**RESPONSIBILITY TO PROTECT IN THEORY AND PRACTICE CONFERENCE**

**April 23-24, 2015**

**CONFERENCE MATERIALS**

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**Thursday, April 23, 2015**

**OPENING SESSION – CHALLENGES AHEAD OF R2P AFTER ITS FIRST DECADE**

* **Ruth Wedgwood**, President of the International Law Association, Edward B. Burling Professor of International Law and Diplomacy at The Johns Hopkins University, the School of Advanced International Studies (SAIS)
* **Judge Awn Shawkat Al-Khasawneh**, Former Judge and Vice-President of the ICJ
* **Vladimir Kotlyar**, Member of the International Law Council of Russia’s Ministry of Foreign Affairs
* **Aidan Hehir**, Director of Security and International Relations Programme at the University of Westminster
* **Enzo M. Le Fevre Cervini**, Director for Research and Cooperation at the Budapest Centre for the International Prevention of Genocide and Mass Atrocities/ Roma Tre University

Abstracts:

**Remarks on Challenges Ahead of R2P After its First Decade (Judge Awn Shawkat Al-Khasawneh)**

I wish to express my deep apologies for not being able to participate in this important conference.

Let us start by emphasizing the need to interpret our times correctly: we live in turbulent times marked by the decay of the Westphalian system. The sovereign equality of states enshrined in the Charter as a basic norm is now giving in. To be sure, it had always been a fiction, but a useful one if only because it was necessary to provide a semblance of order in the international, inter-state system.

The reasons for this decay are beyond the present remarks. One can however point to the increasing gap between the nations in power, wealth and knowledge, as well as the increasing inter-dependence of states. The exclusivity of sovereignty sometimes expressed in the saying that “the god of sovereignty is a jealous god” is not as true as it used to be.

These developments are taking place concurrently with the rise of ethnic and sectarian identities, -what Amin Maalouf has called mortal identities-, examples include the Balkan wars, and now in the conflicts in the Middle East.

On the other hand, the rise of sub-state actors, who most often do not feel bound by the applicable rules of diplomatic interaction, or indeed of international law, is posing new challenges.

The horrors that are now commonplace, for example in Syria and Iraq bring into sharp focus one of the dilemmas of international law, namely, should the system of international law admit another licence to resort to armed force apart from those expressly sanctioned by the Charter, (i.e, self-defence, and collective action)? or should that door, which leads to abuse remain firmly closed?

Even if those who exercise sovereignty are monsters?

This is a question that falls at the meeting place of law, morality and politics, and touches everyone’s sensibilities and deeply held convictions.

The concept of responsibility to protect (R2P) is an attempt to open a niche in what is otherwise a solid wall.

Professor Vera Goland-Dabbas, in the 2014 meeting of the International society of International Law (ASIL) described the concept of the responsibility to protect as “ a hollow and unnecessary one”. I endorsed that remark and continue to do so, as nothing that has happened in the last year has led me to change my mind.

The history of western intervention in the Middle East (humanitarian intervention) has been a tragic one. As the Ottoman Empire started to decline, and as this decline became apparent in the 19th Century, forms of humanitarian intervention began to take place, both in the Balkans and the Middle East. The intervention in Lebanon in 1860 is a case in point. Protecting different minorities only exasperated tension, among communities that had coexisted in relative harmony for centuries. (Russia protecting the Orthodox, France the Maronites, and England for some strange reason the Druze). It is now established that such intervention hid economic and strategic interests.

The R2P is commonly viewed in the Middle East as a euphemism for the discarded concept of humanitarian intervention.

Apart from anything else, the main difficulty with RTP is that it can only be used against small and weak states by stronger ones. The principal justification for law is that it should correct the relations between weak and strong.

In asserting this I am not oblivious to the fact that the oppressed are themselves the oppressors of their people. Syria is an example, and whilst there are no easy answers to the moral dilemma, I have in the past advocated a greater role for regional organizations under Chapter VIII of the United Nations Charter. I continue to believe that in the case of Syria the Organization of Islamic Unity encompassing in its membership such regional players as Turkey and Iran could have affected a peaceful solution to the Syrian crisis had this route been explored, but it was not because of outside intervention.

In conclusion, I am at best only half-convinced that the RTP will have a discernable influence on the development of the rules of international law at a time when the law is passing through a transitory phase.

