Responsibility to Protect: conceptual debate, cases and Brazilian reasoning

Abstract: This article aims to present, according to the unfolding conceptual theory Responsibility to Protect (R2P) developed within organs of the United Nations, critical discussion about where its assumptions were used to support interventions in sovereign states and if it can be used for future situations. It is proposed to analyze the aspect of R2P presented by Brazilian diplomacy called Responsibility while Protecting (RWP), as well as its reception by other countries. Therefore, this work is included in the methodological aspect entitled juridical-theoretic method, based on the analysis of specific legal provisions in connection with the legal system as a whole (GUSTIN; DIAS, 2013, p. 20-25). In this case, there is an emphasis on the study of resolutions and other documents of the Security Council and the General Assembly, as well as its doctrinal interpretation. However, is not limited to working with the normative relations, but shows its correlation with external sources that permeate these rules. Consequently, some legal and political implications that R2P may impact to the international society was found as a result of the research. In this sense, the article seeks to understand the justification and the limits for humanitarian armed intervention of great powers in countries undergoing crisis of governmental legitimacy.

Keywords: Responsibility to Protect, Responsibility while Protecting, International Intervention.
1) Introduction

The report of the International Commission on International and State Sovereignty (ICISS) opened discussions within the UNGA about the concept of Responsibility to Protect (R2P). This 2001 document was a response to the 2000 Secretary-General Kofi Annan speech (p. 48), which had launched an appeal to the international community on account of the atrocities committed in Rwanda and the Balkans region to start a discussion about the possibilities of humanitarian intervention due to serious and systematic violations of human rights.

As in previous situations, like the case of Kosovo, when the Resolution n. 1244 (1999) was approved by the UNSC, humanitarian motives had been used as a justification for the interposition of UN peacekeeping operations. Canada organized a commission composed of 12 experts who presented in December 2001 the ICISS Report. This paper aimed to address the humanitarian intervention and how it should occur, including situations in which the use of force would be necessary. In order to achieve its objectives, the document questioned the definition of sovereignty, moving away from the frameworks of Peace of Westphalia (1648), for a different direction. This would be sovereignty as responsibility, in which the state would be in charge of human security. It would be constitute a "right of intervention" that would allow humanitarian intervention by other States in a country considered a transgressor.

The violation of the sovereignty of this State would be justified with the idea of "responsibility to protect", in which the intervention of the international society would be allowed where negligence of the state in protecting its population could be identified, specifically in cases of genocide, crimes against humanity, war crimes and ethnic cleansing (INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, 2001, p. 12).

The impact of this theory in international society has led to important discussions within the UN as well as shaping the legal basis for authorized intervention by the UNSC in the UN Members.
2) Conceptual debate

According to the arguments of the ICISS Report, there would be undeniable benefits in applying the R2P theory in the humanitarian intervention field, since the interests of the population would be protected without any loss of state sovereignty. This is because sovereignty would be exercised by the people in their own right, and not by the ruler who had it usurped. The consolidation of this theory would also prevent other States interests prevailing over the protection of the population, as the intervention would be legitimized by the action of human rights and humanitarian law defenders, which would facilitate its acceptance by international society (INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, 2001, p. 39).

Regarding the theory scope, the ICISS Report stipulated the three types of responsibility for R2P: prevent, react and rebuild. Prevention is considered the most important one, because it would embrace the causes of conflict and the ability to anticipate and combat attacks. The second concerns the responsibility to react, applied in the case of failure of prevention, where it would be necessary to make an approximate intervention of the so called humanitarian intervention. Finally, the responsibility of rebuilding would be directed towards peace and development (INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, 2001, p. 12).

Another definition of R2P in the report is related to the use of military force, which would only be liable in two situations: if there is the possibility of many victims, both real or foreseeable, with or without genocidal intent, as a consequence of deliberate action by a State, caused by its negligence, incapacity to act, or its collapse; or in the case of ethnic cleansing which has a chance to occur on a large scale situation, real or expected to happen through killing, forced expulsion or act of terror or rape. However, the UNSC would be the sole body responsible for the approval or veto of a possible military intervention because, according to the ICISS, it has sufficient powers to maintain and restore peace, besides ensuring international security. (INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, 2001, p. 12).

