EUROPEAN PARLIAMENT

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT

WORKSHOP

RESPONSIBILITY TO PROTECT FUTURE ASPECTS

AFET

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT
WITH THE SUPPORT OF THE
COMMITTEE ON FOREIGN AFFAIRS

RESPONSIBILITY TO PROTECT: FUTURE ASPECTS

WORKSHOP

Held on Thursday 8 March 2012

11.00 - 12.30

Room: Altiero Spinelli (ASP) 5G2

This workshop was requested by the European Parliament's Committee on Foreign Affairs.

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ABOUT THE EDITOR

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Chair of the Working Group on EU-UN Relations

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Jennifer WELSH, Oxford Institute for Ethics, Law and Armed Conflict, Professor of International Relations, Oxford University, United Kingdom

11.15 - 11.25   *'Responsibly Protecting' - R2P as a universal concept or a transatlantic project*

Leonardo PAZ, Centro Brasileiro de Relações Internacionais, Brazil

11.25 - 11.35   *'Why we intervene and why not?' - Arab Spring, comparison between intervention and non-intervention cases*

Vasilka SANCIN, Assistant Professor of International Law, Faculty of Law of the University of Ljubljana, Slovenia

11.35-11.45   *'The valid case and just case'*

Joachim KOOPS, Director of the Global Governance Institute (GGI) and Assistant Professor, European Peace & Security Studies, Vesalius College/IES, Free University of Brussels

11.45 - 12.25   *Discussion, Q&A*

12.25 - 12.30   *Concluding remarks*

Annemie NEYTS-UYTTEBROEK (MEP)

2.   SUMMARY REPORT

Since its endorsement in the UN World Summit Outcome Document in 2005, the 'Responsibility to Protect' (R2P) principle remains rather weakly defined in international law. However it has made some political and institutional progress within the United Nations (UN) system. Most recently, it has been applied in practice with regards to the military operation in Libya. On this note Member of the European Parliament (MEP) Alexander Graf Lambsdorff opened the workshop and introduced the speakers.

Jennifer Welsh, Professor of International Relations at the Oxford Institute for Ethics, Law and Armed Conflict (Oxford University) gave the first presentation on 'Setting the scene – conceptual basis of the debate on R2P, developments and trends'. According to Jennifer Welsh, from a legal perspective the status of the 2005 World Summit Outcome Document[1] is not more than a political commitment. Thus it does not create any new legal obligations, but it reminds states of their existing legal obligation to protect their population under the existing mechanisms of international law. Moreover, the document makes clear that it is a UN responsibility and that it cannot be invoked outside the UN context. The United Nations Security Council (UNSC) remains the main instance that can authorise the use of force. However, the case-by-case approach is maintained and there are thus no automatic triggers.

Libya has revived long-standing concerns that R2P is merely a gloss on 'humanitarian intervention'. However, the principle has become a mainstay of international politics and continues to be invoked in a variety of situations (e.g. Resolution 1996[2] on Sudan and Resolution 2014[3] on Yemen). Recent action in Libya will shape future implementation of the principle. The Libyan case has thrown R2P back into the hands of the UNSC and reminded states that R2P can be coercive. It has shown a tendency for R2P to become linked to widespread violence and forceful regime changes. This makes it less likely that the UNSC will agree to similar kinds of measures to address imminent atrocity crimes in the near future.

The application in Libya raises further questions about where force fits in the 3-pillar framework particularly regarding the accountability of agents that the UNSC transfers R2P to. How can the UNSC retain control over military operations once the intervention is authorised? Jennifer Welsh recommended that the search for non-military means to prevent should be reinvigorated and military organisations should be encouraged to think more carefully about how to 'protect responsibly'. The case of Libya has also shown the crucial role of North Atlantic Treaty Organisation (NATO) for the implementation of R2P. Moreover, it has led to a strengthening of the position of regional organisations as key enablers of global action to mass atrocities. But which organisations matter (e.g. the League of Arab States[4] or the African Union)? Finally she concluded that Resolution 1973[5] was not only significant because of the application of the R2P principle but also because of the inclusion of the International Criminal Court (ICC) referral. Future discussions on R2P should include the use of the ICC as a tool to R2P in a way that it was done in Libya.

