

TRANSATLANTIC DIALOGUES ON INTERNATIONAL LAW *RISING POWERS AND INTERNATIONAL HUMAN RIGHTS LAW – A TRANSATLANTIC CHALLENGE*

MONDAY, TUESDAY • OCTOBER 24-25, 2011 • 9 AM-5 PM, 9 AM-1:15 PM

THURSDAY, FRIDAY • DECEMBER 1-2, 2011 • 12:30 PM-5 PM, 9 AM-5 PM

On October 24-25 and December 1-2, 2011, the Atlantic Council and Chatham House (Royal Institute for International Affairs) brought together 60 policy-makers, legal scholars and practitioners from Europe and the United States for two workshops to discuss the challenges of ensuring the observation of international human rights law in light of shifts in global power and the increasing importance of states including Brazil, China, India, Russia and South Africa. The first workshop was held at the Atlantic Council in Washington, DC and was composed of primarily American participants and the second meeting was hosted by Chatham House in London and brought together mainly European discussants. At both workshops, participants explored the positions of the 'rising powers' on key issues in contemporary international human rights law and their engagement with institutions including the UN Human Rights Council and UN human rights treaty bodies. Throughout the discussion, the group analyzed US-European methods and tools for enhancing global compliance with human rights law and proposed key policy recommendations for more effective US-European cooperation with the rising powers. These recommendations, along with main conclusions from each session, are summarized below.

All discussions were held on the basis of the Chatham House Rule. The following summary reflects the work of the Atlantic Council, and participants bear no responsibility for its content. The workshop was generously sponsored by the European Union Delegation in Washington, DC.

PART I: POSITIONS OF EMERGING POWERS ON KEY ISSUES IN CONTEMPORARY INTERNATIONAL HUMAN RIGHTS LAW - AN OVERVIEW

Key Points:

- ❖ When studying the approaches of Brazil, China, India, Russia and South Africa to international human rights law it must be recognised that while they may adopt some common positions, each of these states has different histories and politico-legal systems and is subject to different domestic pressures which inform their positions on human rights issues at the international level. The rising powers tend to promote traditional concepts of state sovereignty and non-interference in the domestic affairs of other states. They may oppose sanctions and other intrusive methods of ensuring compliance with international human rights law, both for themselves and other states. As these powers become more influential within international institutions, enforcement of human rights norms may become more difficult.
- ❖ The rising powers tend to prioritise economic, social and cultural rights and the right to development whereas the United States and Europe have historically emphasized civil and political rights. This difference oftentimes prevents productive human rights dialogue.

Summary:

Central to this first session was a recognition that the rising powers have little in common except for their growing global relevance. Any discussion of their behaviour within the international human rights system must

be informed by an understanding of their different paths to rising power status. The approaches of India, South Africa, Brazil and China towards international human rights law have been shaped in part by the experience of colonialism. Brazil's approach is also coloured by its recent history of military dictatorship, while Russia's approach is informed by concerns relating to Chechnya.

China is a 'giant' among the rising powers on account of its economic power and its stance on international human rights issues is likely to become increasingly important. Many within the Chinese foreign policy establishment believe the human rights system was created when China was outside the system and they aim to reshape it in ways that reflect Chinese goals. These days, the Chinese government generally demonstrates rhetorical tolerance for international human rights norms but it unapologetically ignores its international human rights law obligations within China and goes to considerable lengths to avoid international scrutiny of its domestic human rights record. China's official discourse on human rights poses a challenge to the concept of universality by suggesting that it is for the Chinese government to decide how international human rights standards ought to apply within China. China also suggests that the principle of progressive realization applies to all rights, including civil and political rights. Comparatively speaking, the Chinese government faces little domestic public pressure regarding human rights though there is some evidence that this is changing. China still tends to provide political cover for repressive regimes within both the Security Council and the Human Rights Council.

US and European efforts to confront China on its human rights record via human rights 'dialogues' have largely been ineffective. They have led to very few concrete improvements and there is a sense that they have become talking shops. Chinese diplomats approach these dialogues on the basis that US/European and Chinese human rights abuses are of equal severity, and Western diplomats are often reluctant to challenge this.

