

Now, to date, the Security Council's response to the Syrian tragedy has been poor, shall we say. There was Security Council Resolution 2118, the chemical weapons resolution, which obviously came only under a threat of military action. But before we applaud the Council too much for that, we should recognize that chemical weapons have been responsible for roughly 1% of the civilian deaths in Syria. The conventional killing of civilians has barely been addressed. In fact, it was not addressed at all until the February 22nd resolution, which did order an end to barrel bombing and other indiscriminate warfare, and nothing has been done to enforce that. So one of the big questions is: Is enforcement on the table now?

That same resolution did order Assad to lift the siege, to open the borders to humanitarian assistance. He has barely done that, and so one of the big questions facing the UN is whether, given the lack of willingness under compulsion to allow cross-border operations, the UN will start doing it or continue to stand on ceremony and wait for Assad to sign on the dotted line, which he is unlikely to do. These are big questions that remain to be answered.

Finally, I think that if the Security Council remains an obstacle to the solutions to Syria, we've got to start looking at alternatives to the Security Council. I don't mean simply ignoring the Charter, but we should look at some of the options under the Charter. For example, the UN General Assembly theoretically could establish a tribunal under some concept of universal jurisdiction. It wouldn't have the same coercive power of a Security Council-established tribunal or a referral to the ICC, but I see no legal obstacle to a GA-created ad hoc tribunal. Theoretically, we could be talking about uniting for peace with respect to military action as well. I think we also have to look at some of the options that France has been most identified with, which involve generating pressure on the Permanent Members of the Security Council not to use their veto in situations of mass atrocities. There are even some sort of procedural hints in the Charter about how this might be done. I think most people don't recognize that there actually is a requirement in Chapter 6 matters for a party to a dispute to abstain from a vote. Why are we not applying that to Russia, very much a party to the dispute, with respect to possible Chapter 6 action on Syria?

So there are creative things that could be done that would move past the roadblock. Obviously, the other Permanent Members don't like these options of moving past the Council because they like the prerogatives of a veto too, but we have to start asking: Are these prerogatives as important as the many lives that are being lost in Syria today?

DONALD FRANCIS DONOVAN

Thank you, Ken. Awn, please.

AWN AL-KHASAWNEH

I wish to start by saying how delighted I am to be here and therefore how grateful for the kind invitation to participate in this distinguished panel on such a topical and important subject—one that touches everyone's sensibilities and deeply held convictions.

HOW DOES THE CURRENT LEGAL FRAMEWORK ALLOW US TO ATTEMPT TO STOP THE ATROCITIES IN SYRIA?

Let me start by recalling some pertinent elements of the background of the present situation in Syria. Shortly before his death, Hafez Al Assad told his son Bashar, "I have prepared

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Let me start by recalling some pertinent elements of the background of the present situation in Syria. Shortly before his death, Hafez Al Assad told his son Bashar, "I have prepared

the country for you for the next 20 years.”¹ This was not an idle boast, as those who predicted the swift fall of Bashar’s regime have learned to their cost. Hafez stifled all sources of opposition to his rule, particularly the Muslim Brotherhood in the infamous massacre of Hama in 1982. Hafez created a sectarian army and established no fewer than 15 intelligence services which reported separately to him. He successfully implemented the policy of divide and rule and largely broke the spirit of an old and proud people. Any prospects for change must have looked well-nigh impossible to the Syrian people; if change were ever to come, it would have to come from a powerful source outside of Assad’s regime.

What the regime failed to provide for, however, was a method of dealing with peaceful demonstrations. The Assad regime was clearly perplexed at how to handle the first few months of spontaneous, non-violent protests. I should nuance the reference to spontaneity here, as there were already reports of the smuggling of arms into Syria and of the stirring of the masses to rise up against their government, and open discussion of regime change. Of course, this was not confined to Syria; it was part of a pattern in what is euphemistically referred to as the “Arab Spring.” Over the last several months, similar events have been occurring in Ukraine.

Be that as it may, the progressive militarization by outside forces both Arab and Western triggered by the implosion of Syria’s long-suffering people relieved the Assad regime of any initial hesitations, and its killing machine cranked into operation again. The militarization of the Syrian protests also became an opportunity for other regional players to get into the fight and turned peaceful civil protests into something much larger and darker. Syria became a stew of interrelated conflicts: first, a proxy war between Iran and a disparate group of states, i.e., most of the Gulf States plus Israel; second, a sectarian war between Sunnis and Shi’as; and third, the beginnings of a 21st-century mini Cold War between the West and its allies and Russia and its allies.

The complexity of the situation in Syria has made it extremely difficult to establish the facts surrounding the commission of hideous crimes that have claimed the lives of more than 100,000 people. The establishment and attribution of responsibility for these crimes can be even more difficult. The most that we can say now is that both the government and the various rebel groups and their supporters bear responsibility. With respect to the latter, this responsibility is one of complicity, similar to the responsibility of the United States for the actions of the contras,² referred to as the “unilaterally-controlled Latino Assets” in the first Nicaragua case before the International Court of Justice. On the other hand, the responsibility of the Syrian government is direct, where it can be established. At any rate, it would not be rewarding to delve further into questions of state responsibility or even of personal criminal responsibility, because their prosecution is not assured at this stage, due to a lack of effectiveness of international law. To illustrate this, I will point out that in 1982 the Assad regime committed one of the worst massacres in modern history in the city of Hama. Apparently, when the present-day Syrian crisis began, the UN Secretariat searched its files to find any international reaction to the 1982 massacre to use that as a guideline, but could find none. In fact, there was only one reaction to that massacre, and it emanated from Jordan, and it was at the Human Rights Commission in Geneva.

I happened to be personally involved in that episode. And I beg you to permit me to recount it very briefly because of the moral that can be drawn from it. As news of the

¹ DIANA DARKE, *MY HOUSE IN DAMASCUS: AN INSIDE VIEW OF THE SYRIAN REVOLUTION* (2014).

