# Moral Authority to Change Governments?

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**ABSTRACT**

Moral Authority to Change Governments?  by O. Shawn Cupp, Ph.D., (LTC, retired, US Army) and William L. Knight, Jr. (LTC, retired, US Army)


There are numerous reasons in past conflicts for nations to engage in combat operations.  Some reasons are tied to treaty responsibilities while others result in allied forces actions without formal written obligations.  Some past conflicts were based upon unprovoked attacks like Pearl Harbor between Japan and the United States while conflicts that are more recent resulted in an intergovernmental organization stepping in such as the United Nations through the United Nations Security Council (UNSC).  There are also international treaties and customs associated with these conflicts when it is relevant and morally expressed that a government must be overthrown.  This paper will discuss whether it is appropriate to intervene on an international level and subsequently remove a government for humanitarian purposes (based upon two case studies - Libya and Syria). The recent cases of Libya and Syria demonstrated the impact of Arab Spring, detailed the resulting UN Security Council actions in the form of United Nations Security Council Resolutions (UNSCR), and the actions of other supporting nation states.  In the case of Libya, the United States and other nations supported UNSCRs to enforce sanctions and invoke a no-fly zone.  The passage of these UNSCRs was primarily due to Brazil, Russia, India, China, and Germany (BRIC + G) who block voted to abstain.  This provided the impetus for US led Operation Odyssey Dawn (OOD) and ultimately NATO led Operation Unified Protector (OUP).  The case of Syria ended differently with Russia and China voting no to UNSCRs involving UN actions.  Several UN member nations agreed that there is a universal responsibility to undertake humanitarian intervention to protect populations from egregious violations of human rights; even though it is unclear whom exactly in the international community should

intervene. One option, favored by many, is that intervention should be undertaken by those nations whose action is considered legal according to current international law and for humanitarian reasons. Many nation states would agree that UN Security Council authorization is required for an intervener's action to be determined as legal.  Based upon these two recent case studies of Libya and Syria, potential international considerations are discussed to better understand when intervening under humanitarian reasons is appropriate, legal, and is supported by a majority of the international community.

**Key Words:** United Nations Security Council, regime change, international humanitarian law, current international humanitarian law

**BIOGRAPHICAL SKETCH**

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**BIOGRAPHICAL SKETCH**

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**Introduction**

Since before Westphalia in 1648, nations sought to define themselves under what would eventually be international law and standards of conduct as nation states. One principle within the Treaty of Westphalia agreements ending the Thirty Years' War is that each state (no matter how large or small) is equal under international law. "Without an Emperor or Pope as final arbiter, the newly emerging nation states were forced to look elsewhere for conflict resolution. International law emerged to fill this vacuum with its own set of rules to govern the relations between these developing states and rules by which to settle disputes."[1]

Another principle is that other states may not interfere with a country's internal domestic affairs. Nevertheless, as we now continue toward completing the first quarter of the 21st century with a world population estimated to reach 9 billion by 2030, under what circumstances could or should these two principles (equality and non-interference) be set aside? Under what conditions could or should other nation states interfere with the internal domestic situation of a nation state?

Within the beginning of this century, two internal conflicts of nation states included citizens rising up against their governments. The same civil movement – called the Arab Spring - caused the social upheaval in both of these nation states. This movement began in 2011 in the nation state of Tunisia and moved eastward to Egypt and even into Saudi Arabia. Within the actions of this movement, two nations were the subject of external intervention but those interventions by other nation states took radically different forms. In both cases, the question on internal conflict and international humanitarian law were central to the actions of outside nation states.

"The Arab Spring of Arab Awakening is a watershed event in the broader Middle East and North Africa with immense ramifications for the people and governments of the region, as well as the rest of the world."[2] The global community provided a new way to solve these types of problems resulting from the Arab Spring in 1945. The victors of World War II - China, U.S.S.R., France, United Kingdom, and the United States - all ratified the United Nations Charter creating the

Security Council and establishing themselves as permanent members of that council. During the proceeding months and years after the Arab Spring, the United Nations Security Council (UNSC) was used with varying degrees of success to ameliorate the situations created by nation states who were contributors to this movement.

The world's nations saw great devastation during World War II and the attempts to thwart this extensive aggression in many cases were not adequate. "This demonstrated to world powers the need for a collective body of the international community to maintain peace and security. The result was the creation of the United Nations and drafting of the UN charter."[3] Theoretically, nation states do not have the authority to initiate hostilities under the UN construct. Nonetheless, the framework currently in place is used to enable the Security Council, who "would control the use of force in international law."[4] Furthermore, under Article 51, all nations have some right to self-defense without the intervention of the U. N. Security Council. This potential intervention is based on an understanding that this 'self-defense right' is fraught with many different viewpoints of the charter. However, based upon the constructs of international humanitarian law (IHL) and responsibility to protect (R2P) nations can intervene to stop a government from committing atrocities against their citizenry.

