

R2P IDEAS in brief



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The UK and the Responsibility to Protect

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Introduction

The 20th Anniversary of the Srebrenica genocide marks a reminder of a painful point in the recent history of UK foreign policy.¹ The failure to prevent ethnic cleansing in Bosnia was, in the words of one commentator, the UK's 'unfinest hour', and New Labour's so-called 'ethical foreign policy' was in part a response to that failure.² Since then, the UK has approached the challenge of mass atrocity prevention by re-examining its own policy and taking on a leadership role that befits its status as a permanent member of the UN Security Council. This does not mean that it has sought to insulate the Council and the permanent members from the challenge. Rather the UK has realised that the Council's credibility – and that of the permanent members – is weakened if Srebrenica-type massacres are not prevented. This has meant leading a process of fairly radical change in the way the Council relates to the question of mass atrocity prevention.

Together with France, for instance, the UK broke ranks with the other P5 members on the issue of whether the International Criminal Court could operate independently of the Security Council. This decision was described as 'pivotal' in the creation of the kind of Court that exists today.³ Likewise, Tony Blair's leadership during NATO's Kosovo campaign, which was driven by his insistence that the 'international community' learn the lessons of Srebrenica (and Rwanda), helped expose the tension between the non-intervention norm and the cosmopolitan demand that atrocity crimes be prevented.⁴ Of course the International Commission on Intervention and State Sovereignty (ICISS) was set up to explore this policy problem and its 2001 report gave rise to the Responsibility to Protect (R2P) principle, which was adopted by the international community at the 2005 World Summit.

As a concept, R2P has received bipartisan support in the UK; and, as a consequence, the government of the day has been able to sustain the UK's profile of an international leader in



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this area. In 2009, for instance, the UK helped draft Security Council Resolution 1894, which reaffirmed ‘the relevant provisions of the 2005 World Summit Outcome Document regarding the protection of civilians in armed conflict, including paragraphs 138 and 139 thereof regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity’. Speaking in the General Assembly, moreover, Foreign Office Minister Lord Malloch-Brown described R2P as a ‘groundbreaking’ achievement, of which the UN ‘should be rightly proud’.

Indeed, the UK has insisted that R2P should be a ‘governing principle’. It should, Malloch-Brown insisted, inform ‘all Member States’ work across the conflict spectrum, as well as on human rights and development.⁵ His call to construct a ‘culture of prevention’ was echoed several years later, and after a change of government, by Ambassador Wilson. R2P, Wilson repeated ‘should be an important governing principle of all countries’ work across the conflict spectrum’.⁶

The UK has offered more than rhetorical support, however. It is a contributor to the pool that funds the joint office of the UN Secretary General’s Special Advisers on Genocide and R2P. It has also contributed funding to the Global Centre for R2P. Most notably, its overseas aid policies, which have been guided by the cross-departmental *Building Stability Overseas Strategy* (BSOS), has developed an integrated approach to crisis response and upstream conflict prevention, although one can question the extent to which this addresses the particular issue of mass atrocity prevention (see analysis below). And of course, the UK led the diplomatic process of drafting Security Council Resolution 1973 on Libya.⁷ Its contribution to the NATO-led military operation demonstrated that the UK was still able to respond to international society’s call for a ‘timely and decisive’ response despite profound public concerns following the Afghan and Iraq campaigns.

Areas for consideration

As noted, this record is befitting the leadership role that one expects of a permanent member of the Security Council. It led me in *Mainstreaming the responsibility to protect in UK Strategy* to endorse Simon Adams’s conclusion that the UK contribution to R2P norm promotion has been ‘laudable’.⁸ However, the report also offered several observations where it was thought the UK could improve its implementation of the norm. These were:

- 1. The UK’s approach to R2P issues has been subsumed within the BSOS, which emphasises *conflict* rather than *mass atrocity* prevention.** While there is an obvious overlap, these two aims are not entirely complementary. Not all conflicts escalate to the level of mass atrocities and not all mass atrocities take place in conflicts. This goes