² A term referring to various rebel groups active from 1979 through the early 1990s that opposed the Sandinista Junta of the National Reconstruction government in Nicaragua.

massacre in Hama and also in the Palmyra prison was reaching a shocked public, the then Prime Minister of Jordan asked me to prepare a suggestion on what could be done in response to this news. I was at the time Acting Legal Adviser at the Ministry of Foreign Affairs. My suggestion was that Jordan, which was at the time a member of the UN Human Rights Commission, should introduce a resolution—not condemning Syria, not passing judgment—but simply asking for the establishment of a commission of inquiry. The draft resolution was duly introduced, but in the last day of the session, there was a procedural motion to take no action. This motion was made by the ambassador of a Western power with a permanent seat on the Security Council. Thus was killed the only attempt to react to that massacre within the institutions of international law. So much for the effectiveness of human rights and international law.

It became clear to me at that point that human rights ranked second or perhaps third after geopolitical and economic considerations. When Hafez said to Bashar, “I have prepared the country for you for the next 20 years,” he was not merely referring to domestic arrangements. Hafez also had prepared the country for his son’s rule by making careful international alignments with other powers that would provide protection for the regime—and still do. The lack of reaction to the 1982 massacre serves to illustrate that the lack of effectiveness of international law is not an isolated incident, an exception to the rule, so to speak. It is the rule.

A cursory look at the problems of the international legal community, whether we are speaking of the question of Palestine, or the war in Iraq, or the war on terror, shows a discernible pattern, and it is one of the *lack* of effectiveness of international law: the abuse of the right of veto; unilateral actions contrary to the UN Charter that are presented as collective action; the blatant violation of *jus cogens* obligations, such as the prohibition of torture; and many others. It is a long litany and too well-known for me to repeat it. It is a bleak picture; it is certainly one in which the present strife in Syria fits perfectly.

Let me say a few words about the question of intervention in Syria. Direct military action without Charter authorization was contemplated, but luckily averted. There are those who now wish to revive that option in the best tradition of saber-rattling, especially after Ukraine, and perhaps in response to Russia’s annexation or “re-integration” of Crimea. I leave the incalculable risks emanating from geopolitical considerations to the specialists, but as a lawyer, my position is one of extreme suspicion and wariness of calls for intervention, even when the country in question is led by a monster. At least in the Middle East, military intervention under the guise of humanitarian intervention has always been used to further hidden economic and/or strategic agendas. Such intervention nearly always results in detriment to the intervened-in country. The 1860 intervention of European powers in Lebanon is a case in point.

If, *arguendo*, intervention in Syria were obviously necessary to avert an impending disaster, such as the intervention to save the population of Benghazi (although not, of course, the much broader intervention in Libya), the question remains whether, after three years of strife, roughly 100,000 people killed, and millions of individuals now internally displaced, any intervention could do anything other than exacerbate an already tragic situation. What we have now in Syria is partial intervention, which is the worst of all possible worlds. The Syrian people, having been encouraged to rise against their oppressors by their Western and Arab backers, have now been abandoned. From the beginning, there was, according to many observers, no serious intention of changing the Syrian regime, but rather of weakening it through attrition.

The objectives from the beginning seem to have been twofold: first, to compel Assad to give up his chemical weapons arsenal; second, to make Syria a magnet for jihadi groups. Professor Gowlland-Debbas has already mentioned in her abstract that she considers the concept of responsibility to protect (RTP) a hollow and unnecessary one, and I agree with her. Apart from other considerations, RTP will never be invoked against powerful states, and the case of the Ukraine is a poignant one.

I continue to believe that regional actors should have assumed and should have been given by the Security Council greater powers under Chapter 8 of the Charter to assume their role in finding a peaceful solution in Syria. I believe that the only hope of finding a negotiated solution to the problem, which is the only sane option, would involve both Turkey and Iran as major stakeholders, and Saudi Arabia, of course. Previous attempts to effect such a scenario have been frustrated by outside powers, but now with the military balance shifting in favor of the regime, this scenario is much better than continuing a futile and catastrophic conflict. In saying this, I am aware that diplomacy, rather than international law, will be the basis of a solution and that any outcome will be an unprincipled solution rather than one based on international law. Diplomatic resolution of the Syrian conflict may even involve immunity for those who have committed so many crimes, but this is the price that must be paid for the total ineffectiveness of international law in the present crisis.

In sum, while I am gratified, as we all are, that the effectiveness of international law—the theme of this Annual Meeting—can clearly be seen, for example, in greater resort to the International Court of Justice and in compliance with its decisions, I am disheartened to see that in areas relating to international peace and security, such as the crisis in Syria, international law is not effective at all. Rather, patent opportunism and imperial hubris seem to be the order of the day.

HOW DO WE STOP THE ATROCITIES IN SYRIA?

With regard to the atrocities occurring in Syria, what we should *not* do is resort to military force. I say this not purely from the point of view of my formal legal arguments, but from an understanding of the times we live in. An Egyptian jurist in the 15th century named Al-Sha'rani once said, “The wisest of people are those who can best interpret their times.” I think the time for resort to military force is over and that we will create incalculable risks to international peace and security if we cannot rein in these desires. Of course, I also agree with Professor Gowlland-Debbas that we should not sit idly by while these horrendous killings continue.

I think a prominent role needs to be given to regional players, whether we like them or not. For example, I do not understand why Iran was excluded in Geneva II. Iran is a stakeholder and a party that can put pressure on Assad's regime, and we need that kind of player. Whether we like Iran or don't does not matter. We are not in the business of love and hate; we are trying to end a brutal and apparently unending civil war that has the potential to destabilize the entire Middle Eastern region. So Iran should have been brought in. If we can get Iranian, Turkish, and probably Saudi Arabian intervention, with the minimum goal of stopping the killing, then I think we would have a good chance of success, and then we can take it from there. I think that is really the only sane option.

