



Linköping University

RESEARCH CONFERENCES

ESF-LiU Conference

The Responsibility to Protect: From Principle to Practice

8-12 June 2010

Scandic Linköping Vast, Linköping, Sweden

Chaired by: Prof. Andre Nollkaemper - Amsterdam Center for International Law, University of Amsterdam, NL



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Amsterdam Center for International Law



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Conference Highlights

Please provide a brief summary of the conference and its highlights in non-specialist terms (especially for highly technical subjects) for communication and publicity purposes. (ca. 400-500 words)

The aim of the Conference *R2P: From Principle to Practice* was to discuss selected aspects of the Responsibility to Protect (R2P) with a view to identify the added value of R2P as well as the challenges for the practical application of R2P.

The Conference was designed so as to build on and contribute to the emerging consensus among Member States of the United Nations, as reflected in the General Assembly debate in the summer of 2009. While there is considerable general support for R2P along the three pillars suggested by the UN Secretary-General (responsibility of states to protect their own populations, assistance and capacity building and timely responses), fundamental questions remain. For instance: what does R2P add to the already existing obligations of states and to the substantial arsenal of instruments at the possession of the international community to prevent and respond to mass atrocities? Does R2P entail a risk of opening the door to external intervention? And how can R2P be operationalised and implemented in concrete circumstances? The Conference aimed to contribute to answers to these questions, also by increasing our knowledge of the impact of the principle on practice.

The Conference opened with a presentation by Edward Luck, Special Adviser of the UN Secretary-General, United Nations, on *The normative journey: the evolution of the R2P concept*. Mr. Luck discussed the origins of the concept, summarized the present state of consensus-building in the United Nations, and identified the main challenges in further operationalising the concept.

The political context in which the concept of R2P functions was further developed in a panel entitled *The politics of R2P: unpacking the consensus*. Presentations were made by two UN ambassadors (ambassador Mohammed Loulichki of Morocco and Ambassador Ebenezer Appreku of Ghana), who represented different political coalitions, the former being more critical of the concept (in particular for fears that the concept would undermine sovereignty), the latter being more supportive of the concept. Monica Serrano of the Global Center for R2P provided an overview of other political positions.

A series of short talks followed, discussing distinct questions relating to the political context of R2P. Particular noteworthy was a paper by Jonas Claes, discussing the ‘the drivers of R2P-rejectionism’, and thereby allowing for an assessment of the nature and depth of opposition to R2P.

The subsequent sessions discussed the responsibility of the state(s) in which mass atrocities took place. Prof. Nicolas Michel, University of Geneva, discussed that the obligations of those states to prevent mass atrocities were firmly established in international law, and as such were not so new as sometimes has been suggested. Alvaro de Soto, Geneva Centre for Security Policy, and Sarah Sewall, MARO Project, Harvard Kennedy School, US, discussed two aspects to strengthen the role and response of these states: R2P Mediation and Preventative Deployment of military forces.

After a further series of short talks, the Conference watched and had a subsequent discussion on the film *Worse than War*. Daniel Goldhagen, author of the book on which the film was based, discussed the message of the film, critiquing the willingness and ability of the international community to take proper responses to mass atrocities.

The first panel on the second full day discussed various legal aspects of R2P, in particular the scope of crimes that trigger R2P (Jann Kleffner), responsibilities of third states (Nina Jorgensen) and the lessons that

can be learned from the International Criminal Court (Sarah Nouwen). A series of short talks discussed other legal aspects. The afternoon of this day was spent on an excursion.

The third full day discussed questions of forceful responses by international organisations and third states in cases of mass atrocities, including the role of the Security Council (Daphna Shraga and Anne Peters) and humanitarian intervention (James Pattison and Jennifer Welsh). After a discussion of different regional experiences in Africa (Ademola Abass), Asia (Noel Morada), Europe (Stig Elvemar) and Latin-America (Monica Serrano), Ed Luck provided concluding observations.

