

## The EU's Commitment to and Implementation of the Responsibility to Protect: The Way Forward

*By Pinar Gözen Ercan (Hacettepe University)*

### Policy Recommendations

- Adopt and internalise a holistic approach, and apply Responsibility to Protect (R2P) in-depth.
- Include the protection of refugees fleeing mass atrocity crimes in the implementation of R2P in-depth.
- Focus on consolidating diverging positions of the EU Member States and pursue the internalisation of a common protection approach under R2P.
- Learn from the experiences of other regional organizations and recognize the history, specificities and needs of each region.

In 2018, during the second United Nations (UN) General Assembly formal debate on the R2P, Ms. Adamson, speaking on behalf of the European Union (EU) remarked: The Union “was born after the horrors of the Second World War, in a spirit of ‘never again’”. The responsibility to protect is at the core of our primary goal, which is to enable our populations to live in peace and security. When we fail in our responsibility to protect, we fail our very reason for being here”.<sup>1</sup> As this strong remark affirms, the EU is a staunch supporter of the principle of the R2P, which was unanimously adopted by the UN Member States in the World Summit in October 2005.

At the core of R2P lies the protection of populations from mass atrocity crimes—namely: genocide, war crimes, ethnic cleansing and crimes against humanity. Such protection can be achieved through prevention and/or reaction as set out in the 2009 Report of the UN Secretary-General on the three-pillar implementation strategy of R2P.<sup>2</sup> In a nutshell, the first pillar embraces the notion of “sovereignty as responsibility”, which holds every state responsible for the protection of its population from mass atrocity crimes. Likewise, again with a focus on prevention, the second pillar establishes the international assistance and capacity-building responsibilities. The third pillar focuses on reaction and seeks for implementation through timely and decisive response, wherein peaceful and/or coercive measures (up to and including the use of force) can be utilised to stop mass atrocities. In this vein, as enshrined in Paragraphs 138 and 139 of the 2005 World Summit Outcome Document (WSOD), R2P is built on the obligations arising from international humanitarian, criminal and human rights laws. It holds perpetrators accountable for their crimes, and utilises the existing mechanisms of the UN under the authority of the UN Security Council. Hence, it is fully compatible with that which the EU defends and stands for in terms of human rights protection, criminal accountability and peaceful co-existence, as well as its existing humanitarian assistance and sanctioning practices/mechanisms.

Throughout the first one and a half decades of R2P under the auspices of the UN, the EU's support of the principle has been constantly growing rather than diminishing. Nevertheless, its track record, in terms of R2P's implementation, has been mixed. Therefore, this policy brief asks how to bridge the gap between the EU's commitment to R2P and its practices.

### From Words into Deeds

The EU began defining its institutional position on R2P with the European Parliament's 2013 recommendation to adopt an interinstitutional "Consensus on R2P". This reconfirmed its commitment to the principle. In 2016, the EU not only declared in its Global Strategy for the EU's Foreign and Security Policy (EUGS) that it would promote R2P, but also became the first regional organisation to appoint an R2P Focal Point. Currently, except for Cyprus, Estonia, Latvia, Malta and Slovakia, all EU Member States have appointed R2P Focal Points—who are tasked with making sure that domestic atrocity prevention mechanisms are effectively implemented, as well as encouraging international cooperation. While each year a European state co-convenes the annual meeting of the Global Network of R2P Focal Points; in 2019, the EU itself became the first regional organisation to host this meeting. The EU is also a member of the Group of Friends of R2P, which at an intergovernmental level brings together Permanent Missions to the UN in New York and Geneva to promote dialogue and collaboration on R2P. The EU's reiteration of its commitment to R2P in 2017, in "The European Consensus on Development", and its strong support for the inclusion of R2P in the 2018 and 2019 formal agendas of the UN General Assembly, evince the consistency of the EU in promoting the principle. Moreover, the EU actively contributes to upholding Pillar 2 responsibilities through humanitarian, technical and financial assistance in different parts of the world, and regarding Pillar 3, on a case-by-case basis, it applies sanctions and pursues accountability for mass atrocities. Nevertheless, there still remains a gap between the words of the EU and its R2P practices.

