

Foreign Affairs Committee

Oral evidence: Responsibility to Protect and Humanitarian Intervention, HC 1005

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Members present: Tom Tugendhat (Chair); Ian Austin; Mike Gapes; Stephen Gethins; Ian Murray; Priti Patel; Royston Smith.

Questions 1-18

Witnesses

I: Dr Leslie Vinjamuri, Director, Centre on Conflict, Rights and Justice, and Associate Professor of International Relations, SOAS, University of London, Dr Kate Ferguson, Director of Research and Policy, Protection Approaches, and Professor Marc Weller, Professor of International Law and International Constitutional Studies, University of Cambridge.

Examination of witnesses

Witnesses: Dr Leslie Vinjamuri, Dr Kate Ferguson, and Professor Marc Weller.

Chair: Welcome to this afternoon's sitting of the Foreign Affairs Committee. Dr Ferguson, Dr Vinjamuri and Professor Weller, thank you very much for coming.

Q1 Priti Patel: I will not ask this question of everyone, but I will start with Dr Ferguson. For the Committee's purposes, will you highlight the difference between humanitarian intervention and R2P?

Dr Ferguson: First, thank you very much for giving me the opportunity to present. I would also really like to acknowledge and thank you for calling the inquiry in the first place. A lot of our networks are really grateful and encouraged by the Committee taking this agenda on. It is very timely.

Responsibility to protect is an idea that came into being and emerged because humanitarian intervention was not fit for purpose. It was not quite living up to the full potential of the idea that there was a shared responsibility that extended beyond the borders of states towards the lives that were coming under threat from terrible, terrible crimes. It was not about stopping traditional state-on-state conflicts, but about protecting civilians from particular crimes. It was born from the lessons of the Holocaust—from that real failure—from the United Nations system, which was in part born out of those horrors and of course the wider conflagration of the second world war, and the human rights order, that post-1945 order, failing to protect nearly 1 million Tutsis in Rwanda in 1994, and contributing to the collective and specifically the UN failings in Bosnia.

I think that relationship between humanitarian intervention and the responsibility to protect is very important, because R2P is about three principles of responsibility: the responsibility of a state to protect populations—not citizens, but populations—within its borders; the responsibility of states to help other states to uphold that responsibility; and thirdly the responsibility of the international community, when, in circumstances in which states manifestly fail to uphold their own responsibility to protect people within their borders, the responsibility then falls on the international community.

That goes far beyond any of the conceptualisations around international humanitarian intervention. R2P then became a very important focal point and tool of this agenda to prevent these atrocious crimes now known as atrocity crimes: genocide, crimes against humanity, serious war crimes and ethnic cleansing.

Q2 Priti Patel: In terms of the actual concept of R2P and the scale of the humanitarian crises that we still see around the world, clearly there is still a need, a gap, in what protection needs must be met. Do either of our



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other two witnesses, Professor Weller or Dr Vinjamuri, wish to give a view of whether you think the effectiveness is there, or whether we should be doing more, highlighting any particular examples?

Dr Vinjamuri: I think it is a mixed bag. Clearly, there is a lot of movement on the aspect that perhaps gets less attention in the public domain, which is prevention. One thing that has been very significant in terms of the progress and the positives that have come out of R2P is that on a state-by-state basis we have seen multiple examples of states developing capacity and initiatives to concentrate on understanding the causes of atrocity crimes and trying to develop a concerted set of indicators, so that they can begin to predict when low-level violence might escalate into genocide, ethnic cleansing, war crimes or crimes against humanity. This has also happened within the international architecture. That focus on prevention and trying to capacity-building, while still in its early days, has taken a very significant step forward.

The harder part, of course, is what tends to get the most focus in the public sphere, which is Security Council authorisations of the use of force to intervene when these crimes have already taken place. That has been very limited, for all the reasons that we know.

The intervention that we think of most commonly that has got the most attention was the 2011 UN Security Council authorisation to use all necessary means; the intervention in Libya did a great deal of harm politically and in terms of public perceptions and the perceptions across multiple states that engaging in R2P interventions had not in this case been limited to prevention and to stopping ongoing atrocities, but had gone much further. The tainted vision that protection that was wrapped up in regime change has led to a step back and a rethinking of where to go with R2P.

Q3 Priti Patel: Professor Weller, have international reactions to humanitarian crises significantly shifted or changed since countries committed to R2P in 2005? There are many countries where we have seen suffering, IDPs, people movements and so on. Are there any countries that you think have really shown an effective approach?

Professor Weller: There has been a very significant shift in the understanding of the legitimacy of international action in relation to overwhelming humanitarian emergencies. R2P is one of three peaks of that interest. Another is the doctrine of protection of civilians, which relates to when UN forces in the field see an atrocity next to them. We now have a much more robust understanding that they are entitled to act to preserve the lives of those individuals.

