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1. Introduction

In September 2005, the United Nations (UN) General Assembly unanimously endorsed the World Summit Outcome Document, paragraphs 138 through 140 of which recognize the individual and collective responsibility of states to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (R2P).¹ The document *inter alia* explicitly expresses the preparedness of the international community to “*take collective action [...] through the Security Council, in accordance with the Charter, including Chapter VII [...] in cooperation with relevant regional organizations as appropriate*”.² The importance of involving regional organisations in all aspects of the complex task of safeguarding civilian populations from the scourge of mass atrocities is also evident from the reference in paragraph 139 of the Outcome Document to the responsibility of the international community “*to use appropriate diplomatic, humanitarian and other peaceful means [to this end], in accordance with [Chapter VIII] of the Charter*”. Chapter VIII, it is recalled, covers the relationship between the UN and regional agencies or arrangements.³

The 2005 declaration – reaffirmed by the Security Council in April 2006⁴ – was seen by many as a historic step towards the entrenchment of an emerging international

¹ Resolution 60/1 on the 2005 World Summit Outcome, adopted by the UN General Assembly on 16 September 2005.

² The relevant paragraphs of the Outcome Document read as follows in full: “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.*

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 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.*

140. *We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.*”

³ For more on Chapter VIII in the context of R2P, see *infra*.

⁴ UN Doc. S/RES/1674 of 28 April 2006: “*The Security Council [...] reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*”.

norm, developed only four years earlier by the International Commission on Intervention and State Sovereignty (ICISS).⁵ As things turned out, however, this was only the beginning of a fastidious, ongoing process of consensus-building in support of R2P. The R2P notion has endured contest and at times virulent opposition, including from some of its earlier promoters, and the meaning and implications of the concept as of yet remain unclear. UN Secretary-General Ban Ki-moon has nevertheless shown determination to move the debate forward in order to ‘turn promise into practice, words into deeds’.⁶ Taking steps to ‘operationalize’⁷ R2P within the UN system, the Secretary-General issued a report in January 2009 on the implementation of the responsibility to protect.⁸ However, the role of regional organisations received only piecemeal attention in this otherwise comprehensive report.⁹

By and large, the importance of regional organisations and their relationship with the UN in operationalising the R2P concept has eluded clarification. During the large-scale interactive dialogue and debate held at the UNGA in July 2009, statements on the role of regional arrangements and agencies in implementing R2P were few and far between, entering only the discourse of regional organisations themselves and of predominantly small countries.¹⁰ Those statements that did address the issue typically lambasted the lack of institutional and organisational cooperation with the UN in the context of R2P, acknowledging the vast possibilities for improved coordination in this respect. While these statements appear to indicate a common appreciation of the need to involve regional players in the operationalisation of R2P, it remains unclear what role the panoply of regional organisations should play. The present contribution therefore aims to clarify, first, how the United Nations envisages the role of regional organisations in the implementation of R2P, as contemplated both in R2P-specific official UN documents (section 2) and in the UN Charter (section 3). Second, we will try to distil how the EU itself conceives its capacity to contribute to operationalising the responsibility to protect through an overview of the Union’s documents and statements on R2P (section 4).

⁵ ICISS, *The Responsibility to Protect*, December 2001, available at <http://www.iciss.ca/report-en.asp> (last accessed on 1 April 2011).

⁶ Ban Ki-moon address at Berlin event on Responsible Sovereignty: International Cooperation for a Changed World, 15 July 2008, available at <http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm> (last accessed on 1 April 2011).

⁷ UNSG, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, 12 January 2009, para. 67.

⁸ *Supra* note 10.

⁹ See *infra*, section 2.2 (Implementing the three pillars of R2P).

¹⁰ Summaries of the statements made at the various sessions of the debate are available at <http://www.un.org/News/Press/docs/2009/ga10849.doc.htm> (last accessed on 1 April 2011) and <http://www.un.org/News/Press/docs/2009/ga10850.doc.htm> (last accessed on 1 April 2011).

2. Involving regional organisations in the R2P framework: the view from the UN

The present section aims to assess to what extent regional organisations can contribute to realizing the responsibility to protect, taking the development of the concept by the United Nations as a starting point. The analysis will focus on both the *raison d'être* of the R2P notion as offering a palatable alternative to humanitarian intervention (2.1) and on the practical implementation of the concept through its three constitutive pillars (2.2).

2.1. Sovereignty concerns

R2P was born from the debate on 'the right of humanitarian intervention', which, in the 1990s, bitterly divided the international community with dreadful consequences in Rwanda and Bosnia. These experiences made clear that, if the international community was to effectively prevent the recurrence of such humanitarian catastrophes, it had to overcome, *inter alia*, the 'sovereignty versus intervention' dilemma that so plagued the humanitarian intervention debate. The 2001 ICISS report did so by shifting the terms of the debate from 'intervention' to 'protection', and thus defending a new, positive conception of state sovereignty: 'from sovereignty as control to sovereignty as responsibility'.¹¹ Departing from the state-centred, Westphalian notion of sovereignty, based on the principles of territoriality and non-intervention, the idea of 'sovereignty as responsibility' holds that sovereign states are responsible for the welfare and protection of the population living within their jurisdiction, and that they are accountable for discharging this responsibility both internally to their own population, and externally to the international community.

A particularly crucial factor in overcoming states' typical reluctance to accepting caps on their sovereignty is the close involvement of regional organisations in combating mass atrocities.¹² Due to their geographical proximity, close linkage to and intimate understanding of the roots of local conflicts, the participation of regional organisations in R2P situations is crucial in order to assuage possible concerns of the parties involved over allegedly interventionist measures that are feared to affect their national interests.¹³ As such, regional action in the context of crisis

¹¹ ICISS Report, *supra* note 8, p. 13.

¹² This was most recently demonstrated by the crisis in Libya in early 2011 (see *infra*).

¹³ See also C. Chamot, "Vers un Partage des Responsabilités entre les Nations Unies et les Organisations Régionales dans le Maintien de la Paix", 5 *L'Observateur des Nations Unies* 1998, 40-41; M. Szapiro, "International Organisations' Cooperation in the Field of Conflict Prevention", in V.

management has been identified as a strong factor able to “*contribute to a deeper sense of participation, consensus and democratization in international affairs*”.¹⁴ At the same time, it is clear that states are generally more readily inclined to contribute troops to intervening forces that are led by or in cooperation with regional organisations of which they are a member or for which they have more affinity than for a global intergovernmental organisation. Finally, from the viewpoint of the UN, a well-coordinated cooperation with regional organisations is also likely to significantly lighten the burden of exercising the arduous task of safeguarding international peace and security.

Regional organisations can thus act as middle-level mediators reconciling two other categories of addressees of the responsibility to protect: national governments and global international organisations. Indeed, notwithstanding the advantages of closely coordinated action with regional organisations, national ownership of the R2P process is most directly realised if the relevant measures are taken by local authorities. Therefore, whilst R2P puts the primary responsibility to protect populations from mass atrocity crimes with the states themselves, this responsibility yields to the international community, assisted therein by regional organisations, should states prove unable or unwilling to protect their populations.. The mediating role of regional organisations in mitigating fears of biased interventionism implies that there are limits to the means that these regional players can employ in combating mass atrocities under the R2P moniker. Generally speaking, the international community may employ all reasonable means to exercise this responsibility, including the use of force. However, such military measures should be envisaged only as a last resort, along clear criteria, when all other pacific means have been exhausted.¹⁵ The ICISS report confirms that the legal capacity to authorise the use of force rests, first and foremost, with the UN Security Council, pursuant to Article 42 of the UN Charter. According to the ICISS, however, should the UNSC fail to act upon a proposal for military intervention in the case of mass atrocities, or fail to deal with such a proposal within a reasonable time, it should be possible for “*collective intervention [to] be pursued by a regional or sub-regional organization acting within its defining boundaries*”. The report adds that such action

Kronenberger and J. Wouters (eds.), *The European Union and Conflict Prevention*, TMC Asser Press, The Hague, 2004, 364; E. Kodjo and H. Gherari, “Article 52”, in J.-P. Cot, A. Pellet and M. Forteau (eds.), *La Charte des Nations Unies: Commentaire Article par Article*, Paris, Economica, 2005, 1394-1395.