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I hereby authorize ESF – and the conference partners to use the information contained in the above section on 'Conference Highlights' in their communication on the scheme.

Scientific Report

Executive Summary

(2 pages max)

Five years after its acceptance by the 2005 World Summit, the Conference considered the contribution that the Responsibility to Protect (R2P) has made and could make to the prevention of mass atrocities.

The consensus among the Member States of the United Nations, as reflected in the General Assembly debate in the summer of 2009 is broad but not necessarily deep. While there is considerable general support for R2P along the three pillars suggested by the UN Secretary-General (responsibility of states to protect their own populations, assistance and capacity building and timely responses), fundamental questions remain. For instance: what does R2P add to the already existing obligations of states and to the substantial arsenal of instruments at the possession of the international community to prevent and respond to mass atrocities? Does R2P entail a risk of opening the door to external intervention? And how can R2P be operationalised and implemented in concrete circumstances?

Knowledge of the impact of the principle is limited. Recent practice shows both instances of where the international community succeeded (Kenya) and failed (Darfur) to prevent mass atrocities, but in neither of these cases it is obvious that success or failure could be attributed directly to the use, or lack of use, of the concept of R2P.

The aim of the Conference *R2P: From Principle to Practice* was to discuss selected aspects of R2P with a view to identify the added value of R2P as well as the challenges for the practical application of R2P.

The Conference had a strong focus on international law. To the extent that R2P finds a basis in international law, this may foster consensus. Likewise, to the extent that states fear for abuse of R2P as a legitimization for intervention, it is the development of international legal rules and procedures that may help placate such fears. However, the Conference recognized that R2P moves beyond international law, and integrated insights from political science, international relations and moral philosophy.

The Conference brought together many internationally acclaimed experts on the Responsibility to Protect (R2P), academics as well as policy makers, from all regions of the world. It will identify new research lines that can help to understand and develop R2P, as well as provide concrete ideas that may be used by policy-makers.

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Scientific Content of the Conference

(1 page min.)

- Summary of the conference sessions focusing on the scientific highlights
- Assessment of the results and their potential impact on future research or applications

Edward Luck, Special Adviser of the UN Secretary-General, United Nations, put the conference theme in its political context in his presentation the *The normative journey: the evolution of the R2P concept*. The presentation made clear that despite continuing controversy, a consensus has slowly emerged within the United Nations on the basic meaning and potential uses of the concept. These could in be particular be inferred from the increasing references to the document in the Security Council. He also noted, however, that it was difficult to assess the actual use of the concept, since states and organizations may prefer to act in accordance with the concept, yet not refer to it for its political sensitivity.

The political context in which the concept of R2P functions was further developed in a panel entitled *The politics of R2P: unpacking the consensus*. Presentations were made by two UN ambassadors (ambassador Loulichki of Morocco and Ambassador Appreku of Ghana), who represented different political coalitions, the former being more critical of the concept (in particular for fears that the concept would undermine sovereignty), the latter being more supportive of the concept. The presentations also made clear that the differences of opinion on R2P were not along a North-South divide, as it found considerable support in some southern states.

R2P, though new as a political concept, is firmly grounded in international law. Prof. Nicolas Michel explained how that the obligations of those states to prevent mass atrocities were firmly established in

international law, and as such were not so new as sometimes has been suggested.

International law also imposes some obligations on third states to respond to mass atrocities, as discussed by Nina Jorgensen. However, the basis and scope of these obligations remains poorly understood.

The link between R2P and international law is not unproblematic, however. One of the open questions is what crimes trigger R2P – Jann Kleffner explained that the link with international crimes as defined under international law leads to difficult theoretical and practical questions.

Though grounded in international law, the actual use and application of R2P does not depend on court cases. Rather, it is applied, as in 2007-2008 in Kenya, though in mediation and negotiation – this was highlighted in a presentation of Alvaro de Soto.

