

From Libya to Syria: The Rise and Fall of Humanitarian Intervention?

by

Fusun Türkmen, Professor of International Relations

Galatasaray University, Istanbul

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“The reasonable man adapts himself to the world. The unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man”.

George Bernard Shaw

Introduction

Soon after the waves of the Arab Spring reached the coasts of Libya and its people rose against the 40-year old dictatorship of Col. Muammar Qaddafi, a mass homicide campaign was immediately launched by the “Brotherly Leader and Guide of the Revolution” as he had himself called. On February 22, 2011, he announced that he would “purge Libya inch by inch, house by house, household by household, alley by alley, and individual by individual until I purify this land, “ calling the demonstrators “rats” and “cockroaches” to be wiped out.¹ As his forces targeted the rebel stronghold of Benghazi, he vowed to “show no mercy”.² According to Obama administration sources, about 100,000 would have likely died without international intervention, either from direct military action or indirectly as government forces cut off food, water, and other basic necessities.³ The gravity of the threat led to UNSC Resolution 1973 that paved the way for a humanitarian intervention on the basis of “grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties”⁴, which at that time, had barely exceeded 2,000, according to UN figures.⁵

In Syria, where uprisings started almost simultaneously against another 40-year old dictatorship, led by the Assad dynasty, the figures are -as of May 2014 : over 162,000 dead, out of which approximately 54, 000 are civilians, including more than 8,000 are children and 5,000, women.⁶ It has been established that chemical weapons have been used against the population. And after five UNSC resolutions,

¹ “Libya: The Brutal Truth”, *Times*, (London), February 23, 2011.

² “We Are Coming...and There’ll be No Mercy”, *Mirror*, March 18, 2011.

³ Laura Rosen, “Averting Srebrenica on Steroids”, *Envoy*, March 23, 2011.

⁴ UN Security Council Resolution 1973 (2011), adopted at its 6498th meeting, 17 March 2011.

⁵ “Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya”, United Nations Human Rights Council, June 1, 2011.

⁶ As provided by the Britain-based Syrian Observatory for Human Rights, <http://syriahr.com>, accessed on 25 May, 2014.

five UNSC Presidential Statements, eight UN Secretary General Reports, 24 UNSC letters, five UNSC special meetings, five General Assembly Resolutions, five UN Human Rights Council Resolutions and three Reports, all underlining “the unacceptable and escalating level of violence...expressing grave alarm at the significant and rapid deterioration of the humanitarian situation in Syria...”⁷, there is still no likelihood of humanitarian intervention on sight.

Why?

From a point where the world had seemed to be on the edge of a new era as one of the fastest resolutions was passed in the history of the Security Council with a view to militarily protect human rights, how did things end up in the obstinate passivity of the international community in Syria, which reminds us of the worst moments of the Cold War era?

Although the answer that first comes to our minds in all simplicity is the “Russian-Chinese veto”, this obviously does not reflect the entire picture. As we will try to demonstrate all along this paper, the various factors that have determined the intervention in Libya and the non-intervention in Syria, involve as much the geopolitical as the economic, the legal, the domestic, and the timing of the operations. The exact formulation of the relevant UN resolutions and what we call the “rebound effect”, that is the specific impact of the previous intervention, should also be taken into consideration as in every case. In order to be able to draw the appropriate conclusions from these factors with regard to humanitarian intervention at present and for the future, it seems necessary to first tackle the past and recall how the Just War theory has made it to our times.

From Just War to the “Responsibility to Protect”

The concept of humanitarian intervention is not new in itself. The issue was first tackled by the Christian theologians in the 16th century, through the idea of Just War, with the following guidelines: to end an unfair situation, to pursue just

⁷ UN Security Council Resolution 2139 (2014), adopted at its 7116th meeting on 22 February 2014.

objectives, and to conduct the intervention through a legitimate authority.⁸ The writings of Grotius and von Puffendorf followed, positing the main equation that remains unsettled since the 17th century: why wage a war to save foreigners from the oppression of their own rulers? Vattel's 1758 treatise recognized, on the other hand, that every foreign power had the right to support an oppressed people asking for its help.⁹ It is on this basis that the first doctrine of humanitarian assistance was elaborated in the 19th century, illustrated by the protection of non-Muslim minorities from Ottoman power and also against China during the Boxer rebellion of 1900. The main difference between humanitarian assistance and the more recent concept of humanitarian intervention is that the latter implies military/logistic support in favor of this assistance. Holzgrefe defines it as

The threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens without the permission of the state within whose territory force is applied.¹⁰

The modern concept of humanitarian intervention was fathered by Bernard Kouchner, who launched a crusade in favor of what was to become known as "*le droit d'ingérence*" upon his return from Africa in 1967 after witnessing the atrocities perpetrated against the Ibo minority by Nigerian troops during the civil war over the secession of Biafra from Nigeria. While he subsequently founded a humanitarian organization called Doctors without Borders, some preliminary work started at the International Law Association in 1970 with a view to determine a set of criteria for the justification of humanitarian intervention. The 1980s was marked by the efforts of the French government under President François Mitterrand –and of which Kouchner was part- to have international legitimacy conferred to this concept. These efforts culminated in the UN General Assembly Resolution 43/131 passed on 8 December 1988 with the initiative of the French government, and stating that in cases of emergency when a state is unable to assist its population, other states and/or organizations would be allowed to do so without hindrance.¹¹ It would take another four years before humanitarian intervention crossed the border of the Security

⁸ Philippe Moreau Defarges, "Souveraineté et ingérence", RAMSES 2001, Paris, IFRI, 2001, p. 177.

⁹ In *Le droit des gens ou principes de la loi naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains*.

¹⁰ See J. L. Holzgrefe, "The Humanitarian Intervention Debate" in J.L. Holzgrefe and Robert O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge, Cambridge University Press, 2003.

¹¹ Since then France has maintained its traditional attitude in support of humanitarian intervention throughout various occasions and governments.

Council with Resolution 688 that allowed an international intervention to protect Iraqi Kurds from the ire of Saddam Hussein, in the wake of the Gulf War.¹² This was a landmark case indicating the emergence of a new customary rule in international law and which could not have materialized without the end of the Cold War, freeing the system from bloc politics and paving the way for the universalization of democratic/humanitarian values.¹³ But at the same time, it soon became clear that the removal of this strait-jacket would not be a smooth process, as many suppressed conflicts of ethno-confessional order have exploded, constituting a litmus-test for the practice of humanitarian intervention.

Faltering steps in Africa and the Balkans

The initial interventions that can be labeled as humanitarian in the 1990s were undertaken in Somalia, and then Rwanda. Following the outbreak of civil war, famine and the collapse of the state in Somalia, the first UN interference through an insufficient number of peacekeeping forces -UNOSOM I- in charge of distributing humanitarian relief, failed through the resistance of warlords. As the US administration decided to contribute 30,000 troops to facilitate the task, the UN Security Council unanimously voted Resolution 794 on 3 December 1992, authorizing the Secretary General and the member states “to use all necessary means...to establish a secure environment for humanitarian relief operations..” thus invoking Chapter VII of the UN Charter for an intervention to be led explicitly for humanitarian reasons. But the subsequent Operation Restore Hope led by the Unified Task Force (UNITAF) under US leadership as well as UNOSOM II that replaced it were met by harsh resistance on the field until US Rangers were literally massacred by rebel forces. By February 1995, all US and UN forces had disastrously withdrawn from Somalia. This failure was based on various factors- i.e. the ambiguity of the rules of engagement of UN peacekeeping forces ill-prepared for this new type of intervention, lack of dialogue with and consideration for the locals, the subjective management of the crisis by UN Secretary General Boutros Ghali, and the pressure

¹² UN Security Council Resolution 688 (1991) adopted at its 2982nd meeting on 5 April, 1991.