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1 United Nations General Assembly (2005): 2005 World Summit Outcome, UN Doc. A/RES/60/1 (24 October), available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/60/355&Lang=E.
2 United Nations Security Council (2011): Resolution 1996, S/RES/1996, 8 July, available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1996%20(2011)&Lang=E&Area=UNDOC.
3 United Nations Security Council (2011): Resolution 2014, S/RES/2014, 21 October, available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/2014%20(2011)&Lang=E&Area=UNDOC.
4 According to Jennifer Welsh, Resolution 1973 would not have passed without the support of the League of the Arab States (LAS).
5 United Nations Security Council (2011): Resolution 1973, S/RES/1973, 17 March, available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1973%20(2011)&Lang=E&Area=UNDOC.

Leonardo Paz, Study and Debate Coordinator at the Brazilian Center for International Relations (CEBRI) and Professor at the IBMEC College at Rio de Janeiro gave the second presentation on ''Responsibly protecting' – R2P as a universal concept or a transatlantic project'. In his presentation, Leonardo Paz dealt with the question whether R2P is a universal norm or whether it is only used by a group of states. He answered that the premises and ideas of R2P are universal, but its decisions and methods are not. Thus, a debate on its legal, operational and temporal boundaries is needed.

According to Leonardo Paz, the recent experiences with R2P (i.e. the Libyan crisis) could potentially undermine the very concept of the international responsibility to protect civilians. In the case of Libya, the action went beyond the mandate. The military intervention aimed at regime change although this was not authorised in the resolution. This led to a stalemate in the UNSC regarding Syria. Therefore, a multilateral debate on the development of further criteria and guidelines for R2P is necessary. The Brazilian initiative in January 2012 on 'Responsibility while Protecting' (RWP) should be seen in this light. The concept proposed the criteria of the use of force as a last resort. Moreover mechanisms should be established that would 'enhance the UNSC procedures to monitor and access the manner in which resolutions are interpreted and implemented'.

The third presentation was given by Vasilka Sancin, Assistant Professor of International Law at the University of Ljubljana, Slovenia, on the question ''Why we intervene and why not? – Arab Spring, comparison between intervention and non-intervention cases'. In her view the 2005 Outcome Document[6] added something to the legal value of R2P. It confirmed that there is the belief among UN member states in a necessity to act and not to remain passive when the mentioned four crimes occur. There is thus a legal dimension of the notion of responsibility which could lead to a new rule of customary international law on the basis of an ensuing state practice.

Vasilka Sancin analysed recent cases where R2P was used (or even misused) while particularly looking at those that occurred during the Arab Spring. She recalled that R2P is not about regime change and not about the redistribution of power but about the protection of populations. This is important to keep in mind as in recent cases the practice has shown that mass atrocities occur because there is discontent within the population with the government in power. These cases are connected by aspirations of the population to get more autonomy and greater participation in political processes or in some cases even by aspirations for secession. Cases since 2005 have also shown that the most used reason to apply R2P has been the claim of crimes against humanity. Moreover Vasilka Sancin reminded that it is important to think about the responsibility to rebuild before initiating an intervention or applying any coercive measures.

In her view the 2005 Outcome Document does not explicitly require an authorisation of the UNSC for the use of force when applying R2P. She recommended that in the case the UNSC is blocked by a veto there should be another way to ensure the protection of suffering populations. One possibility would be to use the General Assembly (GA) and the Uniting for Peace Resolution as for example in the case of Syria.

The last presentation in the workshop was given by Joachim A. Koops, Director of the Global Governance Institute and Assistant Professor at the Free University of Brussels on the topic of the 'The valid case and just case'. According to Joachim Koops the current debates on the applicability and implementation of R2P reveal a dividing line between arguments for a 'moral duty' to protect and to intervene and warnings about the 'feasibility' of an intervention. The 'moral case' or the 'just case' normally consists of a 'just cause'. However, even if causes for interventions may be equally 'just' in

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6 UN General Assembly (2005), op. cit.

specific cases, different internal, external and regional conditions and configurations might affect the likely success and overall justification of an intervention. The decision on an external intervention should thus take into account criteria of justness (protecting civilians from death and serious harm) and validity (feasibility in terms of internal conditions, external conditions, regional consequences and balance of interests).[7]

Favourable internal conditions are based on internal support and a basic knowledge on the situation inside the country. Joachim Koops used the difficulties of UN Support Mission in Libya (UNSMIL) as an example to highlight importance of the conditions on the ground. He explained that 'the mission has major problems in convincing national actors to be active and carry out for example disarmament and demobilisation since the mission has no clue about the new internal power balance and different internal fights between different factions'.