* **On a Selective Approach to the Implementation of the R2P Concept (Vladimir Kotlyar)**

Nations respond to the globalization by committing themselves to preserve and strengthen their respective cultures, religions and civilizational identities. Whenever such commitments are not recognized as legitimate and justified, there are risks of aggravated tensions. This is the reason why we have seen a noticeable recent increase in the number of conflicts, more often because of worsening internal crises, including inter-ethnic and inter-religious ones. And here is where the R2P might help, but on the condition that it can digest the changes resulting from globalization and adapt to them. Although there is no lack of attention from the international community to the R2P concept, the trend is to look for the R2P applicable cases in Africa or Asia, far away from Europe. Yet, the Ukrainian political crisis which has started with “assistance” from the USA and the EU is developing right before our eyes in the middle of Europe. Unlike previous cases of Western interference, for us in Europe there is a big difference this time with the consequences of the joint US/EU Ukrainian adventure: previously the USA after a similar enterprise would quietly withdraw back home over the ocean, leaving it to the local population in Asia or Africa to deal with the consequences. But in the case of Ukraine, with the EU being one of the major authors of the Ukrainian crisis scenario, this time it will have to be Europe itself to deal with the consequences. One wonders if there are many Europeans who would be happy with this.

* **Ten Years After the World Summit What has R2P Achieved? (Aidan Hehir)**

This chapter argues that the importance of the recognition of the R2P at the 2005 World Summit has been widely exaggerated. The *Outcome Document* – a diluted version of the International Commission on Intervention and State Sovereignty’s 2001 report – constituted an affirmation of the discredited status quo which has failed to significantly improve the international community’s response to intra-state mass atrocities since. The means by which the international community responds to intra-state mass atrocities is the same today as it was prior to 2005 and hence the conflation of politics and law enforcement continues to inhibit the protection of human rights. Since 2005 the currency of the term “the Responsibility to Protect” has certainly increased but actual state practice remains prey to the political whims of the permanent five members of the UNSC. This has been evident during the Arab Spring and particularly the international response to the crisis in Syria.

**PANEL 1: R2P – NORM, PRINCIPLE,…?**

* **The Ethics of International Diplomacy: R2P, Just war theory, and the duty to criticize**

**(James Pattison)**

This paper presents the ethical case for diplomatic criticism as a response to mass atrocities and serious external aggression. It argues, in short, that states have a moral duty to criticise the offending parties. More specifically, it argues that diplomatic criticism is often a plausible and preferable alternative to other means (such as war and economic sanctions) of addressing serious external aggression and mass atrocities. It also argues that diplomatic criticism is preferable to doing nothing and that, even if other means are undertaken, states should engage in diplomatic criticism *as well*. There are two subsidiary aims of the paper. The first is to reject some of the worries surrounding international hypocrisy—I aim to show that even hypocritical diplomatic criticism may be obligatory. The second is to show that Just War Theory needs to take more seriously the ethical issues raised by the alternatives to war, such as diplomatic criticism.

* **R2P: RIP?**

**(Olivier Ribbelink)**

The initial introduction of the R2P concept by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, created what appeared to be doctrinal shockwaves in international law as well as in international relations/political science. Tidal waves of publications and conferences, plus considerable attention in the media and public opinion, very rapidly established R2P as a truly important ‘new’ paradigm in a globalized world. The paper will briefly discuss how, not unexpectedly, different approaches surfaced, and, how the obvious friction of the initial concept with the established basics of the UN collective security system led to the effective dismantling of the original crux of the principle. The adoption of R2P in the Summit Outcome Document in 2005 by the High-Level Plenary Meeting of the UNGA, and the 2009 Report of the UNSG, limited the scope of R2P. Both focused primarily on prevention as the best form of protection, while making (collective) action in situations where prevention fails dependent on a decision of the UNSC, inevitable to preserve the primary responsibility of the UNSC for international peace and security. The consequences of this ultimate subordination of R2P to the UNSC have become obvious in the following years, culminating in what by now is widely perceived as ‘double standards’ approaches to international crises, cf. the Libya crisis and the war in Syria. The paper will then turn to the huge impact the R2P concept has had on public opinion, and the effects of its immediate acceptance and wide-spread embracement, in particular in the Western world, on the freedom to manoeuver in the handling of international crises.

Finally, a tentative assessment will be made whether this has resulted in the death of R2P, as has sometimes been put forward (cf. some contributions to the 2013 Ljubljana Conference on ‘R2P in Theory and Practice’), that is, whether *rigor mortis* has completely set in or not, and in case some life is left, what to expect from R2P in the years to come...

* **Understanding R2P: Textual Anomalies and Interpretative Challenges in the 2005 World Summit Outcome**

**(Gábor Sulyok)**

The ultimate success of the responsibility to protect depends on its effective operationalization. This delicate process demands in the first place an appropriate and standardized interpretation of the text, in which the concept is officially recognized and authoritatively spelled out: paragraphs 138 and 139 of the 2005 World Summit Outcome. However, the interpretation is not as simple a task as it ought to be. The two paragraphs are fraught with several interpretative challenges and textual anomalies that affect, one way or the other, every single pillar of the concept. These issues concern the bearers and beneficiaries of the responsibility to protect, the calamities from which the beneficiaries need to be protected, the exposition of international assistance and capacity-building, the status of the requested support of the United Nations, the threshold and normative framework of collective action as well as the scope and role of organs empowered to authorize or recommend such action. The theoretical and practical gravity of interpretative challenges and textual anomalies ranges from negligible to extreme: some are plainly insignificant, others perturb critical segments of the concept. The proposed presentation seeks to expose and briefly examine these all too often neglected issues in a hope to contribute to a better understanding of the responsibility to protect.