South Africa is more open to human rights dialogues than China and in some areas it has become a regional human rights leader, for example in the protection of economic and social rights. South African civil society is strong and has shaped some positions taken by South Africa at the international level. For example, South Africa has become an active promoter of LGBT rights, including within the UN Human Rights Council. However, South Africa's local and international interests in other areas are sometimes politically incompatible. For example, a sense that it has a historical debt to its neighbors prevents South Africa from taking strong action internationally in respect of gross human rights violations in Zimbabwe.

Russia is a party to the European Convention on Human Rights (ECHR) and its constitution gives domestic effect to international law; international legal arguments are raised in both the upper and lower courts. After many years of holding out against European pressure, Russia recently ratified Protocol 14 to the ECHR providing for a series of reforms to the European Court of Human Rights. However, Russia's internal human rights record is very poor and it was suggested that the European human rights system may have been more affected by Russia than the other way round. As in many ex-Soviet states, there tends to be a stronger focus on horizontal obligations and Russian opinion polls suggest that economic, social, and cultural rights are perceived by the public as more important than civil and political rights.

India is an established and relatively open democracy with a vibrant civil society. However, the Indian government is averse to international scrutiny and it provides strong support for the principle of non-intervention within the Human Rights Council and other UN bodies. India has often assumed an aggressive role within the G77. Unlike South Africa and Russia, India is not part of any regional human rights protection system.

Brazil generally plays a constructive role within the international human rights system. It has demonstrated leadership on gender and LGBT issues and, in principle, is not opposed to country resolutions. Brazil has a positive policy of South-South cooperation and is a powerful advocate for human rights among non-Western

states, and within the Latin American and Caribbean group in particular. It could play an important bilateral role, for example with Cuba. Brazil's complex internal structure means that positions it adopts on the international level are often informed by federal politics. An EU-Brazil human rights dialogue was instituted in 2007 and the Brazilian President recently confirmed her support for this initiative.

The ongoing economic crises in the United States and Europe have indirectly impacted the international human rights framework because trade and economic relationships have been prioritised over human rights in bilateral relationships. The crises have also triggered a general loss of credibility for the United States and Europe in the global arena as they struggle to uphold the link between democratic values and economic prosperity.

Human rights violations committed by the United States and European states, including in the context of the 'War on Terror,' have posed serious risks to the human rights edifice and have also jeopardised the credibility of these states in their dealings with the rising powers on human rights issues. The United States in particular has resorted to traditional sovereignty-based arguments to defend various practices including indefinite detention of terror suspects at Guantanamo Bay and has been charged with hypocrisy for pursuing a policy of 'exceptionalism' while chastising other states for attempting to do the same. Recent US torture practices have been very detrimental to the cause of human rights defenders in Eastern Europe and other parts of the world.

Within international fora, the rising powers favour economic, social and cultural rights and are very critical of what they perceive as an over-emphasis on civil and political rights. However, their enthusiasm for socio-economic rights at the international level is not always matched by strong implementation domestically of their own obligations in these areas. Nevertheless, much could be achieved internationally if the United States and European states engaged more seriously on economic, social and cultural rights issues. There are some signs of a shift in US policy – for example Michael H. Posner, the Assistant Secretary of State for the Bureau of Democracy, Human Rights and Labor in the United States State Department, used a speech to the American Society of International Law in March 2011 to signal a willingness to engage more on these issues within the UN.

In addition to bilateral human rights dialogues, there should be a focus on practical things that can be done to build awareness amongst key domestic constituencies within rising power states about the international human rights obligations of these states.

Although the United States and the EU seek to cooperate on human rights issues within international fora, the length of time taken by EU members states to agree on a common position often means there is no time left to coordinate with the United States. This has weakened transatlantic cooperation within the international human rights system.

Recommendations:

- ❖ In order to restore their credibility among rising powers and other states, the United States and European states must renew their commitment to the international human rights legal framework, including the obligations set out in the UN Charter, and must work to correct recent lapses in their own human rights compliance records.
- ❖ The United States should drop its objection to extraterritorial application of human rights treaties. This would gain credibility with some third countries, who argue that the United States has a good human rights record internally but not where it projects its power abroad.
- ❖ The United States and EU states must support the ICC. Even if it does not join the Court, the United States can assist by acting within the UN Security Council to refer relevant situations to the ICC, as

was done in the case of Darfur in 2005. The United States can also gain a public diplomacy advantage from assisting in the Court.

