



UNIVERSITY OF LEEDS

This is a repository copy of *Syria and the indicators of a 'manifest failing'*.

White Rose Research Online URL for this paper:
<http://eprints.whiterose.ac.uk/82444/>

Version: Accepted Version

Article:

Gallagher, AM (2014) Syria and the indicators of a 'manifest failing'. *The International Journal of Human Rights*, 18 (1). 1 - 19. ISSN 1364-2987

<https://doi.org/10.1080/13642987.2013.859137>

Reuse

Unless indicated otherwise, fulltext items are protected by copyright with all rights reserved. The copyright exception in section 29 of the Copyright, Designs and Patents Act 1988 allows the making of a single copy solely for the purpose of non-commercial research or private study within the limits of fair dealing. The publisher or other rights-holder may allow further reproduction and re-use of this version - refer to the White Rose Research Online record for this item. Where records identify the publisher as the copyright holder, users can verify any specific terms of use on the publisher's website.

Takedown

If you consider content in White Rose Research Online to be in breach of UK law, please notify us by emailing eprints@whiterose.ac.uk including the URL of the record and the reason for the withdrawal request.



eprints@whiterose.ac.uk
<https://eprints.whiterose.ac.uk/>

Syria and the indicators of a ‘manifest failing’

Adrian Gallagher
University of Leeds¹

The on-going crisis in Syria helps Responsibility to Protect (R2P) analysts identify what evidence scholars and policymakers base judgements of a ‘manifest failing’ on. This is particularly relevant as the multifaceted crisis in Syria underlines the complexity and confusion that scholars and policymakers face when analysing overlap between atrocity crimes and armed conflict. The article draws on interdisciplinary research into mass violence in order to put forward five key indicators of a ‘manifest failing’ and applies them to Syria: i) government intentions, ii) weapons used, iii) death toll, iv) number of people displaced, and v) the intentional targeting of civilians, especially women, children and the elderly. In so doing, the article contributes to an emerging research agenda which may aid policymakers and scholars in their assessment of a ‘manifest failing’ but also has scope for helping those outside government to hold decision makers to account by creating a framework against which political [in]action can be judged.

Keywords: Responsibility to Protect, manifest failing, government intentions, weapons used, death toll, number of people displaced, the intentional targeting of civilians, especially women, children and the elderly.

Introduction

‘Research on the concept of manifest failure and its relationship to R2P is relatively new, even within the burgeoning literature that now exists on R2P itself’.²

Paragraph 139 of the 2005 World Summit Outcome Document (WSOD) stipulates that the international community has a responsibility to act in a ‘timely and decisive’ manner when ‘national authorities are manifestly failing to protect their populations’ from genocide, war crimes, crimes against humanity, and ethnic cleansing.³ But what constitutes a ‘manifest failing’? The phrase was introduced in the final drafting stage of the WSOD in order to replace the terminology ‘unable or unwilling’, but the WSOD offers little to guide decision makers in determining when a state is ‘manifestly failing’. Although 2015 will mark the tenth anniversary of the WSOD, the above statement begins to highlight that despite the abundance of literature produced on the Responsibility to Protect, the concept of ‘manifest failure’ remains overlooked and under researched.⁴ It may be claimed that the phrase is so transparent that there is no need for clarity; after all, the word manifest means ‘evident to the eye, mind, or judgement; obvious’.⁵ But when this understanding is applied to the assessment of whether a host state is ‘manifestly failing’ to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing, what evidence is required? If it is the case that proof of one of the four crimes being carried out is enough to warrant a pillar three response, then

the requirement of a 'manifest failing' would not be needed. Moreover, from a legal perspective, the killing of just one person or a small group of people, for example a group of hostages, could constitute genocide, but this would not mean that the host state has 'manifestly failed' in its R2P.⁶ It is important therefore to consider that the most controversial pillar of the R2P (which includes wide range of non-coercive response measures under Chapters VI and VIII of the Charter as well as coercive measures under Chapter VII⁷) is grounded, in part, on an ambiguous phrase.

The question of what constitutes a 'manifest failing' feeds into an important debate regarding 'which humanitarian crises justify international moral action and which do not?'⁸ Despite the fact that the WSOD focuses on just four crimes, Robert Pape analyses twenty-three examples of mass atrocity crimes since 1990 and claims that the current R2P framework would demand an intervention in all of them, which, for Pape, sets the bar too low.⁹ At the same time, he argues that only intervening to prevent genocide would set the bar too high with an intervention in just three cases.¹⁰ As a result he sets out a 'pragmatic humanitarian intervention approach' based on three requirements (discussed below) as an alternative which would have called for intervention in seven of the twenty-three cases analysed.¹¹ Whilst this author is sympathetic to Pape's middle-ground position, it seems he has not considered that the requirement of a 'manifest failing' (a phrase which he never uses¹²) introduced a pragmatic element into the R2P which, even if one accepts his logic, renders his new approach redundant. Yes, legitimate questions need to be considered concerning whether a small scale example of an R2P crime could occur without a 'manifest failing' taking place: '[w]hat kind of war crime?' and '[w]hat kind of ethnic cleansing?' requires international action.¹³ The problem is that in failing to address the issue of a 'manifest failing', Pape fails to acknowledge that his line of enquiry can be factored into the current R2P framework.¹⁴

It is important to answer two questions at the outset. First, why focus on Syria? In many ways, Syria defines the counter-position to this article in that scholars may simply claim that it is obvious that the regime has failed in its R2P. Mike Abramowitz captures this sentiment when he states, '[t]here is no question that Syria today represents perhaps the most glaring failure to protect civilians from the worst, an R2P failure of the first order; with 100,000 deaths and clear cases of massacres and other crimes against humanity'.¹⁵ Although this author does not disagree with this statement, the focus on death toll, which takes centre stage in mainstream media analysis, is just one indicator of a 'manifest failing' and it is important that scholars provide a more informed understanding by analysing the complexities involved. In addition to this it is important to note that this article does not aim to imply that

there have been explicit UN Security Council debates over whether the Syrian regime is ‘manifestly failing’. The point here is that it is important to learn lessons from this ‘R2P failure of the first order’. A part of this should be that the crisis helps us to identify what evidence we base judgements of a ‘manifest failing’ on. More importantly, it highlights the need to get to grips with the confusion and chaos that academics and policymakers face when analysing the issue of a ‘manifest failing’ within the context of warfare.¹⁶ This is a key component highlighted in the UN Secretary-General Ban Ki-moon’s fifth report on R2P (since 2009) as he highlights the need to navigate the ‘overlap’ between ‘armed conflict’ and ‘atrocious crimes’.¹⁷

The second question is: why choose these five indicators? As will be demonstrated throughout this paper, the indicators are drawn from interdisciplinary research into mass violence. Although there is much disagreement on the causes of crimes such as genocide, the question of what constitutes a ‘manifest failing’ is a qualitatively different task and it is important to separate these two lines of enquiry. Against this backdrop, the article identifies five key indicators: i) government intentions, ii) weapons used, iii) death toll, iv) number of people displaced, and v) the intentional targeting of civilians, especially women, children and the elderly. The aim here is not to create the ‘Holy Grail’ framework that policymakers and scholars will turn to immediately. Instead, the intention is to provide a ‘common reference within which argumentation can take place’ for at present there is none.¹⁸ Let us remember that the identification of between three and seven criteria (this has changed over time) has been used to guide assessments of what constitutes a Just War from St. Aquinas to present day.¹⁹

The article is structured in six parts. The first section explains the current UN approach to highlight its strengths and weaknesses and ultimately argues that indicators are needed. The analysis then shifts its attention to focus on Syria with one section devoted to each of the five indicators identified above. The conclusion draws the main points together whilst raising further issues and questions that need to be addressed as this research agenda continues to grow.

The UN approach

Paragraph 139 of the WSOD sets out the following commitment which highlights that a wide range of coercive and non-coercive measures are available to the UN under Chapters VI, VII and VIII as it responds in a ‘timely and decisive manner’ on a ‘case-by-case basis’ should a national authority ‘manifestly fail’ in its R2P:

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared, to take collective action, in a timely and decisive manner through the Security Council in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.²⁰

The key aspect to consider is that the ambiguity that surrounds a ‘manifest failing’ goes hand in hand with the ‘case-by-case’ approach and together these have two significant strengths.

