



International Comparative Jurisprudence



RESPONSIBILITY TO PROTECT. BALANCING NATIONAL INTERESTS AND INTERNATIONAL OBLIGATIONS THROUGH MULTILATERALISM¹

Tomasz A. Lewandowski²

*Adam Mickiewicz University in Poznan, Poland
E-mails: tolewan@amu.edu.pl*

Received 4 November 2016; accepted 28 February 2017

Abstract. Responsibility to Protect is yet another step in post war evolution of international response against genocide, war crimes, crimes against humanity and ethnic cleansing. Author analyses the concept of R2P through the lens of balancing national interests of the UN Member States (state security, human security, budgetary balance, independence) with international values (solidarity, human rights, peace, security). Author underlines that global responses and actions to prevent and end mass atrocities still lack comprehensive and unified approach. Due to diverse interests of each state, international community faces problems dealing with consequences of atrocities. Author believes that states as individual members of international community are bound to redefine their national interests from the perspective of international community's responsibility to protect populations from mass atrocities. Such redefinition should be facilitated by the UN through promotion of effective multilateral approach towards R2P implementation.

Keywords: Responsibility to protect, National interests, International values, Solidarity, Good international citizenship, Multilateralism

Introduction

In September 2005, during the UN World Summit, the participating representatives of states concluded an agreement on the concept of Responsibility to Protect (hereinafter R2P), which was shaped in Summit's Outcome Document paras. 138-139:

“Par. 138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability”.

“Par. 139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing

¹ This is the publication of the WISE project, commemorating the 70th anniversary WWII end, implemented with the support of 'Europe for Citizens Programme' of the EU.

² Tomasz A. Lewandowski is a PhD candidate and teaching assistant at the Faculty of Law and Administration, Adam Mickiewicz University in Poznan. In his research area Mr. Lewandowski focuses on the international protection of human rights, constitutional law and IHL. T. A. Lewandowski implements research project on the relation between sovereignty and R2P funded by National Science Centre of Poland. His publications cover the analysis of constitutional rules on the use of force and the contemporary meaning of sovereignty. T. A. Lewandowski was awarded scholarships from the Kulczyk Family Fund and the Adam Mickiewicz University Foundation in Poznan. He is also interested in oenology, Greek mythology and the works of G. Bizet. His research was financed by the National Science Centre (Poland) based on a decision number DEC-2013/09/N/HS5/00522.

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 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 fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.”

The endorsement of R2P by the General Assembly serves as a starting point for the concept's continuous political and legal evolution within the international agenda. This conceptual evolution is led mainly by the UN Secretary-General who explains and disseminates the ideas behind responsibility to protect through his annual reports (the SG's reports of 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016). In the first one of 2009 *Implementing the Responsibility to Protect* the Secretary-General introduced three pillars agenda of responsibility to protect:

- i. Pillar I - States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity;*
- ii. Pillar II - the international community shall provide assistance to States in building capacity to protect their populations from these atrocities and to assist those, which are under stress before crises and conflicts break out;*
- iii. Pillar III - in case of State manifestly failing to protect its populations international community shall take timely and decisive action to prevent and halt these atrocities (the SG's report, 2009, section II-IV).*

According to the above-mentioned Pillars international community bears two inseparable responsibilities 1) to assist states in building their capacity to protect their populations, and 2) to react in timely and decisive manner in case of states manifestly failing in their primary responsibility to protect. Author's assessment of the responsibilities under Pillar II and III relates primarily to the UN and its Member States as representatives of international community (Glanville, 2011, p. 483). The UN in particular should be considered as a major actor here due to its identity as a leader in creating peace, human rights and democracy-based international environment.

This particular identity is the result of international values as enshrined in the UN Charter, it also reflects particularities among the UN Member States. Such bipolar approach towards R2P implementation is based on the fact that both Member States and the UN (as a separate subject of international law) are distinct members of international community, which according to the 2005 Summit Outcome Document is the main bearer of responsibilities under Pillar II and III. The question is even more troublesome, when one realizes that R2P depends on two levels of international governance and policymaking: universal (represented by the UN and its organs) and national (represented by its Member States). It is obvious that these levels do not always correspond to each other. Even if the commitment to protect certain international values is identical, the means and methods of achieving this protection differ depending on who executes it. The main differences can already be observed in policies on R2P implementation adopted by individual states. These expressions presented on different occasions (e.g. during Libyan and Syrian humanitarian catastrophes) sometimes do not follow the official UN position on R2P.