* **R2P and the ‘Thin Cosmopolitan’ Imagination**

**(Tor Dahl-Eriksen)**

The paper discusses the assumption that R2P, the international obligation to protect civilians against mass-atrocities if the state in question fails, is a principle suited for a ‘thin cosmopolitan’ international community. Launched in 2001, adopted by the UN World Summit in 2005, and later confirmed by the UNGA as well as the UNSC, R2P has obtained a quite solid formal status internationally. Yet, the principle has met many obstacles in the real world after its introduction. Thin

cosmopolitanism is an imagination of an order where human rights are universally respected, international dialogues are broad and inclusive, and loyalties can always be questioned due to legitimacy. This is discussed in relation to R2P through three sections, separate, but also overlapping. The discussions are informed by consciously selected theoretical perspectives from the academic discipline international relations (IR).

* **The Role of National R2P Focal Points?**

**(Marko Rakovec)**

This Article focuses on the role of National Focal Points (NFPs) with regard to the implementation of the R2P concept. NFPs have a substantive knowledge on crisis situations, contacts with other focal points, and access to information databases that make them unique actors in cases of mass atrocities prevention. R2P Focal Points can by acting together exercise decisive pressure on relevant international institutions to act. They can streamline international assistance and lead dialogue with a State where crimes are or could be committed. Through consistent State practice the R2P concept could become a norm of international law. This Article studies R2P NFPs’ action in this respect, in particular reflecting on the Slovenian experience.

**PANEL 2: COERCIVE MEASURES AND THE ROLE OF THE UN SECURITY COUNCIL**

* **R2P at the Age of 10 – Old Stories Re-labelled or a True Conceptual Change?**

**(Christina Binder)**

The Responsibility to Protect (R2P) as put forward in the 2005 World Summit Outcome Document comes close to its 10th anniversary. But is there something to celebrate? With R2P, the international community pledged to take action, should a state fail to live up to its duty to protect its own population against most severe human rights violations. This was praised as conceptual change by many; as shift from a state centered to a more human security centered world. Today, nearly 10 years later, the early enthusiasm of a new human security centered world seems gone. R2P is widely viewed as an undertaking of re-labelling, especially given the necessary Security Council authorization for military action in accordance with Chapter VII of the UN Charter and the possible veto of one of the “Permanent Five”. Humanitarian tragedies in countries like Syria with the international community being blocked to take concerted military action seem to confirm these criticisms. This presentation argues, conversely, that a mere focus on military action with the authorization of the Security Council is overly limited. Rather, one should take a broader perspective, including international diplomatic efforts and good offices. The international efforts in reaction to the civil unrest in Kenya after the disputed 2007 presidential elections showed that R2P offers more.

This presentation proposes to scrutinize these additional dimensions of R2P in the light of current examples. Overall, it argues, that R2P may be considered a true paradigmatic change if one adopts a broader perspective.

* **Questioning the State-centric Paradigm of R2P: What Place for Armed Opposition Groups?**

**(Aristoteles Constantinides)**

R2P is based on a stated-centric paradigm. Relevant documents speak of the responsibility of each individual State to protect its populations from international crimes and prevent such crimes. R2P shifts to the international community if national authorities manifestly fail to protect their populations from such crimes. The assumption is that said national authorities are governmental authorities. A related assumption, in line with the common understanding of ‘protection’ and the duty to protect under international human rights law, is that governmental authorities should ensure

that their populations do not suffer violations by third parties, that is, other individuals and non-state armed groups. Thus, armed (opposition) groups have no place in this scheme other than (the most likely) perpetrators of crimes that may trigger R2P; governmental authorities have the obligation to prevent such crimes and protect their populations from them. The paper will argue that this image, upon which the R2P is premised, is an erroneous one. Apart from portraying governments as benign and responsible actors that are designedly excluded from committing international crimes against their populations, this paradigm is inadequate and problematic in failed states, which are the most common breeding ground of R2P. In those States national governments cannot provide any protection to large segments of their population because they do not control parts of their territory that have fallen under the effective control of armed opposition groups (AOGs). Insisting on the responsibility of the (failed) State and its governmental authorities to provide protection in such situations is vane and counterproductive. At the same time, bypassing AOGs that are in effective control of the territory is also counterproductive and at variance with international practice. The paper will give an overview of such practice indicating that the international community (various UN organs, most notably the Security Council, as well as concerned States and other actors, including domestic courts of third States) quite frequently turn to AOGs that are in effective control of a State’s territory and call upon them to respect and protect the rights of the population under their control. Even though there is a general reluctance to consider AOGs as bearing any obligations under (international) human rights law (which can also explain the absence of any reference to AOGs in relevant R2P documents) various actors frequently address AOGs in human rights terms when the situation on the ground requires so. The paper will argue that the predominant state-centric conceptualization of international human rights law is in need of overhaul in situations where AOGs are in effective control over territory and, in any case, should not stand in the way of offering (non-governmental) protection to civilians where this is needed. This proposition is in line with the central role of civilian protection in the R2P concept as well as with the principle of subsidiarity that underpins R2P. When AOGs have been proven unwilling and unable to respect and protect the rights of the civilian population responsibility should then shift to the international community.