In the following years, these discussions about the R2P were reduced due to the U.S. intervention in Iraq, reemerging in 2005. Thus, the concept of Responsibility to
Protect was officially consolidated in the UN only in 2005 in 138 and 139 paragraphs of the Final Document of the World Summit Outcome. This established the basics of the concept, which differentiate to the right to intervene because the restrict scope of international action under R2P interventions, which is applied only to war crimes, genocide, crimes against humanity and ethnic cleansing. Like the previous report mentioned, this paper considers that R2P would be related to discussions of human security by placing the State with the primary responsibility in the protection of its people, and not only its borders.

This concept extends the responsibilities to prevent and protect to the international community, in the case of negligence or incapacity of the State. However, paragraph 139 does not rule out the possibility of case-by-case analysis for addressing an international collective action -through the UNSC- to contain conflicts when peaceful means would be insufficient, as established in Article VII of the UN Charter. The text further enhances the commitment of member States to assist their peers in developing their own ability to protect, retaking the prevention notion present on the R2P concept, as a result of avoiding that internal tensions evolve into crises, preparing the State prepared to take measures before the outbreak of conflict.

Setting limits for international action under the paragraph 139 was the topic of extensive negotiations, specifically on the parameters of its use. Those boundaries were necessary to differentiate R2P from the right to intervene, that has a much wider application. As Brazilian diplomacy would claim in 2011, R2P could not serve as justification for any humanitarian interventions (BIERRENBACH, 2011, p. 146).

Later, the concept was divided by the Secretary-General of the United Nations Ban Ki Mon (2009) into three pillars. The first pillar is about the primary responsibility of the State in protecting its population; the second, on the international responsibility to call upon peaceful ways to protect the population of the States involved in a conflict; and the third pillar enables collective international action as result of the incapacity of the State and of the peaceful means of international settlements. However, controversy occurs since some states are not willing to accept any kind of military force that was not approved by the UNSC, or in the case of humanitarian intervention (BIERRENBACH, 2011, p. 159).

In the following years the concept of R2P continued to be discussed, especially faced with its first implementations, like in Kenya. However, critics arose from within UN member States - among them Brazil stood out - about the threat to sovereignty that
this reasoning could represent. In this sense, new developments emerged to define international protection, like the idea of Responsibility while Protecting (RwP) advocated by Brazilian diplomacy. Through this approach, the RwP is intended to alert the international community of the possible implications of armed intervention, which can often be more aggressive to the local population than the actual inability of the State to deal with the conflict (DIAS, 2012).

This new position advocated by Brazil is grounded according to the speech of Ambassador Maria Luiza Viotti (2011), who gave new guise to the already conceptualized pillars of R2P, as previously mentioned. Then Brazilian diplomacy proposed that there should be a implementation of references to conduct the process of taking measures through the use of force by the UNSC; the adoption of orientations to guide the lodging of resolutions authorizing the use of force by States entitled to intervene, and the creation of a monitoring and analysis operative unit for the implementation of UNSC resolutions by member States to ensure that the order of intervention is duly fulfilled.

However, according to Almeida (2013, p. 74), Brazil fails to propose concrete forms that have the purpose of reinforcing prevention of conflicts both within the UN and the States. Clearly it is necessary to better enable States to act in the protection of their populations, and in that sense the Brazilian thesis would be enhanced - and could thus have greater acceptance - if it worked on solid forms of implementation of preventive measures at a national level, especially in the Brazilian society.

3) Cases

Due to the important consequences that R2P could bring to international society, four cases which demonstrate the practical challenges and effects of R2P over last decade will be analyzed through the actions taken in in Kenya between 2007 and 2008, in Libya, 2011, in Syria, from 2011 to the present and the possibilities of its application in the ongoing Ukrainian crisis.