At national level, the effective R2P implementation entails a significant burden for the state and implies accepting various political, financial and legal commitments, therefore it is always difficult to establish a unified approach among the Member States of an international organisation. For instance, ongoing humanitarian catastrophe in Syria demonstrates that these inconsistencies undermine the timely and decisive actions taken under R2P. Although International Commission on State Sovereignty and Intervention (body which in 2011 introduced R2P to international community) indicated that the permanent members of the UN Security Council should refrain from veto when their vital interests are not at stake, Russia and China have vetoed three resolutions emphasizing the responsibility of the government of Syria for mass crimes and another resolution on referring the situation to the ICC (Adams, 2015). This inconsistency leads to non-credibility of the UN as a whole, for it is unable to present a unified approach while dealing with the effects of humanitarian crisis in Syria.

The author aims at demonstrating that the inconsistencies mentioned above undermines the effective R2P implementation. In the first part of this article, the notion of international values and its impact on understanding responsibility to protect is explained. This serves as a basis for further interpretation of the notion of national interest (under constitutional provisions of the Republic of Poland), which does not always follow the universal catalogue of these values. In the next part the author, inspired by the ideas of G. Evans and A. Pert, underlines the gravity of ‘good international citizenship’ as the direction, which should be accepted by states as a modern way of exercising international solidarity based on active engagement in application of human rights treaties and multilateralism. Finally, the author evaluates multilateralism as a possible chance of solving problem of inconsistency in R2P implementation.

1. Responsibility to protect, international values and national interest

Each community shares some basic values, which reflect on their understanding of well-being. This applies to communities within a state, regional communities and the international community as a whole. The main question here is what constitutes the common international catalogue of values the international community seeks to protect. Establishing which values are considered as fundamental is essential for the correct interpretation of the objectives and functions of international law (Kwiecień, 2004, p. 86). Global values are flexible and evolve with the changing times. Slavery, ordinary and socially acceptable phenomenon for millennia, had been condemned and finally virtually disappeared. Aggression, once a standard tool of states policy, is now internationally banned (Florini, 1996, p. 363). International values protected in a certain period of time, may lose the protection in some time later.

International values can be defined as persistent, globally shared beliefs that a certain state of the world, which is possible to achieve, is socially desirable, creating the prospect of life of all human beings, as opposed to the opposite state of the world (Spijkers, 2011, Ch. II). In other words, values are based on goods understood as the state of affairs, which is positively considered by a given community (Ziemiński, 1993 p. 15). Under responsibility to protect such state of affairs can be described as the well-being of populations. R2P is based on assumption that axiological unity of international community is well-established, meaning that there is no doubt that mass atrocities are wrong deeds which shall be condemned and eradicated (Lewandowski, 2015, p. 187). But means and methods necessary to achieve this state of affairs are not as universally agreed as the goal itself. R2P is only one of such means. The concept does not constitute an international value *per se* (it would be hard to treat R2P as a state of affairs), but it is a collection of tools applicable for the protection of the well-being of the community. From this point of view, R2P can be seen as an instrumental value – a mean for achieving the preferable international value (Ziemiński, 1993 p. 18). In other words, R2P is a good example of moral doctrine consisting of systematic list of moral norms and evaluations accompanied with argumentation for respecting them (Ziemiński, 1963, p. 37), which, however, is a subject to discussions on their efficiency, reliability or costs.

These discussions mainly result from the fact that achieving the common good of international community often requires taking actions, which do not correspond with community values expressed by national entities. Even

though international set of values can be recognized by a national community, it can still reflect incompatible and divergent standards of individual national societies (Ziemiński, 1963, p. 106). Therefore, R2P performance depends on its capacity to shape not only international but also national systems of values (Lewandowski, 2015, p. 187).