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beyond mere semantics. An examination of where the Stabilisation Unit – a cross government body tasked with implementing BSOS - has focused its resources revealed gaps that were puzzling from an R2P perspective. For example, the Central African Republic (CAR) has long been high on the watch lists of organisations using a ‘mass atrocity’ lens. Indeed, the 2012 study *Understanding and Forecasting Political Instability and Genocide for Early Warning* had the CAR among states where there was the greatest risk of genocide. Yet CAR did not even appear on the risk matrix that was published in the Stabilisation Unit’s Business Plan of April 2013.⁹ Indeed, late in 2013 the UK helped transport a French intervention force that responded to the serious threat of mass atrocity. A ‘mass atrocity lens’ needs to be inserted into BSOS.

2. **Central to the implementation of BSOS has been the national interest.** The ‘Conflict Pool’ is a fund that resourced BSOS.¹⁰ The *Strategic Guidance Notes* recognise that ‘the UK cannot and should not work everywhere to prevent conflict’ and it should ‘prioritise where the risks are greatest, where UK interests are most at stake, and where the UK can make a difference’.¹¹ It goes on to explain that the geographical priorities should reflect NSC priorities and the Government’s internal watchlist of fragile countries. This internal watchlist assess ‘the risks of conflict and insecurity are high and where the UK has significant interests at stake’. The *Strategic Guidance Notes* concludes that ‘[c]ountries that are neither NSC priorities nor on the UK Watchlist will rarely attract significant levels of Conflict Pool resources’.

This is to be expected. The important question, however, is how this interest is defined and whether that definition makes space for the commitment to R2P. Unlike the US, mass atrocity response is not considered part of the UK national interest.¹² **Indeed, the BSOS document does not mention R2P.** It does, however, note that BSOS is to be ‘aligned with related strategies, notably the CONTEST Counter-Terrorism strategy’.¹³ It is possible, therefore, that a narrow focus on counter-terrorism (or, for example, commercial interests) could mean a situation that has the potential for mass atrocity, such as CAR, does not receive UK attention until it has escalated to a mass atrocity situation that UK policymakers cannot avoid. Given this possibility, **it is not correct to say that the UK covers R2P through BSOS.** The national interest must guide the implementation of BSOS but it should not crowd out action that meets the UK’s responsibility to protect. Inserting an R2P lens into BSOS would guard against this possibility.

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3. **The Joint Analysis of Conflict and Stability (JACS) works effectively but without a mass atrocity lens.** The JACS process aims to provide a clear and integrated evidence base for designing BSOS policy in individual cases. It is regarded as a success story. However, like BSOS more generally, it operates without a mass atrocity lens. This is revealed by an examination of the JACS Guidance Notes.¹⁴ These split the JACS process up into three phases: initiation, analysis, and deployment or utilisation. Those initiating a JACS must be clear on why analysis is needed and ‘establish the UK’s strategic interests, the history of involvement and on-going engagement in the country or region’. This could imply that a JACS analysis is not appropriate if there is a threat of mass atrocity in an area where the UK has no ‘strategic interests’ or involvement. Of course a JACS analysis is not ruled out in such instances. But by vaguely declaring that ‘UK interests can be mapped according to set of broad categories’ there is a risk that the moral imperative to prevent mass atrocity is missed.

This risk also occurs in the JACS Guidance Notes on phase two, ‘detailed analysis’. Informed by the BSOS, the analyst is told to focus on the underlying structural factors and dynamics of ‘conflict’ and ‘instability’, as well as identifying opportunities for ‘peace’. Such a focus is appropriate, of course, but by itself it is unable to distinguish between conflicts where the violence is limited (and indeed legitimate), and situations where violence may rise to the level of a mass atrocity (and of course illegitimate). Again, JACS does not exclude such an analysis. The questions offered in the Guidance Notes ‘are just a few of the kinds of complex questions the analysis should begin to address’. Inserting a mass atrocity lens means being more specific about the questions that should be asked.

