

## RESPONSIBILITY TO PROTECT IN THEORY AND PRACTICE CONFERENCE

April 11-12, 2013

### ABSTRACTS\*

#### **Panel 1: Panel 1: Perceptions of the Regional R2P Focal Points**

#### **Panel 2: Potentials and Limitations of the R2P Concept**

##### **Responsibility to Protect - the Hopes, the Crash of an Illusion and a Possibility to Resuscitate It (Vladimir Kotlyar )**

After the NATO war against Yugoslavia in 1999 and the USA invasion of Iraq in 2003, both of which had been started under a “humanitarian” pretext but in fact had led to thousands of innocent victims, the international community got thoroughly disillusioned with the concept of “humanitarian intervention”, put forward by a group of U.S. neo-conservative lawyers in 1980-1990s and then used as a legal justification for the unilateral use of force without approval by the UN Security Council in both cases. The concern of the international community over this kind of illegitimate use of force led to the adoption of the concept of “Responsibility to Protect” (R2P) by the UN General Assembly in 2005. The R2P was designed to bring together two points of view – one that sought to make states not to allow massive violations of human rights of their citizens, with the assistance by peaceful means from other states if requested, but without undue military interference, and the other, the proponents of which insisted on their right to resort to military intervention in order to stop such violations. Russia did not oppose the adoption of R2P which came to succeed the concept of humanitarian intervention, because R2P specifically gave priority to the peaceful means of settling internal conflicts and contained a clear prohibition of an illegitimate use of force by declaring that force may be used only with the UNSC approval.

However, the NATO campaign in Libya in 2011 has mortally wounded, if not outright killed, the R2P as it was drafted in 2005. Paris, London and Washington have deliberately misinterpreted the UNSC mandate and have given military support to the insurgents in order to overthrow the legitimate government of Libya, instead of an implementation of a no-fly-zone as mandated.

This turn of events has led Brazil and China to come forward separately with proposals of two new concepts which are actually quite close to each other – “Responsibility While Protecting” and “Responsible Protection”. Both seek to ensure that “the Libyan model” will not be copied elsewhere (like in Syria).

So today, if the R2P is to survive, it has to go through a thorough resuscitation process, at the end of which the three concepts might be merged together. Otherwise it has no chances to survive.

##### **The Responsibility to Protect as an Instrument to Promote Democracy and Pluralism (Julian Rössler)**

RtoP neither mentions nor demands explicitly certain structural or political preconditions of a State to fulfil this principle. This paper argues that the recent cases of RtoP violations as well as examples of committed core crimes in the past imply that the Responsibility to Prevent can be seen as a quest for political pluralism. The recent violations of the RtoP principle in Syria and Libya have clearly shown that an oppressive regime is more prone to commit core crimes or to allow such crimes on their own population than democratic regimes. Similarly to the democratic peace theory which can only be applied to conflicts between states, the peace within a state requires a political system which is built on the principles of political pluralism and broad political participation. Hence, RtoP needs to be seen as amplification of human rights, political participation of the public and protection of minorities. By looking at different approaches of academics and politicians to the understanding of the Responsibility to Prevent I want to show that establishing a pluralist and democratic system needs to be seen as an effective prevention tool against core crimes.

##### **The responsibility to protect and the Kelsenian approach to international law (Lucian Bojin)**

Responsibility to Protect (R2P) is a relatively new concept. It appeared in 2001 with the Report of the International Commission on Intervention and State Sovereignty so it is barely a decade old. R2P was hailed as a “fresh concept” that can legitimately be opposed to (or, better said, complement) that of sovereignty. In past, it was the old concept of “humanitarian intervention” that used to be invoked when a limitation to sovereignty was called upon. But the legitimacy of the latter was seriously affected by the very use of the “intervention” term that seemed to be prohibited by the principle of non-intervention, as set in art. 2(7) of UN Charter. The new concept has the advantage of focusing on the very content of

the sovereignty when declaring that it implies responsibility. As such, R2P is the consequence of sovereignty and not an opposed concept. And, as such, is more likely to be accepted in the current structure of international law than its ancestor, the “humanitarian intervention”.

But this evolution may also mean shifting some weight between the goals of the UN: less weight on war prevention (art. 1(1) of Charter) and more weight on human rights protection (art. 1(3)). And this, in turn, may also mean changing the paradigm in international law: less focus on the State, as primary actor and subject, and more focus on the individuals. And this takes us to the ideas about international law of Hans Kelsen, the leading legal theorist of the 20<sup>th</sup> Century and one of the first commentators of the UN Charter. In Kelsen’s monistic approach, the ultimate subjects of all kinds of law, whether domestic or international, are the individuals. The particular focus on States of international law is a technicality due to its primitive nature and its decentralized order. An analysis of concept of “Responsibility to Protect” through the lens of the kelsenian approach can be fruitful for both: can emphasize historical foundations for the new concept and can illustrate the current usefulness of the old kelsenian theory.

### Panel 3: R2P and the Security Council

#### Libya and The Responsibility to Protect: Resolution 1973 as Consistent with the Security Council’s Record of Inconsistency (Aidan Hehir)

The Security Council-sanctioned intervention in Libya in March 2011 was heralded by many as a seminal event in contemporary international relations and evidence of the efficacy of the Responsibility to Protect (R2P). The ostensibly unique nature of this intervention led many to predict the dawn of a new era. Ban Ki-Moon summed up the mood by announcing, ‘By now it should be clear to all that the Responsibility to Protect has arrived’.

This paper argues that, while there is no doubt that the intervention was significant, the implications of Resolution 1973 are not as profound as some have claimed. The intervention certainly coheres with the spirit of the R2P, and on this basis was understandably widely welcomed by its supporters, but it is possible to situate it in the context of a trajectory of Security Council responses to large-scale intra-state crises, actual or apprehended, which pre-dates the emergence of R2P. This trajectory is a function of the Permanent Five members of the Security Council’s (P5) decision-making which is guided by politics and pragmatism rather than principles. The record is, as a consequence, characterized by a preponderance of inertia punctuated by aberrant flashes of resolve and timely action. These aberrations, however, have invariably been the product of the occasional coincidence of interests and humanitarian need rather than an adherence to either law or norms. This is not to suggest that parsimony in motives is a pre-requisite for legitimacy or that the response to the situation in Libya was unwelcome, but rather that the intervention was consistent with the Security Council’s record of inconsistency in responding to intra-state crises. The underlying factors which contributed to this record of inconsistency – primarily the P5’s veto power – remain post-Libya. So long as they do, the international response to intra-state crises will continue to be inconsistent.

#### R2P and the vetoes in the Security Council (SC): Syria versus Libya (Birthe Thykier Møller)

In the age of accountability national authorities can’t shield themselves from criminal responsibility. The significance of R2P is its potential as a justifying factor for humanitarian protection operationalized in Libya; a signpost dating back to Hugo Grotius, Kant, Michael Walzer and Hersch Lauterpacht stressing; *‘the principle that the exclusiveness of domestic jurisdiction stops where outrage upon humanity begins’*. R2P has been front in UN SC and HRC resolutions referring explicit to national authorities’ responsibility to protect its populations in Sudan, Libya, Syria, Mali, Congo. UNSC/GA/HRC resolution is interconnected using R2P-language to highlight authorities’ responsibility for R2P-crimes, commissions of Inquiry and referral of situations in Darfur, Libya, Kenya to the ICC. As such R2P reflects an evolution in the way UNSC interprets its powers under the UN Charter s 39, 42, as in SC resolution 1593 before R2P and in Libya resolution 1970 (2011) referring R2P-crimes to ICC. By making R2P-crimes analogue to ICC-crimes renders it possible to integrate jus ad bellum, Human Rights/Humanitarian law and criminal justice law in international/internal armed conflicts. So *‘why hasn’t the Council mandated a humanitarian intervention in Syria in the same way as in Libya and not referred the situation to ICC despite of R2P crimes in Syria as in Libya?’* The thesis of the paper is that the construction of R2P is result of a post-Westphalia sovereignty game framed by divergent state traditions, Security Council reservations and state-formation processes compromising R2P as an optional moral-political choice which not automatically triggers collective reaction in Syria.