From the national perspective, it is clear that the main purpose of states is to guarantee and protect the well-being for all its population. This reflects the idea behind the Pillar I of responsibility to protect and can also be represented in terms of national interest understood as a 'set of goals and values of the highest value for the state, for which the whole nation works' (Warsaw AON 1994, p. 49). The Polish Constitution, as a source of axiological foundations of the state, serves as a basis for determining the national interest of the Republic Poland. National interest is not an exact legal concept. It is more a reflection of different configurations of constitutionally protected values. Accordingly, the Constitution of the Republic of Poland in its very first article states that the Republic of Poland shall be the common good of all citizens. This provision is accompanied by Art. 30 declaring the respect and protection for the inherent and inalienable dignity of the person. This 'axiological spine' of Polish Constitutional system (Judgement of the Constitutional Court K 17/05) is supplemented by other values protected by the Constitution, including inter alia: 'truth, justice, good and beauty' (Preamble of the Constitution), 'democracy' (Art. 2 of the Constitution), 'independence, integrity of territory, freedoms and rights of persons and citizens, security of the citizens, national heritage, natural environment' (Art. 5 of the Constitution), 'freedom, cooperation and dialogue as criteria for the evaluation of any action by public authorities' (Judgement of the Constitutional Court K 34/97), 'national security, public order, protection of the environment, health, public morality, rights and liberties of others' (Art. 31 of the Constitution, Judgement of the Constitutional Court P 2/98), 'legal security and confidence in the law' (Judgement of the Constitutional Court K 21/99), 'public interest' (Judgement of the Constitutional Court K 24/97), 'reliability and efficiency of the public authorities' (Judgement of the Constitutional Court K 14/03), 'efficient and uninterrupted operation of state bodies in the general public interest and freedom of public debate' (Judgement of the Constitutional Court K 3/06), 'budget balance' (Judgement of the Constitutional Court K 15/01) and 'caring for veterans' (Judgement of the Constitutional Court K 12/02).

The above-mentioned values serve as the basis for the adoption of relevant strategic objectives of Poland such as "to internationally promote principles of international law and universal values such as democracy, human rights and civil liberties, and to raise awareness of human and civil rights among the Polish society" (National Security Strategy 2014, p. 12). In case of the Republic of Poland, we can differentiate three categories of national interest (National Security Strategy 2007, p. 11-13):

- *vital interests like independence, sovereignty, territorial integrity, inviolability of borders, safety of citizens, human rights and fundamental freedoms, democracy;*
- *significant interests such as sustainable economic development of the state, prosperity, scientific and technical development, protection of national heritage and the environment;*
- *other essential interests meaning Poland's strong position in the international arena, the effective promotion of Polish interests, strengthening major international institutions including development of international relations based on respect for law and multilateral cooperation, consistent with the purposes and principles of the UN Charter.*

According to the above qualification Pillar I of R2P lies in the sphere of "vital interests", while Pillars II and III are covered by "other essential interests", which as hierarchically lower cannot be implemented at the expense of the former (Lewandowski, 2015, p. 190). This leads to the conflict of values, which cannot be solved without gentle evaluation of state priorities.

Deciding whether Poland (or any given state) should actively participate in R2P implementation, especially in the context of the foreign military deployment, is a difficult multi-faceted process, which requires weighing of different interests. The main premise for taking such steps should be their potential effectiveness, proportionality

of costs, lack of excessive risk and the ability to achieve long-term results. The biggest problem lies in building a nexus between different set of interests in order to find reasons for sacrificing national self-interest for the common universal good. In this matter, responsibility to protect is supplemented by the ideas of international solidarity and good international citizenship.

2. International solidarity and good international citizenship

International solidarity as a strongly ethical concept has recently become the subject of interest by the UN. Already in 2001, the General Assembly adopted resolution on the promotion of a democratic and equitable international order in which it defined solidarity, as a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly in accordance with basic principles of equity and social justice and ensures that those who suffer or who benefit the least receive help from those who benefit the most (2001 Resolution A/RES/56/151, par. 3(f)). This definition had been consequently repeated in the subsequent resolutions of the UN General Assembly on the promotion of a democratic and equitable international order (2002 Resolution A/RES/56/151, par. 4(f), 2004 Resolution A/RES/59/193, par. 4 (f)). However, the notion of international solidarity was introduced to international debate by M. Virally, who explained its dual role in the creation of international order: responding to threats (negative solidarity) and creating common rights and obligations (positive solidarity) (Virally, 1968, p. 542-543), based on commonly shared values.

International solidarity as R2P is often treated as an emerging principle of international law (Wellens, 2005). Its normative character was definitely enforced through works of the Special Rapporteur on International Solidarity who in 2014 presented a proposed draft *Declaration on the Right of Peoples and Individuals to International Solidarity* (Annex of report A/HRC/26/34) according to which:

“International solidarity shall be understood as the convergence of interests, purposes and actions between and among peoples, individuals, States and their international organizations in order to preserve the order and ensure the very survival of international society and to achieve common goals which require international cooperation and collective action, based on the international normative system of duties which they implement and practise to foster peace and security, development and human rights”.