The first is the ambiguous nature of the phrase ‘manifest failing’ itself. To put this in context let us consider the UN Charter. As Paul Kennedy, and indeed many others have highlighted, the Charter was intentionally designed using ‘language that was adaptable enough to allow application under unforeseen circumstances in years to come’.²¹ In other words, if guidelines are too rigid, then ultimately this hinders rather than helps the application of policies. Against the backdrop of the League of Nations Covenant, flexibility was seen to be a key component of constructing a more durable system of governance at the international level. Thus, it could be argued that ‘manifest failing’ is another example of artful language which enables the UN to respond on a ‘case-by-case’ basis – this is its second strength - in that it is widely accepted that there is no ‘one-size-fits-all’ approach.²² Quite simply, mass atrocity crimes are far too complex for any single framework to provide a solution. For example, the debates over the causes of genocide alone highlight that no one approach can provide the silver bullet.²³ Indeed, in the recent assessment of Syria, Samantha Power, the US Ambassador to the UN stated, ‘there is no one size fits all solution, no algorithm, nor should there be.’²⁴ In so doing, Power re-stated the sentiment expressed by the UN Secretary-General in that trying to establish a single framework would be both a mistake and counterproductive.

Although this UN perspective is the dominant view found in the discourse, there are a number of issues that need to be thought through. First, any attempt to create a ‘one-size-fits-all’ approach is flawed but is important to differentiate between the interpretation of the R2P and the application of it. Following the intervention in Libya and the non-intervention in Syria, Alex Bellamy rightly points out, ‘[t]here are two issues that are often raised in relation to this problem: consistency in the application and implementation of the RtoP and consistency in interpretation of the concept’.²⁵ To be clear, this article engages with the latter and does not set out to answer questions of application, such as, how should the UN respond the crisis in Syria? This author’s position is that the response of the international community

should differ on a case-by-case basis, after all, ‘foreign policy must always operate within what Edmund Burke termed “the empire of circumstances”’.²⁶ But in order to help the sustainability of the R2P in the 21st century our interpretation of the concept should be consistent. A part of this has to be, raising awareness of, and addressing the issues that surround, a ‘manifest failing’. This gives weight to the idea that indicators may help aid decision makers in making their assessment of a ‘manifest failing’ thus improving the ability of the UN to fulfil its own commitment to respond in a ‘timely and decisive’ manner. It is important therefore to understand that establishing indicators compliments the UN approach.

The intention here is not to dismiss or downplay the need for flexibility but instead to draw attention to one aspect that has not been raised in the discourse as ambiguity aids flexibility but this also serves great power manipulation. This was famously played out in the context of the Rwandan genocide as the five permanent members of the UN Security Council (P5) avoided using the word genocide to distance themselves from the responsibilities set out in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.²⁷ This is not to say that the actors involved manipulated the ambiguity inherent in the Genocide Convention but simply to draw attention to the idea that words matter. For example, in relation to Libya it has been argued that Conservatives in the Canadian government banned the use of the phrase R2P even though they supported the intervention so as not to set a precedent for the future (which some have claimed is broadly in line with the Western position).²⁸ More recently, regarding Syria, it has been argued that the U.S., used ‘vague rhetoric’ as part of a concerted White House effort to avoid taking a clear position on U.S. policy toward Syria’s 2-year old civil war’.²⁹ When one considers the ambiguity that surrounds the phrase ‘manifest failing’ on one hand and the fact that so little attention is paid to it on the other, this facilitates the ability of states to distance themselves from their responsibilities. Thus, the hope is that this emerging research agenda may in time help those outside government to hold decision makers to account by creating a framework against which political [in]action can be judged. At the very least, and to return to Pape, an awareness of the issue is needed. For example, a senior peace-keeping official at the UN admitted that it was only after the Rwandan genocide had taken place that he found out that the Genocide Convention existed.³⁰ This raises the idea that it is difficult to even know the implications that stem from narratives that are constructed both consciously and unconsciously.³¹

A final point is that even on a case-by-case basis states will have to appeal to something in order to make the case that a threshold has been passed. To put this into context let us consider President Barack Obama's justification for the intervention in Libya in 2011:

In the face of the world's condemnation, Qaddafi chose to escalate his attacks, launching a military campaign against the Libyan people. Innocent people were targeted for killing. Hospitals and ambulances were attacked. Journalists were arrested, sexually assaulted, and killed. Supplies of food and fuel were choked off. Water for hundreds of thousands of people in Misurata was shut off. Cities and towns were shelled, mosques were destroyed, and apartment buildings reduced to rubble. Military jets and helicopter gunships were unleashed upon people who had no means to defend themselves against assaults from the air. Confronted by this brutal repression and a looming humanitarian crisis, I ordered warships into the Mediterranean.³²

At no point does President Obama use the phrase 'manifest failing' yet the underlying argument is that what was tolerated yesterday cannot be tolerated today. In other words, the escalation in violence in both qualitative and quantitative terms signifies that a line has been crossed – a threshold passed - thus implying that the Libyan regime had 'manifestly failed'. Accordingly, Colonel Qaddafi 'forfeited his responsibility to protect his own citizens and created a serious need for immediate humanitarian assistance and protection'.³³ In much the same way, when one surveys the history of the recent violence in Syria, it is clear that there are pivotal qualitative and quantitative developments which led actors to make the case that a 'manifest failing' has occurred.

To bring this section to a close it is important to explain the argument put forward here. Indeed, the reader may reject the idea of establishing a new research agenda on the grounds that it does not matter what phrase is used, the decision to react is a political choice based on things other than a 'manifest failing', such as the national interest, sovereignty, and the complexities of intervention.³⁴ Therefore, we should not get bogged down in a research agenda which has no impact on the decision making process and should focus instead on issues such as UN reform.³⁵ To be clear, this paper does not argue that aspects such as the national interest et al, are not important, and if a reminder of power politics were needed then the on-going crisis in Syria is a perfect example. However, the question of what constitutes a 'manifest failing' is another contributing factor because when one analyses the narrative that surrounds any R2P crisis one can see a debate over threshold. Whether this is framed in terms of illegitimacy, irresponsibility, an escalation in violence, 'unable or unwilling', or a 'manifest failing', the underlying logic is that of threshold: a line has been crossed in that what was tolerated yesterday cannot be today and action has to be taken. It is a mistake therefore to claim that the meaning of 'manifest failure' does not matter because this

perspective fails to recognise that within the current R2P framework it represents the issue of threshold. With this in mind, this article now shifts its focus to analysing i) government intentions, ii) death toll, iii) displacement of people, iv) the intentional targeting of children, women, and the elderly, and v) weapons used, as key indicators of a ‘manifest failing’ in Syria.

Syria

As Raymond Hinnebusch explains, within eleven years of Bashar al-Assad assuming power in Syria his attempt to ‘modernize authoritarianism’ had collapsed into turmoil.³⁶ Since then, the conflict has become more multifaceted needing to be understood within the regional context of ‘complex geo-strategic relationships’ which ‘have fed into the decisions within the UN Security Council’.³⁷ At the start of 2013 divisions in the Security Council continued as U.S. and Russian representatives failed to forge an agreement on what strategy should be implemented.³⁸ This forms part of what Paul Rogers labels as a ‘double proxy’ with ‘the Saudis supporting the rebels and Iran supporting Assad, overlaid by U.S. support for the rebels and Russian support for Assad’.³⁹ This was played out explicitly in the debates that followed the use of chemicals in Syria on August 21st 2013. Although there are many factors which underpin the broader disagreement on Syria - from Russia’s relationship with Syria combined with its opposition of Western intervention and of rebel forces,⁴⁰ to America’s prioritisation of nuclear-talks with Iran⁴¹ - the premise of this article is that the [il]legitimacy and [ir]responsibility of the Syrian government is an important issue which, from within an R2P framework, asks us to question whether the regime has ‘manifestly failed’? Of course, a fundamental problem in any such assessment is evidence as analysts need to distance themselves from emotional hysteria and speculative claims. For this very reason, the UK Foreign and Commonwealth Office trained 300 journalists across five Syrian cities so that more information could be gained.⁴² However, 2013 has also seen substantive reports published, including the Independent International Commission of Inquiry into Syria, which add critical weight to any assessment.⁴³

Government intentions

When assessing whether a state has ‘manifestly failed’ in its R2P, it is difficult to imagine a starting point other than the role of the government itself. Historically, regime type has been a key focal point but with a lack of consensus on this issue,⁴⁴ the R2P framework asks the much more straightforward question: to what extent is the government in question

responsible for the crimes being committed? Analysing the role of state or non-state actors is not a straightforward task however as we are faced with the ‘Other Minds problem’ of trying to assess the intentions of decision makers when we simply do not know what is going on in their minds.⁴⁵ As Bellamy explains, the explicit statements of intent made by Colonel Qaddafi in the lead up to the intervention in Libya should be understood as an exception to the norm as the vast majority of leaders hide their objectives and actions.⁴⁶ To be clear, the R2P does not require the international community to prove intent in the same way that the 1948 Genocide Convention does, but if it can be established that the government in question is deliberately facilitating and/or perpetrating any of the four crimes then this is a clear cut indicator that a ‘manifest failing’ is taking place.