Favourable external conditions refer to the convergence of political will and national interests (of those intervening). Moreover in the case of R2P, Joachim Koops was of the opinion that the authorisation of the UNSC is needed. Otherwise it would merely be a humanitarian intervention (as for example in Kosovo) but not R2P. Additionally the external conditions depend on robust and rapid reaction capacities. Libya highlighted the continued reliance of European countries on the US. According to him, Libya was the mission the Battlegroups were trained for since the past years: a quick intervention to protect civilian on a humanitarian basis. Although the Battlegroups are resource intensive and have several construction mistakes they will have to be invigorated if the EU wants to play a role in R2P.

Favourable regional conditions refer to the support of regional organisations neighbouring the target country such as the League of Arab States (LAS), the African Union (AU) and Gulf Cooperation Council for example. Regional contexts also matter in terms of alliances, neighbouring countries' interests and potentially uncontrollable chain reactions. Questions arise such as: What are those organisations driven by? Which hegemony has which interests (e.g. the role of Qatar in Libya)?

Joachim Koops concluded that the overall chances for success and proportionality of means are firmly embedded elements of R2P's operationalisation. The European Union (EU) has a wide range of instruments such as reinforcement of humanitarian aid and the possibility of a humanitarian corridor and 'safe haven'. Unfortunately the EU has neither the will nor the military capability to take action on the ground beyond these options. In the long-run, serious questions need to be asked about the EU's Common Security and Defence Policy (CSDP) instruments and purposes. If it is not for operations to alleviate human suffering, such as in the Libyan case, what is the purpose of CSDP beyond mere public diplomacy at all?

3.   QUESTIONS AND ANSWERS SESSION

This session was opened by an intervention of Kristin de Peyron, Head of the division on multilateral relations, European External Action Service (EEAS). In her opinion the EU has been very consistent and coherent in its support to R2P. Kristin de Peyron emphasised the importance of the fact that it is not a Western doctrine, but based on cooperation with African countries. In her view, the Brazilian proposal on RWP raises a number of important questions in terms of what parameters should be set for R2P. Those questions include: What would be feasible criteria in terms of accountability mechanisms? And

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7 On the role of the EU, Koops remarked that regarding an external intervention the EU faces several challenges such as the lack of knowledge about the conditions on the ground, a deadlocked Security Council as well as the fundamental weaknesses of its military capacities and CSDP.

what are the gaps in Brazil's view? Moreover she addressed the speaker with the question what the EU can do to make progress towards R2P across organisations that goes beyond naming and shaming? She concluded by stating that the EU has always emphasised the importance of the '3 pillars' and that R2P is a balanced concept.

According to MEP Ana Gomes, R2P is a central concept which entails the reform of the UNSC. Such a reform should restrict the right of veto if not abolishing it. Since the question of the UNSC is vital regarding R2P the EU should kick start the reform process. Ana Gomes agreed with Joachim Koops that the application of R2P requires a UNSC resolution; otherwise it is something else but not R2P. She disagreed with Leonardo Paz that there was a mistake within the application of R2P in the case of Libya in terms of using R2P for the purpose of regime change and not for the protection of civilians. According to Ana Gomes, the regime change was not done by NATO but it was done by the Libyans themselves. Thus regime change was not the objective of the intervention. Further addressing Leonardo Paz on the Brazilian proposal on RWP she posed the question of how Brazil solves the conundrum in what circumstances is RtoP to be exercised. Finally regarding Libya, Ana Gomes strongly agreed that R2P entails the responsibility to rebuild. In the case of Libya this means primarily the building of democratic institutions. In her view, the EU should do more in Libya's post-conflict reconstruction.

MEP Frieda Brepoels firstly addressed de Kristin de Peyron with a couple of questions on the role of the EU regarding the development of R2P: What can the EU do to increase the emphasis of 'pillar 1' and 'pillar 2', as well as to develop the concept itself? Should the EU develop a plan together with countries in the neighbourhood? If the EU takes 'pillar 2' more serious should it invest more in diplomacy and engagement in order to help societies to change gradually from within? Referring to Jennifer Welsh, Frieda Brepoels agreed on the fact that there is continuing contestation regarding R2P which can be seen in the example of China and Russia blocking a UNSC Resolution on Syria. The question thus arises whether the case of the Libyan intervention and how it was conducted was not a 'fatal blow' to the R2P principle itself? Regarding the EU internal division on Libya, she moreover wanted to know whether the speakers agree that the compilation of a comprehensive strategy on R2P could help the EU? And finally she posed the question whether the EU needed to clarify its own position on R2P and determine for itself how best to operationalise R2P internally?

