differentiation, and various diplomatic, military, and defence practices"[4].

The sense of unity of the political body of the nation-state is also consolidated through collective violence, as shown by René Girard. Persecution is a primordial mechanism of the constitution of a community. The latter is bond by the foundational sacrifice which has to be renewed periodically, as a form of remembrance of its identity. Moreover, crisis moments favor collective persecutions. Marginals and outsiders constitute the perfect victims for these secularized rituals:

> "Ethnic and religious minorities tend to polarize majorities against them. We can identify here a victim-selection criterion which is, of course, specific to

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[1] Richard DEVETAK, "Critical Theory", in Scott BURCHILL *et al.*, *Theories of International Relations*, Palgrave Macmillan, London, 2001, pp. 155-180.

[2] Andrew LINKLATER, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era*, Cambridge University Press, Cambridge, 1998.

[3] *Ibidem*, p. 29.

[4] Richard DEVETAK, "Postmodernism", in Scott BURCHILL *et al.*, *Theories*...cit., pp. 181-208/pp. 194-195.

each society, but which is also trans-cultural in its principle. There are no societies which don't subject their minorities, the less integrated groups or simply those who are different, to certain forms of discrimination, if not persecution […] The victim selection has universal characteristics..."[1].

Without reference to Girard, but arguing the same type of marginality of the stranger, Nedim Karakayali provides empirical proof to show that in modern societies, the strangers fulfill social roles that none of the natives are willing or able to perform[2].

The 9/11 terrorist attacks also constituted the occasion of the radicalization of the discourse that criminalized the stranger. The stranger is a suspect by the very fact that he/she does not belong, that he/she is different. Its position in the western societies became more and more unstable. In all Western states, the immigration policies hardened. Actually, the 9/11 attacks marked the beginning of a wave of policies that restricted individual freedoms, instituted controls and surveillance of the state over the private lives of the citizens, marginalized even more the non-natives and, last but not least, re-instituted strong borders in the forms of stricter controls at the frontiers, but also as physical walls and fences.

The Security Discourse

State discourses on security dramatically evolved since the Cold War period. Barry Buzan deplored, in the first edition of his very famous book, the fact that the concept of "security" was only used in its military dimension[3]. The situation is completely different nowadays and he wouldn't have anything to complain about anymore. Because the concept of "security" penetrated the whole range of human activities. We now hear about environmental security, food security, markets security, social security, human security, cyber-security. But the unstoppable inflation of "security" discourses might prove just as unproductive, if not as dangerous, as neglecting the concept.

It is the work of Barry Buzan and the Copenhagen School that first pointed to the widening of the meaning given to the term. Together with Ole Waever and other theorists, he produced a categorization of security into five different fields: military, political, economic, environmental, and societal[4]. These authors observed that the new European security agenda of the end of the 20th century focused on other types of security threats than the traditional, Cold War security agenda, which was mainly preoccupied by military aspects. After the Cold War, security can be re-conceptualized on two dimensions: "state security" – in the traditional sense, and "societal security", which is focused on identity as the basic value of a society. Identity, the authors

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[1] René GIRARD, *Țapul ispășitor*, Romanian transl. by Theodor Rogin, Nemira, , București, 2000, p. 26.

[2] Nedim KARAKAYALI, "The Uses of the Stranger: Circulation, Arbitration, Secrecy, and Dirt", *Sociological Theory*, vol. 24, no. 4, Dec. 2006, pp. 312-330.

[3] Barry BUZAN, *People, States, and Fear: An Agenda for International Security Studies in the Post Cold War Era*, Harvester Wheatsheaf, Hertfordshire, 1983.

