

The European Union and the Responsibility to Protect

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The European Union (EU) has committed itself to the promotion and the implementation of the Responsibility to Protect (R2P) in political statements, most recently in the EU Global Strategy. When taking a closer look at the activities of the EU in the context of humanitarian crises that can be brought within the R2P framework, the strength and effectiveness of the EU's support might be questioned. This article examines the EU's interest in the R2P by addressing the factors that inspired the EU's openness towards the concept and by examining whether the EU's commitment to the R2P falls within its general ambitions to contribute to international security or whether the EU is placing human suffering at the core of its considerations. In addition, this article questions to what extent the EU is capable of pursuing its own interest in the R2P and to what extent the EU is held back in implementing its commitment to the R2P by differing EU Member State approaches. It will be shown that the EU is strongly committed to fulfilling its collective responsibilities in partnership with the United Nations and that the focus of the EU's activities has been put on atrocity prevention.

1 INTRODUCTION

The Responsibility to Protect (R2P) is comprised of three interlinked pillars – pillar one on the ‘protection responsibilities of the state’, pillar two on ‘international assistance and capacity building’ and pillar three on a ‘timely and decisive response’.¹ Under the concept of the R2P which has been endorsed by the United Nations (UN) in the 2005 World Summit² and which is being further developed through reports of the UN Secretary-General, states bear the primary responsibility to protect their population from genocide, war crimes, ethnic cleansing and crimes against humanity.³ The international community, which is not limited to states as traditional actors in international law but also includes regional organizations, is asked to assist states so that they are well-positioned to fulfil their protection responsibilities.⁴ In case a state is

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¹ Report of the Secretary-General, *Implementing the Responsibility to Protect*, A/63/677 (12 Jan. 2009), at paras 11–12.

² UN General Assembly, *2005 World Summit Outcome*, A/RES/60/1 (24 Oct. 2005), at paras 138–39.

³ Secretary-General, *supra* n. 1, at para. 11(a).

⁴ *Ibid.*, at para. 11(b).

manifestly failing to protect its population from the so-called atrocity crimes,⁵ the international community is asked to step in to end severe and grave violations of human rights.⁶

The European Union (EU) has committed itself to the R2P in political statements, most recently in the *EU Global Strategy* (EUGS) and in the *New European Consensus on Development*.⁷ When taking a closer look at the EU's activities in the context of humanitarian crises that can be brought within the framework of the R2P, the strength and effectiveness of the EU's commitment in fulfilling its collective responsibility under the R2P might be questioned. The EU has not conducted a military crisis management operation to stop atrocity crimes, yet and has often appeared to be unable to speak with a strong voice during the humanitarian crisis in Libya in 2011 and during the ongoing Syrian conflict. The lack of military engagement of the EU in the context of Libya, which is often considered to be the first time the UN Security Council authorized the use of force in the name of R2P,⁸ and the non-use of military measures in Syria, are underlined by the preparedness of individual EU Member States to militarily act outside the EU's Common Security and Defence Policy (CSDP) in the spirit of the R2P.

In the context of the Libyan crises, EU Member States' differing national economic and political interests in the country became apparent.⁹ Germany, a non-permanent UN Security Council member at the time, had abstained from a vote in the UN Security Council, while the permanent members France and the UK supported a military intervention.¹⁰ Nine EU Member States contributed to

⁵ See e.g. Report of the Secretary-General, *Responsibility to Protect: From Early Warning to Early Action*, A/72/884-S/2018/525 (1 June 2018), at n. 1. Ethnic cleansing is not an international crime but it includes acts that can constitute a crime specified under international criminal law, in particular crimes against humanity and genocide.

⁶ Secretary-General, *supra* n. 1, para. 11(c).

⁷ EU, *Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union's Foreign and Security Policy* 42 (June 2016); 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, *The New European Consensus on Development: 'Our World, Our Dignity, Our Future'*, para. 66 (2017).

⁸ See UN Security Council Resolution 1970 (2011) and UN Security Council Resolution 1973 (2011). In 2013, the European Parliament viewed UN Security Council Resolution 1973 to make explicit reference to the R2P. See European Parliament, *European Parliament Recommendation to the Council of 18 Apr. 2013 on the UN Principle of the 'Responsibility to Protect' ('R2P')*, (2012/2143(INI)), P7_TA(2013)0180 (2013).

⁹ T. Haesebrouck & M. Van Meir Venne, *EUFOR RCA and CSDP Crisis Management Operations: Back on Track?*, 20(2) Eur. Foreign Aff. Rev. 267–85, 272–73 (2015).

¹⁰ P. Norheim-Martinsen, *The European Union and Military Force: Governance and Strategy* 182 (Cambridge University Press 2013); J. Wouters, P. De Man & M. Vincent, *The Responsibility to Protect and Regional Organisations: Where Does the European Union Stand?*, in *Responsibility to Protect: From Principle to Practice* 247–70, 262 (J. Hoffman & A. Nollkaemper eds, Pallas Publications–Amsterdam University Press 2012).

NATO Operation Unified Protector.¹¹ In light of the atrocities committed in Syria, some EU Member States domestically discussed the use of force against the Assad regime in 2013.¹² In April 2018, in reaction to the alleged use of chemical weapons and following further failed attempts to acquire UN Security Council authorization, the UK and France, together with the US, carried out targeted airstrikes on chemical weapons facilities in Syria, aimed at stopping the use of chemical weapons against the civilian population.¹³

The diverging interests and preferences of EU Member States in the R2P impacted on the EU's choice of crisis management measures. Short of the use of force, the EU fulfilled its collective responsibility in Libya through the adoption of restrictive measures, long-term stabilization initiatives, and humanitarian assistance.¹⁴ In the context of the humanitarian crisis in Syria, the EU has expressed its commitment to the R2P through the adoption of economic sanctions and currently acts as the 'main humanitarian donor for Syrians, with over EUR 16.9 billion mobilized collectively with EU Member States in humanitarian, development, economic and stabilization assistance'.¹⁵ So far, the EU has avoided strong comments on unilateral EU Member State activities outside the EU framework. In the context of the use of force in Syria without a UN Security Council authorization, the EU was careful in its reaction and the High Representative for Foreign Affairs and Security Policy expressed the support 'of all efforts aimed at the prevention of the use of chemical weapons', highlighting that '[a]ccountability is a must', and at the same time stressing the need for a political solution to the Syrian conflict.¹⁶

The EU's cautious reaction generates a number of questions for the EU's relationship with the R2P. They relate in particular to the identification of the EU's interest in the R2P as a regional organization, and to what extent the EU is capable of pursuing its own interest in the R2P and to what extent the EU is held back in implementing its commitment to the R2P by differing Member State

¹¹ Belgium, Bulgaria, France, Greece, Italy, the Netherlands, Spain, Romania and the UK.