DONALD FRANCIS DONOVAN

Thanks, Awn, for those remarks. Vera, particularly given that Ken and Michael both mentioned the recent Resolutions 2139 and 2118, I am hoping that you will elaborate briefly on your view of collective security, perhaps by addressing those resolutions in that context.

VERA GOWLLAND-DEBBAS

Yes, I want to follow up on Ken's military option by looking at these resolutions and what they lay down. Now, it is clear that the resolutions do not authorize any use of force. It is clear that there is no hidden trigger. We are not back to the debate surrounding Resolution 1441 on Iraq and the weapons of mass disappearance.

So any unilateral military action would lie outside the Charter. Let me say that I agree with Ken that the resolutions which have been adopted are very narrow in their focus. It is undoubted that chemical weapons are outlawed, while barrel bombs and other indiscriminate weapons are killing thousands. But nevertheless, these resolutions do lay down some principles on the basis of which diplomacy should take place. The unilateral military option outside the framework of the Charter is often presented as a progressive development of international law. On the contrary, it takes us back to a very regressive situation, before the Charter, and leads to the whole unraveling, in fact, of the post-war regime we attempted to set in place. We must never forget the purpose for which Article 2(4) was put into the Charter. There is also an obligation on states to settle disputes peacefully, and so on.

But let me go back to the framework set by the resolutions. First, the resolutions address both the government and the different armed groups. All are considered to have violated human rights and humanitarian law and are therefore accountable. Surprisingly, Resolution 2139 calls on both the Syrian authorities and all other groups to commit to combating and defeating organizations and individuals which commit acts of terrorism. That's very interesting because, of course, Assad himself has used this as an excuse, and the Council does seem to endorse that, so you have to ask yourself why. If one accepts Michael's or Ken's military option to enforce a cease-fire or put an end to atrocities, does this mean that air power should target not only the government but all 39 or however many factions there are?

What is also interesting is that the Security Council insists in Resolution 2139 that all parties, particularly the Syrian authorities, should provide humanitarian relief in accordance with the principles of humanitarian law, as well as in accordance with the UN guiding principles of humanitarian emergency situations which refer to the principles of humanity, neutrality, and impartiality referred to by the ICJ in the *Nicaragua* case to distinguish this from unlawful intervention. Why are these guiding principles integrated? It is a reaffirmation of the type of humanitarian assistance that should take place.

What about the unilateral military option if an authorization cannot be had from the Security Council? One of the bases that I have heard throughout this conference, one of the running themes, has been R2P. I have said that I consider this a very unnecessary concept—unnecessary because we know that R2P originally began as a kind of fig leaf for humanitarian intervention but was then constrained by the 2005 World Summit Outcome Document by being placed within the framework of Security Council action. But at the same time the Security Council does not require such a concept as its legal basis is grounded in the Charter. It has already shown that it can authorize action in situations of human rights and humanitarian law violations under Chapter VII. Besides, a *duty* to protect, which I think underlies the R2P concept, is unrealistic within a Security Council context, in which the procedural obstacles

are very evident for the Council cannot respond with any automaticity due to its voting requirements.

DONALD FRANCIS DONOVAN:

Vera, with your indulgence, can I ask you to conclude on that point? Because I want to ask Michael to respond directly to your comments.

VERA GOWLLAND-DEBBAS

Sure.

DONALD FRANCIS DONOVAN

Michael, Vera has just characterized the responsibility to protect. I know you have disavowed any status as a lawyer as you sit up here, but since you developed or had a large part in developing the concept, what role did you think it would play when you were developing it, and what role do you think it now plays?

MICHAEL IGNATIEFF

Well, it seems to me that it has been slightly mischaracterized. The report of which I was a drafter and signatory was extremely clear that the use of force should always proceed under UN Security Council authorization. We say as a statement that in conscience-shocking situations, in other words, where legitimacy and legality part company, states may act. We didn't approve or disapprove. We simply said that's just a fact of international relations.

The question that is being asked is whether it adds value to this discussion. It seems to me it does in the sense that (a) it defined in some precise terms the conscience-shocking situations that it seems to me demand Security Council action, and (b) it formalized what you said, which is that sovereignty has changed since 1945. It is not inviolable and absolute, and it implies some obligation, some responsibility to observe basic human rights.

We made the point, however, that in an international system, this is a point made by some distinguished lawyers in this room, including Ken Roth, sovereignty is designed for a pluralist world, a world in which we do not agree about justice, in fact, in which we disagree about justice and disagree about what human rights means. The point about R2P was to work in a pluralist world in which there are limits to pluralism, which are mass massacre, genocide, ethnic cleansing. We simply restated and tried to put in formal terms what seemed to me emerging ideas about responsibility in the international arena. If distinguished lawyers don't find it useful, fine, and I would not claim that it is an emerging principle of international law. I wouldn't go that far. It seems to me to have defined and shaped the debate about international intervention in a positive way since 2001 when it was drafted, and I think it has got a long future ahead of it, but I would never tell you it is *jus cogens*. I would never tell you it's customary under national law. It seems to me an extremely important heuristic for a pluralist world.

DONALD FRANCIS DONOVAN

Ken, a comment?

KEN ROTH

Well, on R2P, I think it has two broad forms of significance. One, which we tend to slide over very quickly, is that it speaks foremost to the national government. It says you have a responsibility to protect your people, that that's an essential attribute of sovereignty, and that if you fail in that responsibility, there will be consequences, and there are other various options laid out. The idea that sovereignty is not sacrosanct and that it comes with responsibilities toward the residents and citizens of that country is a very important one.

The second then speaks to the international community, and Michael is absolutely right that the drafters of the R2P doctrine were very careful to give proper obeisance to the Security Council. But, in fact, the real significance of R2P is that it is mostly understood as not necessarily requiring Security Council action. That is the popular understanding of it, even though the technical legal understanding is absolutely as Michael said.

Syria has been a challenge for R2P because even though everybody understands that the mass atrocities in Syria do trigger R2P, there have been big debates about what the appropriate response is. Even with respect to military action, many people ask: "Does the proposed military action pass the test of being likely to make things better rather than worse?" There is general debate on that topic among people who very much want to see an end to the atrocities.