**Research Problem**

The future of 21st century conflict will include humanitarian decisions at the international level that will invoke moral authority as justification for regime change of recognized and established nation state governments. International humanitarian law (OHL) has matured to the point where it could be invoked to intervene when a nation state is committing mass genocide and atrocities against its citizenry. This study will explore the implementation of regime change under both the responsibility to protect (R2P) and international humanitarian law (IHL) frameworks.

**Research Purpose**

The research purpose for this study is to identify factors that will help in maintaining international humanitarian law (IHL) in the future with respect to regime change. The influence of the United Nations Security Council, with voting of permanent members on sanctions and military actions, is also considered with respect to international actions on nation state regime change.

**Research Question(s)**

The primary research question is - What factors attributable to the future of international humanitarian law are used as justification for regime change of a recognized and established nation state government? Do these factors make up a moral obligation under international humanitarian law (IHL) for nation states to force regime change?

**Definition of Key Terms**

*Lex Specialis*

The relationship between two bodies of rules. Specifically for this, study the rules surrounding human rights versus the rules concerning international humanitarian law. "There are certain situations in which the law may deal with both the general and the specific. Overall, some believe that the relationship between the two bodies of law is vertical. This means the general is at the bottom and is the default position. The special is a subdivision of the general and is above it."[5]

*International Humanitarian Law (IHL)*

"Traditionally, international law is divided into two major areas of law: the law of peace and the law of war. The laws of war (*ius in bello*), often called Law of Armed Conflict or International Humanitarian Law. IHL covers the conduct of operations and what protection combatants and non-combatants enjoy under certain circumstances "[6]

*Human rights law*

The Universal Declaration of Human Rights adopted by member states of the United Nation in 1948 stated "the highest aspiration of the common people, and the foundation of

freedom, justice and peace. Social progress and better standards of life in larger freedom, including the prevention of barbarous acts which have outraged the conscience of mankind, and, broadly speaking, individual and collective well-being, are considered to depend upon the promotion of universal respect for and observance of human rights."[7]

*Non-international armed conflict*

It is sometimes difficult to determine that a situation within a state constitutes an armed conflict. There are metrics proposed to measure this concept. "First, at what point does the law deem that the violence has crossed that threshold? Second, how are the facts to be accurately determined? Third, of what relevance, if any is the state's refusal to accept that what is occurring is an armed conflict?"[8]

*Operation Odyssey Dawn and Operation Unified Protector*

"Demanding an immediate ceasefire in Libya, including an end to the current attacks against civilians, which was said might constitute 'crimes against humanity', the Security Council imposed a ban on all flights in the country's airspace – a no-fly zone – and tightened sanctions on the Qadhafi regime. Adopting resolution 1973 (2011) by a vote of 10 in favor to not against with five abstentions (Brazil, China, Germany, India, Russian Federation). This resolution resulted in two multinational military operations. The first generally became known as Operation Odyssey Dawn (OOD) and was launched by a coalition of states on a day after Resolution 1973 was adopted.[9]

*Operation Unified Protector*

About a week after OOD began, a second multinational operation was launched that superseded OOD; the NATO-led force Operation United Protector (OUP).[10] This second operation continued the air and maritime no-movement zones in the Resolution 1973 under the military banner of NATO. Some U.S. unique capabilities continued to be utilized; however, NATO was not the overall commander and force provider for this operation.

*Responsibility to Protect (R2P)*

This is a limited to provide protection to civilians experiencing a humanitarian crisis. In the case of Libya "President Obama stated that the decision to intervene under this concept aligned with 2010 National Security Strategy 'US will work both multilaterally and bilaterally to mobilize diplomatic, humanitarian, financial, and in certain instances military to prevent and respond to genocidal and mass atrocities,'"[11]

**Research Methodology**

This study used a qualitative research methodology to examine the impact of using international humanitarian law (IHL) in the two case studies examined (Libya and Syria). The research conforms to the *constructivism* worldview.[12] This philosophical worldview of the research study is based on understanding the social interactions of the nation states in determining the proper use of IHL in solving internal conflict within a member state of the UN. "Inquirers generate or inductively develop a pattern of meaning."[13] The researchers seek to interpret what is found in this research study. As Guba and Lincoln stated - "constructivism is about understanding and becoming informed."[14] This research study seeks to understand the relationship of the UNSC actions in addressing the internal conflicts of member nations.