The use of force is very controversial as an aspect of R2P. States have indicated that they did not wish to see humanitarian intervention with force as a part of R2P. Yet, it is also clear that the wish of some states to keep open the military option cannot be excluded. The preferred option from that perspective is resort to the Security Council – the problem in that respect is not so much whether the Security Council is allowed to use force, but rather whether it will be able to act. A presentation by Anne Peters argued that in fact the Council should be considered to have the responsibility to act in these situations.

The question whether states may use force is not only a question of international law, but contains strong moral and political dimensions. As to the former, James Pattison showed that it was possible to identify criteria on the basis of which it could be determined which states has a prime responsibility to intervene.

In a discussion on the film *Worse than War* with Daniel Goldhagen, author of the book on which the film was based, it became clear that there are strong arguments why the international community should be earlier prepared to use force to prevent mass atrocities.

The final day showed the significant differences in regional experiences in Africa (Ademola Abass), Asia (Noel Morada), Europe (Stig Elvemar) and Latin-America (Monica Serrano) – yet, it was also clear that the future and success of R2P lies precisely at the regional level.

Forward Look

(1 page min.)

- *Assessment of the results*
- *Contribution to the future direction of the field – identification of issues in the 5-10 years & timeframe*
- *Identification of emerging topics*

In process terms, the conference provided a most useful forum for exchange between practitioners and scholars. Practitioners provided insight into the state of the debate and the challenges in practice, whereas scholars provided the practitioners with useful insights from recent research, for instance in terms of conceptual development of case-studies.

In terms of substance, the conference has resulted in a better understanding of the concept of R2P – including the relationship between the 3 pillars identified by the UN (prevention, assistance, and response), and its legal, moral and political dimensions.

Also the relationship between R2P and concepts as protection of civilians, as used by the Security Council, and conflict management were further clarified.

An important outcome was the clarification of the degree and way in which the concept is and is not embedded and grounded in international law. While some obligations (eg the obligation to protect human rights) are firmly part of positive international law, in respect of humanitarian intervention, but also in respect of post-conflict rebuilding, obligations are rather underdeveloped.

The main underdeveloped areas to which research will have to be focused in the next 5-10 years include the following:

- a further clarification of the ways in which states can be assisted timely, that is: before mass atrocities occur, to help identify and prevent such atrocities, including early warning mechanisms
- the relationship between rule of law promotion and prevention of mass atrocities
- the role of regional institutions in prevention and assistance
- the role of the ICC in the context of R2P
- the strengthening of the responsibility and ability of the Security Council to act in response to mass atrocities
- the clarification of the conditions under which regional institutions may use force in response to mass atrocities if the Security Council fails to act
- the clarification of the conditions under which individual or coalitions of states may use force in response to mass atrocities if the Security Council fails to act, including the question how responsibility is to be divided between several states

The main emerging topics, to which too little attention has been paid, include the synergies between prevention under the R2P agenda and the effects of other efforts to strengthen the rule of law and human rights, and the added value of R2P in this respect, the role of regionalism, and the distribution of responsibilities between states and organization in regard to mass atrocities occurring in other states.

- Is there a need for a foresight-type initiative?

NA

Atmosphere and Infrastructure

▪ *The reaction of the participants to the location and the organization, including networking, and any other relevant comments*

The atmosphere during the Conference was very positive. There was ample room for discussion (questions/answers) after keynote speeches and panel discussions, to which a substantial number of the participants contributed. In between formal parts of the Conference (during breaks and dinners), there was also sufficient room for informal discussion, although this opinion is not shared by all participants. Furthermore, the combination of both junior researchers and senior participants was considered appropriate and brought a good balance, also thanks to the integration of the various fields in which the Conference participants work (international law, political science, international relations).

The organization and location were satisfactory, although the Conference venue was slightly sober. Catering and hotel facilities were good.

Date & Author:

17 December 2010

André Nollkaemper