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Forfeit Legitimacy, Syria, and the Responsibility to Protect

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On Thursday March 28, a mortar attack in Damascus killed fifteen university students. The scene after the attack —upended, shattered chairs and blood-splattered tables— was a testament to lives cut short with sudden cruelty. While it is difficult to verify whether government or rebel forces perpetrated this indiscriminate attack, it is certain that the current conflict in Syria is replete with such atrocities. The greatest responsibility lies with the Syrian government, which is committing widespread and systematic attacks against civilians. If action is to be taken under the aegis of the responsibility to protect, is it enough to just stop the violations, or must the violator be removed from power?

Intervention and State Sovereignty

Most formulations of the responsibility to protect argue that governments lose their legitimacy and authority when they violate the social contract to protect their own populations from harm. Governments that actively persecute their own populations even more clearly forfeit legitimacy and authority. Of course governments are protected from external interference under the notion of state sovereignty, as enshrined in Article 2(7) of the United Nations Charter, but the principle is not static; rather, it is being reshaped by developments such as the responsibility to protect.

The 2005 World Summit Outcome document, endorsed by the UN General Assembly, sets out that the use of force may be authorised under Chapter VII of the UN Charter “should peaceful means be inadequate” and where “national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”¹ Of course the “manifest failure” to protect populations is subject to interpretation but it speaks to the intention of national authorities to prevent violations and also to their capacity to do so. In some sense the responsibility to protect doctrine represents a shift of sovereignty from the government to the people. State sovereignty can no longer be

seen as a state’s right or prerogative, rather the security of individuals and groups against threats to life, health, and livelihood is now paramount. This is in recognition of the fact that states are often the greatest source of human rights abuses rather than being altruistic actors defending against such violations. Furthermore, the social contract dictates that sovereignty and legitimacy are subject to consent, that power is derived from the people. While this idea has long existed in political philosophy (Jean-Jacques Rousseau’s work for example), it is relatively new in international relations. The global political system as represented in the United Nations is replete with undemocratic governments that other states recognize as legitimate. State sovereignty is still meaningful under the responsibility to protect, but residual sovereignty is vested in the international community in the interests of the protection of individual human lives; lives that are vulnerable to the tyranny of state power.

¹ Paragraph 139, *World Summit Outcome Document, A/RES/60/1, 24 October 2005.*

Legitimate Authority and Gross Human Rights Violations

To strengthen the responsibility to protect and move it beyond mere political rhetoric, the removal of illegitimate regimes from power and the recognition of alternative governments must be considered.

Governments may lose legitimacy if they:

1. Have planned or perpetrated large-scale human rights abuses, such as genocide and crimes against humanity.
2. Are unable or unwilling to ensure the human security of their populations.
3. Have committed recognized acts of aggression against the sovereign territory of other states.

The more a government has engaged in these actions, the weaker its claim to exercising legitimate state authority. Thus, sovereignty cannot be fixed to a particular governing regime when that regime has lost all legitimate authority. Such illegitimate regimes often rely on coercion or intimidation rather than consent to govern. The UN Security Council must be responsible for making determinations of forfeit legitimacy as the ultimate authority on international peace and security. Unfortunately the United Nations Security Council is itself subject to decision paralysis, as narrowly constructed articulations of national interest prevent states from taking meaningful action in response to mass atrocities.

Where regimes have forfeited their legitimacy the international community might choose to withdraw its recognition, meaning that international fora no longer recognize the government's representatives as such. Doing so is easier when there is a functional alternative—a legitimate government able to exercise authority, ensure the security of the population, and prevent and punish human rights abuses. Through the responsibility to protect doctrine, the new government can request intervention from the international community in the event that the state is unable to protect its citizens. Or, once it has acceded to the Rome Statute, the new government can initiate a self-referral of the situation in the country to the International Criminal

Court (ICC). Such self-referrals could also expose the new regime to risks, as the ICC will investigate crimes committed by all parties to a conflict.

Although the crimes of Assad's regime are grave, systematic and widespread, abuses committed by rebel groups could also amount to war crimes, for which they could be held accountable in The Hague.

A government may also be willing but unable to exercise the sovereign power over its own territory necessary to prevent abuses, and thus request international intervention to prevent violations. For example, the recent request from the Government of the Democratic Republic of Congo was instrumental in creating an international "intervention brigade," under authorized by UN Security Council Resolution 2098 to "neutralize and disarm" rebel groups such as the M23. Although the delegitimization of incumbent governments is a logical extension of the responsibility to protect one might also consider the potential negative consequences: namely that the old government will become increasingly isolated and see no incentive for compliance with international human rights and humanitarian law norms or for pursuing peace negotiations. The current situation in Syria is illustrative. The Bashar al Assad government has perpetrated widespread and systematic human rights violations and governs only by terrorizing the Syrian population. Debate within the international community over how to address the situation appears to have reached a stalemate, a situation institutionally engendered within the United Nations by the veto power in the UN Security Council. Some states have urged the Security Council to refer the situation to the ICC, while others argue that a military intervention under the responsibility to protect doctrine would be more appropriate. As both military intervention, under the responsibility to protect, and ICC referral are tools available to the Security Council, it is debateable whether military intervention or referral should come first.

Nevertheless, the recognition of the Syrian National Coalition as the legitimate representative of the Syrian people—in November 2012 by member states of the Gulf Cooperation Council, including Bahrain, Kuwait, and the United Arab Emirates, followed by France, the United Kingdom, the European Union,

the United States, and more recently by the League of Arab States—provides new opportunities to address the deplorable situation in Syria. The sooner that the Syrian National Coalition can unify Syria's fragmented opposition, the sooner the entire international community can recognize it as the legitimate government of Syria, strengthening the political case for intervention.

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The failure to adequately respond to mass atrocities in Syria is ultimately a failure of political will. In this age of ubiquitous media, it is simply not possible to claim ignorance to the occurrence of mass atrocities. This is where the responsibility to protect is meaningful as a normative framework for action: the international community must shift its focus from the political interests of states to the protection of human life. Such a shift recognizes that the legitimacy of governments is itself derived from its citizens. In situations where the government acts as a violator of its citizens' rights it no longer has the legitimacy to govern.



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