#### Whither the veto? Responsibility to protect and the veto (Nicholas Tsagourias)

The crisis in Syria and prior to that the crisis in Libya have raised questions about the applicability and scope of the R2P as well as about the place of the veto in the context of the R2P. It has been suggested that the veto should not be used in situations falling within the scope of the R2P, however certain states have still cast their vetoes. The thrust of this paper is

to consider the R2P and the veto under a constitutional reading of the United Nations Charter or of the international legal system in more general terms. First, the paper will consider the constitutional(ising) dimension of the R2P as projecting a common value system for the international society which moulds national politics but also the international polity and which facilitates or, conversely, constrains action. Secondly, it will examine the constitutional place and role of the veto; more specifically its aims, the values and interests it protects and its facilitating as well as constraining function. It will contend that the R2P and the veto are informed by different rationales and may unleash conflicting dynamics. The question then is how they can be reconciled and how clashes can be mediated and accommodated within a system that exhibits constitutional characteristics. This immediately raises the question of whether there are review mechanisms and what are the grounds of review. The paper will focus on the latter issue and more specifically on the principle of good faith as a ground of review that mediates between the veto and the R2P. The ultimate aim of the paper will be to assess the constitutional character of the international system by studying the interface of the veto with the R2P. To put it differently, the question the paper asks is: what does the veto and the R2P and the ideas, values, interests, dynamics they unleash tell us about the constitutional dimension of the international?

#### **What Constitutes A Manifest Failure? Ambiguous Terminology and the Case of Syria (Adrian M. Gallagher)**

This paper draws attention to the fact that the third pillar of the Responsibility to Protect (R2P) – the responsibility to react – hinges on a consensus being forged that the state in question has ‘manifestly failed’ in its R2P. This is problematic because it provides a highly ambiguous benchmark against which to assess state behaviour. What constitutes a manifest failure? Neither paragraph 138 nor 139 of the 2005 World Summit Outcome Document offer guidelines to aid policymakers in their judgement. Moreover, the terminology of ‘manifest failure’ was introduced in the final drafting stage in order to replace the phrase ‘unable or unwilling’ and this was justified on the grounds that the former is less subjective than the latter. This rationalization is not only highly problematic but National Security Strategies, including the US and the UK, as well as R2P scholars, continue to use the phrase ‘unable or unwilling’ even though this does not appear in the WSOD. Against this backdrop, the article deconstructs the discourse that surrounds the on-going crises in Syria to put forward five indicators of a ‘manifest failure’: the role of the government, weapons used, death toll, displacement of people, and the intentional targeting of civilians, especially women, children and the elderly. The hope is that this will create a new research agenda that will primarily, aid policymakers in their assessment of a ‘manifest failure’ and secondarily, help those outside government to hold decision makers to account by creating a framework against which political [in]action can be judged.

#### **Panel 4: Arab Spring and R2P**

##### **Is R2P Dead? The Responsibility to Protect After Syria (Spencer Zifcak)**

At the UN World Summit in 2005, global political leaders endorsed a new doctrine to govern international political behaviour entitled the ‘responsibility to protect’. Pursuant to this doctrine, the nations of the world affirmed that the primary responsibility for the prevention of mass atrocity crimes rests with the sovereign state in which such crimes are anticipated or occurring. If, however, a state fails to exercise that responsibility, the international community may assume a corresponding obligation to protect civilian populations from the commission of crimes against humanity. Only a short time later, in 2011, the international community was confronted with the prospect that large-scale civilian casualties may occur as a consequence of fighting between government and rebel forces in Libya. The UN Security Council was faced with the dilemma of whether to authorize an intervention to avert what seemed likely to be a humanitarian disaster. In that case, the UN Security Council sanctioned an intervention by NATO forces in accordance with the new doctrine. Soon after, the Syrian rebellion took hold and civilians began to be killed and injured in their thousands. In this case, however, the Security Council has been paralysed. Neither sanctions nor military intervention can be agreed upon.

In this article, I examine the standing of the responsibility to protect in the wake of the Syrian catastrophe. I conclude that the responsibility to protect has been dealt a major blow because of the UN Security Council’s failure to agree upon action in Syria. This does not mean, however, that R2P interventions cannot or will not take place in other places and in different, more favourable circumstances.

##### **Libya & R2P: Lessons Learnt? (Miša Zgonec-Rožej)**

The UN Security Council resolution 1973 (2011) marks the first time the principle of Responsibility to Protect (R2P) was implemented by military force. In this resolution the Security Council, acting under Chapter VII, authorised the NATO operation “Unified Protector” to take all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya. However, the military actions taken pursuant to the Security Council authorisation by the NATO in Libya, in the territory held by Gaddafi forces, which did not pursue the direct aim of protecting civilians or civilian populated areas, raise the question whether the military intervention can be regarded as being carried out in conformity with the principle of R2P. For example, measures that have been seen as a departure from the resolution 1973 (2011) involve the provision of

weapons to rebel fighters and military strikes resulting in civilian casualties against residential compounds considered by NATO as military targets. Critics have argued that the true purpose behind the military intervention was to expand or re-establish Western domination in North Africa and/or to support a regime change in Libya as arguably demonstrated by the halt of the NATO actions soon after the killing of Gaddafi despite the continuing violence in parts of Libya. Consequently, the Libyan experience influenced the on-going debate in the Security Council about the possibility of intervention in the Syrian armed conflict. During the decision-making process at the Security Council, some members of the Security Council invoked the expansive interpretation of the Security Council authorisation in Libya as an excuse for refusing to approve draft Security Council resolutions concerning Syria. Despite the criticism of the enforcement of the resolution 1973 (2011) on the ground, the resolution paved the way for the normative development of R2P. Against this background, the paper proposes to evaluate the implementation of the principle of R2P in Libya and to make proposals as to lessons learnt from the Libyan experience, including the assessment of the initiative “responsibility while protecting”, in order to improve the application of the principle of R2P in the future Security Council’s authorisations.

### **R2P between the power of politics and politics of power: Case Studies on Syria and Libya (Ibrahim Aljazy)**

This study will examine the Libyan situation under Security Council resolutions (1970 and 1973/2011), which already highlighted international responsibility to protect. The study will explore all aspects of the said decisions and justification of issuance including but not limited to; violence by the Libyan authorities against civilians, considerable violations of human rights and humanitarian law so that the decision came in a series of measures, including referring the situation to the International Criminal Court and also the arms embargo, the travel ban for people listed in annex I of the resolution 1970, and also an assets freeze against persons themselves. On the 17<sup>th</sup> March 2011 the Security Council approved a ‘No-Fly Zone’ over Libya pursuant to Security Council Resolution 1973.

The study argues that both decisions are criticized for not making a reference to resolution No. (1674/2006) adopted by the Security Council, which referred to the establishment of measures to protect civilians in armed conflicts against sexual violence and abuse from the peacekeepers. in accordance with the responsibility to protect.