The research design is multiple case study. The research seeks to use case study based upon "the study of an issue explored through one or more cases within a bounded system."[15] A number of variables exist within each of these two case studies. The researchers attempt to analyze the cases against the actions taken against their governments under the umbrella of IHL and several other factors that influence the outcomes of those actions. "By identifying the context of the case, the researcher helps others who later read the case study report to draw conclusions about the extent to which its findings might be generalizable to other situations."[16]

The sample size of this study is N=2, Libya and Syria. While this is not ideal in terms of case study research, "small-N qualitative research is most often at the forefront of theoretical

development.  Large –N research can be sensitized to the diversity and potential heterogeneity of the cases included in an analysis, large-N research may play a more important part in the advancement of social science theory."[17]  Therefore, this study seeks to only view implementation of theoretical framework and not the total advance of understanding the social science theory of international intervention.

"Descriptive inference remains an important, if under valued, trope within social sciences. Descriptive case study asserts that the case understanding is like or unlike other similar cases.  A descriptive inference does not make any assertions about causal relationships."[18]  This research study fits within this framework and seeks to answer What? And How? Versus Why?

**Case Study #1 – Libya**

*Operation Unified Protector – Libya*

As was pointed out in an article in 2015, "The events of (US-led) Operation ODYSSEY DAWN (OOD) and - more specifically for this paper - subsequent NATO-led Operation UNIFIED PROTECTOR (OUP) provides a glimpse into twenty-first century military operations that include maintaining a coalition, using multiple combatant commands, and quickly built-up forces. It is important to review previous military operations in order to learn and to prepare for opportunities and challenges in the future."[19]  The following will provide a synopsis of the events leading up to the conflict in Libya that started with unrest and protests in Tunisia in December 2010, actions of the United Nations Security Council, and intervention using NATO military forces.[20]

This paper will provide *Background* on this situation in Libya (that actually also had spread across Egypt, Algeria, Morocco, and Sudan), *Indicators* to intervene in early 2011 based on the "threat of widely anticipated massacres in northeastern Libya by the regime of Colonel Muammar Gaddafi"[21], the *Justification* to intervene that resulted in the UN issuing Security Council

Resolution (SCR) 1973, and *Conclusions* concerning the legitimacy of UN sanctions and supporting NATO operations.

*Background*

In 2011, following a number of events within Libya that included - Muammer al-Qaddafi repressing antigovernment protests, killing large numbers of civilians, rebels in Misrata fighting against government forces, and the continued siege of the city of Benghazi - requests were made for the UN to take action.[22]  Besides this revolt in Benghazi that was expanding, this destabilization resulted in a number of civilians fleeing Libya that further weakened the social structures within the state. Since the beginning of the crisis on 16 February 2011, over 803,000 people had fled Libya, out of a population of just 6.1 million.[23]  Why were all these citizens fleeing?

The UN Security Council condemned the actions of the Qaddafi government and on 22 February 2011 released a press statement that "condemned the use of force against civilians, expressed deep regret at the deaths of hundreds of civilians, called on Libya to meet its responsibility to protect civilians and respect international humanitarian law."[24]  In a briefing to the Security Council, the Secretary-General announced that more than one thousand people were killed in violence throughout Libya on 25 February 2011.[25]

The following day, the UN Security Council passed a resolution - "UNSCR 1970 under Chapter VII calling for an immediate end to the violence in Libya."[26]  UNSCR 1970 also requested assets to be frozen, referral of the situation to the International Crimes Commission (ICC), and called for UN member states to assist in humanitarian assistance.[27]  This is only the second time that the Security Council had referred a situation to the ICC; the other was in Darfur.[28]  This action had little or no effect on the conditions within Libya.  Attacks continued against civilians, and the - "disproportionate use of force by government forces continued."[29]  "Italy and Germany agreed to

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provide logistic support for a noncombatant evacuation operation (NEO) or humanitarian assistance (HA), but would not support kinetic operations unless enforced by UN."[30]  What did the United Nations and the international community use as <u>Indicators</u> of human rights violations?

*Indicators*

The United Nations was not the only international organization or agency tracking the situation in Libya during this time.  The Cable News Network (CNN) had reported in August 2011 that – "International powers have accused Gadhafi's regime of committing human rights violations and killing civilians.  Libyan officials have repeatedly accused NATO of killing civilians in airstrikes."[31]  As part of this online article, CNN developed a timeline based on 43 'key points/events' (from 14 February through 24 August 2011) they had reported concerning the conflict.  Five of these 'key points/events' reported by CNN are posted below to show the escalation of attacks on the populace:

"February 18 **-** Libyan state television shows images of men chanting pro-Gadhafi slogans, waving flags and singing around the Libyan leader's limousine as it creeps through Tripoli. <u>In Benghazi, human rights groups and protesters claim they are under attack by pro-government security forces</u>. Among the tens of thousands of protesters who took to the streets, at least 20 people are killed and 200 are wounded, according to medical sources.

February 26 **-** The United Nations Security Council imposes sanctions against Libya, including an arms embargo, asset freeze and travel bans for Gadhafi and his associates. <u>It also refers Gadhafi to the International Criminal Court for alleged crimes against humanity</u>. The opposition movement announces that it has picked a leader: Former Justice Minister Mustafa Abdul Jalil.

