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Summary

On 14 April 2018 the Government, with the US and France, conducted airstrikes in Syria in response to the use of chemical weapons by the Syrian regime. The legal basis for these airstrikes put forward by the Government was humanitarian intervention. Humanitarian intervention allows proportionate and limited use of force where there is extreme humanitarian suffering and no practicable alternative. Whilst it has been used by the UK to justify use of force on a number of occasions, it is a contested concept in international law.

It was from the debate around humanitarian intervention that the concept of Responsibility to Protect was born in 2005. This proposed a collection of measures aimed at protecting civilian populations, including the use of force as a last resort and with UN Security Council approval. The current political climate within the UN Security Council has meant that collective action in Syria has not been authorised, with Russia using its veto in relation to proposed resolutions on Syria twelve times. As a result, the humanitarian situation in Syria remains desperate. An estimated 400,000 people have been killed, eleven million displaced and many more are living in untenable conditions, with fears that the situation in Idlib province may also deteriorate significantly in the near future.¹

The Government must consider what more it can do to prevent humanitarian suffering from taking place on such scale in the future. Whilst we agree that this should include being able to rely on humanitarian intervention as a measure of last resort, the Government should also take further preventative measures to pre-empt and avert extreme humanitarian distress. This should include developing a cross-Government mass atrocity strategy that can help identify areas of high risk at an early stage with a range of measures to be taken in response, adopting and promoting the proposal made by the French government in 2013 for permanent members of the Security Council to refrain from use of the veto where there is credible evidence of genocide, and strengthening its stance on the use of explosive weapons in populated areas, setting out how it plans to limit the impact that these weapons have on civilians.

The international community's failure to act and intervene meaningfully in Syria has created opportunities for the regime and other actors in the region to commit atrocity crimes, including the continued use of chemical weapons. The UK must bear its share of the responsibility for this and examine the repercussions of its decisions not to do more on its own and collectively. To this end we call on the Government to establish an independent inquiry into the decision-making processes that led to non-intervention in Syria, the recent airstrikes notwithstanding, and the lessons that can be learnt to prevent similar humanitarian crises happening in the future or to respond more effectively to such crises which may arise. It is clear from the catastrophe in Syria that when a state manifestly fails to protect its own citizens, non-intervention by the international community often results in appalling human suffering and widespread loss of civilian life.

The Responsibility to Protect (R2P) and Humanitarian Intervention

Introduction

1. The airstrikes in April 2018 by the UK, US and France in Syria have raised questions about the moral and legal basis for intervening militarily in other states, without their consent, on humanitarian grounds. Whilst it is not the first time that the UK has justified the use of military force based on humanitarian grounds, its use now raises questions as to why such action was necessary and if more could have been done to protect civilians at an earlier stage. The Committee decided therefore to examine the concept of the Responsibility to Protect (R2P) and humanitarian intervention as bases for military action, particularly in light of the issues raised by this humanitarian intervention in Syria. We also considered the impact that failing to protect civilians has had in Syria, and what other measures could be implemented to protect civilians.

Context

2. Calls for intervention to establish No Fly Zones, or humanitarian corridors to protect civilians in Syria had been made by some parliamentarians in 2011 and 2012. However it was not until August 2013, following a significant chemical weapons attack, that the Government put forward a motion in the House of Commons to agree to military action in Syria if necessary. This motion was defeated.² Dr Leslie Vinjamuri, in her former role as Director at the Centre on Conflict, Rights and Justice, and Associate Professor of International Relations at the School of Oriental and African Studies,³ explained that subsequent diplomatic efforts by the US and Russia at that time ultimately resulted in "... 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.”⁴ This agreement failed to prevent further chemical weapons attacks in Syria however, and Human Rights Watch have estimated that there were 85 chemical weapons attacks between August 2013 and February 2018, with the Syrian government responsible for the majority of those attacks.⁵

3. In 2017, following a large scale chemical weapons attack in Khan Sheikhun, the US undertook airstrikes against a regime airbase in order, in the words of the US Secretary of Defense Jim Mattis, “to deter future use of chemical weapons and to show the United States will not passively stand by while Assad murders innocent people with chemical weapons, which are prohibited by international law and which were declared destroyed.”⁶

4. On 14 April 2018 the UK, US and France authorised air strikes against military targets in Syria in response to the suspected use of chemical weapons by the Syrian Regime in Douma. In that attack in Douma, it was reported that 75 people, including children, were killed and there were up to 500 casualties.⁷

The Inquiry

5. In the wake of these airstrikes the Committee decided to carry out an inquiry considering the legal basis for such interventions, whether more could be done to protect civilian populations at an earlier point in violent conflicts, and the impact of decisions taken in relation to Syria. Specifically, the inquiry focussed on the concepts of Responsibility to Protect (R2P) and humanitarian intervention and their effectiveness in protecting civilians. The inquiry did not consider the Government’s efforts regarding counter-terrorism in the region. In addition to receiving written evidence, the Committee heard from two expert panels which included Syrians impacted by the conflict, legal experts, academics and civil society practitioners. The Committee also took evidence from Alistair Burt MP, Minister of State for the Middle East, Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN, and Foreign and Commonwealth Office (FCO) officials.⁸⁹