¹³ Although throughout the Cold War years, certain military interventions have led to a humanitarian outcome, while this was neither invoked by the intervenors nor recognized by the international community as such. Thus, India’s intervention in East Pakistan in 1971, Vietnam’s intervention in Cambodia in 1979, and Tanzania’s use of force against Uganda in the same year are examples of what might be called “indirect” humanitarian intervention where the intention was not humanitarian but in the end, the consequence was.

of the US public opinion. The UN's Somalian fiasco would also have a negative "rebound effect" on the subsequent crisis in Rwanda.

Indeed, the mass extermination of the Tutsi population by the Hutu population of Rwanda in the spring of 1994 and at odds with each other since the early days of Belgian colonization, was not recognized by the international community as genocide, since this would have constituted a valid argument for humanitarian intervention. As the Security Council looked away, 800,000 people were massacred in three weeks, despite numerous warnings from the commander of UNAMIR, the UN assistance mission deployed in Rwanda since 1992 when first signs of these premeditated massacres were apprehended. Under strong US and British pressure, the UNSC made the fatal mistake of reducing the effectives of UNAMIR further on 29 April 1994 and by the time it reversed this decision through Resolution 918, the genocide was well under way. But as the US was openly against leading UNAMIR II after the trauma it had been through in Somalia, the French government asked for Council approval to mount a humanitarian mission in Rwanda. Although Operation Turquoise, launched on the basis of Resolution 929, is believed to have saved a few thousand lives, it would nonetheless be considered by some as a move of pure *Realpolitik*, limited in scope and destined to highlight Mitterrand's African policy, compensating for long time French support for the Hutus. The best and bitterest conclusion on Rwanda was to be drawn by President Clinton in 1998, during his official visit to this country: "The international community... must bear its share of responsibility for this tragedy... We did not call these crimes by their rightful name: genocide..."¹⁴. It was no coincidence that his administration was the main protagonist of the NATO intervention that put an end to genocide in Bosnia.

Triggered in 1992 by the proclamation of the Bosnian Serb republic within the borders of Bosnia, the civil war has led to "the worst abuses of human rights in Europe since the end of the Second World War".¹⁵ Supported by the Serbian government in Belgrade, the Serbs of Bosnia have targeted the civilian Muslim population of Bosnia from the very beginning, undertaking an ethnic cleansing despite the presence of the UN Protection Force UNPROFOR created by Resolution

¹⁴ "The Clinton Apology", 25 March 1998, www.history.com.

¹⁵ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford, Oxford University Press, 2000, p.251.

770 in August 1992 to deliver food and relief to the besieged Bosnians. While the French and the British objected to the American idea of air strikes fearing for the safety of their ground personnel, the Clinton administration ruled out sending troops for combat, apprehending the reaction of the US public opinion. This gave the Serbs *carte blanche* to continue their sinister venture until the spring of 1994 when it became obvious that the UN could not cope with the situation and NATO air raids were launched against the Serbs. Although this could not prevent the Srebrenica massacre of July 1995, leading to the killing of 8.000 civilian, unarmed Bosnian men once women and children had been evacuated from this “safe area”, it proved effective in the long run and influenced the course of the Dayton accords, putting an end to this painful chapter in recent European history. After 250,000 dead and 2 million refugees, Bosnia proved that Europe was still a long way from undertaking an effective security policy, that the UN was still hostage to its post-WWII structure, and that America could still represent Wilsonianism. The “rebound effect” of Bosnia on the subsequent crisis in Kosovo would be positive -unlike the African example- as NATO would intervene before the Serbs undertook a similar ethnic cleansing against their historic adversaries the Kosovo Albanians who were protesting against the Dayton accords that did not include their rights. Repentance over Bosnia, indignation over human drama revisited, and concern for credibility were the primary motives behind NATO’s 1999 intervention in Kosovo. The implementation, not being based on an explicit UNSC resolution and creating some collateral damage, would be criticized. However, at the end of the day, an international consensus around the NATO intervention as “illegal but legitimate” was to be reached.

The birth of a concept

A decade of reverses for the UN had, in the meantime, gradually destroyed the earlier optimism about prospects for peace-building and effective protection of human rights. This prompted Kofi Annan, the UN Secretary General, to commission two reports, providing new guidelines for peace operations: the so-called Brahimi Report of August 2000, and the report of the Independent Commission on Intervention and State Sovereignty, in December 2001. The Brahimi Report addressed many dysfunctions in the implementation of UN peacekeeping and security operations, including lack of coordination, analysis and protection of civilians. Moreover, it gave expression to the harshest criticism ever of the UN’s tradition of

absolute neutrality: "...impartiality does not mean equal treatment of all parties in all cases for all time, which can amount to a policy of appeasement; where there are obvious aggressors and victims...The UN's continued equal treatment of all sides can in the best case result in ineffectiveness and in the worst may amount to complicity with evil".¹⁶

Appointed by the General Assembly, the Independent Commission on Intervention and State Sovereignty (ICISS), was given the considerable task of formulating an adequate doctrine of humanitarian intervention. In December 2001, it released a report entitled "The Responsibility to Protect" (R2P), shifting the paradigm of the "right to intervention" into that of a responsibility. Arguing that "it is appropriate for states to take coercive –and in particular military- action, against another state for the purpose of protecting people at risk in that other state", the report identified the basic criteria for the implementation of humanitarian action.¹⁷ The first is the "just cause" threshold, that is, the necessity of an extraordinary situation involving either a large-scale loss of life or large-scale ethnic cleansing, to justify military intervention. Human rights violations falling short of these –discrimination, oppression, overthrow of elected governments etc.- are not considered part of the criteria. Follows the set of "precautionary principles," including the right intention, last resort, proportional means and reasonable prospects. According to the first one, the primary purpose of the intervention should be to alleviate or halt human suffering. The second principle envisages military intervention once that all peaceful means have been exhausted. Proportional means pertains to the proportionality between the scale and intensity of the intervention and the magnitude of the provocation. Finally, the intervention should have a reasonable prospect of success and its consequences should not be worse than those of inaction.

Another controversial principle tackled by the report is that of "right authority". Collective intervention authorized by the UN is the only kind that is considered legitimate. Consequently, UN Security Council authorization should, in all cases, be

¹⁶ United Nations, "Report of the Panel on United Nations Peace Operations", (referred to as Brahimi Report, after the name of the main drafter), 21 August 2001, A/55/305-S/2000/809, Part II, E.50 and p.ix. Most of its recommendations were later incorporated in UNSC Resolution 1327 dated 13 November 2000.

¹⁷ International Commission on Intervention and State Sovereignty (ICISS), Gareth Evans and Mohammed Sahnoun (co-chairs), "The Responsibility to Protect", Ottawa, International Development Research Center, December 2001. Conducted under the auspices of the Canadian government, the report was also published in *Foreign Affairs*, Vol. 81, No.6, November/December 2002, pp. 99-110.

sought prior to any military intervention.¹⁸ However, in case the Security Council – given the problems stemming from its structure- is non-committal as in Kosovo, concerted action by a group of states or a regional organization can be envisaged, provided that the above criteria are fulfilled.