March 19 **-** French, British and American military forces begin the first phase of Operation Odyssey Dawn, aimed at enforcing the no-fly zone. More than 110 Tomahawk missiles fired from American and British ships and submarines hit about 20 Libyan air and missile defense targets, U.S.

Vice Adm. William Gortney says at a Pentagon briefing. The operation is meant, "to deny the Libyan regime from using force against its own people," Gortney says.

June 14 - South African President Jacob Zuma lashes out at NATO, arguing that the organization is misusing the United Nations resolution meant to protect civilians "for regime change, political assassinations and foreign military occupation."

August 21 - In an audio-only address on state television, Gadhafi calls on Libyans to rally to the defense of Tripoli, as rebels capture two of his sons. The International Criminal Court says it plans to negotiate the transfer of Saif al-Islam Gadhafi, who is wanted for crimes against humanity, along with his father. Rebels declare Sunday "Day 1," saying "Gadhafi is already finished," while NATO says, the regime is "crumbling." Government spokesman Musa Ibrahim says some 1,300 people are killed and about 5,000 wounded in 12 hours of fighting."[32]

June 2011, the Physicians for Human Rights (PHR) sent an investigative team to the coastal city of Misrata (Libya) shortly after rebel forces liberated it.  This report on Misrata not only details the lives of ordinary citizens during a two-month siege, it also sheds light on Qaddafi's systematic assault.  In-depth interviews with 54 residents provide evidence of war crimes and crimes against humanity that includes murder, torture, rape, forced internment, and disappearance.[33]  The PHR organization also has put together a very extensive listing of events titled – "Libya Conflict Timeline: Appendix A from Witness to War Crimes: Evidence from Misrata, Libya."[34]  This organization listed 36 'key points/events' that took place from 15 February through 22 August 2011.  Five of these well documented, 'key points/events' reported by PHR are posted below to show the escalation of attacks on the populace:

"March 1 - United Nations General Assembly unanimously suspends Libya from Human Rights Council after an estimated 1,000 protestors had been killed by Qaddafi.

April 23 - <u>Save the Children reports that children are being subjected to sexual assault</u> by Qaddafi forces in Libya. The agency, along with other human rights groups, conducts a 13-day investigation into the accusations.

May 6 - <u>Amnesty International claims that Qaddafi forces committed war crimes in the city of Misrata</u> by indiscriminately using cluster bombs, snipers and artillery in heavily populated civilian areas.

June 18 - <u>NATO claims that Qaddafi forces are using mosques and other civilian (facilities and/or large groups of) in order to hide military targets</u>.  Rebels in Misrata claim to possess documents that exhibit war crimes on the part of Qaddafi.

August 10 - <u>The International Committee of the Red Cross (ICRC) issues a report condemning medical neutrality violations in armed conflicts</u>, citing Libya as a prominent example of such violations."[35]

There were numerous indicators of human rights violations and suffering within the civilian populace reported during this Libyan conflict.  To name a few, examples are: disproportionate use of force by pro-government forces, a thousand protestors killed during – in many cases – what started out as peaceful demonstrations, five thousand wounded in 12-hours of fighting between rebel and pro-government forces, and children being subjected to sexual assault.

In addition, the reactions by many international organizations are indicators of suspected human rights violations.  To name a few, examples are: the UN calling on Libya to meet its responsibility to protect civilians and respect international humanitarian law, the ICC focusing on

Qaddafi and his Sons for 'crimes against humanity', and the ICRC condemning 'medical neutrality violations in armed conflicts.'

So what is the international communities' responsibility to intervene in these situations in Libya as briefly described earlier in this paper? "Although states have recently agreed that there is a universal responsibility to undertake humanitarian intervention to protect populations from egregious violations of human rights, it is unclear who exactly in the international community should intervene. One option favored by many, is that intervention should be undertaken by those interveners whose action would be legal according to current international law. This cited article considers this option by assessing the moral importance of an intervener's legal status."[36] So what did the United Nations, with the support of many members within the international community, use as Justification for their intervention?

*Justification*

In December 2001, the International Commission on Intervention and State Sovereignty (ICISS) released Responsibility to Protect (R2P) concept. At the time, and based on previous experiences with earlier humanitarian crises (i.e., NATO operations in Kosovo), this ICISS report encouraged countries to develop a 'compromise' when it came to intervention being acceptable to prevent or stop genocide or mass atrocities. In December 2004, a High-Level panel appointed by the UN Secretary General endorsed an –"emerging norm that there is a collective international responsibility to protect…" This was executable by the UN Security Council – "authorizing military intervention as a last resort in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international law which sovereign Governments have proved powerless or unwilling to prevent."[37] This R2P concept, soon to become a 'norm', was one of the key factors supporting Security Council actions towards the Libyan government.