The Responsibility to Protect (R2P) and Humanitarian Intervention

6. Under the UN Charter there are currently two recognised exceptions to the general prohibition on the use of force on the territory of a sovereign state without its consent: self-defence (Article 51); or with the authority of the UN Security Council (Chapter VII and, in the case of the use of force by regional organisations, Chapter VIII.)¹⁰

7. The concept of humanitarian intervention lies beyond these two exceptions and claims a right to intervention based on use of strictly necessary and proportionate force undertaken as a last resort in the absence of host state consent to avert an overwhelming and large-scale humanitarian emergency.¹¹ The concept has a long heritage, stretching back until at least the nineteenth century. It has, however, sat at odds with aspects of international law and there is no specific provision for it in the UN Charter. As a justification for use of force it is therefore highly contested and although the UK has relied on it previously to justify international interventions without UN Security Council approval, including in Kosovo in 1999 and Sierra Leone in 2000,¹² there is no consensus as to whether it is an accepted basis for the use of force.

8. It was from these deeply divisive arguments that the concept of humanitarian intervention had generated, particularly following the NATO-led intervention in Kosovo in 1999 and the failure of the international community to intervene in the Rwandan genocide and the conflict in Bosnia, that the idea of R2P was born. The Global Center for the Responsibility to Protect described the resulting divergence of views at that time as “a pair of unpalatable choices: either states could passively stand by and let mass killing happen in order to strictly preserve the letter of international law, or they could circumvent the UN Charter and unilaterally carry out an act of war on humanitarian grounds.”¹³ Dr Adrian Gallagher, an Associate-Professor in the Department of Politics and International Studies at the University of Leeds, referred to this in his written evidence as the “authority dilemma”.¹⁴

9. To bridge this gap, the principle of R2P was developed and included in the 2005 World Summit Outcome Document.¹⁵ This was then adopted as the basis for UN General Assembly Resolution (A/RES/60/1) by Heads of State and Government and the concept has since been presented as three pillars of responsibility.¹⁶ R2P focusses on preventing the four mass atrocity crimes of

genocide, war crimes, crimes against humanity and ethnic cleansing, rather than broader humanitarian crises. R2P does not just refer to military intervention but allows for it under Pillar 3, with UN Security Council authorisation. It also includes a "broad range of preventive, negotiated and other non-coercive measures that are central to R2P."¹⁷

10. R2P confers no legal obligation on states to act in the same way that a treaty might but it has created an emerging norm that acknowledges a political commitment to a collective approach to preventing atrocities.¹⁸ The conflict in Syria is a tragic example of the limitations of that commitment. With an estimated 400,000 civilian deaths over the last seven years, the regular and sustained use of prohibited weapons by the Syrian Regime against its own people, and the lack of effective collective action by the international community, questions have been raised as to whether R2P is fit for purpose and whether the international community should be doing more to protect civilians from mass atrocities, as well as how this could be done.¹⁹

Airstrikes in Syria

Legal basis of airstrikes

11. According to the Government's published legal position, the UK airstrikes in April 2018 targeted the Syrian Regime's chemical weapons capability and were aimed at deterring further chemical weapons attacks in order to avert a humanitarian catastrophe.²⁰ Following the airstrikes, the Prime Minister told the House of Commons that she was "clear about who is responsible. A significant body of information – including intelligence – indicates the Syrian Regime is responsible for this latest attack."²¹ She went on to state that "we [the Cabinet] agreed that it was not just morally right but also legally right to take military action, together with our closest allies, to alleviate further humanitarian suffering."²² The Government therefore relied on humanitarian intervention as the legal basis to justify this use of force.

12. The French and US governments, whilst referring to the humanitarian consequences of chemical weapons, did not cite explicitly humanitarian intervention as their legal basis for the air strikes but rather focussed on the deterrence of the use and proliferation of chemical weapons, which was also referred to by the UK in their reasons for the airstrikes.²³ In oral evidence, the Minister of State for the Middle East, Alistair Burt, explained the reasons for intervention as "in response to the chemical weapons attack and designed to be both a deterrent and to seek to degrade facilities that might be available for further attacks."²⁴

13. Despite international acknowledgement of chemical weapons' widespread illegitimacy, reflected in the majority of states accession to the Chemical Weapons Convention,²⁵ currently there is no right for a state unilaterally to enforce treaties or UN resolutions by military means.²⁶ Some scholars have suggested that "One modest option for reform would be [to] permit unilateral action in response to a narrowly defined category of threat such as chemical (or biological) weapons..."²⁷ Dr Leslie Vinjamuri suggested however that considerations for responding to chemical weapons should include broader humanitarian concerns and whether actions taken will improve the humanitarian situation on the ground.²⁸