¹² A. Henriksen & M. Schack, *The Crisis in Syria and Humanitarian Intervention*, 1(1) *J. on the Use of Force & Int'l L.*, 122–47, 126–27 (2014). On the UK's debate, see C. Henderson, *The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government*, 64(1) *Int'l & Comp. L. Q.*, 179–96 (2015).

¹³ Security Council Report, *What's in Blue, Insights on the Work of the UN Security Council, Syria: A Council Divided* (17 Apr. 2018), www.whatsinblue.org/2018/04/syria-a-council-divided.php.

¹⁴ J. Schmidt, *The European Union and the Responsibility to Protect: The Case of Libya, Syria and Mali*, in *Beyond Responsibility to Protect: Generating Change in International Law* 123–45, 138–40 (R. Barnes & V. Tzevelekos eds, Intersentia 2016); EU, *EU-Libya Relations* (Factsheet), Unique ID: 170125_11 (Brussels 9 Nov. 2018).

¹⁵ Schmidt, *supra* n. 14, at 142–44; EEAS, *EU Response to the Syrian Crisis* (Factsheets), Unique ID: 170314_11 (Brussels 8 Mar. 2019).

¹⁶ *Declaration by the High Representative Federica Mogherini on Behalf of the EU on Strikes in Syria*, Press Release 196/18 (14 Apr. 2018).

approaches to the R2P. The identification of the EU's interest in the R2P in this contribution is based on insights gained by conducting interviews with members of the European Parliament (EP), with policy officers of the European External Action Service (EEAS), and with representatives of selected European Member States, including members of the national Parliament of the Federal Republic of Germany (German Bundestag) and the UK Parliament's House of Lords. The detection of the EU's motives, driving forces and limitations behind expressing its commitment to the R2P can serve as indicators for the general role and functions the EU will take on in its external relations and as a member of the international community in the future and will shed light onto the effectiveness of the EU's commitment to the R2P.

Before discussing the EU's interest in the promotion and the implementation of the R2P in more detail, the next section will outline the collective aspects of the R2P and the general role assigned to regional organizations as members of the international community. This will be followed by a brief look at the EU's place within the R2P framework whose focus on conflicts and crises outside its own region and outside its own membership is unique. The third section will analyse the EU's interest in the R2P by addressing the factors that inspired the EU's openness towards the concept and by examining whether the EU's commitment to the R2P falls within its general ambitions to contribute to international security – and thereby to European regional stability, or whether the EU perceives its contribution to the R2P as a question of solidarity and is thereby placing human suffering at the core of its considerations. The final section of the article will scrutinize to what extent the EU can pursue its own interest in the R2P and to what extent the diverging interests of its Member States are preventing the EU from forming and implementing a strong stance on the R2P in specific humanitarian crises, facilitated by the distribution of competences between the EU and its Member States in the EU's external relations.

2 THE COLLECTIVE ASPECTS OF THE RESPONSIBILITY TO PROTECT AND THE ROLE OF REGIONAL ORGANIZATIONS AS MEMBERS OF THE INTERNATIONAL COMMUNITY

The concept of the R2P is still subject of much controversy, despite celebrating its tenth anniversary in 2015. The debate centres on its nature, namely whether it is a legal, a moral or a political concept and the partly interlinked question regarding its precise content. The latter discussion includes a variety of topics, and in particular whether the R2P entails not only a right but even an obligation to intervene in order to protect populations from serious harm; whether the R2P is restricted to genocide, ethnic cleansing, war crimes and crimes against humanity; and whether

and if so to what extent the R2P represents something entirely new within the international legal framework.¹⁷ In general, the EU links its commitment to the R2P to the development of the concept at the level of the UN,¹⁸ and it is this framework which will be analysed with regards to the role assigned to regional organizations in implementing the R2P in the following.

By the UN Secretary-General, the R2P has been described as a political concept¹⁹ that is deeply rooted in existing international law, including international human rights law, international humanitarian law as well as refugee law.²⁰ The UN has adopted a ‘narrow but deep’ approach to the R2P which signifies that the concept only applies to the four atrocity crimes explicitly mentioned in the *World Summit Outcome Document* but that the response to the atrocity crimes should be broad and could employ ‘the wide array of prevention and protection instruments available to Member States, the United Nations system, regional and sub-regional organizations and their civil society partners’.²¹ Possible responses could include ‘appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter’ and ‘collective action’ in accordance with Chapter VII of the UN Charter.²²

Of significance is that the R2P is understood not just as the individual responsibility of states but also as a ‘collective’ one.²³ The collective responsibility to help protect populations from atrocity crimes is focusing on ‘the responsibility that a variety of actors have, at different levels, to assist in protecting potential victims’,²⁴ through assisting states in meeting their core protection responsibilities in a supplementary fashion.²⁵ Unlike the controversially discussed right to humanitarian interventions, the R2P does not focus on a military response but lies on prevention initiatives and on peaceful measures.²⁶ Assistance and capacity building

¹⁷ G. De Baere, *The EU and the Responsibility to Protect*, in *The EU’s Role in Global Governance: The Legal Dimension* 95–109, 96–99 (B. Van Vooren, S. Blockmans & J Wouters eds, Oxford University Press 2013); C. Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?* 101(1) *Am. J. Int’l L.*, 99–120 (2007).