- ❖ While continuing to defend and promote civil and political rights, the United States and European states should seek opportunities to work more constructively with rising powers on initiatives that are genuinely designed to realize socio-economic rights in rising powers and other parts of the world.
- ❖ Human rights should remain a pillar of foreign policy for the United States and European states and, notwithstanding the economic crisis, must not be de-prioritized in favour of economic, security and other strategic interests during dealings with the rising powers.
- ❖ Pursuing reforms under the rubric of “good governance” may trigger less resistance than when the language of human rights is used, but caution must be exercised so as not to inadvertently undermine the human rights framework.
- ❖ The United States and European states must find ways to support local activists within China and other rising power states who are working to defend the universality of human rights against attacks on this concept by their governments. When engaging with local NGOs, governments should focus on providing key resources and capacity-building, not influencing agendas. Engagement between Western NGOs and NGOs in rising power states should also be promoted.
- ❖ The United States and European states should continue to promote training on international human rights law for judges, lawyers and police in rising powers, as well as subsidized Master of Laws (LLM) studies for students from these states on condition that they return to work in these states afterwards
- ❖ There should be further programs aimed at translating international human rights jurisprudence into local languages for use by lawyers and judges.

PART 2: EMERGING POWERS AND THE UN HUMAN RIGHTS MACHINERY

Key Points:

- ❖ The rising powers generally have good ratification records for the main human rights treaties; however compliance in practice with both their substantive and procedural obligations remains a problem.
- ❖ The treaty body system is under-resourced, and increasingly so following a diversion of resources to support the UN Human Rights Council’s Universal Periodic Review process. This limits the capacity of the treaty bodies to hold rising powers and other states accountable for poor human rights records.
- ❖ The rising powers have generally exhibited solidarity within the UN Human Rights Council but they do diverge in some areas, including in relation to country-specific resolutions.
- ❖ Because it applies to all states, Universal Periodic Review process is a key opportunity to critically examine the human rights records of the rising powers.

Summary:

This session addressed engagement by the rising powers with key elements of the UN human rights machinery including the treaty monitoring bodies, the Human Rights Council and the Council's Special Procedures including Special Rapporteurs.

On paper at least, the rising powers are enthusiastic participants in the human rights treaty system. They have good ratification records for the core human rights treaties, though there are some notable exceptions. For example, China has not yet ratified the International Covenant on Civil and Political Rights (ICCPR), though it applies in Hong Kong and Macau, and India has not yet ratified the UN Convention Against Torture (UNCAT).

Russia has not ratified the Convention on the Rights of Persons with Disabilities (CRPD) and South Africa, somewhat surprisingly given strong socio-economic rights protections in its Constitution, has not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). None of the rising powers are parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families or, with the exception of Brazil, the International Convention for the Protection of All Persons from Enforced Disappearance.

The records of these states in permitting individuals to take complaints to the treaty bodies are patchy. China and India have not granted the right of individual petition under any of the treaties to which they are party, and only South Africa has granted this right under UNCAT. Russia, Brazil and South Africa permit complaints under the ICCPR, International Covenant on the Elimination of All Forms of Racial Discrimination and Convention on the Elimination of all forms of Discrimination Against Women, and Brazil and South Africa also permit complaints under the CRPD.

Compliance in practice with both their procedural and substantive treaty obligations is another matter entirely. Although this problem is not confined to the rising powers, many of these states have delayed in submitting their progress reports to the treaty bodies – for example, Russia is yet to report to the Committee Against Torture and Brazil delayed more than 10 years before submitting its first report to this body. Other states such as India and China play the game procedurally, sending high level delegations to examinations but they are not necessarily constructive. Brazil has a much better record of genuine engagement. China takes a very conservative approach to treaty construction and the role of the treaty bodies. It resists NGO participation and seeks enhanced control for states over the treaty bodies.

The treaty bodies have limited enforcement tools at their disposal (e.g. reports, recommendations and general comments) and are generally hampered by a lack of resources. Reporting by states has increased as a consequence of pressure applied through the Human Rights Council's Universal Periodic Review (UPR) process, though UPR has also meant a diversion of resources away from the treaty bodies to support that process. Lack of resources means, among other things, that funds are not always available for document translation.