Humanitarian Intervention

14. In the Government's published legal position on the airstrikes in Syria they cite humanitarian intervention as the legal basis for their response, which was directed exclusively to averting a humanitarian catastrophe caused by the Syrian Regime's use of chemical weapons.²⁹ It references three conditions that should be met for the legal basis of humanitarian intervention to be used: that there is overwhelming humanitarian suffering, there is no other practicable alternative to the use of force, and the proposed use of force is necessary and proportionate, limited in time and scope, to relieve the humanitarian situation.³⁰ The FCO's written evidence to the Committee reiterated this view.³¹

15. The counter-argument against using humanitarian intervention as the legal basis for the intervention in Syria has been set out by Professor Dapo Akande in a legal opinion prepared following the airstrikes in Syria for the Deputy Leader of the Labour Party, Tom Watson MP.³² In this legal opinion he argues that humanitarian intervention is not an established principle of

customary international law and that “there is very little support by states for this legal position.”³³ He goes on to state that “the argument that there is a right of humanitarian intervention under customary international law implies that a rule of customary international law can prevail over or modify the prohibition of the use of force in the UN Charter.”³⁴ Evidence we received that opposed the use of humanitarian intervention as a legal basis for military intervention expressed similar concerns regarding the potential weakening of the provisions set out in the UN Charter.³⁵

16. A further criticism of humanitarian intervention relates to the idea of it being “illegal but legitimate”³⁶ as the Kosovo intervention was described by the Independent International Commission on Kosovo. Referring to this idea Guglielmo Verdirame, a Professor of International Law at King’s College London and barrister at 20 Essex Street, and Dr John Bethell, also a barrister at 20 Essex Street, noted their concern with this argument.³⁷ Rather, their view is that the prohibition on the use of force can be strongly upheld and consistent with “the use of force on humanitarian grounds as a very last resort and where there are realistic prospects of success...”³⁸ As Professor Sir Christopher Greenwood set out in a legal opinion for a predecessor inquiry by the FAC into the NATO intervention in Kosovo in March 1999,

While nobody would suggest that intervention is justified whenever a State violates human rights, international law does not require that respect for the sovereignty and integrity of a State must in all cases be given priority over the protection of human rights and human life, no matter how serious the violations of those rights perpetrated by that State.³⁹

17. Despite these divisions in legal opinion, the broader international response to the airstrikes suggests a degree of consensus about their legitimacy. Following the airstrikes Russia sought condemnation of the attacks in the UN Security Council and proposed a draft resolution that “would have demanded the United States and its allies immediately cease such actions and refrain from any further use of force in violation of international law.”⁴⁰ It was defeated by eight states voting against the resolution. This apparent political endorsement reinforces the view put forward by Verdirame and Bethell that it “seems very far-fetched to suggest that the creators of the new world order centred on the UN Charter would have intended Article 2(4) to outlaw resort to force in the event of large-scale massacres of civilians or enslavement of populations.”⁴¹

18. Whilst noting the divisions in legal opinion around the concept of humanitarian intervention, we agree that it seems unlikely the creators of the UN Charter would have expected that the prohibition on the use of force would be applied in a way that prevented states from protecting civilian populations and stopping mass atrocities. We therefore believe that under specific circumstances, proportionate and necessary force should be available to be used as a last resort to alleviate extreme humanitarian distress on a large scale. The absence of humanitarian intervention as a final recourse could result in the paralysis of the international system and a failure to act, resulting in grave consequences for civilian populations.

19. The Government should provide further clarification and definition in setting out the general conditions for when a humanitarian intervention can take place. The published legal opinion in relation to the April 2018 airstrikes refers, for example, to “an exceptional basis”, “overwhelming humanitarian suffering”, and “convincing evidence”, but the parameters of what these terms mean are not sufficiently clear and therefore risk being misused and misapplied, as has been argued by some in relation to the humanitarian intervention in Libya. In its response to this report the FCO should set out with greater precision the definitions of these terms and how they are applied when determining whether or not a humanitarian intervention is required. Whilst we accept that clarity is difficult in inherently complex conflict situations and that no definition will cover each and every circumstance, definitions can help to ensure that humanitarian intervention is undertaken in future for the right reasons and in the appropriate situations.

