4th Biannual RESPONSIBILITY TO PROTECT IN THEORY AND PRACTICE Conference

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ABSTRACTS BY PANELS

Panel 1: R2P and Challenges of its Implementation

1. One Crisis, Multiple Norms: Analyzing norm interaction through the case of MINUSMA (Blake Lawrinson)
2. European civil society's R2P (Kate Ferguson)
3. R2P and the UK national debate (Andrea Betti)
4. German perspective on intervening in Syria under R2P (Stefan Lorenzmeier)

1. One Crisis, Multiple Norms: Analyzing norm interaction through the case of MINUSMA (Blake Lawrinson)

This presentation analyses the interaction between Protection of Civilians (PoC), the Responsibility to Protect (R2P), United Nations Peacekeeping (UNPK), and antiterrorism norms in Mali. At a theoretical level, PoC, R2P, and UNPK can be understood as a 'norm cluster' defined as 'collections of aligned, but distinct norms or principles at the centre of a regime' (Lantis and Wulderlicht, 2018, p.1). The regime in question is the 'international human protection regime' which, according to Bellamy, has 'evolved from at least eight interconnected streams of norms, rules, practices, and institutional developments' (Bellamy 2016, 120). Within this broad remit therefore, the PoC, R2P, and UNPK can be considered as a cluster of human protection norms. These norms, in and of themselves, are the source of much debate (Hunt and Bellamy 2011, Tardy 2012, and Jones 2017), yet the reality is that we are increasingly seeing this human protection cluster interact with antiterrorism norms which add a further dynamic as the latter prioritises state security rather than human protection (Karlsrud, 2015a; Luck, 2015). The presentation focuses on the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) which François Delattre described as "a groundbreaking operation for the United Nations." (UNSC, 2017a, p.5).

2. European civil society's R2P (Kate Ferguson)

January 2020 will mark 75 years since the liberation of Auschwitz and the 'moral weight of the Holocaust in Europe' continues to make '"Never Again Auschwitz"' a profoundly-felt imperative

across European governments.'[1] And yet, as, Adama Dieng, the UN Secretary General's Special Advisor on the Prevention of Genocide, warned in Geneva in May of this year, 'the signs of the [19]'30s are returning' to Europe. This paper will explore the responsibilities of Europe's civil society atrocity prevention community, including academics, to respond to warning signs at home as well as abroad. It suggests that unless Europe and the global north can better connect the prevention of identity-based violence at home and the prevention of identity-based violence abroad, western development and foreign policies will retain their problematic political and conceptual biases –and western States will leave themselves increasingly vulnerable to (justified) accusations of double standards. Do the pillars of R2P offer a useful framework for the European case and for European civil society? If so, how can the R2P community coordinate to shift the conceptual and political dial? If not, what lessons does that hold for European and other western actors engaged in externally facing R2P activity, particularly with the global south?

3. **R2P and the UK national debate** (Andrea Betti)

In order to describe the "operational capacity and political will" of states to engage in humanitarian intervention (HI) and responsibility to protect (R2P), Thomas Weiss has used the metaphor of the "roller coaster". At the end of the 1990s, Western states agreed on the necessity to invoke and implement the norms related to HI, with NATO intervention in Kosovo as the most ideal-typical example. Despite an unclear legal basis and several doubts on the feasibility of using force for humanitarian purposes, in 1998-9 NATO countries considered that the international community had to resort to the military instrument in order to stop the violations of human rights perpetrated by the Federal Republic of Yugoslavia against the civilian population of Kosovo, even in the absence of a legal authorization by the Security Council. Things have started to change since 9/11 and the decision of the United States (U.S) and the United Kingdom (UK) to invade Iraq in 2003. Despite several United Nations (UN) documents and the positive development of the World Summit Outcome in 2005, the Iraqi war arguably contributed to give HI a bad name, especially due to the questionable justification provided by the George W. Bush Administration and the Tony Blair's government. 14 years after Kosovo, domestic Western societies seem to have become more distrustful of the possibility of invoking and implementing these types of norms.
This presentation focuses on the 2013-15 British domestic debate on the possibility of using force against the Syrian government of Bashar Al Assad. The goal is to analyze how relevant domestic actors, namely the David Cameron's government and the political parties represented in the House of Commons, debated the concepts of R2P and engaged in several discursive strategies with the goal of influencing the decision on whether or not to intervene. The perception of the failure of previous British governments of different ideological affiliations to carry out successful and useful interventions, especially in Iraq and Libya, favored the development of an "intersubjective understanding" that reflects a much more precarious consensus on R2P. This presentation analyzes the British debate as a case of domestic "horizontal contestation" between the Cameron government and the political parties represented in the House of Commons about the role that the UK should have in the Syrian crisis. On the one hand, by focusing on the competing arguments put forward by the government and political parties in favor or against intervention, it contributes to the literature on the domestic determinants of foreign policy and sheds light on the domestic processes that led, first, to the unprecedented decision by the British parliament to veto an air strike operation against Syria and, then, to the decision to join the international coalition against ISIL. On the other hand, it

[1] Karen E. Smith, Genocide and the Europeans, Cambridge University Press, 2010, p.239

contributes to the social constructivist literature on the study of the evolution of international norms by focusing on the changing inter-subjective understanding of British domestic actors about the viability and legitimacy of R2P in the 21st century.