Former U.S. Secretary of State, Hillary Clinton, claimed ‘[w]e will judge Assad’s sincerity and seriousness by what he does, not by what he says’.⁴⁷ The statement reflects the contemporary trend which invokes a behavioral based (rather than a motive or knowledge based) understanding of intent. By this it is meant that Clinton implies that the U.S. will infer intent by analyzing the behavior of the regime’s policies. As scholars such as Hebert Hirsch and Helen Fein have highlighted, ‘instead of emphasizing an obscure and impossible-to-define psychological state of intent’⁴⁸ we should ‘demonstrate “intent” by showing a pattern of purposeful action’.⁴⁹ In other words, since we can never know exactly what is going on in the minds of other actors we should focus on state policy. Notably, this approach has traction in international law, for as William Schabas explains, the International Criminal Tribunal for former Yugoslavia (ICTY) as well as the Darfur Commission carried out their judgements by focusing on ““plan or policy”” rather than the mental element of mens rea.⁵⁰

Of course, President Assad maintains his position that the violence used by the state is justified on the grounds that rebels pose a threat to the political order.⁵¹ This has been exacerbated by the number of Islamic extremists entering into Syria; for example, there was an estimated 1,500 in August 2012,⁵² which had doubled to 3,000 by February 2013,⁵³ and again to 6,000 by August 2013.⁵⁴ Brahimi has now spoken of between 30,000 and 40,000 foreign fighters now in Syria including Hezbollah (supporting Assad) and Al Qaeda (against Assad).⁵⁵ This is complicated even further by reports that the opposition is now made up of 1,200 groups.⁵⁶ Yet whilst Syria is undoubtedly a multifaceted crisis with many sides responsible for committing a variety of different crimes⁵⁷, there is a profound imbalance that should not be miss-conceptualised. For example, in February 2013, The Independent International Commission of Inquiry on Syria published its report stating that whilst both government and anti-government groups have committed war crimes, ‘[t]he violations and

abuses committed by anti-Government armed groups did not, however, reach the intensity and scale of those committed by Government forces and affiliated militia'.⁵⁸ Moreover, '[g]overnment forces and affiliated militia committed the crimes against humanity of murder, torture, rape, enforced disappearance and other inhumane acts'.⁵⁹ These statements highlight that not only is the Syrian regime overwhelming responsibility for the violence carried out but at present it is the only actor to have committed war crimes and crimes against humanity.⁶⁰ (Though this may change as more and more evidence comes to light especially as there are daily reports of war crimes and crimes against humanity being committed as the situation deteriorates even further).

The role of the state has to play an integral part of any future assessment of 'manifest failing' and the premise here is that a behavioural-based approach provides a basis for assessing to what extent the host state has failed in its R2P. To put this into context, regarding Kosovo, the historical policy record of Slobodan Milosevic obviously shaped the decision making process whilst Qaddafi's explicit threats to destroy his own citizens helped create a pro-R2P consensus over Libya. However, as perpetrator regimes learn from one another it will become more and more difficult to assess the role of the government which means that analysts may have to become more dependent on other indicators.

Death toll

The more people killed the more one would expect that the government is actively participating in the violence or is unable to prevent it which aligns itself with the original focus on 'unable or unwilling'. Either way, this may constitute a 'manifest failing' depending on how many civilians have been killed.

In Benjamin Valentino's seminal study on mass violence, the author sets out a clear and concise measure 'at least fifty thousand deaths over the course of five or fewer years'.⁶¹ The reason for this is that it helps demonstrate that a systematic process of mass murder has taken place. The arbitrary nature of Valentino's measurement means that if 49,999 people were killed this would fall short of the classification put forward. Of course, Valentino is aware of this, and furthermore, acknowledges that 'such a definition does not adequately capture the threat to human diversity posed by attacks against smaller groups'.⁶² This has led to authors such as Adam Jones to claim that we should not seek to establish a precise measurement but acknowledge that 'tens or hundreds of thousands' of victims passes a threshold but that also we need to factor in 'relative group size' which is particularly relevant when considering the crime of genocide.⁶³ Essentially, both scholars uphold a 'tens of

thousands approach' with Jones incorporating a qualitative dimension through his focus on relative group size. For some analysts this may set the benchmark too high. Alex Bellamy's understanding of mass atrocities is based on an 'excess of 5,000 civilian deaths and demonstrated evidence of deliberate civilian targeting'.⁶⁴ Although much lower in quantifiable terms, Bellamy's approach still attempts to capture a behavioural-based understanding of intent although there is no time-frame incorporated.

Of course, in relation to Syria, the death toll clearly fulfils any of the above approaches. On January 2nd 2013, the United Nations Office of the High Commissioner for Human Rights commission report was published in which it was claimed that '59, 648 unique killings' had taken place within Syria between March 2011 and November 2012.⁶⁵ It drew upon seven data sets and therefore acknowledged that there may be some overlap which means that 'this count may be slightly too high' but nonetheless, the findings sparked worldwide media attention. The reason for this interest, at least in part, reflects the aforementioned issue of escalation. For example, responding to the data findings, UN High Commissioner Navi Pillay stated '[t]he number of casualties is much higher than we expected, and is truly shocking'.⁶⁶ She also pointed out that as the violence in Syria had not let-up since the end of November, then logically, the death-toll was in fact even higher in January 2013 than the total given in the report. For example, on January 10th UK Foreign Secretary William Hague briefed Parliament claiming '1,000 civilians were reportedly killed in one six-day period over Christmas'.⁶⁷ Tragically, the killing in 2013 has only escalated with 'most of these casualties believed to be civilians'⁶⁸, and the current death estimated to be 115.000 including 47.000 Assad loyalist fighters and 23.000 rebels.⁶⁹ Although the Syrian regime is not responsible for all those killed, and we have no way of knowing exactly who has killed who, to juxtapose these statistics with the role of the government analysis above, it is important to bear in mind that the regime is overwhelmingly responsible for the number of civilians killed. The fact that the Syrian crisis has surpassed even Valentino's high threshold does allow us to further substantiate the case that the Syrian regime has 'manifestly failed' but this does not overcome the issue of whether a quantifiable death toll indicator should be established for future assessments.

To put these approaches into a practical context consider that the genocide in Srebrenica is captured by Bellamy's measurement but not Valentino's. This may lead one to argue that the fifty thousand threshold is too high but as Bellamy's approach identifies 103 episodes of mass atrocity between 1945 and 2010 this could be considered too low. Indeed, if this latter measure were accepted the number of cases would give weight to Pape's claim that

the 'R2P sets the bar for intervention so low that virtually every instance of anarchy or tyranny-or indeed, every potential instance-represents an opportunity for the international community to violate the sovereignty of states'.⁷⁰ However, this statement is problematic because as aforementioned the third pillar of the R2P incorporates more than just military intervention and alternative response measures should not be overlooked.⁷¹ Furthermore, Pape actually claims that 'mass homicide' in which 'thousands have died and thousands more are likely to die' should act as one of the three indicators for a pragmatic intervention, the others being a 'viable plan' and 'workable strategy'.⁷² The trouble here is not Pape's line of thinking but that it is difficult to see why these factors cannot be incorporated into the current R2P framework which embodies a long history of prudence and pragmatism.⁷³

To explain, Pape's death toll indicator, 'thousands have died and thousands more likely to die', has notable purchase and can help determine when a 'manifest failing's is taking place. First, it does not draw an arbitrary quantitative line in the sand in the same way that Valentino's does. Second, it captures the value of Valentino's approach in that helps us demonstrate that a systematic on-going murderous process is taking place which indicates that 'tens of thousands' may die. Third, it means that we do not have to wait until tens of thousands of bodies pile up before a pillar three response can be considered (which is precisely what happened in the context of Qaddafi). On that point it is important to note that the drafters chose the phrase 'manifest failing' rather than 'manifest failure' precisely because they wanted to highlight this should be identified as a on-going process (manifest failing) so that we do not have to wait until the point that the crime is indeed over (manifest failure).⁷⁴ Fourth, it would capture 'genocidal massacres' such as Srebrenica whereas Valentino and Jones' approaches would not.⁷⁵ It is with this in mind that this author upholds Pape's death toll indicator of 'thousands dead and thousands more likely to die' as an element of pragmatism but claims that this should be incorporated into the current R2P framework rather than form the basis of a new approach.