* **R2P and UN Security Council Presidential Statements**

**(Tatjana Milić)**

The paper addresses legal value of the UNSC presidential statements in order to examine their potential contribution to the theory and practice of the R2P. Using case study of Syria the author examines language used in the UNSC presidential statements, taking into account relevant legal framework, situational context and adoption of correlated resolutions. Intention is to complement binary approach to analysis of the decisions of the UNSC with the perspective that acknowledges work dynamic in international organizations and non-linear development of international law.

**PANEL 3: CRIMINAL PROSECUTIONS OF PERPETRATORS**

* **The ICC & R2P: Shared Goals and Shared Politicization**

**(Don Wallace)**

The underlying principles of both the R2P and the ICC share a common objective of preventing and addressing crimes of great enormity. The principles of the R2P and the ICC are determined to establish in governments and leaders the principal obligation to prevent and address these concerns and provide that the international community will take on the responsibilities should domestic remedies be found unproductive. The ICC can be instrumental in furthering the goals of R2P in providing a tool both to deter further atrocious violations of basic human rights and to provide a process to make government leaders answerable for their actions. In its representation as the lead

international institution to foster even a base-line rule of law for the global community, the ICC functions in a political environment that challenges its own legitimacy. This paper examines the issues raised in the attempts to fulfil the equivalent responsibilities of the ICC and of the R2P principle. There is a review of the potential of the ICC for implementing the goals of R2P. Also a discussion on furthering goals of R2P principles by the ICC for non-member institutions is presented. It is observed that the ICC’s goal of justice can conflict with the R2P principle of preventing further mass atrocities.

* **Contribution of the ICTY to the Rebuilding Phase in the Western Balkans**

**(Ivana Jelić)**

Rebuilding phase - the third phase of the responsibility to protect concept, as an international feed back in the UN framework towards grave violation of human rights of civilians and dangerous attacks mainly from the governments - is the most important for the post conflict societies. This is especially relevant for the Western Balkans were unknown forms of atrocities happened and still not all criminals were found or accused. The atrocities sometimes were committed in such a horrible manner that even the *ante mortem data collection* was not feasible in all cases. Missing files are still great. Therefore, the role of international justice has been tremendously important, especially the ICTY’s role. However, not in all cases there is sufficient evidence on individual criminal responsibility. On the other side, not all cases have been ended without political connotation. The questions on how much the ICTY’s truth findings can contribute to reconciliation in a post conflict transition and how ICTY is perceived by the societies of the region are also present in the rebuilding phase. This paper’s aim is to give an assessment on the state of transitional justice in the Balkans, with special overview on the ICTY’s impact to the final phase of R2P concept - rebuilding phase, which, among else, depends on justice accessibility to all. The paper is supposed to give a critical examination of the reality of rebuilding and reconciling post armed conflict Western Balkans.

* **The European Arrest Warrant as a Regional Tool Contributing to Responses to R2P Atrocities**

**(Marina Žagar)**

Within the EU, the special role in extradition procedure belongs to the concept of European Arrest Warrant (EAW). Citizens of the EU have the right to travel freely within the EU. But open borders should not allow criminals to evade justice simply by travelling to another Member State. EAW – in effect since 2004 – provides an efficient tool for extraditing people suspected of an offence from one EU country to another, so that criminals have no hiding place in Europe. EAW is therefore an important tool to catch criminals if they appear within the EU borders. EAW is a judicial decision issued by a Member State with an objective to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. This new 'European' approach to extradition is based on two ideas: (1) building an area of freedom, security and justice within the EU and (2) striving to achieve mutual recognition of judicial decisions rendered by the criminal justice organs of the Member States. Purpose of this paper is, however, to try to connect EAW procedure and its potential role in prosecuting mass atrocity crimes, which are one of the groups of offences listed in the Framework Decision that established the EAW. The central thesis of this paper is that the EAW is an efficient regional tool for addressing R2P atrocities.