4. German perspective on intervening in Syria under R2P (Stefan Lorenzmeier)

The presentation seeks to analyze the issues concerning a possible intervention of Germany in Syria in accordance with the concept of Responsiblity to Protect. Art. 26 para. 1 of the German Constitution prescribes that "acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be criminalised." Thus, Germany is constitutionally barred from taking part in hostile and aggressive actions against third states. It will be explored in the presentation whether the provision has limits and if an intervention under the concept of R2P would fall within the ambit of an exception.

Panel 2: Experience and Prospect for R2P Focal Points in Europe

1. Experience and Prospect for R2P Focal Points in Europe - European Union Responsibility to Protect Focal Point (Christian Behrmann)
2. The Danish R2P Focal Point: Lessons Learnt from Atrocity Prevention in Practice (Martin Mennecke)
3. The Slovenian R2P Focal Point: Slovenian Experience in R2P Awareness Raising (Blanka Jamnišek)

1. **Experience and Prospect for R2P Focal Points in Europe - European Union Responsibility to Protect Focal Point** (Christian Behrmann)

The EU has been from the beginning a staunch supporter of the Responsibility to Protect ("R2P"). Prevention lies at the heart of the EU's action on R2P. The mandate of the EU Focal Point on R2P is to promote, communicate and support the implementation of the R2P principle across the EU's external action. On this basis, the EU Focal Point on R2P provides guidance for the overall strategic approach to R2P and its implementation and is the EU senior level contact within the European External Action Service (EEAS) and in relations with the EU Member States, the European Commission, European Parliament and international partners (states and civil society). The close co-operation and dialogue between the EU and its Member States aims at advancing the development, acceptance and operationalisation of the concept of R2P. In this context, the EU Focal Point and national counterparts ensure continuous political commitment to R2P, raise awareness across their administrations on R2P and promote the integration of R2P in relevant EU and national instruments.

The EEAS and the European Commission, with the support of Member States, continue to use the EU Conflict Early Warning System to identify R2P issues and work for early action. The challenge, however, is how to move "From Early Warning to Early Action": early action needs to secure political will to act swiftly, by mobilising resources from different actors in order to set up a comprehensive and tailor-made approach for the country at risk, in the short-, medium- and long-term. Consequently, the EU focus is on operationalisation of the concept of R2P, aiming at the application of R2P as analytical tool to specific country situations. A new EU toolkit on the Responsibility to Protect and Atrocity Prevention - an instrument to concretely help implement the EU global commitment on the R2P - offers guidance on atrocity prevention to delegations, missions and operations on the ground. The toolkit has recently been disseminated to EU Delegations with the aim to enhance awareness of EU officials on the ground in recognising and responding to atrocity crimes and devising policy options to help preventing them.

In parallel, the EU is keen to advance the concept of RtoP and its operationalisation in multilateral fora, in particular the United Nations. The past 12 months have seen an increased dynamic at the multilateral level, including the appointment of the new UNSG's Special Adviser on the R2P and the first formal debate on R2P in the UN General Assembly on 25 June and 2 July 2018. In December 2018, the first "Arria"-formula meeting in three years on "raising effectiveness of atrocity crimes prevention" (timed to coincide with the 70th anniversaries of the Genocide Convention) highlighted some practical actions that could be taken to improve the UN Security Council's capacity to act in a timely manner.

The 9th annual meeting of the global network of the R2P Focal points will be co-hosted by the EU and take place in Brussels on 13-14 May 2019. It will specifically focus on (i) illustrating the specific added value of R2P when applied to concrete relevant country situations (strengthening the

implementation of R2P by identifying opportunities where R2P Focal Points can facilitate or undertake concrete steps; focus on "good stories" where R2P was successfully applied); (ii) highlighting the specific role regional organisations can have in the promotion and implementation of R2P; and (iii) identifying options to further enable effective and operational action on R2P at the UN.

1. **The Danish R2P Focal Point: Lessons Learnt from Atrocity Prevention in Practice** (Martin Mennecke)

Denmark was in 2011 a founding member of the Global Network of R2P Focal Points – an initiative to push for the implementation of R2P by asking governments to appoint a senior level official to be personally responsible for that government's work on R2P. Denmark is also in other fora very active as strong proponent of R2P, including as newly elected co-chair of the Group of Friends of R2P in New York and as new member of the UN Human Rights Council in Geneva.
This presentation will explore the role of the Danish Focal Point in advancing atrocity prevention in policies of the Danish government. It will focus on the challenges, accomplishments and lessons learnt in the Danish context to reflect on the prospects of increased implementation elsewhere.

2. **The Slovenian R2P Focal Point: Slovenian Experience in R2P Awareness Raising** (Blanka Jamnišek)

Slovenia remains fully committed to the goal of protecting populations from mass atrocity crimes and supports the principle of the Responsibility to Protect. Slovenia organized three regional European Meetings of R2P Focal Points and four academic R2P Theory and Practice conferences (2013, 2015, 2017, 2019). Upon our initiative in 2017 Recommendations to Orient European Action on R2P and the Prevention of Mass Atrocity crimes were endorsed. Greater promotion of human rights through active implementation of the UN World Programme on Human Rights Education and National Action Plans, systematically and for all target groups works towards strengthening the respect of human rights. Preventing human rights violations is crucial to ensure prevention of their potential escalation into atrocity crimes.