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Operation Odyssey Dawn began on 19 March 2011, under the provisions of UNSCRs 1970 and 1973. It authorized supporting and participating states to take necessary actions that included:

- Protecting Libyan civilians from violent actions of the Qaddafi government regime, and

- Enforcing an arms embargo, and

- Freezing bank assets of Libyan authorities, and

- Imposing a no-fly zone[38]

UNSCR 1970 was a non-punitive document calling for an end to the violence of the Libyan government against its civilian populace. It urged Libyan authorities to respect human rights, permit the safe passage of humanitarian supplies to this region, and lift restrictions that were focused on the world media. This resolution also initiated the arms embargo, and implemented sanctions on Muammar Gadhafi and other key regime leaders. UNSCR 1973 was a follow-on resolution that shifted the focus of organizations from humanitarian assistance and other non-kinetic actions, to a military intervention by using 'all necessary measures' – primarily executed through an air campaign since it prohibited the use of ground forces.[39] Therefore, what Conclusions can be drawn from this information in regards to the international community conducting 'humanitarian intervention' operations?

*Conclusions*

Based on a paper published through the Strategic Studies Institute at the US Army War College, legal reviews of UNSCR 1973 concluded the OUP forces did not seek the topple of Colonel Qaddafi's regime. The UN did not express as a 'single, united body' that they were exercising their moral authority in so many words. They did state that this resolution was passed to specifically provide the legitimacy – through the internationally recognized UN Security Council – for actions to protect civilians in an internal conflict. This was also viewed by the UN members to conform to the R2P norm that was endorsed by the UN in 2004.[40]

After NATO forces took over the lead of OUP – a humanitarian assistance operation, the language within this UN (i.e., a non-military body) resolution had to be translated into actions approved for international, military forces.  What indicators would be used by NATO forces to show the international community that their actions were effective in protecting the civilian populace in Libya?  Based on their mission objectives, these indicators were proposed:

- All attacks and threats of attack against civilians and civilian-populated areas have ended; and

- The (Qaddafi) regime has verifiably withdrawn to bases all military forces, including snipers, mercenaries, and other paramilitary forces, including from all populated areas they have forcibly entered, occupied, or besieged throughout all of Libya; and

- The regime has permitted immediate, full, safe, and unhindered humanitarian access to all the people in Libya in need of assistance.[41]

Even with many indicators of a major humanitarian crisis, the legitimacy of the NATO-led operations based on 'R2P norm' and the international communities support, the UNSCR did not recognize a legitimate "moral authority" to depose Qaddafi.  The UN Security Council reduced the possibility of this option by specifically stating - "committed forces did not seek to topple Qaddafi's regime" in UNSCR 1973.

In parallel to these sanctioned operations, as early as April 2011 there was a great deal of 'political pressure' to remove Qaddafi from his position of leadership.  This pressure was primarily coming from "The Contact Group" - a merger of twenty-one countries and representatives from the UN, NATO, and several other regional-international organizations.[42]

In the end, the regime of Colonel Qaddafi was toppled, and Libya's liberation was declared on 23 October 2011.  The NATO-led operation probably saved many civilian lives through their intervention.  Moreover, while many countries and organizations expressed their outrage on conditions within Libya, it was probably not the international communities 'moral authority' that deposed Qaddafi's regime.

**Case Study #2 – Syria**

*Background*

The complex political nature of Syria is rooted in religion, history, and regional alliances. Therefore, when the Arab Spring movement manifested itself in this nation the results were vastly different from other nation states in the region. This difference expressed unlike the more peaceful protests of Tunisia and Egypt and more like the predominately-violent Libya. "The Arab Spring of Arab Awakening is a watershed event in the broader Middle East and North Africa region with immense ramifications for the people and government of the region, as well as the rest of the world."[43] There were many causes for the events occurring in Syria. "Public unrest was not an issue of democracy or human rights as much as it was deteriorating socioeconomic conditions, including rising unemployment, and drops in social welfare were all direct results."[44]

Syria is similar to Libya in a number of ways but dissimilar in others. It is acceptable to state that "non-international armed conflict" occurred in both Libya and Syria. However, in Syria, the conflict splintered to other groups. The Syrian government was bolstered by outside nation states - both in terms of vetoing UN Security Council resolutions and providing military assistance - to address these internal conflicts.

*Indicators*

In 2011, Syrian security forces began to clash with protestors in March. Later, President Assad announced a number of conciliatory measure including the release of dozens of political prisoners and dismissing a 48-year-old state of emergency.[45] There are at least four different draft UNSC resolutions developed on Syria for humanitarian reasons that the internal conflict required outside intervention.