¹⁴ UNSG, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, UN Doc. A/47/277-S/24111, 17 June 1992, para. 64, available at <http://www.un.org/Docs/SG/agpeace.html> (last accessed on 1 April 2011).

¹⁵ The report sets out six criteria for the use of military force: just cause; right intention; last resort; proportional means; reasonable prospects; right authority.

could possibly be approved *ex post facto* by the Security Council.¹⁶ The 2005 World Summit Outcome Document dismisses such regional military R2P, however, and clearly subjugates regional organisations to the UNSC seal of approval by expressly limiting the possibility of military interventions to collective action undertaken *through* the Security Council, in cooperation with regional organisations, as appropriate (see para. 139). The role of regional organisations as currently conceived by the United Nations is thus largely limited to non-military initiatives and to assisting the UN in coercive interventions.

2.2. Implementing the three pillars of R2P

As conceived by the ICISS report, the responsibility to protect embraces three specific responsibilities: the responsibility to prevent, the responsibility to react and the responsibility to rebuild. In its interpretation of the concept, the UN has favoured an approach that sticks to the wording of the 2005 Outcome Document. As pointed out by Edward Luck¹⁷ and subsequently reasserted in Ban Ki-moon's 2009 report to the General Assembly, the responsibility to protect rests on the following three pillars:

1. An affirmation of the primary and continuing legal obligation of states to protect all populations within their territory – whether citizens or not – from genocide, war crimes, ethnic cleansing and crimes against humanity. This applies not only to the actual listed crimes, but also to their incitement.
2. A commitment by the international community to assist states in meeting these obligations. Neighbours and regional organisations have a big role to play here, and the South-South dialogue must in this perspective be further promoted, alongside North-South processes. Edward Luck observes that it is also important to continue looking at, and learning from, positive cases, and to develop mechanisms of prevention better adapted to R2P situations, distinct from existing conflict prevention mechanisms. Indeed, genocide and other mass atrocity crimes may often not be the result of conflicts.
3. An affirmation by the UN member states of their responsibility to respond in a timely and decisive manner, in accordance with the UN Charter, to help protect

¹⁶ ICISS Report, *supra* note 8, para. 6.31.

¹⁷ Edward Luck Statement on R2P, 17 June 2008, available at <http://www.responsibilitytoprotect.org/index.php/edward-luck/1732-statement-from-un-special-advisor-edward-luck-on-r2p?format=pdf> (last accessed on 1 April 2011).

populations from the four listed crimes and violations. Response options include a broad range of pacific measures – diplomatic, political or economic – that do not necessarily require the Security Council's consent. Enforcement measures under Chapter VII of the UN Charter may however sometimes be necessary. The use of military force, which has absorbed most of the discussions, is in fact only a small part of the response options. The early and targeted deployment of troops may also be considered as a preventive measure, as the case of UNPREDEP in Macedonia successfully highlighted.

Luck insists that in order to retain its relevance and political legitimacy, R2P should remain confined to the four most extreme crimes and violations with which it is associated. In this sense, the concept is regarded as 'narrow but deep', in that an entire gamut of prevention and protection tools may be employed in order to counter the dangers emanating from these four types of mass atrocities. These tools necessary for the implementation of R2P run deep, whether at the level of the UN, regional and sub-regional organisations, member states or civil society organisations.

Considerable work remains to be done, however, in order to activate this diverse toolbox so as to really 'change words into deeds' and 'operationalise' the concept of R2P. The notion needs to be further explained and clarified, and more adequate mechanisms of early warning and early response must be developed. Ultimately, in its broadest scope, R2P must become realized both within the reasoning, as well as the daily work of institutions. The magnitude of the challenges ahead was stressed in an address of Ban Ki-moon on 15 July 2008, in which he reaffirmed his 'deep and enduring' personal commitment to what he described as 'one of the more powerful but less understood ideas of our times'.¹⁸ As the next step in a 'long journey', he issued a report on the implementation of R2P in January 2009, drafted on the basis of Edward Luck's consultations and submitted to the General Assembly awaiting member states' feedback.¹⁹

Thorough though the 2009 report appears to be in its lengthy discussion of R2P, it is significantly lacking in offering a comprehensive take on the role of regional organisations in the implementation of the notion. At no point does it outline an inclusive approach to combating mass atrocities in close coordination with regional

¹⁸ Available at <http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm> (last accessed on 1 April 2011).

¹⁹ *Supra* note 10.

players, and only a select number of regional organisations is identified as having developed valuable tools for operationalising R2P (see *infra*). Nevertheless, the report does shed some light on how the United Nations thinks regional organisations can best contribute to the implementation of the three pillars upon which the responsibility to protect rests, as identified previously. First, the role of regional organisations in fulfilling the protection responsibilities of states versus their own populations is largely limited to offering technical assistance in state-to-state learning processes. Limited though this role may be, the experience of the EU has shown that establishing threshold membership standards of a political and economic nature can indeed provide a major impetus for prospective members to bring about significant institutional and legislative grass-roots changes to the benefit of their populations. The 2009 implementation report of the UNSG asks regional organisations to consider introducing R2P criteria into these and other peer review mechanisms established at the regional level.²⁰ This recommendation clearly draws on the idea of the EU integration process as one of the most successful models of post-WWII conflict prevention.²¹

As we have argued, the second R2P pillar to a large extent relies on the role of regional organisations as middle-level mediators in order to render assistance of the international community to states in meeting their primary responsibility more palatable. To some extent, this appreciation of regional organisations is confirmed by the implementation report, in which Ban Ki-moon identifies regional and sub-regional arrangements as mechanisms to contribute to peaceful means of dispute settlement through such means as good offices and diplomacy efforts.²² Regional organisations are also recommended to assist each other in developing civilian capacities to prevent crimes and violations relating to the responsibility to protect. Such region-to-region learning processes can be a valuable complement to the state-to-state learning processes identified in the first pillar. Important lessons can be drawn in this respect from the experience of the OSCE High Commissioner on National Minorities, the ECOWAS early warning and response mechanism and the African Union-United Nations 10-year capacity-building programme.²³

Finally, the 2009 report, even more clearly than the World Summit Outcome Document, bifurcates the contribution of regional organisations to meeting the R2P

²⁰ *Ibid.*, para. 22.

²¹ See, for example, G. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Washington, Brookings Institution, 2008, p. 183.

²² *Supra* note 10, para. 30.