Although endowed with humanitarian arguments , the two US-led interventions following 9/11 in Afghanistan and Iraq do not exactly fulfill the criteria of humanitarian intervention as determined by the UN. Moreover, they pose a problem of credibility from the humanitarian perspective: although the Taliban and Saddam regimes had been persecuting their respective peoples for decades, the plight of the Afghans and Iraqis was not considered a humanitarian emergency – first criterion for an intervention- until the US itself was hit by terrorism.¹⁹

Humanitarian intervention was therefore not going to be an issue until the Arab Spring broke out with its well-known consequences in Libya and Syria.

From Libya to Syria: zenith and nadir of R2P

The apocalyptic nature of the 9/11 terrorist attacks has not only upset the international political order and the prevailing norms of international law, but more particularly the apparent stability of the Arab world. Although still difficult to justify, the almost decade-long US invasion of Iraq that resulted from the post-9/11 momentum has, on the other hand, served as a precedent for the subsequent toppling of Arab dictators. Once Saddam was gone, anybody could go. And as the anti-American reaction to the war somewhat dissipated, the deep-seated resentment of the peoples against their respective regimes began to emerge. Anger at the brutality of the security apparatus, unemployment, inflation and corruption soon erupted across North Africa and the Middle East. What would become known as the Arab Spring was triggered on 18 December 2010 in the Tunisian town of Sidi Bouzid, following the street vendor Mohammed Bouazizi's self-immolation in protest of police

¹⁸ *Foreign Affairs*, p. 106.

¹⁹ Füsün Türkmen, "Between Ethics and Politics: The Dilemma of Humanitarian Intervention", paper presented at the 19th IPSA World Congress, 29 June-4 July 2003, Durban, South Africa, p. 18.

corruption and ill treatment. The movement would reach Libya and Syria almost simultaneously by 2011.

A)In Qadhafi's Libya

Once an Ottoman province and then an Italian colony, Libya had achieved full independence in 1951 and following a brief experience with monarchy had fallen under the grip of Col. Muammar Qadhafi with the military coup of 1969. This was the beginning of a highly authoritarian era based on the precepts of Qadhafi's Green Book (modeled after Mao's Little Red Book) combining Islamic socialism and Arab nationalism. Throughout the 1970s, Qadhafi, along with a staunchly anti-Western foreign policy under the banner of anti-imperialism, used oil revenues to promote his ideology outside Libya, supporting subversive and terrorist activities. This has led to UN sanctions in 1992, which isolated the country politically and economically until 2003 as they were lifted following Libyan acceptance of responsibility and agreement to claimant compensation. The subsequent overture of the Tripoli regime to the West- facilitated by the oil asset despite its leader's lack of international legitimacy and prestige- was not, however, accompanied by liberalization inside the country.

The uprising in Libya started on 15 February 2011 when a human rights activist was arrested in Benghazi. Demonstrations quickly spread in other major cities as the protesters were met with increasing force. While Qadhafi was openly threatening his people by massacre, the government lost control of the eastern part of the country and about half of the west, from mid-February to early March 2011. In response, began a mass killing campaign relying on tanks, military aircraft and other heavy weapons for shelling and bombing urban areas, and on soldiers going from house to house, killing their inhabitants.²⁰ On the other hand, a large number of government officials chose to break publicly with the regime, as diplomats posted abroad, government ministers, and most important, significant parts of the armed and security forces announced that they would not support the brutal policies of the regime and rather ally with the insurgents. Moreover, by late February 2011, several important tribes began to abandon publicly the Tripoli regime. Among them was

²⁰ Robert A. Pape, "When Duty Calls: A Pragmatic Standard of Humanitarian Intervention", *International Security*, Vol.37, No.1 (Summer 2012), p.62.

Libya's largest tribe, the Warfalla, with more than a million members who live mostly in the West.²¹

Towards intervention

The proportions of the crisis first prompted the Security Council to pass unanimously an initial resolution including an arms embargo, a travel ban for members of the regime and the freezing of several assets of Libya and the Qadhafi family, referring Libya's crackdown on rebels to the International Criminal Court.²² In the following weeks, several other international organizations like the European Union, the African Union, the League of Arab States, the Organization of the Islamic Conference and the Gulf Cooperation Council condemned the behavior and the actions of the Qadhafi regime and asked for international measures like a non-fly zone and summoned Tripoli to stop the violence.²³ But as Qadhafi's threats intensified, the international community, independent experts and the media realized that unless there was a foreign military intervention, a grand scale massacre would follow.

March 2011 was marked by high-level consultations between NATO and EU members while the National Transitional Council of Libya- a *de facto* government proclaimed on 27 February- declared itself in a letter addressed to the UN General Assembly as "the sole representative of all Libya and called for the international community to protect the Libyan people without any direct military intervention on Libyan soil".²⁴ As to the international community itself, it was divided over the policy on Libya, as Germany declared to be "fundamentally skeptical" towards a military action whereas France and Great Britain envisaged air strikes, while the US remained non-committal until after Secretary of State Hillary Clinton's informal meeting with Mahmoud Jibril, head of the NTC, during the G-8 meeting in Paris on 14-15 March. According to Secretary Clinton, it was rather the support of the Arab League for a non-fly zone that pushed the US to support such a move. By calling on the international community to secure a non-fly zone over Libya, the Arab League

²¹ Ibid., p. 66.

²² UN Security Council Resolution 1970(2011), adopted at its 6491st meeting on 26 February 2011.

²³ Stefan Hasler, "Explaining Humanitarian Intervention in Libya and Non-Intervention in Syria", unpublished Master's thesis presented at Naval Postgraduate School, Monterey, California, June 2012, , pp. 62-63.

²⁴ Emily O'Brien and Andrew Sinclair, *The Libyan War: A Diplomatic History*, Center on International Cooperation, NYU, August 2011, quoted by *ibid.*, p. 63.

had, for the first time, voted to sanction a fellow Arab state.²⁵ In the meantime, the EU had proclaimed that in order to protect the civilian population, Member States would examine all necessary options, provided that there was a demonstrable need, a clear legal basis and support from the region.²⁶ The US, France and Great Britain decided, on 16 March, to table a UNSC resolution with a view to allow military intervention. Qadhafi's subsequent radio speech warning that he would have "no mercy and no pity" on the rebels was to be used as a final justification for UNSC Resolution 1973 passed only hours later, stating:²⁷

"...Acting under Chapter VII of the Charter of the United Nations... (the UNSC) authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements...to take all necessary measures...to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya..".²⁸

The resolution passed with ten votes in favor and five abstentions including those of Germany, Brazil, Russia, China and India. As long as there was no veto opposed to it, it was a victory not only for the people of Libya, but also for the responsibility to protect (R2P) concept itself, unequivocally implemented for the first time by the UN acting with the primary objective of protecting civilians. According to some experts, this indeed "may well go down in UN history as one of the more momentous occasions, not only for the UN but also the contemporary development of international law..".²⁹

The first strikes conducted by France against Libyan armed forces began on March 19. While the US did not want to get involved in the leadership of the military operations for international and domestic political reasons, NATO declared at first that it would not lead the operations. This was as much prompted by the fact that some of its members (like Germany, and for a while, Turkey) were openly against it,

²⁵ Jillian M. Siskind, President, Canadian Lawyers for International Human Rights (CLAHR), "Humanitarian Intervention, R2P and the case of Libya", Keynote Address Presented to International Relations Society Annual Conference, March 2011.