The experts responded to some of the raised questions in the same order as they presented. Regarding a reform of the UNSC Jennifer Welsh recalled of the related legitimacy problems. The UNSC has to balance the need for representativeness and for effectiveness in terms of rapid reaction. In her opinion a larger Council would not necessarily be more effective. In her view the right of veto should not be abolished but conditions should be set under which it could be used.

Concerning the importance of prevention, Jennifer Welsh clarified that mass atrocities have been relatively rare occurrences but with high impact. However, social scientists do not know very much about the so-called root causes of mass atrocities. Two third of mass atrocities occur in the context of armed conflict but the remaining one third occurs in peace time. R2P is not about the protection of civilians in armed conflicts, it is about the protection of populations. The prevention of an armed conflict and of atrocities is not the same. Finally concerning the questions of military capabilities, Jennifer Welsh drew attention to the Mass Atrocity Response Operation Project (MARO) carried out by Harvard University.[8] The project directed to the US military has shown that military operations responding can be improved in terms of 'protecting responsibly'.

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8 The project inter alia analysed the reconfiguration of military forces in order to not just to respond to mass atrocities but also to play a preventive role. For more information see: http://www.hks.harvard.edu/cchrp/maro/.

Leonardo Paz agreed with Ana Gomes that without a reform of the UNSC R2P will not turn into a universal norm. Furthermore, he explained that according to the Brazilian proposal on RWP interveners should be held accountable when extrapolating the mandate. But specific accountability mechanisms have not been developed yet. So far it is a conceptual note to foster the debate within the GA.

Vasilka Sancin drew attention to two dangers in linking R2P strictly to the UNSC. First, the UNSC does have the primary responsibility for international security but it is not exclusively responsible. The role of other actors such as the GA is important and should therefore not be neglected. She agreed on the importance of establishing individual criminal responsibility to be invoked by the ICC but which could also be dealt with by domestic courts. In her opinion, the EU should play a greater role in the promotion of and in ensuring compliance with R2P. Thereby the EU could consider the proposal of Edward Luck, Special Advisor to the UN, to establish focal points in states to monitor cases which could lead to the application of R2P[9]. One concrete step for the EU would be to encourage its member states to establish such focal points to regularly report on events that could be connected to R2P.

On the question about what the EU can do, Joachim Koops agreed that the issue of prevention is an important one. The EU's work in the area of conflict prevention should also be strengthened in terms of coherence between different institutions and by using the existing resources and structures such as the Situations Centre and the Crisis Room. He wondered how these processes fed back into the EP. To increase information sharing, the EP could establish a working relationship with the EEAS in the area of crisis management. Joachim Koops agreed that reinforcing the role of the ICC will be very important for a comprehensive R2P approach. On the question of military capabilities he concluded that either the EU Battlegroups should be made operational or SHIRBRIG[10] should be reinforced.

MEP Annemie Neyts-Uyttebroek closed the workshop by shifting the focus on what has not been discussed. In her view, there has been much talk about the conditions under which interventions may happen i.e. conditions under which external forces get in, but less talk about how to get out after an intervention. As nowadays often claimed by military forces, the difficulty in today's conflicts is not so much to get in but to get out. Finally she remarked that the task of rebuilding societies is very difficult as the cases of Kosovo and Bosnia have shown. The 'responsibility to rebuild' points to the looming danger of being overambitious to solve all the problems of the world.

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9 United Nations General Assembly (2011): Information note, Informal Interactive Dialogue on the Role of Regional and Sub regional Arrangements in Implementing the Responsibility to Protect United Nations General Assembly, 12 July, available at: http://responsibilitytoprotect.org/RtoP%20Info%20Note%20and%20Programme%20-%20SG%20Report%20-%206%20July%202011.pdf.
10 Multinational Standby High Readiness Brigade for United Nations Operations.