Currently international solidarity is starting to be treated as a human right. The switch in treatment can be observed in the official language of the General Assembly or Human Rights Council resolutions on promotion of a democratic and equitable international order. For already few years, both UN bodies define international solidarity as a right of peoples and individual (2014 HRC Resolution A/HRC/RES/25/15, 2015 GA Resolution A/RES/70/149), which shall be understood as a fundamental human right by which peoples and individuals have the freedom to enjoy, on the basis of equality and non-discrimination, the benefits of a harmonious international society with a just and fair international political and economic order, in which all human rights and fundamental freedoms may be fully realized. Despite these developments, there aren't enough examples of state practice pointing at the normative character of international solidarity as a separate principle of international law. However, K. Wellens suggests that solidarity is still present in the existing international law in a form of substantive solidarity norms and procedural solidarity norms (Wellens, p. 2).

The first group of norms consists of e.g. international humanitarian law, human rights law, international environmental law, refugee law or international development law. This group precisely and directly addresses both - negative and positive solidarity. The second group of solidarity norms concerns the diverse international obligations, which main objective is to achieve the state of international solidarity. The most glaring example of such norms are the provisions of the UN Charter for the maintenance of international peace and security.

Despite all these conceptual developments international solidarity (as well as responsibility to protect) remain dependent on actual national interest, which shape states' attitude towards their implementation. J.M. Coicaud categorized four structural factors limiting proper implementation of the two above-mentioned concepts (Coicaud, Book 2). The first factor is the national disposition of international life. The second factor covers the limits of modern democratic solidarity. According to J.M. Coicaud solidarity based on democratic values, which shape contemporary international community, is not enough to solve dilemma that what is internationally owed to others is weighed against the demands of the national community and its members. This leads to the third factor – preference given to what is nationally owed over what is internationally owed. Meaning that states always focus on ensuring that the costs of foreign assistance are not paid at the expense of nationals. This challenge may be described in terms of "solidarity with" and "solidarity within" characterizing relations between any international organizations (or international community) and its members. Solidarity with populations in need often loses to solidarity within a Member State or even a regional organization. National interest prevails over solidarity and human rights among nations and beyond borders.

Finally, protecting human rights of foreigners is still considered as a moral rather than legal obligation. International solidarity and responsibility to protect lacking strict legal status are not so persuasive for states in this manner. Lack of a normative character makes it also difficult to point the exact bearer of responsibilities. While one can easily identify the bearer of responsibilities under Pillar I, it is almost impossible to precisely indicate who should act under responsibilities covered by Pillars II and III. Problem lies in only overall determination of one of the addressees of these responsibilities, namely international community which “is at best an aspirational cliché, at worst a misleading description of something that has yet to be adequately defined, let alone realised” (Beeson, 2015). The issue is thus which states and whether they are obliged to participate in fulfilling the responsibilities of the international community, to what extent and under what motives? G. Evans, one of the founding fathers of R2P, proposed the idea of so-called „good international citizenship” (Evans 1988, 1989, 1995) as a possible answer to that question.

Good international citizenship was firstly mentioned by R. Michener - the Canadian Governor General who in 1967, during his speech, summarized that Canada was a good international citizen worthy of trust and capable of leadership. He also underlined that with such powers responsibility and opportunity to combat hunger, disease, poverty, and ignorance, which threaten the peace as much as territorial and racial dispute, come (Michener, 1967, p. 193-202). Contemporary idea of good international citizenship, however, was entirely shaped by G. Evans who insisted on placing it next to the security and economic interests as an element of national interest (Evans, 2008, p. 229-230). G. Evans acknowledges that good international citizenship presents more useful framework to deal with the complexity of the interdependent world in the 21st century than traditional focus on narrowly defined security and economic interest (Evans, 2015). Good international citizenship is an area of international policy, in which the most important values of the national community have a major impact on the realization of national interests on the international forum. According to G. Evans, good international citizenship, while retaining the character of objective national interest, cannot be fully understood without reference to the identity of the community and its guiding principles (Evans, 1989). Credibility serves as a major feature of a good international citizen, which should ensure a consistent and impartial compliance with the relevant standards by himself before “blaming and shaming” other members of international community (Evans, 1989). In other words, a good international citizen should have a good record of human rights protection.