R2P was really the answer to the failure to define a common understanding of humanitarian intervention after Kosovo. We initially had a commission—later the General Assembly, as you said—trying to pressure the Security Council to fulfil the second leg of this triad of modalities of action: to give the Security Council a rationale for acting where a state that is responsible in the first place for protecting its own population and



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others in its territory fails or is unwilling to do so. The rationale is broader than just focusing on the Council, but the General Assembly was careful to explain that this doctrine is meant to be applied through a Security Council mandate.

Nevertheless, that has also strengthened the third element of the triad, because the same rationale applies: if there is a population left unprotected by its own Government, someone else can step in and act. If it is not the Council, the logic would continue and maybe someone else should do it—the General Assembly, or even, perhaps in extreme cases, individual states. That would be the doctrine of humanitarian intervention. All three have really moved along quite significantly since the 2005 critical and controversial debate after Kosovo.

- Q4 **Mike Gapes:** If things have moved on, why has there not been intervention in some other conflicts, such as Yemen, South Sudan and Myanmar? Is the real problem not what you alluded to: the decision by the General Assembly that everything has to go through the Security Council? We have this impasse in the dysfunctional Security Council, because of continued use of vetoes. If it has to be that way, we won't get any further, will we?

Professor Weller: There is more than one answer to your question. Responsibility to protect has moved the debate along. It is more difficult to rationalise why we are not acting. States have to explain more, but ultimately, all three doctrines are permissible doctrines: they say, if you can find the political will to act, you can. That does not mean that if there has not been political will to act in cases A, B and C but there is will to act in case D, you should not or cannot act in case D.

There is, through the three doctrines but also in terms of unilateral humanitarian intervention, a recognition that the Security Council may sometimes for political reasons—you mentioned Libya, Dr Vinjamuri, which kind of killed the prospect of UN-mandated forcible action for a while—have a responsibility to protect, as the original report itself said. If that happens and there is a blockage in the Council—we have seen Rwanda, about which Kofi Annan said, "Would you really stand aside and allow that to happen again?"—the temptation for states to act unilaterally will increase. Then, the third element of the triad—humanitarian intervention as a legal justification—grips.

Mike Gapes: Do our other witnesses wish to add anything?

Dr Vinjamuri: Yes. First, on R2P as a principle, it is not clear to me—I come at this from a political angle, rather than a legal analysis angle—whether it prevents other sources of legitimacy for not only unilateral action but collective action outside the Security Council. That is where the question arises, which we are thinking about right now, about the conditions under which humanitarian intervention can take place in a collective fashion outside the Security Council, given the very clear reasons why it is very difficult to move through the Security Council at this point in history.



Dr Ferguson: I will add what is perhaps the third element of my triad. You have the options via the UN Security Council. It is incredibly important that in this conversation and more broadly we consider where there are alternative spaces and options via the UN for legitimacy, convergence and support.

I think the third element is on the national level. All of the examples you gave—South Sudan, Myanmar and Yemen—have already reached the point of crisis and beyond. We have to remember that the responsibility to protect and the general concept of our changing attitudes, which have really shifted somewhat—and remarkably—since 1945 and the Holocaust towards the lives of others on the other side of the world, is about what is often in policy language called mainstreaming this notion of a responsibility to protect. That where the UK can play a very important role.

We see like-minded states—the US, but not only—now developing national mechanisms for an approach to atrocities to ensure they are preventing and predicting, and are able to respond on a national level, through their national mechanisms and resources. That is fulfilling the second pillar: assisting states in the protection of populations within their borders. That is a very important component, and I hope we will get the chance to talk about it more.

Q5 **Mike Gapes:** Can I press you on this? Doesn't it undermine the whole concept of a responsibility to protect if states do not take action when there are clearly, visibly and continually crimes against humanity of one form or another—mass atrocities, people being burned out of their villages, widespread rapes and crimes against women and children—and yet powerful countries do nothing. Doesn't that make people feel that these are just empty words?

Dr Ferguson: The instinct to respond and the desire to punish those we see committing these appalling atrocities against civilians is entirely understandable, but I think the feasibility, legitimacy and legality have to be discussed. What risks undermining that incredibly important historical moment of 2005 is the inconsistency with which that notion of the responsibility to protect is applied by all member states, but perhaps particularly those that have the veto. At the extreme end, we have the Russian Federation and their behaviour, but the UK's responsibility to protect and its commitment to that is also undermined.

You say that it is undermined when states do nothing. Intervention is a vast concept. At the very sharp end we are talking about military intervention but there are lots of other ways that states are able to push forward that agenda. It is around developing the capacity to do so holistically to ensure that the UK is on every level, through all of its mechanisms, discharging that responsibility to the greatest extent that it can. I think that is where this conversation holds the biggest opportunity.

