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Syria and the Responsibility to Protect

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RAMESH THAKUR, FEB 4 2014

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The civilian protection agenda has tried to fill critical gaps in the existing normative architecture through the Responsibility to Protect (R2P) and protection of civilians (POC) as sibling norms.^[i] Despite these two valuable additions to the repertoire of the international community in dealing with civilian victims of armed conflicts, many gaps remain in the protection agenda, as shown in several cases—from Cyclone Nargis in Myanmar to Darfur and, most prominently this year, Syria.^[ii]

The failure to protect Syrian civilians stems from five sets of factors: conceptual conundrums in relation to an armed civil war; the difficulty of establishing culpability for atrocities with sufficient clarity; parallel difficulties of satisfying the balance of consequences test; NATO excesses in Libya linked to the West's reluctance to share a rule-writing role with the new emerging powers; and the latter's reticence in accepting the burdens of being joint managers of the world order, which requires a mix of power, norms, and ideas for good global governance.^[iii]

1. Fighting erupted in Syria in early 2011 as the Arab Spring rapidly spread eastwards from Tunisia and Egypt. President Bashar al Assad launched a fierce crackdown on the initially peaceful pro-democracy protests, and the country swiftly descended into full-fledged civil war that sucked in various foreign jihadists and rival outside backers, raising two problematical questions. Is the recognised state prohibited from employing force to fend off armed challenges to its authority? With the ensuing spread and escalation of humanitarian crises, how can the moral hazard of encouraging other opposition and secessionist groups to take up arms against governments elsewhere be avoided? In addition, what is the appropriate boundary demarcation between POC/R2P, on the one hand, and international humanitarian and human rights laws, on the other, in regulating the conduct of conflict parties in civil wars?

2. In the midst of a highly emotive war, critical question marks need to be substituted for excitable exclamation marks regarding the facts and possible responses. Too often slogans pass for policy: something must be done; this is something; therefore this must be done.

Casualty figures are deliberately manipulated and misused through casual elision. Leading US politicians routinely condemned the Assad regime for having massacred more than 100,000 people. That figure represents the total number of people killed. The best available estimate, provided by the Syrian Observatory on Human Rights, breaks it down as follows: civilians, 40,146; rebels, 21,850; government soldiers, 27,645; pro-regime militias, 17,824; others/unknown, 2,897; total, 110,371 (as of mid-September 2013).^[iv]

With regard to chemical weapons use—a qualitative escalation that crosses the atrocity threshold in that all weapons of mass destruction are inherently indiscriminate and inhumane in their deadly effects—the UN investigation team led by Ake Sellstrom recently confirmed, without attributing responsibility to any party, that chemical weapons had been used in five instances during the Syrian civil war.^[v] The West did not help its credibility problem by jumping to conclusions that they were used by the regime. Seymour Hersh argues that, like Bush in Iraq in 2003, Obama had cherry-picked facts and intelligence, presenting assumptions as facts, implying a sequence that reversed reality, and omitting important intelligence pointing to the jihadist al-Nusra's capability to make and mount a chemical weapon

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attack with sarin.[vi]

3. What could the world do in response without further inflaming an extremely volatile region and badly damaging key major power relations? The fluid and confused internal situation; question marks over the identity, intent, and methods of the rebels; the risk of atrocities against minority groups if the regime collapsed; relations with Iran, China, and Russia; and the deepening Sunni-Shia divide all around the Islamic crescent in the Middle East made it impossible to assess the balance of consequences of outside intervention with confidence. A war-weary US public doubts the West has any dog in the fight in the Syrian civil war where a rebel commander filmed himself eating the heart of a government soldier and almost half the rebel fighters are jihadists.[vii] There is the added risk of blowback as radicalised Western Muslims take up arms to go and fight in Syria, and return with an extremist ideology and battle experience.

Retired US Air Force General Michael Hayden, head of the CIA until 2009, argues there are three possible outcomes to the conflict: continuing fighting between ever more extreme rebel and pro-government sectarian factions, disintegration of Syria as a state with flow-on destabilising consequences for the whole region, or the survival of the Assad regime. Given the alternatives, Hayden concluded, reluctantly, that the last was the best.[viii]

4. The 2011 Libya crisis showcased the mobilising power of R2P as a new norm that led China and Russia to abstain, rather than veto, Resolution 1973. The initial response to the crisis was a textbook example of R2P Pillar Three military intervention. But the NATO operation soon exposed a critical gap between the proclamation of a no-fly zone, prohibition of regime change, and effective provision of civilian protection. The last required regime change that would break the Security Council consensus. There also developed a significant gap in communications, expectations, and accountability between those who authorised and those who implemented Resolution 1973. The post-Gaddafi turmoil and volatility in Libya further complicated international responses to the ongoing crisis in Syria by raising doubts about the long-term results of R2P-type military action.

