

Written Evidence from Chloë M Gilgan (RTP0011)

Short bio

[Chloë M Gilgan](#) is a PhD candidate in Law at the University of York Law School and the Centre for Applied Human Rights with funding by the Economic and Social Research Council. Chloë is a doctoral researcher for the European Centre for the Responsibility to Protect (ECR2P) and has published on the Responsibility to Protect. Her dissertation examines the varied understandings over implementation of the Responsibility to Protect (R2P) norm across different UK government agencies. Chloë's research and expertise lies in US constitutional law and public international law, particularly in the areas of international human rights, international refugee law, international humanitarian law and international criminal law.

Executive Summary

This paper answers one question posed by the Committee: "To what extent has the UK fulfilled its commitment made in 2005 to protect civilian populations from genocide, war crimes, crimes against humanity and ethnic cleansing? Has the UK fulfilled its commitment?"

- The UK is meeting its R2P through diplomacy efforts at the UN Security Council, humanitarian assistance in Syria and the region through DFID, and via its Syrian resettlement programme at the Home Office. The recommendation is to explicitly link all domestic policies that help to protect Syrians from mass atrocities in order to operationalise the UK's rhetorical commitment to R2P.
- The UK is failing to fulfill R2P's aspirational objectives such as ending the mass atrocities in Syria. However, non-coercive options have not been exhausted, such as committing to finding consensus in the UN Security Council by adjusting the UK's objectives or by using the Uniting for Peace initiative in the UN General Assembly.

What Does R2P Require?

1. Confusion persists as to what an R2P response entails. R2P demands the lowest common denominator in terms of the international community's response to mass atrocities in exchange for wide consensus.^[1] The literal obligation in paragraph 139 is to '*help* protect populations from mass atrocity' which is highly subjective and ambiguous. Arguments that member states are required to do whatever it takes to *save* populations from mass atrocity are compelling^[2] but rely on a much broader interpretation of R2P obligations than what is found in the text. The presumption that R2P requires ending mass atrocities or saving populations from mass atrocities manifests from the spirit underlying the R2P norm, and not from its text.^[3] The language of R2P, as endorsed by states, permits a subjective (due to ambiguity) and minimal (*helping* to protect, not protecting) response to those facing mass atrocities. States are not politically or legally required to act beyond the text they endorsed. Interpreting R2P narrowly as a response that '*helps* to protect populations from mass atrocity', a different obligation from 'ending the mass atrocity' is defensible. Former Special Advisor on R2P, Jennifer Welsh, argues that 'R2P is best conceived as a responsibility to consider a real or imminent crisis involving mass atrocity crimes'^[4]. This evidence advises that Welsh's 'duty to consider' is the baseline from which to begin because R2P also requires that states actually '*use* appropriate diplomatic, humanitarian and other peaceful means'.^[5] This means the UK has a 'duty to consider' a case and then must respond through one of these peaceful methods, but the responses need only *help* protect populations from mass atrocities, which requires a minimal effort as compared to ending the mass atrocities. The duty to respond under Chapter VII is even less binding than the non-coercive measures as states agreed they 'are prepared to take collective action in a timely and decisive manner'.^[6]
2. Advocates can certainly advocate for a broader interpretation of state responsibilities under R2P from moral imperatives and perhaps even from political necessity, but a state cannot be said to be failing its responsibility to protect when mass atrocities persist despite implementation of responses that *help* to protect but fall short of ending the mass atrocities.

The UK's Responses to Syria are R2P in Action

1. There is a persistent notion that R2P constrains the development and realisation of foreign policy objectives, and particularly, that R2P implementation means engaging in a Libya-style military intervention.^[7] For this reason, high-level officials are careful not to connect R2P to humanitarian assistance on the international level in order to avoid a Russian and Chinese veto over fears of leaving room for a robust military response.^[8] This notion has

also led to a rebranding of the ‘responsibility to protect populations’ to a ‘responsibility to protect civilians’ as a way to distance policies from R2P’s controversial military aspect.[9] The problem is that R2P is too often conflated with military intervention, which makes officials wary of linking any response to R2P. R2P is then relegated to its prevention box under Pillars I and II.[10] As a result, the UK’s commitment to R2P appears rhetorical rather than operational because in the absence of authorisation for military intervention, it looks as if the UK is not responding to Syria within the context of R2P.

2. However, the UK is currently implementing R2P through its various cross-government responses, including diplomacy at the international level and humanitarian assistance in the region through DFID. In reality, R2P requires a response that does little more than *help* protect, so it is powerless to constrain foreign policy or pre-determine the particular responses to cases of mass atrocities. Any response that can be said to help protect populations from mass atrocities is R2P in practice. Importantly, the UK has not linked R2P to its other policies on Syria,[11] particularly the Home Office’s Syrian Resettlement Scheme, which is certainly a policy that is *helping to protect Syrians from mass atrocities*. Linking this programme to R2P would help build the norm and would demonstrate how the UK is practicing R2P in other non-coercive ways. This would signal to those wary of R2P as a military intervention tool that the UK implements R2P in non-coercive ways and does not conflate the norm with military intervention.