This Committee highlighted in its very important and strong report into the Rakhine violence that there were some real lessons to be learned there

from the Foreign Office and the need to develop an atrocity prevention strategy. The International Development Committee also acknowledged that need. That is something there is a political appetite for, as well as it being something that would enable the UK to better discharge that responsibility.

Priti Patel: Building on Mr Gapes' point, we are living in a culture where we see all these global crises and humanitarian atrocities taking place across the countries that have been spoken about—South Sudan and Yemen in particular and, of course, Syria. As a country, we are great humanitarian contributors, certainly from a Government perspective—we have our commitment to 0.7% for aid—but do you think there is a blurring between our humanitarian support and the whole notion of R2P? Is that what is preventing us from dealing with some of the difficult points that you, Dr Ferguson, have made on the politics of finding resolutions, outcomes, the players and actors who would work together to end some of these awful conflicts and situations?

Dr Ferguson: We have to remember that R2P as a UN norm is an instrument that helps us, or is part of that toolbox of this agenda of prevention, but you are absolutely right in terms of these agendas blurring.

Three trends are very pertinent to that point. One is that atrocity crimes have been rising year on year since 2012. We are seeing an increase in civilian deaths in conflicts, reversing what everybody thought was a downward trend. Crises are becoming more protracted and they are involving this deliberate targeting of civilians. The majority of refugees are fleeing atrocity situations.

The second trend is that the consequences of climate change have led to the biggest levels of displaced people since the UN was invented. The third one is that our world is becoming more divided. I do not know if you saw that Ipsos MORI BBC poll that came out last week that said that three in four people in the world think that our world is more divided.

If you think of those trends, you don't have to be the best atrocity prevention analyst to see that these atrocity crimes are going to be the challenge of the next political generation, not just the current one. It is really incumbent on the UK to take this opportunity to consider what a UK strategy on atrocity prevention could look like. I am happy to talk more on what that could look like.

Q6 **Chair:** Can I jump in quickly? You mentioned statistics that since 2012 there has been an increase in civilian deaths. Could you provide afterwards in writing where you got those statistics from? I would be very interested to have the actual details.

Dr Ferguson: Absolutely. That is also in the opening pages of *The Pathways to Peace*. I will be very happy to provide that for you.

Q7 **Mike Gapes:** I have a final question and any of you can come in on it. Do you think that responsibility to protect, even though it is a relatively new



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concept, needs to be reformed or strengthened, or do we just have to give it more time to develop? If so, how should it be reformed or strengthened?

Dr Vinjamuri: I don't think it has to be either/or. First of all, due to responsibility to protect, there will continue and should continue to be further efforts to deepen the capacity building, the capability to identify and prevent, and further work on trying to develop the mechanisms to respond when necessary or when desirable at the level of the Security Council.

As an aside to that, I would not discredit or deny the significance of even taking something to the Security Council for deliberation when one knows that there will not be a resolution that comes forward, because it provides some basis for evidence that there is a basis for collective action, perhaps outside the Security Council, despite one veto or two abstentions, or a few more.

To your broader question, R2P does not need to be exclusive. It does not need to be the singular basis for responding to atrocities or to the use of categories of weapon that have been deemed illegal for well over a century and, given that basis, since 1997 very clearly, and today by 192 countries. So to assume that because R2P does not work for a particular instance does not mean that we need to dismiss it and disregard it, but it also does not need to preclude other bases or other efforts to create norms and conditions for thinking about what a legitimate and credible basis for intervention would look like.

Professor Weller: I entirely endorse that thought. I printed out this morning a list provided by the Global Centre for the Responsibility to Protect of all the instances where the Security Council has invoked it. There are apparently some 69 resolutions where it has been invoked, in addition to a large number of presidential statements of the Security Council. So it has become, as it were, the new norm that is routinely applied. However, as you pointed out, we have all accepted that there is not always equal political will to implement, which, if you act through the Council, requires the unanimity of the permanent five members.

As you were just mentioning, it is one of several tools: where you have atrocity crimes, you can threaten ICC prosecution; where the ICC applies, you can assemble evidence; you can see whether sanctions can be deployed through the Security Council or, if not, through regional organisations; and you can apply all sorts of other tools. So I am not sure R2P needs to be very much developed. It is what it is. It challenges the state to provide protection and it challenges the Security Council to act where that doesn't happen. If then the Security Council does not act, we need to be clearer about the rest of the toolbox that comes into play and how that can apply to try and make that more powerful.