Displacement of people

To be clear, the R2P was not set up to address the problem of internally displaced people (IDP) and refugees. However, if genocide, war crimes, crimes against humanity, or ethnic cleansing have been committed, the premise here is that an analysis of IDP and refugees helps analysts to gain an understanding of whether the government is 'manifestly failing' to fulfil both its internal and external responsibilities. It is important to recall that the Independent Commission on Intervention and State Sovereignty (ICISS) re-characterized

sovereignty ‘from sovereignty as control to sovereignty as responsibility in both internal functions and external duties’.⁷⁶ It was claimed that ‘[t]hinking of sovereignty as responsibility...implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare.’⁷⁷ Accordingly, mass IDP and refugee movements help demonstrate that the government is failing in its internal responsibility to protect the safety and welfare of citizens as well as its external responsibility as refugees destabilise regional order.

The internal/external dimension was put into context by the Commission of Inquiry into Syria as it stated that areas with high number of IDP are particularly prone to hostilities as coping mechanisms amongst the population collapse thereby also increasing the number of refugees.⁷⁸ To give an overview, in January 2013, it was estimated that there were two million IDP in Syria and ‘an estimated 671, 262 Syrian refugees were present in five neighbouring countries and North Africa, further destabilizing the region, both economically and politically’.⁷⁹ Addressing the refugee crisis Melissa Fleming, Chief Spokeswoman for the United Nations Refugee Agency claimed ‘it has gone from bad to worse to verging on horrific, I mean, what civilians are going through in this conflict is absolutely dramatic....it is a very very dramatic situation and has gotten worse’.⁸⁰ Since this statement was made, the number of IDP has risen to an estimated 6 million with 2 million refugees.⁸¹ It seems regional tensions have surpassed breaking point, for example, on the Turkish Syrian border refugee camps are full and security is failing.⁸² Quite simply, the government has not only failed to create a safe security environment domestically but has committed war crimes and crimes against humanity which have played major role in escalating the IDP and refugee crisis. In relation to this indicator, it seems incomprehensible that anyone would argue that the Syrian regime has not ‘manifestly failed’.

The death toll in any crisis will remain the ‘headline grabber’; however, the displacement of people provides another strong indicator because it helps us gauge whether the host state is failing in its internal and external responsibilities. The latter is often neglected yet extremely important. For example, in relation to the Rwandan genocide the ICISS stated, ‘[i]ts consequence was not merely a humanitarian catastrophe for Rwanda: the genocide destabilized the entire Great Lakes region and continues to do so’.⁸³ To return to the qualitative and quantitative dimension discussed in relation to death toll, one may question exactly how many people have to be displaced before we can begin to discuss this in relation to a ‘manifest failing’? However, unlike death toll, no refugee crisis is in itself large enough to trigger a third pillar action (one of the four crimes would also have to be carried out). The

intention therefore is to simply highlight that this is another important factor that we should incorporate into any judgement of whether the government in question has ‘manifestly failed’.

Weapons of choice

Which weapons are being used to carry out the violence? The answer to this question is important as it helps assessments of what the state is doing. Quite simply, if government weaponry is being used in systematic manner (rather than a rebel group capturing and using some government artillery) then this implies that the government is an active participant in the mass violence and is thus obviously failing in its R2P.

The attack on Homs in February 2012 represented a seismic shift in the violence as the city came under siege from heavy weaponry. Comparable thresholds, such as Srebrenica, began to be used in the discourse as analysts claimed that the violence equalled unacceptable levels.⁸⁴ In June 2012, Sausan Ghosheh, the spokesperson for the UN Supervision Mission in Syria, stated that UN observers in Homs ‘reported heavy fighting in Rastan and Talbiseh, north of the city, with artillery and mortar shelling, as well as firing from helicopters, machine guns and smaller arms’.⁸⁵ The statement captures two key components in any assessment as it draws attention to the disproportional escalation in violence and the role of the government. Both of which became even more prominent with the use of scud missiles.⁸⁶ Whilst anti-Government armed groups have also used anti-tank and anti-air craft missiles, it is important to stress that these are limited in ‘quality and quantity’.⁸⁷ This reaffirms the idea that the Syrian government bears overwhelming responsibility precisely because it was government weaponry that was used.

Long rumored reports on the potential use of chemical weapons became more prominent as the government’s control weakened.⁸⁸ In a Chatham House publication in January 2013, Steve Clemons touched on many key issues here when he stated:

The use of chemical weapons by the Syrian regime would be likely to generate conditions of regional and global support for intervention. But if the regime does not deploy chemical weapons, then the United States and other countries in the region are not likely to intervene robustly.⁸⁹

Even though Syria is just one of six states to have not ratified the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons, the statement highlights that the use of chemical weapons may constitute a tipping point in the

Syrian crisis. This was put into sharp context in March 2013 as reports that the Syrian regime had in fact used chemical weapons came to light. This led President Obama to claim ‘[o]nce we establish the facts, I have made clear that the use of chemical weapons is a game changer’ which led to a heated debate over whether a ‘red-line’ had been crossed.⁹⁰

Of course, we now know that the chemical weapon attacks conducted on August 21st 2013 – which the West claimed were carried out by the Syria regime – did not lead to military strikes. Nevertheless, the statement rightly captures the qualitative dimension that surrounds the use of chemical weapons. Despite the fact that an estimated 100.000 people had been killed by conventional weapons, chemical weapons were interpreted as a ‘qualitative leap’ in the violence. Whether this is right or wrong is a separate issue. From an analytical perspective, the example draws attention to the central idea of threshold and that the weapons used have been factored in to calculations of a ‘manifest failing’ in Syria.

The focus on heavy weaponry in Syria is understandable but whether weaponry can be used as a comparative indicator is problematic. For example, in the Rwandan genocide in 1994, an estimated 37.9% of victims were killed by machetes and further 19.8% by clubs.⁹¹ Historically therefore, mass atrocities have been carried out without the use of heavy weaponry. At the same time however, Linda Melvern highlights that the Rwandan government played an integral role in ‘arming the country’ as ‘US\$725.669’ was spent importing new machetes in 1993 so that ‘there was an estimated one new machete for every third male in the country’.⁹² This brings us back to the point that the weapons used - in the case of Rwanda not just type but also quantity - help us understand what the government is doing and what it is not doing. Further research on this is required yet the heavy weaponry in the Syrian crisis juxtaposed with the light weaponry in the Rwandan genocide begin to illustrate that the weapons used in a conflict may have substantial purchase when attempting to demonstrate that a ‘manifest failing’ is taking place.

Targeting civilians: especially women, children and the elderly

The systematic targeting of civilians implies that a policy has been forged. Accordingly the government is either responsible for the plan being formulated or is incapable of preventing non-state actors from implementing this strategy. Either way, a substantive case can be made that the host state is ‘manifestly failing’ in its R2P but the premise here is that this failing is most obvious when vulnerable groups are targeted. In Jacques Sémelin’s accomplished

analysis on the dynamics of mass murder the author claims that '[a] considerable qualitative leap is taken when the target widens to include, women, children, and elderly people'.⁹³ The point is not to downplay attacks on other civilians but to highlight that the gravity and character of the crime takes on another qualitative dimension when vulnerable groups are targeted. This is not to suggest that such groups should be viewed as passive actors that have no agency but instead to highlight that certain groups are more vulnerable in war than others.⁹⁴ Therefore, when the host state fails to protect these groups, or if it is the perpetrator itself, then it is difficult to conceive of a clearer indicator of a 'manifest failing', especially in relation to the targeting of children.

