Written evidence from Gerrit Kurtz (RTP0007)

Executive Summary

- The main value of R2P was as an impetus to conceptual and political debates as well as a tool for policy entrepreneurs to galvanize public attention, mainly in domestic contexts.
- R2P has not substantially changed the existence of global power inequalities, domestic incentives for foreign policy making, or the proclivity of violent actors to use force indiscriminately if it suits their objectives.
- There are no generalized exemptions from the prohibition on the use of force outside the UN Charter. Any General Assembly resolution could only provide an, albeit strong, political signal of legitimacy, not a legal one.
- In UN debates and diplomacy, the concept of R2P should be retired and replaced by a more operational focus on atrocity prevention.
- The UK can make use of the notion of “universal jurisdiction” to prepare cases against foreign individuals responsible for war crimes, crimes against humanity, and genocide. With the central position of the UK in the global financial system, it could also engage more forcefully in combating money laundering by elites that are responsible for such crimes.
- The UK should include explicit assessments of atrocity risks, including identity-based violence, in its country strategies.

Introduction

1. I am a PhD candidate at the Department of War Studies, King’s College London as well as a non-resident fellow at the Global Public Policy Institute (GPPi), an independent Berlin-based think tank. Between 2012 and 2015, I was involved in a major international research project entitled “Global Norm Evolution and the Responsibility to Protect”, which brought together seven international partner institutions from Europe as well as Brazil, China, and India and was coordinated at GPPi. The main objective of the research project was to investigate how the idea of a Responsibility to Protect (R2P) was faring in the context of a changing global order. All our academic and policy publications are accessible on the following website: http://www.globalnorms.net/.

2. This submission builds on that research, as well as my research on the diplomacy of conflict prevention and peacemaking in the context of my PhD project since then. While it builds on collaborative research, it only represents the views of the author and not necessarily any of the institutions that I am affiliated with. Taking the questions posed by the Committee as a starting point, the submission starts with a discussion of the concept of R2P and what (not) to expect from it. It then highlights a few issues with the implementation of the political commitment to R2P globally. Subsequently, the submission discusses the idea of a “humanitarian intervention”, before it concludes with ideas and recommendations for reform of the discourse and practice of R2P.
The concept of the Responsibility to Protect

3. The adoption of the three paragraphs on R2P in the World Summit outcome document of 2005 needs to be seen in its proper historical context (UN General Assembly 2005, para. 138-140). It was a response to the heated discussions of the preceding one and a half decades. These are well known and include the acknowledgement of catastrophic failures faced with genocide in Rwanda and ethnic cleansing and crimes against humanity in the former Yugoslavia in the 1990s as well as the divisions in the Security Council regarding the situation in the Kosovo in 1999. The creation of R2P included an important conceptual shift from earlier debates about “humanitarian intervention”: instead of focussing on the rights of intervening powers, R2P highlighted the responsibilities of all UN member states to prevent atrocity crimes (International Commission on Intervention and State Sovereignty 2001). Instead of explicitly qualifying state sovereignty, it emphasized the sovereign responsibility of governments for the protection of their populations from atrocity crimes (Evans 2008).

4. R2P is a political commitment by UN member states, not a legal one. Endorsed by a then record number of heads of state and government, the World Summit outcome document has a high legitimacy, but does not constitute international legal obligations comparable to an international treaty. Notably, it does not change the existing legal context for the use of force under the UN Charter. The use of “timely and decisive action” remains firmly tied to the UN Security Council.

5. The main value of R2P was as an impetus to conceptual and political debates as well as a tool for policy entrepreneurs to galvanize public attention. After its adoption, UN officials sought to operationalize its meaning and implications for the UN system (Murthy and Kurtz 2016). The work by subsequent UN Special Advisors on the Responsibility to Protect as well as UN Special Advisors on the Prevention of Genocide is particularly pertinent in this regard. As a result of detailed interpretation and wide-ranging consultations, Edward Luck, the first UN Special Advisor on the Responsibility to Protect, developed the three-pillar framework of R2P: government responsibility, international assistance, and timely and decisive action (UN Secretary-General 2009). This framework has since structured conceptual debates among member states about R2P.

6. The three-pillar framework has allowed a comprehensive focus: by including the essentially uncontested responsibilities under pillars one and two, it made it easier to also discuss much more controversial policy options if governments are “manifestly failing” to protect their populations. Exactly because coercive measures are contested among UN member states, however, relatively few official debates and reports capitalized on that opportunity.

7. At the same time, controversies on the utility – and abuse – of the use of force could taint the overall concept. Nowhere has this been clearer than in the aftermath of the decision of the Security Council to mandate UN member states to use “all necessary means” to protect civilians in Libya in March 2011 (UN Security Council 2011). As the oral testimony to the committee also acknowledged, the interveners’ shift from a narrow focus on protecting civilians in Benghazi to a much wider demand for regime change in Libya (Obama, Cameron and Sarkozy 2011) seriously undermined the credibility of R2P in the eyes of a global audience (Brockmeier, Stuenkel and Tourinho 2016).