Dr Vinjamuri: Specifically on the selectivity question that you posed to Dr Ferguson and whether, when one does not respond, that absolutely undermines R2P, I would just note that sometimes responding can also



undermine R2P. Go back to the case of Libya. It is not not responding versus responding that leads to the strengthening of the norm. It is certainly more complex than that. Sometimes, not responding—if you subsequently recognise or if a broad consensus emerges that perhaps it was a collective failure not to respond—can lead to a strengthening of the norms. I don't think that selectivity necessarily—

Mike Gapes: You could say that about Syria in 2012, perhaps.

Dr Vinjamuri: The failure to respond effectively not only with military force but the broader set of strategies that could have turned the course of that crisis around very early on has certainly led to many people and many actors across the world feeling like there is more of a need to think much more carefully about what can be done.

Chair: On that very basis, I wish to put on the record: thanks to our late colleague Jo Cox, who wrote and spoke so passionately about this case, and to her colleagues in Crisis Action, who I am sure you will know of, like Nicola Reindorp, who have very much led that campaign in this country.

Q8 **Ian Murray:** I want to continue this theme on the basis of Syria. You have already mentioned the role of the UN Security Council in trying to provide a way forward and that deliberations that do not come to a resolution may actually be useful. There are many arguments that say the contrary: deliberation without a resolution provides an argument not to intervene or provide humanitarian support as required. Do you still think the Security Council is an effective body to authorise interventions? If not, what should the international community do to try to find an alternative?

Professor Weller: The Security Council has been unable to authorise forcible interventions really since Libya in terms of coalition operations. It has authorised at times, under the doctrine of protection of civilians, aggressive action of its own UN peacekeeping forces for humanitarian purposes—in the Democratic Republic of the Congo, the Intervention Brigade.

In Yemen, where I was involved in the negotiations to obtain a peace agreement, the very fact the Security Council was addressing it and engaging with it, although it was far away from sanctions, seemed to President Saleh, who was to be removed from office, to mean that something would happen imminently. That contributed to at least the provisional resolution of the crisis. So there is value in it.

On the negative side, even if you know that you cannot obtain consensus in the Council, sometimes it is useful to have a clear decision in the Council as a point to move on to another forum. We had the Syrian airstrikes, where Russia sought condemnation. Ordinarily, if states are not keen to vote for something and want to see it fail in the Security Council, they abstain or have to go out for a coffee or some such thing, but in this case eight states positively voted against the condemnation, which could be taken as a legitimising act on most of the actions. Also, the debate



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before the airstrikes, which proved that other means were probably not available in this instance, had a certain function. Russia was aware of it and, in fairness, complained of it, even while the debate was going on.

So the Security Council is not irrelevant, and one constantly has to try to engage it again and try again. As you know, the Security Council just had a retreat on a Swedish island after the Syrian problem, having in a way looked into the abyss of perhaps having come close to an altercation between the United States and other forces deployed in the region, and trying to say, "Look, we are in the United Nations. You have now seen the risks. Come back into the fold of the Council." Perhaps that is not possible at this moment, but it is constantly tried. If it does not work, unilateral humanitarian intervention becomes an option.

Q9 Ian Murray: I am not quite clear from your answer whether you still think the UN Security Council is an effective body to authorise intervention.

Professor Weller: The short answer, though it will not satisfy you, is that it can be, where the powers decide to use it. Where they lack the political will to do so, then it can be a tool or mechanism to point still to the need of action. If 14 states declare there is an overwhelming humanitarian emergency, as, say, we had in Kosovo, and they declare it is a threat to the peace and identify the three or four minimal things that have to happen to terminate that instant, overwhelming threat to an entire population, that helps the states that then might step in and act to calibrate their action to specifically that which, really, virtually all on the Council would have been able to authorise, and therefore to avoid the argument that they are engaging in a use of force for their own purposes. They are doing something which the organised international community seems to have deemed necessary; it was not quite willing to take the step of a mandate, but there is some sort of authentic determination that action was necessary and there was no other means.

Q10 Ian Murray: I quickly googled "UN" and "humanitarian assistance" just to see what comes up as the current stories. Myanmar is there, as well as, obviously, Syria, Yemen and so on. In that context, when you see humanitarian crises continuing right across the globe and feel, to a greater or lesser degree, toothless to try to help, is the context of international law as it stands effective to protect civilian populations?

Dr Vinjamuri: I might take a stab at that from the point of view of somebody who is not an international lawyer. I think perhaps you are asking too much, because, inevitably, law enables and it constrains, but it is not the fundamental driver of state action on questions of intervention in the internal affairs of other states. That is not to say that humanitarianism cannot be a fundamental driver but, inevitably, it is going to be driven by a range of interests.

