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## INSTITUTE REPORT

### **R2P - HOW TO MAKE THE INTERNATIONAL SYSTEM MORE RESPONSIVE?**

**Summary of the Panel Discussion organised by the EUISS in cooperation with the Liaison Office of the General Secretariat of the EU Council with the UN and the Center on International Cooperation (New Your University) on 24 November 2008 in New York and Guidelines for the contribution of the EU to the debate on R2P at UN Level**

The Responsibility to Protect (R2P) represents a compelling expression of human dignity, since it crucially refers to the prevention of the most heinous international crimes. In spite of the concept being enshrined in the Outcome Document of the 2005 World Summit, there is as yet little clarity about the added value of R2P in practical terms. Moreover, the future of R2P depends to a great extent on progress towards effective multilateralism, since only the joint commitment of leading global actors will give substance to the good intentions underlying the concept.

The EUISS organised a Panel Discussion in New York on 24 November 2008 on R2P in cooperation with the Liaison Office of the General Secretariat of the Council of the European Union with the United Nations, and with the collaboration of the Center on International Cooperation, New York University. The introductory remarks of Professor Edward Luck, Senior Vice President and Director of Studies at the International Peace Institute and Special Advisor to the UN Secretary-General Special Advisor of the UN Secretary General on R2P, were followed by comments by Dr. David Hamburg, President Emeritus, Carnegie Corporation of NY, Ambassador Peter Maurer, Permanent Representative of Switzerland to the UN, and Mr. Marcelo Böhlke, Second Secretary, Permanent Representation of Brazil to the UN.

The Panel addressed some of the fundamental questions relating to the content and implementation of R2P: to what extent has this new term been invoked by states and international organisations in confronting situations of mass atrocities?; has the Outcome Document made a difference in terms of the international response of states and international organisations to these situations?; what are the necessary civilian and military means that could entail a more effective protection of civilian populations from international crimes?; are the new global actors and the international organisations making a meaningful contribution to R2P within, or in cooperation with, the UN?

The discussion that followed, in which some 30 experts, diplomats, academics and practitioners took part, concentrated on the features of the concept as it is being shaped by the United Nations Secretary General (UNSG), the added value of introducing such a concept in the present international order, and the obstacles to endorsement and implementation. The main points raised by the panel and the participants during the discussion can be summarised as follows:

## **Features of the R2P concept**

- R2P aims to articulate governmental and intergovernmental responsibilities to prevent or react against the four most serious categories of international crimes, namely genocide, crimes against humanity, war crimes and ethnic cleansing. In contrast to humanitarian intervention, the concept of R2P delineated in paragraphs 138 and 139 of the 2005 Outcome Document puts the accent on sovereignty as responsibility. R2P should not be used as an excuse to revive a North-South debate or a debate on territorial integrity.
- Prevention should remain the guiding principle of national and international action throughout the first two of the three pillars on which the concept is premised, namely the responsibility of states to prevent and international assistance, particularly to complement and strengthen national prevention policies. The UNSG approach to R2P is in this sense ‘deep’ as it is ‘narrow’, since it starts with prevention which entails a wide variety of actions and targets the four abovementioned categories of crimes. The envisaged policies range from human rights protection to constraints on the availability of weapons, but more specifically they should include pro-active involvement of relevant actors in fostering inter-group relationships and countering inter-group hostility. In the search for prevention activities that are truly specific, the term ‘R2P-sensitive development’ has already been employed in certain proposals.
- Regarding the third pillar, which deals with response, the actions considered are as extensive as Chapters VI, VII and VIII of the UN Charter allow, and they include actions taken by all relevant international institutions and mechanisms, such as the International Criminal Court. In this sense, the Security Council (SC) is not the only relevant decision-making body, not even regarding certain coercive actions designed to protect victims of the four abovementioned crimes, and its discretionary powers should be limited to the extent possible when it comes to authorising the use of force in order to deter ongoing crimes. In this context, the possibility that the Five Permanent Members (P-5) might agree to renounce exercising their veto power in these situations could be considered. Also, the role and capacities of the General Assembly (GA) should be explored and strengthened, including recourse to the Uniting for Peace Resolution when appropriate.
- The implementation of the concept will require enhanced cooperation among member states and regional organisations, including the development of specific administrative units. The UN Secretary General (UNSG) has already undertaken some administrative improvements, with a particular emphasis on prevention, at the Department of Political Affairs. Among regional organisations, the EU is well placed to contribute to prevention and capacity building through partnerships with other relevant actors, be they states or regional organisations. It is also noticeable that the approach taken by the African Union (AU) and ECOWAS to the protection of victims of serious international crimes is developing along the lines proposed by the UNSG in his relevant speeches.

## **Specificity versus added value**

- Two main lines of reasoning were present in the debate, which reflect two different approaches to the protection of the right to life in situations of mass violence, but which are equally favourable to deploying all possible efforts both at national and international levels to prevent these situations and to respond early and halt ongoing situations where serious crimes are taking place. On the one hand, in accordance with the guidelines expressed by the UNSG in his speech of 15 July in Berlin, proposals were made to tailor all instruments and capacities to R2P situations, i.e. by building specific conflict mediation capacities, or – as was mentioned above – by creating R2P-sensitive development policies. On the other hand, some participants expressed concern that there is little if any value added in the proposal. The reference to R2P made in the Outcome Document was considered ‘irrelevant’, since it has not led to a stronger engagement of the main global actors – and the EU was explicitly mentioned – in the response to massacres.
- The main objections to the need for a more detailed formulation of the concept can be summarised in one question: to what extent and in what different ways is R2P useful and effective in enhancing the capacity of states and the international community to prevent or respond to mass violence? It was stressed that prevention is a well-established principle in the international order, and that its mere reaffirmation with a specific focus will not necessarily entail a more efficient response. Doubts were expressed as to whether the debate on the concept will help create more resources at national or international level, since it seems more likely that in fact it may create difficulties regarding the implementation of a principle that already exists under international law. Since the UNSC is already endowed with the power to authorise a response to these situations and R2P does not entail new mechanisms or rules, a debate on the language used to define the specific crimes and on the limits of the principle could further complicate the situation.
- The debate on the concept of R2P was considered by some other participants as necessary for public awareness. Also, such a debate will reveal how states calculate their positions on such essential international principle *vis-à-vis* public opinion.