The study will also address the situation in Syria and the impact of the failure of the Security Council resolutions No. (2042 and 2043/2011) on the adoption of humanitarian intervention under the responsibility to protect. The study will conclude by examining the power of politics and the politics of power within the security council regarding the two situations.

### **The BRICS and the ‘Responsibility to Protect’: Lessons from the Libyan and Syrian Crises (Andrew Garwood-Gowers)**

The emerging ‘responsibility to protect’ (R2P) principle presents a significant challenge to the BRICS (Brazil, Russia, India, China and South Africa) states’ traditional emphasis on a strict Westphalian understanding of state sovereignty and non-interference in domestic affairs. Despite formally endorsing R2P at the 2005 World Summit, each of the BRICS has, to varying degrees, retained misgivings about coercive measures under the doctrine’s third pillar. This paper examines how these rising powers engaged with R2P during the 2011–2012 Libyan and Syrian civilian protection crises. The central finding is that although all five states expressed similar concerns over NATO’s military campaign in Libya, they have been unable to maintain a common BRICS position on R2P in Syria. Instead, the BRICS have splintered into two sub-groups. The first, consisting of Russia and China, remains steadfastly opposed to any coercive measures against Syria. The second, comprising the democratic IBSA states (India, Brazil and South Africa) has displayed softer, more flexible stances towards proposed civilian protection measures in Syria, although these three states also remain cautious about the implementation of R2P’s coercive dimension. This paper identifies a number of factors which help to explain this split, arguing that the failure to maintain a cohesive BRICS position on R2P is unsurprising given the many internal differences and diverging national interests between the BRICS members. Overall, the BRICS’ ongoing resistance to intervention is unlikely to disappear quickly, indicating that further attempts to operationalize R2P’s third pillar may prove difficult.

## **Panel 5: Critical Views on the R2P**

### **Why Do We Care? A Critical Look at the Responsibility to Protect (Alexandra Bohm)**

In contrast to specific examples of its application, this paper takes a critical look at the overall concept of the Responsibility to Protect (RtP) and its assumptions about how to achieve justice for vulnerable populations at risk from certain kinds of violence. The paper ultimately questions the need for the RtP doctrine at all, arguing that it is not as different from the concept of humanitarian intervention as proponents believe and that it is not necessarily more effective than existing international legal measures.

The paper concentrates on three questions:

- 1) Why do we care so much about those who die from mass atrocity crimes rather than HIV/AIDS, malaria or starvation?
- 2) Why do the debates and applications of RtP always come down to the issue of military intervention, even though the RtP mentions legal, economic and political solutions in addition to military ones?
- 3) Why do we see ourselves as part of the solution, rather than part of the problem, of global injustice?

In suggesting some answers to these questions, the paper does not take the approach of realist international relations theory in arguing that seemingly selfless motives are in fact a cover for national interest – it accepts that humanitarian concerns are frequently genuinely held and that individuals, whether in civil society or in government, may well genuinely want to help those across the globe who are suffering from injustice.

Instead, using the questions above, the paper takes a critical approach to how we construct the nature of the injustices that are perceived to be most important; and the need for military intervention as the solution to these injustices. It concludes that the RtP does not represent a significant development in the international community's response to crises and mass atrocity crimes and in fact may be detrimental to other endeavours to reduce global suffering and injustice.

### **Responsibility to Protect: The Historical and Current Controversy on Just War (Josef Bordat)**

In the debate about the question if, when, and how humanitarian interventions can afford peace and justice, military action needs to be taken into consideration. To discuss the meaning of justice in relation to military intervention, conclusions can be drawn from a historical view of the *bellum iustum* topic, as treated by the Spanish scholars Sepúlveda, Vitoria and Las Casas. Historical analysis reveals the principles both for the *ius ad bellum* and the *ius in bello*, that can be found in a recent proposal, the report *The Responsibility To Protect* (2001) of the International Commission on Intervention and State Sovereignty (ICISS). In addition, for the recovery of justice, a *ius post bellum* for the prosecution of "crimes against humanity," as intended by the International Criminal Court (ICC), seems important.

### **The Responsibility to Protect and regime de-legitimation (Ludovica Poli)**

NATO's intervention in Libya is a very controversial application of RtoP in practice, as it appeared to be an instrumental use of the humanitarian purpose to justify a military operation aimed at effecting regime change. While regime change is not completely unrelated to the RtoP logic, it still may have an unconstructive impact on the doctrine's future development. The paper assesses the conditions at which the overthrow of Gaddafi could possibly be considered legitimate, as well as the limits and ambiguities of such construct. It finally considers regime de-legitimation as a genuine application of RtoP principles on States responsible for massive violations of fundamental rights.

### **The Spear Point and the Ground Beneath: Territorial Constraints in the Logic of R2P (Timothy Waters)**

The rise of responsibility to protect is impressive and undeniable, but where is this doctrine heading? What is it likely to achieve and what are its limits? This paper considers these questions in light of a feature R2P exhibits – in common with much of international law – which will challenge its utility and shape its use in consequential ways. That feature has to do with the doctrine's assumptions about the state – its territorial logic.

The core innovation of R2P is a novel inversion of sovereignty, turning it from a shield against the outside world into a portal whose closure requires continuing justification through ensuring decent conditions for the subject population within the state. And although we say 'the state,' we really mean 'the regime' – individual actors and institutions. This recognition is consonant with trends in scholarship and law, which seek to debunk the idea of the state as a monolithic actor.

This trend is sensible, but should also direct our attention to the effects of plurality on intervention. Many states are defined by deep cleavages – ethnic, religious and regional divides – that pattern the distribution of power and the economy of violence. In these cases, 'harm to civilians' – the thing R2P seeks to prevent – is often driven by demographic factors, rather than 'bad kings' or bad regimes as such. We see such cleavages in recent conflicts such as the north-south split in Ivory Coast, the east-west tensions within Libya, the multilateral conflict in the Balkans, and sectarian divisions in Syria.

The political configurations and identities aligned with such communities are not fixed, but they are sticky; they determine possibilities and – critically for our purposes – they are often territorially expressed, meaning that such communities are not randomly distributed across the state.

R2P *appears* to be sensitive to these factors, but in fact is constrained by a statist logic. It has adopted the default logic of the state as the unit to be addressed, and in which protection must be assured. Controversies round R2P center on the justification and tests for intervening in the state, but the state as the unit of attention is widely assumed.

Recognizing the doctrine's territorial blind spot and responding would mean having, as an available tool, the possibility of addressing not only a regime's actors and processes, but its territorial ambit – imagining that intervention might not be only to protect a population, replace a regime, or even remake a society, but to reconstitute the frontiers of the state.

These are aspects R2P's advocates have not anticipated; their project is controversial and difficult enough; but inattention to the territorial logic of crises in which we intervene will make those interventions harder by leaving functional options off the table, making our interventions replicate or even become part of the demographic basis for conflict.

## Panel 6: Application of R2P in Selected Crisis Situations

### The Responsibility to Protect and the Occupied Palestinian Territory (Eva Tomič)

What is the potential scope of applicability of the Responsibility to Protect (R2P) concept in the situation of a prolonged armed conflict, namely in the Occupied Palestinian Territory? How could R2P be useful in addressing the armed attack on Gaza from 27 December 2008 until 28 January 2009?

The legal bedrock for the international common responsibility was laid in Common Article 1 of the Geneva Conventions of 12 August 1949, obliging the contracting parties not only to respect but also to *ensure* respect for the Conventions.

Public perception often equates the R2P concept with the military (humanitarian) intervention. Such misleading perception neglects the concept's other important aspects, ranging from prevention to the post-conflict peace building. Accountability should be part and parcel of the R2P concept.