²³ *Ibid.*, paras. 37-47.

responsibilities of the international community in the third pillar into two separate components. The report notes first that ‘the wide range of non-coercive and non-violent response measures’ under Chapters VI and VIII of the Charter may either be undertaken by the Security Council or by regional and sub-regional arrangements, even without the explicit authorization of the UNSC.²⁴ Here, the case of Kenya after the contested December 2007 elections provides a revealing example. In the first few months of 2008, Secretary-General Ban Ki-moon regularly invoked R2P to describe the situation of unfolding violence, and his Special Advisor for the Prevention of Genocide, Francis Deng, issued a statement in late January warning political and community leaders of their accountability and the risks incurred for violations of international law, urging them to ‘meet their responsibility to protect the civilian population’. It is noteworthy that this statement was not only addressed to state authorities, but to all parties that were behind the violence, and to all actors of the international community, including regional arrangements. This example shows that while R2P does not reinvent what the UN is capable of doing, it does provide a useful framework to interpret events and assess objectives to be achieved. In particular, the mediating efforts of the African Union with strong support of the United Nations are worth highlighting.²⁵

Conversely, it follows from the language of the 2009 report that violent and coercive measures are still relegated to the sole authority of the UN Security Council, regional and sub-regional arrangements having no independent R2P role in this context. The explicit reference to *ex post facto* authorization of *non-coercive* measures by regional organisations also appears to confirm that military intervention by such organisations should always be carried out *through* the Security Council, with no option of approval by the UNSC after the fact, as was already clear from the 2005 Outcome Document. The (implied) authorization by the Security Council of the ECOMOG deployment in Liberia by ECOWAS in the early 1990s²⁶ should from this perspective be treated as no more than an isolated exception.²⁷

²⁴ *Ibid.*, para. 51.

²⁵ See Global Centre for the Responsibility to Protect, *The Responsibility to Protect and Kenya: Past Successes and Current Challenges*, policy brief, 13 August 2010, available at [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/ASAZ-883JDU-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/ASAZ-883JDU-full_report.pdf/$File/full_report.pdf) (last accessed on 1 April 2011).

²⁶ UN Doc. S/RES/788 of 19 November 1992.

²⁷ For more on this and other cases of purported *post factum* ratifications of military interventions by regional organisations, see U. Villani, “The Security Council’s Authorization of Enforcement Actions by Regional Organisations”, in J.A. Frowein and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law: Volume 6*, The Hague, Kluwer Law International, 2002, 535-557.

The limited role envisaged for regional organisations in operationalising R2P by the 2009 report of Ban Ki-moon, still the most recent comprehensive report on the implementation of the responsibility to protect from the viewpoint of the United Nations, is thus largely one of soft diplomacy and assisted learning processes. Information sharing with a view to improving the early warning and assessment capabilities of both the UN and regional organisations in particular is seen as key to putting the concept of R2P into practice. This aspect of R2P was further expanded upon in a separate annex to the 2009 report and in a full-fledged report of the Secretary-General to the General Assembly of July 2010.²⁸ Both documents stress the vital importance of enriching United Nations decision-making by the input of regional and sub-regional organisations, whenever possible.²⁹ This is clearly the area where the UN sees most potential for a fruitful collaboration with regional agencies and arrangements in operationalising R2P: “*Global-regional collaboration is a key plank of our strategy for operationalizing the responsibility to protect, including for establishing the early warning capability mandated in paragraph 138 of the Summit Outcome, and it deserves our full and unambiguous support.*”³⁰ The R2P role of regional and sub-regional organisations in coercive interventions, on the other hand, is clearly contemplated only as a conditional corollary to the actions undertaken in this respect through the UNSC. This confirms that, unlike what was hinted at by the ICISS in 2001, there does not appear to be an independent military regional R2P.³¹

In spite of these limitations, the reactions of the international community to the developments in Libya in early 2011 show that regional organisations are in fact taken into account in the operationalisation of R2P, even if the reasons for their involvement may appear somewhat obscure. Following the toppling of Tunisian and Egyptian leaders, the brutal oppression of civilian anti-government protestors in Libya by unrelenting mercenaries hired by Colonel Muammar Gadhafi provided, in the eyes of some commentators, a real test case for R2P.³² Indeed, the actions were considered to be of such a grave nature that Libya was suspended from the League of Arab States³³ and the UN Human Rights Council.³⁴ Calls for intervention by the

²⁸ UNSG, *Early Warning, Assessment and the Responsibility to Protect*, UN Doc. A/64/864 of 14 July 2010.

²⁹ *Ibid.*, para. 11.

³⁰ UNSG, *supra* note 10, para. 65.

³¹ K.M. Haugevik, “Regionalising the Responsibility to Protect: Possibilities, Capabilities and Actualities”, 1 *Global Responsibility to Protect* 2009, 350.

³² I. Cotler and J. Genser, “Libya and the Responsibility to Protect”, *The New York Times*, 28 February 2011.

³³ See the statement of the Council of the Arab League at the level of permanent delegates on the serious developments taking place in Libya of 22 February 2011, available at http://www.arableagueonline.org/lasimages/picture_gallery/bayan22-2-2011.doc (last accessed on 11 April 2011, Arabic only).

international community, in particular through the imposition of a no-fly zone, grew louder. After it became apparent that such intervention would be backed by regional organisations of the Arab world and Africa, the UN Security Council finally leaped into action by adopting landmark resolutions 1970 and 1973 under Chapter VII, in which it explicitly recalled the Libyan government's responsibility to protect its civilians. Given the manifest failure of Libya to do so, the Security Council authorized all UN member states that notify the Secretary-General, to "*take all necessary measures [...] to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya [...] while excluding a foreign occupation force of any form on any part of Libyan territory*".³⁵ On the ground, the broad wording of UNSC resolution 1973 was interpreted as granting an authorization to the international community to engage in a strong military campaign against the regime of Gadhafi. Moreover, following the Libyan example, the UNSC later also included a reference to R2P in its resolution condemning the escalating security situation in Côte d'Ivoire in the aftermath of the presidential elections of 2010.³⁶

At first sight, the Security Council was careful not to overstep the strict limits of the R2P notion as agreed to at the 2005 World Summit. The resolutions reaffirm the international community's "*strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya*".³⁷ Moreover, they expressly note "*that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity*". The classification of the acts by the Libyan authorities as crimes against humanity, using language that appears to be taken directly from the description of this type of crime in the statutes of international criminal tribunals, is a clear confirmation of the narrow scope of R2P.³⁸ This also ties in with the referral of the situation to the International Criminal Court, the jurisdiction of which is mainly restricted to the international crimes listed in the World Summit Outcome document.³⁹ At the same time, the measures called for in the resolutions are of a widely varying nature and run deep.

³⁴ UN Doc. A/RES/65/265 of 3 March 2011.

³⁵ UN Doc. S/RES/1970 of 26 February 2011 and UN Doc. S/RES/1973 of 17 March 2011.

³⁶ UN Doc. S/RES/1975 of 30 March 2011.

³⁷ Compare resolution 1975 on the situation in Côte d'Ivoire, stressing the Security Council's "*strong commitment to the sovereignty, independence, territorial integrity and unity of Côte d'Ivoire, and recalling the importance of the principles of good-neighbourliness, non-interference and regional cooperation*".

³⁸ Resolution 1973 specifically refers to several war crimes and crimes against humanity believed to have been perpetrated by the Libyan authorities, such as enforced disappearances, torture and summary executions.

³⁹ See operative paragraphs 4-8 of resolution 1970.

What was remarkable about the UN reaction to the situation in Libya is the close collaboration with regional organisations of the Middle East and Africa, both in the process leading up to the intervention by the coalition forces and in the implementation thereof. The actions of the Libyan authorities were widely condemned in the Arab world and were in particular denounced by the League of Arab States, the African Union and the Secretary-General of the Organisation of the Islamic Conference. The adoption of resolution 1973 to a large extent depended on the decision taken by the League of Arab States on 8 March 2011 calling for the imposition of a no-fly zone on Libyan military aviation and to establish safe areas.⁴⁰ Testament to the close involvement of regional organisations is also the recurring reference in resolution 1973 to the obligations of member states to take all necessary measures to protect the Libyan civilians, “*acting nationally or through regional organisations or arrangements*”. Moreover, the resolution explicitly recognizes “*the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the Charter of the United Nations, requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of [the resolution]*”. Finally, the UNSC decided that member states should not only inform the UN Secretary-General of their actions implementing resolution 1973, but also the Secretary-General of the League of Arab States.