¹⁸ The *EU Priorities for the 64th General Assembly of the United Nations*, e.g. expressed the EU’s support for the UN Secretary-General’s efforts in implementing R2P ‘within the UN’ and acknowledged his balanced three pillar strategy. See Council of the EU, Political and Security Committee, *EU Priorities for the 64th General United Nations General Assembly*, 10809/09, at annex para. 8 (Brussels 9 June 2009).

¹⁹ Report of the Secretary-General, *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect*, A/68/947 – S/2014/449, at para. 2 (11 July 2014).

²⁰ Report of the Secretary-General, *Responsibility to Protect: Timely and Decisive Response*, A/66//874-S/2012/578, A/66//874-S/2012/578, at para. 9 (25 July 2012).

²¹ Secretary-General, *supra* n. 1, at paras 10(c), 11. UN General Assembly, *supra* n. 2, at para. 138.

²² UN General Assembly, *supra* n. 2, at para. 139.

²³ Report of the Secretary-General, *Early Warning, Assessment and the Responsibility to Protect*, A/64/864 (14 July 2010), at para. 12.

²⁴ Secretary-General, *supra* n. 19, at para. 13.

²⁵ Secretary-General, *supra* n. 1, at para. 14.

²⁶ General Assembly, *supra* n. 2, at paras 138–39; Secretary-General, *supra* n. 1, at para. 11(b); Secretary-General, *supra* n. 19; Secretary-General, *supra* n. 20, at paras 3, 19.

by the international community are closely connected to prevention.²⁷ Prevention in itself is a broad concept, including long term structural initiatives as well as short-term operational responses applied to avoid the escalation of atrocities at an early stage.²⁸

Preventive and responsive action in the spirit of the R2P is understood by the UN to be most effective when carried out in partnership with ‘regional actors’.²⁹ Although regional organizations have the potential to contribute to all three pillars of the R2P, their key strength is seen to lie in their ability to help states in building and exercising their sovereignty responsibly, thereby limiting the need for third parties to intervene in order to stop atrocity crimes. Regional organizations can assist states by identifying their existing obligations under public international law and they can help to monitor and address internal tensions before they escalate into atrocity crimes.³⁰ Regional organizations can contribute to structural prevention initiatives through the ‘development of norms, standards and institutions that promote tolerance, transparency, accountability, and the constructive management of diversity’.³¹ Although the R2P is understood to be a ‘universal principle [...] each region will operationalize the principle at its own pace and its own way’,³² building ‘on the normative traditions and institutional capacities that already exist in each region and culture’.³³

The terminology of ‘regional ownership’³⁴ already indicates that regional organizations are attributed with a special responsibility towards their own region and their own Member States as part of the collective aspects of the R2P. This understanding of a special collective responsibility is influenced by the perceived closeness of regional actors to their Member States and in a heightened interest in keeping their own region stable.³⁵ Regional organizations are understood to have a greater awareness of when tensions within the region are intensifying and when and how the international community could step in to help.³⁶ This special collective responsibility of regional organizations for their own region and their

²⁷ Secretary-General, *supra* n. 19.

²⁸ Report of the Secretary-General, *The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect*, A/65/877 – S/2011/393, at para. 21 (28 June 2011).

²⁹ Secretary-General, *supra* n. 20, at para. 20.

³⁰ Secretary-General, *supra* n. 28, at para. 17.

³¹ *Ibid.*, at para. 23.

³² *Ibid.*, at para. 8.

³³ *Ibid.*, at para. 26.

³⁴ *Ibid.*, at para. 8.

³⁵ The intra-regional focus of the R2P also becomes visible in the Secretary-General’s Report on *Responsibility to Protect: From Early Warning to Early Action*, *supra* n. 5, at para. 46(c) which asks regional arrangements to ‘Support their Member States’. See also Report of the Secretary-General, *Mobilizing Collective Action: The Next Decade of the Responsibility to Protect*, A/70/999-S/2016/620, at para. 59 (22 July 2016).

³⁶ Secretary-General, *supra* n. 28, at para. 24.

own membership is reflected in the legal framework provided for in the UN Charter.³⁷ Regional organizations have been attributed with the primary responsibility to settle local disputes peacefully,³⁸ and this responsibility is restricted to a regional actor's own sphere of membership.³⁹

This is not to say that regional organizations are not addressed by the collective aspects of the R2P when non-Member States are in need of help.⁴⁰ The R2P is perceived to be a 'continuing responsibility to support policies that are directed at atrocity crime prevention and response' which is best tackled in partnership with other international actors.⁴¹ Therefore, if states or regions that are closer to a specific situation are already engaged, more distant observers are not cleared of their collective responsibility.⁴² In some scenarios, actors that are not in close proximity to a crisis might even have a more balanced perspective, being less influenced by political as well as economic bias.⁴³

The responsibility of regional organizations in contributing to the prevention of atrocity crimes outside their membership is also in line with the framework of the UN Charter. Accordingly, regional organizations can offer peaceful methods of dispute resolution, including dialogue, mediation, negotiation or good offices, based on the consent of the parties to a dispute.⁴⁴ In case a response is required, regional organizations need to be authorized by the UN Security Council to use military force.⁴⁵ When putting on the perspective of the R2P, the difference between a regional organization's special collective responsibility in relation to its own region and its own Member States on the one hand and a regional organization's general collective responsibility to prevent atrocity crimes wherever they might occur, can be seen in the heightened political and moral pressure that can be created if a regional organization would turn a blind eye to an intra-regional crisis.⁴⁶

³⁷ Schmidt, *supra* n. 14, at 132.

³⁸ Arts 33(1), 52(2) UN Charter.

³⁹ J. Schmidt, *Regional Security and International Law*, in *Security and International Law* 69–92, 78–79 (J. Schmidt, M. E. Footer, N. D. White & L. Davies-Bright eds, Hart 2016).