In Syria, the high number of children killed stems from a lethal cocktail of intentional targeting, indiscriminate killing, and the destruction of healthcare provisions. It is important to bear in mind that 'the escalation point for the uprising in Syria was the arrest and torture of fifteen school children for spray painting anti-government graffiti on a wall in Daraa'.⁹⁵ This was followed by reports that '[a]s of 26 February 2012, 599 children had purportedly been killed'.⁹⁶ This led to the organization War Child publishing a twenty-four page report entitled, 'Syria: War on Childhood' in which it was claimed that up to 1500 has been killed by July 2012.⁹⁷ By October, estimates reached over 2000 children dead.⁹⁸ Of course, there are real difficulties in substantiating the accusation that such groups are being systematically targeted. Leila Zerrougui, the Special Representative of the Secretary-General for Children and Armed Conflict, acknowledged that violence has been committed 'against civilians and children' but stated that the UN needed better access in order to establish whether 'we can say that it's a weapon of war used to target specifically children or if it is an indiscriminate use of violence that affect children including civilians'.⁹⁹ In other words, is it that the Syrian regime is intentionally targeting children or is it more than they simply do not care if children die as part of the mass violence?

In March 2012, Pillay claimed '[t]hey've [government forces] gone for the children – for whatever purposes – in large numbers. Hundreds detained and tortured... it's just horrendous'.¹⁰⁰ Since then reports of the Syrian regime using children as human shields has led to the claim of genocide being raised.¹⁰¹ More recently, the Independent Commission of Inquiry validated examples of 'government forces executing women, children, and the elderly'.¹⁰² Furthermore, in February 2013, the Syrian government launched ballistic missiles into a town in Aleppo which killed 141 people including 71 children. Responding to this, Philippe Bolopion, UN Director of Human Rights Watch, stated 'either the government is deliberately targeting civilians or it is acting with complete disregard for the lives of

civilians'.¹⁰³ The examples give weight to the fact that the high death toll amongst children is a mixture of indiscriminate killing as well as intentional targeting; however, there is a third dimension as a Save the Children report published in March 2013 drew attention to the particularly vulnerability of children from the spread of disease.¹⁰⁴ Juxtaposed with this is the fact that 'more than half of Syria's hospitals have been damaged, and nearly a third have been put completely out of action'.¹⁰⁵ For instance, in Aleppo it is estimated that 'two-thirds of hospitals are no longer functioning...and the number of medics practising in and around Aleppo has fallen from 5,000 to just 36'.¹⁰⁶ The examples underline the tragic tripartite of reasons which explain the high death toll amongst children.

Although the civilian focus is enough to warrant a 'manifest failing', to return to Sémelin, this author agrees that we should pay attention to the targeting of vulnerable groups when assessing the [ir]responsibility of the host state. It may be the case that the high number of child soldiers in post-Cold War conflicts complicates the picture and at the very least highlights that children, like women and the elderly, should not be written off as passive agents. Having acknowledged this however, it is important to recognize that children are 'manipulated by those in power, forgotten by many international organizations, and rarely included in key decision-making bodies of peace efforts' and thus, further research on the treatment of children in warfare is required as part of a broader research focus on vulnerable groups.¹⁰⁷

Conclusion

This article has analysed the discourse on Syria and drawn on interdisciplinary research in to mass violence in order to identify five key indicators of a 'manifest failing': i) government intentions, ii) weapons used, iii) death toll, iv) number of people displaced, and v) the intentional targeting of civilians, especially women, children and the elderly. When one begins to put these five jig saw pieces together one can at least begin to make sense of, and substantiate, the idea that the Syrian regime has 'manifestly failed' in its R2P. Although anti-government forces should also be held account, it is evident that the Syrian regime bears overwhelming responsibility for the war crimes and crimes against humanity committed which has seen an estimated 115.000 people killed, a third of the country displaced, and widespread indiscriminate killing of civilians including children. Although voices calling for a third pillar response have been around since at least February 2012,¹⁰⁸ this author would argue that there is now an irrefutable body of evidence that can be put forward in order to demonstrate that the Syrian regime has 'manifestly failed'. The worrying complexity is that

without such evidence we cannot prove a ‘manifest failing’ has taken place. Undoubtedly, this raises the troubling reality that a pillar three action, such as a humanitarian intervention, may be most effective if it is conducted earlier rather than later.¹⁰⁹ But with very little consensus on this issue the R2P process as it stands means that the international community has to first agree on and then react to a ‘manifest failing’.

Of course, there are never going to be criteria which will allow analysts to scientifically pinpoint the precise moment at which a ‘manifest failing’ occurs. Moreover, a level of flexibility is needed so that the rules do not become too rigid for practical use on a case by case basis. However, to return to the logic that underpins Just War Theory, the intention here is to provide a ‘common reference within which argumentation can take place’ for at present there is none.¹¹⁰ The hope is that through further research a more comprehensive framework can be established which aids the assessment of other case studies. Future research needs to address questions and issues which could not be factored in to this article. In particular, the idea of scaling needs to be addressed. This author’s position is that not all five indicators have to be present for a ‘manifest failing’ to take place, for example, the displacement of people is less important than death toll or government intentions. Furthermore, there may be other indicators, for example, systematic sexual violence, which may be incorporated as comparative studies are done, and interdisciplinary perspectives put forward. Finally, there are quantitative and qualitative dimensions embodied in these five indicators which need to be brought to the fore, again, interdisciplinary research will help here. But at the very least, the five indicators provide a framework to aid further debate and analysis. When one considers that the lives of potentially millions of people may depend on the third pillar of the R2P being triggered, the importance of this issue cannot be overstated. Indeed, as the crisis in Syria continues to escalate this gives further credence to the idea that an independent body should be set up to make rulings on such issues,¹¹¹ a part of which has to be whether a ‘manifest failing’ is taking place.

¹ An earlier version of this article was presented at ‘Responsibility to Protect in Theory and Practice’, University of Ljubljana, Slovenia on April 11 2013. I would like to take this opportunity to thank Sir Michael Wood, William Pace, Spencer Zifcak, and Vasilka Sancin for their questions and comments which have shaped the final version. I also express great thanks to Aidan Hehir, James Pattison, Jason Ralph, Andrew Garwood-Gowers, Anthony Goldhawk and the blind reviewers for their comments on this paper. All errors are the author’s own.

² Melissa T. Labonte, ‘Whose responsibility to protect? The implications of double manifest failure for civilian protection’, *The International Journal of Human Rights* Vol. 16. No. 7. (2012), pp. 982-1002, 987.