But I am not one who thinks that Syria spells the demise of the R2P doctrine. In fact, if you look at recent use of the doctrine, just in the last year with Central African Republic and South Sudan, it was very much acted upon. We don't have these big debates about whether at the time that it was the Central African Republican government, whether the Séléka was consenting to the French intervention or not. Nobody cared, you know? There were mass atrocities, and the French went in. The African Union bolstered its peacekeeping force. The UN has now authorized peacekeepers. Again, let's not get too caught up in Syria here.

In recent years we have seen similar use of the R2P doctrine in Côte d'Ivoire, again with a combination of a French and UN peacekeeper intervention. You saw it in Kofi Annan's work in Kenya without military invention, with very active international involvement, to end the ethnic killing there. So it is important as rhetorical device to urge people to act. But there is also a popular shift in the understanding about what the world should do. I for one don't reify the UN Charter. That is an important form of law. I understand that that is structural law. It is intergovernmental law, but there are other laws involved here, the Geneva Conventions, the common law against crimes against humanity, which are flouted in R2P situations. You then end up having to ask which law is more important: the law protecting people from mass slaughter or the law structuring relations among states. This is a good debate, but the answer isn't obvious. You can't just say, "Oh, the Charter wins always." Maybe not. And I think that that's what the R2P doctrine has forced us to debate.

VERA GOWLLAND-DEBBAS

May I respond?

DONALD FRANCIS DONOVAN

Yes, a quick response to those points on R2P?

VERA GOWLLAND-DEBBAS

Yes. That's the problem with sound bites; I didn't have a chance to nuance what I was saying. In fact, I was only talking about R2P as an unnecessary concept where the legal basis of military action was concerned. I agree with you that there is a preventative aspect, and the only time it was expressly referred to in Resolution 1973 on Libya the emphasis was very much on the responsibility of Libya to protect its own population. This is echoed in the Syrian resolutions that I was talking about. So I am not saying that the entire concept is unnecessary; of course, it reflects also what I have been saying about the evolution of the collective security system, where protection of populations from egregious human rights violations is now right at the core of international security.

DONALD FRANCIS DONOVAN

Thank you for that. Do you want a quick response, Awn?

AWN AL-KHASAWNEH

My position is quite similar to Vera's. With regard to the nonmilitary aspects of the concept of the responsibility to protect, I am at best only half convinced of the arguments. I don't think it has happened. Of course, with regard to its use as the basis of military action, it's impossible for me to accept the thing. Maybe I am too much of the old school and former law to advance with the times.

DONALD FRANCIS DONOVAN

Let me pose a question, which I'll initially direct to you, Ken. Let's pose the hard question, particularly for a human rights lawyer. An important pillar of the human rights movement has obviously been human rights law. It's been an important means by which we have advanced the human rights agenda.

Let's consider what I would not regard as an extraordinary hypothetical, to test whether or not we are moving toward a freestanding norm of a responsibility to protect. Let's imagine that we have had irrefutable evidence of successive instances of the use of chemical weapons by the Syrian government, and imagine further that Russia used its veto to preclude military action. Imagine further, obviously a big step, that a third state was prepared to go in and use its blood and treasure to stop that atrocity. Do we have to fall back and say that intervention in those circumstances is illegal but legitimate? Do we use Tom Franck's notion of mitigation or excuse? Or, given the very modest prospect of Security Council reform, and the regular use of the veto by members of the Security Council to advance what may seem to the broader international community a narrow national interest, should we be open to a more flexible notion? Should we be open to the development of the responsibility to protect as an independent norm that stands beside the Charter and perhaps sits on some of the other legal bases that you have identified?

KEN ROTH

Well, I mean, it is a norm. Does it have the status of law? Not yet. You don't even have to go to the chemical weapons example. Just take contemporary reality in Syria where you have mass slaughter taking place, 5,000 deaths a month, let's say. This is not something that Human Rights Watch, my organization, has endorsed, but the option that is on the table and that people talk about is actually not the way Michael portrayed it. It is not using military force to force a cease-fire or to force Geneva III negotiations because, frankly, it is really hard to calculate that, and it is very easy for those kinds of calculations to go wrong.

Rather, I think what has been on the table is: Are there military steps that could be taken that would undermine the means that Assad has been using to slaughter many civilians? Here, I would disagree with you. There are atrocities on both sides, but the vast majority are at the hands of the Syrian government. You don't have to overcomplicate the issue by saying you have got to attack 39 different forces. No. The bulk of the killing at this stage that could be remedied are the planes and the helicopters being used by the Syrian government to drop barrel bombs and to indiscriminately fire on civilian neighborhoods. That is why the response to the chemical weapon use, the option that was being very seriously looked at, at that point, was bombing the airfields and trying to destroy some portion of the Syrian air force. Not that that would end the war or necessarily even force a negotiation in Geneva, but it would just undermine the means that were being used to slaughter so many civilians. So I think that is the issue that is on the table.

And if that step were taken, I think what we want to look at is: How can we maximize its legitimacy, and how can we minimize its being used inappropriately as a precedent? Obviously, Putin cites the severe persecution of those poor persecuted Russians in Crimea to justify his actions there. Bush did the same thing in Iraq where, after the weapons of mass disappearance were not discovered, he then cited human rights as the reason for having acted. So the fact that people do misuse the doctrine is not a reason not to have the doctrine. It is a reason to condemn the dishonest use of it, but nonetheless you do want to avoid, as much as possible, unilateral military action. Therefore, I think that the broader the body that you can get to endorse R2P military action, the better. That is why I am interested in reviving the UN General Assembly Uniting for Peace concept and merging that with R2P, because there you have a very broad body that would have quite a bit of legitimacy, even though it is not the same legality as Security Council action. You could probably find similar things were the League for Arab States to act, or some relevant regional body.

Those, I think, are the issues. They are much more pragmatic than the grand concept of "is this a legal norm now or not," which I don't think we can really answer, and it's probably not going to get there for a long, long time, anyhow.