**PANEL 4: RESPONSIBILITY TO PREVENT**

* **The Concept of Prevention Under R2P**

**(Alexandra Bohm)**

This paper will explore the concept of prevention in the R2P. It does so against a background of mixed views about the responsibility to prevent within academic and policy circles. Some – such as the Secretary General’s Report on Implementation – note the critical importance of prevention of atrocities as part of the R2P. Others have commented that focusing on prevention detracts from the most important aspect of the R2P – its ability to act as a ‘rallying cry’ for action in response to a crisis. This paper explores two particular issues on the topic of prevention: 1. The importance, and moral consistency, of a genuine commitment to prevention as part of the R2P; and 2. What exactly a commitment to prevention should involve. On the first issue, the paper argues that prevention is a crucial part of the R2P. The R2P, as it was described by the International Commission on Intervention and State Sovereignty in 2001, is far broader than merely a rallying cry for (re)action. Indeed, it was intended specifically to move forward from the short-term *ad bellum* focus of humanitarian intervention debates. If we claim to care about vulnerable strangers enough to act when they are threatened with atrocities, we ought also to care about them enough to work hard to prevent atrocities, reducing the need to act in response to crises. On the second issue, the paper argues that in order to be meaningful (both morally consistent and operationally successful) the responsibility to prevent should be construed widely and should include global structural issues. The international community’s commitment to atrocity prevention should go beyond early warning mechanisms and capacity building activities such as human rights training of target states. This is not to say that these aspects of prevention are not necessarily useful. But early warning mechanisms can still be insufficiently early, or potentially narrow in what they address, and human rights training can be similarly narrow in its understanding of how to prevent atrocities. The paper sets out some of the evidence which suggests that global poverty and inequality are strongly correlated with violent conflict, and argues that the international community has a responsibility to prevent atrocities by addressing issues such as poverty and inequality. This includes addressing its own role in perpetuating systemic conditions of economic deprivation which can lead to violence. The paper concludes that the responsibility to prevent is crucial in addressing our responsibility for vulnerable individuals across the globe, and that this responsibility must be understood to involve a broad and deep commitment to tackling structural injustice such as economic deprivation and inequality. Without such a commitment the R2P, as a rallying cry for action in response to atrocities, is unlikely to save those so much in need.

* **Reducing Gender Inequality as a Means to Reduce the Risk of Mass Atrocities**

**(Serena Timmoneri)**

Preventing atrocities saves lives, is less expensive than reaction and rebuilding, and raises fewer difficult questions about the unending tension between state sovereignty and interference. However, it is difficult to translate rhetorical support for the prevention of genocide and mass atrocities into a cohesive strategy. It is doubtful whether a relationship exists between the composition of R2P’s prevention agenda and the UN existing work on armed conflict and genocide prevention. The connection between armed conflict and mass atrocities is highly complex and yet not well understood. Despite the fact, that the strong correlation between the two phenomena implies a direct link, not all conflicts give rise to mass atrocities and many of them occur in the absence of an armed struggle. Atrocity prevention requires tailored engagement that targets both peacetime atrocities and those committed within a context of an armed conflict. Many scholars have argued that a domestic environment of gender inequality and violence results in greater likelihood of violence both at national and international level. This contribution aims at upgrading this line of

reasoning. It seeks to discover what impact, if any, gender inequality has on mass atrocities and gross violations of human rights. The main hypothesis is that the higher gender inequality is, the greater the likelihood that a state will experience mass atrocities. If confirmed, this hypothesis invariably leads us to consider the need of greater commitment to reduce gender inequality. Reduction of gender inequality can namely work as one of the means of reducing the risk of mass atrocities concerning the responsibility to prevent, since the negative repercussions that gender inequality has at the societal level go beyond the negative impact on women.

* **The Expanding Use of Measures Less than Force under R2P**

**(Stacey Henderson)**

The principles of sovereignty and non-intervention, taken at their highest, require States to do nothing, to take no action to intervene or interfere in another State, regardless of what is occurring there. The concept of R2P, on the other hand, when taken at its highest, obliges States to respond, including with military force, when faced with massive violations of human rights and humanitarian law. This paper will explore whether R2P has in fact also resulted in a middle ground between these two extremes in relation to the increasing use by the international community of measures which are less than the use of force. This paper will refer to these less than force measures as intercession in order to distinguish them from intervention. This paper suggests that intercession includes unilateral sanctions, trade restrictions, diplomacy, withdrawal of aid funding and even non-lethal support to rebel groups. Consideration of intercession is important as it is in fact the most dynamic area in current practice and appears to be the site of the most significant opportunities for change that protect the most vulnerable. The increasing use of intercession by the international community suggests that R2P is more than clever marketing. This paper argues that R2P has spawned a form of intercession that fits between the two extremes of doing nothing and the use of force. This paper argues that R2P has resulted in States developing new understandings of what is permissible conduct in response to atrocity crimes with an increasing array of less than force measures (intercession) being available and utilised. These new understandings have led to the reconceptualisation of the principles of sovereignty and non-intervention. This paper suggests that R2P has led to both an expansion in permissible measures of intercession and a simultaneous restraint on the way those measures are conducted, with States being required to explicitly consider the impact their actions may have on the facilitation or commission of atrocity crimes and an obligation to ensure that any action taken does not increase the risk of atrocity crimes.