-
- ³ United Nations, '2005 World Summit Outcome' UNGA Res. 60/1, 16, 2005, paragraph, 139.
- ⁴ Ibid, Labonte references just two articles, Sheri P. Rosenberg, 'The Responsibility to Protect: A Framework for Prevention', *Global Responsibility to Protect* 1 (2009): 442–77; and Luke Glanville, 'The International Community's Responsibility to Protect', *Global Responsibility to Protect* 2 (2010): 287–306. Neither of the articles address the issue in any detail and in their defence that is not their focus. The Cardozo School of Law, New York, is currently conducting research into establishing institutional guidelines on the parameters of a 'manifest failure'.
- ⁵ Charles T. Onions ed., *The Shorter Oxford English Dictionary on Historical Principles: volume one A-Markworthy* (Oxford: Clarendon Press, 1973), p. 1272.
- ⁶ William A., Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), pp. 234-240.
- ⁷ Report of the Secretary-General, Ban Ki-moon, *Responsibility to Protect: Timely and Decisive Response A/66/874-S/2012/578*, 25 July 2012.
- ⁸ Robert A. Pape, 'When Duty Calls: A Pragmatic Standard for Humanitarian Intervention', *International Security* Vol. 37. No. 1. (Summer 2012), pp. 41-80.
- ⁹ Ibid, 50-52.
- ¹⁰ Ibid, 46-50.
- ¹¹ Ibid, pp 75-77.
- ¹² This gives weight to Evans and Thakur's criticism that Pape puts forward a rather shallow portrayal of the R2P. Gareth Evans and Ramesh Thakur, Robert A. Pape, 'Correspondence: Humanitarian Intervention and the Responsibility to Protect', *International Security* Vol. 37. No. 4 (Spring 2013), pp. 199-214, 199-200.
- ¹³ Ibid, 210.
- ¹⁴ Of course, all peaceful means available should be used in order to respond to any such crime and further research on what to do once a 'manifest failing' occurs is needed. But, to return to Bellamy's point at the start, that is a question of how to apply the R2P rather than how to interpret it
- ¹⁵ Mike Abramowitz, 'Who Will Stand Up for the Responsibility to Protect?' *New York Times* August 1 2013. http://kristof.blogs.nytimes.com/2013/08/01/who-will-stand-up-for-the-responsibility-to-protect/?_r=4 Accessed August 1 2013.
- ¹⁶ Alex Bellamy, *Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent* (The Stanley Foundation, February 2011, 1-20). Martin Shaw, *War and Genocide: Organized Killing in Modern Society* (Oxford: Polity, 2003).
- ¹⁷ UN Secretary-General, *Responsibility to Protect: State Responsibility and Prevention* (9 July 2013) A/67/929-S/2013/399. This is not to suggest that he raises this point in relation to manifest failing or is pro-indicators.
- ¹⁸ Nicholas J. Wheeler, *Saving Strangers Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), p. 33.
- ¹⁹ This has had a strong influence on the criteria established to help post-Cold War assessments of what constitutes legitimate humanitarian intervention. Wheeler, *Saving Strangers*, pp. 33-37. Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), 35-38. Fernando Tesón, 'Ending tyranny in Iraq', *Ethics & International Affairs* Vol. 19. No. 1 (2005) pp. 1–20, 2-3. T. J., Farer, 'Cosmopolitan humanitarian intervention: A five-part test', *International Relations* Vol. 19. No. 2 (2005) pp. 211–220.
- ²⁰ '2005, World Summit Outcome Document', p. 30.
- ²¹ See Paul Kennedy discussion of artful language, *The Parliament of Man: The Past, Present and Future of the United Nations* (London: Random House, 2006), pp. 33-47, quote taken from p.45.
- ²² See Report of the Secretary-General, *Responsibility to Protect: Timely and Decisive Response A/66/874-S/2012/578*, 25 July 2012, p.6.
- ²³ See Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide* (New Haven: Yale University Press, 1990), Alex Alvarez, *Governments, Citizens, and Genocide, a Comparative and Interdisciplinary Approach* (Indiana: Indiana University Press, 2001), Robert Gellately and Ben Kiernan, Eds., *The Spectre of Genocide, Mass Murder in Historical Perspective* (Cambridge: Cambridge University Press, 2003). Alex Hinton, Ed., *Genocide, an Anthropological Reader* (Oxford: Blackwell Publishing, 2002). For quantitative research see Barbara Harff and Ted Robert Gurr 'Toward an Empirical Theory of Genocides and Politicides: Identification and measurement of cases since 1945', *International Studies Quarterly*, Vol. 32. No. 3. (1998), pp. 359–371. Nicolas Rost, 'Will it Happen Again? On the Possibility of Forecasting the Risk of Genocide' *Journal of Genocide Research* Vol 15. No. 1 (2013) pp. 41-67. Benjamin E. Goldsmith, Charles R. Butcher, Dimitri Semenovich, and Arcot Sowmya. 'Forecasting the Onset of Genocide and Politicide: Annual Out-of-Sample Forecasts on a Global Dataset, 1988-2003,' *Journal of Peace Research* Vol. 50. No. 4 (2013), pp. 1-16.
- ²⁴ Power cited in Abramowitz, 'Who Will Stand Up for the Responsibility to Protect?'

-
- ²⁵ Alex Bellamy, "Making RtoP a Living Reality: Reflections on the 2012 General Assembly Dialogue on Timely and Decisive Response", *Global Responsibility to Protect*, Vol. 5. No.1 (2013), pp. 109-125, p. 119.
- ²⁶ Burke cited in, Robert Jackson, *The Global Covenant, Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), p. 20.
- ²⁷ Linda Melvern, *A People Betrayed, The Role of the West in Rwanda's Genocide* (London: Zed Books, 2009). With regard to France see Andrew Wallis, *Silent Accomplice, The Untold Story of France's Role in Rwandan Genocide* (London: I.B. Tauris, 2006). With regard to the US see, Samantha Power, *A Problem From Hell, America and the Age of Genocide* (London: Flamingo, 2003). Also, J. E., Alvarez, 'Judging the Security Council', *American Journal of International Law*, Vol. 90. No. 1 (1996), pp. 1-39.
- ²⁸ Kim Richard Nossal, 'The Use –and Misuse – of R2P: The Case of Canada' in Aidan Hehir and Robert Murray Eds., *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (Basingstoke: Palgrave Macmillan, 2013), ch. 6.
- ²⁹ Guy Taylor, 'Obama's policy on Syria leaves analysts guessing' *The Washington Times* (April 1 2013) <http://www.washingtontimes.com/news/2013/apr/1/obamas-policy-on-syria-leaves-analysts-guessing/?page=all> Accessed 9 April 2013 Also, see Joshua Landis (Director of the Centre for Middle East Studies at the University of Oklahoma) comments on the U.S.'s lack of strategic interest in Syria, *Aljazeera*, Inside Syria: Preparing for the day after al-Assad's fall (April 7 2013)
- ³⁰ Bruce D. Jones, *Peacekeeping in Rwanda: The Dynamics of Failure* (Boulder, CO: Lynne Rienner, 2001), p. 121.
- ³¹ Mark Bevir, *The Logic of the History of Ideas* (Cambridge: Cambridge University Press, 1999), p. 33. This thinking has since been applied to a number of different case studies in, Mark Bevir, Ian Hall, and Oliver Daddow, Eds. *Interpreting Global Security* (New York: Routledge 2013).
- ³² President Barack Obama, Remarks by the President in Address to the Nation on Libya, National Defense University Washington, D.C. (March 28 2011) <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya> Accessed 19 December 2012
- ³³ Harold Hongju Koh, 'Statement Regarding Use of Force in Libya' American Society of International Law Annual Meeting, Washington, DC, (March 26, 2011), <http://www.state.gov/s/l/releases/remarks/159201.htm> Accessed 19 December 2012
- ³⁴ Adrian Gallagher, 'A Clash of Responsibilities: Engaging with Realist Critiques of the R2P', *Global Responsibility to Protect* Vol. 4. No. 3 (2012) pp. 334-357.
- ³⁵ Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge: Cambridge University Press, 2006), ch. 13. Thomas G., Weiss, *What's Wrong with the United Nations and How to Fix it* (Cambridge: Polity Press, 2009). Spencer Zifcak, *United Nations Reform? Heading North or South* (New York: Routledge 2009). In relation to the R2P see Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality, and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2012) ch. 8. On the need to reform regional organisations because of the problems facing UN reform see James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (New York: Oxford University Press, 2010) ch. 8.
- ³⁶ Raymond Hinnebusch, 'Syria: From Authoritarian Upgrading to Revolution', *International Affairs* Vol. 88. No. 1 (2012) pp. 95-113, 95.
- ³⁷ Jess Gifkins, 'The UN Security Council Divided: Syria in Crisis', *Global Responsibility to Protect* Vol. 4. No. 3. (2012) pp. 377-393, 391. See also, David Kaye, 'A Responsibility to Object', *Foreign Policy* (10 January 2013) http://www.foreignpolicy.com/articles/2013/01/10/responsibility_to_object Accessed 11 January 2013. Also, Samuel Charap, 'Russia, Syria and the Doctrine of Intervention', *Survival: Global Politics and Strategy* Vol. 55. No. 1. (2013) pp. 35-41. Robert G. Rabil, *Syria, The United States, and the War on Terror in the Middle East* (Westport: Praeger Publishers, 2006).
- ³⁸ Richard Dicker, 'Holding The Security Council to Account on Syria', *The Progressive* (29 January 2013) <http://progressive.org/holding-security-council-to-account-on-syria> Accessed 18 February 2013.
- ³⁹ Paul Rogers, 'Syria: The Evolving Problem of Competing Militias' Oxford Research Group (February 2013), p. 1. <http://www.oxfordresearchgroup.org.uk/sites/default/files/febEn13.pdf> Accessed 15 March 2013
- ⁴⁰ On Russia's position see Roy Allison, 'Russia and Syria: explaining Alignment with a Regime in Crisis', *International Affairs* Vol. 89. No. 4. (2013), pp. 795-823.
- ⁴¹ On April 1 2013, Javier Solana, the former EU foreign policy chief, claimed that the U.S., has not taken a stronger stance on the Syrian crisis because of on-going nuclear negotiations with Iran. Paul Owen, '6,000 killed in bloodiest month for Syria Crisis', *The Guardian* (April 2 2013) <http://www.guardian.co.uk/world/middle-east-live/2013/apr/02/6-000-killed-in-bloodiest-month-for-syria-crisis-live-updates#block-515ab48595cbd934fc4629be> Accessed 2 April 2013.