DONALD FRANCIS DONOVAN

Michael, and then Vera, and then Awn, let's address the question concretely. What do we do? In the face of these atrocities, what does international law allow us to do?

MICHAEL IGNATIEFF

I would want to emphasize what Ken just said. If we see this as a conflict between strict legality and moral legitimacy, between legality and moral necessity, we miss the fact that we are also talking about the defense of a whole set of other international laws: Geneva I, II, III, IV, crimes against humanity. Sometimes those who defend Charter 2(4) think the

only way to defend international law is through the defense of the Charter rules. And that is why we are talking about this. This is why this is painful and difficult.

I think the differences between us about when you might use military force are small. I think it is to stop mass killing. The preponderance of mass killing is by the regime. My point is that you must never use military force unless it is connected to a political and diplomatic strategy, since there is no military solution here. The West and its allies should never get into a military strategy that does not have a diplomatic and political route somewhere that gets us back to . . . this is where I am talking about cease-fires. I am making the strategic goals suboptimal or stand-in-place, simply because we have tried more elaborate strategic goals, such as “Assad must go.” I think in realistic terms, that is not going to happen. But I think it is possible to get the killing to stop, and so you take it one painful day at a time. Every day in which people are not dying is a day in which they discover that it is good to be alive and better than killing. You create an indigenous desire for the killing to stay stopped, and you take it from there one step at a time.

There are risks all across the board when you use force, but when I look at this situation, I see a world in which we sit and watch this thing for another 3 or 4 years. And the situation in Syria is not just a humanitarian catastrophe. It is a strategic catastrophe for Lebanon, for Jordan, for Turkey, for everybody, for Iraq, for the Kurds, and that geostrategic implication needs to be put here.

DONALD FRANCIS DONOVAN

Before I turn to Vera and Awn, I want to alert everyone that shortly we will be taking comments and questions. Given the time constraints and the number of people in the room, and how much more we want to hear from our four colleagues up here, I would be grateful if you would formulate brief comments or precise questions.

So, turning back, I want to ask Vera to respond to the question, then Awn. In the face of these continuing, undoubted atrocities, what do we do?

VERA GOWLLAND-DEBBAS

To respond very briefly to what has been said, I think it is too easy to oppose sovereignty on the one hand and human rights on the other, and to say we have come a long way and therefore sovereignty has to give way to human rights. I think that is a false dichotomy. We are all agreed that sovereignty is not a bar to human rights. I think the real question is: Who decides, and what measures do we use to do what? We are not arguing that this would be an intervention in sovereignty, and I think that is the real debate.

Take the Kosovo crisis, for example. India stated in the Security Council that some were saying there was an *ex post facto* agreement on or legitimization of NATO’s intervention, but that when China, Russia, and India were all opposed, this represented half of humanity. I believe that the importance of the United Nations is that it does represent all the member states and their views, and if there isn’t consensus at one point, then it is not representative.

What also bothers me is that unilateral intervention is now carried out in the name of the international community. It is not the humanitarian intervention of the past. So the question is: Who should speak in the name of the international community? There is a conflation now which is very worrying. The privatization of military force by the Security Council has become intertwined with unilateral action; the collective is pushed by the unilateral; and the unilateral purports to speak in terms of the collective. And I think that is a rather insidious development.

So what do we do? I am always worried when we say, “Let’s intervene militarily because we don’t know what else to do.” There are a number of options. They are slow. They may not succeed. But I think that one of the most important things is to impose an arms embargo and to stop outside intervention in Syria. There are diplomatic means which the Security Council resolutions endorse. There are economic and other types of non-military sanctions that one could have imposed, although this now too late.

Another option which has been mentioned is referral to the ICC. There was a letter pushed by Switzerland and signed by 56 other states urging such referral. Unfortunately, so far this has not succeeded.

And then most important (and this comes out in the resolutions I mentioned, which I don’t think we should discount as being too narrow since we should look to them for some guiding principles) is the insistence on peaceful resolution of the dispute and a Syrian-led peace process. We know the Geneva peace talks have failed, but that is not the end of it. We have to ask ourselves why the Geneva conference failed. Were there too many preconditions? When one comes to the peace talk saying that Assad must go, that is not a good start to getting Assad to come to the peace talk.

DONALD FRANCIS DONOVAN

So, Awn, we know that there are massive atrocities happening. What do we do to stop them?

AWN AL-KHASAWNEH

Very briefly, what we should not do is to resort to military force. I say this not purely from the point of view of formal legal arguments, but from, I think, an understanding of the terms that we live in. There was an Egyptian jurist in the 15th century, Al-Shahrani, who once said the wisest people are those who can best interpret their times. I think the time for this easy resort to military force is over, and there are incalculable risks to international peace and security if we don’t rein in these wishes, so to speak.

Of course, I also agree with what Vera has said. Of course, we shouldn’t sit idle and see this horrendous killing go on. I think a big role should be given to the regional players, and for the life of me, I cannot see why in Geneva II, Iran, for example, was excluded. Iran is a stakeholder. It is the party that can bring pressure to bear on Assad’s regime. Whether we like Iran or don’t like Iran, we are not in the business of love and hate. I think Iran should have been brought in.

I think if there is a possibility of Iranian, Turkish, or Saudi Arabian intervention with the aim of achieving the minimum, which is to stop the killing, then we should work hard towards that. I think that is really the only sane option.

DONALD FRANCIS DONOVAN

Okay. We are going to take four questions, two from each side. Please.

AUDIENCE MEMBER

My name is Valerie Epps. I teach at Suffolk University Law School in Boston. One very brief comment. First, I would like to weigh in on the side of the R2P skeptics. While recognizing its persuasive power, R2P is essentially a rule designed for the powerful, and the powerful don’t have any moral supremacy over the less powerful.