The United States is limited in the advocacy it can do in support of the treaty system because it also has not ratified some key treaties including the Convention on the Rights of the Child, CEDAW and CRPD. EU-led advocacy on issues relating to the international human rights treaty system is therefore likely to be more effective. The EU uses a number of tool including dialogues, démarches and public declarations to encourage rising powers (and other states) to ratify and drop reservations to treaties.

Brazil, China, India, Russia and South Africa have all served on the Human Rights Council. The extent to which they work together within the Council is unclear but they certainly do not act as a bloc. Participants agreed that the regional blocs remain the main venues for coordination within the Council. Brazil is more supportive than any of the other rising powers of robust action within the Council, for example in response to serious human rights abuses within specific countries, but it has resisted a leadership role. In contrast, China and Russia strongly object to 'naming and shaming' and argue that the Council should instead focus on dialogue and cooperation. India articulates a similar policy but it has often abstained rather than voting against country resolutions (for example on Syria and DPRK). China has pursued a low profile within the Council, but it has become more exposed recently, for example in votes on resolutions relating to DPRK and Syria. During the 18th session of the Council, China delivered a high profile statement on behalf of 34 states on peaceful protests and this has been interpreted as evidence that China is increasingly comfortable articulating its views openly.

China went to considerable lengths to manipulate its first peer review under the UPR framework – it reportedly created fake NGOs to contribute to the civil society report and, like many states, ensured that friendly states lined up to compliment China on its progress. China released a human rights action plan not long after its UPR but insisted this was unconnected to international pressure. India was very worried about its UPR which created openings for pressure. Some of the rising powers have also begun to experiment with using UPR to shine a spotlight on the failings of Western states – for example China criticised the United States in many areas and India advised the UK to develop a human rights action plan.

Most of the rising powers are cautious about the Special Procedures of the Human Rights Council and have tried to limit their activities, for example by supporting the creation of a 'code of conduct.' Although China is heavily resistant to Special Procedures' criticisms of its human rights record, it does not raise ideological objections to them visiting China. Successive UN Special Rapporteurs on Torture did not visit China because agreement could not be reached on the terms for the mission. When a later Special Rapporteur on Torture, Manfred Nowak, finally did visit, the Chinese government was very unhappy with the report. Brazil is more open in its approach and was at the forefront of efforts to create a Special Rapporteur on the right to the highest attainable standard of health.

Both China and Russia will rotate off the Human Rights Council in 2012, but while this presents some opportunities, participants concluded that it is unlikely to significantly alter dynamics or voting patterns in the Council.

Recommendations:

- ❖ The United States and European states must actively and consistently champion the framework of international human rights law with rising powers including the relevant provisions of the UN Charter and the principle of universality enshrined by the Universal Declaration of Human Rights.
- ❖ The United States and European states should support the treaty bodies politically when they come under attack for criticising the human rights treaty compliance records of rising powers and other states and should support increases to their budgets to enable them to better discharge their duties under the treaties.
- ❖ Web-casting of treaty body sessions should be facilitated to increase transparency and opportunities for civil society organisations to hold rising powers and other states accountable for poor treaty implementation.
- ❖ The United States and European states should make better use of the UPR process to underline states' legal obligations in the human rights field and to reinforce recommendations directed at the rising powers and other states by the treaty bodies.
- ❖ Further work is needed on the membership criteria for the Human Rights Council and more should be done to hold states to their voluntary pledges.
- ❖ Lengthy processes within the EU often mean there is no time to coordinate with the United States. A solution to this problem must be found in order to facilitate improved US/EU cooperation within the Human Rights Council.
- ❖ The United States and European states must find new ways to cooperate with the rising powers within the Human Rights Council and to leverage within the regional blocs any positive leadership they demonstrate. Strategies are likely to be issue-dependent and pragmatic. Great care must be taken in view of tensions that may arise between short and long term objectives – for example, initiatives on issues like human trafficking may be attractive to states like China because they increase state power over non-state actors, but taken too far this approach can be corrosive. The United States and EU should engage with China by framing China's human rights violations as a problem affecting China's national interests. For example, China currently faces resentment in Africa because of the poor human rights record of Chinese investment projects there.