⁴² Foreign and Commonwealth Office, Foreign Secretary updates Parliament on Syria (10 January 2013) <https://www.gov.uk/government/speeches/foreign-secretary-updates-parliament-on-syria> Accessed 14 January 2013.

⁴³ This analysis draws predominantly on evidence up to September 1st 2013.

⁴⁴ Initial thinking used to trace the origins of such violence to totalitarian regimes, see Hannah Arendt, *The Origins of Totalitarianism* (Orlando: Harcourt, 1973). Irving Horowitz, *Taking Lives: Genocide and State Power* (New Brunswick: Transaction, 1997). R. J. Rummel, *Death By Governments* (New Brunswick: Transaction, 1994). In sharp contrast contemporary critiques have raised a diverse range of facilitators, on democracy see Michael Mann, *The Dark Side of Democracy, Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2005). On postcolonialism, see A. Dirk Moses Ed., *Empire, Colony, Genocide: Conquest, Occupation and Subaltern Resistance in World History* (New York: Berghahn Books, 2008). On modernity, see Zygmunt Bauman, *Modernity and the Holocaust* (Cambridge: Polity, 1989), Mark Levene, *Genocide in the Age of the Nation State, I: The Meaning of Genocide* (London: I. B. Tauris, 2005). Mark Levene, *Genocide in the Age of the Nation State, II: The Rise of the West and the Coming of Genocide* (London: I. B. Tauris, 2005).

⁴⁵ Martin Hollis and Steve Smith, *Explaining and Understanding International Relations* (Oxford: Clarendon Press, 1990), 171 – 176, esp. 174.

⁴⁶ Alex Bellamy, 'Libya and the Responsibility to Protect: The Exception and the Norm', *Ethics and International Affairs* Vol. 25. No. 3 (2011) pp. 263-269, 265-266.

⁴⁷ Reuters, 'Syrian Violence Ignores Peace Diplomacy' <http://www.reuters.com/article/2012/03/28/us-syria-idUSBRE8280G820120328> Accessed 28 December 2012.

⁴⁸ Herbert Hirsch, *Anti-Genocide, Building An American Movement to Prevent Genocide* (London: Praeger, 2002), 6.

⁴⁹ Helen Fein, 'Genocide, Terror, Life Integrity and War Crimes: The Care for Discrimination', in G. J. Andreopoulos ed., *Genocide, Conceptual and Historical Dimensions* (Philadelphia: University of Pennsylvania Press, 1997), 97.

⁵⁰ William Schabas, 'Whither Genocide? The International Court of Justice Finally Pronounces' *Journal of Genocide Research* Vol. 9. No. 2 (2007) pp. 183-192, 188.

⁵¹ Radwan Ziadeh, *Power and Policy in Syria* (New York: I.B. Tauris, 2013), pp. xii-xiii. Also, Report of the Independent International Commission on the Syrian Arab Republic, (UN DOC A/HRC/S-17/2Add.1, 23 November 2011) p. 30.

⁵² Paul Rogers, 'The Jihadist Element in Syria and its Implications', The Oxford Research Group (28 August 2012)

http://www.oxfordresearchgroup.org.uk/publications/paul_rogers_monthly_global_security_briefings/jihadist_element_syria_and_its_implications Accessed 12 January 2013.

⁵³ Rogers, 'Syria: The Evolving Problem of Competing Militias'. This number has doubled since August 2012,

⁵⁴ Anne Barnard and Eric Schmitt, 'Syria Risks Being Extremist Haven as Fighters Flown in', *International Herald Tribune*, August 10 2013, p. 4.

⁵⁵ Luran Williams, 'Brahimi tells Security Council: Syria situation Hopeless', *The Daily Star: Lebanon* (April 24 2013). <http://www.dailystar.com.lb/News/Middle-East/2013/Apr-24/214833-brahimi-tells-security-council-syria-situation-hopeless.ashx#axzz2RNUbI9U2> Accessed 5 May 2013.

⁵⁶ Barnard and Schmitt, 'Syria Risks Being Extremist Haven'.

⁵⁷ It is important here to remember that both state and non-state actors can be held accountable for mass atrocity crimes in Syria. United Nations Press Release, 'The UN Secretary-General's Special Advisers on the Prevention of Genocide, Francis Deng, and on the Responsibility to Protect, Edward Luck, urge immediate action to end violence in Syria', (10 February 2012).

<http://www.un.org/en/preventgenocide/adviser/pdf/Statement%20on%20Syria%2010%20Feb%202012%20-%20ENGLISH.pdf> Accessed 28 September 2012

⁵⁸ Report of the Independent International Commission of Inquiry, p. 5

⁵⁹ Ibid.

⁶⁰ United Kingdom, 'Foreign and Commonwealth Office, Assad regime bears overwhelming responsibility for Human Rights violations in Syria', (18 February 2013) <https://www.gov.uk/government/news/assad-regime-bears-overwhelming-responsibility-for-human-rights-violations-in-syria> Accessed 28 February 2013

⁶¹ Benjamin A. Valentino, *Final Solutions, Mass Killing and Genocide in the 20th Century* (New York: Cornell University Press, 2004) pp. 11-12. This is not to suggest that Valentino is pro-intervention in the same way that R2P advocates are, see Benjamin Valentino, 'True Costs of Humanitarian Intervention: Hard Truths About Nobel Action', *Foreign Affairs* Vol. 90. No. 6 (November/December 2011) pp. 60-73.

⁶² Valentino, *Final Solutions*, p.13.

⁶³ Adam Jones, *Genocide, A Comprehensive Introduction* (New York: Routledge, 2006) pp. 22-23.