I would go back to Dr Ferguson's early point about an assessment of what is possible and the likely consequences. To singularly say it is the right thing to do, regardless of whether it makes a situation worse rather than



better, or whether it invites a pushback by another foreign power—all these, of course, come into consideration. So I would be very reluctant to buy into the assumption in the question, which is that law is not doing it and so law becomes the problem, rather than thinking about law as a tool for creating a set of criteria that can enable positive action when there is political will and when it will do more good than harm.

- Q11 **Ian Murray:** Just to get a little bit more from you, in the Syria example, in this case, from the answer you have just given, is it the case that France, America and the UK justified their action through international law, rather than using international law to provide the basis for what they did? So it is an interpretation rather than an actual black and white legal case.

Dr Vinjamuri: A number of elements were drawn on differently by each of those three countries. That is where I think there is a lot of scope for thinking about how one could arrive at a collective basis for working to respond to the use of chemical weapons, in a world where 192 countries have agreed to join a convention that prohibits the use and storage of chemical weapons. To look back and ask what the legal underpinnings are for that and what the basis is for military intervention is a useful enterprise. We can and should debate whether the steps taken in this instance were adequate—not only whether they were adequate in this case, but whether they are adequate as a basis for criteria that should be developed for developing conditions for responding outside of R2P. That, I think, is a different question.

Dr Ferguson: Forgive me, I would like to come back to answer aspects of those past two questions around the problems caused by deadlock at the Security Council. Maybe that will slip into the question around the state of international humanitarian law. I want to raise briefly three ideas. One is the 1950 General Assembly resolution “Uniting for Peace”. It is very rarely used, but it is a process within the UN structure that was established during the cold war for circumstances when there was no consensus among the permanent members. I just posit that as an area worthy of exploration, and probably the contributions to that far exceed my own expertise, but I think that it is an interesting and important process that exists. If ever there was a circumstance of the UN Security Council failing to live up to those obligations, it is Syria.

The second is around working methods at the United Nations and considering through less formal channels where that legitimacy can come from. That is, again, something that should be explored through the UN General Assembly and also through the R2P group of friends, which is a very big group of states that stretches from every single region in the world. That would include considering how, through dialogue, the United Kingdom, as a leader in this field of protection, prevention and development, can lead this conversation.

The third component is that, of course, any evolution of the United Nations or international law is a very long term and hard fought for process. The UK can play a very important role there, but in my opinion it must seek to



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do so multilaterally and collectively as a leader of this global movement, because the responsibility cannot and should not fall on Britain's shoulders alone. The UK should contribute to a global, multilateral evolution and then place on the other side of that majority those who are illegitimate and who are forfeiting their legitimacy by their behaviour.

Professor Weller: The United Kingdom was in a way the leader in formally expressing its position on the bombing relating to the chemical weapons episode as humanitarian intervention. That is to its credit. As it did in 2013, when you first discussed this, it took the view that if we believe that humanitarian intervention is legitimate, we also have to believe that it is lawful. We have to make a point, as a matter of the rule of law, that this kind of action is covered by legal authority. The other two states, France and the US, have also referred to humanitarian motivations for the recent bombing. In that way, they have been consistent with the UK, but the UK went slightly further in offering formal criteria for the application of this legal doctrine, in addition to formally claiming that it is a doctrine of law, rather than a kind of principle of legitimacy that excuses us to violate the law.

That is an important step. That has a certain leadership function. A number of other states have congregated around this. It is important, if you have the idea that humanitarian intervention can be legitimate, to attach to it limiting criteria. Therefore, putting it forward as a legal rule with these very tough and restrictive criteria is quite an important step. Yes, it is permissible, but only under very specific circumstances: the state, proposing to use force, has to make out overwhelming evidence that they are fulfilled. In that sense, I think that was helpful.

- Q12 **Ian Austin:** What should happen if consensus cannot be reached or there is disagreement in the UN Security Council? What sort of rules do the witnesses think should apply when a civilian population is considered to be in danger and there is not an agreement in the UN Security Council? Are there specific criteria for example, which should automatically allow an international response outside a Security Council resolution?

Dr Vinjamuri: Like all of us, I have been thinking a lot about this, because my own instinct was that one should not ignore the use of chemical weapons, nor should one ignore mass atrocities. However, one cannot be naïve and not think about the consequences of any action, especially the use of military force. Any decision to use military force has to, first and foremost, be taken with respect to a careful assessment of the consequences in humanitarian terms, as well as political and strategic terms, of that action.