5. The refusal to entertain overtures for a negotiated outcome that might have left Muammar Gaddafi in power fatally undercut efforts to build global support for military strikes on Syria. No foreign country has been attacked by Syria. Other than self-defence against armed external attack, only UN authorisation provides legal cover for military strikes. Without UN authorisation, military strikes would be neither lawful nor legitimate, just another instance of vigilante justice by a trigger-happy and seemingly out-of-control West. The international community cannot be collapsed into a mini-NATO coalition of the willing. The rest saw a determination by the NATO P3 to enforce humanitarian norms inside other countries' sovereign jurisdictions by flouting higher-order global norms on restrictions on the threat and use of force internationally. The latter are more critical to most countries' national security and international stability.

China and Russia were adamantly opposed to authorisation of any international action without host-state consent and to any resolution that could set in motion a sequence of events leading to 1973-type outside military operations in Syria.[ix] After the allegations of chemical warfare on 21 August, President Barack Obama and Secretary of State John Kerry clamoured for Syria to submit to US authority and surrender to American might. What Russia did, instead, was subject Syria to international law and UN authority to get rid of its chemical weapons, at the price of no regime change. President Vladimir Putin's op-ed in the *New York Times* laid out a narrative of the US as an international rogue state, addicted to bullying weaklings in the global backyard, who refuses to kowtow to its dictates.[x] The morally dubious provenance of the author could not take away the sharp sting of his analysis.

In conclusion, Syria has thrown up challenges, but not thrown out R2P. There is interest in clarifying the norm further and tightening operational safeguards to prevent misuse—for example, through the Brazilian concept of “Responsibility while Protecting” or a Chinese version of “Responsible Protection”—but no demand to rescind the norm, *per se*. Protecting civilians is a “wicked problem” with no solutions, only better or worse outcomes. Our common humanity demands an acceptance of a duty of care by all of us who live in zones of safety towards all of those trapped in zones of danger. To be meaningful, the R2P spectrum of action must include military force as the option of last resort (conceptually, not sequentially). Because of the difficulty in satisfying the balance of consequences test in Syria, the failure to unite behind non-coercive military intervention measures to rein in the brutal excesses of the Assad regime is the truer indictment of the UN's ineffectualness.

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- [i] See Hugh Breakey, Angus Francis, Vesselin Popovski, Charles Sampford, Michael G. Smith, and Ramesh Thakur, *Enhancing Protection Capacity: Policy Guide to the Responsibility to Protect and the Protection of Civilians* (Brisbane: Institute for Ethics, Governance and Law; 2012). Accessed at <http://www.griffith.edu.au/criminology-law/institute-ethics-governance-law/research/responsibility-to-protect-protection-of-civilians-policy-guide> (Jan. 14, 2014).
- [ii] See Ramesh Thakur, "Protection Gaps for Civilian Victims of Political Violence," *South African Journal of International Affairs* 20:3 (December 2013), 321-38.
- [iii] See Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers," *The Washington Quarterly* 36:2 (Spring 2013), 61-76.
- [iv] Figures cited in Micah Zenko, "Responsibility to Protect?" *Foreign Policy* (September 17, 2013). Accessed at http://www.foreignpolicy.com/articles/2013/09/17/responsibility_to_protect (Jan. 14, 2014).
- [v] "Those guilty of chemical weapons attacks in Syria must be held accountable – Ban," UN News Centre (13 December 2013). Accessed at <http://www.un.org/apps/news/story.asp?NewsID=46739> (Jan. 14, 2014). For the interim report in September 2013, see "Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013," United Nations, A/67/997-S/2013/553 (16 September 2013). Accessed at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/997 (Jan. 14, 2014).
- [vi] Seymour M. Hersh, "Whose sarin?" *London Review of Books* 35:24 (19 December 2013), 9-12. Accessed at <http://www.lrb.co.uk/2013/12/08/seymour-m-hersh/whose-sarin> (Jan. 14, 2014).
- [vii] Ben Farmer, "Syria: nearly half rebel fighters are jihadists or hardline Islamists, says IHS Jane's report," *The Telegraph*, London (15 September 2013).
- [viii] AFP, *The Times*, "Assad victory 'the best outcome,'" *Weekend Australian* (14-15 December 2013).
- [ix] Fyodor Lukyanov, "Why Does Russia's Stance on Syria Baffle Everyone?" *Russia in Global Affairs* (23 February 2012). Accessed at <http://eng.globalaffairs.ru/redcol/Why-Does-Russias-Stance-on-Syria-Baffle-Everyone-15478> (Jan. 14, 2014). Liu Xiaoming (China's ambassador to the UK), "China believes Syria needs a peaceful solution," *The Guardian* (10 February 2012).
- [x] Vladimir V. Putin, "A plea for caution from Russia," *The New York Times* (11 September 2013).

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