*Ambassador **Blanka Jamnišek** works for the Government of Slovenia since independence in 1991. After her last diplomatic posting as the Permanent Representative to the UN, OSCE and other international organizations in Vienna, she has been appointed as the Slovenian R2P Focal Point by the Government in 2015. She is a multilateral diplomat, currently working in the Human Rights Department of the MFA. The focus of her work is on the promotion of human rights, R2P and work related to International Holocaust Remembrance Alliance.*

Panel 3: R2P, the Security Council and the protection of civilians

1. Responsibilities and Obligations: Understanding the Legal Consequences of the UN Security Council's failure to uphold its Responsibility to Protect (Patrick Butchard)
2. The Establishment of Safe Zones under International Law (Brid Ni Ghrainne)
3. Judicalization of High States Politics, Sovereignty and R2P – The Last Man Standing? (Birth Thykier Moller)

1. Responsibilities and Obligations: Understanding the Legal Consequences of the UN Security Council's failure to uphold its Responsibility to Protect (Patrick Butchard)

The legal nature of the Security Council's responsibility to maintain international peace and security and, by extension, its responsibility to protect, has been left relatively unexplored in academic literature. This presentation seeks to re-examine this issue and assess the legal nature of the Security Council's primary responsibility, in order to determine whether the Council itself is under an obligation to act in response to threats to the peace and atrocities that fall within the scope of the responsibility to protect.
By doing so, the presentation sheds light on what a 'failure' of the Security Council's responsibilities might look like, and therefore whether there are any legal consequences to inaction. With reference to the construction and drafting of Article 39 of the UN Charter, this presentaion argues that the responsibility of the Security Council includes a legal obligation on the Council, at the very least, not to ignore situations that fall within the maintenance of peace and security. Where the Security Council fails to act in these situations, the responsibility for the maintenance of peace reverts to the actors with residual responsibility in this regard. Therefore, in situations where the responsibility to protect and the responsibility for the maintenance of international peace and security overlap, the responsibility to protect could merge with this legal responsibility and continue beyond the Security Council in the event of failure. The presentation identifies a number of key actors who may hold residual responsibility in the event of a Security Council failure, by outlining the responsibilities of the UN General Assembly and the wider international community. It also suggests a number of ways in which a 'failure' itself might be authoritatively determined to exist, including by the use of investigations established by UN organs.

2. The Establishment of Safe Zones under International Law (Brid Ni Ghrainne)

This presentation will examine the establishment of safe zones in armed conflict. A 'safe zone' (sometimes referred to as a 'buffer zone', 'safe haven', or 'de-escalation zone') refers to an area within a state engulfed in armed conflict where civilians may find refuge from attack. Remaining in a safe zone allows civilians to avoid the inherent dangers associated with leaving their state, such as drowning and people smugglers. However, they may be invoked as an alternative to asylum and are often unsafe, as the tragic example of Srebrenica illustrates. Despite its status as a UN-designated safe zone, Srebrenica fell to the Bosnian Serb forces, resulting in the deaths of over 7,000 Bosnian Muslims.
A detailed legal analysis of the creation of safe zones is timely and long overdue. US President Donald Trump has repeatedly proposed to build a 'big, beautiful safe zone' within Syria; and Turkey, Russia, and Iran have established four 'de-escalation zones' in Syria where rebels and government forces should halt hostilities for six months. In addition, safe zones have been employed as a foreign policy

tool since the 19th century, and have been recently established in Sri Lanka (1990), Iraq (1991), Rwanda (1994), Bosnia (1993 – 1995), Afghanistan (2000 – 2001), and Somalia (2007).
This presentation will first argue that there are two clear scenarios such action is lawful: where there is consent from a territorial state and where the safe zone is authorized by the Security Council pursuant to Chapter VII of the UN Charter. The presentation will then examine whether safe zones can be legally created outside of the UNSC framework, based on the concept of humanitarian intervention. The literature has produced a list of criteria that should be taken into account when states are considering using force pursuant to humanitarian intervention, including that there must be a humanitarian emergency, the territorial state must be unable or unwilling to address the situation, and the safe zone must be the last resort. This presentation will illustrate how these criteria might apply to the establishment of a safe zone. It will draw on the example of the safe zone established by the US, UK and France in Iraq in the 1990s (Operation Provide Comfort), which was initially established without UNSC authorization. It will also contrast the establishment of a safe zone with bombing campaigns for ostensibly humanitarian purposes (e.g. the NATO bombing during the Kosovo crisis in the 1990s). It will argue that a strong case for humanitarian intervention can be made in respect of safe zones (as opposed to other actions such as bombing) because the humanitarian purpose of a safe zone can, in theory, be more clearly ascertained. In addition, a safe zone could, in theory, be established using minimal possible force and consequently with minimal civilian casualties.