UNSC Resolutions 1970 and 1973 are noteworthy for bringing back to the fore the doctrine of R2P in a high-profile case and implementing it in close collaboration with the regional arrangements of the affected area. To what extent the UN actions concerning Libya can or should set a precedent for the future application of R2P is unclear, however. The circumstances of the case were highly idiosyncratic and essentially constituted a reaction of a divided international community united only by the actions of a completely isolated dictator committing atrocious violations of international humanitarian law against his own population. Due to the grave nature of the events, it is likely that the intervention in Libya would have been authorized, even in the absence of the R2P doctrine. Indeed, it should be noted that the relevant resolutions do not rely on R2P as an independent legal principle as such. They merely refer to the notion in their preambular paragraphs, while the operative sections of the resolutions rely on the obligations of Libya, “*under international law, including international humanitarian law, human rights law and refugee law*”. Even to the extent that the R2P doctrine could be considered to provide a legal basis for the

⁴⁰ See the statement of UN Secretary-General Ban Ki-moon on 17 March 2011, available at <http://www.un.org/apps/sg/sgstats.asp?nid=5145> (last accessed on 1 April 2011).

UNSC decision to intervene in Libya, the implications thereof for the elevation of the notion are severely mortgaged by the observation that the military intervention in practice has been sidetracked from the aim of protecting civilians, to aiding the rebels in their attempts to overthrow the regime. This apparent instrumentalisation of R2P for a regime change is unlikely to help win support for the concept in countries already sceptical of the notion, in spite of the ostensible backing by the Arab world of the military intervention in Libya.

Indeed, the involvement of Arab regional organisations in the reaction of the international community to the situation in Libya can be read in either of two ways. It could be interpreted as the genuine expression by the leading powers of the West of a veritable need to involve the countries that are most likely to be affected by the problems at hand. At the same time, it could also be read as a mere tactic applied by countries since long desiring a regime change in a notoriously recalcitrant member of the international community, to deflect the unavoidable accusations of a purely Western intervention in internal Arab issues. The fact that the Arab contribution to the France, UK and US-led intervention in Libya remained limited to token contributions of airplane force by countries such as Qatar and the United Arab Emirates, would appear to support the latter interpretation. In any event, the Libyan crisis, for better or for worse, confirmed the role of regional arrangements in an R2P case as middle-lever brokers between the intervening powers and the sovereign country whose civilians are in need of protection.

3. Regional organisations and R2P under Chapter VIII of the UN Charter

3.1. The overarching framework of Chapter VIII

The explicit reference to Chapter VIII in the World Summit Outcome Document reveals that the global-regional cooperation in operationalising R2P has to be seen in the broader perspective of the role of regional arrangements and agencies in preventive diplomacy as set out in this and other Chapters of the UN Charter. Indeed, as emphasized in the 2010 UN report on early warning, assessment and R2P, “[t]he Charter, in Articles 33 (1) and 52 (2), envisioned a world in which preventive diplomacy would begin with local and regional initiatives, to be complemented or supplemented by global efforts by the United Nations, as needed”.⁴¹ Article 52 (2) provides that UN member states of regional arrangements

⁴¹ *Supra* note 31, para. 11.

and agencies shall make every effort to achieve pacific settlement of local disputes through such regional mechanisms before referring them to the Security Council. Furthermore, pursuant to Article 53, the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. However, it adds that “*no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council*”. These two provisions thus confirm the tenor of the regional-global partnership in terms of the use of force as described above. Moreover, the importance of information-sharing between the UN and regional organisations stressed earlier on as a key measure for improving the early warning capabilities in cases of mass atrocities also corresponds to the general obligations laid down in Article 54 UN Charter. This provision instructs regional arrangements and agencies to keep the UN Security Council “*fully informed, [at all times,] of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security*”.

3.2. Diversity of regional arrangements and agencies

Like Chapter VIII, the official UN documents on R2P nowhere define the notion ‘regional agencies or arrangements’, thus potentially compounding the operationalisation of the concept at the regional level. An in-depth discussion of the reach of this concept lies outside the scope of this contribution. However, it is commonly agreed that the concept in the context of conflict prevention and crisis management has undergone a major transformation in the past two decades, most notably due to the clarifications offered by former UN Secretary-General Boutros Boutros-Ghali in his landmark report ‘An Agenda for Peace’.⁴² It follows from this report that every regional organisation that is (1) aimed at peacefully resolving matters of a regional dimension by actions having regional characteristics and which (2) contributes to the maintenance of international peace and security (3) in conformity with the purposes and principles of the United Nations should be considered a regional agency in the sense of Articles 33 and 52 of the Charter if cooperation therewith can complement the efforts of the Organisation in settling

⁴² *Supra* note 17. Para. 61 of the report reads as follows: “*The Charter deliberately provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of States to deal with a matter appropriate for regional action which also could contribute to the maintenance of international peace and security. Such associations or entities could include treaty-based organisations, whether created before or after the founding of the United Nations, regional organisations for mutual security and defence, organisations for general regional development or for cooperation on a particular economic topic or function, and groups created to deal with a specific political, economic or social issue of current concern.*”

disputes.⁴³ This increased reliance, since the end of the Cold War, on regional organisations in the framework of Chapter VIII is indicative of a broader trend recognizing the importance of regional cooperation in the context of conflict prevention and is now also seen to pervade the discourse on R2P.

The wide diversity of the organisations that meet the above criteria for regional agencies and arrangements to some extent renders it impossible to discuss in general terms the role of regional organisations in operationalising R2P. Nevertheless, it is possible to distil from the 2009 report on the implementation of R2P the regional organisations that are thought to be particularly valuable partners of the UN in this respect. The UN Secretary-General notably refers to the initiatives of a select number of regional organisations as best practices to be followed by other regional agencies, which will be briefly touched upon in the next paragraphs.⁴⁴

First, due to the geographical concentration of most conflicts involving mass atrocities and the institutional evolution in the past decade of the regional organisation at hand, the African Union is an obvious choice for a crucial regional R2P partner of the UN. Core elements of R2P were already well developed in Africa in the 1990s. The notion that state sovereignty is not absolute, but conditional is reflected in the African Union's Constitutive Act of 2000, which asserts under Article 4 (h) as one of its main principles “[t]he right of the Union to intervene in a member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity”.⁴⁵ The non-interference principle of the predecessor to the AU, the Organisation of African Unity, has thus been discarded in this most fundamental provision, the precise wording of which is remarkably close to the threshold criteria used to circumscribe the narrow scope of R2P in the UNGA Outcome document five years later. Preceding the concept, none of the founding instruments of the African Union refers to the responsibility to protect by name and some issues concerning the operationalisation of R2P by the AU still need to be resolved. As such, even though the Constitutive Act commands respect for the Charter of the United Nations (Article 3 (e)), it refers to the Assembly of Heads of State and Government as the sole authority to decide upon intervening in a member state in case of mass atrocities, upon recommendation of the Peace and

⁴³ V. Kronenberger and J. Wouters, “Introduction”, in V. Kronenberger and J. Wouters (eds.), *supra* note 16, xxvi-xxvii. See also *An Agenda for Peace*, *supra* note 17, para. 63; E. Kodjo and H. Gherari, *supra* note 16, p. 1374.

⁴⁴ As for the EU, see *infra*.

⁴⁵ See also Article 4 (j) of the Constitutive Act (“*The right of Member States to request intervention from the Union in order to restore peace and security*”).