Of the many ongoing R2P crises that have made us question the genuineness of the commitment of not only the EU but also the international community, two cases from 2011, namely Libya and Syria, draw a striking picture. Firstly, the Libyan case is demonstrative of the dividedness of the EU Member States regarding the third pillar of R2P, from the stage of the adoption up to the way of operationalisation of the UN Security Council Resolution 1973 on Libya, upon which the military intervention was carried out. More specifically dividedness with respect to the use of force as a means to stop mass atrocities. From this, we can deduce that while the EU has verbally been expressing support for R2P in the above-mentioned documents, in practice it has not identified a common position as to the three pillars of R2P and how to operationalise the principle within the Union. Furthermore, with the case of Syria other major problems at the national and international levels have surfaced. When we look at the EU documents and/or official statements referring to R2P, we see that the

“As we have witnessed in the unprecedented refugee protection crisis ... the Union has failed to uphold its responsibility to protect populations fleeing from mass atrocity crimes”

Union considers R2P mainly as a foreign policy matter. This is inherently problematic because it overlooks individual responsibilities of states to offer protection within their own territories. As we have witnessed in the unprecedented refugee protection crisis that emerged with the outbreak of conflict in Syria—which the EU labelled as a “migration crisis”—, the Union has arguably failed to uphold its responsibility to protect

populations fleeing from mass atrocity crimes. It is noteworthy that the protection of forcefully displaced persons is accepted as an integral part of R2P's protection framework as noted in the reports of the UN Secretary-General. Yet, a considerable number of Member States have failed to uphold their responsibilities arising from Pillar I of R2P, while the EU has overlooked its internal responsibility in this regard.

The vast differences of approach between the Member States towards the protection of refugees, as well as the growing inflammatory language, radicalisation and xenophobia in some European countries, not only points to a lack of R2P's internalisation by each Member State under the

umbrella of the EU, but also a lack of an understanding both of what the “responsibility to protect populations” entails, and of the “narrow and deep” implementation mentality.<sup>3</sup>

### **The Way Forward and Challenges Ahead: Policy Recommendations**

As argued elsewhere, the EU has the capability and tools to contribute to a deep and consistent implementation of R2P, especially through non-military tools and assistive measures to ensure atrocity prevention.<sup>4</sup> However, to realise this, the EU first needs to reflect on its own actions, develop a common understanding of what R2P entails internally and externally, and above all, overcome its existential crisis arising from the diverging views and practices of its Member States. Accordingly, the following policy recommendations can be made:

- **Adopt and internalise a holistic approach, and apply R2P in-depth:**

The EU needs to adopt a holistic approach to R2P, which embraces not only a global responsibility to protect but also an understanding of “sovereignty as responsibility”. The three pillars of R2P cannot, and should not, be detached from each other, because they are complementary. R2P’s timely, consistent and effective implementation requires an understanding of the depth of the inherent responsibility of states, as well as of the international community. As the former UN Secretary-General Ban Ki-moon put it, while R2P is conceived narrowly in terms of its scope—which pertains to situations of genocide, war crimes, crimes against humanity and ethnic cleansing—the response itself needs to be deep. That is to say, in situations that fall within the scope of R2P, the prevention toolkit<sup>5</sup> should be used by all possible actors in order to achieve protection, whether it concern halting the incitement or commission of mass atrocity crimes, or protecting internally displaced persons and/or refugees who are fleeing atrocities.

As envisaged in the EUGS, the EU recognizes the value of mass atrocity prevention. A better comprehension of the tools available to R2P would allow Member States to consolidate their differences, especially pertaining to Pillar 3. A deep approach to R2P also requires the recognition and utilisation of the

measures short of the use of force for timely prevention or reaction. To this end, the EU needs to ensure that the prevention mentality put forth by R2P is internalised and actualised. It is also noteworthy that the EU Focal Point needs to be made more visible. The appointment of R2P Focal Points by all Member States would also strengthen the internal atrocity prevention mechanisms of the EU.

