

**Association of the Bar of the City of New York
Human Rights Committee**

**The Responsibility to Protect – Inception, conceptualization,
operationalization and implementation of a new concept**

**Opening statement by Ms. Patricia O'Brien,
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**Tuesday, 7 February 2012
House of the ABCNY, 42 W 44th Street (btwn. 5th and 6th Aves.)
6:30pm – 6:50pm**

Mr. Chairman,
Colleagues and friends,
Ladies and Gentlemen,

[Introduction]

It is a great pleasure to be back at the Association of the Bar of the City of New York – for the first time in the Human Rights Committee. It's great to see some members of this Committee again who attended the evening in December last year when I was invited by the European Affairs Committee. Let me express my sincere gratitude to the Chairman of the Human Rights Committee, Mr. Steve Kass, who organized this evening. Thank you for your kind introduction.

Over the course of many years, the ABCNY has been a great supporter and a true friend of the UN Office of Legal Affairs. This is one of the reasons why it is always such a pleasure to come and discuss current legal issues facing the UN with you. Thanks for having me tonight.

Tonight, I would like to share with you some thoughts about a very interesting new political and legal concept which was the subject of a lot of discussion at the UN in the recent past, and in particular last year – the concept of the responsibility to protect, R2P.

[2011 – the year R2P became a reality]

By way of introduction, allow me to provide you with an overview of the nine situations in which the concept of the responsibility to protect has to date been invoked by United Nations inter-governmental organs. The Human Rights Council referred to R2P twice in the situation in Libya and once in the situation in Syria – each time ahead of the Security Council. The Security Council referred to R2P in connection with the situation in Libya (in resolutions 1970 in February 2011 and 1973 in March 2011). The Security Council further referred to R2P in connection with the situations in South Sudan in July 2011 (resolution 1996) and in Yemen in October 2011 (2014). R2P-like language can finally be found in the Security Council's resolutions on Côte d'Ivoire (1975 in March 2011), Somalia (2010 in September 2011), and Children in Armed Conflict (1998 in July 2011).

Before that, namely in Kenya, Kyrgyzstan, Guinea, the Democratic Republic of the Congo, and elsewhere, R2P had already become part of the UN messaging and preventive diplomacy.

I believe that this overview shows in an impressive way that 2011 was the year in which the concept of the responsibility truly came of age. The principle was tested like never before and became a powerful reality in international relations.

The results were uneven but, at the end of the day, tens of thousands of lives were saved. The United Nations gave hope to people long oppressed. By our words and actions, we demonstrated that human protection is a defining purpose of the United Nations in the twenty-first century.

How did we get there?

[Inception concept of R2P]

The concept of Responsibility to Protect was first conceived by the International Commission on Intervention and State Sovereignty. The ICISS was established in September 2000 in response to former Secretary-General

Kofi Annan's call for UN Member States to reach consensus behind 'the principle that massive and systematic violations of human rights . . . should not be allowed to stand', and set against the background of the Rwandan genocide, the ethnic cleansing in Kosovo, violent conflicts in Sierra Leone and Sudan. The ad hoc commission was created under the authority of Canadian Government during the UN Millennium Summit to "promote a comprehensive debate on the relationship between intervention and sovereignty, with a view to fostering global political consensus on how to move from polemics towards action within the international system". The concept of responsibility to protect was first articulated in the 2001 Report of the Commission, which states that:

"sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states."

These principles in essence equate the sovereignty of States with responsibility for their populations, and they place a positive obligation on the international community to assist States, where necessary, to meet those obligations.

Since its inception the concept of R2P was criticised as humanitarian intervention by another name. This is a misunderstanding of the concept of R2P, as it fundamentally differs from humanitarian intervention. The latter focuses on intervention and military action, whereas R2P concentrates primarily on prevention and protection with a special emphasis on peaceful means of conflict resolution. Humanitarian intervention limits sovereignty, whereas R2P reinforces it while reformulating sovereignty as responsibility. The starting point for such reformulation is the UN Charter. Membership in the UN necessarily involves a re-characterisation of the notion of sovereignty from sovereignty as control to sovereignty as responsibility. It is also important to keep in mind that R2P does not create any additional exceptions to the universal prohibition of the use of force other than those explicitly provided by the Charter. In the final assessment, R2P nurtures a culture of prevention.

[Conceptualization of R2P]

Since 2001 the concept of Responsibility to Protect has undergone a transition from an idea to a doctrine. It was extensively debated by the High-Level Panel on Threats, Challenges and Change, which established in 2003 by Secretary-General Annan, was mandated to analyse, among other things, the collective action in response to challenges to peace and security. In December 2004, the Panel delivered its report, "*A More Secure World: Our shared responsibility*", which contained 101 recommendations, including the endorsement of "*the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent*" (para. 203).