Instead, the UK may be failing the aspirations of R2P

1. The UK is implementing R2P as endorsed in 2005. The issue is that practising all these R2P responses has not ended the mass atrocities in Syria. Thus, if the UK wants an end to the humanitarian suffering in Syria and the region, then it must take steps towards reaching R2P’s aspirational ends. Importantly, it is not implementation of R2P that is preventing realisation of the norm’s aspirations. Instead, it is a lack of diligence in finding consensus at the UN Security Council. Linking R2P to humanitarian aid is not what is causing a Russian veto[12], it is the linking of political transition to humanitarian access that has caused non-consensus.[13] Furthermore, pursuing the Uniting for Peace initiative as argued by Dr. Adrian Gallagher is another way for the UK to lead in obtaining multilateralism for attaining R2P’s aspirational ends.[14] Thus, in terms of ending the humanitarian crisis, it is impossible to say all peaceful options have been exhausted requiring the unilateral use of force, which remains illegal under international law. Furthermore, legitimacy is also tenuous as a coalition of the P3 engaging in military action fails to demonstrate that the international community is convinced of the need for the use of force. [15]

Conclusion

1. The UK has not failed its responsibilities under R2P because the Pillar III *prescription* to *help* protect populations is minimal and subjective as virtually any response that can be said to help protect populations from mass atrocities suffices as implementation of R2P. The fears around linking R2P to government policies on Syria stem from misconceptions around what R2P requires and what R2P responses should look like. The UK’s policies on Syria, including humanitarian assistance, Syrian resettlement, and diplomacy all fit within the remit of R2P responses. R2P does not require a particular response but allows any response that helps to protect populations from mass atrocities.
2. The R2P norm as endorsed does not require ending mass atrocities and therefore, resolving conflicts and ending human suffering comprise its underlying aspirations, which will be left to the political will of the state to pursue. However, the means used, such as unauthorised military force for laudable ends, may give rise to additional responsibilities[16] and may threaten the international system by legitimising other states’ determinations that their use of force is permitted. A stronger path is for the UK to lead in either adjusting its desired ends (favouring peace over political transition) in Syria in pursuit of consensus at the UN Security Council or by changing its means of evolving laws and norms from a P3 coalition to a genuinely multilateral coalition through the UN General Assembly via the Uniting for Peace initiative as described by Dr. Gallagher.

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[1] Alex J. Bellamy, *The Responsibility to Protect: A Defense*, (Oxford: Oxford University Press, 2015).

[2] Alex J. Bellamy, ‘The Responsibility to Protect and the ‘Migrant Crisis’’, <https://protectiongateway.com/2016/04/02/the-responsibility-to-protect-and-the-migrant-crisis/>, 2 April 2016, accessed 27 April 2016.

- [3] Chloë M. Gilgan, 'Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement', *Global Responsibility to Protect Journal*, 9/4: 366-394 (2017).
- [4] Jennifer M. Welsh, 'Norm Contestation and the Responsibility to Protect', *Global Responsibility to Protect*, 5: 365-396 (2013).
- [5] '2005 World Summit Outcome', UNGA Res. 60/1, 16 September 2005, para. 139.
- [6] *Ibid.*
- [7] Based on interviews in the FCO.
- [8] Permanent Secretary at DFID, Michael Rycroft, *Maintaining Momentum in a Changing World: Atrocity Prevention in UK Policy*, Conference at Chatham House, 20 February 2018.
- [9] Based on field research.
- [10] See for example, 'UK Fully Committed to Implementing the Responsibility to Protect', FCO Speech by Deputy Permanent Representative Peter Wilson, 11 September 2013, <https://goo.gl/amnVVH>, accessed 6 March 2018; FCO Letter to UNA-UK from the Multilateral Policy Directorate, 17 June 2014, <https://goo.gl/Cuy9Jx>, accessed 6 March 2018. For a discussion of Pillar II, see Ban Ki-moon, *Report of the Secretary-General - Fulfilling our collective responsibility: international assistance and the responsibility to protect*, A/68/947, 11 July 2014; see also, Adrian Gallagher, 'The Promise of Pillar II: Analysing International Assistance Under the Responsibility to Protect', *International Affairs* 91/6: 1259-1275 (2015).
- [11] Based on field research including document analysis and interviews in Parliament, Home Office and FCO.
- [12] Permanent Secretary at DFID, Michael Rycroft, *How to Prevent Mass Atrocities*, Chatham House, 20 February 2018.
- [13] Jason Ralph and Jess Gifkins, 'The Purpose of United Nations Security Council Practice: Contesting Competence Claims in the Normative Context Created by the Responsibility to Protect', *European Journal of International Relations*, 23/3: 630–653 (2017); Jason Ralph, 'What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect', *International Organization* 72/1: 173-203 (Winter 2018), online (2017) at doi: 10.1017/S0020818317000455, accessed 23 January 2018.
- [14] See, Adrian Gallagher, Written Evidence to this inquiry.
- [15] Blair's doctrine was criticised because it did not contain an important sixth condition that had been noted after the Kosovo crisis by Andrew Linklater, which would require other states to be convinced of the case for using force. See, Jason Ralph, 'After Chilcot: The "Doctrine of International Community" and the UK Decision to Invade Iraq', *The British Journal of Politics and International Relations*, 13: 304-325, 307 (2011).
- [16] For example, James Souter argues that special responsibilities arise due to the external causes of displacement—military interventions, support for oppressive regimes, or the result of economic policies—which requires asylum as reparation. James Souter, 'Bringing Human Rights Home: Refugees, Reparation, and the Responsibility to Protect', in Lennox, C. (ed.) *Contemporary Challenges in Securing Human Rights*, (London, Institute of Commonwealth Studies, 2015), p.33, <https://goo.gl/LaV3uc>, accessed 26 April 2016; James Souter, 'Towards a Theory of Asylum as Reparation for Past Injustice', *Political Studies*, 62: 326–342 (2014). However, this special responsibility to protect only applies in contexts where a potential causative link exists between intervention and displacement. In those cases where there is no link between intervention and displacement, the argument that R2P responsibilities apply outside the manifestly failing state are more tenuous.