Security Council (Article 7(e) of the Protocol establishing the Peace and Security Council). This would appear to be at odds with the UN perception of the role of regional organisations in the use of force to protect civilian populations. For example, the AU intervention in Burundi in May 2003 apparently occurred without any prior UNSC authorization. Afterwards, the Security Council nevertheless commended the efforts of the African Union and encouraged it to maintain a strong presence in the field.⁴⁶

Another regional organisation whose member states have granted it an explicit right to intervene under particular circumstances is the Economic Community of West African States (ECOWAS). Its 1999 Protocol relating to the Mechanism for Conflict Prevention, Management and Resolution, Peace-keeping and Security authorizes ECOWAS to intervene in order “*to alleviate the suffering of the populations and restore life to normalcy in the event of crises, conflict and disaster*” (Article 40). Such broad reference to humanitarian intervention cannot be construed as an explicit implementation of the R2P notion, however, especially given the date of adoption of the Protocol. Moreover, the relevant article indicates further on that the organisation’s right to intervene includes cases of rehabilitation of the gravely devastated environment of a member state. However, such broad construction of the R2P concept so as to include natural disasters was vehemently opposed during the negotiation of the 2005 World Summit Outcome (see more *infra*).

Finally, the Organisation for Security and Co-operation in Europe (OSCE) is also among those organisations that are frequently mentioned as having specific importance in the regional operationalisation of R2P. Indeed, the member states themselves have defined the OSCE as “*a primary organization for the peaceful settlement of disputes within its region and as a key instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation*”.⁴⁷ The aptitude of the organisation as an R2P partner is mainly due to its broad take on security, as well as its organisational and institutional infrastructure. The experience of the OSCE High Commissioner on National Minorities is particularly relevant in this respect.

⁴⁶ UN Doc. S/RES/1545 of 21 May 2004. See J. Sarkin, “Dealing with Africa’s Human Rights Problems: the Role of the United Nations, the African Union and Africa’s Sub-regional Organisations in Dealing with Africa’s Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect, research paper No. 09-01, April 2009, available at <http://ssrn.com/abstract=1323332> (last accessed on 1 April 2011).

⁴⁷ 1999 Istanbul Document, para. 7. See also the 1992 Helsinki Document, Section III (“*Early Warning, Conflict Prevention and Crisis Management (including fact-finding and rapporteurs missions and CSCE peacekeeping), Peaceful Settlement of Disputes*”). All summit documents are available at <http://www.osce.org/>.

Generally speaking, all of the above organisations have the mandate and potential to play an important role in the operationalisation of the R2P concept at the regional level. The African Union and ECOWAS are significantly lacking in financial resources, however, and so far have failed to realize their full potential in this field. Moreover, the consensus-based decision-making process of the OSCE often precludes it from taking swift action in the event of an imminent crisis. Other regional organisations such as the Organisation of American States (OAS), the Association of South East Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC) and the South African Development Cooperation (SADC) are still largely constrained by their continued adherence to the principles of non-interference and non-use of force. Political will is often lacking, especially in South Asia and the southern regions of Africa.⁴⁸

The principles of sovereignty and non-interventionism thoroughly influence the institutional infrastructure and workings of regional organisations and their member states in Asia.⁴⁹ This is one of the reasons why China initially rejected the R2P concept at the ICISS Roundtable Consultation with the China Institute of International Studies in June 2001.⁵⁰ China's position significantly softened, however, when the concept was subsequently watered down in the consensus-building exercise during the negotiations on the World Summit Outcome document, as is shown by the unanimous endorsement of the concept on this occasion and in UNSC resolution 1674. The text of this resolution was deemed acceptable by China only on the express condition that it was limited to the terms of the 2005 Outcome document.⁵¹ China's subsequent engagement in UN peacekeeping operations⁵², the

⁴⁸ For a more in-depth overview of the capabilities of these regional organisations in implementing R2P, see, D. Carment and M. Fischer, "R2P and the Role of Regional Organisations in Ethnic Conflict Management, Prevention and Resolution: the Unfinished Agenda", 1 *Global Responsibility to Protect* 2009, 261-290; M. Mwanasali, "The African Union, the United Nations, and the Responsibility to Protect: towards an African Intervention Doctrine", 2 *Global Responsibility to Protect* 2010, 388-413; K.M. Haugevik, *supra* note 34; J. Sarkin, *supra* note 49.

⁴⁹ See Y. F. Khong and H.E.S. Nesadurai, "Hanging Together, Institutional Design, and Cooperation in Southeast Asia: AFTA and the ARF", in A. Acharya and A.I. Johnston (eds), *Crafting Cooperation: Regional International Institutions in Comparative Perspective*, Cambridge, Cambridge University Press, 2007, p. 32–82.

⁵⁰ ICISS Report, *supra* note 8, Part III: Background, p. 392 *et seq.*, available at <http://www.iciss.ca/pdf/Supplementary%20Volume.%20Background.pdf> (last accessed on 1 April 2011).

⁵¹ See R. Foot, "The Responsibility to Protect and Its Evolution: Beijing's Influence on Norm Creation in Humanitarian Areas", *St Antony's International Review*, 2010. See in general on China's stance vs. R2P J. Prantl and R. Nakano, "Global Norm Diffusion in East Asia: How China and Japan Implement the Responsibility to Protect", NTS Working paper Series No. 5, January 2011, available at http://www.rsis.edu.sg/NTS/resources/research_papers/NTS%20Working_Paper5.pdf, referring to Z. Pang, "China's Non-Intervention Question", 1 *Global Responsibility to Protect* 2009, p. 237–252; S. Teitt, "Assessing Polemics, Principles and Practices: China and the Responsibility to Protect", 1 *Global Responsibility to Protect* 2009, p. 208–236.

Shanghai Cooperation Organization and its close coordination with ASEAN and APEC are testament to the country's apparent turnaround on R2P.⁵³ This is further evidenced by the noteworthy choice of China to refrain from using its veto regarding UNSC resolution 1973 on Libya, although this decision might at least partially have been inspired by a fear of jeopardizing its economic ties with Africa and the Middle East, especially given the favourable stance of Arab and African states on the intervention themselves. China's about-face on the R2P concept is also largely due to the containment of the concept at the 2005 Summit and its subsequent endorsement on the same terms by the Security Council. The UNSC resolutions on Libya once again confirmed the strict confines of the notion in this respect, although the ensuing implementation of the resolutions shows that the motivation of the intervention might not have been dictated solely by concerns for the wellbeing of the civilian population.

The Libyan crisis shows that it remains vital to promote an increased Southern ownership of the R2P concept, especially at the level of states and regional organisations. It is often striking to observe the recalcitrance of many Southern and Asian state leaders towards R2P – which some are quick to denounce as a Western neo-imperialist instrument – and the contrasting support of their populations for the concept. The instrumentalisation of R2P as a means of democratising dictatorial nations such as Libya shows that the fears of the notion's detractors are not entirely ill-founded. Indeed, the initial support of the regional organisations most closely connected to the conflict in Libya quickly gave way to apprehension over the motives of the UN-authorized intervention. Western states should remain careful not to impose R2P on the countries that are affected by the conflict, and apply it only in the pursuit of the goals that originally guided the establishment of the concept. In the meantime, there still is a lot that developed countries can do internally and at a regional level, notably in the EU, to integrate R2P in the daily practice of administrations and to build political support for the concept. The next section will discuss whether and how the EU is doing this.