Despite these suggestions, there is no definition of good international citizenship itself. A. Pert advises that instead of strenuous attempts to define it, one should analyse why states can be labelled as good international citizens (Pert, 2012, p. 3). This analysis is based on breaking the term into components that are clear and can be defined. Understanding of good international citizenship from the perspective of international law, according to A. Pert thus refers to two basic criteria (Pert, 2012, p. 3):

- *the state's involvement in the application of international law understood as the ratification of treaties, compliance with treaties, policies and practices of the state in areas such as human rights, environmental protection, anti-terrorism, treatment of asylum seekers;*
- *the involvement of the state in multilateralism on issues such as climate change, relations within the UN, humanitarian aid, peacekeeping and disarmament.*

In addition to these leading categories, A. Pert mentions such qualities of a good international citizen as readiness to fulfil the tasks of the international community, fulfilling “good international deeds” and being a leader involved in the continuous raising of international standards (Pert, 2012, p. 4). At the same time A. Pert emphasizes that the state cannot be precisely defined as a good or a bad international citizen. Such assessment requires evaluating different actions undertaken by the State (Pert, 2012, p. 7). This process can occur on the basis of all, and every one with the above-mentioned categories.

The idea of good international citizenship clearly fits in the frames of responsibility to protect. At the end, good international citizen is the state, which protects its population from massive human rights violations at a level that validates it as an entity that could properly participate in fulfilling international community’s obligations under Pillars II and III. Should responsibility to protect be exclusively the domain of good international citizens, who can condemn those “bad citizens” as unworthy of the name? Definitely not! Individualism of good international citizenship is based on the national values, which define international politics through which states individually shape the characteristics of their good citizenship. In other words, there is no single standard of good international citizenship, thus each state before acting should evaluate its reliability as a member of international community. The best environment for such evaluation is multilateral engagement by which states can easily discuss and debate on their performance under human rights standards, establish the relevance of their national values for international politics, as well as promote certain solutions.

3. Responsibility to protect and multilateralism

Multilateralism equips states with a possibility to reconcile their national interests with these of the international community. Multilateralism is of particular importance in case of R2P implementation through foreign military deployment. The UN through its multilateralism tries to make its position on R2P both legitimate and legal. Such strategy is contrary to the strategies presented by some major powers like Russian Federation or the United States, which focus mainly on unilateralism, often taking actions outside of the accepted R2P framework. Unilateralism in R2P implementation often leads to questioning the legality and legitimacy of actions taken by individual powers “implementing” responsibility to protect. In opposition to unilateralism, multilateral approach presented by the UN combines a series of policy aims, such as the promotion of democracy, human rights, and good governance and the safeguarding of peace and security.

Multilateralism is an institutional form which coordinates above-mentioned values among three or more states on the basis of generalized principles of conduct, defining ‘generalized principles’ as those which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence (Ruggie, 1992, p. 571). S. Blavoukos and D. Bourantonis distinguish two kinds of multilateralism: instrumental multilateralism and principled multilateralism (Blavoukos, Bourantonis, 2011, p. 6). The first serves as one of many institutional forms which can be employed to achieve certain national policy goals without having intrinsic value *per se*, while the latter remains a “part of an ongoing, taken-for-granted subjective understanding of international life”, comprising “deliberative and communicative aspects, an emphasis in cooperation through mutual understanding, and norms-oriented behaviour”. Taking into account the UN’s unconditional support to multilateralism in R2P implementation throughout resolutions of its main organs, policy documents and other official statements suggest that the UN ranks among the principled “multilateralists”.

The UN serves as the collection point of ideas and policies derived from the collective weight of international values defined by its objectives and purposes but also by national interests of its Member States. The main challenge is to reconcile goals and values represented by the Member States and the Organization as a whole. The process of such reconciliation is best reflected by the coherent relationship between the policies the UN and its Member States. Coherence in policy-making should be understood as: “policy-making that seeks to achieve common, identifiable goals that are devised and implemented in an environment of collaboration, coordination and cooperative planning among and within (Lewis, Benedek, Müller Funk, 2014) the UN, among the UN bodies and its member states, as well as among Member States”. Despite the fact that various UN bodies have mechanisms to enable effective implementation of the objectives of the responsibility to protect, the practice of using these mechanisms shows that often an organization as a whole is not able to present a unified and coordinated program for the prevention of mass atrocities. The UN is aware of this deficiency in functioning and tries to prevent it. Examples of such efforts to eliminate inconsistencies include the *Rights Up Front Initiative* and proposed *Code of Conduct* on the functioning of the members of the Security Council in relation to the mass atrocities.