Having the capability to identify the particular risk of mass atrocity in a particular conflict or non-conflict is especially important because, to repeat the Conflict Pool’s Strategic Guidance notes, the ‘the UK cannot and should not work everywhere to prevent conflict’.¹⁵ Selectivity of this kind is inevitable, but by not prioritising the indicators of mass atrocity in JACS the UK government risks deploying scarce resources to prevent conflicts where there is not a risk of mass atrocity, at the expense of efforts to prevent conflicts where there is such a threat. This risk is not mitigated by what the JACS Guidance Notes says on Phase 3, ‘Utilisation’. This should ‘aim to: pull out and agree key findings from the JACS process to date that have the most relevance for HMG action planning; establish what the key findings imply for the immediate and future actions of HMG partners ...’.¹⁶ Again, this does not rule out the possibility that government officials will be warned of the risk of mass atrocity, but JACS does not

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institutionalise R2P-based warnings in ways that suggest it is a governing principle of the UK approach to conflict.

4. **R2P did not appear in BSOS but found explicit expression in the Government Strategy on Protection of Civilians in Armed Conflict (PoC).** This was launched as a three year strategy in March 2010. Apart from the fact that this has now been discontinued, leaving a gap in the UK R2P policy, there are two troubling aspects to the formulation. Firstly, R2P is broader than PoC to the extent the latter is only an obligation in wartime situations. This might again appear a rather semantic distinction as mass atrocities generally take place in situations of armed conflict. But there are exceptions to that rule. In North Korea, for instance, there is no recognised state of armed conflict but a Commission of Inquiry recently accused the government of 'manifestly failing' to protect its population of R2P crimes.¹⁷ Secondly, any claim that PoC demands a strategy because it is a longstanding legal obligation, whereas R2P is merely a recent political commitment misunderstands the relationship and the UK's leadership role in this area. R2P is grounded in international human rights and humanitarian law. Its reason for being is the realisation that these laws will only be honoured in the breach if international society cannot rally the political will to enforce them. R2P does not impose legal penalties on states for failing to prevent mass atrocities, but good citizens act out of a sense of responsibility not because they are threatened by the law. The UK can maintain its reputation as a good international citizen by recommitting to R2P within the next iteration of BSOS.
5. **The UK continues to maintain humanitarian intervention without UN authorization is legal.** This is problematic from an R2P perspective because the 2005 World Summit document, which is *the* referent point for the UN norm, insists that states act through the Security Council before engaging in military action for humanitarian purposes. The UK insistence that unauthorized humanitarian intervention is legal was expressed at the time of the Kosovo intervention.¹⁸ The Attorney General's opinions on the UK planned invasion of Iraq also referred to humanitarian intervention as an exception to the non-use of force norm (Security Council authorization and self-defence being the other two);¹⁹ although, it should be noted here that the Attorney General did not claim the invasion could be justified as a humanitarian intervention. More recently, the Foreign Office repeated the humanitarian intervention exception in relation to the proposed action against Syria in response to the alleged use of chemical weapons in August 2013.²⁰

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Given its stance on Kosovo, it is difficult for the UK to change its legal position, but it is possible to acknowledge the damage that would be done to the political consensus surrounding the World Summit statement if the UK were to act outside its boundaries. As noted, the implementation of human rights and humanitarian law is contingent on cultivating political will based on international consensus and trust, and the difficulty the UK's position creates has not gone unnoticed. ICISS co-chair and former Australian Foreign Minister Gareth Evans for instance recently noted how 'the enterprise of achieving greater international consensus around the application of R2P would benefit from a rather more cautious approach to the use of coercive military force', linking this directly to what he called the UK's 'sentimental attachment to "humanitarian intervention"'.²¹

Recent Developments

At the time *Mainstreaming the responsibility to protect in UK Strategy* was published in April 2014 there was some confusion about the UK appointment of an R2P Focal Point. The UK had participated in the annual meetings that began in 2011 but its approach appeared to be *ad hoc*, sending local representatives to the meeting rather than Whitehall based senior officials that could influence policy.²² The Foreign Office acknowledged that staff changes had delayed the appointment of a Focal Point but during the editing process of the report, the UNA-UK received confirmation that Paul Arkwright of the FCO's Multilateral Policy Directorate had been appointed. Paul Williams from the FCO's Multilateral Policy Directorate attended the June 2015 Focal Meeting in Madrid.