3 Applying R2P to the Syrian Conflict

20. Action taken to fulfil states' commitments to R2P does not have to amount to military intervention.⁴² As Laila Alodaat, Middle East and North Africa Director at the Women's International League for Peace and Freedom, told us: "it is important not to equate taking action in Syria with military intervention, otherwise all the countries who cannot intervene will say, 'Well, there is nothing to be done,' and withdraw. We cannot afford that, because 22 million Syrians still need help and support."⁴³

21. In written evidence the FCO recognised the current challenges "in mobilising the political will of the UNSC to intervene"⁴⁴ and highlighted some of the other measures that they have taken to help resolve situations where there is a risk of atrocity crimes. These include supporting the establishment of the International, Impartial and Independent Mechanism (IIIM) and leading on a resolution on Syria in the Human Rights Council that was passed in March 2018, which extended the mandate of the UN Commission of Inquiry on Syria for another year.⁴⁵ These measures, whilst welcome, are limited in their impact, illustrated by the sheer scale of the tragedy in Syria. Evidence we received highlighted that "there is an urgent need to develop a specific atrocity prevention strategy within the UK government."⁴⁶

22. An atrocity prevention strategy would require a consolidated cross-Government approach to programming and policy development in atrocity risk contexts.⁴⁷ This idea is not new. According to Protection Approaches, a charity that works to assist UK decision makers in better predicting and preventing identity-based violence, an atrocity prevention strategy would strengthen the UK's ability to "address the prevention of mass atrocities as a core national security interest and a moral responsibility".⁴⁸ In evidence from UNA UK the use of sanctions was suggested as "part of the coercive elements of the atrocity prevention toolkit."⁴⁹ The importance of the difference between conflict prevention and atrocity prevention was also highlighted during the inquiry.⁵⁰

23. When asked why the UK lacks an atrocity prevention strategy, Lord Ahmad appeared to propose that humanitarian intervention was a primary mechanism to address atrocity prevention.⁵¹ Humanitarian intervention is however, by definition, an option of last resort and a blunt tool of atrocity prevention. Protection Approaches cited a concern that by not having a comprehensive approach to atrocity prevention "the UK falls short of the holistic understanding of atrocity crimes that is intrinsic to successfully tackling conflict and instability overseas and to strengthening the rules-based international system in a time of considerable duress."⁵²

24. Prevention will always be better than a response. The Government should be doing all it can do to prevent atrocities from occurring in the first place. The obvious and driving impetus for this is the lives saved. As the situation in Syria has illustrated in the most devastating of ways, waiting to respond to crises means that it will inevitably be too late for some, or in this case many. Successfully preventing atrocities also has domestic implications such as reducing the likelihood of the need to deploy the armed forces and contributing to achieving national security objectives.

25. In our first report of this session on the Violence in Rakhine State and the UK's response⁵³ we called on the Government to prioritise atrocity prevention in political and diplomatic conversations. Everything we have heard as part of this inquiry has strengthened our belief that an atrocity prevention strategy is now more vital than ever. The Government needs to act urgently to produce a comprehensive atrocity prevention strategy and implementation plan to ensure it moves beyond words and towards concrete actions. Such a strategy would benefit from consultation and we call on the Government to produce a draft strategy for consultation by April 2019.

Avoiding deadlock in the UN

26. As a recently emerging norm R2P has gained traction. It has been mentioned in 69 UN Security Council resolutions since 2005.⁵⁴ However the recent deadlock in the Security Council has highlighted the challenges to the process. The decisions of the UK, US and France to conduct airstrikes in Syria can be understood as a reaction to that deadlock. Russia has used its veto 12 times to block direct action in Syria on a range of issues,⁵⁵ including draft resolutions that addressed chemical weapons,⁵⁶ the Joint Investigative Mechanism (JIM),⁵⁷ and ending military flights over Aleppo.⁵⁸ The chilling effect of the deadlock goes beyond the situation in Syria and, according to Dr Aidan Hehir, a Reader in International Relations at the University of Westminster,

governments will need to seek bolder solutions to the way decisions are made or risk impeding “the consistent and effective enforcement of international law.”⁵⁹

Constructive Abstention

27. Russia’s repeated use of the veto in relation to Syria has led to renewed attention to what Marc Weller, Professor of International Law and International Constitutional Studies at the University of Cambridge, referred to as the idea “that states should refrain from using the veto when there is a credible allegation of genocide”⁶⁰ This proposal was mentioned in the report of the International Commission on Intervention and State Sovereignty (ICISS) in 2001 where it was observed that “capricious use of the veto, or threat of its use”⁶¹ would likely be an obstacle to averting humanitarian crises. The report then went on to suggest that states could refrain from using the veto to obstruct the passage of what would otherwise be a majority resolution, an idea that has been referred to as “constructive abstention” in the past.⁶² This concept was then put forward by President Hollande of France in 2013 in relation to mass atrocities.⁶³

28. The Government, whilst not officially endorsing the French proposal, has signed up to the Accountability, Coherence and Transparency (ACT) Group’s Code of Conduct⁶⁴ which includes a “Pledge in particular not to vote against a credible draft resolution before the Security Council on timely and decisive action to end the commission of genocide, crimes against humanity or war crimes, or to prevent such crimes.”⁶⁵ Lord Ahmad told the Committee “we agree with the principle of what the French are suggesting” but that in the current political climate “it will not be supported by the Security Council, and particularly the P5.”⁶⁶