²⁶ European Council, *Declaration*, Extraordinary European Council, 11 March 2011, EUCO 7/1/11 REV 1, published 20 April 2011.

²⁷ Stefan Hasler, *op.cit.*, p. 64.

²⁸ UN Security Council Resolution 1973 (2011), adopted at its 6498th meeting on 17 March 2011.

²⁹ Donald R. Rothwell and Hitoshi Nasu, "UN Security Council resolutions on Libya and the significance of R2P", *East Asia Forum*, 8 April 2011.

as the idea of getting involved in yet another Muslim country –after Afghanistan- may cause new resentments. But as the attitude of the members gradually mellowed down, NATO first took over the responsibility of the no-fly zone and then on 24 March, the full implementation of Resolution 1973 through the mission “Unified Protector”, effective on 1st April 2011. More than seven months of fighting including 26.281 sorties flown by the coalition forces under NATO command on Libya led to the declaration of victory by the NTC and NATO officially ended its mission on 31st October 2011.³⁰ Clearly, the success of the Libyan rebellion would have been impossible, if not unthinkable, without the crucial support of the coalition forces engaged in the operation “Unified Protector”. Yet, they would not be spared some harsh criticism afterwards, which, as we will subsequently see, had a negative impact on the handling of the Syrian crisis.

Grounds for intervention

- As clearly stated by UNSC Resolution 1973, purely humanitarian reasons constituted the very basis of the intervention in Libya. There has been a general consensus on that, with even Henry Kissinger, known for his cynical realism, agreeing on it: “While the United States did not have a vital interest at stake in Libya, a limited military intervention solely on humanitarian grounds could be justified.”³¹ Besides, this was in conformity with the 2010 US National Security Strategy, with two of the four general US strategic goals obviously applicable in Libya. These were the aims of “respect for universal values around the world” and the idea “of an international order advanced by US leadership that promotes peace, security, and opportunity through stronger cooperation to meet global challenges”.³² Our main reference here is the United States for the very simple reason that a NATO military intervention could never have taken place without its leadership.
- Libya’s past human rights record strengthened further this argument, making the immediate threat to the civilian population highly credible. This is a country where indeed, for the last 45 years, political parties, groups, non-state

³⁰ NATO JFC Naples, NATO and Libya, Operational Media Update for October 31, 2011.

³¹ Henry A. Kissinger and James A. Baker III, “Grounds for U.S. military intervention”, *The Washington Post*, 10 April, 2011.

³² National Security Strategy, The White House, Washington, 2010, quoted by Stefan Hasler, *op.cit.*, p. 105.

media and independent civic organizations working on political issues had been banned. Citizens have not been allowed to criticize the government, otherwise they risked arrest, detention and lengthy prison sentences following unfair trials. The government is also known to have extensively used torture as a method of dealing with opponents and obtaining confessions. “Libyan law specifically calls for the death of anyone involved in a group opposed to the ideology of the revolution in 1969 that brought Qadhafi to power”.³³ It was therefore obvious that this time Qadhafi would indeed show no mercy as he openly threatened his people by bloodbath.

- “Redemption politics” was a factor of a more political nature in prompting the intervention in Libya.³⁴The term refers to the revision of the US attitude towards the Arab Spring, which had been one of hesitancy if not ongoing support for the old regimes in countries like Egypt and Tunisia. In other words, once it had become clear that this was the wrong course, Washington had to prove to the world that it indeed supported the quest for democracy in this part of the world. Libya was therefore considered a good opportunity to demonstrate the goodwill of the US to the Muslim world, considerably antagonized after a decade-long confrontation in Afghanistan and Iraq.
- The importance of Libyan oil for the US/Western world has inevitably played a role in facilitating the intervention, albeit it was not a vital factor within the general context of the crisis. But still, Libyan oil reserves are the largest in Africa and the fifth largest in the world, with 76.4 billion barrels as of 2010, out of which 85% were exported to European markets .³⁵Also, following the Libyan-Western rapprochement in the 2000s as mentioned earlier, the American share in the Libyan oil production/industry had considerably increased with several new projects pre-planned. Consequently, there was an interest in maintaining the expanding mutual relationship while a long-lasting conflict within Libya could hit the world oil market badly, creating shortage and leading to soaring oil prices.

³³ Jillian M. Siskind, President, Canadian Lawyers for International Human Rights (CLAHR) op.cit.

³⁴ The term belongs to Stefan Hasler, op.cit., p. 107.

³⁵ “Libya-The Economy”, U.S. Library of Congress, [http:// worldfacts. us/Libya](http://worldfacts.us/Libya) (accessed on 12 March, 2014)

- “Libya does not have modern military forces; it has a modern military farce” writes an expert.³⁶ The weakness of the Libyan military was an important factor that helped the coalition fulfill the criterion of “reasonable prospect of success” in humanitarian intervention. The pre-intervention military data reveals the existence of 80,000 active personnel with a 45,000 reserve force (People’s Militia), 530 tanks, 2840 infantry fighting vehicles, 650 artillery, 580 anti-air weapons, 480 aircrafts, and 21 navy ships (with 2 frigates and 2 submarines).³⁷ Although these numbers are not so insignificant for a small country with 6 million inhabitants, much of this capability was non-operational or in storage, with an exceptionally low combat-readiness and very poor modernization rates. Training and leadership problems crippled manpower so much so that it was predicted “...they would break down quickly in the event of war”.³⁸ An aging and obsolete Soviet-supplied missile defense system illustrated, on the other hand, the technical limits of the Libyan military. When, on top of it all, its members started deserting to join the rebel ranks, Qadhafi’s defeat became a certitude.
- The decisive role played by France in undertaking the intervention should not be overlooked. At the same time, it should be underlined that the pro-intervention stance of the French government in this case was more a product of political pragmatism than the country’s traditional support for humanitarian intervention. The failure in handling the emerging “Arab Spring”, the dismissal of the French Foreign Minister suspected of corruption and her controversial links to the Tunisian Ben Ali regime before the revolution, the ongoing and increasingly heated debate in French politics over Islam and the problem of African refugees coming through Libya (and Qadhafi’s blackmail to the EU not to stop illegal immigration unless he was paid 5 billion euros a year), had damaged President Sarkozy’s reputation considerably while benefiting to the extreme-right.³⁹ As he badly needed to demonstrate leadership, Bernard Henri

³⁶ Anthony H. Cordesman, *The Military Balance in the Middle East*, (in cooperation with the CSIS in Washington, D.C.), Westport, Connecticut, Praeger Publishers, 2004, p. 96.

³⁷ Sources: Jane’s Military and Security Assessments, *SIPRI*, CIA The world factbook.

³⁸ Cordesman, op.cit., p. 101.

³⁹ Stefan Hasler, op.cit., pp. 125-126.