I think that one of the best set of criteria has been set out—I won't pretend that it's my own. I refer you to the "Just Security" legal blog website, which is very well read. Harold Koh, a very distinguished professor of law, has said there—I will run through this very clearly—that there is a strong argument for developing a legitimate basis to respond to chemical weapons outside the Security Council if circumstances threaten serious disruption; if there is a sufficient effort made to garner a UN



Security Council authorisation but it is blocked by a veto; if the response is limited, proportionate and would improve the humanitarian situation; and if an attack can reasonably alter rather than exacerbate the humanitarian situation. That is one element. Also, desirably: if it is still taken as a collective, not a unilateral action, if it is aimed at preventing illegal means, such as chemical weapons, and/or if it is aimed at avoiding illegal ends, such as crimes against humanity, genocide, ethnic cleansing and war crimes.

I think that is a very good set of criteria to very seriously deliberate on. It goes further than what was offered in the recent response.

- Q13 Royston Smith:** I was going to talk about the UK's legal basis for airstrikes in Syria and the fact that it used the justification of humanitarian intervention, but I think you have covered that, Professor Weller. Is the fact that none of the UK, the US or France cited the responsibility to protect at the time of the recent intervention an indication that it does not carry enough political weight? Is it not seen as a reason to intervene, as opposed to, perhaps, citing a humanitarian basis?

Dr Ferguson: The responsibility to protect, as a framework, has to be discharged through the UN Security Council, so the fact that it was not directly invoked by those three powers, and unilateral action was taken outside the UN Security Council because the Security Council was compromised, does not, I think, undermine that norm. Where there could have been some strengthening was around the humanitarian argument itself, because if we are looking at the motivations and then justifications—take away the legality, because I am not a lawyer—for that action, it has to be about protecting lives and the contribution that any intervention, military or otherwise, makes to that.

The potential to undermine the perceived legitimacy of that action came from a lack of transparency about how the decision was made domestically and from the fact that there is no clearly articulated strategy, either specifically for the UK in Syria or for the UK towards atrocities and protecting civilians more generally. There is a discussion that bears particular pertinence to the UK circumstance of the parliamentary context and the fact that this was not taken to a vote. There was a move whereby it looked as if, in the UK, these decisions would be taken to a parliamentary vote, and then there was some uncertainty.

That matters for our domestic politics, but it also matters for how the UK is seen abroad. It matters, when these decisions are taken, not just that they are legitimate, but that they are seen to be legitimate. I think that that is where there are some lessons to be learned from the way in which the UK but also France and the US have discussed within their own national space whether to intervene militarily or not, throughout the Syrian context. I think that in the UK there is an opportunity to develop some due process drawing on the ideas that we have been hearing from my fellow panellists.



- Q14 Royston Smith:** May I push you on the bit about domestic politics? I can understand the domestic politics of the Government not seeking a vote in Parliament, and that is for them to manage, but you talked about how that is seen internationally. The Americans did not have to seek a vote and nor did the French—and nor do the UK Government if they choose not to; it has just become something of a precedent. So how is that seen internationally?

Dr Ferguson: I think—this comes mostly from conversations with networks that work in and around civilian protection or around the atrocity prevention agenda, or just generally in the diplomatic sphere—that the decision for unilateral action is a complex one. I have already referred to the desire to respond and to be seen to punish a regime that has routinely been violating people in the most atrocious ways. The way I heard someone describe it the other day was that they could not imagine a crime that had not been committed in Syria by the state against the people.

We live in a rules-based system, though. It is crucial that any action taken with that desire to protect and objective to protect does not contribute to undermining that rules-based system. So it's not to challenge the validity or even engage in that conversation around whether it was right or wrong to do those specific attacks, but more around due process. Transparency of process and decision making helps to clarify that. We saw that in the UK from the recommendations of the Chilcot report. The finding of this Committee's inquiry into Libya was about the lack of transparency around information and intelligence that then led to the decision making. That applies to how Governments decide whether to go to Parliament or not in terms of taking military action, but also to how they engage with the international community.

The vote at the UN Security Council against the Russian resolution was very powerful, but perhaps there could have been a resolution taken by the three powers along the same lines or the opportunity to reach out to members of the R2P Group of Friends to say, "Will you publicly come out and support this, so while we provide the capacity as the P3, it has a diplomatic legitimacy?" That kind of tone and contribution is able to stand against some of that criticism that is routinely levelled at the P3 for taking unilateral action.

The last component is making sure it is part of a broader strategy, because if it is not consistent it is then vulnerable to challenges of illegitimacy or of its being a focus on the military solution and not the humanitarian or diplomatic.

- Q15 Royston Smith:** But all that said, do you think the fact that the UK did not take a vote made that worse in any way because what you are saying applies to all three through the UN and how it is seen internationally? Do you think the fact that the UK did not take a vote made that situation worse?

Dr Ferguson: I think the apparent lack of due process or the lack of transparency about how that decision came about created some confusion.