8. As a tool for policy entrepreneurs, R2P has allowed civil society organisations and members of parliament to refer to their respective government’s responsibility to engage in
political debates about adequate action to respond to atrocity crimes – the current inquiry is a case in point. It has provided civil society organisations with a way to frame their demands for diplomatic, humanitarian, human rights, and judicial engagement by pointing to a political commitment that all governments have signed up to on a global level. The Global Center on R2P, for example, is a New York-based NGO dedicated to the implementation and promotion of R2P. The International Coalition for the Responsibility to Protect brings together civil society organizations from around the world with a shared objective. The efforts of these organisations increase awareness among policymakers, officials, and the general public for atrocity crimes, they provide analysis and regular country monitoring, and organize training and capacity building events.

9. On the global level, our research found that R2P has not been an effective tool to mobilize action between 2004 and 2014. Where there was international agreement, visible through UN Security Council actions, the frame of “genocide” and historical analogies to Rwanda and Srebrenica were much more powerful than references to R2P – including in the decision by Western powers to intervene in Libya in 2011 (Kurtz and Rotmann 2016: 6). No draft Security Council resolution is more likely to be adopted by consensus just because it contains a reference to R2P.

10. R2P has not resolved geopolitical divisions in the UN Security Council, nor has it made international responses in the most protracted cases of atrocities more likely. The expectation, where it exists, that a political concept like R2P could in and of itself solve some of the most contested questions in international relations and drive political action, is too high. Any idea about an international legal obligation for member states to intervene in situations where atrocities are committed creates unreasonable expectations of international law and global politics. No government can be expected to commit troops on behalf of another country’s population without domestic considerations on a case-by-case basis. Furthermore, it is rarely clear which specific international actions would be effective and proportional to prevent atrocities in a given situation.

The implementation of R2P

11. Where the salience of a situation has been very high for the permanent members of the UN Security Council, consensus has remained difficult to achieve. The situation in Syria illustrates this dynamic well. Again, R2P has not substantially changed the existence of global power inequalities, domestic incentives for foreign policy making, or the proclivity of violent actors to use force indiscriminately if it suits their objectives.

12. The inclusion of R2P in the World Summit outcome document was a manifestation of a larger underlying normative change. This normative evolution has also been visible in related fields of the universality of human rights, the development of international criminal law, and in the debate about “protection” in humanitarian action and peacekeeping. R2P should be seen as an instrument in the promotion and contestation of these “norms of protection” (Kurtz and Rotmann 2016: 18). The carriers of this normative evolution have come from all corners of the earth, including from Africa, where most of today’s conflicts take place. As our research project on global debates about the meaning and interpretation of R2P has shown, there is a very wide acceptance of the fundamental normative tenet of R2P: atrocity crimes require international action. How such action may look like in practice, has remained less clear unfortunately (Benner et al. 2015).
13. The evolution of those norms does not follow a linear path, but they do shape the social context in which international politics takes place. Research has shown, for example, that the ratification of the Rome Statute and investigative actions by the International Criminal Court exerts a deterrent effect on the commission of atrocity crimes (Jo and Simmons 2016).

14. Inconsistency, hypocrisy, and contradictions undermine the evolution of norms of protection as well as the credibility of R2P. Policymakers should devote greater attention to the permissive effects of their statements and policies in this area. The focus on “red lines” on the use of chemical weapons in Syria, for example, by President Obama and, more recently, by President Macron, not only set their users up to follow through on their threats. They also gave the impression that atrocities committed by conventional means are somewhat more acceptable. Even if governments denounce the killing of civilians rhetorically, such ultimatums and threats send a contradicting message.

15. A similar permissive effect could be observed regarding narrowing action in Syria against ISIS/Da’esh, thus sparing the Syrian regime. In 2014, when the US government, in conjunction with its allies, took the decision to militarily intervene against ISIS/Da’esh, it may have been too late to broaden the intervention to include anti-regime actions (Yacoubian 2017: 27). A more detailed investigation of the permissive effects of this decision on the dynamics of the Syrian civil war notwithstanding, the focus on counterterrorism risked sending a signal that massive violence against civilians by the Syrian government did not attract the same kind of coercive punishment as the violence committed by ISIS/Da’esh.

16. Similarly, continuing support to the Saudi-led coalition in Yemen, including by arms exports, undermines the UK’s credibility on atrocity prevention in Yemen. British military support to the Saudi-led coalition also undermines UK aid and diplomacy for a political solution in Yemen, as such support empowers a military approach to the crisis. As the United Nations High Commissioner for Human Rights (2017) said in September 2017, “[c]oalition airstrikes continue to be the leading cause of civilian casualties, including of children.” The UK should immediately halt all arms exports to Saudi Arabia and all other members of the coalition involved in the war in Yemen.