International military intervention was not contemplated in the wake of or during the Gaza war. Any such proposal would likely be vetoed in the UN Security Council. Even if action in the General Assembly under Uniting for Peace Resolution would be possible, it might not be very practical or effective (with Western countries likely to obstruct action thus authorized). Hence we will not address that particular aspect of the R2P in relation to the Gaza war and will focus on other R2P possibilities, in particular its Rule of Law aspect. Two eminent inquiry commissions produced reports (Report of the Board of Inquiry on Gaza, UN Fact Finding Mission on the Gaza Conflict); however they were both effectively shelved by the UN Security Council. The public "Goldstone Mission Report" in particular offered a wide array of recommendations which - if implemented - could contribute importantly to ending the ongoing cycle of impunity in the Israeli-Palestinian conflict.

'Peace first and human rights will follow' approach, pursued so far in the Middle East Peace Process has obviously not yielded results. One would hope that lessons learnt upon side-tracking the accountability for war crimes and crimes against humanity committed during the Gaza war are to feed into any future peace process.

### Turkey's Foreign Policy and Responsibility to Protect (Muzaffer Senel)

The aim of this paper is to examine the role, place, perception and position of responsibility to protect doctrine by the Turkey's foreign policy decision makers. While paper has been taking the transformation (continuities and changes) of Turkish Foreign Policy into account in accordance with the EU accession process, Kurdish and Cyprus issues and democratic Arab revolutions, will address also the perception of doctrine of responsibility to protect. How the decision/policy makers or opinion producers perceive the doctrine of R2P. First part will concentrate on the concept of responsibility to protect and its relevance to Turkey's foreign policy. Second part, will be especially focusing on the practices of the responsibility to protect around the world and the views of Turkey's policy makers. The Middle East in general and the Peace Process, Kurdish Issue, Cyprus and democratic Arab revolutions in specific will be common denominators to analyze the. To put the matter bluntly, Turkey's understanding regarding the doctrine of Responsibility to Protect can be examined through the speeches, declarations, announcements and press release of related institutions, i.e., Foreign Ministry, Prime Ministry, Presidential office and so on. My contribution will be obvious by addressing and discussing the Turkey's understanding on the responsibility to protect doctrine by refereeing the latest developments in foreign policy especially in term of EU negotiation process and ongoing Kurdish issue and Arab Revolutions.

## Panel 7: R2P: Assistance of International Community and Responsibility to Rebuild

### Mediation as a Primary Response to Responsibility to Protect Situations (Ashish Kumar)

The concept of Responsibility to Protect (R2P), ever since the UN initiative established it in 2005 at the World Summit, has emerged as a new norm under international arena. Though currently non-binding, it has generated a lot of controversies regarding its scope and application. In emergent situations, it allows for international collective response of coercive nature against the state indulged in mass atrocities against its own citizens. Thus military intervention may be resorted to as a last step. Critics describe the R2P as a 'euphemism' for humanitarian or ultimately military intervention. This is very unhealthy for the future health of this nascent concept which otherwise promises to realize a world free from incidents of mass atrocity crimes.

There is a lack of unanimity among states over the actual contents of this concept. This is precisely because the concept appears to encroach upon the sovereignty of small, weak states by powerful ones. The very idea that measure could even be military intervention on humanitarian ground has posed a serious challenge on the growth and success of this concept. There is a wide need of generating consensus over the kind of response which will be taken in R2P situations. In this connection, mediation has a very significant role to play as a measure of consensus building among various stakeholders which may lead to peaceful settlement of disputes, unlike coercive measures like economic blockade, military intervention etc. The present article will discuss and analyse the role of mediation in R2P situations. It will build an argument about

reading mediation into the wider concept of R2P, whereby mediation can be treated as a primary response or measure by international community in times of failures of R2P by any state. The article will thus primarily seek answer for the question how mediation, if made a fundamental part of the concept of Responsibility to Protect, can generate better understanding and consensus over the scope and application of this emerging and promising field.

#### **The Role of Peacekeeping Operations within R2P (Metodi Hadji Janev & Vesna Poposka)**

The main goal of Responsibility to protect (R2P) is a responsibility to prevent conflicts and negative effects that come along. In order to create healthy environment that will support further retaliation and grievances effective R2P requires a responsibility to prevent, rebuild, reconcile, and reconstruct fragile or post-conflict environment. Envisioned as set of principles that provides the international community with a framework for taking action to prevent or stop these residual effects of conflicts R2P doctrine among other advances new tasks for peacekeepers.

The new role that peacekeepers should play in support of R2P requires different operational capability. On one hand in this new environment (set by the R2P principles) the objectives that determine success are nothing like traditional war fighting (i.e. to destroy enemy's capacities, not just to stop particular kinds of violence and intimidation). Nevertheless these objectives are neither like traditional peacekeeping (i.e. there is a peace to keep and is concerned essentially with monitoring, supervision, and verification). Considering the role which peacekeepers should play in the complex environment, the main objective of the article is to emphasize how peacekeepers could act proactively during their future involvement while supporting R2P pillar two in practice.

Therefore the article first briefly describes why prevention is utmost dimension and the core value of R2P. Then it argues that although preventive action is granted that does not mean success by definition. To prove this article analyzes several cases where United Nations has employed preventive force. To be successful peacekeepers need to focus on prevention by building capacities among local stakeholders. To achieve this, soldiers on the ground should link their lines of operation to the desired political end-states that have evoked R2P. While accomplishing their missions under the framework of prevention peacekeepers need to galvanize their actions in accordance with the social, cultural, religious, ethnic, economic and other forces that shape the dynamics of their theater of operation. Therefore if we are about to expect success in preventing human suffering and effective R2P building "strategic corporals" is something the UN should stimulate through the member states.

#### **Transitional Justice as a Substantive Component of the Responsibility to Rebuild within the RtoP Framework (Tomasz Lachowski)**

'The Responsibility to Protect' (RtoP) concept, as an emerging principle of public international law, is not solely limited to the level of reaction and military response to the humanitarian crisis or state's failure to protect its own citizens. The holistic approach to observance and enforcement of human rights and ending mass atrocities is based also on the need of achieving justice and accountability in fragile societies, reckoning with their past abuses or results of the internal deadly conflicts.

This paper focuses particularly on the transitional justice mechanisms seen from the perspective of 'the responsibility to rebuild (RtoR)' layer. The RtoR toolbox covers a whole range of possible actions how to restore the post-conflict environment, among which, the issue of coming into terms with the past, appears as a primary one. Transitional justice, after being systematically 'internationalized' by the international community (UN) involvement, brings a useful 'package' of strategies and mechanisms, with the special reference to the human rights law and public international law development in the field of accountability and reconciliation.

#### **Exercising Diplomatic Protection on Behalf of Refugees (Niccolò Ridi)**

The idea that protection of human rights has to be based on nationality is no longer acceptable. Nevertheless, such an assumption remains almost unchallenged when dealing with some issues relating to the international protection of refugees. The protection paradigm set forth by the 1951 Geneva Convention is built on the grounds that only States can effectively grant protection to refugees, essentially replacing a State of nationality that fails to do so. However, what happens when a refugee – who has been granted asylum – finds himself not only outside "the country of his nationality", but also outside his State of asylum? Once deemed highly theoretical, such cases have in fact occurred, prompting a number of complex issues. In particular, a landmark case involves Guantanamo detainees who had been granted asylum in the United Kingdom. Their expectation of the State of asylum exercising diplomatic protection on their behalf was held by a British court not to be "legitimate". Although admittedly still far from being part of customary international law, Article 8 of the 2006 ILC *Draft Articles on Diplomatic Protection* suggests instead that States could act on behalf of refugees to whom they granted asylum. States, however, have traditionally had complete discretion in the exercise of diplomatic protection for nationals – let alone refugees.