These began with the U.N. Security Council resolution, "in October 2011, Russia and China vetoed a sanctions resolution drafted by Europe condemning Syria."[46] The S/2011/612 draft resolution noted the following: "recalling the Syrian Government's primary responsibility to

protect its population and the Secretary-General's call for the Syrian Government to allow unhindered and sustained access for humanitarian aid and humanitarian organizations."[47]

The next year in February of 2012, "Russia and China vetoed a UN Security Council resolution backing an Arab-West peace plan that called for Syrian President Bashar al-Assad to step down. The other 13 UN Security Council members voted in favor of the resolution." [48] On March 1st, Russia and China both voted against a draft resolution of the UN Human Rights Council condemning crimes in Syria.[49] China and Russia continued to block all efforts by the UNSC to intervene in Syria; however, they did endorse a non-binding peace plan drafted by UN envoy Kofi Annan. This was after an earlier, more stringent draft of the plan was modified.[50] The UN Security Council draft S/2012/77 language included - "…condemns the continued widespread and gross violations of human rights and fundamental freedoms by the Syrian authorities. Demands that the Syrian government immediately put an end to all human rights violations and attacks against those exercising their rights to freedom of expression, peaceful assembly and association, protect its population."[51]

"On 19 July 2012, China and Russia vetoed a British-sponsored UN Security Council resolution that would have punished the Syrian government with economic sanctions for failing to carry out a plan agreed to in March. Eleven Security Council members, including the other three permanent members—Britain, France, and the United States—voted for the resolution.[52] Throughout the summer of 2012, Free Syria forces continue to target government targets and seize the city of Aleppo. Fires engulfed Aleppo later in the fall and destroyed much of the city.

Later in November of 2012, the National Coalition for Syrian Revolutionary and Opposition formed in Qatar. These groups excluded Islamic militias. The Arab League stops short of fully recognizing this opposition group.[53] In December 2012, a number of other nation states acknowledged the National Coalition as the legitimate representative of Syrian people.[54] These

nations include the US, UK, France, Turkey and Gulf States. By this time, millions of citizens are displaced in Syria with many seeking refuge in camps located in Jordan, Turkey, and Lebanon.

Throughout 2013, Islamists began to rise and coalesce into still another force fighting government and other factions within Syria. Government and allied Lebanese Hezbollah forces recapture the town of Qusair—strategically important between Homs and the Lebanese border.[55] By November, the UN weapons inspectors concluded that chemical weapons were used; however, who conducted this chemical attack was not explicitly reported.

In the beginning of 2014, the UN-brokered peace talks in Geneva failed, largely because Syrian authorities refused to discuss a transitional government.[56] By the middle of 2014, the Islamic Caliphate or Islamic State (IS) declared a new nation state in the territory near Aleppo - all the way to eastern Iraq province of Diyala. By September of 2014, five nations - including the United States and Saudi Arabia - launched air strikes against the IS.[57] Throughout the first half of 2015, IS made gains against Turkey and Kurd forces to the North and East. IS took over the ancient city of Palmyra in central Syria, raising concerns that they may destroy historic artifacts and irreplaceable architectural structures including a pre-Muslim World Heritage site.[58]

By the end of 2015, Assad asked for Russia to assist in fighting IS. In September 2015, Russia launched attacks against IS targets. However, many Syrian opposition forces and Western powers concluded that many of the Russian targets are not IS but Syrian anti-Assad forces.[59] By December, "Britain joins US-led bombing raids against Islamic State in wake of Paris suicide bombing attacks. Syrian Army allows rebels to evacuate remaining area of Homs, returning Syria's third-largest city to government control after four years."[60]

A US-Russian partial ceasefire was brokered between government and major rebel forces that came into effect in February 2016. This is after major gains are made by pro-government forces striving to capture Aleppo. Islamic State not included in ceasefire agreement.[61] Attacks continue from western powers against IS targets within Syria and Iraq.

*Justification*

Within international humanitarian law (IHL), the requirement occurs to intervene into Syria. "Proponents of action in Syria are again arguing that there exists a right to intervene within the territory of another state (with that state's consent, and without [Security Council] authorization) in order to prevent certain large scale atrocities or deprivations."[62] The nature of IHL is such that throughout the years since World War II, actions and inaction by the UN Security Council demonstrated that - at least in most cases - some form of IHL is within actions of intervention.

Russia and China, both permanent members of the U.N. Security Council, "maintain a rather consistent position against U.N. resolutions allowing foreign intervention in the business of sovereign nations."[63] With respect to Libya, "it appears Russia and China felt confident no veto was necessary as regime change was not a specified goal of UNSCR 1973."[64] This is one major difference in obtaining the approval of Russia and China to vote or abstain from voting for a UNSCR against Syria and President Assad.