- ❖ After 2012, Russia, China, South Africa, and Cuba will all be off the Council temporarily. This provides a window in which to pass more effective resolutions, though the real scale of the opportunity remains to be seen.

PART 3: THE QUESTION OF ENFORCEMENT: US AND EU PERSPECTIVES

Key Points:

- ❖ Enforcement of international human rights law is very challenging and this is particularly so in relation to the rising powers.
- ❖ Sanctions play an important role in enforcement, however there is a lack of clarity about when and how they should be applied.
- ❖ Country-specific resolutions passed by the UN's political bodies, although resisted by China, Russia, India and other states, still play a valuable role in enforcement of human rights standards.

Summary:

This session explored the international community's enforcement tools in the human rights field and their applicability to the rising powers.

Enforcement is the Achilles heel of the international human rights system. The international community boasts good norms and workable institutions in this field, but enforcement mechanisms require further development. For this reason human rights enforcement is “more an art than a science.”

“Soft” enforcement tools include “naming and shaming,” including via social media and other technologies, bilateral human rights dialogues, aid conditionality and investment in civil society actors who can hold states to account at the domestic, regional and international levels. The EU, for example, has a good track record of using dialogues and other opportunities to encourage states to ratify human rights instruments, although some argue that these methods are vulnerable to manipulation. Russia, for example, refuses to participate in human rights “dialogues” and sends low ranking officials to the human rights “consultations” that are held instead. China has in the past struck names from the EU's delegation list for the EU-China dialogue and has represented via the Chinese press that the dialogue was used by the EU to praise China's human rights record. The European Union needs to take a tougher, more nuanced stance towards countries unwilling to engage fairly.

Aid conditionality is a less potent tool for the United States and EU states now that China offers investment with “no strings attached” to states with poor human rights records, although it was noted that China has itself resorted to aid conditionality as a means of pressuring states not to recognise Taiwan. India has also pushed back against human rights clauses in trade partnership agreements.

Sanctions are the most obvious of the “hard” enforcement tools. They do not always produce quick results but can be effective as part of a package of measures that also includes some of the soft measures as described above. Sanctions also serve an important communicative function by publicly condemning forms of conduct and distancing the sanctioning country from that conduct.

The rise of global powers beyond the United States and Europe has limited the effectiveness of sanctions because there are alternative countries to visit and trade with. For example, a head of state banned from travel

to Europe can travel to Singapore instead and enjoy the same amenities. Similarly, the impact of sanctions is blunted when states such as China offer alternative markets and loans.

Recent European jurisprudence on sanctions (including the *Kadi* and *Nada* cases) are a warning shot about the potential for sanction regimes to violate human rights. Proportionality must be carefully considered, including via impact assessments which can be conducted quickly if necessary, and there must be provision for judicial review. Problematically, sanctioning bodies are often unclear whether a set of sanctions will succeed or how to tell whether they have succeeded. The United States and EU lack a strategic vision as to what sanctions should accomplish and when they are appropriate.

Other “hard” tools include referrals to the International Criminal Court (the legitimacy of this tool was significantly strengthened by the unanimous vote in favour of Security Council resolution 1970 referring the situation in Libya to the ICC), initiating proceedings in regional human rights courts (often this is more palatable than action at the international level within Africa and Latin America), and strengthening of domestic accountability systems.

Country-specific resolutions remain a useful enforcement tool even if they are only used in relation to a small number of countries. NGOs consider them valuable and countries of concern seek to avoid them at all costs which is evidence of their impact.

Recommendations:

- ❖ Before sanctions are imposed, the rationale for them, their expected duration and the basis on which their effectiveness will be judged should be agreed. Too often, it is unclear under what conditions a sanction should be lifted.
- ❖ The international community must learn from past sanctions. Research should be established into the history, effectiveness, and durability of previous sanction regimes.
- ❖ A policy framework should be developed for ICC referrals.
- ❖ Benchmarks are needed for human rights dialogues and their transparency must be increased. There should be a more strategic choice of topics and greater involvement of human rights defenders.
- ❖ More resources need to be directed towards mainstreaming human rights within the UN in accordance with former Secretary-General Kofi Annan’s reforms.
- ❖ The UN needs to respond appropriately to gross human rights violations in order to create a consistent human rights culture that countries can adapt to.