3. **Judicalization of High States Politics, Sovereignty and R2P – The Last Man Standing?** (Birth Thykier Moller)

Since 2005, three alarming trends inflict upon the liberal order and the Responsibility to Protect (R2P); increasing disregard for fundamental tenets of International Humanitarian law (IHL), lack of commitment to structural (R2P) prevention, uncontrolled flows of arms to perpetrators, who pay scant regard to civilians; indirect victims of war on terror. There is a link between lack of prevention and recurrence of civil wars in the Middle East and North Africa. Is Libya/Syria the end of the constitutional
order and R2P?
The new frontiers are the emerging phenomena of 'judicialization of 'mega - pure politic'; transfer to Supreme courts of contentious issues of once an outright political nature – like peace-building, referring to three interrelated processes; societal, procedural, substantial, constitutional matters. 1
This trend towards 'juristocracy' finds on the global level a parallel in the intertwined mandates of the United Nations Security Council, UNSC and International Criminal Court (ICC) to eradicate impunity for the most serious (R2P) crimes. Yet, reliance on courts for addressing core moral predicaments, controversies on electoral outcomes and referral of situations to the ICC is a double-edged sword, which no always succeed. This leads to the intertwined research questions: Why does domestic judicialization of High Stakes politics and international judicialization by UNSC-ICC not eradicate impunity, but create societal, procedural and substantial peace and justice dilemmas? These dilemmas/trends will be conceptualized and contextualized from an English school approach: While post electoral conflict prevention in Kenya 2008 was a successful example of R2P at work mediated by then Secretary-General, Kofi Annan, the annulment of the 20. August 2017 presidential elections by Kenyan Supreme court was an unprecedented act of domestic judicialization – for African and any other standards. Armed with acquired judicial review procedures, national courts

[1]Ran Hirschl, the Judicialization of Politics, in; Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington: Oxford Handbook of Politics and Law, (2008).

worldwide are asked to resolve a range of issues from tainted elections to transitional peace. Yet, a hearing on 25 October collapsed due to intimidation and lacking quorum in Kenya's Supreme Court, who on 20 November 2017 dismissed two petitions against the 26 August victory to the president: 2 Uhuru Kenyatta, who were charged with crimes against humanity by ICC (01/09-02/11) like Sudan's president, al-Bashir is. This was how 'the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, and the rule of law' ended. Was it also the End of History for an independent judiciary – the last man standing - in defense of the sovereignty of the people? 3 Judicialization in favor of good governance, R2P and ICC's strife for a duty-bound, criminal justice order is an uphill battle, clashing with Hobbesian power politics.

[2] Kenya Law, Petition 2 & 4 of 2017, Judgment (20 November 2017), http://kenyalaw.org/caselaw/cases/view/145261

[3]The Constitution of Kenya (2010), http://www.kenyalaw.org/kl/index.php?id=398

Panel 4: Historical and Political Underpinnings of R2P

1. Preserving the Holocaust record: Lessons Evaluation in View of Social Memory Studies (Irena Šumi)
2. Inconsistency of International Response to Libya and Syria? Pragmatic Revisionism and the Responsibility to Protect (Šarka Kolmašova)
3. The Cracked Pillar: Libya, Syria and the 'Responsibility to Protect' (Josephine Jackson)

1. **Preserving the Holocaust record: Lessons Evaluation in View of Social Memory Studies** (Irena Šumi)

After WWII, the memory of the Holocaust was sought to be protected as early as in 1945 when the concept for the Yad Vashem, the world largest memorial, research and documentation centre on the Holocaust, was first discussed. A string of ensuing milestone events, notably the Eichmann trial of 1961; the Lpstadt v. Irving libel case of 1996; the founding of the International Holocaust Remembrance Alliance (IHRA) in 1998, and criminalization of Holocaust denial and distortion in 18 countries, mostly European, during past several decades, certainly succeeded in bringing the historical facts to millions of people, and in keeping the memory alive. However, the preservation of the memory is revealed to be a fragile enterprise every step of the way: in the West alone, millions of people are revealed yearly as having practically no knowledge of the Holocaust; antisemitic conspiracy theories regarding the Holocaust, differently motivated, are as incessantly burgeoning as they are inexhaustible in their imaginativeness. On top of it, learning about the Holocaust critically depends on the testimonies of survivors who, before long, will have passed away. In the efforts to safeguard the Holocaust record, it will be proposed that certain facts about the human sense of past and the structure, protocolization and functioning of social memory as outlined by the interdisciplinary memory studies need be tapped in and further clarified, especially in view of the Responsibility to Protect, that is to say, to prevent similar mass atrocities from happening again and again.

2. **Inconsistency of International Response to Libya and Syria? Pragmatic Revisionism and the Responsibility to Protect** (Šarka Kolmašova)

The concept of the Responsibility to Protect (R2P) has been widely criticised for the gap between words and deeds, mainly due to the inadequate international response to the crisis in Syria. Does this failure mean the end of R2P and, more importantly, the emergence of a post-liberal global order? In contrast to mainstream debates, the presentation argues that the Syria crisis did not bring any fundamental change, but reflects a pragmatic revisionism that characterises the whole time period since the R2P concept was introduced in 2001. Therefore, the inconsistent implementation in Libya and Syria corresponds with the compromised nature of R2P and also with the pragmatic global order, which accommodates moral principles according to practical politics rather than on their own merit.
The concept was constituted by the political practice and the need to find a legitimate framework, which would reconcile the existing UN Charter-based regime and the changing global political order. In other words, R2P was not constituted because of abstract liberal principles, but as a response to new crisis situations that were emerging in the 90s. Rather than facing a gradual support of active/interventionist liberalism, the lessons learned resulted in revisionism. R2P takes a pragmatic approach that gives primacy to the state, yet stresses its legitimacy based on its capacity to provide

security to one's own citizens. Although it allows for military intervention, there is nothing in the conception about a non-selective and universal obligation to use it. Rather than expressing a clear moral imperative, it provides a compromise fitting to contemporary politics.