⁴⁰ J. Schmidt, *The EU-UN Partnership in Light of the Responsibility to Protect*, in *The EU, Strategy and Security Policy: Regional and Strategic Challenges* 135–49, 140, 135 (L. Chappell, J. Mawdsley & P. Petrov eds, Routledge 2016).

⁴¹ Secretary-General, *supra* n. 19, at para. 20.

⁴² *Ibid.*

⁴³ *Ibid.*, at para. 23; Secretary-General, *supra* n. 28, at para. 24.

⁴⁴ Art. 33(1) UN Charter.

⁴⁵ Arts 42, 48; 53(1) UN Charter. See also N. D. White, *The EU as a Regional Security Actor Within the International Legal Order*, in *European Security Law* 329–49, 342–44 (M. Trybus & N. D. White eds, Oxford University Press 2007). In favour of 'regional organizations as alternative authorising mechanisms' is B. Adediran, *Implementing R2P: Towards a Regional Solution?*, 9(4) *Global Resp. to Protect* 459–87 (2017).

⁴⁶ For a discussion on the allocation of responsibilities within the R2P, see T. Erskine, *Moral Agents of Protection and Supplementary Responsibilities to Protect*, in *The Oxford Handbook on the Responsibility to Protect* 167–86 (A. J. Bellamy & T. Dunne eds, Oxford University Press 2016).

3 THE EU'S PERSPECTIVE ON THE RESPONSIBILITY TO PROTECT

When turning to the EU's perspective on the R2P, it becomes apparent that in political statements, the EU supports the R2P and highlights the shared responsibility it holds with other actors of the international community.⁴⁷ The focus of the EU's commitment to the R2P is put on states and regions outside its membership. The EUGS provides that:

[w]e will therefore act promptly to prevent violent conflict, be able and ready to respond responsibly yet decisively to crises, facilitate locally owned agreements, and commit long-term. We will take responsibility foremost in Europe and its surrounding regions, while pursuing targeted engagement further afield. We will act globally to address the root causes of conflict and poverty, and to champion the indivisibility and universality of human rights.⁴⁸

It is this outward-looking perspective in its commitment to the R2P which sets the EU apart from other regional organizations such as the African Union, for example.⁴⁹ With its comprehensive approach to crisis management, which covers the whole life cycle of a crisis, from conflict prevention to post-conflict stabilization, and which utilizes a variety of peaceful and coercive measures, including development cooperation, humanitarian aid, trade, political and diplomatic tools, as well as economic sanctions, and military operations,⁵⁰ the EU's crisis management concept is well-suited for the R2P's 'narrow but deep' approach adopted at the UN level. The same can be said for the EU's preferences for prevention initiatives that are either short term or long term in nature.⁵¹

Nevertheless, the EU's outward looking focus on the R2P which is in line with a regional organization's general collective responsibility within the R2P framework, raises questions about the EU's specific interest in the R2P. It might be wondered whether the EU's commitment to the R2P outside its own region and outside its own membership is merely putting on a new label on its traditional external policy objectives and crisis management activities without providing anything substantially new. The EU's increased institutional engagement with the R2P and the centre stage the R2P takes in the EUGS indicate otherwise.

⁴⁷ General Secretariat of the Council of the EU, J. Solana, *Report on the Implementation of the European Security Strategy: Providing Security in a Changing World*, S407/08, at 2, 12 (Brussels 11 Dec. 2008); EU, *supra* n. 7, at 17–18, 42; Council of the EU, *Council Conclusions on the Integrated Approach to External Conflicts and Crises*, 5431/18, at para. 4 (Brussels 22 Jan. 2018); see also *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*, *supra* n. 7, at para. 66.

⁴⁸ EU, *supra* n. 7.

⁴⁹ Constitutive Act of the African Union, Art. 4(h).

⁵⁰ European Council, *A Secure Europe in a Better World: European Security Strategy* 7, 11 (Brussels 12 Dec. 2003), <http://consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

⁵¹ *Ibid.*, at 11; EU, *supra* n. 7, at 18.

3.1 INCREASED INSTITUTIONAL ACTIVITY AND THE EU GLOBAL STRATEGY

In recent years, the EU institutions are increasingly engaging with the R2P. Amongst them, in particular the EP and the EEAS are involved in the promotion for the respect of the R2P.⁵² In 2013, the EP adopted recommendations on the R2P addressed to all actors involved in the EU's external relations, including the High Representative of the Union for Foreign Affairs and Security Policy, the EEAS, the Commission, the Council and the EU Member States. The recommendations emphasized the prevention component of the R2P, including mediation and preventive diplomacy and called for the EU to 'continue to play a leadership role' in this field.⁵³ In addition, the EP called for the identification of 'an EU Focal Point for R2P in the EEAS'.⁵⁴ The topic of the R2P is regularly featuring on the agenda of the EP.⁵⁵

Within the EEAS, a Focal Point on the R2P has now been created, signifying the importance assigned to the R2P by the EU. The EU's engagement with the R2P is based on a close working relationship with the UN. Members of the EP and of the EEAS consult and communicate with the UN Secretary-General's Special Advisor on the Responsibility to Protect.⁵⁶ Through the sharing of good practices and lessons learned, the EU contributes to the further development of the concept of the R2P at the international level. The EU's efforts in implementing the R2P have been positively received in the UN Secretary-General's 2018 report on *The Responsibility to Protect: From Early Warning to Early Action*.⁵⁷

It is not only the increased institutional awareness and sensitivity for the R2P within the EEAS and the EP which point towards the importance of the R2P debate for the EU as an international actor. Although the term 'Responsibility to Protect' is mentioned in the EUGS only once,⁵⁸ the terminology and content of the EU's comprehensive security strategy reveals a strong influence of the R2P debate at the level of the UN. For example, the EUGS expresses the EU's aim to promote resilient states and societies in its neighbouring regions, including Central Africa and Central Asia, based on the notion that '[a] resilient state is a secure state,

⁵² See e.g. European Parliament, *European Parliament Resolution of 4 July 2017 on Addressing Human Rights Violations in the Context of War Crimes, and Crimes Against Humanity, Including Genocide*, (2016/2239 (INI)), P8_TA(2017)0288; European Parliament, *European Parliament Recommendation of 5 July 2018 to the Council on the 73rd Session of the United Nations General Assembly* (2018/2040(INI)), P8_TA-PROV (2018)0312.