PART 4: REGIONAL MECHANISMS

Key Points:

- ❖ While the network of regional human rights institutions now covers a broad swath of the globe, some rising powers, notably India and China, are not yet subject to human rights oversight at the regional level.
- ❖ Despite its shortcomings, the European Court of Human Rights is the most effective regional human rights court and most of its rulings are complied with “by most of its members most of the time”. Russia generates a heavy case load for the Court and has a poor record of implementing judgments.
- ❖ The inter-American human rights system receives less attention and funding by comparison with the European system but it has achieved a great deal, particularly in relation to human rights promotion. Brazil participates in this system but is currently locked in a dispute with the Organization of American States over a major dam project.

- ❖ The African human rights system is still in a formative phase. South Africa is a major player within this system.

Summary:

This session focused on the regional human rights protection systems and the attitudes of the rising powers to these initiatives.

There is enormous potential for regional human rights machinery to embed human rights norms in different parts of the world, but their coverage remains patchy, particularly in Asia and the Middle East.

The European human rights system remains the most developed but continues to face considerable criticism owing to the huge backlogs in the European Court of Human Rights, low levels of compliance by some states including Russia and Turkey, uneven abilities amongst the judges, and the practical impediments to accessing the Court including in states with high levels of illiteracy. “Friendly fire” is also on the increase amongst politicians in the UK and Germany over issues including the rights of prisoners and terror suspects and in the field of privacy rights. Discussants queried whether it had been wise to abolish the European Commission on Human Rights which had played an important role in assessing the admissibility of petitions before they reached the Court.

The European Court of Human Rights has had mixed results in Russia which continues to generate vast numbers of individual complaints often in relation to the same issues, for example detention conditions. There have been some improvements including Russia's support for Protocol 14 of the ECHR.

The inter-American human rights system has been remarkably successful considering its modest levels of funding. The Inter-American Court of Human Rights has increasingly focused on compliance and reparations and the Inter-American Commission on Human Rights plays an important role in human rights promotion. Brazil recently threatened to withdraw from the Organization of American States (OAS) after the Commission called for Brazil to suspend work on the Belo Monte dam in the Amazon. An injunction issued by a Brazilian court shifted the focus away from the Commission but the situation is still tense.

The pan-African human rights system is continuing to develop. The AU Charter includes a strong focus on human rights and democracy and the AU has shown some willingness to discipline violating states. Alongside the African Commission on Human and Peoples' Rights there is a new African human rights court and several sub-regional courts which also deal with human rights issues even if they do not have human rights in their names. There continue to be conflicting views within Africa about the human rights framework – while some actors feel it is a neo-colonial imposition, others have embraced its potential for promoting good governance and development. In states such as South Africa, strong civil society movements are mobilizing to support implementation of the state's human rights commitments. There have also been important African innovations in relation to socio-economic and group rights which serve as a reminder that the process of human rights standard development is not a unidirectional one in which the West instructs the world; it instead runs two ways.

The Arab League has an Arab Charter on Human Rights which could yet become a useful human rights tool and there are efforts underway to develop human rights mechanisms for the Organisation of the Islamic Conference and for the Association of South East Asian Nations.

Recommendations:

- ❖ The United States and EU should support the development of regional human rights institutions and recognise that they are often more effective than the UN in generating domestic support for and enforcing human rights. Building the capacity of domestic human rights groups to utilize these institutions is essential and should include translation of key legal materials for use by local lawyers.
- ❖ Great care must be taken to ensure that universality of human rights is not undermined by regional systems based on human rights instruments that fall short of international standards.
- ❖ Better use could be made of the Parliamentary Assembly of the Council of Europe by having its parliamentarians, who are members of their home countries' parliaments, raise issues of non-compliance with the European Convention on Human Rights with their national governments.