## **The way ahead**

- A first discussion on R2P in Africa at the Security Council level took place on Monday 1 December, as proposed by South Africa. For his part, the UNSG is briefing member states for the first time this month, and a period of two months for consultations with member states on the finalised UNSG’s Draft Report will start thereafter. It is envisaged that the Report will be submitted to the General Assembly in March 2009.
- Although it may seem strange for the Security Council to discuss the principle before the General Assembly does, considering that the role of the latter in further elaborating R2P is specifically mentioned in the Outcome Document, there is nevertheless no reason why this should not be the case. It seems important that the debate is not limited to the capacities within the UN, but that it embraces the relevant capacities and responsibilities of states and international organisations. However, the envisaged discussion in the General Assembly should naturally contemplate the specific role that the GA should play in implementing the principle, perhaps including the more delicate question of the relationship between it and the SC.
- Strong concern was expressed as to whether a premature or misconceived GA debate may jeopardise efforts to give content to the principle of R2P. The need to carefully explore and understand the dynamics of intergovernmental relationships was

emphasised, so that some states do not come to the conclusion that the real purpose of broadening the debate is ultimately to camouflage a discussion on intervention. On the other hand, the concept was already delineated and endorsed by all member states in 2005, and the debate on details at the GA is in any case necessary in order to transform the general endorsement into specific political and financial support to create adequate administrative machinery at the UN level.

- Among the foreseeable obstacles that the report may encounter in the GA, which were mentioned by different participants, were the reluctance of some of the emerging powers to openly support coercive responses for upholding human rights obligations, the attempts to merge the discussion on R2P with the enlargement of the Security Council by those countries who are candidates for a permanent seat, the reservations of medium and small states about establishing a principle that will not be applied to the most powerful states, and conversely the concerns of the latter that they would be bound to intervene when the occurrence of one of the four categories of serious international crimes is acknowledged. The inappropriateness of a body vested with discretionary powers such as the Security Council getting involved in a discussion on the legal distinction between e.g. genocide and crimes against humanity – a discussion which in fact should be reserved for criminal courts when assessing responsibility of individuals under international law – was also pointed out.

## Framing the debate — guidelines

In order to contribute to the debate at the UN level with a European perspective that endorses R2P as a principle, as stated in the recent *Report on the Implementation of the European Security Strategy - Providing Security in a Changing World*, the following guidelines could be taken into account:

1. R2P has already been endorsed by the 2005 World Summit's Outcome Document in sufficiently clear language, thus no general debate is necessary at the UN level on the principle as such. In addition, the Security Council has delivered a series of resolutions that contribute to reaffirming and shaping the concept – Res. 1265 (1999), 1296 (2000), 1674 (2006) and 1738 (2006) – in spite of their wider scope.
2. The debate on UNSC enlargement should not be evoked when dealing with R2P. It is however pertinent to consider the role of the UN General Assembly in applying the different pillars of R2P, and particularly – taking into account the Uniting for Peace Resolution – in cases of blockage of the Security Council in the face of actual or imminent mass atrocities. UN member states have in this connection an opportunity to develop the principle of R2P through the General Assembly and to influence and complement SC action as regards the third pillar, and even to contribute to remedy the impact of vetoes in the framework of the Charter. It should be noted in passing that coercive measures in response to major breaches of international law which do not include the use of force need not be authorised by the Security Council.
3. With regard to the operationalisation of R2P, it is crucial to avoid a situation where political debate either at the UNSC or at the UNGA on whether a situation amounts or could eventually amount to genocide or not becomes an insurmountable obstacle to action. Since it is for the judges to determine which particular criminal category is applicable in order to establish international responsibility of the individuals, the debate at the UN level should rather concentrate on how to prevent mass atrocities or on how to bring mass atrocities to an end, regardless of the individuals responsible and the specific category of crime taking place in the situation under consideration.

4. As an ultimate policy objective, the UN Secretary General approach to R2P seems to try to establish a trade-off between narrowing down the scope of R2P, thus ultimately limiting the situations which require a multilateral armed response, and increasing the likelihood of such a response, thus limiting the discretionary powers of the Security Council in the face of R2P situations. The obvious risk is that only the first part of the equation is fulfilled. Considering that no other limits apart from those arising from imperative international law can be imposed on the Security Council unless the UN Charter is amended accordingly, a unilateral declaration of commitment by the P5, stipulating that veto is excluded in these cases, would be very welcome. However, even if the P5 were to honour such a commitment formally, states with vested interests against adopting coercive measures in a particular case will tend to deny the existence of such crimes or to minimise their scale, thus damaging the underlying principle.
5. The most relevant contribution of the EU to the operationalisation of R2P will be the strengthening of cooperation with the UN as endorsed by the abovementioned Report *Providing Security in a Changing World* and the 2007 Joint EU-UN Declaration, particularly with regard to increasing civilian capabilities for crisis management and improving the combination of civilian and military expertise from the conception right through to the implementation of missions that are conducted under UN mandates.