The Rights Up Front Initiative was formed as a response to criticism of the UN's activities in connection with the civil war in Sri Lanka, which were characterized by non-uniformity and lack of system solutions. This criticism has been summarised by C. Petrie (Internal Review Panel Report) who recommended "a comprehensive review of the system of the United Nations during the conflict in Sri Lanka and the humanitarian activities taken by the United Nations after the conflict". Those recommendations took the consolidated form of the *Rights Up Front Initiative* presented in December 2013, which provided guidance for the UN to develop a uniform practice concerning the situation of serious human rights violations in the future (Rights Up Front, 2014). The creators of the Initiative stressed that the UN is not always able to fulfil its task of promoting and encouraging respect for human rights. This situation was caused by the lack of a coherent system of response strategies at risk of serious human rights violations, as well as the inability to achieve agreement by the Member States on concerted action, which deprives the international community of effective measures to prevent and combat mass crimes. Initiative is primarily set out in the six-point action plan for the Secretariat of the UN, its funds and agencies:

- i. First, the UN Secretary-General points the need for better integration of human rights in the activities of the United Nations, so that all employees understand their own responsibilities, and obligations of the United Nations in the field of human rights protection.*
- ii. Second, Member States should be provided with information regarding endangered populations or victims of serious violations of human rights or humanitarian law of armed conflicts.*
- iii. Third, there is a need to ensure a coherent strategy for the UN field actions to fully use the United Nations system to respond in a coordinated way.*
- iv. Fourth, there is a need to clarify and streamline procedures at the UN headquarters to improve communication within its units working in the field and to facilitate taking of early, coordinated action.*
- v. Fifth, the UN should strengthen its capacity in the field of human rights, in particular through better coordination of its bodies dealing with the protection and promotion of human rights.*
- vi. Sixth, the United Nations should develop common system for managing information on serious violations of human rights and humanitarian law.*

The *Rights Up Front Initiative* contributes to the R2P concept at the international and institutional level (Informal remarks on Rights Up Front; Mailer, 2014) but it is difficult, at this stage, to assess the impact of the Initiative on the development of the responsibility to protect. Despite the explicit reference to the *Rights Up Front* in the Report of 2014 the Secretary-General does not propose any mechanism for its implementation as part of the R2P toolkit (the SG's report of 2014). The Secretary-General only emphasizes the role of the Initiative as a way to improve the ability of the UN to fulfil obligations under Pillar II and to coordinate actions taken by the Human Rights Council, the Office of the High Commissioner for Human Rights and other competent authorities.

Regarding the activities of the Security Council, in response to the controversy over the use of the veto by the permanent members of the Council, primarily due to the ongoing conflict in Syria, ACT Group (Accountability, Coherence and Transparency) in October 2015 presented a proposal for a *Code of Conduct* (Draft Code of Conduct) concerning the acts of the members of the Security Council in relation to the mass crimes. Code of Conduct was presented as a way to provide for greater political accountability at the UN. The proposed *Code of Conduct* provides that:

- i. states pledge to support a quick and decisive action of the Security Council aimed at preventing or ending genocide, crimes against humanity or war crimes;*
- ii. states pledge to abstain from voting against the draft resolution of the Council in this respect;*
- iii. states declare the full and urgent attention to the recommendations of the Secretary General presented to the Security Council on the situation, which include or may lead to mass murder.*

Code of Conduct is not considered to bind only the permanent members of the Security Council. Its designed for all UN Member States, which are or which will be a future members of the Council. *Code of Conduct* was initially signed by 104 Member States, including the United Kingdom and France as permanent members. As all tools for R2P implementation, the *Code of Conduct* requires real implementation and not just commitments. Sooner or later, states' commitments will be challenged by the situation requiring balancing timely and decisive reaction of the international community with national interests of the members of the UN Security Council

Conclusions

National interest, understood as an expression of government's commitments towards its own population, is an indispensable element of the decision-making process. States are not fully resistant to arguments for the protection of international values, but decisions on the use of force or other forms of participation in the realization of international community's responsibilities under Pillars II and III will always be based largely on the question of actually existing national interest. The fact that states are considering the interest in deciding whether to react or not, however, is not their moral indifference. The primary responsibility of any government is to care for its own citizens, whose interests may be affected by the activity of the state under Pillar II and III. Responsibility to protect does not alter this situation. Although you can construct a variety of hypothetical institutional framework to ensure efficient, impartial and consistent response to humanitarian crises, all such proposals are in fact verified by pre-defined interests of the states.

The role of the UN is therefore to reconcile these different interests and put an effort to combine them into added value for R2P implementation. It is not an easy task. Main challenges for the active and credible R2P implementation by and within the UN are: 1) turning its ambitious commitment into real practice; 2) making a whole and unified policy from disparate parts presented by different Member States, 3) reconciling often discrepant interests of the organization and its Member States. These challenges should be addressed with coherent actions oriented at helping other states to implement and abide by these rules and engaging actively in multilateral forums, by promoting a forward-looking agenda that is not limited to a narrow defence of national interests. As explained in the idea of good international citizenship, national interests should be motivated and publicly justified in the name of humanity and the rule of law. The UN shall act as a leader that groups partners with different interests but simultaneously with comparable achievements in the field of human rights. This would result in a better understanding of R2P and therefore its faster development.