PART 5: LESSONS FROM THE ARAB SPRING

Key Points:

- ❖ The Arab Awakening has been underpinned by citizen demands for human rights and it is hoped this will translate into increased support among Arab states for human rights, both domestically and abroad.
- ❖ Libya provides a useful case study for the use of international law tools, including intervention based on the concept of the responsibility to protect. These interventions include travel bans, asset freezes, arms embargoes, special Human Rights Council sessions, suspension from the Human Rights Council, and referral to the ICC. Whether this model is replicable in the near future remains to be seen.
- ❖ Turkey has emerged as the key rising power in the Middle East, dominating regional discussions and presenting an example of how human rights concerns can be addressed in a Muslim country.

Summary:

This session explored the role of international law in the Arab Spring, including efforts by the international community to discourage crackdowns, and the positions adopted by the rising powers in the context of these events.

The Middle East and North Africa (MENA) region is highly diverse and recent events connected with the 'Arab Spring' have had different implications for different states. Some states are in transition (Tunisia, Egypt, Libya), some can be described as 'pragmatic reformers' (Morocco, Jordan), others have 'purchased consent' rather than reform (Saudi Arabia, Algeria), and there are also active oppressors (Syria, Yemen, Bahrain).

The uprisings across the MENA region may provide opportunities for human rights reform. Internal pressure in this direction tends to be strongest within countries that are already democratic to some extent. It will be interesting to see what potential these developments hold for reshaping the traditional positions of the OIC. Tunisia, for example, is now a party to the ICC Statute and Egypt is considering ratification (though participants noted that post-Mubarak Egypt still plays an obstructive role within the international human rights system). Although aid conditionality fell out of favour some years ago, there is some evidence that it is being revived in the context of the Arab Spring with the EU standing ready with aid programs to provide support on the basis of the "more for more" approach, increasing aid and trade only if certain benchmarks are achieved.

International law has played a prominent role in the Arab Spring. There have been three main conversations. First there have been substantive claims based on international human rights law put forward by the protesters, involving, for example, freedom of assembly, freedom of expression and access to the Internet, non-violence and the ban on arbitrary detention. The Human Rights Council has largely endorsed these claims and acted, for

example, to trigger Libya's suspension from the Council. Second, international criminal law has featured in resolutions of the Security Council, including the referral of the situation in Libya to the ICC. Third, there has been a conversation about the responsibility to protect. Each of the key Libya resolutions in the Security Council (1970 and 1973) recognised that the primary responsibility to protect rested with Libya, and Brazil, Russia, India, China and South Africa joined the unanimity in relation to resolution 1970. The support of the Arab League and the African Union were critical factors in securing the support of China and Russia in particular. Unanimity was broken for resolution 1973 although South Africa voted in favour (China, Russia, Brazil as well as Germany abstained). Libya is an example of all of the tools being used including suspension from the Human Rights Council, referral to the ICC, and sanctions. For various reasons it has proved impossible to replicate this in relation to Syria, but in the long term it may be that the Libya example serves as a precedent elsewhere.

Turkey has emerged from these events as an increasingly important player in the region and an example of how human rights can be addressed in a Muslim country. While there is potential to leverage Turkey's influence, for example in relation to Iran, concerns were sounded about the extent of Turkey's human rights problems, including in relation to the treatment of minorities.

One of this session's main conclusions was that the MENA region has proven itself willing to pursue democracy and international human rights standards, an ambition the West never considered plausible. Ultimately, the Arab uprisings have demonstrated that human rights can be a source of security.

Recommendations:

- ❖ The United States and EU must continue to promote democratization in the Arab world by reaching out to the new governments and supporting civil society actors who are pressing for human rights reforms.
- ❖ When offering conditionality-based aid, the United States and EU should pursue the “more for more” approach and consider not just finance but also market access and mobility.
- ❖ The role of Turkey in brokering human rights reforms elsewhere in the Islamic world should be cultivated though pressure still needs to be applied in relation to Turkey's shortcomings, especially in protecting minorities.
- ❖ The United States and Europe must take a stronger approach in relation to Saudi Arabia which has played a critical role in preventing reform in states like Bahrain.

As the balance of global wealth and power continues to shift to the East and South, the United States and Europe must strengthen their partnership in order to remain leaders in upholding human rights and the rule of law around the world. The above conclusions and recommendations highlight a range of options for improving US-European collaboration in this field. The Atlantic Council and Chatham House thank workshop participants for their insights and the European Union Delegation in Washington, DC for its support.