Uniting for Peace

29. Another potential option to circumvent the UNSC’s deadlock could be to go through the UN General Assembly, applying a process referred to as ‘Uniting for Peace’, after the 1950 General Assembly Resolution 377 known by this name.⁶⁷ In this process a resolution would need the support of at least two-thirds of the Assembly to be passed and would be considered in a situation where due to “lack of unanimity of the permanent members, [the Security Council] fails to exercise its primary responsibility for the maintenance of international peace and security.”⁶⁸ However whilst a resolution that gathered this level of support in the UNGA would potentially demonstrate political legitimacy, its application would not change the legal status of an action prohibited under international law and so could not form the legal basis for use of force (and it has not been used for this purpose.⁶⁹) Its use could also have longer term repercussions for the authority of the UNSC, undermining the role of the UNSC as set out in Article 39 of the UN Charter.⁷⁰

30. We agree that the UNSC is the right authority to mandate collective use of force. However, we believe that the P5 states, in holding a right to veto, have a responsibility to ensure that the narrow interests of a few do not stand in the way of protecting the many. It is an abuse of the moral responsibility entrusted to the permanent Security Council members to block action sought to prevent or alleviate suffering from mass atrocities. Just as there are risks to undermining the authority of the UNSC through invoking the ‘Uniting for Peace’ resolution, so there are similar risks if the UNSC fails to respond when a state is perpetrating mass atrocities against its own citizens.

31. The Government should commit to implementing France’s 2013 proposal to refrain from use of the veto where there is credible evidence of genocide and it should encourage other P5 members to do the same. The Government should explain how it intends to encourage P5 members to commit to this proposal and, if other members fail to adopt voluntarily the French proposal, how it intends to work with those states to secure this commitment.

4 The price of inaction

The price of inaction within Syria

32. It has become clear through our inquiry that the price of inaction in the case of Syria has been unacceptably high. Starting as a peaceful protest in March 2011 the Syrian conflict has subsequently claimed an estimated 400,000 lives, and led to eleven million people, half the Syrian population, being forced to leave their homes.⁷¹ The conflict is characterised by what our

predecessor Committee report described as “extraordinary complexity” with “thousands of fighting forces in various coalitions and umbrella organisations, with unclear aspirations and shifting alliances.”⁷² In oral evidence we heard some of the challenges facing the Syria Civil Defence,⁷³ or ‘White Helmets’ as they are commonly known, from Dr Farouq al Habib, a Director at the Mayday Rescue Foundation, who works closely with them:

The main challenges that the White Helmets face are related, first, to the deliberate targeting of medical teams in general, and the White Helmets in particular, through double-tap attacks, when the regime bombs the same area again and again when rescue workers arrive. There is also the disinformation campaign, led mainly by Russian propaganda, to undermine the credibility and legitimacy of the White Helmets and all civil society groups proposing a different narrative in Syria.⁷⁴

33. The international response to chemical weapons but not to the massive civilian casualties caused by conventional weapons has caused confusion and concern. Referring to the red line that President Obama defined in relation to chemical weapons use in 2012, Farouq al Habib told us that to many in Syria that was understood as “a green light to the regime to use all other kinds of weapons to kill people.”⁷⁵ Written evidence we received also documented an escalation by the regime of bombing civilians with explosive weapons following the 2013 chemical weapons agreement.⁷⁶ Data from the NGO Action on Armed Violence records that 2017 was the worst year yet for civilian deaths from explosive weapons.⁷⁷ Laila Alodaat also explained how explosive weapons have prevented women from reaching life-saving healthcare facilities.⁷⁸

34. Whilst international humanitarian law prohibits indiscriminate attacks, this has been broadly interpreted by some states who choose to use explosive weapons in populated areas. The use of certain weapons, such as barrel bombs and other Improvised Explosive Device (IEDs), however, are considered by some to be so imprecise and inaccurate, particularly when used in areas with a high concentration of civilians, that there need to be stronger international standards to regulate and limit their use. A recent report by RUSI and Save the Children proposed that the Government should recognise “the use of explosive weapons with wide-area effects in populated areas as a key challenge in contemporary conflicts.”⁷⁹

35. The airstrikes have shown, as one witness put it, that “when western Governments want to act, they can act.”⁸⁰ Whilst the Committee notes the action taken by the UK Government in responding to the chemical weapons attacks in Douma, we are concerned that the Government has responded only to chemical weapons attacks rather than conventional weapons attacks and other grave breaches of international humanitarian law, which have caused many more deaths and injuries. In so doing the Government risks creating what has been described to us as a “hierarchy of atrocities”.⁸¹

36. Whilst international humanitarian law prohibits and regulates the use of weapons in conflict, the continued flouting of those laws in Syria by the regime and other actors suggests that more needs to be done to bolster and strengthen the application of those rules in order to protect civilians. The Government should update its protection of civilians in armed conflict strategy to include a focus on the use of explosive weapons in populated areas. As part of that strategy the Government should set out the measures it is taking to reduce the impact of these weapons on civilians and on the essential services that civilians rely on, such as healthcare facilities.

