

## Eschewing Impunity: What the International Community Can Do for the Embattled Syrians

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Exemplifying “international politics at its worst,” Russia and China recently vetoed a draft UNSC resolution, supported by the US and the EU, to condemn Bashar Assad’s regime. The regime is believed to have committed crimes against humanity that resulted in the deaths of at least 2,700 pro-reform protesters. As US Ambassador Rice pointed out, the watered-down draft had already eliminated explicit references to “sanctions.” In their place was rather nebulous language to the effect that the UNSC would “consider its options” in 30 days if Assad failed to stop the violence, and would seek a peaceful settlement of the crisis.

Those who share the US/EU outrage need not despair just yet. Even in the face of intractable veto-wielding Assad supporters in the UNSC, international law provides other tools that can be flexibly harnessed to protect Syrians from their own fratricidal government, and can prevent us from finding ourselves on the wrong side of history.

Ambassador Rice’s outraged denunciation of the veto did not reference a basic actionable international norm—the Responsibility To Protect.

Sometimes conceived of as an even more robust “Right To Protect,” this norm is erroneously conflated solely with military intervention. It is in fact focused on preventing crimes and in mobilizing all available levers to urge actors to cease committing atrocities. The underlying premise of the Responsibility To Protect is that the international community must act if a government abdicates its responsibility to protect its citizens and perpetrates atrocities.

Harvard Law Professor, Chibli Mallat, thus advocates an immediate short-term approach based on actions “short of invasion or bombing,” that can establish a credible threat of foreign intervention if necessary. These include amassing troops in the region, mobilizing planes, establishing no-fly zones and no-drive zones, as also safety zones for civilians. For instance, during the Second Persian Gulf War, America and its allies declared the area around Basra in Iraq to be a “safe zone.”

This creative use of avenues available in international law can also extend to the strategic use of an application to the Prosecutor of the International Criminal Court. Under Article 15 of the Rome Statute, the Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court. Building on the recent Palestinian example of a non-state entity approaching the Prosecutor under Article 12 of the Statute, the opposition Syrian National Council can conceivably approach the Prosecutor with a request to investigate allegations of crimes against humanity.

Just an independent investigation by the Prosecutor, notwithstanding any outcome, can have the powerful effect of exposing the nefarious atrocities perpetrated by Assad’s regime, by an impartial and venerated international authority. This may also help to drastically diminish any principled opposition to UNSC action. Any claims that Assad’s regime still maintains a modicum of legitimacy and support within Syria’s citizenry will ring hollow. An investigation by the Prosecutor could thus serve the equivalent of a UNSC resolution directly condemning Assad’s crimes would have done.