[4] Barry BUZAN, Ole WAEVER, Morten KELSTRUP, Pierre LEMAITRE, *Identity, Migration and the New Security Agenda in Europe*, Pinter Center for Peace and Conflict Research, London, 1993.

contend, is at least as important as physical preservation; this is why a threatened identity is at least as significant as a military security threat. But threats to identity are not as visible as military threats; they come into being only by being stated by a political actor. This is actually the key of the vision of the Copenhagen School, offered by Ole Waever[1]. Security threats are performed through speech acts; they only exist if they are perceived as such; and they come to be perceived by a society if there is a political actor which emphasizes them. Thus, security issues are those issues that are "staged as existential threats to referent objects by a securitizing actor who thereby generates endorsement of emergency measures beyond rules that would otherwise bind"[2]. This is the core of Waever's famous theory of "securitization". The influence of Carl Schmitt on Waever's work is visible in this statement, as this definition explains the way in which security threats can be used in order to invoke a state of exception that asserts sovereignty beyond the legal norms of a society[3]. This is one of the ways in which state sovereignty, more and more threatened by the 21st century evolutions of the international environment, tries to survive the new globalized, transnational and de-territorialized realities of our world.

The discourse about security constructs state identities in a world so fluid that states need to incessantly reassess themselves. The idea that states maintain their very existence through security discourses has been further examined by IR scholars. One of the most famous contributions belongs to David Campbell, according to whom "The constant articulation of danger through foreign policy is thus not a threat to a state's identity or existence: it is its condition of possibility"[4,] but there are also other contributions to the topic[5].

The end of the 1990s brought another evolution of the concept of "security". After it had been transposed into economic, political, environmental and, most thoroughly developed, societal terms, the word was given a new dimension in the expression *human security*. The term has been launched by the United Nations Development Program in the Human Development Report of 1994, but it is extremely vague in its content:

> "Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs or communities"[6].

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[1] Ole WAEVER, "Securitization and Desecuritization", in R.D. LIPSCHULTZ (ed.), *On Security*, Columbia University Press, New York, 1995.

[2] Barry BUZAN, Ole WAEVER, Jaap DE WILDE, *Security: a New Framework for Analysis*, Lynne Rienner, Boulder and London, 1998, p. 5.

[3] The sovereignty is defined by Schmitt as the capacity to institute the exception from the legal order. See Carl SCHMITT, *Political Theology*, transl. from German by George Schwab, The MIT Press, Cambridge and London, 1985, p. 5.

[4] David CAMPBELL, *Writing Security: United States Foreign Policy and the Politics of Identity*, University of Minnesotta Press, Minneapolis, MN, 1998, p. 12.

[5] Michael STERN, *Naming Insecurity – Constructing Identity*, Manchester University Press, Manchester, 2005.

[6] UNDP Human Development Report, "New Dimensions of Human Security", 1994, available at http://hdr.undp.org/en/reports/global/hdr1994/ (accessed: 30 August 2011).

As such, it was completely inoperable. However, we should notice that the accent is not on the state anymore, but on the human being. The shift of the emphasis from the state to the human being (more precisely, to the *life* of the human being) allows for the inclusion, into the concept of *human security*, of situations that occur inside states – such as genocides committed by the state itself against its own people. The multiplication of infra-state conflicts and events that lead to waves of refugees, migration and political instability certainly contributed to this shift, as well as to the consecration, in international politics, of another controversial notion: that of "humanitarian intervention".

Thus, since its resurrection (thanks to the work of Barry Buzan), the notion of "security" shifted to "societal security" and "human security". Then, the emphasis moved to the other term of the expression: the *human* dimension. The need to protect – or to assure the security of populations – was a preferred topic in the international political discourse of the 1990s and 2000s. Actually, "human security" is a notion that evolves in a close relation to those of "humanitarian protection", "humanitarian assistance" and "humanitarian intervention" – a term that has been used for the first time to characterize the UN intervention for the protection of the Kurdish population in Northern Iraq, in 1991[1]. However, the idea of humanitarian intervention could not gain much terrain: while its supporters insisted on the word "humanitarian", its contenders emphasized the word "intervention". And the end of the 1990s brought about several too bold speeches of the UN Secretary General, Kofi Annan, about the need for humanitarian intervention[2]. After this moment, this type of discourse begins to fade, in favor of the emergence of a new concept: responsibility to protect.