The idea of a “humanitarian intervention”

17. The committee asked for evidence on the question whether the concept of a “humanitarian intervention” was recognized as an exemption to the general prohibition of the use of force under the UN Charter. I am not an international lawyer, but it seems to be very clear to me that there is no international consensus that the doctrine of “humanitarian intervention” could provide an exemption to Art. 2 (4) of the UN Charter. Indeed, the general prohibition of the threat and use of force remains an important achievement in international law. It cannot be incumbent on UN member states to create an exemption from this fundamental norm by themselves. The bar to any use of force outside the UN Charter is therefore very high, as it should be. Without the resort to any court of law that could interpret unilateral justifications for the use of force, the concept of “humanitarian intervention” opens the door to abuse. Furthermore, the concept is tainted with a very problematic history, including the French operation Turquoise during the genocide in Rwanda in 1994. Framed as humanitarian intervention, it ended up helping perpetrators to escape into neighbouring Zaire.
18. If “humanitarian intervention” does not provide the legal justification for military action without UN Security Council mandate or in self-defence, what can? In any given situation, potential interveners should contemplate whether military force is really the last resort, urgently needed, and an effective and proportional instrument. If they conclude that military action fulfils these criteria, they should at least seek a wider international agreement in the UN General Assembly. Any resolution adopted by the General Assembly under such circumstances would not have the force of law, in my understanding. There are no generalized exemptions from the prohibition on the use of force outside the UN Charter – they would undermine the whole system. A political statement in the form of a resolution of the General Assembly would, however, provide a strong signal of legitimacy. It cannot undo the fundamental power inequalities inherent in the international order, which are manifested by the authority of the UN Security Council and the power of its permanent members.

The need for reform

19. The concept of the responsibility to protect was developed to spur international action on atrocity crimes. On that score, its success is very limited. It has contributed to the specification of conceptual debates within the United Nations, and provided a helpful tool for policy entrepreneurs, mainly in domestic settings. On a global level, its utility has run its course. In UN debates and diplomacy, R2P should be retired and replaced by a more operational focus on atrocity prevention. Indeed, recent reports by the UN Special Advisor on the Prevention of Genocide already point in that direction.

20. Instead of focusing on issues of global order and intervention, as R2P inevitably does, atrocity prevention focuses on the role of victims, in particular civilians. Indeed, actors such as the UK that say they want to promote the global rule of law and prevent atrocities should embrace this civilian-centred perspective. They should ask themselves in diplomatic, development, humanitarian, and military engagements in political crises how their actions are going to affect the situation of civilian populations. Are there ways to empower the capacity of civilians to protect themselves by unarmed means? In contrast to R2P, atrocity prevention cannot be mistaken as legalistic justification for military interventions.

21. In cases where governments are directly responsible for atrocities, it is important to find ways to coerce them to stop these violations of fundamental human rights, including by targeted financial and judicial means. The UK can make use of the notion of “universal jurisdiction”, for example, to prepare cases against foreign individuals responsible for war crimes, crimes against humanity, and genocide. With the central position of the UK in the global financial system, it could also engage more forcefully in combating money laundering by elites that are responsible for such crimes.

22. Building on the Brazilian proposal of a “responsibility while protecting” in 2011, UN Security Council members, including the UK, should consider more rigorous monitoring arrangements for UN-mandated operations. These could include requirements for regular reporting by lead nations of such mandated operations to the Council via the Secretary-General. The Security Council could also create independent monitoring teams that report on the implementation of mandates by third-party forces, similar to panels of experts in the context of UN sanctions regimes. Such mechanisms

---

1 As such, it would contribute to an assessment that the Independent International Commission on Kosovo (2000: 186) made with regard to the NATO-led intervention in 1999 when the commission qualified it as “illegal, yet legitimate.”
would facilitate a higher quality of information and decision-making in the Security Council (Benner et al. 2015: 25-26).

23. In the specific case of chemical weapons use in Syria, it is questionable how one-off airstrikes such as those conducted by the US in April 2017 and by the US, France, and the UK in April 2018, would credibly deter the Syrian government. **The UK government should focus on re-establishing an investigative mechanism that investigates culpability for chemical weapons incidents.** If the Security Council remains blocked on this question, then the General Assembly should provide a new mandate for this mechanism, whose original mandate ran out in November 2017. Furthermore, **the UK should hand over any evidence that is has collected through its own sources on chemical weapons use in Syria to the International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab Republic (IIIM).** The UK should help the European Union to prepare targeted sanctions on individuals and companies involved in the chemical weapons programme in Syria, whether they are from Syria or not. Lastly, the UK should contribute to fund humanitarian appeals on Syria and accept a much larger share as part of the resettlement programme that the UN High Commissioner for Refugees operates.

24. Finally, the UK government should invest in consistent political engagement through diplomatic tools, including in its own diplomatic capacities and in multilateral capacities. As the United States is withdrawing diplomatic capacities on a large scale, Europeans need to step up to at least provide detailed analysis, monitoring and engagement in crisis areas around the world. **The UK should include explicit assessments of atrocity risks, including identity-based violence, in its country strategies.** It should exchange these risk analyses on a regular basis with like-minded states and create joint response strategies.

May 2018

References


UN Secretary-General (2009): *Implementing the responsibility to protect - Report of the Secretary-General*. UN Doc. A/63/677. 12 January