In this paper I wish to show how diplomatic protection can be an effective instrument for the protection of human rights and how the concept of R2P can help limit the discretion of States in deciding whether exercising it; subsequently, I wish to examine the various issues arising from the choice of diplomatic protection as a means to protect refugees. Furthermore, I argue that discrimination based on a formal bond of nationality should not be acceptable, because: 1) refugees are closer to

a national than any other alien: they can thus be considered *de facto* nationals; 2) especially when basic human rights are at stake, the duty to protect the civilian population is a paramount principle, the implementation of which cannot be dependent on the existence of a bond of nationality – or the lack thereof – only.

## Panel 8: R2P and the Principle of Non-intervention

### The Responsibility to Protect and Civil Wars: From strict non-interference to the duty to intervene? (Ralph Janik)

The paper deals with civil wars from the perspective of the Responsibility to Protect and asks the core question whether this relatively new principle constitutes the final step in a constant process that has completely changed the classification of this type of conflict in international law from being essentially domestic into international matters. The ultimate question is whether the final step in this process, the complete reversal of the doctrine of strict non-intervention in civil wars to an actual duty to do so, albeit obviously not necessarily by using force, has been made or whether it is likely in the near future. The first part will define and describe the two commonly identified types of internal wars (armed struggle against the state and wars in states without any effective state authority) and their impacts on civilians from a legal and political/theoretical perspective; on this basis, the evolution of the change in attitude towards the principle of state sovereignty and the domestic jurisdiction clause of the UN Charter will be highlighted by outlining the relevant practice of the international community from early on. In particular, the practice of the Security Council on this matter reveals a constant trend of lowering the threshold for the determination of threats to international peace and security, thereby completely erasing early doubts whether the Security Council may interfere in civil wars at all. Yet, as will be shown, the establishment of any positive obligation to act is not even close to becoming reality since this would necessarily mean the somewhat Utopian of an end of power politics as soon as one of the crimes triggering the responsibility to protect occurs. It thus rather seems that the international community in general and the Security Council in particular are somewhat stuck in the middle of the two extremes of strict non-interference and the duty to act, while it is not likely that a further significant step in any direction is going to be taken in the immediate future. As pessimistic as this may sound, this finding nevertheless must not distract from the significant progress already made in the last decades.

### Responsibility to Protect Concept and UN Charter: Alternatives, Complements or Antagonists? (Miloš Hrnjaz)

Responsibility to protect concept (RtoP) advanced by the International Commission on Intervention and State Sovereignty represents the classical example of soft law document which opens rather intense debate about the relation of it and the UN Charter as classical hard law document. Using some previously proposed methodologies, this paper examines whether this relation should be marked as *alternative*, *complementary* or *antagonistic* one. The general conclusion is that all of them are relevant in this context.

Responsibility to protect doctrine represents alternative to the UN Charter in a sense that its adoption is direct consequence of the fact that states could not agree upon the interpretation of some key concepts of international law mentioned in the UN Charter, such as sovereignty and principle of non – intervention on the one side and protection of human rights on the other. The solution was found in agreement to adopt soft law document (Outcome Statement of the UN 2005 General Assembly Summit) without legal obligation to implement it.

However, it is also possible to see relation between Responsibility to protect and UN Charter as *complementary* in a sense that some elements of RtoP concept could represent interpretation of some norms of UN Charter, especially those in reference to the rules of conduct of Security Council.

Finally, it is of course possible to see RtoP and UN Charter as *antagonistic* documents in a sense that some parts of RtoP concept are interpreted as clear violation of UN Charter. In that sense, argumentation for using RtoP concept to authorize use of force without Security Council explicit authorization undermines the position of United Nations and international legal order.

### The Responsibility to Protect: The Soft Law Riddle and the Role of the United Nations (Nina Zupan)

This paper addresses the operational dimension of the responsibility to protect, exploring the utility of soft law as a tool of implementation and development of the concept in light of the general soft law criticism. The latter relates in particular to the credibility of the inception of soft law (given the possible involvement of non-state actors) and to the alleged threat to the coherence of the international legal system. The role of the United Nations is assessed on the basis of its special position as both the integral part and the catalyst of the responsibility to protect. It is submitted that the United Nations is a legitimate source of soft law in this respect and possesses important comparative advantages to bring the overarching idea of the responsibility to protect to full fruition.



## Panel 9: Security Council Deadlock, Humanitarian Intervention and Responsibility While Protecting

### R2P: Room for a Tertiary Responsibility? (Christian Henderson)

The Responsibility to Protect (R2P) concept was primarily designed to ensure that the elites at the helms of states were aware that they had a responsibility to protect those within their domestic territory. In this sense, they were accorded with a 'primary' responsibility to protect. However, the R2P concept further places a responsibility upon the international community to step in and offer protection if the government concerned is failing to do so. In the development stages of the concept thus far this 'secondary' responsibility has been generally bestowed upon the United Nations Security Council (UNSC) as the representative of the international community. While question marks were raised as to the willingness of this organ – or more accurately the member states of which it is constituted – to meet such an independent responsibility, the events in Libya perhaps offered some confirmation that it was, if only on this occasion, willing and able to do so.

However, the events in Syria, and more specifically the threat or use of the veto to prevent even formal condemnation of the Assad regime, have raised further questions of R2P in the context of the Council. In this respect, the question is posed whether there is room for a 'tertiary responsibility' if the government of a state is unwilling to protect its civilians and then the UNSC is unable to. Surely the drafters of R2P did not completely overlook this situation arising given that the threat or use of the veto has been such a remarkable and prominent part of the history of the UNSC. Where, legally speaking, could such a responsibility lay? Is there room within the UN Charter or the various stages of development of the R2P doctrine for such a responsibility? Resolving this question is unavoidable if the concept is to develop further and, ultimately, whether it is to become a legal norm, such as was the case with the principle of self-determination, or simply remains just another piece of ultimately empty political rhetoric.

### R2P without UN Security Council mandate - Subsidiary action as the possible way out of institutional deadlock? (Csaba Törő)

Although the international response to the looming threat of massacres of civilians in Libyan in 2011 presented the instance of an optimal course for the invocation and application of R2P, its implementation, and probably inevitable extension, of the NATO-led operation to regime change provoked much controversy and suspicion about the possible abuse of the emerging doctrine of R2P.

Recourse to R2P within the range of multilateral responses – timely and adequate collective measures through the UN system – can be paralysed by its inherent ultimate limitation, the exercise of *great power veto*. As the steadily deteriorating humanitarian crisis in Syria have plainly illustrated, the centralised system of collective security could easily fail in critical situations to perform its principal function due to political discord and the resulting paralysis in the Security Council.

Systemic failure at universal level to carry out the invested "primary" responsibility of the Security Council (UN Charter Art. 24) for the maintenance of international security could be argued to imply the option of legitimate and inevitable recourse to *subsidiary action* through regional structures in exercise of an assumed or default "secondary" responsibility for peace and order through local multilateral frameworks for collective countermeasures as the only alternative to inaction and its devastating human as well as moral consequences.

Conceptually, forcible emergency measures without prior authorisation represent a possible exit from the institutional deadlock by way of temporary *perforations in the monopoly of legitimate international violence* invested in the UN SC by the member states.