To follow-up the publication of *Mainstreaming the responsibility to protect in UK Strategy*, and to mark the 20th anniversary of the Rwanda Genocide, UNA members sent Foreign Office Minister Mark Simmonds MP a letter calling on the UK to increase its capacity to prevent atrocity crimes. It was accompanied by a covering letter from UNA-UK Chairman Sir Jeremy Greenstock.²³ The reply from the Multilateral Policy Directorate reaffirmed the UK commitment to R2P. Interestingly, given R2P's absence from the BSOS document, the letter stated that R2P 'is a guiding principle of the Building Stability Overseas Strategy'.²⁴ It stated the UK was committed to strengthening its early warning system and that it was actively working to increase the focus on preventative aspects. It confirmed that its engagement with and support for the Focal Point initiative was led by the Director of the Multilateral Policy Directorate. More than that, however, the UK Focal Point would work through Multilateral Policy Directorate with the MoD, DfID and the Home Office 'on activity and policy for fragile countries at risk of R2P crimes'. This was supplemented by the work of

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integrated departments and teams such as the Stabilisation Unit and ‘the newly formed Joint Secretariat (to manage HMG’s Conflict Security and Stabilisation funding from 2015)’.

The UNA-UK remains an energetic advocate of R2P, integrating a comprehensive commitment to mass atrocity prevention into its own foreign policy manifesto.²⁵ It has lobbied Parliament and political parties to help mainstream R2P in public discourse.²⁶ Only the Liberal Democrats explicitly referenced support for R2P in its election manifesto, but the then Labour Party leader Ed Miliband MP did respond to a pre-election letter from 8 civil society organizations, including UNA-UK, by re-affirming that a ‘cross-Whitehall approach will be taken to preventing genocide and mass atrocity will be priority with a focus on early warning and prevention.’²⁷ The Conservative Party, which won the election and formed the government, this time without coalition partners, did not reference R2P or mass atrocity prevention in its manifesto. It did, however, highlight a continued commitment to maintain spending on international development. Moreover, the recent decision to regard CSSF spending as counting toward defence spending targets (see note 10) suggests the work that the fund does to help create a culture of mass atrocity prevention will continue. As noted, the application of an R2P lens would help sharpen analysis and inform allocation of that fund and in ways that better meet the UK’s international responsibilities.

One worrying feature of the UK election was the allegation of hate speech surrounding the issue of migration and asylum seekers. Several weeks before the election, for instance, the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein called on ‘the UK authorities, media and regulatory bodies to take steps to curb incitement to hatred by British tabloid newspapers, in line with the country’s obligations under national and international law’. This was in response to an article in the Sun newspaper calling migrants “cockroaches”, a term that is, of course, closely associated with the hate speech leading up to the Rwanda Genocide. However, Zeid insisted that the Sun article was simply one of the more extreme examples of what was a widespread practice. ‘Many of these stories’ he added, ‘have been grossly distorted and some have been outright fabrications. Elsewhere in Europe, as well as in other countries, there has been a similar process of demonization taking place, but usually led by extremist political parties or demagogues rather than extremist media.’²⁸

This poses a particular challenge for the UK in relation to the R2P norm. It is a reminder that the UK has a primary responsibility to examine its own society and to make sure it is free of the kind of hatred that can lead to R2P crimes. More specifically, the UK has cited progress on tackling hate crime as an example of its commitment to R2P. In the 2013 UN Interactive Dialogue on implementing R2P, for instance, Ambassador Wilson referred to the 2012