4. Where does the EU stand?

The very reference to the experience of the European Union in the 2009 UNSG report (*supra*) indicates that it is a regional organisation with specific relevance for

⁵² United Nations, *Contributors to the United Nations Peacekeeping Operations – Monthly Summary of Contributors as of 31 Jan 2011*, 2011, available at http://www.un.org/en/peacekeeping/contributors/2011/jan11_1.pdf (last accessed on 1 April 2011).

⁵³ J. Prantl and R. Nakano, *supra* note 54, p. 10-11.

the implementation of R2P by the UN. This was confirmed by a recent statement of one of the fathers of the concept, Gareth Evans, who noted that, “*of all the regional organizations capable of helping make R2P a reality, the twenty-seven-member EU brings by far the greatest potential strengths*”.⁵⁴

Ever since the run-up to the 2005 World Summit, EU member states have notoriously been amongst the most fervent advocates of R2P at the UN level. The European Council in its meeting of 16-17 June 2005 reaffirmed “*the importance which it attributes to the concept of the responsibility to protect, which must be implemented by the Security Council*”.⁵⁵ The European Commission also embraced the cause and issued, a few days before the Summit, a communication to express its wish to see UN member states endorse R2P in the outcome document. The EU Council, on 7 November 2005, welcomed the endorsement of R2P, which it reckoned would “*be an important tool of the international community*”.⁵⁶ In its Joint Action on the EU Rule of Law Mission in Kosovo the Council made reference to R2P as referred to in the Security Council’s Resolution 1674.⁵⁷ In its priorities for the 63rd UN General Assembly, the EU reiterated that it “*attaches great importance to the implementation of the responsibility to protect, a concept that was endorsed at the 2005 World Summit, and emphasizes the need for further consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity in the General Assembly and the Security Council*”.⁵⁸

Among EU institutions, the European Parliament is the one that has most consistently kept R2P on its agenda, including reference to the concept in a number of resolutions – most recently on the violence in the Democratic Republic of Congo⁵⁹, on the problem of piracy off the Somali coast⁶⁰, and on the situation in Libya.⁶¹ However, these resolutions typically only make mention of the R2P notion as such,

⁵⁴ *Supra* note 24, p. 183.

⁵⁵ Presidency Conclusions, para. 37, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/85349.pdf (last accessed on 1 April 2011).

⁵⁶ EU Council Conclusions – UN World Summit (7 November 2005, Brussels).

⁵⁷ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, *OJ L* 42 of 16 February 2008, p. 92, third recital of the preamble.

⁵⁸ European Union Priorities for the 63rd General Assembly of the United Nations, 16 June 2008, para. 18, available at http://www.europa-eu-un.org/articles/en/article_8160_en.htm (last accessed on 1 April 2011).

⁵⁹ European Parliament resolution of 17 December 2009 on violence in the Democratic Republic of Congo, *OJ C* 286 of 22 October 2010, p. 21.

⁶⁰ European Parliament resolution of 26 November 2009 on a political solution to the problem of piracy off the Somali coast, *OJ C* 285 of 21 October 2010, p. 59.

⁶¹ European Parliament Resolution of 10 March 2011 on the Southern Neighbourhood, and Libya in particular, P7_TA-PROV(2011)0095.

in the framework of the United Nations, without any elaboration on how it should be interpreted or implemented in the situation at hand. Moreover, even within the European Parliament, consensus on R2P remains fragile, as exemplified by the opposition of the European People's Party (EPP) and Confederal Group of the European United Left (GUE/NGL) to the insertion of a reference to R2P and the concept of human security in a motion for resolution on the implementation of the European Security Strategy and ESDP. Their reluctance was based on the assumption that such concepts are increasingly used to justify military intervention.

After some years of rather timid backing of R2P, the European Commission, Council and Parliament reaffirmed their commitment to the concept in the European Consensus on Humanitarian Aid, endorsed in December 2007.⁶² Furthermore, all three institutions have expressly welcomed the appointment of Edward Luck as UN Special Adviser, regarding his nomination as an opportunity to promote more substantive debate on R2P. The EU also included R2P amongst its priorities for the last two sessions of the UN General Assembly, stressing the need for its implementation and operationalisation by the UN Secretary-General 'on the basis that the concept is not open for renegotiation'.⁶³ The Commission is of the view that the issue should then move beyond the General Assembly and Security Council, to the Human Rights Council. Moreover, the Parliament affirmed in its 2010 resolution on the annual report from the Council on the Common Foreign and Security Policy, that the R2P notion, 'as defined by the 2005 World Summit Outcome Document' should become one of the 'guiding principles' of the CFSP, along with the concept of human security, as defined by the 2007 Madrid Report of the Human Security Study Group.⁶⁴

EU support for the principle of R2P is thus widespread and enduring. However, the successive references to the notion in EU documents and statements before the UN have yet to be followed up by a clear and comprehensive strategy of the

⁶² Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, *OJ C* 25 of 30 January 2008, p. 1, para. 17.

⁶³ European Union Priorities for the 64th General Assembly of the United Nations, 9 June 2009, para. 8, available at http://www.europa-eu-un.org/articles/en/article_8967_en.htm (last accessed on 1 April 2011); European Union Priorities for the 65th General Assembly of the United Nations, 25 May 2010, para. 11, available at http://www.europa-eu-un.org/articles/en/article_10094_en.htm (last accessed on 1 April 2011).

⁶⁴ European Parliament resolution of 10 March 2010 on the annual report from the Council to the European Parliament on the main aspects and basic choices of the Common Foreign and Security Policy (CFSP) in 2008, presented to the European Parliament in application of Part II, Section G, paragraph 43 of the Interinstitutional Agreement of 17 May 2006, *OJ C* 349 of 22 December 2010, p. 51.

Commission or Council on how the concept should be interpreted and implemented in practice. Most EU documents are country-specific resolutions of the European Parliament, and statements at the UN General Assembly that mention the R2P notion typically merely hint at the need for collective action through the UNSC and the importance of effective implementation of the concept. Most recently, the European Parliament in its recommendation to the Council on the 65th session of the UN General Assembly repeated the need “*to fully support the efforts of the UN Secretary General to better define the notion of the principle of the Responsibility to Protect (R2P)*”.⁶⁵

Throughout the past five years, the EU has tried to offer some clarification on how it viewed the R2P concept. This process has revealed some noteworthy discrepancies with the official UN take on R2P, even though the ripples have been smoothed out over time. Illustrative in this respect were the discussions on a possible readjustment of the European Security Strategy under the French Presidency of the EU from July through December 2008. Both events coincided to give a further push to the EU debate on R2P. Driven by its Foreign Minister Bernard Kouchner – who famously conceived the principle of ‘*droit d’ingérence*’ and has since been a dedicated champion of R2P – France declared its intention to use the exercise of its EU Presidency to promote a debate on R2P among the 27 member states. Setting an example at the national level, France included a reference on R2P in both its white paper on defence and national security and its white paper on foreign affairs.

The report on the implementation of the European Security Strategy, adopted in December 2008, mentions R2P in two key paragraphs. Apart from highlighting the primary responsibility to protect of sovereign nations versus their own populations, the Council noted that “[*w*]ith respect to core human rights, the EU should continue to advance the agreement reached at the UN World Summit in 2005, that we hold a shared responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.⁶⁶ This reference, however, does little more than repeat the commitment in the World Summit Outcome Document and as such appears to hardly contribute anything to the debate. The discussions preceding the adoption of the report nevertheless show that the mere adherence to the terms of the

⁶⁵ European Parliament recommendation to the Council of 25 March 2010 on the 65th Session of the United Nations General Assembly, OJ C 4 of 7 January 2011, p. 49.

⁶⁶ *Report on the Implementation of the European Security Strategy: Providing Security in a Changing World*, Council Doc. S407/08 of 11 December 2008, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/104630.pdf (last accessed on 1 April 2011).