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I was on and off the phone to the parliamentary office trying to find out what was happening myself. It goes back to the argument that I think is crucial, that the UK has an opportunity now to articulate an approach to atrocities. That would mean that when these circumstances arise, many Members of Parliament and some aspects of Government do not find themselves on the back foot; they are prepared and there is a series of processes and decision making that goes on.

I would be very interested, for example, to know the actions and conversations that are a focal point for the responsibility to protect during those weeks. At the moment, that is the only mechanism that the UK Government have, specifically around that responsibility, which is a heavy duty indeed. Because that role is not public facing, though, it is difficult to know what role that mechanism, which is about how the UK discharges its responsibility to protect populations from atrocities, fed into that decision to then support and participate in the strikes.

Q16 Mike Gapes: Is it not a fact that the air strikes that have just taken place were specifically because of the breach of the Chemical Weapons Convention? They were not about the issues of responsibility to protect and therefore we cannot really draw too many lessons from that.

Secondly, I was one of the people who wrote the Select Committee's report on Libya. We did not in that report reject the idea of the intervention. What we said was that it was badly handled and that, for example, they could have used Tony Blair to get Qaddafi out of Libya and they didn't take up that option, even though he said he had the channels and he was prepared to do it.

My third point is, in the situation we are in, isn't the reality that within the UN system—you referred to a kind of public opinion—there are states, including South Africa, that have a totally traditional view about non-interference in the internal affairs of other countries, and that, in a sense, an ideological battle is going on in the UN system between those people who want to go back to the traditional view of the 1950s and 1960s and those people who want to build on what we got to in 2005?

Dr Ferguson: Just to come back very quickly, I hope, to all three points. In terms of the Libya report, I was just highlighting that I believe it was identified that there could have been better clarity of information and intelligence.

Mike Gapes: That's certainly what this Committee thought.

Dr Ferguson: That is the point that I was picking up on.

Mike Gapes: We did say that. We said lots of things and that was one of them.

Dr Ferguson: In terms of the strikes being a response to the chemical weapons, not necessarily about the responsibility to protect, absolutely—but it is in the context of seven years of systematic violations of international humanitarian law and mass atrocities. That is very much in terms of the broader political rhetoric how it was legitimised. I think that is



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important. On that R2P focal point question, because we do not have anything else in terms of approach to atrocities, it falls on poor Mr Paul Williams' shoulders.

The third thing is about the challenge at the UN—this ideological battle. On the one hand, yes, but let's remember that R2P was codified in the African Union, and to a much greater extent, before it was adopted by the General Assembly. There are states that have shifted one way and another way.

We know that how to win a battle of ideas is to try to win the argument and bring people with us. Maintaining, promoting, developing and strengthening the responsibility to protect and that attitude towards saving lives in countries that are not our own is a longer game; we cannot just go our own separate way, those of us who believe it is the right thing, and leave others. That was one of the massive mistakes made in Libya—not taking some potential allies but leaving them on the outside. They have become very vocal critics, and that made saving lives in Syria frankly just harder.

Professor Weller: To reinforce what you said, the African Union not only has endorsed responsibility to protect but in its constitutional instruments it has formally endorsed humanitarian intervention. So it is a kind of African approach. Uganda has declared that international law no longer condones human rights violations as "internal affairs". It said, "The international community should now openly adopt a definitive convention which will permit instant intervention in cases of massive threats to the right to life." So there is an ideological battle but it is not as clearly drawn as some think. Some states have had experience that leads them to recall that perhaps intervention may be necessary under certain circumstances.

On the issue of the alternatives, we heard about having the General Assembly replace the Security Council where the Council does not act. Of course, that is an idea that is not altogether attractive to the permanent members of the Security Council such as the UK, because it shifts power and control away from an arena where one has a veto. It is something that some states are thinking about. It is less about moving the power to authorise. The General Assembly can fulfil the power of identifying situations where there is an overwhelming humanitarian emergency that cannot be addressed in any other way. The legal authority would not come from the General Assembly making that determination but the confirmation that the facts—the trigger—of a right for humanitarian intervention actually exist could come from the Assembly. That is perhaps a subtle distinction for the lawyers.

Then we have regional organisations. Can they be deployed more like we heard in relation to the African Union? There is a French proposal that states should refrain from using the veto when there is a credible allegation of genocide, which I would have thought is an impressive idea, but again, it has not quite gained traction as yet. While those campaigns are fought there is room for trying to build more support for the emergency last resort doctrine of humanitarian intervention, which has gained ground quite considerably, provided it is applied with clarity.



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That relates to my final point, which again you mentioned. Was the recent bombing an action to enforce the Chemical Weapons Convention? Clearly, the answer, at least from the perspective of the UK, is no. There is no international right to enforce treaty obligations of other states. The key factor is that we have an overwhelming humanitarian emergency. The fact that chemical weapons were used is a particularly clear identifier that a population is now at threat.