With regional political will to act, multilateral countermeasures to avert mounting mass atrocities by an *occasional coalition* or through *regional arrangements* may be taken as *interim measures* until the emergency situation – the imminent threat or actual discharge of mass atrocities – triggering external protective action has not been averted.

The status of the UN SC as "the central licensing authority" remains unchallenged as long as a subsidiary action without UN mandate is conceived as R2P in its *reactive and protective function* and discharged as "human rights disaster relief" limited in their *temporal* as well as *spatial* aspects to specific emergencies.

### Delimitation of Humanitarian Intervention and the Responsibility to Protect: A Conceptual Approach (Gábor Sulyok)

The responsibility to protect was conceived over a decade ago to remedy certain theoretical and practical shortcomings of the doctrine of humanitarian intervention, and to reconceptualize the increasingly frustrating debate on the subject. These objectives inevitably raise the need to delimitate the two categories on a conceptual level. This paper seeks to accomplish that task by briefly introducing and comparing the evolution and principal conceptual elements of humanitarian intervention and the responsibility to protect. Bearing in mind that humanitarian intervention has never had a generally accepted definition, the delimitation promises to be a rather challenging academic endeavour, but its results may contribute to a better understanding of the responsibility to protect.

### **Responsibility to Protect and Humanitarian Intervention (Veronika Bilkova)**

The paper examines the relationship between the new concept of the Responsibility to Protect (R2P) and the much older doctrine of humanitarian intervention. It shows that since the establishment of R2P in 2001, this relationship has passed through three distinct stages: the stage of the direct inclusion of humanitarian intervention into R2P in the early 2000s, the stage of mutual coexistence of the two in the mid-2000s, and the stage of the indirect exclusion of humanitarian intervention by R2P in the late 2000s. This progression could seem to indicate that humanitarian intervention is gradually disappearing from the international scene. The paper cautions against such an interpretation, arguing that R2P fails to solve the underlying dilemma of how to react to those large-scale violations of human rights that are not dealt with by the UN Security Council. Auguring the death of humanitarian intervention may therefore prove to be largely premature.

### **An Analysis of the Brazilian Position on the Responsibility to Protect (Aziz Tuffi Saliba & Pedro Guimarães Vieira)**

The aim of this article is to comprehensively analyze the issue of the “Responsibility to Protect” (R2P), focusing on the evolution of the Brazilian position concerning this international concept.

Initially, Brazil perceived R2P as a contemporary form of humanitarian intervention (*droit d'ingérence*), which was expected to impair two cornerstones of Brazilian External Affairs: the Principles of Sovereignty and of Non-Intervention. Moreover, Brazil highlighted that the UN Charter set forth only two exceptions allowing the use of force: the right to self-defense and the use of force authorized by Security Council (UNSC) under Chapter VII. Thus, it argued that the development of a new permissive exception would undermine the very rationale of the United Nations system.

Alongside this critical stance, Brazil endeavored to restrain the scope of R2P use of force by stressing its subsidiary and last-resort character, which requires the previous exhaustion of all peaceful means to tackle the matter and the authorization of the UNSC to the international use of force relying on R2P. Consequently, despite recognizing that the Principle of Non-Intervention must be associated with the idea of Non-Indifference, it pointed out the importance of preventive measures, which must be discharged simultaneously with policies stimulating social and economic development in order to achieve political stability and peace.

Brazil has ascertained, furthermore, the necessity to respect the material, temporal and formal limitations on the use of force by the international community in the exercise of its responsibility to protect, whose objective is to assure that the operations carried out relying on this permissive exception do not worsen the conflicts and the damages to civilian population. Accordingly, Brazil has proposed that the R2P must come along with a “Responsibility while Protecting”, i.e. the respect for International Humanitarian Law and Human Rights Law.

Considering the pivotal role of UNSC, since it must ensure accountability of those to whom authority is granted to use force, Brazil has restated that the legitimacy of the decisions of this UN Organ hinges on its reform so as to incorporate, as permanent and non-permanent members, developing States from Africa, Latin America and Asia.

### **“Responsibility while Protecting”: something new under the sun? (Andrea Spagnolo)**

The aim of this paper is to present a brief analysis of the concept paper ‘Responsibility while Protecting’ submitted by the Brazilian delegation to the UN Secretary General in 2011. This concept will be analyzed from the perspective of the protection of civilians. In this regard, the first paragraphs of the paper will present the relevant UN practice in the file of civilians’ protection, taking also into account the recent events in Libya and Syria. The objective is to identify the legal gaps in the international community action for the protection of civilians. In the following paragraphs the ‘Responsibility while Protecting’ will be scrutinized and then presented as a potential tool to make more effective the protection of civilians during armed conflicts. It will be proposed a possible role for this concept as a mean to interpret UN Security Council resolutions.

## **Panel 10: The Role of Regional Organizations in the Implementation of R2P**

### **The Responsibility to Protect and Regional Organizations: The Example of the European Union (Jan Wouters & Philip De Man)**

The responsibility to protect (R2P) doctrine declares that each state has the primary responsibility to protect its citizens from acts amounting to a specific category of international crimes, failing which the international community has the obligation to intervene. The two main addressees of the responsibility to protect as codified in the 2005 World Summit Outcome (WSO) Document are therefore the individual state (paragraph 138) and the international community (paragraph 139). Nevertheless, the text of both paragraphs also expressly refers to the need for states and the international community at large to work in close cooperation with regional organizations and other players for operationalizing R2P. The role of regional intermediaries between ostensibly partisan states and an altogether aloof international community for defusing tensions in situations of high volatility threatening international peace and security has long remained

underappreciated in legal theory and policy documents on R2P, including reports from the UN Secretary-General, yet has proven invaluable on the ground in such cases as the uprising in Libya in 2011.

In an attempt to clarify the role of regional organizations in the context of R2P, the present paper will, first, detail the integration of regional players in the preservation of international peace and security in general and in the context of R2P in particular, as envisaged by the United Nations in the UN Charter and its policy documents on R2P. A second part of the paper will focus on the actions undertaken by regional organizations in empowering themselves for assisting individual states and the international community at large in protecting populations from the atrocities listed in the WSO Document. In light of its long-standing practice and developing capabilities in terms of conflict management, the paper will in particular address the contributions of the European Union to the operationalisation of R2P, by analyzing the Union's conflict management policy documents and statements in international organization for their R2P pertinence.

#### **African Union and the Responsibility to Protect (Hennie Strydom)**

Already since the early nineties, UN reports on the strengthening of the UN's peace and security apparatus have placed renewed emphasis on the need for cooperation between the Security Council and regional arrangements under Chapter VIII of the UN Charter. The High Level Panel Report of 2005 also propagated a fuller and more productive use of Chapter VIII for achieving a more pro-active response by the Security Council in preventing and responding to threats. This was envisaged within a framework that requires authorization from the Security Council in all cases involving regional peace operations, unless the urgency of the matter rendered prior authorisation obsolete. In 1994, the Rwanda genocide exposed, once again, the tragic failure of both the UN and the Organization of African Unity (OAU) to act decisively in the face of large scale and gross violations of human rights. Consequently, when the African Union (AU) replaced the OAU in 2000 it was evident that urgent action was needed for bringing about a different kind of regional organization, better geared for decisive action and more aligned with the challenges of a changing world. This was reflected in the Constitutive Act of the AU, which provided for forceful action by the AU in the case of war crimes, crimes against humanity and genocide should a national state, and member of the AU, be unwilling or unable to protect its own citizens. However, the crises in Darfur, Libya and more recently in Mali have placed a huge question mark over the ability of the AU to live up to its own values as stated in the Constitutive Act.