The on-going debate on the Responsibility to Protect (R2P) concept revolves around its problematic and inconsistent implementation, particularly while comparing the military intervention to protect civilians in Libya (2011) and the inadequate response to the Syrian crisis. The presentation traces the development of the R2P discourse in the context of key cases, which have fundamentally shaped the interpretation of legitimate conditions for humanitarian military intervention. In contrast to the liberal universalist approach, which views R2P as an emerging norm indicating progressive support of liberal values, the analytical framework is based on pragmatic global ethics. In this perspective, the changing perception of normative concepts according to practical politics results inevitably in discursive shifts regarding R2P operationalization and implementation. Therefore, hesitations over Syria do not reflect the failure of R2P; rather, the crisis demonstrates continuous pragmatic revisionism of its normative foundations.

3. **The Cracked Pillar: Libya, Syria and the 'Responsibility to Protect'** (Josephine Jackson)

Despite the international unanimity that underpinned the establishment of the 'Responsibility to Protect' (R2P) in 2005, the doctrine continues to face many implementation challenges. First and foremost, though the R2P was intended to be a framework for the international duty to protect, the global community's mixed record in responding to violations has resulted in accusations of selectivity and double standards. Libya and Syria illustrate the effects of this indeterminacy. When outbreaks of state-sponsored mass atrocities occurred in both countries in 2011, Libya received a R2P-principled militarized intervention endorsed and led by an international coalition. Syria, on the other hand, was not extended such assistance, and instead was allowed to implode in stages. The disparate international responses, despite both cases clearly having met the qualifying criteria for a R2P referral, has thus subjected the interpretive and constitutive elements of the R2P to increased scrutiny. An abundance of literature exists on thematic and country-specific R2P-principled Security Council resolutions, as well as the socio-normative contexts of power within the doctrine. Limited research has been done, however, on the circumstances that determine how the R2P – specifically, the international consolidation mandated by the doctrine's third pillar – is codified by the United States. It is this gap that this presentation addresses. Using qualitative data collected from recent fieldwork as part of a larger project centered on social constructivist understandings of British and American applications of the R2P in Libya and Syria, this presentation presents an American narrative of the interface between initial R2P strategy formulation and interest-based decision-making in Libya and Syria. The narrative invokes personal perspectives comprised of the identities, interests and goals of the actors; their places of employment; relations and actions of allies and government and public responses to the crises. It will be argued that American decision-making, as it related to conceptualizing R2P-principled measures in Libya and Syria, was a socially constructed process shaped by the interaction between knowledge, leadership, strategy and interests. Preliminary findings suggest that certain sociopolitical and military contexts and conditions will influence the ways in which the R2P develops and changes from case to case.

Panel 5: R2P and International Criminal Law

1. The Continuing Relevance of R2P and the International Criminal Court as a Joint Ethical Project (Mia Swart)
2. Preliminary outcomes of the project CORE (Centre for the Observation of the Rome Statute in the European Union) in the situation of Northern Iraq (Hannes Tretter and Andreas Sauermoser)
3. The special court for Sierra Leone: Did the voluntary funding mechanism and time frame impede the court from achieving its mandate? (Ishmail Pamsm-Conteh)
4. The international criminal court's deterrent effect on crimes covered by R2P (Marina Žagar)

1. **The Continuing Relevance of R2P and the International Criminal Court as a Joint Ethical Project** (Mia Swart)

Similar to the International Criminal Court (ICC) the doctrine of R2P fits into the desire to create a universal moral and judicial community by focusing on individual human rights. Both concepts aim at protecting individuals when their lives are at stake.
Schiff argues that there are numerous similarities between R2P and the ICC. Each address similar governmental failures, namely the failure of governments to prevent atrocities. This means that both R2P and the ICC speak to the responsibilities that governments have to their citizens and imply that when governments fail or are unwilling to uphold those responsibilities it is justified to resort to external interventions. With the exception of ethnic cleansing and aggression, R2P and the ICC also cover the same crimes: crimes against humanity, war crimes, and genocide.
There are also important differences between the ICC and R2P. While the ICC is an institution, R2P lacks any institutional structure. Rather, R2P is a concept, perhaps even an emergent norm, that is embedded within the UN.
I will argue that there are more similarities than differences between the ICC and R2P. Kersten has described R2P and the ICC as part of the same 'liberal political and ethical projects'. I will argue that R2P can probably and sensibly use the Court, as a part of the R2P range of interventionary options. I will further ask whether the slow demise of R2P and the current criticism of the ICC means that the future of this particular ethic 'project' is in danger. I will look at the extent to which the Security Council has obstructed the ethical project both in the case of R2P and the ICC.