The price of inaction beyond Syria’s borders

37. The broader implications of the failure of the UK to intervene more robustly has had repercussions, overwhelmingly and fatally in Syria of course, but also beyond. Farouq al Habib, a Director at the Mayday Rescue Foundation, told us in evidence that “hundreds, maybe millions, of refugees would not have been displaced if something had been done in 2013.”⁸² He explained how extremists in Syria have co-opted the narrative of inaction to use against moderate groups.⁸³ The international community’s reluctance to intervene at an earlier stage created an opportunity for Russia and Iran to deepen their involvement.⁸⁴ The Minister of State for the Middle East, Alistair Burt, told us that “There are no vacuums in foreign policy or military action. If you are not there, somebody else is.”⁸⁵

38. Haid Haid, a Research Fellow at the International Centre for the Study of Radicalisation at King's College London, identified the failure of the international community to respond to the use of chemical weapons in 2013 as a turning point.⁸⁶ Farouq al Habib went further in expressing his view that "the impact of inaction goes beyond Syria. It is not only inside Syria. It encouraged Russia to interfere in Ukraine. It will encourage all autocrats and dictators all over the world to feel impunity and that they can do whatever they want, even using chemical weapons and committing all kinds of atrocities, without any consequences."⁸⁷ The idea that states are being allowed to act with impunity was reiterated by Laila Alodaat who expressed a similar concern regarding "the fundamental undermining of international laws" and a withdrawal from accountability.⁸⁸ In summarising the evidence we heard, the Chair asked the witnesses:

Q62 Chair: Would I be right in saying that the cost of doing nothing is most immediately obvious in Syria, and among the murdered in Syria, but actually it fundamentally undermines the security position of the British people and is a fundamental threat to the rules that we have relied on for 70 years to keep us safe?

Dr al Habib: Yes.

Laila Alodaat: It is fair to say that, yes.

Haid Haid: Yes.⁸⁹

39. The Committee wrote to the Foreign Secretary recommending that an independent inquiry should be established into the consequences of non-intervention in Syria. In his response the Foreign Secretary agreed that "decisions not to intervene militarily in conflicts can prove as significant, and worthy of discussion, as decisions to do so."⁹⁰ The Foreign Secretary also told us that the UK's failure to act militarily in 2013 "may have emboldened the regime and encouraged other countries to enter the conflict more forcefully on the side of the Syrian regime."⁹¹ However, the Foreign Secretary was not convinced an inquiry would be appropriate in this context. He noted that the circumstances that led to the decision in 2013 were well documented. Whilst true, the Committee is interested in understanding fully the consequences of that decision and the continued failure to act at other flash points in the conflict.

40. There has been a manifest failure to protect civilians and to prevent mass atrocity crimes in Syria. This failure has gone beyond the heavy toll paid by the Syrian people to the surrounding region, and had repercussions in Europe and the UK. It is the Committee's view that this failure derives principally not from the actions taken by the international community but inaction. Whilst we recognise the UK's significant contribution to the humanitarian effort in Syria and its support of other mitigating measures, the failure to intervene has had severe consequences and is about political engagement and will. The international community's inaction created an opportunity for others, particularly Russia and Iran, to intervene, changing the politics of the conflict in Syria.

41. While the cost, complexities and challenges of intervening have been well documented through previous inquiries, such as the Iraq Inquiry, the consequences of not acting are less well understood.⁹² We believe that the consequences of inaction can be every bit as serious as intervening. The decision not to intervene in Syria has had very real consequences for Syrians, their neighbours, the UK and our allies. We believe the Government needs to understand the role the UK's inaction has had and learn the lessons from it for the future. Whilst the Committee agrees with the Foreign Secretary that the UK has remained engaged in Syria throughout the conflict, this engagement has focussed more on measures that respond to crises, rather than proactive measures that prevent them. It remains our view that the Government should establish an independent inquiry into the decision-making processes leading to, and the consequences of, non-intervention.