2005 agreement was something of an achievement in and of itself. During its presidency, France made clear that it was determined to promote an extensive understanding of R2P, which should clearly start with a commitment to the 'responsibility to prevent'. As part of this extensive understanding, and following the controversy around Bernard Kouchner's call to invoke R2P in the case of Burma following cyclone Nargis, the French Presidency sought to include natural disasters within the scope of R2P. The text of the ESS Implementation Report cited above shows that the internal quibbles were settled timely by upholding the narrow threshold criteria of the 2005 consensus. This reading of R2P is most certainly in line with the present views of the UN Secretary-General, as Ban Ki-moon in his 2009 report once again stressed the narrow approach to R2P: "*To try to extend it to cover other calamities, such as HIV/AIDS, climate change or the response to natural disasters, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility*" (para. 10 (b)).

Some statements made during debates at the United Nations hint at how the European Union would like to see the R2P implemented in practice. Former EU Commissioner on External Relations and European Neighbourhood Policy Ferrero-Waldner noted at a 2009 High Level Meeting on effective multilateralism that the EU supports the UN Secretary-General's suggestion that permanent members of the Security Council abstain from their veto in matters concerning the responsibility to protect.⁶⁷ The statement of the EU Presidency on the occasion of the UNGA debate on the responsibility to protect in July 2009 is instructive in that it comprises the closest the EU has come so far in revealing its take on R2P, in the absence of an official document detailing a comprehensive strategy on the matter. The statement broadly echoes the official documents of the UN in that it once again reaffirms the limited scope of the R2P notion and the importance of effective implementation, mainly through the development of early warning capacities.⁶⁸

The Presidency statement concludes by repeating that the greatest potential for operationalising R2P at the EU level is in terms of prevention and stresses that the principle has to be integrated in the Union's overall normative framework. Indeed, the EU does not need to invent a multitude of new instruments in the name of R2P,

⁶⁷ *Effective multilateralism: Building for a better tomorrow* – Speech by EU Commissioner Ferrero-Waldner of 14 April 2009 at the United Nations Association of Spain, High Level Meeting on European Union and United Nations: Towards effective multilateralism, available at http://www.eu-un.europa.eu/articles/fr/article_8644_fr.htm (last accessed on 1 April 2011).

⁶⁸ EU Presidency Statement – United Nations General Assembly: Debate on the Responsibility to Protect of 23 July 2009, available at http://www.europa-eu-un.org/articles/en/article_8901_en.htm (last accessed on 1 April 2011).

having already at its disposal a broad range of conflict prevention instruments: from the structural long-term preventive instruments – such as development co-operation, trade, arms control, human rights, social and environmental policies, as well as political dialogue – to the diplomatic and humanitarian instruments for short-term prevention. The Commission also sees a necessity of further investment in helping states build their capacity to protect their population. Here it could indeed play a very useful role, building on its experience at capacity building in the fields of rule of law and good governance. Early warning is a major field that should be prioritised and where the Commission could prove a valuable partner, having developed a checklist for root causes of conflict that it has already shared with the UN and other donors. Lastly, the EU has a broad range of instruments in the field of crisis management that could be of use, including civilian capabilities such as police missions.

The civilian uprisings of early 2011 in what the EU refers to as its Southern Neighbourhood⁶⁹ presented the Union with a singular opportunity to clarify its stance on R2P. Unfortunately, the reaction of the 27 member states to the Libyan crisis was slow, haphazard and equivocal in relation to its application of R2P.⁷⁰ While France and the United Kingdom were the leading protagonists of a rapid intervention in Libya, other EU member states remained sceptical. In a move that painfully laid bare the internal cracks in the Union's reaction to the situation in Libya, Germany abstained when UNSC Resolution 1973 was voted, thereby joining China, Russia, India and Brazil in ventilating their anti-interventionist sentiments.⁷¹ Once more, the EU failed to speak with one voice on an important event of international peace and security.

In spite of their divisions on the international stage, EU member states managed to align their positions internally in the Council for the adoption of a number of measures aimed at paralyzing the Libyan government, including a visa ban and assets freeze on Colonel Gadhafi and other persons of his regime thought to be

⁶⁹ The term initially only comprised the Mediterranean states, but now also reaches into what is officially called the Broader Middle East and North Africa.

⁷⁰ Former Belgian prime minister and current leader of the Liberal fraction in the European Parliament Guy Verhofstadt called the lukewarm response of the Council to the unfolding events in Libya 'a disgrace' and 'sickening': see <http://knack.nnews.be/nl/actualiteit/nieuws/belgie/verhofstadt-verklaring-euro-ministers-over-libie-is-een-schande/article-1194956626080.htm#> (last accessed on 4 April 2011) and http://www.europa-nu.nl/id/vinonIron6yw/nieuws/liberale_fractieleider_verhofstadt?ctx=vh84exkkodyi (last accessed on 4 April 2011).

⁷¹ See E. Reguly, "Germany Splits from EU Family over Libya", *The Globe and Mail*, 18 March 2011, available at <http://www.theglobeandmail.com/news/world/europe/germany-splits-from-eu-family-over-libya/article1948193/> (last accessed on 4 April 2011).

responsible for the violent crackdown on Libyan civilians of early 2011.⁷² This series of measures culminated in the adoption of Council Decision 2011/210/CFSP of 1 April 2011, authorizing the establishment of an EU military operation in Libya (EUFOR Libya).⁷³ If deployed, the mission of EUFOR Libya is to conduct, in the framework of the Common Security and Defence Policy, a military operation to support humanitarian assistance in the Libyan region. It shall in particular contribute to the safe movement and evacuation of displaced persons and support, with specific capabilities, the humanitarian agencies in their activities in Libya.⁷⁴

The EU has always been careful to qualify its actions with respect to Libya as the implementation, at the regional level, of the resolutions that were pushed for by two of its member states at the UN level. The Council decisions adopting restrictive measures in view of the situation in Libya, such as the freezing of assets and the imposition of travel bans, consistently refer to resolutions 1970 and 1973, and were indeed expressly taken in reaction to these measures.⁷⁵ Similarly, the decision on EUFOR Libya stresses that the operation is to be deployed '*[w]ith a view to underpinning the mandates of United Nations Security Council Resolutions 1970 and 1973 (2011) [...], if requested by the United Nations Office for the Coordination of Humanitarian Affairs*'.⁷⁶ In line with the decisions of the UNSC, the EUFOR Libya decision also emphasizes the importance of operating in close coordination with the

⁷² Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya, *OJ L* 58 of 3 March 2011, p. 53; Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya, *PJ L* 58 of 3 March 2011, p. 1; Council Implementing Regulation (EU) No 233/2011 of 10 March 2011 implementing Article 16(2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya, *OJ L* 64 of 11 March 2011, p. 13; Council Implementing Decision 2011/156/CFSP of 10 March 2011 implementing Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya, *OJ L* 64 of 11 March 2011, p. 29; Council Implementing Regulation (EU) No 272/2011 of 21 March 2011 implementing Article 16(2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya, *OJ L* 76 of 22 March 2011, p. 32; Council Implementing Decision 2011/175/CFSP of 21 March 2011 implementing Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya, *OJ L* 76 of 22 March 2011, p. 95; Council Implementing Regulation (EU) No 288/2011 of 23 March 2011 implementing Article 16(1) and (2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya, *OJ L* 78 of 24 March 2011, p. 13; Council Decision 2011/178/CFSP of 23 March 2011 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya, *OJ L* 78 of 24 March 2011, p. 24; Council Regulation (EU) No 296/2011 of 25 March 2011 amending Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya, *OJ L* 80 of 26 March 2011, p. 2. Moreover, negotiations on an EU-Libya framework agreement and ongoing cooperation contracts with the country were suspended on 22 February 2011.