2. **Preliminary outcomes of the project CORE** (Centre for the Observation of the Rome Statute in the European Union) in the situation of Northern Iraq (Hannes Tretter and Andreas Sauermoser)

The Rome Statute of the International Criminal Court (ICC) was established in 1998, in order to conduct respectively to facilitate the prosecution of the perpetrators of gravest human rights violations. However, the state of affairs 20 years later is disillusioning. Unfortunately, authorities in the signatory states of the Rome Statute (including all Member States of the European Union) have not been proactive in this matter, despite having agreed to not allow impunity for grave human rights violations.

Thus, the Centre for the Observation of the Rome Statute in the European Union (CORE), part of the Ludwig Boltzmann Institute of Human Rights and under the direction of Professor Hannes Tretter, aims to encourage the harmonised application of the Rome Statute in the EU Member States in order to reach a higher rate of prosecutions in accordance with international criminal law in front of domestic courts. With a comprehensive scientific examination, in particular a comparative legal analysis of the implementation of the Rome Statue in the EU Member States, CORE formulates legislative recommendations to strengthen and facilitate law enforcement within the scope of international criminal proceedings. In addition to the scientific examination of the Rome Statute, there will be a strong focus on States that need support in a transitional justice process following an armed conflict and grave human rights violations. Through a platform, victims and witnesses of such conflicts will be provided with information on how to report gravest human rights violations in EU Member States. At the same time, the exchange of experience and the networking of law enforcement authorities, lawyers' organisations and NGOs will be promoted. At the moment, the focus of CORE lies on the conflict situation in Northern Iraq where the terrorist organisation "Islamic State" has committed gravest human rights violations.

3. The special court for Sierra Leone: Did the voluntary funding mechanism and time frame impede the court from achieving its mandate? (Ishmail Pamsm-Conteh)

The aim of the Special Court for Sierra Leone was to address the issue of impunity by holding to account perpetrators responsible for crimes committed during the country's civil war. The war lasted from 1991 to 2002. The brutality of the war was well noted for the amputation of the arms and legs of innocent civilians and children, forced marriages, the use of child soldiers, direct intentional attacks on United Nations peace keepers and the wanton destruction of lives and property.
The Court's mandate was articulated in Article 1(1) of its Statute:

> … have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

The Court was funded through a voluntary funding mechanism which was very different from that of the sister tribunals of the International Criminal Tribunal of the former Yugoslavia and the International Criminal Tribunal for Rwanda. Both of which received accessed funding from the UN budget under Chapter VII of the United Nations Security Council Mandate.
The Court was established in 2002, and at the end of its judicial activities in 2013, only thirteen individuals were prosecuted. This figure was very minimal for a conflict that lasted for eleven years, resulting to the deaths of approximately 70,000 people. Some commentators have argued that the Court's voluntary funding mechanism and time frame, limited the number of prosecutions at the Court.
This presentation evaluates whether those two factors should be attributable to the limited number of persons that were prosecuted by the Special Court.

4. The international criminal court's deterrent effect on crimes covered by R2P (Marina Žagar)

The author aims to focus on the International Criminal Court (hereinafter: ICC; the Court) and its role in preventing crimes that are under its jurisdiction, and that overlap with the crimes covered by Responsibility to Protect (hereinafter: R2P). (International) criminal prosecutions of mass atrocity

crimes are necessary, since these crimes are universally considered to be a threat to peace and security of the world. The purpose of deterrence rests on idea that accountability for the crimes of the past may deter the commission of crimes of the future. By punishing individuals culpable of genocide, crimes against humanity and war crimes, the ICC sends a strong message of general deterrence to future wrongdoers. While no institution can have absolute deterrent effect, it will be examined if the ICC can deter some actors. Raising the risk of punishment where the rule of law is otherwise weak is precisely the formal role envisioned for the ICC. In the context of the ICC, the deterrent effect can be realized through the capacity of prosecutions to influence behaviour of potential perpetrators and thus to prevent the commission of mass atrocity crimes. Deterrence may be achieved as part of ICC's own norm setting; through complementarity and strengthening the national legislation that incorporates core crimes and, in a wider sense, through so called social deterrence.

Panel 6: R2P, Politics of States and International Organizations

1. R2P and Responsibility while Protecting: Current Developments from an EU-Brazil Perspective (Jan Wouters and Francisca Costa Reis)
2. R2P in Latin America: Are the principles of sovereignty and non-intervention really standing in the way of R2P's operationalization? (Ana Srovin Corali)
3. Responsibility to Protect: A comparative Analysis of whether it has Served its Original Purpose in the Last Decade (Namisi Siboe)

1. **R2P and Responsibility while Protecting: Current Developments from an EU-Brazil Perspective** (Jan Wouters and Francisca Costa Reis)

Today, early enthusiasm about R2P appears to have faded, particularly in the aftermath of NATO's intervention in Libya, which has sparked discussions on the application of the responsibility to protect (R2P) principle and the importance of prevention mechanisms, revealing the need for further debates on how R2P should be implemented. Despite proposals, such as Brazil's 'Responsibility while Protecting' (RwP), which, among others, emphasized the importance of preventive over coercive measures in R2P, little credit has been given to preventive mechanisms, which remain understudied despite constituting a core underlying component of R2P. This presentation seeks to contribute to this debate, by comparatively analyzing the European Union's (EU) and Brazil's practices in this regard. Both Brazil, as the proposer of RwP, and the EU, as a staunch defender of R2P and the importance of conflict prevention, provide interesting cases to understand variations of support for the preventive dimension of R2P in challenging times. To this end, the presentation will provide an understanding of the views and justifications of Brazil and the EU in favour of R2P, before and after the intervention in Libya, and how far these converge or diverge, followed by an analysis of the practical development of tools and instruments, by both actors, to safeguard the implementation of R2P and its preventive dimension.