Lévy, an influential intellectual and human rights activist put a welcome pressure on Sarkozy, underlining the moral obligation of France to intervene in Libya, dramatically stating that otherwise the “blood of the massacred would stain the French flag”, and personally brokering the first meetings between Sarkozy and the Libyan rebels.⁴⁰ As a result, France was the first country to recognize the Libyan NTC in March 2011, and under the honorable banner of humanitarian intervention, French Air Force attacked Libyan troops before even the NATO mission was officially launched. Later on, it would support the rebels with arms without informing its allies.⁴¹ French engagement in Libya was also a readjustment of its influence politics in North Africa. At the end of the day, it was also a contribution to the democratization of this continent.

- Finally, the domestic framework in Libya has considerably facilitated the intervention. Despised by the international community for the brutality of his 42-year regime, his open support for terrorism, his aggressive anti-Western rhetoric and the pathological dimension of his bizarre personality, Qadhafi had no allies across the world. Despite his continuous references to Islam, he had antagonized his population so deeply that they were looking for a “Muslim brotherhood” type of alternative, which sped up the revolt. Moreover, he reigned over a society that was composed of more than 100 tribes and this structure played a role of catalyst all throughout the conflict, pitting rebellious eastern and pro-Qadhafi western tribes against each other. As mentioned earlier, the weakness of the military was an important factor, while the geographical profile of the country – 95% desert and a couple of urban centers along the Mediterranean coast- made the operation quite easy to undertake.

Taken all together, the above mentioned factors have contributed in different ways to the military intervention of 2011 in Libya, which can be considered as the most successful attempt of humanitarian intervention so far, fulfilling each of the required criteria.

⁴⁰ Benjamin Wallace Wells, “European Superhero Quashes Libyan Dictator”, *New Yorker Magazine*, 26 December 2011 and Steven Erlanger, “By His Own Reckoning, One Man Made Libya a French Case”, *New York Times*, 2 April 2011, quoted by *ibid*.

⁴¹ This was against UNSC Resolution 1970 that constituted the base of Resolution 1973 and prohibiting arms shipments to the parties. It was severely criticized by Russia on the grounds that NATO engagement exceeded the decisions of the UN Security Council.

However, some harsh criticism would follow, with Russia opening the fire at a news conference held by Vladimir Putin on April 26, 2011. Calling Resolution 1973 “a medieval call for crusade”, he gave the clear impression that he would have vetoed it, in open disagreement with the then President Dmitri A. Medvedev. He then attacked NATO for exceeding its mandate and “violating the principle of sovereignty and the wishes of the Libyan people”. France also got its share of criticism as the Russian leader accused it of supplying arms to the rebels, against the terms of the UNSC Resolution (which he had just condemned!).⁴² Still today, he calls the NATO intervention in Libya a “false pretense of humanitarian intervention”.⁴³ There were soon other critics voicing their objection to NATO’s contribution to a violent regime change. Whereas Louise Arbour, the former Chief Prosecutor of the International Criminal Tribunals for Yugoslavia and Rwanda has asked whether regime change is not the logical end state of any decision to invoke R2P. “How can the international community be expected to protect civilians without going to the further and necessary lengths of ousting the leaders responsible for the human rights violations?”.⁴⁴ This is exactly what is at stake in Syria.

B) In Assad’s Syria

Another former Ottoman province since 1516, Syria was established as a French mandate after WWI and gained its independence in 1946 after a long struggle against the French. Marked by upheavals and successive military coups until the late 1960s, Syrian politics became increasingly dominated by the military and security establishment while pan-Arabism has emerged as the prevailing political movement, combining Arab nationalism and socialism. At the same time, a pact signed with the Soviet Union would seal the destiny of Syrian foreign policy for the last half-century. After a brief merger with Nasser’s Egypt in 1958 under the label of United Arab Republic, Syria seceded in 1961. Since a coup d’Etat engineered in 1963 by the members of the Arab Socialist Ba’ath Party, Ba’athism has become the official ideology of the country while the al-Assad family, its unofficial dynasty. As of the bloodless coup led by Hafez al-Assad in 1970, Syria has been ruled with an iron fist

⁴² Ellen Barry, “Putin Criticizes West for Libyan Incursion”, *The New York Times*, April 26, 2011.

⁴³ During his press conference on the annexation of Crimea, reported by *The New York Times*, 18 March 2014.

⁴⁴ Louise Arbour, “Protection des civils, jusqu’où?”, *Le Figaro*, 29 June 2012.

by this Alawite clique while 60% of its population belonged to the Sunnite sect, subject to the tyranny of the minority.

Indeed, according to various international sources, Syria's human rights record has been "among the worst in the world" displaying a systematic use of torture, arbitrary detention, forced disappearances, travel ban, and censorship.⁴⁵ Soon after Bashar al-Assad's takeover in 2000 following his father's death, hopes were dampened that this Western-educated heir would reform the country. Instead, he rather followed the idea to "modernize or upgrade authoritarianism", which amounted to the attempt of improving the economic system without real changes in terms of democratization.⁴⁶ Long involved in Lebanese politics through its support for the Hezbollah along with its increasingly close ties to Iran and opaque connections with terrorism in Iraq, Syrian foreign policy, on the other hand, has been centered on counterbalancing Israel and the US in the region. This was the natural outcome of its four-decade-old alliance with Russia, highlighted by the Russian navy base in the port of Tartus founded in 1971, as well as increasing arms imports from Moscow in the last decade. Highly authoritarian, isolated from the West, armed to the teeth, firmly backed by Russia, the Damascus regime was ready to counter the uprisings related to the Arab Spring when they broke out in 2011.

"Slow-motion state-sponsored mass homicide campaign"

These are the words used by an expert to describe what has been going on in Syria for the last three years.⁴⁷ The first protests against the ruling Ba'ath party and President Bashar al-Assad had already started in February 2011, to be quickly suppressed by the Syrian security forces. On March 18, protests broke out in the southern city of Dara'a where, after the Friday prayer, masses had taken out to the streets to demonstrate against the arrest and torturing of some 15 teenagers who had sprayed anti-regime slogans to the walls, some weeks earlier. The killing of some protestors grew along with the demonstrations and 8000 civilians were killed across the country, bringing Syria to the brink of civil war in a matter of months. President Assad's first reaction had been to combine the classical accusation against

⁴⁵ 2011 Report of Human Rights Watch.

⁴⁶ Volker Perthes, *Syria under Bashar al-Assad: Modernisation and the Limits of Change*, Oxford, Oxford University Press, 2004, quoted by Stefan Hasler, op.cit., p.68.

⁴⁷ Robert Pape, op.cit., p. 70.

a “foreign plot” in a speech before the parliament, along with the announcement of some cosmetic reforms, including the lifting of the 48-year old Emergency Law, the ordering of an investigation of police killings and the abolition of state security courts.⁴⁸ Nevertheless, state violence continued as armed forces attacked Dara’a, Homs and other cities with artillery and tanks while protests could not be extinguished and the death toll grew geometrically.