In parallel with the emergence of the notion of *responsibility to protect*, another evolution can be grasped in international politics after the September 11 attacks, namely, the return of the emphasis on national security or "homeland security". The war against terrorism brought about a whole series of measures intended to increase security, such as the Patriot Act or the law of the Military Commissions in the USA[3], but also the 2008 security package in Italy[4]. In order to be safe, the governments argued, citizens must accept to give up some of their liberties – such as, for example, the secrecy of correspondence or of medical files. Moreover, governments are more and more preoccupied by threats from within, such as immigration or terrorism. These are two of the most quoted "new types of threats" indexed in the national security strategies of the Western countries. But the difference with respect to the Cold War national security discourse are obvious: the threats are not exterior to the state anymore. They come from within; the anarchic foreign environment has infiltrated itself inside the states, threatening its coherence, its cohesion, and its existence.

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[1] Hamit BOZARSLAN, "De la géopolitique à l'humanitaire. Le cas du Kurdistan d'Irak", *Cultures et conflits*, no. 11, 1993, pp. 41-64. The French language offers a more subtle distinction between *intervention* and *ingérence*.

[2] For a discussion around these initiatives Thomas G. WEISS, "The Politics of Humanitarian Ideas", *Security Dialogue*, vol. 31, no. 1, 2000, pp. 11-23.

[3] Ruth WEDGWOOD, "Al Qaeda, Terrorism, and Military Commissions", *American Journal of International Law*, vol. 96, no. 2, April 2002, pp. 328-337.

[4] Massimo MERLINO, "The Italian (In)Security Package. Security *vs.* Rule of Law and Fundamental Rights in the EU", *Challenge Research Paper* no. 14, 2009, available at http://www.libertysecurity.org/IMG/pdf_italian_insecurity.pdf (accessed: 10 September 2011).

The evolution of the content of the notion of "security" is a hypostasis of the transformation of the nature of sovereignty. The discourse about "security" reflects two opposed, but complementary transformations of this notion: the erosion of sovereignty, on the one hand, and the consolidation of the internal mechanisms of control, as an attempt of the state to re-constitute what has been lost in the first sequence of this process, on the other hand. A false opposition has been constructed through political discourse between security and liberty. This is a mark of a technique of power that is based on a widening control of the state over the lives of the individuals. The state is trying to re-constitute its political body and hence its sovereign power through the manipulation of the security discourses.

More and more often, especially after September 11, we hear politicians speaking of the "balance" between liberty and security. Because of the "new types of threats", mostly the threats from within, the governments justify the institution of exceptional measures that suspend the normal legal order. IR scholars from the critical and postmodern schools already inquired this tendency[1]. The *Challenge* project tries to deconstruct the apparent naturalness of the dichotomy liberty-security, suggesting that we don't actually have to make a choice between being surveyed and being threatened. On the contrary: the language of balancing "justifies discriminations, legal transgressions and violence of security policies by implying that the exceptional and the violent can always be reconciled with the acceptable..."[2]. In the same line of arguments, the *Challenge* project shows the way in which, based on the exceptional security policies designed to prevent illegal migration and terrorism in the EU, the distinction between police and military is more and more diluted, mainly because of the increasing ambiguity of the distinction between internal and external. Or, it is precisely this distinction that *constitutes* the State: "The opposition between sovereignty and anarchy rests on the possibility of clearly dividing a domesticated political space from an undomesticated outside"[3]. When the distinction is not clear anymore, the very identity of the State as a political subject is threatened.