- Q17 **Chair:** On that very point, the chemical weapons treaty sits almost unique in international treaties in the sense that its violation is very particular. Should there be a separate legal doctrine that allows intervention on the basis of the violation of the Chemical Weapons Convention?

Professor Weller: My personal sense is possibly, but the answer is there is not such a doctrine as yet. Instead, you have to demonstrate that chemical weapons in a conflict that affects mainly civilians, such as Syria, will particularly affect them because civilians do not have armoured vehicles that are sealed from the effects of chemical weapons; they don't have gas masks and chemical weapons suits.

If a Government use chemical weapons on civilian concentrations, this is a particularly strong indication that there is a significant widespread attack going on aimed particularly at a civilian population, and that would be one of the trigger points for humanitarian intervention. However, there could be other trigger points: if you massively use barrel bombs targeting civilian populations, that would also go in the direction of allowing for action. The fact that no action has been taken in relation to that problem is a matter of political will and less a matter of the doctrine of humanitarian intervention not necessarily applying also in that circumstance.

- Q18 **Mike Gapes:** So when Obama had a red line, which he, of course, then did not act on, where would that relate in this definition? I might have a red line that I don't want 400,000 Syrians killed.

Professor Weller: A very useful red line.

Mike Gapes: Where do these red lines fit into this?

Professor Weller: In terms of chemical weapons, there is the argument that it is a unique identifier of an attempt to kill massive numbers of civilians; therefore, it is a somewhat particular case, but it is not a case that uniquely attracts the doctrine of humanitarian intervention. Humanitarian intervention grips where you have any overwhelming case of emergency affecting the very survival of an entire population or large segment of it. That can be the result of chemical weapons use or other attacks against civilians that can be an omission. For example, a Government deny that a million people are dying through starvation in a certain area and refuse international assistance. At some stage, there may be a case for arguing that this is an overwhelming necessity of distress of that population, where action is legitimate to save it from, in this case, the inaction and the denial of its own Government.



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The doctrine of humanitarian intervention, on the one hand, is extremely limited because you have to have the survival of a large segment of a population at stake. However, it can be triggered, by chemical weapons, by other attacks on a population—attacks of ISIS on a population that the Government are unable to meet, for instance—or by acts of omission of a Government. The Government simply declare that these million people—the southern Shi'ites in southern Iraq in 1992—are not likely to be destroyed or killed, so “We don't need to do anything, and any action on your part to try to help them, we will resist”.

Dr Vinjamuri: On the specific question of the US response after the red line had been drawn, one thing to remind ourselves in terms of context is that there wasn't a decision to do nothing. There was a decision to pursue something short of using military force—a negotiation of what, at the time, people thought was the removal of the chemical weapons that existed and a decision by the Syrian Government to join the Chemical Weapons Convention. There was a diplomatic strategy that was pursued, so it wasn't a red line or nothing. It is significant to remember that. In hindsight, we now know that either all the chemical weapons were not removed or they continued to be gotten from somewhere else or produced locally.

You have got to the real dilemma, which is on this question of whether there should be a specific doctrine for responding narrowly to the use of chemical weapons. Undoubtedly, it is the case that doing nothing in response to chemical weapons, given the status they occupy—their widespread illegitimacy internationally—is a problem. However, we cannot divorce a response to chemical weapons from a broader question of whether it will do more harm or will push the humanitarian situation forward in a positive way. That has got to be part of the question. To respond to the use of chemical weapons and do nothing to alter the humanitarian situation is a very costly action with political and legal consequences, and it seems unwise if it does not alter the situation. There is an active debate about whether the recent strikes have done anything to move the situation forward in a positive way. That is an important question. If we go back to the Harold Koh criteria, he has that in there. It should have a positive impact on the humanitarian situation. I think that is very significant.

I also want to get to the question of a domestic vote, because I think that one parameter that needs to be set is the question of timing. There is a very pragmatic question about how important the timing of the response is, and what the consequences of delaying a response are. One of the consequences, which one might think is important or not important, is that something that was not a unilateral response—it was a British, American and French response—might have become a unilateral response if Britain had decided to wait for a parliamentary vote, or it might have been a bilateral response between the United States and France. That has a certain implication, which certainly shouldn't be ignored.



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I would also note—I looked at some of the data on the UK side—that when people were polled just prior to the strikes public opinion was lower than when they were polled after the strikes. Support for the strikes went up when once they were actually taken. None the less, 54% of people polled would have liked to have seen a vote in Parliament. In terms of what the public thinks, as a parameter, that is a point worth making.

Chair: May I thank all three of you very much indeed? This session has been most informative, and I am extremely grateful for your time. On that, we will go into private session. Thank you very much.