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publication of a national plan ‘to tackle hate crime that focuses on challenging attitudes that foster hatred and encouraging early intervention’.²⁹ In that Plan, which was for three years only, the Minister for Equality Lynne Featherstone MP noted that crime motivated by the hatred of a particular characteristic of the victim – ‘whether it’s their race, faith, sexual orientation, gender identity, perceived disability or anything else - is particularly corrosive’.³⁰ The Plan set out to prevent hate crime ‘by challenging the attitudes that underpin it, and early intervention to prevent it escalating’.³¹ It recognised that progress had been made in tackling behaviour (at football matches for instance) that sought to stir up racial hatred, but it acknowledged that more needed to be done, especially in the underreporting of such crimes against asylum and refugee communities. For the UK to have been criticised by the UN High Commissioner in the way it was suggests that challenge is even greater than anticipated.

Looking Forward

The Conservative Party’s victory in the May 2015 election suggests policies in this area will be fine-tuned rather than radically overhauled. The new government is committed to three reviews, all of which are due to be completed by the end of 2015: the National Security Strategy Review will influence the Strategic Defence and Security Review, which will then be followed by the Comprehensive Spending Review.³² It is likely that BSOS and the National Action Plan on Hate Crime will be re-examined within that context. Of course, the UK’s public spending, including its defence and overseas expenditure, remains under intense pressure and this is likely to reinforce the speculation about the UK’s diminished global role. Certainly continuing restraint in defence spending reflects (and strengthens) the apparent reluctance to engage in costly military interventions. That does not mean, however, the UK cannot take constructive steps to promote R2P as an international norm and to improve its practices in ways that better meet its responsibility to protect. Indeed, there are ways that the UK can meet its responsibilities in this challenging context. The UK is a leader in this area and what follows are three suggestions that can help it maintain that reputation.

1. Insert a “R2P Lens” into BSOS

BSOS has succeeded in driving UK thinking, but from an R2P perspective it conflict prevention lens does too much and too little: too much because some conflicts may not be a concern and too little because mass atrocities take place outside armed conflict. I am not suggesting here that the UK should stop trying to end conflict. Peace and stability are worthwhile goals in themselves. But to the extent R2P is ‘a guiding principle’ of UK policy then it should a) be acknowledged as such by the new BSOS and b) begin to influence

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analysis and resource allocation in ways that make sure atrocity prevention is part of the UK national interest.

A concrete example of change that would flow from the decision to insert R2P into BSOS is an alteration to the JACS Guidelines. Paragraph 4.16 of the 2012 guidelines directs the analyst to ask questions about the actors involved in specific unstable situations. It suggests asking ‘what are incentives and disincentives (towards peace or conflict?; what are actor’s peace agenda and peace building capacities? Are they willing and able to negotiate?’ An R2P lens would specifically direct the analyst to address the question ‘what is the actor’s propensity to commit mass atrocity crimes?’ Evidence used to answer this question would enable JACS to separate conflicts (and indeed non-conflict situations) that would trigger the UK’s responsibility to protect (and therefore elevate them in a list of priorities) from those conflicts where there is no such threat. This kind of minimal change to existing practice does not demand more resources. Together with continuing exploration of the use of ‘big data’ mining technologies it could yield important results.³³

2. Recommit to building Security Council consensus

Recent government statements have emphasised the UK commitment to increasing the emphasis on the preventative aspects of R2P.³⁴ This possibly reflects recognition that there is profound international unease with the more coercive or “Pillar III” aspects of R2P. This shows sensitivity to the need to maintain a broad consensus if the R2P norm is to continue to be a feature of international decision making. But alongside France and the US, the UK has to realise that the international unease is not with R2P or Pillar III operations per se. Rather the concern is that these states (the so-called P3) largely determine what it means to implement a Pillar III operation, and that the way they control diplomatic processes at the Security Council can lead to a sense of exclusion and alienation.³⁵ This was the lesson of the Libya crisis; not that it was wrong to intervene, or even to act in ways that led to regime change, but that the P3 failed to maintain the broad coalition of support that it had at the start of the campaign. This, together with the P3’s insistence on regime change in Syria, contributed to a situation where, in the words of Amitav Acharya, some states were ‘unwilling to even foreshadow non-military measures ... because of their concern military coercion would be the inevitable next step’.³⁶