-
- ⁶⁴ Bellamy, *Mass Atrocities and Armed Conflicts*, p. 18, Appendix I.
- ⁶⁵ Megan Price, Jeff Klingner, and Patrick Ball, *Preliminary Statistical Analysis of Documentation of Killings in the Syrian Arab Republic* The Benetech Human Rights Program, Commission by the United Nations Office of the High Commissioner for Human Rights (January 2013), p. 1.
- ⁶⁶ UN News Centre, 'Data Suggests Syria Death Toll may be 60,000, says UN Human Rights Office', <http://www.un.org/apps/news/story.asp?NewsID=43866&Cr=Syria&Cr1=> Accessed 8 January 2012.
- ⁶⁷ Foreign and Commonwealth Office, 'Foreign Secretary updates Parliament on Syria' (10 January 2013) <https://www.gov.uk/government/speeches/foreign-secretary-updates-parliament-on-syria> Accessed 14 January 2013.
- ⁶⁸ General Assembly President Vuk Jeremic, cited in, Associated Press, "'Outraged" by rising death toll in Syria, General Assembly demands halt to all violence', UN News Centre (15 May 2013) <http://www.un.org/apps/news/story.asp?NewsID=44916&Cr=syria&Cr1=> Accessed 16 May 2013.
- ⁶⁹ I draw here on the work of the Syrian Observatory for Human Rights, see http://syriahr.com/en/index.php?option=com_news&Itemid=2&nt=1# Accessed 24 September 2014 Robert Fisk puts the debate over numbers into an interesting context, see Robert Fisk, 'The death toll in Syria continues to rise - whoever is doing the counting', *The Independent* (19 September 2013). <http://www.independent.co.uk/voices/commentators/the-death-toll-in-syria-continues-to-rise--whoever-is--doing-the-counting-8827805.html> Accessed 23 September 2013.
- ⁷⁰ Pape, 'When Duty Calls', p. 43.
- ⁷¹ Evans and Thakur, 'Correspondence: Humanitarian Intervention', 202.
- ⁷² Pape 'When Duty Call's', 43.
- ⁷³ Evans and Thakur 'Correspondence: Humanitarian Intervention', 203. Also, Thomas Weiss discussion of 'The Responsibility to Protect: Costs, Benefits, Quandaries' which explicitly addresses these themes, in Weiss, *Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect* (New York: Rowman and Littlefield, 2005), ch. 10. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes One and For All* (New York: Brookings, 2008), pp. 141-146.
- ⁷⁴ I would like to thank Dr. Sancin for this point.
- ⁷⁵ The term was first used in Leo Kuper, *Genocide and its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1982), 32.
- ⁷⁶ ICISS, *Responsibility to Protect*, 13.
- ⁷⁷ *Ibid.*
- ⁷⁸ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 9.
- ⁷⁹ *Ibid.*
- ⁸⁰ Melissa Fleming speaking as part of the Inside Syria documentary first shown on Al Jazeera English on 2nd December 2012.
- ⁸¹ UN Refugee Agency, 'Number of Syrian Refugees tops 2 million mark with more on the way', (September 3 2013) <http://www.unhcr.org/522495669.html> Accessed 24 September 2013
- ⁸² Sebnem Arsu and Rick Gladstone, 'Turkey and Israel Feel the Effect as Syria's Civil War Fuels Tensions at Borders' *The New York Times* (28 March 2013) http://www.nytimes.com/2013/03/29/world/europe/turkey-reverses-plans-to-deport-130-syrian-refugees.html?pagewanted=all&_r=0 Accessed 9 April 2013. Also, Megan Bradley, 'For Regional Stability, Help Syria's Internally Displaced', *Brookings* (June 12 2013). <http://www.brookings.edu/research/opinions/2013/06/12-internally-displaced-syria-bradley> Accessed 12 June 2013.
- ⁸³ ICISS, *Responsibility to Protect*, p. 1.
- ⁸⁴ On Wednesday 7 March 2012, the UK based newspaper, *The Independent*, devoted its front page to Robert Fisk's article in which he questioned whether the atrocity in Homs represented another Srebrenica with images of both conflicts placed side by side. The front-page made no reference to the fact that the timeframes involved were qualitatively different. Also, Nick Tattersall and Ece Toksabay, 'Turkey cites Srebrenica in appeal for action on Syria', *Reuters* (October 13, 2012) <http://www.reuters.com/article/2012/10/13/us-syria-crisis-idUSBRE88J0X720121013> Accessed 10 October 2012.
- ⁸⁵ UN News Centre, 'Syria: UN observers concerned over escalation of violence in city of Homs' (11 June 2011) <http://www.un.org/apps/news/story.asp?NewsID=42195&> Accessed 11 November 2012.
- ⁸⁶ Stephen M. Walt, 'Scuds over Syria: Is Assad escalating the war?' (December 12th 2012) http://walt.foreignpolicy.com/posts/2012/12/12/scuds_over_syria Accessed 19 December 2012.
- ⁸⁷ A/HRC/22/59, 39.
- ⁸⁸ Kim Sengupta, 'New Fears on Syria's Chemical Weapons', *The Independent* (9 January 2013), p.1.
- ⁸⁹ Steve Clemons, 'The Middle East and North Africa', in Xenia Dormandy *The Next Chapter: President Obama's Second-Term Foreign Policy* (London: Chatham House, January 2013), ch. 8.

-
- ⁹⁰ Mark Landler and Rick Gladstone, 'Chemicals Would Be 'Game Changer' in Syria, Obama Says', *The International Herald Tribune*, (March 20 2013), http://www.nytimes.com/2013/03/21/world/middleeast/syria-developments.html?pagewanted=all&_r=0 Accessed 25 February 2013. Peter Baker, Mark Landler, David E. Sanger and Anne Barnard, 'Off-the-Cuff Obama Line Put U.S. in Bind on Syria' *New York Times* (March 6 2013) <http://goo.gl/jhbSz> Accessed 8 May 2013. Also, Richard Falk, 'The Wrong Red Line', *Aljazeera*, 8 May 2013 <http://www.aljazeera.com/indepth/opinion/2013/05/20135773053236551.html> Accessed 10 May 2013.
- ⁹¹ Lind Melvern, *Conspiracy to Murder: Rwandan Genocide* (London: Verso, 2004) p. 253.
- ⁹² *Ibid*, p. 56.
- ⁹³ Jacques Semelin, *Purify and Destroy, the Political uses of Massacre and Genocide* translated from the French by C. Schoch (London: Hurst and Thompson, 2007), p. 231.
- ⁹⁴ For an overview on this point in relation to women see Laura J. Shepherd and Linda Åhäll Eds., *Gender, Agency and Political Violence* (Basingstoke: Palgrave 2012). In relation to children see Shelly Whitman, 'The Responsibility to Protect and Child Soldiers', in Andy W. Knight and Frazer Egerton Eds., *The Routledge Handbook of the Responsibility to Protect* (New York: Routledge, 2012), ch. 12.
- ⁹⁵ Gifkins, 'The UN Security Council Divided: Syria in Crisis', 393-394. Also, Doreen Khoury, 'Losing the Syrian Grassroots', *German Institute for International and Security Affairs* (February 2013) 2-3. http://www.swp-berlin.org/fileadmin/contents/products/comments/2013C09_kou.pdf Accessed 15 March 2013.
- ⁹⁶ War Child, 'What is Happening in Syria?', (6 March 2012) http://www.warchild.org.uk/news/whats-happening-syria?gclid=CNqjr4Po4rQCFWbKtAoda2kAWw#_edn2
- ⁹⁷ War Child, 'Syria: A War on Childhood' (July 2012) <http://www.warchild.org.uk/sites/default/files/Syria%20-%20War%20on%20Children%28final%29.pdf> Accessed 7 September 2012.
- ⁹⁸ The Arab League Online, *War On Children* (31 October 2012) <http://www.arableagueonline.org/war-and-children/> Accessed 7 December 2012.
- ⁹⁹ United Nations News and Media, *Syrian forces indiscriminately targeting children* (11 September 2012) <http://www.unmultimedia.org/radio/english/2012/09/syrian-forces-indiscriminately-targeting-children/> Accessed 7 September 2012.
- ¹⁰⁰ Navi Pillay, 'Syrian authorities target children, says UN rights chief', *BBC News* (28 March 2012) <http://www.bbc.co.uk/news/world-middle-east-17532966> Accessed 3 November 2012.
- ¹⁰¹ Sonja Grover, 'Child soldiers as victims of "genocidal forcible transfer": Darfur and Syria as case examples', *The International Journal of Human Rights* DOI:10.1080/13642987.2012.744305 Available on-line <http://dx.doi.org/10.1080/13642987.2012.744305> Accessed 10 February 2013.
- ¹⁰² Report of the independent international commission of inquiry on the Syrian Arab Republic, 11.
- ¹⁰³ Human Rights Watch, 'Syria Missile Kills More than 140' (February 28 2013) <http://www.hrw.org/video/2013/02/28/syria-missiles-kill-more-140> Accessed 29 February 2013.
- ¹⁰⁴ Save the Children, *Childhood Under Fire: The Impact of Two Years Conflict in Syria* (London: Save the Children, 2013).
- ¹⁰⁵ *Ibid*, 8.
- ¹⁰⁶ *Ibid*.
- ¹⁰⁷ Whitman, *The Responsibility to Protect and Child Soldiers*, p. 152.
- ¹⁰⁸ United Nations Press Release, 'The UN Secretary-General's Special Advisers on the Prevention of Genocide, Francis Deng, and on the Responsibility to Protect, Edward Luck, urge immediate action to end violence in Syria', (10 February 2012). <http://www.un.org/en/preventgenocide/adviser/pdf/Statement%20on%20Syria%2010%20Feb%202012%20-%20ENGLISH.pdf> Accessed 28 September 2012. Aidan Hehir, 'Syria and the Responsibility to Protect' e-international relations (14 March 2012) <http://www.e-ir.info/2012/03/14/syria-and-the-responsibility-to-protect-rhetoric-meets-reality/> Accessed 16 April 2012.
- ¹⁰⁹ Stanley Hoffman, *The Ethics and Politics of Humanitarian Intervention* (South Bend: University of Notre Dame Press, 1997), p. 39.
- ¹¹⁰ Nicholas J. Wheeler, *Saving Strangers Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), p. 33.
- ¹¹¹ Fernando Tesón, 'The Vexing Problem of Authority', *Wisconsin International Law Journal* Vol. 24. No. 3, (2006) 761 – 772.