**Friday, April 24, 2015**

**PANEL 5: R2P, SPECIFIC CASES AND RESPONSES OF STATES**

* **A Grim Necessity: Why R2P Style Military Intervention is Justified in Syria**

**(Mia Swart)**

This chapter will argue in favour of limited military intervention in Syria. It will be argued that in light of the continued failure to obtain Security Council authorization for intervention in Syria, the best alternative solution would be for the international community to resort to coercive means under the umbrella of R2P. There are many reasons why military intervention in Syria is justified even in the absence of SC authorization. It is clear that diplomatic efforts to end the bloodshed have largely failed. This chapter will focus on the fact that the contemporary conception of state sovereignty has long served as an argument blocking intervention by the international community. It will be argued that the responsibility to protect and the responsibility while protecting have replaced the doctrine

of absolute state sovereignty. It will further be argued that moral and humanitarian considerations justify limited military intervention in what Wellman and Altman call the necessity for a 'supreme humanitarian emergency.'

* **NATO (In)actions in Syria?**

**(Daniel Silander)**

The principles of state sovereignty and non-intervention have been corner stones of the post-Westphalian order. These principles are still guiding the contemporary international politics that protect and promote state security in an anarchic international setting. In a post-Cold War era, it was argued that state security not only required human security but also state sovereignty and non-intervention embedded human security in the protection of civilians. The 2001 report on the R2P, by the International Commission on Intervention and States Sovereignty (ICISS) and the 2005 UN Outcome Document, addressed that the R2P implied an international duty to act upon mass atrocities and safeguard civilians from systematic abuse from state regimes or other violent actors. It was further argued that the notion of state sovereignty included the responsibility to protect human security. Although the 2005 UN Outcome Document institutionalized the requirement of UN authority for international interventions on R2P, the ICISS and the UN Outcome Document stressed the importance of international organisations on R2P. International organisations were argued to be potential experts on conflict-solving measures within their regional domains but also constituted advanced entities for burden-sharing to the UN. International organisations could provide capabilities to the international community to promote R2P and human security in war-thorn societies. Based on the inability of the UNSC to firmly address the humanitarian crisis in Syria, this study explores the capacities and abilities of NATO on Syria. It is argued that although NATO has seen a dramatic transformation from an organisation to protect state security from communism and to address a wide range of human security challenges beyond NATO territory, NATO has not followed up on the humanitarian missions in Kosovo and Libya in Syria. It is argued that this is not only due to disagreements within the UNSC or on the complex situation within Syria but also to internal organisational challenges in member states’ disagreements on: i) where NATO should act, ii) why NATO should act, and with iii) what NATO capacities.

* **R2P and the Chemical Attack on Ghouta**

**(Birthe Thykier Møller)**

It was with great heart that the UNSG Ban Ki-moon submitted to the UNSC/GA the UN Organization for the Prohibition of Chemical Weapons (OPCW) Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013, condemning ‘the most significant confirmed use of chemical weapons against civilians’, since Saddam Hussein in 1988. *The overriding question is* *why the chemical attack on Ghouta became a game-changer in the UNSC and the international community as a whole?*The hypothesis of the paper is *that the Ghouta incident was primary a moral-political and normative game-changer* because of the conscience-shocking nature of the war crimes and use of indiscriminate means/methods of warfare; chemical weapons, that are by their very nature incapable of directing attacks only against combatants, violating the cornerstone principle of customary international law, distinction. Due to the fact, that indiscriminate attack with chemicals has effects that are uncontrollable, causing unnecessary suffering and casualties among civilians, it violates another principle of customary humanitarian law; that of proportionality, dating back to Hugo Grotius. *The interrelated questions are;* *why did the UNSC not authorize a Chapter VII humanitarian protection intervention or a limited off-shore action to prevent further war crimes and crimes against humanity in Syria caused by chemical and conventional weapons?* The Ghouta attack can be analysed from an international humanitarian law approach combined with the English school

integrating law, history, politics, and morality, enshrined in the R2P-chapeau, recognizing that human justice and real-politics are hard to reconcile in the UNSC and at the battlefield between warfare and law fare: The strategy of using or in the words of Charles Dunlop misusing law as a substitute for traditional military means as China-Russia do in Syria for their common purpose; that of preventing humanitarian protection since 2012, as R2P is not customary law yet, disposing that non-interference is the primary value of the Russian-China sovereignty game. Nonetheless, Ghouta is a case for the R2P from the solidarist position claiming that the international community has a moral responsibility to hold accountable those who committed war crimes and to ensure that chemical weapons never re-emerge as a means of warfare.