References

- Adams, S. (2015), *Failure to Protect: Syria and the UN Security Council*, Global Centre for the Responsibility to Protect Occasional Paper Series, No. 5. Retrieved from: <http://www.globalr2p.org/media/files/syriapaper_final.pdf>.
- Beeson, M. (2015), Being a good international citizen, The Conversation of 11 June 2015, Retrieved from: <www.theconversation.com/being-a-good-international-citizen-43137>.

- Blavoukos, S., Bourantonis, D. (2011), Introduction: The EU presence in international organizations', Blavoukos, S. Bourantonis, D., (eds.) *The EU presence in international organizations*, Routledge 2011.
- Coicaud, J.M., *International Humanitarian Interventions, Conflicts of Legitimacy and the Question of International Solidarity*, Held, D., McNally, K., *Lessons from Intervention in the 21st Century: Legality, Legitimacy and Feasibility*, Global Policy Ebooks, Book 2.
- Draft Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes from 24th October 2015. Retrieved from: <www.globalr2p.org/media/files/act-unscc-code-of-conduct-atrocity.pdf>.
- Evans, G. (1998), *Australia's Place in the World: The Dynamics of Foreign Policy Decision making*, ANU, 6 December 1988, Retrieved from: <www.gevans.org/speeches/old/1988/061288_fm_australiasplace.pdf>.
- Evans, G. (1989), *Australian Foreign Policy: Priorities in a Changing World*, AIIA Melbourne, 27 April 1989, Retrieved from: <www.gevans.org/speeches/old/1989/270489_fm_prioritiesinachanging.pdf>.
- Evans, G., Grant, B. (1995), *Australia's Foreign Relations*, Melbourne University Press.
- Evans, G. (2015), *Good international citizenship and military intervention in Syria* 28th August 2015, Retrieved from: <www.aspirategist.org.au/good-international-citizenship-and-military-intervention-in-syria>.
- Florini, A. (1996), *The Evolution of International Norms*, 40 *International Studies Quarterly*.
- Glanville, L. (2011), *On the meaning of 'responsibility' in the responsibility to protect*, *Griffith Law Review*, Vol 20, No 2.
- Glossary of key terms relating to national security, Warsaw AON 1994.
- Human Rights Council Resolution of 15 April 2014 A/HRC/RES/25/15.
- Informal remarks at briefing of the General Assembly on Rights Up Front. Retrieved from: <www.undg.org/docs/13405/DSG%20informal%20remarks%20at%20briefing%20of%20the%20GA%20on%20Rights%20up%20Front.docx>.
- Report of the Secretary General's Internal Review Panel on United Nations Action in Sri Lanka., November 2012. Retrieved from: <www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf>.
- Judgement of Constitutional Court of 31st March 1998, K 24/97 OTK ZU 1998 No. 2, item 13.
- Judgement of Constitutional Court of 3rd June 1998, K 34/97, OTK ZU 1998, No. 4, item 49.
- Judgement of Constitutional Court of 12th January 1999, P 2/98 OTK ZU 1999 No. 1, item 2.
- Judgement of Constitutional Court of 10th May 2000, K 21/99 OTK ZU 2000 No. 4, item 109.
- Judgement of Constitutional Court of 20th November 2001, SK 15/01, OTK ZU 2001, No. 8, item. 252, p. 1281.
- Judgement of Constitutional Court of 7th January 2004, K 14/03 OTK ZU 2004, Series A, No. 1, item 1.
- Judgement of Constitutional Court of 9th March 2004, K 12/02 OTK ZU 2004, Series A, No. 3, item. 19, p. 278.
- Judgement of Constitutional Court of 20th March 2006, K 17/05 OTK ZU 2006, Series A, No. 3, item 30.
- Judgement of Constitutional Court of 11th October 2006, P 3/06 OTK ZU 2006, Series A, No. 9, item 121.
- Kwieceń, R., *Suwerenność państwa. Rekonstrukcja i znaczenie idei w prawie międzynarodowym*, Kraków 2004;
- Lewandowski, T. (2015), *Constitutional Dilemmas over Responsibility to protect in the Republic of Poland*, Sancin, V. (ed.), *Responsibility to protect: Where Do We Stand Ten Years After?*, Ljubljana.
- Lewis, T., Benedek, W., Müller Funk, A. (2014), *Report on coherence of human rights policymaking in EU Institutions and other EU agencies and bodies*, FRAME Deliverable 8.1, Retrieved from: <www.fp7-frame.eu/wp-content/materiale/reports/06-Deliverable-8.1.pdf>.
- Mailier, A. (2014), *The highs and lows of peacekeeping in South Sudan, From Poverty to Power*, OxfamBlogs, 7th October 2014. Retrieved from: <www.oxfamblogs.org/fp2p/the-highs-and-lows-of-peacekeeping-in-south-sudan/>.
- Michener, R. (1967), *Canada's New Status, The Empire Club of Canada Addresses* (Toronto, Canada), 30 November 1967, Retrieved from: <www.speeches.empireclub.org/60628/data?n=6>.
- National Security Strategy of the Republic of Poland of 2007.
- National Security Strategy of the Republic of Poland of 2014.
- Pert, A. (2012), *The Good International Citizenship of the Rudd Government*, *Australian Yearbook of International Law*, Vol. 30, Forthcoming Sydney Law School Research Paper No. 12/72.
- Proposed draft declaration on the right of peoples and individuals to international solidarity, Annex of report A/HRC/26/34 of the Independent Expert on human rights and international solidarity, Retrieved from: <www.ohchr.org/Documents/Issues/Solidarity/ProposedDraftDeclarationSolidarity.pdf>.
- Ruggie, J. (1992), *Multilateralism: The anatomy of an institution*, 46 *International Organization*.
- Secretary General Report: "Implementing the Responsibility to Protect" from 12 January 2009 (A/63/677).
- Secretary General Report: "Early Warning, Assessment, and the Responsibility to Protect" from 17 July 2010 (A/64/864).
- Secretary General Report: "The Role of Regional and Sub-regional arrangements in Implementing the Responsibility to Protect" from 27 June 2011 (A/65/877-S/2011/393).
- Secretary General Report: "Responsibility to Protect – Timely and Decisive Response" from 20 August 2012 (A/66/874-S/2012/578);
- Secretary General Report: "State Responsibility and Prevention" from 5 August 2013 (A/67/929-S/2013/399);
- Secretary General Report: "Fulfilling our collective responsibility: International assistance and the responsibility to protect" from 11 July 2014 (A/68/947-S/2014/449).
- Spijkers, O. (2011), *The United Nations. The Evolution of Global Values and International Law*, Cambridge, Intersentia 2011, Chapter II.
- The Constitution of the Republic of Poland of 2nd April 1997 as published in *Dziennik Ustaw* No. 78, item 483.
- UNGA Resolution 2005 World Summit Outcome adopted by the General Assembly, 24 October 2005, A/RES/60/1.
- UNGA Resolution on the promotion of a democratic and equitable international order from 19 December 2001, A/RES/56/151
- UNGA Resolution on the promotion of a democratic and equitable international order from 18 December 2002, A/RES/56/151