The UK’s history of interpreting Security Council resolutions in ways that have facilitated military action (e.g. Resolution 1441 on Iraq), and its continuing commitment to the doctrine of humanitarian intervention does not help to overcome this distrust. Publicly shaming Russian and Chinese (as during the Syria crisis) further damages the ability to start, and then

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sustain, Pillar III operations as collective endeavours. Openness to the idea that complexity gives rise to normative pluralism, and an acknowledgement that regime change has been tainted by the experiences in Iraq and Libya, should inform UK diplomacy at the Security Council. While acknowledging the difficulty of dealing with other great powers, this increased openness can help restore R2P's promise of coordinated collective action.

3. An inward looking R2P.

The UK may lead by going one step further. As the UN Secretary General's Special Adviser on R2P, Jennifer Welsh, recently noted, R2P is still very much framed 'as a foreign policy issue: i.e., as something we do 'outside' our borders. In only rare cases,' she continues,

has the conversation turned inward, to ask what the prevention and response to atrocity crimes could mean for the European heartland itself. But if the spirit behind RtoP is one of collective responsibility – as opposed to a discretionary right to respond – then European states must ask themselves what actions they are taking as part of the shared task of protecting populations.³⁷

The UK can lead on the development of R2P by turning the conversation inward and revising its policy on asylum. As noted, it can re-examine its Action Plan on Hate Crime. But it can also re-examine its response to the refugee crisis surrounding the conflict in Syria and Iraq. There is a strong argument that the UK has been responsive and fulfilled its responsibility to protect refugees by providing aid that supports UN camps in the region. But clearly the crisis has evolved. Neighbouring states show signs of no longer shouldering their burden and the vulnerable are seeking refuge further afield. An outward looking R2P response is no longer sufficient. The UK has a long history of protecting the displaced, generously offering refuge to Jews during the Holocaust, South East Asians in the 1970s and 1980s and Kosovans in the 1990s. Its refugee intake to date and its attempts to block coordinated European action that would ease the burden on Iraq and Syria's neighbours betrays that history. It also contradicts the image of the UK as a promoter of R2P.³⁸ If Welsh is right that asylum is a significant means of fulfilling a state's responsibilities, and I have argued elsewhere she is,³⁹ then the UK must change its policy if the government's words on R2P are to have real impact. Furthermore, an inward looking R2P raises questions about whether the R2P Focal Point has sufficient leverage across government when he or she is located in the Multilateral Policy Directorate of the Foreign Office.

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BIOGRAPHICAL NOTE AND ACKNOWLEDGEMENTS

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The Defence Ministry's contribution to this Fund is now counted as 'defence spending' for the purpose of achieving NATO's 2% of GDP target. Defence Minister Michael Fallon referred to this when he hit back at critics, including those in the US: "Those who belittle our Armed Forces' efforts fail to recognise that our national security depends on tackling the causes of instability, not just treating the symptoms. It means using our soft power, diplomacy and engagement, to help weaker countries build stronger institutions and law enforcement, and to promote women's rights. It means using smart power, our better-focused development budget, on conflict prevention and stabilisation as well as on disease and suffering. Defence and international development are two sides of the same coin: well-focused aid helps protect Britain's security in the longer term". Michael Fallon, 'Our Armed Forces are anything but "feeble"', *The Telegraph* 20 June 2015 <http://www.telegraph.co.uk/news/uknews/defence/11687126/Michael-Fallon-Our-Armed-Forces-are-anything-but-feeble.html>

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