**PANEL 6: R2P, SPECIFIC CASES AND RESPONSES OF STATES**

* **The Security Council and the Responsibility to Prevent Mass Atrocities in Central Africa**

**(Spencer Zifcak)**

Throughout 2014, internal conflict raged in the Central African countries of South Sudan and the Central African Republic (CAR). These conflicts, which intensified dramatically in December 2013, have resulted in thousands of deaths and tens of thousands of injuries in both nations. It has been accepted by the UNSC that crimes against humanity and war crimes have been committed on a large scale in each place. It is mass atrocities of this kind that the doctrine of the ‘R2P’ was designed to prevent or cease. Several factors favoured the application of the doctrine, its means and methods, in South Sudan and CAR. It was evident that mass atrocities were being committed in both countries from the outset. None of the major powers had significant strategic interests in the Central African region. These nations were poor and their institutional and military capacities were weak. They were countries, therefore, in which external intervention, whether humanitarian, economic or military, designed to put an end to international crimes, might be expected to succeed. Tragically at the end of 2014, as at its beginning, the internal wars and their associated crimes continue unabated. This article seeks to explain, at least partially, how it was that R2P in these contexts failed to live up to its best expectations.

* **R2P: Bridging the Gap between Theory and Practice in Africa**

**(Swikan Ncube)**

This paper argues that the R2P as a norm has been accepted and now forms part of the humanitarian law discourse both within the AU and the UN. It argues further that a sound theoretical framework exists within the AU Peace and Security Architecture (APSA) which if adhered to can facilitate a break for the people of the continent from serious human rights violations that have become an all too familiar phenomenon in intra-state conflicts on the continent. However, while the concept has enjoyed a shift from being a debatable principle to an accepted international norm the same cannot be said of its application in practice. The APSA has failed to live up to the high expectations that greeted its creation as it has failed to resort to the military leg of the responsibility to protect in compelling cases such as Darfur and Libya prior to the ouster and killing of Muammar Gaddafi. The failure to act in compelling cases is not a result of a deficit in the organisation’s theoretical framework but the lack of political will. While the crises in Libya and Darfur clearly illustrate the failure of the AU in implementing the R2P they also present lessons for the Union. In conclusion, the paper opines that it may not be through the current political leaders in Africa that life will be breathed into Article 4 (h) of the AU Constitutive Act as a norm but its very existence is a reason for optimism that in the future, the continent’s people will look to it for protection in conflict situations.

* **African Union’s Implementation of the Three R2P Pillars**

**(Maruša Veber)**

With the emergence of new security threats after the end of the Cold War, African regional organisations with the African Union (AU) at the forefront, began to develop their own peace and security systems and undertook a proactive strategy, recognizing their responsibility to protect African people from further suffering. This *inter alia* manifested in the AU’s shift from the principle of non-intervention to the principle of non-indifference, underpinned in AU’s right to intervene under Article 4 (h) of its 2000 Constitutive Act and in the African Peace and Security Architecture. Similar principles for protection of populations were later introduced at the international level in the normative concept of R2P and were presented in its final form in the UNGA at the 2005 World Summit. This paper aims to conceptualize AU’s R2P enunciation, arguably one of the most progressive regional implementation of the normative concept. The paper provides an overview of the AU’s legal background that correlates to R2P and places the AU’s laudable newly established peace and security mechanisms and institutions within the three-pillar R2P structure. The paper pinpoints the discrepancy between the AU’s legal and institutional aspirations and its actual capacity for R2P implementation. It concludes that the AU’s initiatives within the first and second pillars, especially in respect of preventive and peaceful resolution mechanisms, are praised for having a huge potential and have already successfully contributed to the resolution of conflicts in the past. However, its role regarding the use of coercive measures is less clear.

**PANEL 7: R2P, SPECIFIC CASES AND RESPONSES OF STATES**

* **“Responsible Protection”: China’s Voice in the Discourse on R2P**

**(Pak K. Lee)**

After the end of NATO’s intervention in Libya, emerging powers have found fault with the application of the R2P norm, especially its Pillar 3, and subsequently promoted new principles of humanitarian intervention. After Brazil’s enunciation to the UN its principle of ‘Responsibility While Protecting’ (RWP), China floated informally its notion of ‘Responsible Protection’ (RP). Ruan Zongze of China Institute of International Studies, a think tank for China’s Ministry of Foreign Affairs, in June 2012 advocated for the Chinese concept in a paper published by the Institute. In presenting the principles of RP, Ruan highlights that the prerequisite for invoking protection should be exhaustion of diplomatic and political means, the intervening states should be responsible for the post-intervention reconstruction of the state concerned and the UN should establish mechanisms of supervision, outcome evaluation and post factum accountability to ensure the means, process, scope and results of ‘protection’. This paper seeks to examine whether China and Chinese discourse can set the agenda in international fora or shape the debates surrounding the emerging norm of R2P.