Second, I would like to ask Mr. Roth whether he would be willing to reconsider something that he said, while recognizing his wonderful work in human rights. Professor Ignatieff said he wanted to get to peace, and then Mr. Roth said, “Oh, well, I don’t really want to get to peace. I don’t care if the military keep shooting at each other. What I want is to protect civilians.” I would ask you to reconsider that in light of the fact that most, indeed almost all, modern wars result in more civilians being killed than the military. The fact of the matter is that you cannot have an internal armed conflict without killing more civilians than you do military, so I wonder if you’d be willing to reconsider that statement.

AUDIENCE MEMBER

My name is Tyler Thompson with the Public International Law & Policy Group. My question is also for Mr. Roth. You mentioned the Uniting for Peace resolution. As far as I know, Uniting for Peace resolutions are nonbinding and reserved for when the Security Council is not able to act. For better or for worse, it seems that the Security Council has acted with 2118 and 2139. My question is: If Assad is not willing to comply with either of those resolutions and the P5 is not willing to enforce them, then what about a Uniting for Peace resolution or other General Assembly action which would draw compliance or enforcement? Or is Uniting for Peace just another yet untapped source to show international displeasure with the situation in Syria?

AUDIENCE MEMBER

I am the former Permanent Representative of Spain to the United Nations and former negotiator and signatory of the Rome Statute of the ICC. So I cover both sides.

Speaking of the responsibility to protect, I am a bit surprised that none of the panelists has mentioned the main document in which such a notion has been incorporated into international canon. I refer to the declaration of the 2005 Summit at the United Nations. There all the member states unanimously incorporated that idea into the UN instruments, but put it in the multilateral concept.

Of course, the Canada report, of which Mr. Ignatieff was an author, was intellectually a very important contribution, but it is not Moses law. On the contrary, an instrument adopted by almost 200 states of the United Nations carries much more weight. And that declaration insists on having a multilateral context provided by the General Assembly, by the Security Council, by the Secretary General, and this is what we have to build on. The question is how to build on those resolutions that have been mentioned in order to push the parties to come to Geneva and to settle the problem with support of the big powers and of the regional powers as well.

AUDIENCE MEMBER

I am Jeanne Wood from Loyola University School of Law. I have three quick questions. First, is the U.S. supply of arms to the Syrian rebels illegal under *Nicaragua*? Second, could you compare the Security Council response to Syria to its response to the U.S. war on terror and the invasion of Iraq? And third, it struck me that all of the states in which R2P is being deployed are from Africa—Central African Republic, South Sudan, Côte d’Ivoire, Kenya, Libya. Is this a coincidence? Is this being coordinated with the AU? I know they do have an R2P in their Charter. Thank you.

DONALD FRANCIS DONOVAN

Ken, we will start with you, since a couple were directed at you, but then I ask each of the panelists to address any of the points they'd wish to. Ken, please.

KEN ROTH

Well, there are a few questions in R2P. At a certain level, when you say R2P is only for the powerful, it is a bit tautological in the sense that, yes, it is going to be only powerful militaries that can actually exercise the military part of R2P, but I think we have to recognize that R2P is actually for the weak. R2P is for the people who are getting slaughtered, and the question is: Are you going to do nothing for the people who are being slaughtered, or are you going to try to do something for the people who are slaughtered? And then, if you're going to try to do something, you look around and see who can do it.

This is pre-R2P, but sometimes it is Tanzania removing Idi Amin, or it's the Vietnamese removing the Khmer Rouge. These are not superpowers. These countries were just the ones who were willing to act, with all kinds of imperfections, but it was better that they acted than that they didn't. In contemporary times, I don't think we are terribly particular about who stops the mass slaughter as long as it stops, so I tend to start from the perspective of the victims.

The formal R2P doctrine, since it has been articulated, has tended to be only in Africa, but you don't have to go back too far. Take East Timor, which is effectively an R2P situation in which Indonesia was coerced to consent to the Australian deployment there. So there are lots of historical analogue in which R2P was used outside of Africa.

Regarding my comment about how I don't care about the combatants shooting at each other, maybe I was being a little bit too facile there, but my concern is that John Kerry's approach to Geneva II was basically "We will get a grand political agreement, and that will stop the killing." All power to Secretary Kerry, but I don't want to put all my eggs in that basket, because I don't have a lot of faith in there being a grand political solution. I think that it is very likely that the best we are going to get is Lebanon or Bosnia, a Balkanized territory with various powers controlling different parts of it, without any political solution. So my aim is to find a way to stop the killing of civilians while this forever process of finding a political solution proceeds. And I think the two can be severable to some extent. They obviously are related, but there are certain techniques, such as the barrel bombing, that could be stopped with appropriate pressure, and that would make a big difference for the Syrian people who are living with these bombs that can destroy a dozen houses on a try.

There was an article recently in the *L.A. Times* showing how the people of Aleppo have become indifferent to the rockets because they just kill a few people, so they kind of sleep through the rocket attacks because it's the barrel bombs that they are worried about. That just shows what things have come to and what we stoop to. There are steps that can be taken short of a grand political solution that would make a big difference.

With respect to Uniting for Peace, it is a shorthand, and I am not even sure that that is the right term, because traditionally it has really been used to refer only to the General Assembly's authorization of military force. I mean it somewhat more broadly than that, and if we want to use a different term, that's fine. But I think that when the Security Council is not pursuing its responsibilities to address mass atrocities, we need to look to the General Assembly to do some things that traditionally we have looked only to the Security Council to do. The preference by far would be to go with the French proposal that has been on the

table for a while, under which there should be no veto in mass atrocity situations. I think that is a very interesting proposal, but the P5 are not jumping on board.

If we are stuck with the status quo, we should look to the General Assembly. I am particularly interested in looking to it to set up a tribunal, as I mentioned earlier. There is no reason why this could not be done. Of course, such a tribunal would not have the power of a Security Council-established tribunal, but who cares? It's not like anybody is going to invade Syria to pick up suspects. Ultimately, you are going to have to find some way to get suspects down the road anyhow, but the tribunal could be very important as a statement of justice, as a deterrent. It would be useful to do, and I would like to see the General Assembly acting.