The security situation in Syria began to deteriorate after the Arab Spring and continues to this day. Justification to intervene - as moral authority inside the IHL framework - was evident once Assad began fighting internal forces, using chemical weapons, and committing other atrocities. As many as 60,000 citizens were killed by November 2012 according to the U.N. Office of the High Commission for Human Rights.[65]

*Conclusions*

Syria as a case study of international intervention is unique for a number of reasons. The U.N. Security Council could not pass military options based upon China and Russia vetoes. However, that is not unique. The official government of Syria is battling a number of internal forces; during this time of instability - IS came into being. This is unique to this case. IS is taking advantage of the security situation in both Syria and Iraq to control portions of both nation states.

Aside from Syrian governmental forces, IS factions, and Russian assistance, there were also Free Syrian forces, Al Qaeda affiliates, and other western powers all fighting within the Syrian borders. There is another other unique aspect of this case. The influence of Turkey, Kurd forces, Hamas, and Hezbollah are also involved with the Syrian crisis. All of these forces, nation states, and groups make intervention into Syria a very unique situation when considering implementing IHL.

With the current implementation of international humanitarian law, the U.N. Security Council is the authority under which IHL is exercised. "Yet the simple and often frustrating truth is that the Security Council veto system purposefully allows for a permanent member to unilaterally block international action even if it may mean a state commits mass atrocity crimes against their own citizens."[66] Syria is different from Libya due to this premise being exercised by both the Russian Federation and China - numerous times resulting in blocking military action and economic sanctions by the U.N. Security Council. In the case of China, their "experience concerning Libya in 2011 had a direct impact on its actions regarding Syria."[67] "Beijing's perception of gaining nothing while losing everything in Libya, after abstaining on UNSCR 1973, significantly contributed to its decision to veto the Syria resolution."[68]

**Analysis of Case Studies**

The two case studies within this study are Libya and Syria. Specifically addressed in this study is how these nation states were treated by the United States Security Council after the Arab Spring pushed for regime change. Were these actions expressions of International Humanitarian Law (IHL) or Responsibility to Protect (R2P)? Did the actions continue with violence against the nation state citizenry? Do IHL and R2P provide the moral authority for regime change in future conflicts?

| Factors Used for Analysis | Case Study #1 Libya | Case Study #2 Syria |
|---|---|---|
| UN Actions (UNSCR) Mandate | + | - |
| Expression of International Human Law (IHL) | - | + |
| Expression of Responsibility to Protect (R2P) | + | - |
| Violence against citizenry by the government | + | + |
| End of internal violence | - | - |
|  |  |  |

Table 1 Analysis of Case Study Factors

Note: + Positive outcome of this factor in relation to the case study evaluated
- Negative outcome of this factor in relation to the case study evaluated
No outcome marking means there is no positive or negative outcome observed with this factor in relation to the cast study evaluated.

*UN Actions (UNSCR) Mandate*

First, the question of an international mandate, usually in the form of a U.N. Security Council Resolution, is how situations are engaged in order to end internal violence of a nation state. "Resolution 1973, adopted on March 17, 2011 by a 10-0-5 vote (China, Russia, Brazil, India, and Germany abstained), and authorized the use all necessary measures to protect civilians and civilian-populated areas."[69]  In this case, Russia and China - the two permanent members - decided not to engage with their votes in the Libya situation.  This allowed the US-led coalition to implement UNSCR 1973 and enforce it with military assets.  In the case of Syria, UN Security Council action was blocked primarily by Russia and China.  Part of that came because of what happened in Libya with regime change, and part of that were the economic and political ties that Russia and China

fostered with President Assad's government.  In the case of Libya, this factor was a positive in

taking action and a negative based upon the lack of support for UN Security Council actions against

Syria.  The question in the future may be whether a situation becomes so brutal - with multiple

atrocities being committed - that nation states act without a UNSCR mandate.


*International Humanitarian Law (IHL)*

Under international humanitarian law, "an occupying power has the responsibility to protect

not just citizens and residents on its own territory, but all people living under its occupation."[70]

Within the Libyan case study, IHL was not used; however, in the case of Syria - IHL was implied

based on many members supporting a variety of UN Security Council actions (less Russia and

China).  Unfortunately the UN Security Council was not able to pass any resolutions to enforce this

principle based upon the vetoes from China and Russia.


*Responsibility to Protect (R2P)*

Based upon previous failures of Rwanda and Srebrenica, the international community began

discussing the principle that - "state sovereignty could not act as an absolute shield from military

intervention when mass atrocities were taking place."[71]  A compromise was struck in 2005 with the

World Summit Outcome Document.  The U.N. Security Council later expressed the principles of

this document in Resolution 1674.  "Humanitarian intervention unlike R2P, thus allows for a

unilateral use of military force based solely upon the moral imperative to stop an ongoing crisis."[72]

In the case of Libya, President Obama and the United States used R2P as the legal premise for

action to obligate states to intervene.  However, there was no mention of regime change   Therefore,

within the confines of the situation in Libya, R2P was invoked and used.  In that respect, R2P was a

positive for intervening in Libya.  While in Syria, R2P was not used and may not have necessarily

assisted in obtaining a more peaceful status today due to the complexity and fluidity of the internal

situation.  Therefore, the concept of R2P - by its 'non-use' - is a negative factor in the case of Syria.