* **The Chinese Notion of “Responsible Protection”**

**(Philipp Janig)**

Since the doctrine of R2P has been endorsed by the UNGA during the World Summit 2005, the UNSC has resorted to R2P in several of its resolutions when facing international crises. In each instance the most critical stance towards the concept and its implications was taken by the People’s Republic of China (PRC), together with the Russian Federation. The unease was increased after UNSC Resolution 1973 (2011), dealing with Libya, was subject to a questionable interpretation by the NATO. This has sparked strong criticism by China, with the Western powers being accused of rather seeking regime change than the protection of the Libyan people. Following this, and in light of the ongoing crisis in Syria, Brazil was first to propose an amendment to the original concept and named its approach

‘Responsibility while protecting’. Building upon that proposal, the China Institute of International Studies, the most senior think-tank administered by China’s Ministry of Foreign Affairs, has introduced the notion of ‘Responsible Protection’. The proposal was outlined in six clauses, focusing in particular on following points: 1. R2P should not be used to support a certain side in internal conflicts and overthrow governments. 2. Military action might only be taken after all peaceful means have been exhausted, with the UNSC being the sole organ empowered to legitimize an intervention. 3. For the time after the intervention, an intervening state should have a responsibility to reconstruct, while the UN shall establish a framework to monitor all phases of the process of ‘protection’.This paper first gives an overview of the attitude of Chinese officials and scholars towards R2P before and after the intervention in Libya. Then, it discusses in which key aspects the Chinese proposal of ‘Responsible Protection’ differs from current approaches and how far it might serve as a constructive contribution.

* **Applying R2P to the Situation in Tibet**

**(John Gaudette)**

Smouldering situations are defined by relatively low levels of violence sustained over a long period of time. These situations can inflict suffering on people and communities just as effectively as explosive situations. However, the R2P is rarely invoked in response to smouldering situations. It is easy for the international community to allow smouldering situations to be overshadowed by more explosive and immediate crises. Yet, the commission of crimes against humanity against a non-violent movement still requires collective action by the international community consistent with R2P. Tibet is such a situation. Since 1950, the People’s Republic of China (PRC) has implemented policies that involve the systematic commission of arbitrary detention, torture and murder. These policies rise to the level of crimes against humanity. When considered in their full context, the commission of these crimes today reach a level of scale and impact that justifies a non-military intervention by the international community. Refusing to apply R2P to the smouldering situation in Tibet would defeat the object and purpose of R2P and could create a perverse incentive for non-violent movements to adopt violent tactics in the hopes of gaining international support. This paper will argue that R2P applies to the situation in Tibet even though the situation is not as explosive. Instead, the situation in Tibet represents a smouldering crisis that, while drawn out leads the same result that R2P was designed to prevent. It will also examine how the international community can fulfil its responsibilities to prevent and protect.

* **Assessing the Limits of R2P in the Case of Western Sahara**

**(Jeffrey Smith)**

The dimensions of the R2P principle are assessed in the context of the occupation and unresolved self-determination of Western Sahara. The case is selected to examine the principle in its development and legal limits to application to situations involving non-self-governing peoples and others under occupation, and its future prospects. Western Sahara, colonized by Spain in 1884, was transferred to Mauritania and Morocco in 1975 despite the International Court of Justice concluding that neither state had a claim to it and the territory’s original inhabitants, the Saharawi people, had the right of self-determination. While other self-determination cases of the late 20th century – Namibia and East Timor – came to be resolved, self-determination for the people of Western Sahara has been stalled for a decade. Beginning with an assessment of Western Sahara’s history and its decolonization, R2P’s development after 2005 is addressed and application of the principle considered in the context of the legal obligations of the actors concerned with Western Sahara: the organized international community (the *erga omnes parties*), the UN (the *mandated party*), Spain (the *de jure party*) and Morocco (the *de facto, occupying party*). The adequacy and implementation

of R2P in a particular case is not the subject of evaluation, instead it is the limits of the principle in a hybrid setting of self-determination and occupation where the roles of the actors concerned are fragmented. Also considered is the prospective development of R2P, including its subject matter limit (to situations involving both UN directed and self-determination processes), its temporal limit (retroactively in a long-running occupation case) and the problem of the doctrine’s conflict with of other legal norms.

* **Constitutional Dilemmas over R2P in the Republic of Poland**

**(Tomasz Lewandowski)**

R2P is mainly discussed within the framework of international law. Author believes that the effectiveness of R2P depends not only on international norms but also on constitutional denouements of states assisting in its realisation, which has so far been neglected by most of the researchers. Author aims to demonstrate that analysis of constitutional regulations related to the possible R2P application helps to fully evaluate the concept's potential. While discussing constitutional dimension of R2P author analyses Polish regulations concerning: balancing constitutional values while deciding on possible R2P involvement (including rule of law, security of the state) and the question of democratic accountability. Finally, author evaluates potential risks associated with the course of Polish participation in the R2P implementation, in particular, responsibility for compliance with rules governing the conduct of operations within the R2P framework.