Accountability is an important aspect of sustainable protection under R2P. In this regard, the EU sets a good example, as all its Member States are party to the Rome Statute of the International Criminal Court. Moreover, in terms of adopting a common protection approach and delivering the responsibility to protect with one voice, the 2019 “EU Responsibility to Protect–Atrocity Prevention Toolkit” constitutes an important starting point. The early warning and financial capabilities of the EU gives it strength in terms of atrocity prevention. What is important at this point is to achieve consistency in the individual practices of the Member States. For this, the EU needs to adopt new documents detailing its understanding of R2P and its implementation priorities. Such a document should follow what has been outlined in the 2005 WSOD, as well as the 2009 Report of the Secretary-General on Implementing the Responsibility to Protect, so as not to challenge the achieved consensus on R2P.

- **Include the protection of refugees fleeing mass atrocity crimes in the implementation of R2P in depth.**

Considering the European experience in humanitarian crises, and since this is an area where the EU can make a real difference, the Union should also integrate the protection of refugees into its R2P approach and adopt the necessary mechanisms in order to effectively fulfil its responsibility to protect.

- **Focus on consolidating diverging positions of the EU Member States and pursue the internalisation of a common protection approach under R2P”**

Unlike other regional organisations, the EU claims to be a global actor, and acts as such, but its level of influence is arguable. To champion R2P’s implementation, first of all the EU itself needs to consistently implement the principle. As in the Syrian case some Member States upheld their responsibility

by providing protection to refugees, while others had a destabilising impact on the ongoing conflict in Syria with their military involvement. Such discrepancies—which contributed the EU falling into an existential crisis—as well as internal problems, such as inflammatory language, radicalisation and xenophobia in some Member States, have to be resolved, and the current asylum and migration system needs to be reformed without further delay. Without these measures, the EU cannot uphold its protection responsibilities and its credibility as a global actor role will continue to be undermined.

- **Learn from the experiences of other regional organizations and recognize the history, specificities and needs of each region.**

Last but not least, the EU should continue its cooperation with other regional organisations. This is very important considering the advantages that regional organisations hold with regard to their proximity to and the knowledge of the regions of conflict. Moreover, regional organisations such as the African Union (AU), which has officially adopted the principle of non-indifference, have much experience to offer to the EU. Hence, the EU should seek to benefit from this cooperation so obtaining a better understanding of different regions and delivering responses tailored to the needs of the population requiring protection in each situation. It should be remembered that what might be a feasible solution within Europe may not be sustainable for another region. In other words, while assuming the role of the global actor, the EU should recognise the history, specificities and needs of each region. It should cooperate and assist, but avoid a one-size-fits-all approach or the imposition of the “European way of life”.

### References

- <sup>1</sup> UN General Assembly, A/72/PV.99, June 25, 2018.
- <sup>2</sup> UN General Assembly, A/63/677, January 12, 2009.
- <sup>3</sup> UN General Assembly, A/63/677, January 12, 2009.
- <sup>4</sup> Pinar Gözen Ercan and Defne Günay, “How can a ‘Responsible’ European Union Contribute to the Implementation of the Responsibility to Protect?” *European Review* 27 no. 4 (2019): 501.
- <sup>5</sup> Such as the UN “Framework of Analysis for Atrocity Crimes: A tool for prevention” (2014).

### About the Author

**Pinar Gözen Ercan, Dr.**, is an associate professor of International Relations and Chair of the Branch of Public International Law at the Department of International Relations of Hacettepe University, Turkey. She is one of the co-chairs of the “2R2Ps for Sustainable Peace Initiative” and a former co-convenor of the BISA IR2P Working Group. She researches and publishes intensively on the Responsibility to Protect. Her areas of research and teaching also include international law, the law of the sea, and IR theories.

### Acknowledgement

This publication is based upon work from COST Action CA17119 ENTER, supported by COST (European Cooperation in Science and Technology).

[www.cost.eu](http://www.cost.eu)



 Funded by the Horizon 2020 Framework Programme of the European Union