If we are not going to settle for the purely legalistic "only the Security Council can approve this", and I don't subscribe to that theory, then we should look for other ways in which military action can be used (but not too easily used) under R2P. One route would be to look to the General Assembly. Another route would be to look to regional bodies. So that's my point in bringing up the General Assembly there.

DONALD FRANCIS DONOVAN

Awn, any points you'd like to respond to?

AWN AL-KHASAWNEH

With respect to the question of whether the United States is supplying weapons to the rebels, of course, I am not in a position to affirm that or deny it, but I think the question that is more often asked, in the Middle East at least, is whether the United States is supplying enough weapons to the rebels to make a difference.

With regard to the question of a Uniting for Peace resolution, I can only say that the dignity of truth is lost with too many reformations. I think the General Assembly has been overused in the past with regard to other conflicts and when the Security Council has not been able to find the necessary remedy.

I wouldn't place too much hope on the action of the General Assembly. I would be very surprised. Again, speaking not only from a purely formal point of view, but from our reading of the world, I think that there wasn't a window, unfortunately, after the collapse of the Soviet Union. I think, unfortunately, it was squandered in senseless wars.

Now, with the resurgent Russia, I don't think the game is the same, and we have to take that always into account in making our calculations.

DONALD FRANCIS DONOVAN

Vera?

VERA GOWLLAND-DEBBAS

First of all, I want to take up the comment that the use of military force results in more civilian casualties. Just looking at Kosovo, we saw the use of depleted uranium, bombardment of refugee convoys, and so on. Or look at the unpredictable consequences of intervention in Iraq or Libya. One never knows where one ends up if military force is used. There is no such thing as a clean surgical strike or a smooth regime change.

As far as the question of a settlement through peace talks, I agree with Awn that one of the mistakes was not to have included all of the regional protagonists. I think Iran should have been there—it is an important player.

It is interesting that when Russia and the United States agreed, they succeeded in producing a framework for the destruction of chemical weapons. There has to be some diplomatic move, and I am wondering how the situation in Ukraine is now going to affect that in Syria.

As far as the General Assembly is concerned, it should play a far more effective role in world affairs. The ICJ in the Wall case in fact bolstered its powers by reaffirming the legality of the Uniting for Peace resolution and its residual role in the maintenance of international peace and security. The problem is that the General Assembly has not been assuming this role. After the end of the Cold War, we have had a very subservient General Assembly. It has not insisted, for example, on receiving special reports from the Security Council under Article 15 of the Charter on the measures the Council has taken to maintain international peace and security, although the Assembly did play a small role in reviewing some of the effects of the sanctions imposed by the Council against Iraq.

Finally, I think the responsibility of the Permanent Members of the Security Council should be insisted upon. As I said previously when referring to the evolution of the collective security system, there is a growing call for accountability of the Council but also for the concurrent responsibility of member states for its actions as well as for their own. Austria in a recent declaration has stated quite bluntly that supplying weapons to the armed groups in Syria could result in state responsibility for complicity in the atrocities perpetrated by some of these movements. One can see here that references are being made to Article 16 of the ILC Articles on State Responsibility regarding responsibility arising from aid or assistance in the commission of internationally wrongful acts.

So you have responsibility arising in a variety of ways—responsibility of the Permanent Members for the actions, or inaction, of the Security Council, but also for their individual actions, as well as the possibility of complicity.

DONALD FRANCIS DONOVAN

Michael?

MICHAEL IGNATIEFF

This conference meets at a time in which I think the rules for the international use of force and the management of international conflict are in more difficulty than we imagined they would be at the end of the Cold War. Crimea, on the one hand, is one bookend. Syria is another. We have the unilateral use of force by one great power and total inaction in the Security Council's blockage in relation to another conflict, which is costing 150,000 lives. So international law is having a very tough go. The people in this room are the trade union of the international law movement, and your trade union wants to strengthen international law. I think everybody on this panel wants to strengthen international law, and it is significant that there is quite a substantial and enduring difference about how to do that. And that seems to me inherent to the problem.

I don't think we are going to get to 'yes' here, and the crucial point is always about when and whether and in what circumstances you can use force. Clearly, my colleague is right. When you use force, it can have unintended and terrible consequences. Just please notice that when you don't do anything at all, it also has terrible consequences. Let's get this thing balanced out. We are talking about tragedy here—whether you pick up the sword

or whether you don't—and let's also remember that none of us pays the price for this. The people who pay the price are the civilians on the receiving end, so we have some obligations there.

I was amused by the question about R2P always being in service of the powerful. It is an amusing point, but it has a slight unreality. We are sitting in Washington, about half a mile from the President most reluctant to use force in the modern period. There is absolutely zero chance, in my view, that the Americans will actually use military force here.

And to pick up a point made by my colleague, one of the reasons that R2P is so unpopular in Washington is precisely as you describe it. They do not want to have intervention be anything other than a discretionary exercise of power. They don't want it to be construed to be a perfect obligation, so let's be real about R2P in relation to the powerful. The powerful don't like it any more than the powerless.

And Ken is making the point that the whole purpose of R2P was to provide better protection for the powerless and for victims. If you then ask me in conclusion as someone who was involved in the drafting of R2P what I care about when I think about what a good world would look like, it's a world of responsible sovereigns. It is not a world subject to the invigilation of powerful states with mass casualty weapons. It's a world of responsible sovereigns.

What does a world of responsible sovereigns look like? Well, I will tell you what it looks like. It looks like Venezuela this week. A bunch of Latin American states go to Venezuela and say, "This thing is spiraling out of control. How can help?" What does a world of responsible sovereigns look like? It looks like Kenya, Tanzania, Zambia showing up, Ghana showing up on Kenya's door saying, "You have just had election violence that could topple into the war of all against all. How can we help?" I don't know whether any of them used the language of responsibility to protect. I don't care. What I like is the vision of a world in which responsible sovereigns perceive that they have obligations to other sovereigns, that sovereigns are not inviolable islands. The idea that intervention is only the business of rich white countries seems to be fatuously wrong.