2. **R2P in Latin America: Are the principles of sovereignty and non-intervention really standing in the way of R2P's operationalization?** (Ana Srovin Corali)

Fear of destructive interventions is the most commonly used argument against the promotion and implementation of the Responsibility to Protect (R2P) principle by a significant number of Latin American States, the most extreme examples being Cuba and Venezuela. It is worth bearing in mind that this region has been greatly affected by the foreign military interventions. Therefore, its opposition towards the possibility of a unilateral intervention by another State is understandable. The same however cannot be said for interventions that involve collective action and are based on international law. The assumptions and speculations that R2P generates the reoccurrence of past events and that it is an equivalent to the vague concept of humanitarian intervention are fundamentally flawed.
Contrary to the contentions of many Latin American countries, the present contribution seeks to prove that both the principles of sovereignty and non-intervention support the implementation of R2P. In the author's view, the key issue in this situation lies in the interpretation of these two principles. As international law now stands, State sovereignty and responsibility must go hand in hand and the purpose of R2P's pillars is to provide a mechanism of compliance with the existing rules

of international law. It is crucial to realize that the all R2P pillars, including the third, are simply a derivative of the current international legal order.
This presentation stems from the premise that sovereignty does not imply non-intervention. The purpose is to respond to the manifestly defective arguments put forward by Latin American countries in order to justify their reluctance towards the third pillar of R2P when, in fact, this reluctance stems from other facts. The objective therefore is to identify and analyze these arguments as well as to consider the premises of R2P emphasized by Latin American States. Additionally, the contribution pays special attention to the pragmatic aspect of R2P, trying to prove that Latin American region has a good potential for the implementation of R2P measures. The discussion concludes by exploring different possibilities for further improvements in the implementation of R2P in the future.

3. **Responsibility to Protect: A comparative Analysis of whether it has Served its Original Purpose in the Last Decade** (Nancy Namisi Siboe)

Over the last decade, Responsibility to Protect (R2P) has featured highly in public international law debates pertaining to mass killings, humanitarian intervention and protecting potential victims. The question of how the international community and the United Nations Security Council (UNSC) has invoked or failed to invoke the principle of R2P has elicited different comments and contributions since its development in the year 2001 and subsequent application. The author finds that R2P in itself is an important norm that came into being specifically for protection of civilians during mass actions that held the deadly potential of wiping out generations. Secondly, the role of the international community and the United Nations Security Council cannot be under emphasised. It is the opinion of the author that R2P is in danger of being extinct which will be construed as a failure on the part of the international community to work towards preservation of international peace and security.
The presentation aims at opening a new door as to what is to be expected, provide insights on the behavioural pattern of the international community and what ought to be to protect innocent civilians from mass killings. It provides a critical analysis and assessment of norms, laws, policies, regulations and resolutions in the application of R2P in the cases of Libya, Cote d'Ivoire (Ivory Coast), Yemen and Syria, the common denominator being the mass atrocities that threaten the peace of civilians on a large scale. Based on these findings, the author hypothesizes that real purpose of R2P as laid down in theory has not materialised in practice especially in the last decade. The author has kept within legal perspective scope while laying emphasis on humanitarian intervention. The conclusion drawn is that legality and uniform enforceability of the norm can only be achieved when all the players are operating on a level platform. Until then, R2P is quickly taking a backseat from the international law perspective.

Panel 7: R2P and Contemporary Challenges

1. Planetary defense in the context of the R2P doctrine (Martin Svec)
2. Preventing and protecting refugee children from trafficking: a paradigm shift under R2P principle? (Jasmina Dimitrieva)
3. International Disaster Response Law and R2P (Lucia Bodišova)
4. Responsibility to protect in the event of natural disasters (Nuša Kucler)

1. **Planetary defense in the context of the R2P doctrine** (Martin Svec)

Near Earth Objects (NEO) are solar system bodies whose orbit brings them into proximity with Earth. According to the United Nations Office for Outer Space Affairs (UNOOSA), there are over 18,000 NEOs including both insignificantly small objects and objects capable of causing significant damage to life and property on our planet. However, there is not a single approach for dealing with NEOs and no mechanism at the global level designed to respond to a NEO threat. Since state parties to the Outer Space Treaty shall carry on activities in the exploration and use of outer space in accordance with international law, a space mission to deflect an asteroid off a course for Earth raises important legal questions with regard to the international/national decision making during an actual impact threat. Currently, there are two possible option discussed by the international scientific community - a unilateral mission (in light of the U.S. technological advantages not considered as unrealistic), and an international mission coordinated by an international agency.
However, specific nature of outer space reflected by the principles of international space law (the non-appropriation principle, the concept of outer space as the "province of all mankind", the principle of cooperation and mutual assistance) does effectively limit states in their use of outer space. Prof. Marchisio argues the OST in essence sets outer space aside as an extra-jurisdictional territory and no state can exercise any sovereign rights over it.
In this context, a rationale behind the R2P concept may be relevant. Particularly important are references to state's responsibility to protect its population and notion of collective responsibility of states to protect human lives. *Thus*, the presentation seeks to analyse planetary defense in the context of the R2P doctrine.
Given the limited applicability of the R2P concept to particular situations (genocide, war crimes, ethnic cleansing and crimes against humanity), a NEO-impact threat is not a "*responsibility to protect*" case. However, the author is focused on the implications of the R2P for the traditional concept of sovereignty as well as the non-intervention principle. In particular, the author analyses legal implications of key pillars of the R2P doctrine, namely, *sovereignty as responsibility* and *collective responsibility of the international community* for planetary defense. In this context, both the R2P doctrine developed by the ICISS and the R2P endorsed by heads of state and governments at the 2005 UN Summit is analysed.