#### **A Responsibility to Protect: NATO and the Arab Spring (Mark V. Vlasic & Peter Atlee)**

The North Atlantic Treaty Organization (NATO) has played a critical role in the expansion and legitimation of the concept of a Responsibility to Protect (RtoP), perhaps more so than any other group of nations. The member nations share an abiding respect for human rights and the financial and military capacity to defend those rights throughout the world. But in spite of their dedication to human rights, these democratic nations are ultimately driven by the harsh political costs of spending blood and treasure to protect individuals in faraway lands. In 2011, NATO actively supported the revolution in Libya, but only after Muammar Qadhafi's actions and threats to slaughter of his own people became impossible to ignore. And even then, the decision to enter another quagmire in the Muslim world was to many, politically controversial. Although the Libyan intervention was, by most accounts, a success, NATO, a creature of democratic politics and its own history of interventions, has been reluctant to get involved in other RtoP situations. Despite the abundant clarity of the wholesale slaughter in Syria, NATO has resisted involvement. And, in 2009 in Iran, as the government brutally suppressed protests that may have foreshadowed the Arab Spring, NATO similarly resisted involvement.

This Paper argues that NATO's history with RtoP interventions, including its actions in Libya, have shaped its reluctance to become involved in the Syrian conflict. Part I will describe NATO's RtoP history. Part II will consider how that history—and NATO's experience in certain conflicts—has shaped its current response to the Arab Spring in Syria. Part III, finally, considers whether NATO (and Western) involvement in humanitarian conflicts, especially those espousing democratic revolution, is ultimately helpful or hurtful.

#### **Panel 11: Prosecution of R2P Crimes**

##### **The R2P, the doctrine of non-indifference, and cooperation of African states with the ICC (Katarina Škrbec)**

The AU member states' commitment to their responsibility to protect under paragraphs 138 and 139 World Summit Outcome, and to the doctrine of non-indifference, underpinning the Union's right to intervene under Article 4, paragraph (h), AU Constitutive Act has been questioned on the basis of their reluctance, sometimes even outright refusal, to cooperate with the ICC, an important building block of the R2P, in relation to certain cases before the Court. For example, the AU Assembly has repeatedly requested the UN Security Council to defer ICC proceedings against Sudanese President Al-Bashir, as well as proceedings in relation to the situation in Kenya; decided that AU member states would not comply with the Court's arrest warrant against Al-Bashir; encouraged the African state parties to the Rome Statute and other African

states to consider concluding bilateral agreements on the immunities of their senior state officials; and, at least seemingly in line with the principle of complementarity, encouraged adoption of the African Model National Law on Universal Jurisdiction over International Crimes; endorsed Libya's decision to hold its own national prosecutions; and considered adoption of a draft protocol amending the Statute of the African Court on Human and Peoples' Rights to give it jurisdiction to try international crimes.

The paper explores the concepts of, and the relationship between, the R2P and its African 'counterpart', the doctrine of non-indifference, the role of the ICC in the three-pillar structure of the R2P, and the abovementioned events that have contributed to, or resulted from, the rift between the AU and the ICC. In conclusion, the author discusses some suggestions regarding future cooperation between the two institutions, and assesses their impact on the role of the ICC within the 'protection continuum'.

### **ICC and RtoP: Identifying Main Convergences and Possible Conflicts (Medlir Mema & Mathias Holvoet )**

While the ICC and R2P are usually considered separately, the two concepts share significant convergences. Both ICC and R2P speak to the responsibilities that governments have to their citizens and imply that when governments fail or are unwilling to uphold those responsibilities, external interventions are warranted. Interestingly, with the exception of the crimes of ethnic cleansing and aggression, R2P and the ICC also recognize the same crimes, namely war crimes, crimes against humanity and genocide, as the most egregious crimes to commit against people and as justifications for intervention.

Furthermore, the ICC is not only similar to the concept of R2P, but is also part of its interventionist toolbox. The most obvious role of the ICC in implementing R2P is ending impunity for past crimes through prosecutions and convictions. Nonetheless, R2P is not limited to a reaction to atrocity crimes but constitutes a more holistic approach to address crisis situations, based on the idea that the response requires an intervention that starts with preventative measures. In this perspective, the ICC can play an important role. Contrary to other international(ized) criminal tribunals, the ICC is not an *ex post facto* judicial institution, but a permanent body that can help preventing future mass atrocities through timely intervention in situations where mass criminality is happening, or about to happen. This is mainly discharged by the ICC Prosecutor through preliminary examinations and investigations.

However, the relationship between ICC and R2P is not unproblematic. Some elements of the civil society are concerned about the stifling effect that adding the crime of aggression to the ICC subject-matter jurisdiction would have over R2P related activities. The inclusion of the crime of aggression could mean that a state acting under the umbrella or the justification of R2P, would now think twice before becoming involved, since it could potentially leave itself open to charges brought before the ICC for acts related to the crime of aggression. While this deterrent effect would be welcomed in the case of unwarranted interventions in another country's state sovereignty, it could also have a very real chilling effect on necessary and timely interventions to come to the aid of a vulnerable civil population. Considering that world leaders, and especially UNSC members, are already too cautious in such cases, developments related to the crime of aggression as well as in other aspects of the Rome Treaty of the ICC, reveal a more nuanced relationship between R2P and the International Criminal Court.

### **Reciprocal repercussions of the overlap of armed conflict and international criminal justice (Ulf Häußler)**

UN Security Council resolutions (UNSCRs) 1970 and 1973 concerning the situation in Libya as well as UNSCR 2071 concerning the situation in Mali were significantly inspired by the responsibility to protect (R2P). Both resolutions conceptually build on the responsibility to react. Apart from military efforts – respectively the mandate on which NATO relied for Operation Unified Protector (OUP) and the provisions indicative for a possible ECOWAS-led stabilization force – these elements comprise the International Criminal Court's (ICC's) involvement based on referrals by the UN Security Council and Mali's transitional government. Relevant policy documents unequivocally emphasise the ICC's role in implementing R2P. In particular, they stress the nature of the outrages which trigger both referrals to the ICC and authorisations of military operations as "mass atrocity crimes".

Parallel efforts to stop atrocities by military force and to secure the prosecution of those responsible for them are all but new. Post-conflict peace missions in the Balkans during the 1990s and in Rwanda following the 1994 genocide, and the respective international criminal tribunals (ICTY and ICTR) as well as the missions deployed to Sierra Leone at the same time as the Special Court (SC-SL) became operative were able to create significant synergies in support of the peace processes in the countries concerned.

The OUP experience – and possibly its equivalent in Mali – may nevertheless open a new chapter since it involves a period of international criminal investigations during an on-going combat operation. To date, the reciprocal repercussions of this overlap of armed conflict and international criminal justice have hardly been explored. Even in the absence of legal obligations, there may be a case for developing a courtesie approach on the part of organisations exercising direction and control of forces towards international criminal justice. For instance, it seems that NATO deliberately chose not to target Colonel Ghaddafi in light of the on-going investigation. Conversely, launching a criminal investigation against a head of

state or government might add legitimacy to regime change as a method towards stopping atrocities and thereby fully implementing the R2P. My paper will explore related questions from an international law and legal policy perspective.