In a move premonitory of its future deadlock on Syria, the UN Security Council would attempt, on 28 April 2011, a condemnation of the Syrian regime endorsed by France, Great Britain, Germany and Portugal, only to be vetoed by Russia and China, and denied by India and Lebanon. Neither the immediately subsequent condemnation by the UN High Commissioner for Human Rights, nor the arms embargo, travel ban and freezing of assets of the Syrian leadership imposed by the EU were to bring any results, as the main international instrument had been blocked from the start. The summer of 2011 was marked by desperate attempts by the international community to put pressure on Assad: on 2 August, the EU expanded their embargo; on 6 August the Gulf Cooperation Council issued a condemnation; envoys from different countries traveled to Damascus on August 9 to convince Assad to end the violence, with the US and the EU prompting him to resign; on 2 September the EU imposed an oil embargo to Syria. In response to that decision, Russian President Medvedev warned the Western states not to increase pressure on Syria because this was “absolutely not needed”.⁴⁹ As a result, not only Washington’s new attempt to urge the UN Security Council to impose sanctions against Syria failed on 21 September, but another European-sponsored resolution threatening sanctions if Syria did not immediately halt its military crackdown against civilians, was vetoed by Russia and China on 4 October. In the meantime, the country was descending into civil war, with fighting reaching the outskirts of Damascus and the second biggest city of Aleppo, as various armed groups organized themselves to take up the opposition.

The diplomatic cat and mouse game continued throughout 2012, with former UN Secretary General Kofi Annan’s nomination as Special Envoy of the UN and the League of Arab States (LAS) and Assad first seeming to accept the terms of a LAS

⁴⁸ The Emergency Law allowed the government to arrest people without charge and extended the state’s authority into virtually every aspect of citizens’ lives.

⁴⁹ Ian Black, “Russia refuses more Syria sanctions”, *The Guardian*, 12 September 2011.

peace plan and not implementing them at the end, backed by a third Russian-Chinese veto blocking the peace plan on 11 February 2012. All the UNSC could undertake was the deployment of some unarmed thirty military observers and then establish a 300-men United Nations Supervision Mission in Syria (UNSMIS), "...condemning the widespread violations of human rights by the Syrian authorities...and expressing its profound regret at the death of many thousands of people in Syria..." but ending its mandate after four months.⁵⁰

In July 2013, the UN said more than 100,000 people had been killed in Syria and stopped updating the death toll.⁵¹

According to the Independent International Commission of Inquiry on the Syrian Arab Republic established on 22 August 2011 by the UN Human Rights Council, "...government forces have committed gross violations of human rights and the war crimes of murder, hostage-taking, torture, rape and sexual violence, recruiting and using children in hostilities and targeting civilians in sniper attacks. Government forces disregarded the special protection accorded to hospitals, medical and humanitarian personnel and cultural property.." ⁵², thus violating all international human rights conventions of which the Syrian Arab Republic is party as well as its obligations under international humanitarian law, violating the fundamental prohibitions of common article 3 of the Geneva Conventions.⁵³ The latest report of the Commission also pointed at non-state armed groups which committed war crimes, crimes against humanity, and perpetrated massacres.⁵⁴

Before the uprising began, the Syrian military had one of the world's largest stockpiles of chemical weapons, comprising more than 1,000 tones of precursor chemicals and chemical agents, including sulphur mustard and sarin. The government insisted this toxic arsenal would not be used "inside Syria" but on 21 August 2013, rockets filled with sarin were fired at several suburbs in the Ghouta agricultural belt around Damascus, killing between 300 and 1,430 people.⁵⁵ The

⁵⁰ See UNSC Resolution 2042 of 14 April, Resolution 2043 of 21 April, and Resolution 2059 of 20 July 2012.

⁵¹ BBC News, Middle East, "Syria: The story of the conflict", 14 March 2014, <http://www.bbc.com/news/world-middle-east-26116868> (accessed 23 March 2014).

⁵² Report of the independent international commission of inquiry on the Syrian Arab Republic, Human Rights Council, A/HRC/25/65, 12 February 2014, Summary.

⁵³ Ibid, Conclusions.

⁵⁴ Ibid., Summary.

⁵⁵ BBC News, Middle East, op.cit.

opposition and Western powers argued that it could only have been carried out by government forces while Assad blamed it on the rebels. But within weeks he would agree to a US-Russian deal aimed at the removal and destruction of Syria's chemical weapons. On 27 September, the UN Security Council unanimously adopted Resolution 2128, demanding the destruction or removal of the arsenal by mid-2014. It also called for the convening of an international conference on Syria to implement the Geneva communiqué of 30 June 2012, issued by the UN-backed Action Group for Syria and calling for the establishment of a transitional governing body in Syria.⁵⁶ The talks, known as Geneva II, began in January 2014 and broke down the following month while the new UN and LAS Special Envoy Lakhdar Brahimi blamed Damascus for refusing to discuss opposition demands and its insistence on fighting "terrorists" a term used by the government to dismiss all opponents.⁵⁷ As to the chemical weapons issue, at the time of this writing Syria's all declared stocks of isopropanol had been destroyed while the remaining chemicals still needed to be removed urgently according to the Organization for the Prohibition of Chemical Weapons, while Damascus argues that the delay is due to the security situation. There is also grave concern about the alleged use of chlorine gas.⁵⁸ The Organization continues its consultations with Syria on the fate of 12 chemical production facilities - which Damascus wants to seal while the international community is asking for their destruction.⁵⁹ In the meantime, the death toll has reached over 160,000, and Syria is blocking access of humanitarian relief to the population in violation of international humanitarian law and despite the latest Security Council resolution passed in consideration of "...the dire situation of hundreds of thousand civilians trapped in besieged areas, most of whom are besieged by the Syrian armed forces..."⁶⁰ As Forsythe argues, the process for the removal and destruction of chemical weapons "...had the effect of making the brutal Assad look more responsible and acceptable...and key Western states seemed to lose interest in doing anything serious about attacks on civilians through conventional means...In Syria, some progressive action on arms control substituted for meaningful action to protect

⁵⁶ UN Security Council Resolution 2118 (2013) adopted at its 7038th meeting on 27 September 2013.

⁵⁷ BBC News, Middle East, *op.cit.*

⁵⁸ Statement by OPCW Director General Ahmet Üzümcü on 22 May 2014.

⁵⁹ Foreign Policy, Mideast Daily, March 20, 2014.

⁶⁰ UN Security Council Resolution 2139 (2014) adopted at its 7116th meeting on 22 February 2014.

civilians or to deal with the root causes of the violence”.⁶¹ As to the latest electoral show, it has been staged by Damascus to confer to Assad a further semblance of legitimacy while it was met with skepticism by the very powers whose reasons for non-intervention will be explored below.

Grounds for non-intervention

- Russia’s unwavering support for the Damascus regime has been the decisive factor behind the passivity of the international community despite the fact that the humanitarian crisis in Syria has reached unprecedented proportions. Each time that a UNSC draft resolution attempted at taking measures against the “grave and systematic human rights violations and the use of force against civilians by the Syrian authorities” Russia has argued that a) the draft would not promote a peaceful solution to the crisis and b) it “did not take into account the violence directed by extremists against the government in Syria” or that it would “send an unbalanced signal to the Syrian parties”.⁶² On the other hand, it should be underlined that “the question remains if a UN resolution would have changed anything as long as military means are not included. The resolution drafts that were vetoed by Russia and China contained diplomatic gestures, but did not contain real sanctions- although crimes against humanity have been proven several times..”.⁶³ This brings us to the other factors that have determined the attitude of the international community towards Syria.
- Military risks involved in a potential intervention are much higher in Syria than in Libya, as confirmed by NATO itself. First of all, Syrian armed forces are considerably stronger, with 292,400 active personnel with a 325,000 reserve force, 4950 tanks, 6610 infantry fighting vehicle, 2160 artillery, 3310 anti-air weapons, 830 aircraft, 19 navy ships (2 frigates) and an unknown number of long range strike systems.⁶⁴ It is also known that since 2006, Russia has increased its arms exports to Syria by tenfold (from 16 million US \$ to 162

⁶¹ David P. Forsythe, “The UN Security Council and Human Rights: Promising Developments, Persistent Problems”, *Journal of Human Rights*, 13:2, DOI: 10.1080/14754835.2014.886945, p.131.