⁷³ Council Decision 2011/210/CFSP of 1 April 2011 on a European Union military operation in support of humanitarian assistance operations in response to the crisis situation in Libya (EUFOR Libya), *OJ L* 89 of 5 April 2011, p. 17.

⁷⁴ Art. 1 of Council Decision 2011/210/CFSP.

⁷⁵ See, *inter alia*, paragraph (1) of Council Regulation (EU) No 204/2011 of 2 March 2011; paragraphs (2) and (3) of Council Implementing Regulation (EU) No 288/2011 of 23 March 2011; paragraphs (2) and (3) of Council Decision 2011/178/CFSP of 23 March 2011.

⁷⁶ Art. 1 of Council Decision 2011/210/CFSP.

League of Arab States and the African Union.⁷⁷ Nevertheless, and in spite of these clear procedural and substantial links with the two UNSC resolutions on Libya, the relevant Council decisions nowhere refer to the responsibility to protect, and the notion is only mentioned sporadically in official EU statements commenting on the situation.⁷⁸

To what extent the EU in its reaction to Libya was motivated primarily by the need to protect the Libyan civilian population, thus remains unclear. Even though the scope of the EUFOR Libya mission is specifically tailored to the protection of civilians (*supra*), the Union's motives for acting at last are obscure and in the end seem to confirm the impression that R2P is once again being instrumentalised for political goals extraneous to the protection of civilians and civilian populated areas as such. Indeed, various statements of highly placed EU representatives reveal that the ultimate goal of the measures taken with respect to Libya is the removal of Gadhafi's regime and, ultimately, the democratisation of the Southern Neighbourhood.⁷⁹ While such political motivations may be defensible in and of themselves, they bolster the suspicion that the R2P references in the UNSC resolutions were used mainly as a pretext to overthrow a dictator that had since long been a thorn in the eye of the West, rather than as a real indication of a strong political willingness of the international community to come to the rescue of a suffering civilian population. Germany's abstention on Security Council resolution 1973 is an important indication in this respect of the less-than unwavering support for R2P, even among EU member states. Additionally, it may be noted that at least part of the EU's motivations for acting over the situation in its Southern Neighbourhood were in direct reaction to the concerns of its member state Italy to halt the influx of refugees from

⁷⁷ See Art. 8 (*"EUFOR Libya shall cooperate closely with the designated United Nations coordinator(s), as well as with the designated coordinator(s) of the League of Arab States and with its Member States. [...] Consultations shall take place with the African Union as appropriate"*) and Art. 9 of Council Decision 2011/210/CFSP (*"Without prejudice to the Union's decision-making autonomy or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States, in particular the Member States of the League of Arab States, may be invited to participate in the operation"*).

⁷⁸ See the general statement by Hungary on behalf of the EU and its member states concerning the membership of Libya in the Human Rights Council of 1 March 2011, available at http://www.europa-eu-un.org/articles/en/article_10734_en.htm (last accessed on 12 April 2011); Declaration by Catherine Ashton, High Representative for Foreign Affairs and Security Policy, on behalf of the EU of 23 February 2011, available at http://www.europa-eu-un.org/articles/en/article_10704_en.htm (last accessed on 12 April 2011).

⁷⁹ See, for example, the statement by Catherine Ashton, EU High Representative for Foreign Affairs and Security Policy, following the London Conference on Libya, 29 March 2011: *"Colonel Kadhafi should relinquish power immediately in order to allow Libya to rapidly embark on an orderly transition to democracy"*. See also the overview of the EU's response to the developments in Libya at the Council's website, available at <http://www.consilium.europa.eu/showFocus.aspx?id=1&focusid=568&lang=EN> (last accessed on 11 April 2011) (*"Herman van Rompuy, President of the European Council, said that the political objectives, set by the extraordinary European Council on 11 March [2011], remained unchanged: Gaddafi must go, and the EU wants a political transition"*).

Tunisia, Egypt and Libya into Lampedusa and the Pelagic Islands. Calls for solidarity among EU member states to stop the Italian territory from being flooded with North African refugees has thus taken up a priority position in the EU's reaction to the situation in Libya⁸⁰, resulting, among other measures, in the Frontex Hermes 2011 operation⁸¹ and dramatic appeals for amending the Schengen Agreement.⁸² In this light, the decision to locate the operational headquarters of EUFOR Libya in Rome and to place the operation's command in Italian hands, is revealing.⁸³

5. Concluding remarks

The internal debate within the European Union on R2P and its divided stance on Libya externally show that a strong divergence persists on how the notion should be interpreted. The effects of this failure to clarify the notion are not limited to the conceptual plane, but extend to operations on the ground as well, as definitional issues unavoidably impact upon the practical implementation of a notion, especially one that requires coordination among such a wide range of players as does R2P. The piecemeal references to regional organisations in the context of R2P operationalisation in the latest reports of Ban Ki-moon confirm that the United Nations is still at a loss as to what role should be attributed to regional organisations in the complex task of protecting civilians during the maintenance of international peace and security. This lack of guidance at the international level reverberates regionally. The diverse nature of the manifold regional players only adds to the complexity of this task, with some that are directly involved in the conflict yet crippled by an acute lack of resources, while others may have the necessary institutional and operational capacities yet are frustrated by a lack of political willingness. The EU's support for R2P in particular is characterized by official statements paying lip service to the notion, reiterating the terms of the 2005 Summit and thus foregoing effective operationalisation of the notion in favour of maintaining a fragile consensus on an altogether narrowly defined concept. Moreover, the experience of Libya shows that the invocation of R2P within its theoretical limits need not fulfil the actual goals of the notion.

⁸⁰ See, *inter alia*, the Declaration adopted by the extraordinary European Council of 11 March 2011, paras. 10-11; Foreign Affairs Council conclusions on Libya of 21 March 2011, para. 7; Conclusions of the European Council of 25 March 2011, paras. 25-26.

⁸¹ See 'Hermes 2011 Starts Tomorrow in Lampedusa', available at http://www.frontex.europa.eu/newsroom/news_releases/art95.html (last accessed on 12 April 2011).

⁸² "France and Italy push for reform of Schengen treaty", *BBC News*, 26 April 2011, available at <http://www.bbc.co.uk/news/world-europe-13189682> (last accessed on 28 April 2011).

⁸³ Arts. 2 and 3 of Council Decision 2011/210/CFSP.

Nevertheless, the express incorporation of the responsibility to protect in the ESS implementation report and the actions of the EU in support of the UN actions on Libya are pointers of an increasing willingness of the Union to make R2P an effective dimension of its foreign and security policy. Likewise, the express reference to the concept in two binding resolutions of the UN Security Council is an important step in activating the responsibility to protect at the international level, even if the actual implementation of the resolutions show we still have a long way to go. The EU for its part should take advantage of the current political momentum to further clarify its own position on R2P and to determine for itself how best to operationalise the concept internally, so as to be able to act as a reliable partner to the UN. A unified and determined approach to R2P by the EU, one of the key partners of the UN in maintaining international peace and security, could spur the international community into developing a workable and comprehensive framework for cooperation with regional organisations, thus paving the way for an effective implementation of R2P. To this end, the EU first has to decide on a number of issues internally, however. What means and what capacities is the Union willing to commit? What extra instruments and mechanisms should be put in place? It is important to have an open and non-confrontational discussion of these questions among the 27 member states and the EU's institutions. Independent of its immediate outcomes, the challenges surrounding R2P are enormous and will necessitate a sustained political commitment for many years to come.



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