4. PRESENTATIONS

4.1 Setting the scene - conceptual basis of the debate on R2P, developments and trends - Jennifer WELSH

The Responsibility to Protect:
Conceptual Origins and Development
Prof. Jennifer Welsh
University of Oxford

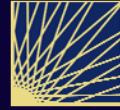Oxford Institute for Ethics, Law & Armed Conflict   The James Martin 21st Century School

Outline

- Background to R2P
- Endorsement in 2005
- Points of continuing contestation

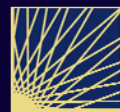Oxford Institute for Ethics, Law & Armed Conflict   The James Martin 21st Century School

Background

- UN Charter
  - non-intervention
  - promotion of human rights

- Post Cold War developments (more permissive context)

- Deng and 'sovereignty as responsibility'
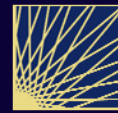
Background

- Two key cases:
  - Rwanda and inaction
  - Kosovo and no authorization

- ICISS and the 'new' meaning of sovereignty
  - from 'right of intervention' to 'responsibility to protect'
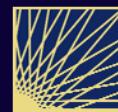 - continuum of action (prevent, respond, rebuild)

Background

- ## Ambiguities in the concept
  - bearer of the responsibility
  - triggering conditions

- ## Three core obstacles
  - P5 members of SC
  - Developing countries' concerns
  - Iraq War

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2005 Statement

- The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN Charter, including Chapter VII, on a case by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations …
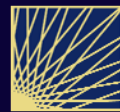
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Endorsement in 2005
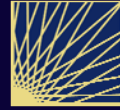
- ## Status of Outcome Document
- ## Evolution in meaning
  - UN responsibility (vs. broad international responsibility)
  - four specific crimes
  - case-by-case basis (vs. general doctrine)
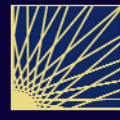- ## Balance of roles (GA and SC)

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Continuing Contestation

- ## Scope of meaning
  - Cyclone Nargis
  - Russia-Georgia
- ## Who bears responsibility?
  - Darfur
- ## Continuing concerns about sovereignty
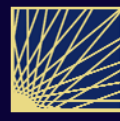 - Russian and Chinese views in the UNSC

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2009 SG Report

- ## 3-pillar framework

- ## Emphasis on prevention and non-coercive means
  - impact of Kenya case

- ## Highlighting R2P's non-Western roots

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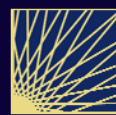
Conclusion: Impact of Libya Case

- ## Importance of SC in implementing R2P

- ## R2P *can be* coercive
  - raises questions about where force 'fits' in the 3-pillar framework

- ## Reg org's as enablers and partners
  - which org's matter? (e.g. LAS or AU)
  - accountability for delegated responsibility

- ## Brazilian proposal: force as a last resort?

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Conclusion: Impact of Libyan Case

- ## Balance between GA and SC

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4.2 'Responsibly Protecting' - R2P as a universal concept or a transatlantic project - Leonardo PAZ

`Responsibly Protecting´:
R2P as a universal concept or a
transatlantic project?

Leonardo Paz
Study and Debate Coordinator
Brazilian Center for International Relations (CEBRI)

Summary:

- 1. Simple Answer
- 2. Introductory Remarks
- 3. Issue About Sovereign and Interventions
- 4. Alternative Approach – "Responsibility While Protecting"

1. Simple Answer

R2P as a universal concept or a
transatlantic project?

**Its premises (ideas) are universal,
its decisions and methods are not.**

2. Introductory Remarks

- R2P importance
  - Collective Security Model
  - Condemnation of the threat and use of force – last resort
  - *"Meta"consensus* on Human Rights (universal values)
  - Global condemnation of mass atrocities

2. Introductory Remarks

- R2P Critic:
  - Selectivity
    - Who really decides when to intervene?
  - Legitimacy
    - Who carries out "intervention"? New codification for XXI Century Intervention and Coercion?
  - Action beyond the mandate
    - Comprehensiveness from the mandate generate debate (legal, operational and temporal boundaries)

3. Issue About Sovereign and Interventions

- Recent hard-won sovereign
- Distrust about Top-Down initiatives
- Globalization and sovereign flexibilization

# 4. Alternative Approach – "Responsibility While Protecting"

- Recent Developments called for a Great Debate
- New set of criteria:
  – Exhaustion of all peaceful means
  – Proportionality
  – Balance of consequences
- Enhanced instruments for UNSC
  – Monitor, access and hold accountable