The 21st century, if we want responsibility, it will be the responsibility of states looking after other states, engaged with other states, as the Latin Americans are at the moment with Venezuela, as the African states are with problems in Africa, African solutions for African problems, Latin American solutions for Latin American problems. That is where we want to go, and at the core of it is a conception of responsible sovereignty, and that's why we wrote that report. And at the moment, we are a long way short of getting closer to that ideal.

DONALD FRANCIS DONOVAN

Okay. Vera has warned us about the danger of sound bites, but I am nonetheless going to ask each of you to give a brief response to a final question. Michael's comments anticipated the question with which I wanted to conclude. We continue to live in a world with many wildly irresponsible sovereigns, and I want to narrow the focus back to the theme of the conference. Recognizing that there is a wide range of considerations and a wide range of axes to consider, how should we look to develop international law in order to strengthen its effectiveness in dealing with—let's put it very bluntly—stopping the kinds of appalling atrocities that are going on in Syria?

I'd like to ask you to speak in the reverse order from your preliminary remarks, so that we start with Awn.

AWN AL-KHASAWNEH

The best way to approach it, of course, would be to effect changes to the Charter itself, to introduce new rules. However, this has to be done by common agreement, and I think this is probably a whole lot of fancy at the moment.

It is really very difficult. People always expect that there is a solution to any problem, but there are some problems to which there may be no solutions, and we have to recognize that this is the situation, at least in the foreseeable future.

To comment on responsible sovereigns, that is exactly what I meant when I said that the countries of the region under Chapter 8 should take the lead. Maybe something that does not state formal changes in the Charter, but before the Security Council to refer more to regional organizations. I am thinking more of the Islamic Conference organizations rather than the Arab League. Had they been permitted to play a greater role before the wounds deepened, before the tragedy became even more tragic, maybe we would not be in a situation like this.

I think we can look here and there for agreements to do things like that, which do not state formal change. But I don't think that the duty to protect, the obligation to protect, concepts along those lines—while I am sure are motivated by the most noble intentions of the world—would be helpful in the situation of Syria. I am very interested in hearing what my colleagues say. Maybe there is something that I have completely overlooked.

DONALD FRANCIS DONOVAN

Ken.

KEN ROTH

Well, let me just begin with Awn's point about regional organizations. We would love for the Arab League to take a leadership role here. Contrast what the Arab League is doing in Syria, which is basically nothing, with what the African Union is trying to do in Central African Republic and Somalia. In Central African Republic, there are tough situations, and the AU is deploying peacekeepers there. They are doing what they can. It is not always effective. It sometimes has to be supplemented by a UN peacekeeping force, but there is an effort there in every situation of mass atrocity on the African continent. Meanwhile, the Arab League has been gazing at its navel for three years as the killing escalates and escalates in Syria. So don't blame the Security Council for the lack of action, the lack of regional solutions, the Chapter 8 stuff. It is there. Take it, but nobody is doing it. So I think we have to be realistic here. The obstacle is not the Security Council. The obstacle is the Arab League.

Now, in terms of what changes, your question, Don, international law is still at a rudimentary stage. We have imperfect enforcement mechanisms because of the veto, and so if you are a Permanent Member or a friend of the Permanent Member, you can get away with mass atrocities and for the most part avoid Security Council action, which creates an enormous gap in the enforcement possibilities. We have massive violations of international law, and nothing is done.

So I think what we need to do is to look at international law less as an excuse not to act, which is the way we tend to talk about the Security Council. God forbid we do something if one of the Permanent Members doesn't want us to. We have to look at the problem instead as one of enforcement. There are serious violations of the law and in significant areas involving massive loss of life. What are we going to do to enforce that law? I think if we

take that enforcement mentality, we can begin to make a difference, recognizing that the last answer is military force. But we should be looking much more readily for ways to establish tribunals, to enforce arms embargoes, to apply sanctions, to condemn actions. These are all useful enforcement tools, short of the controversial stuff of military action. But we can't feel that we've done our best after we have presented these options to the Security Council, and it has done nothing. We've got to recognize that the responsibility to enforce is a broader one.

DONALD FRANCIS DONOVAN

Michael.

MICHAEL IGNATIEFF

I feel I'm in a slightly comic situation since I've already said my final word. Instead of repeating my final word, I will just pass to my colleague.

DONALD FRANCIS DONOVAN

Vera.

VERA GOWLLAND-DEBBAS

I agree entirely with Michael, which may seem strange following our R2P discussion, when he refers to developments in Africa and Latin America in which regional actors cooperate to settle crises in a peaceful manner. These simply reflect the basic principles of the UN Charter: cooperation and peaceful settlement of disputes. So I think that this is the kind of world we would like to see. Again, let me nuance what I have said about R2P. I have only discussed this in the context of the use of unilateral military force. So if you want to call what is happening when states come to the assistance of other states through peaceful means the preventative side of R2P, that's fine. If you want to call it the application of the purposes and principles of the Charter, that's fine with me as well—this is exactly the kind of world we would like to see.

AWN AL-KHASAWNEH

Just a very small comment. I wasn't thinking of the Arab League but more of the Organization of Islamic States, and there, of course, Iran could have played a very important role. And that role was stated very early on in the Syrian crisis.

KEN ROTH

Look, I'll take the Organization of Islamic Conference. I'll take whoever you put forward, but nobody is acting, and that's the problem I have.

DONALD FRANCIS DONOVAN

Like many of the discussions over the last week, this one could go a lot longer and be just as compelling. I ask you all to join me in thanking Ken and Michael and Vera and Awn.

[Applause]

And on behalf of our new President Damrosch, Executive Director Andersen, President Wedgwood, and Lord Nance, I want to close by thanking Fionnuala, Oona, Larry, and the entire Program Committee for putting on a spectacular program, and Betsy and all our colleagues at Tillar House for organizing a flawless event.

[Applause]