2. **Preventing and protecting refugee children from trafficking: a paradigm shift under R2P principle?** (Jasmina Dimitrieva)

According to the index of global peace, children of almost 25% of the States are exposed, or may be exposed to war. They are forced to flee to other countries to seek refuge from mass atrocities. Refugee children are traumatized, have no parents or other family to accompany them, or have no

financial means to sustain their risky voyage. Thus, they can easily fall in the hands of human traffickers who exploit them for profits. Whereas the refugee children enjoy the protection of the 1951 Refugee Convention and trafficking in children is an internationally prohibited crime, many states lack the resources and knowledge to prevent and protect refugee children from this hideous crime.

The Responsibility to Protect (R2P) triggers individual and collective responsibility of the States when crimes against humanity are committed. Considering trafficking in refugee children as a serious risk factor for commission of crimes against humanity, question arises as to whether or not there is a need of a shift of the Responsibility to Protect (R2P) paradigm in order to use this principle to prevent trafficking in refugee children. The presentation contribute towards the body of knowledge regarding effective global prevention of trafficking in refugee children. The methodology combines legal and comparative analyses of international instruments that create a safety net for refugee children from trafficking. Data are collated from the reports prepared by IOM, UNHCR, UNICEF, CoE, and UNODC and analysed by applying human rights approach and best interest of the child standard. The results show that the R2P principle entails a responsibility for the States to act and jointly collaborate with aim to prevent trafficking in refugee children. The shift of the paradigm under R2P principle will have a high impact on preventing trafficking in refugee children and protecting this vulnerable population. Further research is needed to develop a framework on the manner of application of the R2P principle by the States and the International Community with purpose to protect refugee children who are vulnerable to trafficking.

3. **International Disaster Response Law and R2P** (Lucia Bodišova)

The presentation will try to answer two questions. First, what is the correlation between the International Disaster Response Law (IDRL) and Responsibility to Protect (R2P). In what cases the application of R2P doctrine is the only option to prevent or to stop crimes against humanity in the aftermath of a disaster. Second, since the role of an affected State in the IDRL is clear – protection of its population from the negative effects of disasters, the author will focus its attention to the role of non-state actors (NSAs). Special regard is given to NSAs who are providing international assistance or advocating at a national or international level for causes which are either highly relevant or directly connected to R2P and disaster response, such as the Amnesty International, Human Rights Watch and others. The reason why the focus is on NSAs is the fact, that their role in disaster response and their contribution to upholding the R2P doctrine is recognizable. The aim of the presentation is to highlight the NSAs´ role in R2P in the aftermath of a disaster, since the affected States may be more tolerable to NSAs, rather than States who may be politically motivated to provide international assistance.

4. **Responsibility to protect in the event of natural disasters** (Nuša Kucler)

Due to global warming natural disaster are becoming more frequent and increasingly devastating. Victims of natural disasters need appropriate response and humanitarian assistance for their rights and needs to be protected. The current state of the international legal regime of humanitarian assistance in the event of natural disasters indicates the lack of a comprehensive and systematic legal codification of this area. There is currently no legally binding document that would regulate disaster relief on a global level. At present, despite the current absence of explicit international legal obligations of States to provide humanitarian assistance to persons on their territory or under their

jurisdiction who are endangered by natural disasters, this obligation can be derived from fundamental legal principles and human rights. But what happens when the affected state fails to protect its population afflicted by natural disasters? The circumstances in such cases are fairly similar to the situations of mass atrocities. In both cases similar circumstances of chaos, loss of lives, thread to human health and great material and environmental damage occur. Since the R2P was designed to react to situations of mass atrocities where lives and human rights of wide population are at stake, it could present an appropriate legal model to regulate international disaster response as well. The proposal of the R2P's applicability in the event of natural disasters was already included in the report of the International Commission on Intervention and State Sovereignty which formed the basis for the creation of the R2P. This idea was later not adopted by the General Assembly but remained a common proposal of experts for resolving the legal gap in the area of international assistance in the event of natural disasters. However, with the preparation of the Draft articles on the protection of persons in the event of disasters by the International Law Commission the legal development of international disaster response law went in another direction. It seems that the Draft articles present the biggest potential so far for the establishment of a universal regime for international disaster response. The presentation will investigate whether there are elements of Draft articles that could be compared to the R2P.