"Libya proved to be almost a textbook illustration justifying R2P principles, but its

implementation also demonstrated the need to (build, publish, and agree upon) legitimacy criteria to

guide decisions on authorizing and overseeing international military intervention.  Although

successful, the Libyan operation proved particularly controversial among the emerging powers, and

the price of exceeding the mandate there has been paid by Syrians."[73]  However, the use of R2P in

some theorist's consideration is not valid.  Ramesh Thakur stated, "Interventions cannot become the

pretext for imposing external political preferences (a.k.a. regime change)."[74]


*Violence against citizenry by the government*

In both cases the government in power, Ghaddafi and Assad, both implemented systematic

violence against their citizens.  In both cases, this violence was recognized by the international

community.  In addition, in both cases the violence did provide the catalyst for action in both Libya

and Syria.  Unfortunately, as a factor, violence against citizenry did cause the entire international

community to act on behalf of the citizens in both cases.  In fact, in the case of Libya it may be

argued that acting and getting rid of the Ghaddafi government caused the national security situation

to become even less safe and more fractured than when he was in power.


*End of internal violence*

In both Libya and Syria, violence against the citizens did not end.  In the case of Libya, the

violence of the opposition forces degraded and now even IS has camps within Libya.   Therefore,

when IHL or R2P are implemented in the future, the end state of such actions should be taken into

consideration.  The security situation in Libya in terms of internal violence is much worse than at

the end of Quaddafi's rule.  In the case of Syria, the end of internal violence did not take place.  In

fact, the security environment provided an opportunity for the Islamic State to form and impose still another force in both Syria and Iraq that must be dealt with by the international community.

**Findings**

China gained much from its veto of Syrian U.N. Security Council resolutions. "China's veto saved Moscow from international isolation – the joint veto was a powerful demonstration of Sino-Russia diplomatic cooperation – a favor that Russia now has to return."[75] This provides a quid pro quo situation with Russia to China. This also may provide either opportunities or challenges in the future concerning seeking a joint position from Russia and China in international politics, or possible intervention in crisis situations like Libya and Syria in the future.

In the most recent stages of the Syria conflict, "Russia's and China's apparent willingness recently to distance themselves from President al-Assad may signal a transformation in the international community, garnering the support necessary to convince al-Assad to leave office peacefully."[76] This may or may not play out in future conflicts but should be a positive sign that other permanent UN Security Council members can sway Russia and China in supporting end states that do not leave depots and tyrants in power.

**Conclusions**

The future of global politics will continue to become more complex, and conflicts may be reduced to oppression with a limited ability to obtain basic needs like food and water for the populace. The UNSCR is an imperfect instrument to enforce international humanitarian law, but the UNSC is the best organization to coordinate and implement this action for now. However, future conflicts may force the global community to reevaluate the *lex specialis* between the application of human rights law and international humanitarian law (IHL). "It is not clear whether this full expression *lex specialis derogate legi generali* means that the special prevails over the

general, or whether it means that the former actually displaces the latter."[77] A human rights body in the future will have to address these issues "in order to determine whether IHL is or is not applicable."[78]

"China and Russia remain resolutely opposed to any resolution that would set off a chain of events leading to a '1973-type authorization' for outside military operations in Syria."[79] They simply used the system in place – the UN Security Council - to impose their will on the way international humanitarian law is expressed in Syria. In particular, "China's experience concerning Libya in 2011 had a direct impact on its actions regarding Syria this time around."[80]

Another factor that led to China's actions in Syria is that, "the Chinese leadership has no doubt resisted foreign interventions in the internal affairs of sovereign nations—especially when led by the United States and the West in general—out of a concern that such intervention is often motivated by a desire for regime change."[81] So not only did China learn from its abstaining experience in the Libya UNSC resolution vote, but it continued to express its national opinion that regime change as an outcome of intervention is not something they need to support. This is particularly true in other nations like the Democratic Republic of Congo and Sudan, where internal actions were perceived as civil war. In these instances, China believes that the UN should not intervene in these internal conflicts.[82]

"Libya was the first international intervention inspired by the doctrine of R2P."[83] That does not mean that it will be the last. However, as international conflicts become more complex the moral authority to intervene and conduct regime change will also become more complex. While governments will continue to oppress their citizens, the reactions by those governments will also continue to determine whether international intervention is warranted or required. In the future should moral authority be used in either IHL or R2P the end state of nation state should also be considered if regime change takes place.

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