Subsequently, Responsibility to Protect was accepted and endorsed by the Secretary-General in his 2005 Report "*In Larger Freedom*". The SG urged Heads of State and Government to recommit themselves to supporting the rule of law, human rights and democracy - fundamental principles at the very heart of the Charter of the United Nations and the Universal Declaration of Human Rights.

Against this background, more than 150 Heads of State and Government at the 2005 World Summit unanimously affirmed the "Responsibility to Protect". The General Assembly Resolution agreed upon at the World Summit provides that "[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity". It further states that the international community, through the United Nations, also has the responsibility to provide such protection, when national authorities "manifestly fail to protect their populations" from the four specified crimes and violations, commonly referred now to as "R2P crimes". The focus is on prevention of these crimes and protection of civilians must be a corollary of protection.

[Operationalization of the concept of R2P]

While an extensive debate on the conceptualization of the R2P doctrine took place before the General Assembly adopted its framework in 2005, the task of operationalizing R2P fell to Secretary-General Ban Ki-moon when he took office on 1 January 2007. During his first term in office, significant progress was achieved on this issue. In his January 2009 report on "*Implementing the responsibility to protect*", the Secretary-General identified three pillars for advancing the World Summit's landmark decision in this area: Pillar One on the responsibility of States to protect their own population; Pillar Two on "International assistance and capacity-building" to assist States to protect their population before crises and conflicts escalate to the level of a likely commission of the R2P crimes; and Pillar Three on a "timely and decisive response" by the international community where States are not able or willing to protect their population. Collective action should be taken in a "timely and decisive manner through the Security Council, in accordance with the Charter, including Chapter VII" in cooperation with relevant regional organizations as appropriate when national authorities "manifestly fail to protect their populations" from the four specified crimes and violations.

In August 2010, the Secretary-General addressed an informal interactive General Assembly dialogue on "Early warning, assessment and the responsibility to protect" as part of the General Assembly's continued consideration of the emerging concept. His report on the matter underscores existing early warning and assessment mechanisms within the UN system, identifies gaps and proposes ways to improve the UN's ability to use available early warning information effectively.

In July 2011, the General Assembly held another informal interactive dialogue on "The role of regional and sub-regional arrangements in implementing the responsibility to protect". The Secretary-General's report that followed the debate highlights the importance of effective global-regional collaboration for realizing the promise of protection embodied in the R2P concept. The report identifies gaps and recommends solutions for the UN to

enhance its cooperation and ability to undertake or support timely and effective preventive action at the sub-regional, regional, or global level.

[Implementation and practice of the concept of R2P]

At the same time, the upheaval in Northern Africa and the Middle East – commonly referred to as the “Arab Spring” - brought about significant developments which put the concept of R2P to a practice test.

The “Arab Spring” has been marked by appalling violence committed by Governments against their own citizens, and represents a clear failure by them to carry out their protection responsibilities under pillar one. Situations throughout the Arab world have highlighted the challenges involved in operationalizing R2P across the three pillars. The international community, represented by the UN, together with interested States, have taken a series of measures under pillars two and three in order to either assist governments and transitional authorities to meet their responsibilities vis-à-vis their populations, or to intervene to protect populations from the R2P crimes and violations.

Measures have been taken under pillar two to assist national authorities to protect their populations in Egypt, Tunisia, Yemen and Syria.

In Egypt and Tunisia, the extreme violence came to an end and the countries are in transition to become democratic societies, including the holding of elections, and to develop constitutional frameworks, which will hopefully prevent a relapse into conflict. Unfortunately, this cannot be said about Yemen and Syria.

Regarding Yemen, the Security Council encouraged an expedited implementation of a political settlement negotiated with strong assistance by the Secretary-General’s good offices. The challenge ahead continues to be the implementation in good faith of this settlement agreement. The Secretary-General continues his good offices in this regard, through his Special Adviser Jamal Benomar who is consistently advised by my Office.

Regarding Syria, the situation continues to be deeply troubling. The Government has ignored a number of deadlines set by the League of Arab States and numerous calls by others to stop the brutal and bloody crackdown on anti-government protestors.

On 2 December last year, the Human Rights Council met in Special Session to consider the report of the Commission on Inquiry. It adopted a resolution that sent a very clear message to Damascus to finally stop the killing and human rights violations.

In a parallel development the General Assembly adopted a resolution on the situation of human rights in Syria which strongly condemns the continued grave and systematic human rights violations by the Syrian authorities and authorized the Secretary-General to provide support to the League of Arab States Observer Mission to the Syrian Arab Republic.

Credible reports from a variety of sources indicate that the total number of people killed since the protests began in March 2011 now probably exceeds 5,400, including over 300 children. Many sources allege that crimes against humanity have been committed in Syria. Sadly, these allegations are very credible.