Initially, the Kenyan case is regarded as the first successful case of R2P implementation (SHARMA, 2011, p.28). The political instability of this country was caused due to the disclosure of electoral fraud by the European Union monitoring group and the Electoral Commission of Kenya, which brought upheavals, rebellions and
political persecution. This crisis was marked by the reelection of Mwai Kibaki of the Party of National Unity (PNU) and, against Raila Odinga of the Orange Democratic Movement (ODM). The situation sparked conflicts between armed groups because of the ethnical and ideological differences and polarization.\(^7\)

While the conflict was escalating, intervention from the UN was requested. This request occurred because both PNU and ODM, after a several number of meetings, agreed with the African Union resolution, which aimed at a peaceful settlement of dispute using the UN mediator. The negotiation process counted on the participation of the parties’ representatives, and set the end of violence as the main objective, in addiction to international peacekeeping, the protection and guaranteeing of human rights, national reconciliation and longstanding peace strategies (SHARMA, 2011, p. 30). With these stated purposes, the peace making meetings, performed in 2008 February, ended the conflict and created the National Accord and Reconciliation Act as well as the Principles of Partnership of the Coalition Government, signed by Odinga and Kibaki.

After the end of the mediation process, the changes in the Kenyan situation have been minimal. This conclusion is based on the post-intervention period, because, after the “success” in the configuration of a new political scope in the country, the ills and consequences of the internal political disputes were not solved even with international assistance. Still, in the opinion of Sharma (2011, p. 31), the real international concern in Kenya, which was translated as intervention, seems to serve Western Power’s interests in the region, since it is considered as an important place for regional maintenance of security and combatting terrorism.

Another emblematic case related to R2P’s application is referred to Libya, which was the subject of international military intervention in 2011. Given the revolutions of North Africa and the Middle East in 2010-2011, the Gaddafi’s government initiated a reactionary movement, using the national army against the rebels and the civilian society (ANDERSON, 2011, p.6). In response, the UNSC initiated sanctions against this State to achieve a cease-fire. Thereby, through the Resolution 1970\(^8\), from February 26 of 2011, based on Chapter VII from the UN charter, specifically art 41, the UNSC, decided on actions without the use of force, such as: economic and military embargoes, and the freezing of Libyan assets. Nevertheless, these measures were ineffective. There

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\(^7\) Historically, the ethnicity Kikuyos and Luos fight with each other for the political control of the country.

\(^8\) In this resolution, all members of the Security Council of the United Nations adopted a positive vote.
was no cease-fire and the violence escalated, leaving the National Transition Council, the Libyan political anti-Gaddafi organism, the only option but to ask for international military help and intervention.

In March 17th of 2011, the UNSC Resolution number 1973\(^9\) was approved, establishing “all necessary measures” to protect Libyan civilians. Thus, the North Atlantic Treatment Organization (NATO) was authorized to intervene with the use of force. The Resolution 1973 imposed a no-fly zone in the Libyan territory. (DAALDER; STAVRIDS, 2012, p. 2)

From these measures, the civil war lasted for another three months, ending in August 2011, with the fall of Gaddafi’s government, his subsequent death and the Transition Council interim government. In the course of voting on UNSC Resolutions, it is important to mention the change in position of Russia and China, which demonstrates the lack of consensus regarding the use of interventionary measures for humanitarian affairs and their limits of state sovereignty. Therefore, in the Libyan case, the internal intrigues had not been fully resolved and significant expansion of the tensions between the different groups, due to the decentralized features of the Libyan state, whose current government still seeks internal institutional legitimacy and dissolution of the militias in the countryside (VANDERWALLE, 2012, p. 8-15).

After these clarifications on the Kenyan and Libyan cases, the analysis of the Syrian deadlock it is important in relation to boundary issues regarding the performance of R2P. Unlike previous actions, the use of intervention in Syria has not come at the request of representative of the country, such as Kenya, nor the prior agreement of the members of the UNSC on this matter, as in Libya. Thus, Russia and China used their veto power unlike in the previous case, in which they abstained. Syria has major military and political expression (than the other examples), which could cause irreparable international consequences\(^10\).

Those objections from Russia and China fall into the “balancing\(^11\)” of systematization, in which the States join the race to generate collateral balance of power. In this case, the interest in maintaining peace is guided by non-intervention in

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\(^9\) This Resolution were 10 votes and 5 abstentions (abstentions being made by India, China, Russia, Brazil and Germany)

\(^10\) The Syrian army has about four times the number of soldiers who were in Libya, and an armed intervention in this State would take a step in the security dilemma in neighboring countries supporters of the Assad government, in this case, Iran (WESTERN, Goldestein 2013).