⁵³ European Parliament, *supra* n. 8, at paras N, O.

⁵⁴ *Ibid.*, at para. 1(h).

⁵⁵ See e.g. European Parliament, *European Parliament Resolution of 4 Feb. 2016 on the Systematic Mass Murder of Religious Minorities by the so-called 'ISIS/Daesh'*, (2016/2529(RSP)), P8_TA(2016)0051.

⁵⁶ Interview with the advisor of a political group in the EP (Feb. 2018); interview with EEAS policy officers (Mar. 2018).

⁵⁷ Secretary-General, *supra* n. 5, at para. 13.

⁵⁸ EU, *supra* n. 7, at 42.

and security is key for prosperity and democracy'.⁵⁹ As part of its contribution to 'more stable and peaceful societies', the EU has committed itself to the protection of children in armed conflict, for example, and has supported initiatives designed to prevent their recruitment and use, to support the release of child soldiers as well as their reintegration into society, and is supporting UN efforts in this context.⁶⁰

The EU's ambition is aimed at supporting 'inclusive and accountable governance' based on the rule of law as a key to creating an atmosphere in which communities are not repressed or marginalized and in which human rights are protected.⁶¹ The EU's emphasis on resilience is linked to the EU's increased focus on local or regional ownership and becomes visible in the *Africa-EU Strategic Partnership*, for example.⁶² In 2013, when the EP stressed cooperation between regional organizations as an important element of the R2P, it also expressed its support for the promotion of 'African ownership of R2P'.⁶³

Rather than interpreting the references to resilience and local or regional ownership as a weakened commitment to the R2P, indicating a re-distribution of responsibilities away from the EU to other communities, the EU's terminology echoes the UN Secretary-General's common principles on assistance, which have been designed to guide the efforts of members of the international community in fulfilling their collective responsibility under the R2P.⁶⁴ Based on past experience, international assistance is viewed by the UN to be more impactful 'when aligned with national priorities'.⁶⁵ The emphasis on national ownership rests on the assumption that '[n]ational actors are usually best placed to identify risk factors for atrocity crimes and to develop effective mitigation strategies'.⁶⁶ The success of a state in protecting its population is considered to be dependent 'on the

⁵⁹ *Ibid.*, at 23.

⁶⁰ EEAS, Statement on behalf of the EU and its Member States by Mr Gerton Van den Akker, *EU Statement at the Security Council Open Debate on 'Children and Armed Conflict'*, Unique ID: 180709_13 (9 July 2018); EEAS, Statement on Behalf of the EU and Its Member States by Mr Gustavo Martin Prada, *United Nations Security Council Arria-Formula Meeting on Protecting Boys and Girls in Shrinking Humanitarian Space*, Unique ID: 190212_13 (12 Feb. 2019); EEAS, *Joint Statement by HRVP Federica Mogherini and UN Special Representative for Children and Armed Conflict Virginia Gamba on the International Day Against the Use of Child Soldiers*, Unique ID: 190212_8 (12 Feb. 2019). UN Security Council Resolution 2427 (2018).

⁶¹ EU, *supra* n. 7, at 26.

⁶² Council of the EU, *The Africa-EU Strategic Partnership: A Joint Africa-EU Strategy*, 16344/07, at paras 6, 18 (Presse 291) (Lisbon 9 Dec. 2007). The strategy refers to the 'principle of African ownership'. See also EEAS, Statement of the EU and Its Member States by H. E. Mr João Vale de Almeida at the UN Security Council Open Debate, *Silencing the Guns in Africa: Cooperation Between the United Nations and Regional Organizations*, Unique ID: 190227_25 (27 Feb. 2019).

⁶³ European Parliament, *supra* n. 8, at para P.

⁶⁴ Secretary-General, *supra* n. 19, at paras 13, 14. For a critical view on 'resilience', see W. Wagner & R. Anholt, *Resilience as the EU Global Strategy's New Leitmotif: Pragmatic, Problematic or Promising?*, 37(3) *Contemp. Sec. Pol'y* 414–30 (2016).

⁶⁵ Secretary-General, *supra* n. 19, at para. 14(a).

⁶⁶ *Ibid.*

commitment of national actors to fulfil their responsibility’ and that ‘[w]here a genuine will to build resilience is lacking at the national level [...] the potential contribution of outside actors will be limited’.⁶⁷ Thus, the wording of the EUGS which serves as guidelines for the EU’s engagement with the wider world, reveal the EU’s strong commitment to the R2P.

3.2 THE EU’S INTEREST IN THE RESPONSIBILITY TO PROTECT

In order to assess the EU’s motivation behind its support for the R2P and to uncover the EU’s specific interest in the R2P, the next section will question whether the EU’s commitment to the R2P is part of its general ambitions to contribute to international security – and thereby to European regional stability, or whether the EU perceives its contribution to the R2P as a question of solidarity and is thereby placing human suffering at the core of its considerations.

Amongst members of the EP and within the EEAS, the EU’s interest behind its commitment to the R2P is often seen as a combination of both – as an expression of solidarity with human suffering and as a contribution to international stability and security, as the prevention of human suffering can help to provide stability and security in turn.⁶⁸ With its contribution to international stability, the EU is indirectly contributing to European regional security. The link between the different interests becomes visible in the EUGS. The EU’s security strategy is firmly based on the understanding of the interconnectedness of internal and external security threats and states that:

our [European] security at home entails a parallel interest in peace in our neighbouring and surrounding regions. It implies a broader interest in preventing conflict, promoting human security, addressing the root causes of instability and working towards a safer world.⁶⁹

The EU’s investment in ‘African peace and development’ is regarded as an investment in European security and prosperity, for example.⁷⁰ The EUGS also reveals a strong human centred approach by acknowledging that the breaking down of fragile states and the crises they result in, together with the ‘unspeakable violence and human suffering to which they give rise, threaten our shared vital interests’.⁷¹ Individual statements made on behalf of the EU in the context of

⁶⁷ *Ibid.*, at para. 14(b).