⁶² UN News Centre, “Russia and China veto draft Security Council resolution on Syria”, “ Syria: Ban voices deep regret after Security Council fails to agree on resolution” quoted by Stefan Halper, *op.cit.*, pp. 88-89.

⁶³ *Ibid.*, pp. 82-83.

⁶⁴ Sources: Jane’s Military and Security Assessments, *SIPRI*, CIA The world factbook.

million US \$) and future contracts including modern weaponry worth 4 billion US \$ have already been signed.⁶⁵ The existence of a sizeable arsenal of chemical weapons is yet another element to be reckoned with. Against this background, the NATO Secretary General stated that the alliance had no intention of intervening in Syria and instead urged the Arab states to find another solution. Besides, a confidential NATO report after mission “Unified Protector” in Libya has made clear that an engagement of NATO in Syria contained military risks and preconditions because a) the military intervention in Libya had revealed several military flaws within NATO such as coordination and staffing problems b) proved the dependence of the alliance on the active involvement of US forces, since Syria’s more capable military and formidable array of sophisticated Russian-made air defenses would be very difficult to destroy.⁶⁶

- On the other hand, intervention fatigue is a palpable fact in the United States, in military, economic, and human terms. After ten years of conflict in Iraq and nearly fifteen years of war in Afghanistan with costs ranging from 4 to 6 trillion US \$⁶⁷ and over 6,000 military fatalities, support for yet another overseas intervention where direct national interests are not involved was understandably low already in Libya. In 2011, only 27% of Americans thought the US should do something about Libya while 63% were against.⁶⁸ The rapid success of the subsequent NATO operation does not seem to have changed people’s minds much, as indicated by polls conducted after Syria’s use of chemical weapons against civilians: 29% of Americans were in favor of (only) air strikes whereas 48% still remained against.⁶⁹ The Obama administration caught between an economic crisis, exhausted military and negative public opinion, has been avoiding any military involvement and, according to some, “politicizing intelligence”, that is publicizing Syria’s military strength and

⁶⁵ By 2010, Syria had become the seventh largest market for Russian arms, all according to the Stockholm International Peace Research Institute data.

⁶⁶ Eric Schmitt, “NATO Sees Flaws in Air Campaign Against Qaddafi”, *The New York Times*, 14 April 2012.

⁶⁷ Linda J. Bilmes, “The Financial Legacy of Iraq and Afghanistan: How Wartime Spending Decisions Will Constrain Future National Security Budgets”, Harvard Kennedy School Faculty Research Working Paper Series, RWP 13-006, March 2013.

⁶⁸ National survey conducted by PEW Research Center for the People & Press, March 10-13, 2011.

⁶⁹ National survey conducted by PEW Research Center for the People & Press, August 29-September 1, 2013.

downplaying the opposition's capabilities, "to justify doing nothing".⁷⁰ This can be seen as a precursor sign of a long period of US abstentionism ahead –with Cold War-like possible consequences as already witnessed in the Ukraine/Crimea. A corollary factor shaping US policy in Syria could be the delicate position of its ally Israel. On the one hand a declared adversary of Assad for his ties with Iran, the Hezbollah, and Hamas, it is also increasingly concerned by the rise of Al-Qaeeda-linked opposition movements like al-Nusra in Syria. Consequently Washington should avoid any *faux-pas* that could endanger Israel in this careful balancing act.

- Part of the criticism aimed at the latest intervention in Libya has gone beyond the arguments advanced by Russia or NATO's internal logistical self-criticism, but reached a more conceptual level, raising questions about humanitarian intervention as a principle. The main argument was the chaos into which Libya has found itself after the intervention, with violent infighting and human rights violations perpetrated by rebel forces. Some critics went as far as arguing that "even if the intervention does ultimately give birth to a stable and prosperous democracy, this outcome will not prove that intervention was the right choice in Libya or that similar interventions should be attempted elsewhere. To establish that requires comparing the full costs of intervention with its benefits and asking whether those benefits could be achieved at a lower cost", stressing the fact that evidence from the last two decades was not promising on this score.⁷¹ Others have argued that a dictator's violent toppling could only push other such leaders to more brutality and the acquisition of foreign arms and support, reversing the domino theory. They added that foreign military intervention not only impeded democratization but also often led to regional instability- like in Mali after Libya.⁷² As expected, this kind of theorizing based on a precedent would strengthen the arguments of those opposing intervention in Syria or elsewhere.

⁷⁰ Elliott Abrams, "Politicizing Intelligence on Syria", *The Weekly Standard*, March 11, 2012.

⁷¹ Benjamin A. Valentino, "The True Costs of Humanitarian Intervention: The Hard Truth about a Noble Notion", *Foreign Affairs*, November/December 2011, <http://www.foreignaffairs.com/print/133751>

⁷² Benjamin H. Friedman, "Intervention in Libya and Syria Isn't Humanitarian or Liberal", *CATO at Liberty*, April 5, 2012.

- The transformation of systematic repression with an identifiable perpetrator (the Damascus regime), knowingly and willingly causing harm against innocent civilian victims (demonstrators taking up to the streets since March 2011), into a confrontation with two or more parties where victims are increasingly mingled with organized armed resistance (al-Qaeeda linked groups which infiltrated the country), is perceived as an internal conflict where the political border line has become much harder to trace between victims and aggressors. Consequently, the legal justification for a humanitarian intervention has progressively grown more difficult if not impossible, while the moral grounds upon which it could be built have become considerably shakier. Intervention was much more plausible and justifiable before this threshold was crossed.⁷³ Indeed, as indicated by Laurent Fabius, the French Foreign Minister, "...in June 2012 Bashar al-Assad could have been easily replaced as neither Iran nor the Hezbollah was on the ground and the Russians were ready for a transition. A lot of time has been wasted because of the American elections where non-intervention became a domestic political issue. Today, the Hezbollah is in Syria, the Iranians are training the army, the Russians are exporting more arms than ever and terrorist groups have infiltrated the land..."⁷⁴ In other words, it is too late.
- Finally the Syrian domestic scene is very different from that of Libya. A much bigger, more heterogeneous population with different religions, ethnicities and nations make it very difficult to find a common ground for a rebellion. "Additionally, experience from other domestic conflicts in the Middle East demonstrates that the minorities have to fear political marginalization, or even being expelled from the country, when a new regime replaces the current one".⁷⁵ This is particularly true for the 10% Christian minority, for example. An eventual victory of pro-Al- Qaeeda factions could be fatal for this portion of the

⁷³ For the general conceptualization of the threshold approach through the systematic study of Security Council resolutions' language, see Carrie Booth Walling, *All Necessary Measures: The United Nations and Humanitarian Intervention*, Philadelphia, University of Pennsylvania Press, 2013.