\(^11\) Concept made by Kenneth Waltz (1979, p. 125-126) in which the states are related by groups which exert a balance of power in the international arena against its hegemony.
State sovereignty (BAEV, 2011, p. 294; POLLACK, 2011, p. 302). According to Western and Goldestein, there have been at least 100,000 deaths while 7 million have been made homeless, until this day. As a result, R2P faces its biggest challenge so far, which is their application and directives depend on the agreement held by the UNSC in its functions. The Syrian problems remain, because in spite of UNSC Resolutions 2042, 2043 and 2056, the government did not retreat in their repression of the rebels. Furthermore, President Assad remains in power, even with the suspension of the state as a member of the Arab League (AJAMI, 2012, p. 62).

In June 2012, the United States, United Kingdom, Russia, China, France and the Arab League met in the Action Group for Syria UN, becoming a communiqué setting out the possible ways for a safe transition of the Syrian regime. This event was known as Geneva I. Points established by the document required a ceasefire on the part of the Syrian government; the establishment of a transitional government, constitutional and legal reform, establishment of a multiparty system and free and guaranteed women's representation in this process of transition and the rebuilding of the country (ACTION GROUP OF SYRIA, 2012). The intent of this proposal was to avoid bloodshed, the escalation of the conflict and international military intervention whether approved -or not- by the UNSC.

However, the statement had little real effect. Despite the presence of Russia and China, allies of the Assad government, the Syrian regime gave no legitimacy to the document and maintained their actions, intensifying repression and attacks. A turning point came about over the claims use of chemical weapons in Ghouta in August 2013, carried out by the Assad’s government. The use of chemical weapons against civilians is considered a war crime and genocide. The U.S. reaction was more vigorous at this moment: if the Syrian government did not give up its hold of power, unilateral intervention measures would be carried out in the name of international security.

With a range of verbal threats and the possibility of impending international war, the Russian Foreign Ministry rhetorically defused the United States with their own discourse in respect to international safety standards, confronting them with this last speech. The same foreign ministry demanded that the United States ceased threats, while at the same time the Syrian government proposed tabling its arsenal of chemical weapons to international forces.

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12 Resolutions that allowed observation: UN Supervision Mission in Syria; and renewal dates of April 14, 2012, April 21, 2012 and July 20, 2012, respectively.
After this discussion, the UNSC adopted Resolution 2118 in 2013, which allowed the entry of UN members for the withdrawal of Syrian chemical weapons state. The document condemns generically the use of chemical weapons as a threat to regional and international security and their use by the Syrian regime against the population. This resolution was adopted unanimously. In a sense, the negotiation of the resolution afforded time for the Assad government and its allies to strengthen themselves politically.

Thus, the international pressure for necessary dialogue was established, beginning with an attempt at a diplomatic level of conversation between the Syrian government and the opposition with the participation of other international actors. The meeting, which took place in Montreux and Geneva from 22 to 31 January 2014, became known as Geneva II, which was attended by the United States, European Union, representatives of the Syrian opposition, the Assad government, the Russian Federation and China. The meeting was the first to meet on a negotiation desk an officer of the Syrian government and the rebel opposition. The position for the United States and the European Union was more complex, as they had proposed, as with Geneva I, that the Assad government withdraw from power and guarantee a peaceful and democratic transition; while Syrians and Russians were only there to maintain their previous position (SHABANEH, 2013).

This impossibility of articulation by peaceful means in the Syrian case demonstrates the diplomatic inaction of the UN and the concert nations in situations where state interests remain above the law and international institutions. The continuing threats and permanence of the potential use of chemical weapons by the Syrian regime would lead the United States to act unilaterally, like 2001, breaking the rules signed by the United Nations.

In another case in which R2P is sometimes thought of as a justification for intervention is the current situation in Ukraine. In December 2013, civil unrest broke out against then President Viktor Yanukovich for having canceled the negotiations that would enable the country to enter into free trade agreements with the European Union. This attitude was interpreted as Russian influence and against the "will of the Ukrainian people," especially given the history of corruption of the government officials.