UNGA Resolution on the promotion of a democratic and equitable international order from 20 December 2004 A/RES/59/193.

UNGA Resolution of 17 December 2015 A/RES/70/149.

UN Secretary-General, Rights up Front, May 2014. Retrieved from: <www.refworld.org/docid/549141f84.html>.

Wellens, K. (2010), Revisiting Solidarity as a (Re-)emerging Constitutional Principle: Some Further Reflections, Wolfrum, R., Kojima, C., (ed.), *Solidarity: A Structural Principle of International Law*, Springer-Verlag, Berlin Heidelberg.

Virally, M. (1968), Le role des 'principes' dans le developpement du droit international, Batelli, M., Guggenheim, P. (ed.) *Recueil d'etudes de droit international en hommage a Paul Guggenheim*, quoted after Wellens, K., Revisiting Solidarity as a (Re-)emerging Constitutional Principle: Some Further Reflections, Wolfrum, R., Kojima, C. (2010), (ed.), *Solidarity: A Structural Principle of International Law*, Springer-Verlag, Berlin Heidelberg.

Ziemiński, Z. (1963), *Normy moralne a normy prawne. Zarys problematyki*, Poznań.

Ziemiński, Z. (1993), *Wartości konstytucyjne*, Warszawa.

Copyright © 2017 by author(s) and Mykolas Romeris University

This work is licensed under the Creative Commons Attribution International License (CC BY).

<http://creativecommons.org/licenses/by/4.0/>