⁷⁴ Interview granted to the weekly *Paris Match*, no. 3375, 23-29 January 2014. Speaking of France, despite its traditional pro-humanitarian intervention discourse, there was no direct interest linked to an eventual operation in Syria unlike in Libya where human trafficking and illegal immigration was very much an issue. It would anyway be highly unlikely to have a positive result in Syria with only a minor effort as in Libya, for all of the above mentioned reasons.

⁷⁵ Stefan Halper, op.cit., p. 152.

population that naturally remains loyal to Assad. Besides its incomparably stronger military, Syria has also a much more professional -and fearful- security intelligence apparatus, the *Mohabberat*, long-trained by the Russians. It is even argued that this is the real master of the country behind Bashar Al-Assad, mainly a figurehead. Finally, geography is the ally of the ruling regime, making it very difficult for any foreign army to advance through the mountainous Syrian hinterland, unlike the Libyan desert and absolutely flat coastline.

All of the above factors have prevented a humanitarian intervention in Syria although the majority of the criteria have long been fulfilled. Indeed, after more than 160,000 dead and the use of chemical weapons against civilians –which by itself had been a justification in imposing a no-fly zone in Iraq back in the 90s- the “just cause” argument is no longer debatable; the “intention is right” since nobody could be planning to occupy the country; it would be the “last resort” given that diplomatic efforts were leading nowhere, way before the Geneva II stage. So, the decisive element has been the lack of “reasonable prospects of success”, due to existing political and military constraints.⁷⁶

Conclusion

The dialectical opposition between the most successful humanitarian intervention so far, and the immediately following passivity of the international community in the face of a much bigger case of mass victimization forces us, at this point, to evaluate the practice of humanitarian intervention.

One of the major lessons that can be drawn from the current situation is the importance of timing which is key to the success of any military intervention, including humanitarian. Failure to act in time has already proven fatal in the past, partly in Bosnia and entirely in Rwanda. “At what point should a decision be made to intervene? When we disagree with a powerful and violent regime? Or a powerful and violent uprising that the state is unable to deal with occurs?” asks Jillian M. Siskind.⁷⁷ The answer given in Libya has justified the first question. Today experts agree that in Libya “...timing was perfect. As the UN, NATO and the US debated intervention,

⁷⁶ The “use of proportional means” does not come into consideration at this stage of non-action.

⁷⁷ President, Canadian Lawyers for International Human Rights, op.cit.

leaders in the Middle east were still reeling from the Arab Spring. Acutely aware of the vulnerability of their own regimes, the members of the Arab League, Organization of the Islamic Conference, and Gulf Cooperation Council all endorsed the UN's declaration of no-fly zone over Libya, including the use of 'all necessary means' to prevent mass atrocities".⁷⁸ In Syria, on the other hand, the timing would have been perfect and intervention fully justified, if it had been undertaken to protect innocent people from the violence of the government, before things degenerated into a confrontation between various factions. Within this context, "innocent" is understood as people who themselves are not engaged in unjust violence.⁷⁹ Thus, it commonly applies to unarmed protesters, noncombatants in internal wars, and virtually all those called "civilians" in popular language.⁸⁰ As indicated earlier by the French Foreign Minister, the intervention in Syria should have been realized when it could be considered as sheer protection rather than participation into an internal armed conflict. The more time has passed, the more difficult it has become to justify humanitarian intervention in this particular case. The international community had already failed the test of timing before, with belated and/or insufficient operations. This time it has failed it outright, with no action whatsoever.

The "rebound effect", that is the –negative or positive- impact of the precedent intervention(s) on the fate of the new one envisaged, is another important factor to be reckoned with. As the fiasco in Somalia had sealed the destiny of Rwanda, while the one in Bosnia had helped save Kosovo, the criticism aimed at the Libyan intervention has played a certain role in planting the seeds of doubt in the minds of potential intervenors as well as the public opinion. It should be kept in mind however, that in this particular case, hadn't it been for Russia - a major player in Syrian politics- the criticisms might have had a lesser impact on decision makers, despite other hindrances.

This brings us to another element that undeniably relativizes the concept of R2P: the individual dynamics of each case. This is best illustrated by President

⁷⁸ Stewart Patrick, "Libya and the Future of Humanitarian Intervention: How Qaddafi's Fall Vindicated Obama and RtoP", *Foreign Affairs*, Snapshot, August 26, 2011, <http://www.foreignaffairs.com/print/68154>, (accessed on 23.01.2014).

⁷⁹ Terry Nardin, "The Moral Basis of Humanitarian Intervention", in Nardin and Melissa S. Williams (eds.), *Humanitarian Intervention: Nomos XLVII*, New York, New York University Press, 2006, p. 65.

⁸⁰ This definition is consistent with the Geneva Convention, Protocol I, Articles 43 and 50, amended June 8, 1977, according to Robert A. Pape, op.cit., p. 45.

Obama's remarks articulating the reasons for the United States acting in Libya. At a time of upheaval in many other countries across the Arab world-those reasons were carefully confined to the Libyan case.⁸¹ As he noted: "...we cannot use our military wherever repression occurs. And given the costs and risks of intervention, we must always measure our interests against the need for action... In this particular country- Libya- at this particular moment, we were faced with the prospects of violence on a horrific scale. We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves...".⁸² This highly pragmatic assessment seems to have clearly set the limits of humanitarian intervention, as illustrated by the Syrian case.

It has also encouraged scholars and experts to reflect upon a new standard: pragmatic humanitarian intervention. According to this concept, states should undertake humanitarian intervention only when certain conditions are present, such as the possibility of saving a significant number of lives by low-risk operations, where the threatened population is easily separable from those not at risk, a militarily effective local ally exists, major international and regional institutions sanction the intervention, and the government's forces are highly vulnerable to offshore air and naval power such as massed combat forces over open terrain which can be easily destroyed at low risk with precision technology. Besides, enduring security should be achievable, either by territorial separation of the perpetrator and the victims or a credible political settlement between all parties.⁸³ It has been argued that the most important avenue for productive humanitarian intervention was the development of a new international treaty to codify this proposed standard.⁸⁴

This so-called new standard, however, does not seem very convincing, since a) all of the above conditions would be rather difficult to gather at a time, and b) such a treaty would establish too rigid a framework that cannot necessarily apply to all cases, also limiting the rules of engagement in advance. It therefore looks more

⁸¹ Simon Chesterman, "Leading from Behind: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya" (2011), *New York University Public Law and Legal Theory Working Papers*, Paper 282. http://lsr.nellco.org/nyu_plltwp/282

⁸² Barack Obama, "Remarks by the President in Address to the Nation on Libya", National Defense University, Washington, D.C., 28 March 2011.

⁸³ See Robert A. Pape, *op.cit.*

⁸⁴ *Ibid.*, p.80.

like a realist's wishful thinking than a genuine argumentation in favor of humanitarian intervention. Finally, it might be too early for a codification within this context, as the responsibility to protect is yet an emerging norm of customary international law. According to Kofi Annan, "...none of us behind the development of this international norm imagined that states everywhere suddenly would respect the rights of their peoples, or that the answer when they failed was necessarily military action in the name of human rights. What we sought –and still seek- is a consciousness on the part of the leaders and governments everywhere that their integration into global society cannot progress without respect for human rights".⁸⁵

⁸⁵ Kofi Annan, *Interventions: A Life in War and Peace*, London, Penguin Books, 2012, p. 371.