The internal disruption in Ukraine entered into civil war, fought mainly in the capital Kiev, resulting in the fall of Yanukovith from his post. Until then R2P would not have been justifiable. The political crisis then brought a joint transition presidentially
led by Oleksandr Turchynov that promoted a closer relationship with the countries of NATO. Here, it can be observed a second phase of the Ukrainian crisis with the Russian military presence in the territory of Crimea, in retaliation to the new government which the Kremlin labelled a "coup". The Russian government harbored Yanukovitch and initiated military movements from the borders of the two countries. Parallel to this, regions of Ukraine's ethnic Russian majority rose up to the current regime and proclaimed their independence, taking advantage of the weakness of Kiev.

Thus, regions such as Crimea and Donetsk considered themselves independent from Ukraine, Crimea annexed to Russia days after the referendum on separation from their old country. In this second phase of the crisis, the conflict assumed the character of the crisis in the international system. Components of NATO mobilized, including Ukraine itself in military exercises in Eastern Europe, which exacerbated the tensions in the country. Russia, in turn, recognized the autonomous provinces then abandoned their consistent diplomatic discourse in relation to sovereignty, indivisibility of the territory of a country and non-intervention in internal affairs. Subsequent UNSC resolutions to defend the integrity Ukrainian territory became unlikely due to the veto power of the United States and Russia in any decision of the UN Summit. The main international organization in this case tends towards immobility, similar to the Cold War.

4) Brazilian Reasoning

The 66th UN General Assembly established the Brazilian conduct regarding R2P. President Dilma Rousseff’s opening speech, besides recalling the principles of international relations written in the UN Charter, emphasized the need to observe both the authority of UNSC authorization for intervention, as their consequences with respect to its implementation. The focus of the Brazilian position does not lie only in the fundamental idea of Responsibility to Protect, but to spread it to what was called Responsibility while Protecting or, in other words, what happens, how and by whom the actions will be taken in sequence to the order of the UNSC.

Muggah and Hamann (2012, p. 6) synthesize the proposal of the Brazilian President by emphasizing that an intervention should not be restricted to the conditions of its occurrence, but how and by whom should be interposed. Therefore, the Brazilian proposal is relevant for setting long-term commitment on the non-intervention by
linking such actions to multilateralism and prevention since they have to be mandatorily observed before any interference in a sovereign country. Consequently, Brazil claims to participate in the development of international security regulations.

In addition to the debate about prevention, which should be the focal point of the actions described by R2P, the Brazilian proposal features three main concerns: first, the reference implementation to guide the process of taking action on the use of force in the UNSC; second, the adoption of references to guide the filing of resolutions authorizing the use of force by States entitled to intervene; and finally, the creation of a monitoring and analysis method for the implementation of UNSC Resolutions by Member States, ensuring that the intervention order is duly fulfilled (ALMEIDA, 2013, p. 75).

Soon after Brazil announced the RwP idea, opposite reactions took place by Member State representatives in the UN. Different delegations positioned themselves as in favor or against the Brazilian proposition, but most of them disagreed (STUENKELL, 2013, p. 62-63). It was received skeptically due to the absence of details in its conception and understood as a whole set of undefined but inflexible procedures that would delay actions against major human rights violations. Therefore, RwP was considered generic and succinct, and its usefulness against, for example, the Assad regime was questioned. On that occasion, the most important discussion involved the case of Syria.

The strict pillars arrangement and the necessity of monitoring and assessment of the intervention actions by the UNSC were also heavily criticized, particularly by the NATO Member States concerned about possible interference of the UNSC on R2P ongoing operations or some sort of accountability for their actions. It was recognized, however, that there were certain authenticity of the Brazilian discourses, since the points and proposals presented the concept of RwPhad already been expressed in one form or another in the past but without a conjectural articulation. Thus, the true innovation would have been Brazil's decision to utter these arguments and proposals under the name RwP and take its explicit defense.