Conclusions and recommendations

Airstrikes in Syria

1. Whilst noting the divisions in legal opinion around the concept of humanitarian intervention, we agree that it seems unlikely the creators of the UN Charter would have expected that the prohibition on the use of force would be applied in a way that prevented states from protecting civilian populations and stopping mass atrocities. We therefore believe that under specific circumstances, proportionate and necessary force should be available to be used as a last resort to alleviate extreme humanitarian distress on a large scale. The absence of humanitarian intervention as a final recourse could result in the paralysis of the international system and a failure to act, resulting in grave consequences for civilian populations. (Paragraph 18)

2. *The Government should provide further clarification and definition in setting out the general conditions for when a humanitarian intervention can take place. The published legal opinion in relation to the April 2018 airstrikes refers, for example, to "an exceptional basis", "overwhelming humanitarian suffering", and "convincing evidence", but the parameters of what these terms mean are not sufficiently clear and therefore risk being misused and misapplied, as has been argued by some in relation to the humanitarian intervention in Libya. In its response to this report the FCO should set out with greater precision the definitions of these terms and how they are applied when determining whether or not a humanitarian intervention is required. Whilst we accept that clarity is difficult in inherently complex conflict situations and that no definition will cover each and every circumstance, definitions can help to ensure that humanitarian intervention is undertaken in future for the right reasons and in the appropriate situations.* (Paragraph 19)

Applying R2P to the Syrian Conflict

3. Prevention will always be better than a response. The Government should be doing all it can do to prevent atrocities from occurring in the first place. The obvious and driving impetus for this is the lives saved. As the situation in Syria has illustrated in the most devastating of ways, waiting to respond to crises means that it will inevitably be too late for some, or in this case many. Successfully preventing atrocities also has domestic implications such as reducing the likelihood of the need to deploy the armed forces and contributing to achieving national security objectives. (Paragraph 24)

4. *In our first report of this session on the Violence in Rakhine State and the UK's response we called on the Government to prioritise atrocity prevention in political and diplomatic conversations. Everything we have heard as part of this inquiry has strengthened our belief that an atrocity prevention strategy is now more vital than ever. The Government needs to act urgently to produce a comprehensive atrocity prevention strategy and implementation plan to ensure it moves beyond words and towards concrete actions. Such a strategy would benefit from consultation and we call on the Government to produce a draft strategy for consultation by April 2019.* (Paragraph 25)

5. We agree that the UNSC is the right authority to mandate collective use of force. However, we believe that the P5 states, in holding a right to veto, have a responsibility to ensure that the narrow interests of a few do not stand in the way of protecting the many. It is an abuse of the moral responsibility entrusted to the permanent Security Council members to block action sought to prevent or alleviate suffering from mass atrocities. Just as there are risks to undermining the authority of the UNSC through invoking the 'Uniting for Peace' resolution, so there are similar risks if the UNSC fails to respond when a state is perpetrating mass atrocities against its own citizens. (Paragraph 30)

6. *The Government should commit to implementing France's 2013 proposal to refrain from use of the veto where there is credible evidence of genocide and it should encourage other P5 members to do the same. The Government should explain how it intends to encourage P5 members to commit to this proposal and, if other members fail to adopt voluntarily the French proposal, how it intends to work with those states to secure this commitment.* (Paragraph 31)

The price of inaction

7. The airstrikes have shown, as one witness put it, that "when western Governments want to act, they can act." Whilst the Committee notes the action taken by the UK Government in responding to the chemical weapons attacks in Douma, we are concerned that the Government has responded only to chemical weapons attacks rather than conventional weapons attacks and other grave

breaches of international humanitarian law, which have caused many more deaths and injuries. In so doing the Government risks creating what has been described to us as a “hierarchy of atrocities”. (Paragraph 35)

8. Whilst international humanitarian law prohibits and regulates the use of weapons in conflict, the continued flouting of those laws in Syria by the regime and other actors suggests that more needs to be done to bolster and strengthen the application of those rules in order to protect civilians. The Government should update its protection of civilians in armed conflict strategy to include a focus on the use of explosive weapons in populated areas. As part of that strategy the Government should set out the measures it is taking to reduce the impact of these weapons on civilians and on the essential services that civilians rely on, such as healthcare facilities. (Paragraph 36)

9. There has been a manifest failure to protect civilians and to prevent mass atrocity crimes in Syria. This failure has gone beyond the heavy toll paid by the Syrian people to the surrounding region, and had repercussions in Europe and the UK. It is the Committee’s view that this failure derives principally not from the actions taken by the international community but inaction. Whilst we recognise the UK’s significant contribution to the humanitarian effort in Syria and its support of other mitigating measures, the failure to intervene has had severe consequences and is about political engagement and will. The international community’s inaction created an opportunity for others, particularly Russia and Iran, to intervene, changing the politics of the conflict in Syria. (Paragraph 40)

10. While the cost, complexities and challenges of intervening have been well documented through previous inquiries, such as the Iraq Inquiry, the consequences of not acting are less well understood. We believe that the consequences of inaction can be every bit as serious as intervening. The decision not to intervene in Syria has had very real consequences for Syrians, their neighbours, the UK and our allies. We believe the Government needs to understand the role the UK’s inaction has had and learn the lessons from it for the future. Whilst the Committee agrees with the Foreign Secretary that the UK has remained engaged in Syria throughout the conflict, this engagement has focussed more on measures that respond to crises, rather than proactive measures that prevent them. It remains our view that the Government should establish an independent inquiry into the decision-making processes leading to, and the consequences of, non-intervention. (Paragraph 41).