The Security Council is actively seized of the matter but so far has not been able to agree on a comprehensive strategy on how to resolve this situation. However, Syria remains very high on the agenda of the Arab League and the Gulf Cooperation Council and of the Security Council.

With regard to Libya, efforts to operationalize R2P culminated in the Security Council's adoption of two resolutions in 2011 (SCR 1970 and SCR 1973). These are the first fully-fledged "R2P resolutions". When passed, it should be remembered that Qaddafi's forces were threatening to annihilate those Libyans who were challenging his 42 years grip on power. Resolutions 1970 and 1973 recognize the responsibility of the Libyan authorities to protect the Libyan population (pillar one). They identify the wide-spread and systematic attacks in Libya as "crimes against humanity", thus framing them within the "R2P crimes".

The lead-up to resolution 1973 saw numerous “diplomatic, humanitarian and other peaceful means” taken by the Secretary-General, States and regional arrangements to protect civilians under “pillar two”. Eventually, in the words of paragraph 139 of the 2005 World Summit Outcome resolution, Member States took collective action in accordance with Chapter VII and upon authorisation of the Security Council (pillar three). This Security Council resolution and its authorization “to take all necessary measures … to protect civilians and civilian areas under threat” is the most explicit and robust application of the R2P doctrine to date.

On 16 September 2011, the Security Council adopted resolution 2009 (2011). The Council mandated a civilian mission (UNSMIL) to assist Libya in establishing a democratic system of governance based on the rule of law. Targeted sanctions were lifted to support Libya’s post-conflict economic and social recovery.

[Assessment of the recent practice]

While it might still be premature to pass an overall assessment of the actions by the international community under “R2P” in the context of Libya, it has to be noted that these actions, undertaken both via the UN and other multilateral and bilateral efforts, have been swift and targeted.

Against this theoretical and factual background it appears clear that the “rule of law” at both the international and national levels lie at the heart of the Responsibility to Protect, and it proves useful in understanding the course of action needed under these three pillars of R2P.

Under the first pillar, there is a need for States to become parties to relevant international instruments on human rights, IHL and refugee law, and to the ICC Statute; and the core international standards need to be faithfully embodied in national legislation and implemented. Full implementation of the obligations contained in the Charter of the United Nations, and in other international instruments, is central to collective efforts at maintaining international peace and security, effectively fighting the growing problem of

terrorism and transnational organized crime, and closing off accountability gaps for the most serious international crimes. The presence of a strong culture of rule of law in a society may prevent or minimize the risk of deterioration into an “R2P” situation.

Under the second pillar, there is a need for assistance programmes to build specific capacities, including legal institutions and judicial capacities, within societies that would make them less likely to travel the path to crimes relating to the responsibility to protect.

Under the third pillar, emphasis is needed on all the available tools provided under the Charter, notably in Chapters VI, VII and VIII, and thus includes the use of force where authorised by the Security Council. As I already mentioned, it is important to underline that R2P does not provide a third exception to the Charter prohibition on the threat or use of force against the territorial integrity or political independence of any state – the other two exceptions being acts in self-defence (Art 51), and acts authorized by the Security Council (Articles 2(4) and 42). The Responsibility to Protect does not create any additional exceptions to the prohibition on the use of force, and is not - as popularly misconstrued - another way of talking about “humanitarian intervention”

Finally, while the implementation of R2P in any particular situation is susceptible to political considerations, it is nonetheless a significant political acknowledgment by the international community that sovereignty entails responsibility, and that the international community has a responsibility to act to assist States to protect their populations. The clear focus of our efforts in implementing R2P must be on prevention.

In a landmark speech on 4 October 2011, the Secretary-General outlined his vision for the future of R2P placing a particular emphasis on prevention: “Yet human protection begins with prevention. We far prefer early engagement to late intervention. We prefer helping States succeed to responding when they fail. Our challenge now is to help these societies successfully manage their transitions, and build the foundation they need to ensure that the gains they have achieved are irreversible, and that the peace

they have found is sustainable. That foundation lies in the rule of law." End of quote.

In a recent speech on 18 January 2012 on the occasion of the 10th anniversary of the ICISS report, the Secretary-General further developed his ideas on effectively implementing the concept of R2P. He concluded – and I cite again – that: "The world has embraced the Responsibility to Protect — not because it is easy, but because it is right. We therefore have a moral responsibility to push ahead. Together, let us work... with optimism and determination... to make the Responsibility to Protect a living reality for the peoples of the world."

[Conclusion]

Ladies and Gentlemen,

This last reference brings me to the conclusion of my opening remarks. Thank you very much for your kind attention and I now look forward to hearing your comments and to discussing with you.