The *subject* of human security, as well as of the responsibility to protect, is ambiguous: is it the individual? The citizen? The communities? The society? The people? Or the "population"? Scientific literature on the subject does not tackle this issue, and the documents of the UN which make reference to the notion are even more cautious in designating the subject. But an overall look on this semantic evolution points to the fact that the emphasis is not at all on the individual, nor on the citizen, nor on the society or the people, but on "population". And, while the former have an obvious *political* dimension, the latter is deprived of its political characteristics, being taken into account only in its biological dimension.

If we think that, in the end, security is about the preservation of life – both in what concerns internal measures of fight against terrorism, or international measures of protecting populations, we are touching another significant aspect of the transformation of the State in the globalized era. Commenting on the closing of *La volonté de savoir* de Michel Foucault, Giorgio Agamben inteprets it as follows:

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[1] *Challenge Liberty and Security*, 2009, http://www.libertysecurity.org/module (accessed: 30 november 2010).
[2] *Ibidem*.
[3] Richard DEVETAK, "Postmodernism", cit., p. 193.

"Foucault summarizes the process by which, at the threshold of the modern era, natural life begins to be included in the mechanisms and calculations of the State power, and politics turn to *biopolitics* […] According to Foucault, a society's 'threshold of biological modernity' is situated at the point at which the species and the individual, as a simple living body, become the stake of political strategies..."[1].

The turning point of modernity is, thus, the politicization of the bare life.

This brings us back to the discussion of the bio-power and biopolitics. The over-preoccupation for the preservation of life, to the detriment of other human rights, does not reinforce our democratic values; on the contrary, as Agamben notes:

"Our politics doesn't know, today, of other value (and, implicitly, of other negative value) than life, and as long as the contradictions involved by this fact will not be annulled, Nazism and Fascism, which made of the decision on bare life the ultimate political criterion, will unfortunately remain actual"[2].

The focus on the *biological* aspects of human life – famines, natural calamities, diseases leads to a situation in which "the space of bare life extends to coincidence with the political space"[3], taking over all that used to be "political" in international politics. The man is neither a citizen, nor a legal entity, holder of rights and obligations anymore; he is rather a statistical element, a living individual in a *population*, a subject of governance – a governance that is instituted for his protection, but not necessarily in his name.

"The inclusion of bare life in the political realm constitutes the original – if concealed – nucleus of sovereign power. *It can even be said that the production of a biopolitical body is the original activity of sovereign power.*"[4]

Thus, the doctrine of the R2P institutes some kind of an international "super-sovereignty", since, according to the Report of the Secretary General[5], the international community can decide the exception from the norm of sovereignty. Moreover, through the responsibility to protect, the paradigm of governmentality discussed by Foucault[6] penetrates the international; because in the end, the rationale of the responsibility to protect lies in the danger of spillover of the negative phenomena brought about by civil wars, genocides or waves of refugees.

Through the security discourse, the states attempt at reconstituting the borders *inside*: now, the immigrants are inside, the terrorists are potentially inside – and thus, the frontier between *us* and *them* is, itself, inside the state. This is what justifies the

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[1] Giorgio AGAMBEN, *Homo sacer. Sovereign Power and Bare Life*, Stanford University Press, Stanford, 1998, p. 3.

[2] *Ibidem*, p. 7. See also Hannah ARENDT, *The Human Condition*, University of Chicago Press, Chicago, 1998.

[3] Giorgio AGAMBEN, *Homo sacer*...cit.

[4] *Ibidem*, p. 6. Underlined in original.

[5] UN General Assembly A/63/677, cit.

[6] Michel FOUCAULT, *Securitate*...cit.

institution of surveillance and repressive mechanisms. Not being able to reconstitute its territorial borders, not being able to control the flows that are penetrating its frontiers, challenged by the emergence of superior international institutions, the state takes refuge in the core if its attributions, the one that have been granted to it through the social contract: insuring security. The state thus attempts at reconstituting its sovereignty by re-constituting its political body (which is more and more becoming a mere object of its governance) through the discourse of threat. The common threat holds together the political body and ultimately the identity of the state. This is why we think that the security discourse is a way of 'production' of the society by the political power.