¹ Human Rights Watch, [Syria: Events of 2017](#), accessed 17 July 2018

² HC Deb, 29 August 2013, [col 1425](#) [Commons Chamber]

³ Dr Vinjamuri has subsequently taken up a new role as Head of the US and the Americas Programme, and Dean of the Queen Elizabeth II Academy at Chatham House.

⁴ [Q18](#) [Dr Leslie Vinjamuri]

⁵ Human Rights Watch, [Syria: A year on, Chemical Weapons Attack Persist](#), accessed 17 July 2018

⁶ US Department of Defense, [Statement by Secretary of State Jim Mattis on the U.S. military response to the Syrian Government’s use of chemical weapons](#), accessed 17 July 2018

⁷ HC Deb, 16 April 2018, [col 39](#) [Commons Chamber]

⁸ Martin Longden, Head of Near East Department, and UK Special Representative for Syria at the FCO, accompanied Alistair Burt in providing evidence to the Committee. Richard Jones, Deputy Director, Human Rights and Democracy, Corinne Kitsell, Deputy Director UN & Multilateral / UN Coordinator, and Paul McKell, Legal Director at the FCO, accompanied Lord Ahmad in providing evidence to the Committee.

⁹ Professor John Bew, who serves as a Specialist Adviser for the Committee’s ongoing work on Global Britain, has declared the following interests: consultant for the think tank Policy Exchange on a project called ‘Britain in the World’, examining UK foreign policy (since March 2016); contributing writer (not contracted) for the New Statesman; past consultancy for M&C Saatchi on informal basis, father is Cross-Bench Peer in House of Lords (Lord Bew of Donegore).

¹⁰ Global Centre for R2P, [RTP0003](#), para 14

¹¹ The Foreign and Commonwealth Office ([RTP0016](#)), para 15

[12](#) Jo Cox Foundation (RTP0013), para 3.3

[13](#) Global Centre for the Responsibility to Protect (RTP0003), para 2

[14](#) Dr Adrian Gallagher (RTP0008), para 1.1

[15](#) UN Office on Genocide Prevention and the Responsibility to Protect, [Responsibility to Protect](#), accessed 17 July 2018

[16](#) "R2P stipulates three pillars of responsibility. Pillar One: Every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing. Pillar Two: The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility. Pillar Three: If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter." Global Centre for the Responsibility to Protect (RTP0003), para 4.

[17](#) Global Centre for the Responsibility to Protect (RTP0003), para 12

[18](#) Gerrit Kurtz (RTP0007), para 4, Dr Aidan Hehir (RTP0009), p2

[19](#) Human Rights Watch, [Syria: A year on, Chemical Weapons Attack Persist](#), accessed 17 July 2018

[20](#) Prime Minister's Office, [Syria action – UK government legal position](#), 14 April 2018

[21](#) HC Deb, 16 April 2018, [col 39](#) [Commons Chamber]

[22](#) HC Deb, 16 April 2018, [col 40](#) [Commons Chamber]

[23](#) US Department of Justice, [Memorandum Opinion for the Counsel to the President](#), 31 May 2018, p11. Prime Minister Office, [Statement by Edouard Philippe, Prime Minister, on the French Armies' intervention in response to the use of chemical weapons in Syria](#), accessed 17 July, p3

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[25](#) Organisation for the Prohibition of Chemical Weapons, [OPCW Member States](#), accessed 17 July 2018

[26](#) Chatham House, [US Missile Strikes Expose the Untenable Status Quo in International Law](#), accessed 17 July 2018

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[30](#) Prime Minister's Office, [Syria action – UK government legal position](#), 14 April 2018

[31](#) The Foreign and Commonwealth Office (RTP0016), para 16

[32](#) Tom Watson MP, [Legal advice on UK airstrikes on Syria](#), accessed 17 July 2018

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[34](#) Tom Watson MP, [Legal advice on UK airstrikes on Syria](#), accessed 17 July 2018, para 8

[35](#) Gerrit Kurtz (RTP0007), para 17, Brigadier (Retired) Anthony Paphiti (RTP0004), para 26, Dr Aidan Hehir (RTP0009), para 3, UNA-UK (RTP0010), para 33, Patrick Butchard (RTP0017) para 4

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[38](#) Professor Guglielmo Verdirame and Dr John Bethell (RTP0015)

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[42](#) Global Centre for the Responsibility to Protect ([RTP0003](#)), para 4

[43](#) Q74 [Laila Alodaat]

[44](#) The Foreign and Commonwealth Office ([RTP0016](#)), para 14

[45](#) The Foreign and Commonwealth Office ([RTP0016](#)), para 14

[46](#) Peace Direct ([RTP0014](#)), para 15

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