⁶⁸ Interview with EEAS policy officers, *supra* n. 56; written responses, members of the EP (Feb. and Apr. 2018); interview with advisor of a political group in the EP, *supra* n. 56. See also EEAS, Statement on behalf of the EU and its Member States by Ambassador Joanne Adamson, *Debate on ‘The Responsibility to Protect and the Prevention of Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity’*, Unique ID: 180625_13 (New York 25 June 2018) which states that ‘[t]he Responsibility to Protect is at the core of our primary goal, namely to allow our populations to live in peace and security’.

⁶⁹ EU, *supra* n. 7, at 14.

⁷⁰ *Ibid.*, at 36.

specific humanitarian crises also include a focus on human suffering. Following the military intervention in Libya in 2011 in the name of the R2P, for example, the EU increased its humanitarian aid, motivated by ‘Europe’s solidarity’ and by the EU’s ambition to ‘relentlessly [...] relieve the plight of the affected men, women and children’.⁷²

The EU’s motivation for supporting the R2P is seen to rest on a multitude of factors, including the EU’s own origin as a peace project in the aftermath of the Second World War, following the atrocities committed by the Nazi regime in Europe. The EU’s openness towards the R2P is also influenced by the individual experiences of some of its Member States with atrocity crimes within and outside Europe, such as the French experience with the genocide in Rwanda and the Dutch experience with the massacre in Srebrenica.⁷³ Both atrocities have been triggers for the R2P debate at the international level.⁷⁴ Of further significance for the EU’s backing of the R2P is that the concept’s origin is linked to the UN through its endorsement at the 2005 UN World Summit. The identification of the R2P as UN concept is considered to generate a heightened level of commitment within the EU, reflecting the special importance of the EU-UN relationship for the EU.⁷⁵ The EU’s traditional support for the UN ‘as the bedrock of the multilateral rules-based order’⁷⁶ and for its principles become visible in the EU’s persistent call for effective multilateralism and in primary EU law.⁷⁷

In general, the concept of the R2P appears to be a natural fit for the EU as a project that is based on principles and values, of which the promotion and the protection of human rights are implicit.⁷⁸ Putting human beings at the centre of its considerations is viewed to be a European tradition and as an essential element of the EU’s democratic foreign policy.⁷⁹ Since the entry into force of the Treaty of Lisbon, the promotion of the EU’s values through its external relations is not merely an EU objective anymore, but was transformed into an obligation as indicated by the wording of the missionary principle in Article 3(5) Treaty on European Union.⁸⁰ In order to promote the respect for human rights, the rule of

⁷¹ *Ibid.*, at 28.

⁷² European Commission, *Europe Boosts Its Humanitarian Aid in the Libyan Crisis*, IP/11/621 (Brussels 23 May 2011).

⁷³ Interview with member of the German Bundestag No. 2 (Apr. 2018).

⁷⁴ Secretary-General, *supra* n. 19, at para. 2.

⁷⁵ Interview with member of the EP (Mar. 2018); interview with member of the German Bundestag No. 1 (Apr. 2018).

⁷⁶ EU, *supra* n. 7, at 10.

⁷⁷ *Ibid.*, at 43; European Council, *supra* n. 50; Arts 3(5), 21(1–2), 42(1) TEU.

⁷⁸ See Arts 2, 3, 21 TEU.

⁷⁹ Interview with member of the German Bundestag No. 1, *supra* n. 75.

⁸⁰ M. Broberg, *What Is the Direction for the EU’s Development Cooperation After Lisbon?—A Legal Examination*, 16(4) *Eur. For. Affairs Rev.* 539–57, 548 (2011).

law and democracy, the EU traditionally uses a carrot and stick approach. The EU has developed the practice of making its development aid for third states conditional upon the compliance with human rights standards, for example.⁸¹ The same applies for trade preferences under the framework of the EU's common commercial policy either in context of the Generalized System of Preferences or in the context individual trade agreements.⁸² In addition, the EU uses targeted restrictive measures in response to human rights violations, as has been the case in Libya and Syria, for example.

At the same time, the R2P is perceived to signify a new development and to differ from the EU's traditional support for the protection of human rights in the EU's external relations.⁸³ The novelty of the concept is predominantly understood to be its focus on prevention.⁸⁴

In particular within the EEAS, the R2P is treated as a cross-cutting concept, including conflict prevention and peace-building and as a concept which is concerned with policy-making and action.⁸⁵ Of significance is that the R2P has led to a shift in focus for the EU.⁸⁶ Through the inclusion of indicators for atrocity prevention, the R2P now forms one of the dimensions of the EU Conflict Early Warning System (EWS) and is part of the whole conflict response cycle.⁸⁷ The prevention of atrocities has been integrated into the EU's CSDP missions and operations and into the EU's capacity building programmes, based on the *New European Consensus on Development*.⁸⁸ The aim to create a toolkit to help with the 'early detection and prevention of atrocities' was identified in 2017.⁸⁹ The Atrocity

⁸¹ On the EU's human rights conditionality, see L. Bartels, *The European Parliament's Role in Relation to Human Rights in Trade and Investment Agreements* (Study requested jointly by the European Parliament's Subcommittee on Human Rights and by the Committee on International Trade), PE 433.751, EXPO/B/DROI/2012–09 (Feb. 2014). On the suspension of development aid, see C. Portela, *European Union Sanctions and Foreign Policy: When and Why do They Work?* 127–47 (Routledge 2010).

⁸² See e.g. Portela, *supra* n. 81, at 148–61.

⁸³ Interview with EEAS policy officers, *supra* n. 56.