4.3 'Why we intervene and why not?' - Arab Spring, comparison between intervention and non-intervention cases - Vasilka SANCIN
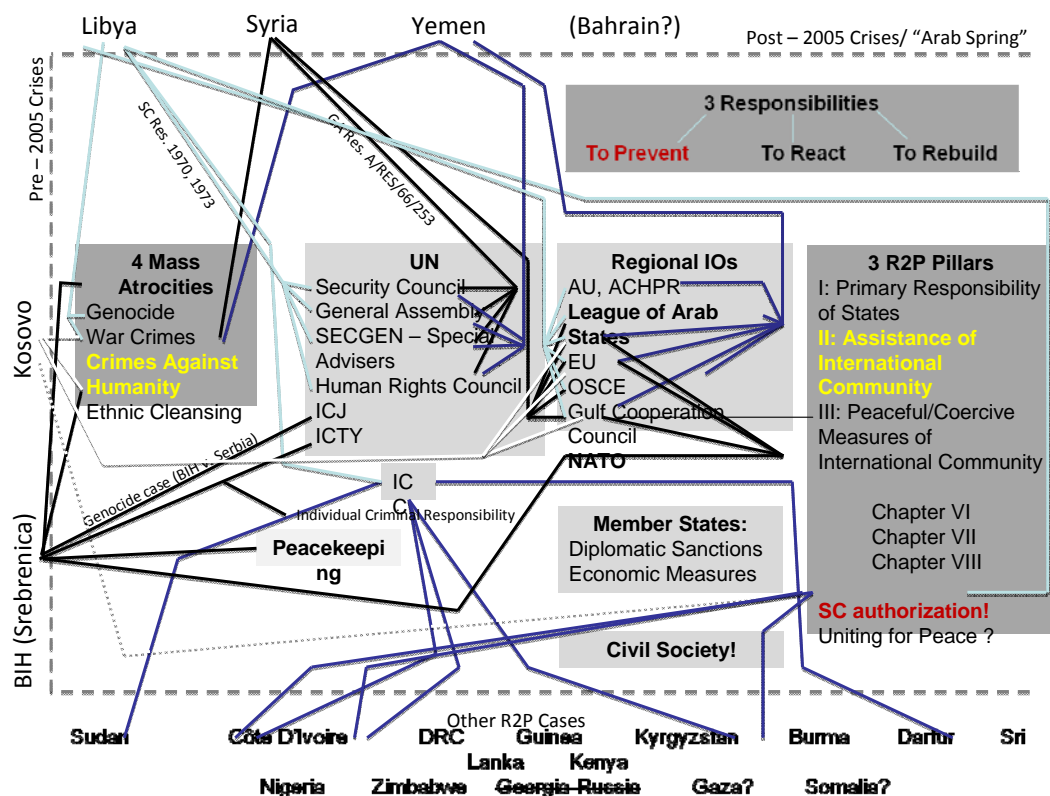
4.4 **'The valid case and just case' - Joachim KOOPS**

"R2P: The Valid and Just Case"

Prof. Dr. Joachim A. Koops

Briefing prepared for the Workshop
"Responsibility to Protect: Future Aspects"
European Parliament, 8 March 2012

jkoops@vub.ac.be & jkoops@globalgovernance.eu

Overview

+ Ethical Arguments vs. Issues of **Feasibility**

+ Feasibility: *Internal*, *External*, *Regional* Conditions

+ Political Willingness vs. Military Capability

+ Capability Issues: SHIRBRIG, Battlegroups, CSDP

+ What the EU can do nevertheless...

R2P: Just Ca(u)se vs. Valid Case

+ Just Cause: Protection of the Innocent

+ Valid Case: Issues of Feasibility

+ Responsibility to Neglect?

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Feasibility

① **Internal Conditions:**
   Call for intervention, Knowledge of Internal Power Balance, Responsibility to Rebuild

② **External Conditions:**
   Convergence of national interests;
   Political Willingness; Military Capabilities

③ **Regional Contexts:**
   Legitimacy through Regional Organizations;
   Regional Power Balance?

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Rapid Reaction Capabilities

① **SHIRBRIG (UN Rapid Reaction Brigade)**
1996 – 2009; Included 16 EU Member states
(out of total of 23); 6 Missions in Africa, ASF Capacity-
Building; Closest to UN Army so far; UNEPS?

② **The Case of the Sleeping EU Battlegroups**
Resource-intensive; serious construction mistakes; not
one single deployment. Essential for R2P

③ **CSDP: More Than Public Diplomacy of Solana Decade?**
Serious Crisis of CSDP as a result of Libya. Future?

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What the EU can do....

① **Humanitarian Aid (incl. Medical Supplies)**

② **Support Civil Society Movements (Tunisia)**

③ **Diplomatic Pressure**

④ **No-Fly Zone (Safe Havens)**

⑤ **Close Cooperation with Regional Organizations**

⑥ **Increase Early Warning and Critical Regional
Knowledge (joint EEAS-EP working groups?)**

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