### **Responsibility of States to Fight Impunity for Core International Crimes as Part of the Responsibility to Protect (Marko Rakovec)**

In this paper I will focus on how States can exercise their responsibility to protect populations, in particular what are the appropriate and necessary means available at their disposal at the national level? Mass atrocities are criminal acts and we should therefore draw comparisons with the national crime prevention activities. There is a substantial discrepancy between prosecuting ordinary crimes in relation to prosecution of core international crimes. Why? Prosecution of core international crimes usually has transnational component and therefore requires judicial cooperation between several States. National judiciaries are usually not very favorable to starting such complex cases with the consequence being impunity. However, it should be stressed that genocide, crimes against humanity and war crimes are international crimes which breach values considered important by the whole international community.

Any State, regardless of any territorial or nationality link with the perpetrator or the victim, has a right but also an obligation to punish perpetrators of such crimes, as it was decided by the recent ICJ judgment in the case “Questions relating to the Obligation to Prosecute or Extradite (Belgium vs. Senegal)”. If the States have an obligation to fight impunity than we must ask ourselves what should we do to improve effectiveness of prosecuting international crimes? A first step is to establish appropriate jurisdictional basis, including universal jurisdiction. We can see that the majority of States have adopted universal jurisdiction in their national legislations.. However, there is only a small number of cases that were prosecuted on this basis because States usually lack adequate knowledge how to prosecute such cases, resources and determination or they seek to avoid potential political conflicts with other States.

The responsibility of States to punish perpetrators of mass atrocities is clearly an important element of the R2P concept. It has a deterrent effect on any future commitment of such crimes. States should do more to ensure their effective prosecution and it seems that more pressure should be put on States by scholars and the civil society to exercise their responsibility to fight impunity for international crimes. States should also enhance cooperation with each other in the detection, arrest, extradition and punishment of persons guilty of international crimes.

### **Panel 12: Extension of R2P to Other Issues**

#### **Application of “Responsibility to Protect” in the Event of Natural Disasters, with a Special Focus on the Work of the International Law Commission (Ana Polak Petrič )**

This article is divided into three major parts. The first chapter represents a **short overview of existing international law and other major instruments and initiatives that deal with response, assistance and protection of persons in the event of natural disasters**. The examination of this corpus of documents reveals that one of the key dilemmas in this area pertains to the tensions between the protection of disasters victims and their human rights, on the one hand, and the respect for the fundamental principles of State sovereignty and non-intervention, on the other hand. The provision of humanitarian assistance thus becomes problematic when the affected State itself is unable or unwilling to provide humanitarian assistance to the victims of natural disaster and at the same time even rejects foreign relief offered by the UN, humanitarian organizations or assisting States. Though rare in practice, such cases do exist. They are the ones particularly relevant to this study.

With this in mind, the second part of this article focuses on the **relevance of the “responsibility to protect” (R2P) in the event of natural disasters**. Underlining the debate after the 2008 Cyclone Nargis and the statements made by the UN Secretary-General, members of the International Law Commission (ILC) and States’ representatives it is confirmed the R2P concept is so far strictly limited to four gross human rights violations and is explicitly excluded to apply to natural disasters *per se*.

Nevertheless, the recent **work of the ILC on the topic “Protection of Persons in the Event of Disasters”** proves that certain rights and duties of States involved in disaster response are established, which appear very much to include the elements of R2P. In this context several provisionally adopted draft articles by the ILC on this topic (draft articles 5, 9, 10, 11 and 12) are presented in the final chapter of this article, accompanied by discussions within the ILC and among States’ representatives in the UN General Assembly’s Sixth Committee. The analysis shows that the affected State in the event of natural disasters is not free to act as it pleases – its response is limited to specific rights and duties, which bear important elements that are closely related to those recognized by the R2P concept, such as understanding “sovereignty as responsibility”, the duty to protect, the responsibilities of the international community and the duty to cooperate.

The paper reveals that in the event of natural disaster the affected State, by virtue of its sovereignty, has the primary responsibility and duty to ensure the protection and adequate and timely relief to disaster victims on its own territory. In principle, the affected State must also give consent to the provision of international humanitarian relief on its territory and is responsible for its coordination, direction and supervision. Nevertheless, in line with the principle of humanity, the right

to life and other basic human rights, as well the fact that sovereignty today entails not only rights but also duties towards the State's inhabitants, the principle of State sovereignty cannot be an "excuse" for the affected State to deny victims access to assistance, especially by unjustifiably rejecting international disaster assistance offered when unable to provide it on its own. No legitimate State in the contemporary world can object the claim that it is responsible for the well-being of its citizens, including during the times of emergencies, such as natural disasters. Therefore, when disasters strike and aid is needed, the affected State that is unable to honour its obligation to provide adequate and timely relief to its people in distress, should have a duty to seek outside humanitarian assistance. It may also not withhold its consent to humanitarian assistance "arbitrarily or without justification".

### **R2P vs. Human Security (Ivana Jelić)**

Two emerging international legal concepts of contemporarity - Responsibility to Protect (R2P) and Human Security - have significant implications towards the protection of human rights and freedoms in all situations. During an armed conflict they are especially linked to the protection of civilians from mass atrocities. In times of peace it is more about (in)security of individuals and groups that are diverse from majority. Both are subject of the human protection in the Western Balkans. Human security concept shifts the security from the state to the individuals, underlining creating a solid system of social, economic, political, military and cultural aspects which would build the environment for human survival in accordance with congenital human dignity. Therefore, human security is focused on the protection of individuals which refers to the normative and institutional mechanisms for protection of people from pervasive threats. On the other side, R2P concept, established as international community's answer to grave civilian casualties and dangerous attacks mainly from the governments, introduces responsibility to protect as a duty of contemporarity. The concept derives from the framework of the UN system. In that sense, the Resolution of the Security Council no. 1973, based on Chapter VII of the UN Charter, introduced practical implementation of military aspect of R2P doctrine, which was exercised in the region concerned. This paper aims to critically examine two concepts in regard to the Western Balkans, where both ones are influenced by the need for human rights protection in different stages of peace building in the region concerned. Both concepts have common goals such as ensuring the human dignity and freedom in its full meaning, encompassing freedom from fear and freedom from want in all situations and under all circumstances.

### **Women Protection within Responsibility to Protect Doctrine (Danijela Barjaktarović)**

A female victimization, context of gender violence, quest for gender equality and pursuit for the methods which will end the violence against women and girls are the focal points one faces while questioning the responsibility of States and international community toward women protection. Since rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and similar forms of sexual violence of comparable gravity committed against women are by the Statute of the ICC envisaged as crimes against humanity and war crimes, the violence against women is also a prerequisite in the employment of the R2P doctrine. When in 2000, the SC adopted the Resolution 1325 this body emphasized the importance of the protection of women in armed and post-conflict situations and placed it into the heart of the global discourse on peace and security. Protection of women, after the adoption of said and subsequent documents was transformed into the search for methods by which the prevention of female violations would be achieved. In accordance with female logic of care and solidarity, the force was not to be seen as an adequate method. However, the first pillar of the R2P doctrine, responsibility to prevent, is professed as a solid theoretical and practical ground. On the other hand, the creation of the approximate legal framework didn't prevent the engenderment of the problem in the practice. The fragility of women rights during the reaction of the international community under R2P or similar doctrines was brought to light. As vulnerable groups, women and girls, as shown in different reports, were victimized by national security forces. It was needed to protect them while protecting. On the other side, voices arguing the abuse of female right in territorial domination of certain states aroused. For all said, the humanization of the methods employed in the R2P concept is needed. Women rights can be protected only if their derogation is visible. To do that, we need to build up a system which will at an early stage indicate the violation, and with gentle, female methods, prevent additional abuses. It is our intention to search for those methods.

\*Full papers are available in the conference book entitled **Responsibility to Protect in Theory and Practice**, which will be available at the conference.