⁸⁴ Interview with the advisor of a political group in the EP, *supra* n. 56; interview with member of the German Bundestag No. 1, *supra* n. 75.

⁸⁵ Interview with EEAS policy officers, *supra* n. 56.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.* The EU's efforts in integrating the *Framework of Analysis for Atrocity Crimes* developed by the UN Secretary-General's Advisors on the Prevention of Genocide and on the Responsibility to Protect has been recognized by the UN. See Secretary-General (2016), *supra* n. 35, at para. 41. The EWS is designed as 'a robust, evidence-based risk management tool that identifies, assesses and helps prioritise situations at risks of violent conflict for non-EU countries, focusing on structural factors' and 'also identifies conflict prevention and peacebuilding opportunities'. See EU, *EU Conflict Early Warning System* (Factsheet) (Sept. 2014), www.eeas.europa.eu/archives/docs/cfsp/conflict_prevention/docs/201409_factsheet_conflict_earth_warning_en.pdf; see also European Commission, *Joint Staff Working Document, EU Conflict Early Warning System: Objectives, Process and Guidance for Implementation* SWD (2016) 3 final (Brussels 14 Jan. 2016).

⁸⁸ EEAS, *supra* n. 68.

⁸⁹ European Commission, Joint Communication to the European Parliament & the Council, *A Strategic Approach to Resilience in the EU's External Action*, JOIN(2017) 21 final, at 20 (Brussels 7 June 2017).

Prevention Toolkit, as part of the EWS is designed to provide EU staff anywhere in the world with ‘specific hands-on knowledge’ in this regard,⁹⁰ and has already been informally shared in February 2018.⁹¹ It is not only the shift in focus through the R2P which is worth highlighting but also that the identification of early signs of atrocities is now linked to early action,⁹² revealing the EU’s commitment to improving the implementation of the R2P. The 2018 Council Conclusions on the *Integrated Approach to External Conflicts and Crises*, for example, stress the importance of ‘atrocities prevention in the context of the prevention of conflicts and crises’ and the need to develop ‘a culture of early action’.⁹³

4 THE IMPACT OF DIFFERING EU MEMBER STATE PREFERENCES ON THE EU’S ABILITY TO IMPLEMENT ITS COLLECTIVE RESPONSIBILITY TO PROTECT

Internally, the EU has made profound changes inspired by its support for the R2P, most visibly through the introduction of an ‘R2P lens’⁹⁴ into the EWS. The EU’s commitment to the collective aspects of the R2P is driven by its solidarity with human suffering in combination with its aim to provide international stability and thereby also European security. In its ambition to better implement the R2P, the EU has linked the early identification of risk factors for atrocity crimes to its call for early action. The effectiveness of the EU’s endeavours to close the gap between early warning and early action depends to some extent on generating the political willingness amongst its Member States to act in the name of the R2P. In most policy fields falling within the EU’s external relations, the EU Member States are still the dominant actors and their political willingness and political preferences still matter. If consensus cannot be reached within the Council, the constitutional structure of the EU is preventing the EU from using specific crisis management tools, such as restrictive measures or military crisis management operations, for example.⁹⁵ In the absence of a European army, the latter have to be carried out by

⁹⁰ Statement by HR/VP Federica Mogherini on the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime Unique ID: 171209_8 (Brussels 9 Dec. 2017).

⁹¹ Interview with EEAS policy officers, *supra* n. 56. The EU’s review of its early warning system and the shift towards early action has been positively received by the UN Secretary-General, *see supra* n. 5, at para. 13.

⁹² Interview with EEAS policy officers, *supra* n. 56.

⁹³ Council of the EU (2018), *supra* n. 47, at para. 12. *See also* European Commission, *supra* n. 89, at 19 and Council of the EU, United Nations Working Party (CONUN), *Recommendations on Promoting and Operationalising the Responsibility to Protect by the EU and EU Member States*, at para. 1 (3 May 2018), http://www.mzz.gov.si/en/foreign_policy_and_international_law/responsibility_to_protect/.

⁹⁴ Interview with EEAS policy officers, *supra* n. 56.

⁹⁵ Arts 29, 31(1–2) TEU; Art. 215 TFEU; Art. 42(4) TEU.

capable and willing EU Member States who bear most of the costs according to principle of ‘costs lie where they fall’ and the Athena mechanism.⁹⁶

Some EU Member States in general are more reluctant than others to resort to military measures⁹⁷ and the domestic debates accompanying the Libyan and Syrian military interventions also uncovered different views on whether the use of force in the name of the R2P requires UN Security Council authorization.⁹⁸ In addition, not all EU Member States seem to agree on the ‘narrow but deep’ approach to the R2P adopted by the UN which signifies that the concept only applies to genocide, war crimes, ethnic cleansing and crimes against humanity.⁹⁹ France, for example, also considers that humanitarian emergencies caused by natural disasters are capable of triggering the R2P,¹⁰⁰ a view which has not been shared by the EP.¹⁰¹

Although the expectations on the R2P differ between EU Member States and although they have different types of foreign policy tools at their disposal that can be used in the name of the R2P, EU Member States are viewed to be supportive of the EU’s initiatives in the name of the R2P, especially when the EU is carrying out its commitment to the R2P within its own competences, using its own foreign policy tools.¹⁰² In particular with regards to the EU’s efforts in conflict prevention, a wide level of acceptance has been expressed.¹⁰³

The EU has a variety of instruments at its disposal which can be used for prevention purposes, including mediation and dialogue and it is prevention the EU is focusing on in its commitment to implement the R2P.¹⁰⁴ In order to enhance the EU’s ‘unique potential [...] in global mediation engagements’ the 2018 Council Conclusions on the *Integrated Approach to External Conflicts and Crises* for example stresses the:

⁹⁶ Council Decision (CFSP) 2015/528 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP, OJ L 84/39 (2015), Arts 15, 28; F. Terpan, *Financing Common Security and Defence Policy Operations: Explaining Change and Inertia in a Fragmented and Flexible Structure*, 24(2) *European Security* 221–63, 225–26 (2015).