Thus, the Brazilian position had its own assumptions, differing to other Western countries, including USA, which viewed the proposal as Brazilian irresponsibility due to the meaninglessness of its coercive power and the inexperience of Brazil in international armed conflicts. Thus, the Western powers, as well as Russia and China, judged that the country did not know the question, in fact, to take the lead on major issues of global security (LUCK, 2012).
It should be noted, however, that the Brazilian position goes away from a whim of foreign policy or an attempt to unduly put itself into the discussion. The Constitution of Brazil, in its Title I, referring to the "Fundamental Principles", provides in Article 4, the principles of Prevalence of Human Rights, Nonintervention, Defense of Peace, Peaceful Settlement of Conflicts and Cooperation between Peoples for the Progress of Mankind; which guarantees, without proclaimed responsibility, as placement of RwP would point, but a consistent trajectory of its foreign policy while defending those kind of questions.

The UN Charter provides, among its purposes and principles, that peaceful means of dispute settlement may be employed, so force should not be used as a rule of thumb for international responses. So, the promotion of peace and security and therefore the repression of aggression and effective international cooperation should be considered formulas to link the behavior of the different spheres of power. Hence, also according to the preamble of the UN Charter, the relationships between large and small nations, respecting the conditions of sovereignty and self-determination should be ruled by the preservation of the future generations from the scourge of war and human rights violations, deriving from treaties and other sources of international law.

According to Dias (2012), Brazil's proposal benefits both the development of the law standard, allowing it to be envisioned more clearly and precisely in its operation, as it contributes to a reduction of the resistance in relation to R2P in order to lead to a regulatory change that can be effective in practice and not a dead letter on legal grounds. According to a Canadian point of view (WELSH; QUINTON-BROWN; MacDIARMID, 2013), the Brazilian proposal marks a new stage in the development of the global standard in prevention and response to the actions against genocide, war crimes, crimes against humanity and ethnic cleansing. In other words, it is intended to strengthen the commitment to seek peaceful means for serious threat to populations and to improve the accountability of those who use force, as last resort, in the name of the UN. Thus, by this understanding, the RwP is a commitment to maintaining the current world order based on rules rather than encourage unilateral action.

The crises of the new scenario, as the Ukrainian example, show that is essential for the international system to develop clear and effective rules. State interests overlap institutions and mitigate the possibility of actions of the Concert of Nations where any resolution could undermine this or that great power. The great problem is that such reform needs to be a systematic change and willingness of great powers of yielding their
power, what will probably not occur. The other possibility is a new great war that will change the current paradigms, but the results do not necessarily change the rules of the international game system. While life is only a rhetorical trick is doomed to be currency in the state game.

5) Final Considerations

The case studies samples in those where R2P was applied corroborates the idea that its applicability is not consistent with the theory that it casts. Thus, the international system debates, if not the motivations of the concept itself, the necessary revision of its terms, and especially the charging measures of its implementation. Therefore, their theoretical conformations and practices should help the proposition to embrace or at least dialogue simultaneously with the conflict of interest between the powers acting on this scenario.

Consequently, the importance of the RWP, in the words of Stünkel (2013, p. 62) arises where "Regardless of being a success or a failure, Brazil's decision to propose the concept of Responsibility to Protect (RWP) is a milestone in the multi-polarization process". Adding that, "The emerging powers no longer want to just take a seat at the main table, but also attempt to influence the global agenda”.

Therefore, considering that the Final Report of the UN Secretary General, 2012, Responsibility to Protect: timely response, the RWP takes up all of the fifth title of the document, and noting that it was decisive for the report's conclusions it is recognized that RWP, besides its relevance as proposal, is a successful effort of the Brazilian position in the UN regarding the responsibility of States and the international organization itself (DIAS, 2012). In short, the Brazilian position enthusiasts point out that the strategy adopted by the country to position itself in the central security discussions is the key for the desired projection by Brazil to the permanent seat in the UNSC, as referenced in the speech of President Rousseff on the 66th UNGA. On the other hand, pessimists argue that the pacifist policy and lack of experience in question are the exact points that disqualify the theory proposed by Brazil.

For that reason, it is concluded that regardless of the effectiveness of the proposal and the Brazilian intentions, the country's position cannot be ignored for the necessary reform of R2P, which aims at an objective way of using measures to ensure
human safety when sovereign institutions promote conditions to guarantee the human rights of its population. The immobility of the UN in the Syrian case confirms the urgent need for revision of standards efferent international security. Humanity does not need more Syrian, and perhaps Ukrainian episodes in its history. Humanity should be responsible for what it decides and for its consequences.

6) References


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