⁹⁷ A. Menon, *European Defence Policy from Lisbon to Libya*, 53(3) *Survival* 75–90, 82–83 (2011).

⁹⁸ Under the UN Charter framework, the non-consensual use of force outside the context of self-defence requires UN Security Council authorisation, Arts 2(4), 42, 48, 51, 53(2) UN Charter.

⁹⁹ On different EU Member State approaches, see S. Brockmeier, G. Kurtz & J. Junk, *Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect*, 14(4) *Conflict, Sec. & Dev.*, 429–60 (2014); D. Fiott & M. Vincent, *The European Union*, in *An Institutional Approach to the Responsibility to Protect* 199–219, 204–08 (G. Zyberi ed., Cambridge University Press 2013).

¹⁰⁰ D. Carment, J. Landry & S. Winchester, *The Role of Regional Organizations: A Responsibility Gap*, in *The Oxford Handbook on the Responsibility to Protect* 335–54, 344 (A. J. Bellamy & T. Dunne eds, Oxford University Press 2016).

¹⁰¹ European Parliament, *supra* n. 8, at para AB.

¹⁰² Interview with EEAS policy officers, *supra* n. 56.

¹⁰³ *Ibid.*

¹⁰⁴ EEAS, *supra* n. 68.

need to further build up the mediation capacities of the EEAS to assist in prevention and resolution of local and national conflicts and further work on the ability to rapidly deploy mediation expertise to EU delegations and in support of other international and regional organizations whenever appropriate, also with sufficient emphasis on its use in early action.¹⁰⁵

EU Member States are said to be becoming more aware of the tools available at the EU level in the context of mediation and are increasingly seeking the EU's help and advice on this matter.¹⁰⁶

The different national approaches of EU Member States to the R2P not necessarily needs to lead to contradictions with EU efforts in implementing the R2P. Rather, the refinement of the concept of the R2P and its implementation benefit from shared learned lessons and good practices. This applies not only in the relationship between the UN and regional organizations in general but also in the relationship between the EU and its Member States.¹⁰⁷ Besides the EU Focal Point on the R2P which has been established within the EEAS, EU Member States have created national R2P Focal Points. Since 2013, the European focal points come together every two years for a *Regional R2P Focal Points Meeting for Europe* in Slovenia.¹⁰⁸ In addition, a network at the technical level between those who carry out and work with the R2P has been put in place in order to exchange ideas and information.¹⁰⁹

The closeness of individual EU Member States to particular countries and regions can be an advantage for the EU's commitment to the R2P. EU Member States' particular insights and relationships with specific states have the potential to create greater awareness for potential risk factors for atrocity crimes in specific parts of the world and can help to establish the required moral and political pressure needed for common initiatives in the spirit of the R2P within the EU framework. The EU Member States are closely involved in the EWS and their active participation is viewed by the EEAS as key to its success.¹¹⁰ In addition, the seat of EU Member States in the UN Security Council as permanent or non-permanent members and their potential to influence the decisions of the UN Security Council are considered to be a great advantage to the EU who does not have a seat in the Security Council itself.¹¹¹ The French/Mexican initiative on the non-

¹⁰⁵ Council of the EU (2018), *supra* n. 47, at para. 10.

¹⁰⁶ Interview with EEAS policy officers, *supra* n. 56.

¹⁰⁷ See e.g. European Commission, Joint Staff Working Documents, *Progress Report on the Implementation of the EU's Comprehensive Approach to External Conflicts and Crises: Action Plan 2015*, SWD(2016) 253 final, at 7 (Brussels 18 July 2016).

¹⁰⁸ For more information on the Global Network of R2P Focal Points, see <http://www.globalr2p.org/resources/1008>.

¹⁰⁹ Interview with EEAS policy officers, *supra* n. 56.

¹¹⁰ *Ibid.*

¹¹¹ Interview with the advisor of a political group in the EP, *supra* n. 56.

use of the veto power in the UN Security Council in the case of mass atrocities is a positive example in this regard.¹¹²

5 CONCLUSION

The EU's commitment to the R2P is influenced by a combination of interests. By contributing to the fulfilment of the collective aspects of the R2P, the EU expresses its solidarity with human suffering and thereby also contributes to international stability and security. The human centred focus and the significance of the R2P debate for the EU becomes visible throughout the EUGS. The terminology used by the EU, including resilience and national ownership reveals a close alignment of the EU's commitment to the R2P with the development and further refinement of the concept of the R2P at the UN level. In its commitment to the R2P, the EU acts as a close partner to the UN and participates in the R2P dialogue at the international level.

The distribution of competences between the EU and its Member States in policy areas that fall within the EU's external relations imply that the EU can often only become visible as an international actor through the use of specific crisis management tools if consensus can be reached among EU Member States. This does not imply that the EU is not efficient in fulfilling its commitment to the R2P and that the EU has not developed a unique interest in the R2P either. Rather than the third pillar of the R2P, the focus of the EU's activities in the context of the R2P has been put on atrocity prevention. For the EU, prevention starts by raising awareness for the R2P agenda within the EU's own services, including headquarters, delegations and EU officials, through educating and informing them about the R2P and on the identification of early signs of atrocity crimes.¹¹³ Indicators for atrocity prevention have been introduced in the EWS and the EU has started to use an 'R2P lens'. The latter can help to further improve the use of the instruments available to the EU in a more coordinated and effective manner and to generate the required awareness and political willingness to act in the name of the R2P. In its ambition to improve the implementation of the R2P and to narrow the gap between early warning and early action when faced with the risk of atrocity crimes, the EU collaborates with its Member States and the UN in order to find multilateral solutions.

¹¹² *Political Statement on the Suspension of the Veto in Case of Mass Atrocities*, presented by France and Mexico during the 70th session of the UN General Assembly, <https://onu.delegfrance.org/France-and-the-UN-Reform-8615>.

¹¹³ Interview with EEAS policy officers, *supra* n. 56.

